

ELECTION APPEALS MASTER

IN RE:

BILL ZIMMERMAN and TOM LEEDHAM  
RANK AND FILE POWER SLATE

01 Elec. App. 080 (KC)

This matter is an appeal from the Election Administrator's decision 2001 EAD 424, issued August 10, 2001. The appeal hearing was requested by Danny J. Bruno, Secretary Treasurer of Teamsters Local Union 396; Bradley T. Raymond, Esq. of Finkel, Whitefield, Selik, Raymond, Ferrara & Feldman on behalf of the International Brotherhood of Teamsters; and Scott D. Soldon, Esq. of Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman on behalf of Joint Counsel 39.

A hearing was held before me on August 28, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq., for the Election Administrator's Office; Bradley T. Raymond, Esq. of Finkel, Whitefield, Selik, Raymond, Ferrara & Feldman on behalf of the International Brotherhood of Teamsters; Stephen A. Ostrach, Treasurer of the Tom Leedham Rank & File Power Slate; Lois Tuttle, Esq., Election Administrator Representative of the Election Administrator's Office; Barbara Harvey, Esq. on behalf of Teamsters for a Democratic Union; Gary Miller, Esq. of Previant Goldberg, Uelman, Gratz, Miller & Brueggeman on behalf of Joint Counsel 39 and Danny J. Bruno, Secretary Treasurer of Teamsters Local Union 396.

This appeal involves three union financed publications that have been found by the Election Administrator to have violated the Election rules by furthering the political campaign of the Hoffa Unity Slate.

The basis for these rulings is set forth in the decision and order of the Election Administrator and will not be repeated here.

In the Teamster Leader case, the masthead contains the words “Unity · Pride · Strength” and a brief letter from the General President headed “Breathtaking Unity” which notes the division that existed in the 1996 Philadelphia convention and closes with the statement “Our convention this year proved once again that UNITED, WE WIN.” The paper also contains excerpts from speeches of IBT officers that referenced Hoffa Slate campaign themes that were found by the Election Administrator to have violated the Rules in Martinez II.

The IBT complains that the ruling constitutes an ex post facto exaction since the Teamster Leader issue in question was mailed before the decision in Martinez II. This confuses the impact of a new statute (or Election Rule) with the mere controlling authority of a decision interpreting an existing statute (or Election Rule). The former may implicate ex post facto analysis, the latter does not. The need to interpret and forecast the impact of legal decisions explains why lawyers constitute such a thriving profession in America. It is their task, responsibility and challenge to anticipate whether their clients’ actions, analyzed in the light of prevailing law, and previous decisions, run the risk of being found violative of that law as it is applied to future, different and circumstantial facts and events. Here the Hoffa campaign appropriated a unifying slogan, which in September 2001 was established as a perfectly appropriate appendage to the newspaper’s masthead, and converted it to its partisan political

purposes. Surely the extraordinarily able lawyers supporting the IBT understood the legal risks and cautioned those on the political side. The union politicians chose to ignore them. I affirm the finding of a violation, and find the remedy entirely appropriate.

In the case of the Local 396 Newsletter, the Election Administrator found that although a published article referenced “unity” in the previously approved context of specific union organizing goals, the Rules were violated because of the article’s juxtaposition to “the author’s caption REMEMBER YOUR VOTE COUNTS”, which rallying cry has been for many issues a recurring theme by the Local during this election cycle to stimulate interest and get out the vote. The Election Administrator complains also that although General President Hoffa’s name was mentioned, the opposing candidate’s name was not, and that a lamentation about the negative impact of internal in finding was a cynical code phrase with political motivation.

These reeds of support for the decision are too frail to justify the censorship of this publication. The tone, content and timing analysis required by the Rules does not support the finding. Accordingly, the Election Administrator’s decision in connection with the Local 396 Newsletter is reversed, and the remedy is vacated.

The Wisconsin Teamster articles indisputably endorse the Hoffa candidacy. Accordingly, the Election Administrator’s decision and remedy as to it is affirmed.

\_\_\_\_s/Kenneth Conboy \_\_\_\_\_  
Kenneth Conboy  
Election Appeals Master

Dated: September 14, 2001