

ELECTION APPEALS MASTER

IN RE:

TOM LEEDHAM SLATE and
HOFFA UNITY SLATE

01 Elec. App. 082 (KC)

This matter is an appeal from the Election Administrator's decision 2001 EAD 410, issued July 19, 2001. The appeal hearing was requested by Bradley T. Raymond, Esq. of Finkel, Whitefield, Selik, Raymond, Ferrara & Feldman on behalf of the International Brotherhood of Teamsters and Betty Grdina, Esq. of Yablonski, Both & Edelman on behalf of the Tom Leedham Slate. The hearing was delayed on several occasions because of difficulty in obtaining certain video taped evidence relied upon by the Election Administrator's Office ("EAO") in its findings.

A hearing was held before me on September 17, 2001. The following persons were heard by way of teleconference: William Wertheimer, Jr., Election Administrator; Michael B. Nicholson, Esq. General Counsel for the Election Administrator's Office; Jeffrey J. Ellison, Esq., for the Election Administrator's Office; 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; Betty Grdina, Esq. of Yablonski, Both & Edelman on behalf of the Tom Leedham Slate; Stephen Ostrach of the Leedham Campaign; J. Douglas Korney, Esq. of Korney & Heldt on behalf of the Hoffa Unity Slate; James L. Hicks, Esq. on behalf of the Hoffa Campaign; Barbara Harvey, Esq. on behalf of the Teamsters for a

Democratic Union; Joseph J. Kaplon, Esq. of Wohlner Kaplon Phillips Young & Cutler on behalf of Jim Santangelo and Todd Thompson.

This appeal arises out of a controversial incident that occurred during the recent nominating convention of the IBT held in Las Vegas, Nevada. A public hotel corridor that passed the campaign headquarters of the two contending international slates and directly accessed the room where actual voting was to be conducted, became congested and, according to some witnesses, difficult to pass through. This occurred just prior to and shortly after the commencement of voting for nomination of regional International Vice President candidates.

The Leedham Slate filed a protest, asserting that the Hoffa Slate intentionally caused this condition with the intended objective of physically and psychologically intimidating voters as they made their way to the polls. The Election Administrator was personally present and attempted to, and did, by vigorous intervention, succeed in clearing the passageway. The Hoffa Slate filed a complaint, alleging pro-Leedham bias by the Election Administrator and his General Counsel. The protests were investigated and decided for the EAO by a designated Deputy of the Election Administrator. He sustained the Leedham Slate protest and rejected the Hoffa Slate protest.

This incident and its aftermath have been regrettably characterized by excessive rhetoric and self-interested exaggeration from virtually every quarter. The scene has been described as chaotic and out of control; some witnesses have been called liars; the concept of intimidation has been invoked without care, precision or restraint; the Election Administrator and his General Counsel have been assailed as unprofessional and biased; the International

Brotherhood of Teamsters as an institution has been denounced as anti-democratic, and the decision of the EAO is marked by tendentious overstatement of the evidence.

The wisest comment amid all the bombast has been that of James L. Hicks, Esq., at the appeals hearing, who soundly and accurately described the sorry affair in the hotel corridor as “sophomoric” adults regressing to adolescents in behavior and language.

I have examined the two videotapes on which the Election Officer relies for evidence of “a gauntlet” and find no such evidence. Although the only neutral witness interviewed, a security guard, described “two irregular lines formed on either side of the hall about five feet apart,” he gives no evidence either of intimidation or blockage of access to the polls. None of the witnesses interviewed stated that they were intimidated or prevented from voting.

I make the following findings, based upon the record:

- 1) The claim in the decision that the International Brotherhood of Teamsters through its counsel has by its legal position in this matter repudiated the principle of free and unimpeded access to the polls for its membership, is without foundation, is wholly improper, and does grave injury to ten years of democratic institution building under the Consent Decree. I have cautioned in the past against zeal of argument or the desire to jaw bone compliance with the Rules leading to excessive and imprudent language in the legal record. To whatever extent the EAO’s formal decision is founded on this claim/finding (and in its generalized and confusing marshaling of fact and finding the nexus is unclear), it is reversed and vacated.
- 2) The finding that certain witnesses’ “description of the activity” is “corroborated by the videotape record of the event” is untenable if the decision intends to suggest, as its organization strongly implies, the existence of a “gauntlet,” (as distinguished from “irregular lines”). The videotape record shows no such thing.

- 3) I reject entirely the decision's "important role" ascribed to loud, vulgar chanting ridiculing the Teamsters for a Democratic Union as having "the foreseeable effect of intimidation." This is incoherent as a matter of logic and totally at odds with the benign nature of the rough and tumble of union politics. The decision goes on to assert, in a strikingly condescending, Miss Manners admonition taken to the absurd, that [loudly] using a "phrase [with] a derogatory connotation is foreseeably threatening" to non-Hoffa supporters (emphasis added). This is decisional mischief making at its worst. To the extent that it was intended to legally support the finding of a violation of the Rules, this conclusion in the decision is explicitly rejected and vacated.

The decision of the EAO is affirmed solely upon the ground that the incumbent Vice President for the West region, in a refreshing display of honesty, told the EAO's investigators, in the presence of his attorney that "we set up a gauntlet." That is sufficient to sustain the findings of the EAO, although it would have been more illuminating had the EAO pressed Mr. Santangelo in a forthright manner in an attempt to establish if he in fact either intended to or considered the likelihood of intimidating voters or blocking their access to the polls. The setting up of a "gauntlet", without further exploration, is equally consistent with creating a stupid and mindless, but in the end, harmless campaign stunt. Indeed, the entire incident may be more accurately defined as merely a case of electioneering too close to a polling place. But I defer to the EAO's darker finding of fact, only because I am required to under prevailing precedent. The required notice under the remedy will be mailed within three calendar days of the date of this order. The rejection of the Hoffa Slate protest is affirmed.

____s/Kenneth Conboy_____
Kenneth Conboy
Election Appeals Master

Dated: September 25, 2001