

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: HOFFA 2006,) Protest Decision 2006 ESD 200
) Issued: April 24, 2006
Protestor.) OES Case No. P-05-049-121505-HQ
)

Hoffa 2006 filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that John Kikes, a former but now banned IBT member, provided assistance and in-kind donations to Teamsters for a Democratic Union (“TDU”) and the Tom Leedham Campaign.

Election Supervisor representative Steven R. Newmark investigated this protest.

Findings of Fact

John Kikes is a former Teamsters member and officer of Local Union 78 who has been found to have impermissibly associated with banned former member William Hogan. The Independent Review Board has applied for an order from the United States District Court that would ban Kikes permanently from the IBT.

On or about December 13, 2005, Kikes faxed to an undetermined number of members of Local Union 78 an “Open Letter from John Kikes” contending that the internal union process that resulted in his penalty was “rigged” and that he has appealed the finding. The letter is reprinted here in its entirety:

Dear Friends:

Certain Local 78 officers and agents were happy to publicize that I was removed from office and banned based upon the IRB charges filed against me. What they failed to mention was that I have filed an appeal which is based upon the fact that the hearing and decision were rigged.

How would you feel if your job was on the line in a hearing where your enemies picked the decision makers and the attorney to write the decision and he was a Union-busting management attorney? Would you feel that you got a fair hearing? You bet you wouldn’t! That’s exactly what happened to me.

Rome Aloise, who wants to merge Local 78 into his Local, which I opposed, picked the Chairman who was a friend of his and retired immediately after issuing the decision against me. Rome also picked the attorney to direct the hearing panel and write the decision. Rome admits that this management attorney is a personal friend who represents in bargaining Safeway, Sara Lee Foods, Suag’s Products, and other companies with Teamster members. On the Union-busting website, he brags that he trains management how to remain “union free.” Apparently Rome couldn’t get any self-respecting Union attorney to do his dirty work. But the Local never told you about any of that!

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The Local also never told you that IBT Vice-Presidents Jim Santangelo and Fred Gegare testified in my behalf, as did International Rep Rick Middleton, but none of your officers or business agents even showed their faces at the hearing. They were ordered to stay away, as were other people who agreed to testify.

The Local also never told you that all of my contacts with Bill Hogan were on the telephone, did not involve Union business and ended in December 2003. That's what I was found guilty of.

My fight to set aside this injustice is a long way from being over! Your fight to save your Local is just beginning! Don't let your guard down. Look what they did to me!

Kikes' fax included a copy of the "2004 Edition of the \$100,000 Club for Teamsters Official" downloaded from TDU's website. Beneath TDU's electronic masthead, the following was inserted:

Dear TEAMSTERS OF LOCAL 78,

Did the Teamsters of Lo. 78 know that each OFFICIAL of the Local all make over 100,000 Dollars a year. DID you also know that YOUR OFFICIALS also have 5 COUNT them (5) DIFFERENT PENSION PLANS that will Pay them over 100,000 a year for the rest of their LIVES!!!! ALL except STEVE MACK who will get OVER 180,000 a YEAR for life and who currently makes over 230,000 a year, and has 6 different Pensions. Do the members of Local 78 like paying their Dues to these guys who are suppose to represent them but instead ACT like they are working for the EMPLOYER!!!!!!!!!!!!!! ASK YOUR OFFICIAL FOR THE TRUTH ON THEIR SALARY AND THEIR PENSIONS.....AND HOW ABOUT THEIR 1100 dollar a month CAR ALLOWANCE their 125 dollar a month CELL PHONE ALLOWANCE.

Kikes circled the entries for each officer and employee of Local Union 78 whose names appeared on the \$100,000 Club document. In addition, the entries for Rome Aloise and Chuck Mack also were circled. Aloise is principal officer of Local Union 853; Chuck Mack is principal officer of Local Union 70. These two local unions and Local Union 78 belong to the same joint council.

The fax attacked the compensation paid these persons and urges members of Local Union 78 to go to the IBT convention as delegates and "change the way they get paid."

Local Union 78 held its nominations meeting on January 3, 2006, some 3 weeks after Kikes faxed his open letter. Local Union 853 held its nominations meeting the same day. Local Union 70's nominations meeting was January 4. Steve Mack, Rome Aloise and Chuck Mack each was nominated for delegate at his respective local union's nominations meeting; each was declared elected those same dates on white ballots.

The fax does not endorse or otherwise refer to Leedham or the Leedham slate.

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TDU and the Leedham campaign deny any contact with Kikes or knowledge of his activities. Although TDU compiled the “\$100,000 Club” document as it originally was published on TDU’s website, TDU denies preparing and adding the “Dear TEAMSTERS OF LOCAL 78” passage quoted above. In particular, TDU’s Ken Paff denied any contact with Kikes and stated that he knew nothing of Kikes’ letter or the altered “\$100,000 Club” document until he received the instant protest from our office. Similarly, Dan Lutz and Stefan Ostrach of the Leedham campaign denied any contact with Kikes or any knowledge of his letter or the “\$100,000 Club” document before reviewing the protest. We found no evidence to contradict these denials.

The protest by Hoffa 2006 alleged that Kikes’ fax constituted an impermissible contribution to TDU and to the Leedham campaign. Specifically, the protest alleged that Kikes’ fax “is violative of the *Rules* in a number of serious respects, including, without limitation:

- 1) Mr. Kikes’ fax wrongfully assisted TDU and Leedham because he is a non-member who knowingly used employer resources to assist their campaigns;
- 2) Mr. Kikes is not a member of the IBT and therefore can not interfere with the Union Delegate or International Officer Elections on his own behalf or, more importantly, on behalf of TDU and Leedham;
- 3) Mr. Kikes’ fax demonstrates that TDU (which is ostensibly made up of Teamster members, Ken Paff excluded) and the Leedham Slate (which must be made up of Teamster members) had knowing and purposeful contact with a banned member to further their efforts in the 2005/2006 IBT Delegate and International Officer Election;
- 4) Mr. Kikes appears to be working, campaigning and contributing on behalf of TDU and Leedham while he is not a Teamster member.

No evidence was presented nor did our investigation find any that Kikes was an employer or used employer resources in preparing or faxing the open letter.

Analysis

The *Rules* define “campaign contribution” as “any direct or indirect contribution of money or other thing of value where the purpose, object or foreseeable effect of that contribution is to influence, positively or negatively, the election of a candidate for Convention delegate or alternate delegate or International Officer position,” and includes an “endorsement or counter-endorsement by an individual ...” Definition 5, in relevant part.

Kikes’ fax focused on what he regarded as unfair treatment in the selection of a hearing panel for his internal union trial and the conduct of that trial. The fax extended to an attack on officials of Local Union 78 and sister locals and the compensation those officials are paid. Although the fax included an altered document that listed the compensation of Teamsters officials who were paid more than \$100,000 in 2004 (the unaltered version of which was first published on TDU’s website), the fax cannot fairly be construed as a contribution in any respect by Kikes to TDU. Similarly, as the fax does not identify Leedham by name or reference, it is not a “campaign contribution” to Leedham or the Leedham slate within the meaning of the *Rules*.

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because it does not have the purpose, object or foreseeable effect of influence his election or the election of his slate.

Nor did Kikes' fax have an objective to defeat the delegate candidacies of Rome Aloise, or Steve Mack, or the delegate or International officer candidacies of Chuck Mack, all of whom Kikes blamed for the claimed unfair treatment he was accorded. Indeed, the fax did not refer to their candidacies. Although it suggested that members of Local Union 78 go to the IBT convention to "change the way [Rome Aloise, Steve Mack, and Chuck Mack] get paid," the fax advocated on a policy issue and did not support or oppose any particular candidate. In *Hoffa 2006*, 2005 ESD 3 (August 4, 2005), we held that CSPIC did not make campaign contributions within the meaning of the *Rules* because it did not support or oppose particular candidates for delegate, even though it sought a change in the IBT constitution with respect to the manner in which pension funds are governed that could be made only through delegate action at the IBT convention. In a similar manner, Kikes' advocacy for change in the way local union officials are compensated is not support for or opposition to particular candidates for delegate and is not, therefore, a campaign contribution within the meaning of the *Rules*.

Further, we find no evidence that Kikes had any contact with TDU or the Leedham campaign or is an employer or used employer resources to prepare or circulate the fax.

Accordingly, we DENY the protest.

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
885 Third Avenue, Suite 1000
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, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20007-5135, 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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