

IN RE: DAVID THORNSBERRY,)	
)	Protest Decision 2005 ESD 17
)	Issued: October 14, 2005
Protestor.)	OES Case No. P-05-013-090905-MW
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TDU has earned a negative reputation around the country for attempting to destroy the Teamsters Union from within. Their anti-union activities over the years are well documented, and are an insult to the hard-working men and women of our Union. TDU calls itself a democratic organization, but the truth is there is nothing democratic about this group. This small splinter

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group based out of Detroit, Michigan is not interested in what is best for Teamsters. Their only mission is to undermine the Teamsters Union, do what they can to weaken the membership, and help anti-union interests and employers destroy our ability to fight for working families.

The article contains a side-bar that re-prints in its entirety the resolution the local membership adopted. Among other things, the resolution criticizes TDU for “disseminating propaganda suggesting that International and Central States officials are mismanaging the Central States Health and Welfare & Pension Funds. This propaganda then gets distributed by anti-union employers, who in turn distribute these lies to potential union members at companies being organized by the International and Local Unions. The distribution of such false information is threatening the success of organizing campaigns across the nation.”

The article concludes with another Zuckerman quote, *viz.*

TDU is not our friend, and we will do whatever we must to fight their plan to destroy our union. This resolution is a first step in Local 89’s campaign to stand up for real Teamsters by fighting back against TDU’s anti-Teamster agenda. We cannot allow this group to weaken our union and destroy our ability to improve the quality of life for working men and women.

The September/October 2004 issue of *Local 89 Teamster* contains a “President’s Perspective” column in which Zuckerman writes the following:

While Local 89 and the International Union have been working very hard to expand and strengthen our union, not everybody is happy about our recent successes. I am talking about the dissident, anti-Teamster group TDU – which is currently working to weaken our union and destroy our ability to represent you and your interests.

* * *

TDU are not true Teamsters, and their actions prove it!

The March/April 2005 issue contains an article titled “Local 89 Members Approve Resolution Condemning TDU’s Anti-Union Activities by UNANIMOUS Vote.” The article documents a Local 89 membership meeting that adopted a resolution criticizing TDU for, among other things, “making endless allegations and innuendos saying that Teamster leaders regularly engage in unlawful activity or neglect their sworn duty to the members.”

None of the articles or resolutions appearing in *Local 89 Teamster* identifies or refers to the protestor, the UR&F slate for the delegate and alternate delegate election or

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any candidate on that slate, or any activity of TDU that occurred within the jurisdiction of Local 89.

No protest was filed against any of these editions of *Local 89 Teamster* during the “reach back” period when the proposed *Rules* were first published in May 2005.¹

The instant protest was lodged in response to a one-page flyer distributed by the Zuckerman-Bolton slate in early September 2005 entitled, “Don’t Let Thornsberry and TDU Play Politics With Your Central States Pension.” The flyer is demonstrably campaign material. It carries a banner at the top identifying it as “An Important Message to Local 89 Members from the Zuckerman/Bolton Slate.” Fine print at the bottom of the flyer states: “No union funds were used to print or distribute this flyer.”

The text of the flyer reprints almost verbatim a column by IBT Vice-President Fred Gegare published in the July/August 2005 edition of *Wisconsin Teamster*. Gegare’s column was entitled, “TDU’s Opposition to Pension Reform Bill Is Based on Lies and Ignorance” and reported on a particular pension reform bill that had been introduced in the United States Congress. Gegare’s article criticized TDU for opposing the bill, stating that the “move serves only TDU’s anti-Teamster efforts, and could threaten the retirement security of 750,000 Teamsters who participate in multiemployer plans.”

The Zuckerman-Bolton flyer alters two passages from the Gegare column to read as follows (language added in the campaign flyer appears in *italics*):

Unfortunately, *David Thornsberry and TDU* – a *Detroit-based radical* group opposes the Teamsters Union – has [sic] decided to come out against this bill, which is still in the initial stages of the legislative process. This move serves only *Thornsberry’s and TDU’s* anti-Teamster efforts, and could threaten the retirement security of the 750,000 Teamsters who participate in multiemployer pension plans.

* * *

Thornsberry and TDU’s decision to attack your Union leaders for doing the right thing amount to ignorant blather by ignorant people who do not have your best interests in mind.

Thornsberry and TDU’s shenanigans have ALWAYS been an irritant to rank-and-file members who would rather focus on organizing, negotiating

¹ Article XIII, Section 2(a) of the *Rules* states:

Protests regarding violations of the [Labor-Management Reporting and Disclosure Act, as amended](including violations of the IBT Constitution) allegedly occurring prior to the date of issuance of these Rules and protest regarding any conduct allegedly occurring within the first twenty-eight (28) days after issuance of these Rules must be filed within thirty (30) days of the date of issuance, or such protests shall be waived.

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strong contracts, protecting our benefits, and building political power. In this instance, *Thornsberry and* TDU has [sic] reached a new low by deciding to play games with the retirement security of 750,000 Teamster members.

Investigation shows that approximately 2,500 of these campaign flyers were distributed in employer parking lots across the jurisdiction of Local 89.

Richard Leebove and his company, RL Communications, provide communications services to Local Union 89. In particular, RL Communications produced each of the *Local 89 Teamster* editions at issue in this protest. These production services included writing or editing each of the articles discussed above.

Leebove and RL Communications also serve as campaign consultants to Hoffa 2006. Investigation shows that Hoffa 2006 provided the Zuckerman-Bolton slate with use of the services of Leebove and RL Communications for the delegate and alternate delegate campaign. Leebove told our investigator that he wrote the article that first appeared under Gegare's byline in *Wisconsin Teamster* and that he or a member of his staff converted it to the campaign flyer distributed by the Zuckerman-Bolton slate.

The protestor ran for delegate in the 2000-2001 election and for local union office in 2002. In each of those elections, the protestor and his slate openly expressed their support for TDU and its goals and were criticized by the Zuckerman slate for that support.

Analysis

The protestor contends that the criticisms of TDU that appeared in *Local 89 Teamster* were part of a long-term campaign orchestrated by Leebove to provide union-financed assistance to the Zuckerman-Bolton slate in the delegate and alternate delegate election. The protestor further contends that the Zuckerman-Bolton slate now has taken over the criticisms of TDU and linked the protestor to TDU in its campaign material.

The following provisions bar use of union resources and publications to support or attack the candidacy of any member. Thus, Article VII, Section 11(c) of the *Rules* states the following, in relevant part:

Union funds, facilities, equipment, stationery, personnel, etc., may not be used to assist in campaigning unless the Union is reimbursed at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance.

Further, Article VII, Section 8(a) of the *Rules* provides as follows, in relevant part:

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No publication or communication financed, directly or indirectly, by a Union may be used to support or attack any candidate or the candidacy of any person ...

In contrast, the *Rules* protect the rights of members, including union officers, to exercise political rights. Thus, Article VII, Section 11(a) states the following, in pertinent part:

All Union members retain the right to participate in campaign activities, including the right to run for office, to support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions. This includes, but is not limited to, the right to distribute campaign literature and otherwise to solicit support for a member's candidacy outside a meeting hall before, during and after a Union meeting, regardless of Union policy, rule or practice.

Where any candidate or other member of the Union exercises or attempts to exercise a right under the *Rules* to campaign for or against the candidacy of any person for the position of delegate, alternate delegate or International Officer, members of the Union shall have the reciprocal right to hear or otherwise receive such campaign advocacy.

Further, Article VII, Section 11(b) states, in part, the following:

All Union officers and employees, if members, retain the right to participate in campaign activities, including the right to run for office, openly to support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions. However, such campaigning must not involve the expenditure of Union funds. ...

The Local Union and the Zuckerman-Bolton slate assert, among other defenses, that the protest is untimely and should be denied. Article XIII, Section 2(b) requires that protests "must be filed within two (2) working days of the day when the protestor becomes aware or reasonably should have become aware of the action protested or such protests shall be waived." In addition, Article XIII, Section 2(a), quoted in footnote 1, above, provides a 30 day limitations period for protests arising prior to "the date of issuance of these *Rules*."

Although the protest was filed within two working days of the date the protestor became aware of the Zuckerman-Bolton campaign flyer, the protestor does not assert that the Zuckerman-Bolton slate has violated the *Rules*. Rather, the protestor contends that the local union violated the *Rules* by publishing the articles specified in this decision. Those

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articles were published and distributed over an eight month period ending with the March/April 2005 edition of *Local 89 Teamster*. The protestor has provided evidence that he received each of the protested editions of the newspaper when they were published. As such, any protest of these publications, to be timely filed, had to be lodged during the 30 day period specified in Article XIII, Section 2(a).

Accordingly, we DENY this protest as untimely filed.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Supervisor in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal and shall be served upon:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
Suite 1000
885 Third Avenue
New York, New York 10022
Fax: (212) 751-4864

Copies of the request for hearing must be served upon the parties, as well as upon the Election Supervisor for the International Brotherhood of Teamsters, c/o Orrick, Herrington, & Sutcliffe LLP, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20006-1416, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
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