

IN RE:  
FRANK HALSTEAD

01 - Elec. App. – 078(KC)

This matter is an appeal from the Election Administrator’s (the “EA”) decision 2001 EAD 378, issued May 31, 2001. The hearing was requested by Danny J. Bruno, secretary-treasurer of Teamsters Local Union 396 in Rancho Cucamonga, California. A cross appeal was filed by Barbara Harvey, Esq.,<sup>1</sup> on behalf of Mr. Frank Halstead, the protestor and member of Teamsters Local Union 572 in Carson, CA.

A hearing was held before me on June 6, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. for the Election Administrator’s Office; Mr. Bruno; Mr. Halstead; Ms. Harvey on behalf of Mr. Halstead; and Mr. Ernesto Perez, vice - president of Local Union 396. Additional submissions were received from Ms. Harvey pre- and post-hearing on June 6, 2001.

In this protest, Mr. Halstead alleged<sup>2</sup> that Mr. Bruno retaliated against Mr. Perez by refusing to grant his request to attend the International Convention because Mr. Perez did not run on the same slate as Mr. Bruno in the Local Union 396 delegate election. The EA’s analysis found Mr. Bruno’s decision and his motivation to be improper retaliation in violation of Article

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<sup>1</sup> Prior to the hearing, Mr. Bruno requested that Ms. Harvey recuse herself from representing Mr. Halstead in this appeal because of a possible conflict. He explained that since Ms. Harvey did some work on behalf of the officers of Local Union 396, and Mr. Perez was a member of the Local Union Executive Board at the time, she would have a conflict of interest. Ms. Harvey explained that her representation occurred before Mr. Bruno was an officer and concerned advice she gave the outgoing local union administration concerning extraordinary expenditures, issues unrelated to those raised in this appeal. She was confident that no attorney client confidence would be breached as a result of her knowledge and representation in that matter. Satisfied with Ms. Harvey’s explanation that there would be no breach of confidentiality, I overruled Mr. Bruno’s objection.

<sup>2</sup> The issue of the timeliness of the protest was raised at the hearing. Mr. Bruno argued that the appeal should be dismissed on timeliness grounds because: (a) Mr. Perez knew the Rules concerning the timely filing of protests; and (b) Mr. Halstead, who is not a member of Local Union 396 and not involved in the underlying events that gave rise to the protest, should not be allowed to file on Mr. Perez’s behalf. I concur with the

VII, Section 11(g) of the Rules. He concluded that the conduct protected by the Rules, Mr. Perez's decision to run on a slate in opposition to Mr. Bruno's slate, was the motivating factor in Mr. Bruno's decision not to grant Mr. Perez's request. The EA explained that "[w]hether to send a member to the IBT Convention as a guest cannot hinge on the member's support of the winning slate.... [and] Local Union 396's selection must be based on legitimate considerations of educational benefits to its officers, business agents and stewards. It may not base its decision on the partisan activities of such persons during the delegate election campaign...." (See, page 4, 2001 EAD 378 (May 31, 2001)). As a remedy for this violation, the EA ordered that Mr. Perez be permitted to attend the International Convention for two days as a guest of Local Union 396.

On behalf of the protestor and in support of the cross appeal, Ms. Harvey argues that along with the retaliation analysis, the EA should also have made an additional finding of "unlawful union support" under Article XI, Section 1(b)(6) which prohibits the use of union resources to promote the candidacy of any individual. She explains that since union resources are being used to pay guest expenses, the Rules provide that invitations should be extended equally to supporters of both the Hoffa and Leedham slates. She also agreed with Mr. Halstead's proposal that a lottery be held among those members qualified to attend the International Convention, which would also lend an air of impartiality to the selection of attendees.

At the hearing, appellant Mr. Bruno denied that he retaliated against Mr. Perez, but did not refute the EA's findings that his refusal to allow Mr. Perez to attend the International Convention was based on Mr. Perez's political decision to run in opposition to his slate. In rebuttal to Ms. Harvey's claim that the guests were all Hoffa supporters, he claimed that at least one guest, Jim Smith, was a Leedham supporter. However, Mr. Halstead, himself a Leedham

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EA's conclusion that while there was a delay in filing, under these facts and because of the importance of this issue, the matter should be decided on the merits.

supporter, stated that as far as he knew, Mr. Smith was not a supporter of Mr. Leedham, did not attend any meetings or assist in the distribution of any leaflets in support of Mr. Leedham's campaign.

First, I reject Mr. Halstead's lottery proposal. At this late date, with the International Convention days away, this would be too disruptive to the plans of the members already scheduled to attend and for those potential attendees to make plans and change schedules. Second, as for Ms. Harvey's suggestion that the guests be divided evenly between the Leedham and Hoffa supporters, I find this to be manifestly untenable. It would require the EA's office to scrutinize the political affiliation of every guest in attending the convention, to insure an even distribution of support from both slates, and would undermine the democratic will of the local unions to choose how they wanted to be represented at the International Convention.

I find that the EA's retaliation analysis is convincing. Case law clearly establishes that to demonstrate retaliation, it must be shown Rules-protected activity was the motivating factor in the resulting action. In this case, it is clear that Mr. Bruno, by his own admission, denied Mr. Perez's request to attend the International Convention as a guest on the basis that Mr. Perez had chosen to run in opposition to Mr. Bruno's slate, clearly Rules-protected political activity. Accordingly, retaliation is established on this record.

As to the remedy, as with the findings of facts, the EA's determination is entitled to substantial deference (See, page 2, Richards, 00 Elec. App. 001 (KC) (August 14, 2000)).

Accordingly, I affirm the EA's decision in this matter in all respects.

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s/Kenneth Conboy  
Kenneth Conboy  
Election Appeals Master

Dated: June 15, 2001