

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: JAKWAN RIVERS,)	Protest Decision 2011 ESD 137
)	Issued: February 24, 2011
Protestor.)	OES Case No. P-138-021411-NE
_____)	

Jakwan Rivers, member of Local Union 237 and candidate for delegate, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that the Greg Floyd slate communicated an impermissible union endorsement to a segment of the local union membership, in violation of the *Rules*.

Election Supervisor representative Deborah Schaaf investigated this protest.

Findings of Fact

Local Union 237, the IBT’s largest local union, is comprised of employees of New York City. At the local union’s nominations meeting held January 6, 2011, two full slates of candidates for delegate and alternate delegate were nominated. Protestor Rivers is a candidate on the We Deserve Better slate. That slate is competing against the Greg Floyd slate, comprised in part of incumbent local union officers, as well as several independent candidates. Ballots were mailed February 9 and are scheduled to be counted March 2.

The protest alleged that the Floyd slate mailed campaign literature to members of a sub-unit of Local Union 237 known as the Civil Service Bar Association, and that the mailing conveyed an impermissible endorsement.

The facts underlying this protest are not in dispute. The Floyd slate mailing consisted of a tri-folded, two-sided self-mailer. The sentence “CSBA Backs the Floyd Slate” was printed -- white lettering in a dark box – prominently beneath the return address on the face reserved for the addressee. On the adjacent face to the right was the headline “Civil Service Bar Assn. (CSBA) votes the Greg Floyd Slate for Delegates to the 2011 IBT Convention.” The remainder of the flyer included a list of Floyd slate candidates and separate letters from Greg Floyd and James P. Hoffa.

The CSBA is comprised of some 700 local union members employed as attorneys by New York City. The CSBA is governed by its own officers and executive board. The parties to the collective bargaining agreement it administers are the City of New York and “Local 237, International Brotherhood of Teamsters, AFL-CIO and its affiliate, the Civil Service Bar Association (hereinafter referred to jointly as the ‘Union’);” the contract bears the signatures of Greg Floyd as president of Local Union 237 and Gloria Johnson as president of CSBA. Most of the letters of understanding appended to the contract bear the signature of Johnson only, under the phrase “Accepted and Agreed on Behalf of Civil Service Bar Association.”

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George Geller prepared the Floyd flyer. He is an employee of Local Union 237 and a political supporter of the Floyd slate. He supplied a flyer targeted to members who are food managers from the recent local union officers election; it read “Food Service Managers Back Greg Floyd for Local 237 President!” He stated, “[W]e always use this little slogan above the return address in our appeals to the numerous Local 237 subgroups, and had no intention of indicating the CSBA *entity's* support; just that we're rallying members of CSBA to vote for Floyd.”

Geller contended that the language in the flyer did not state or imply an endorsement by CSBA. “[T]he use of BACKS instead of ENDORSES, and the absence in the piece of *any* reference to Executive Board action, or *any* trumpeting of an official endorsement, shows this is just a rallying slogan” rather than an endorsement.

In a subsequent communication, Geller conceded that “‘CSBA’ *is* an entity as well as a convenient way of referring to the union constituency of agency attorneys. Hence the charge that we implied the improper endorsement of Floyd by a union body. (Of course, there is and was no actual endorsement by CSBA, which we'll concede would be a patent violation of the rules!)”

That the flyer had the potential to mislead was pointed out in a letter to the editor of *The Chief – Civil Service Leader*, a weekly print and electronic publication for civil service employees. Margot Shields, 1st vice president of the CSBA, reported receiving by mail on February 10 the flyer stating that “CSBA Backs the Floyd Slate.” She wrote:

This was certainly news to me. Neither the CSBA officers, directors, nor the general membership has endorsed the Floyd slate. Nor were we even asked for our endorsement, which would not have been forthcoming. It has long been the policy of CSBA not to endorse any individual Teamster candidates, although individual members have actively supported the candidates of their choice.

* * *

I urge CSBA members not to be misled by this phony endorsement.

Shields' letter was published in the electronic edition of *The Chief* on February 14. It is unclear whether it also appeared in the print edition. The electronic edition is available on a subscription basis. Only the first sentence of Shields' letter, in which she reported receiving the Floyd slate flyer, may be viewed by non-subscribers. Investigation did not reveal what portion of the CSBA membership subscribes to *The Chief*.

Analysis

Article VII, Section 12(b) of the *Rules* declares that “[t]he Union or a Local Union as such or the General Executive Board or an Executive Board of a Local Union as such may not endorse or otherwise advance a candidacy, even if all members agree on the endorsement or candidacy.”

We held in *Jensen*, 2006 ESD 167 (April 25, 2006), *aff'd*, 06 EAM 37 (May 12, 2006), that “[u]nder the *Rules* and Election Office precedents, endorsement by the Union or Local

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Union ‘as such’ is essential to finding a violation of Article VII, Section 12(b). Our precedents have given broad scope to individuals, and to groups of union members, who have endorsed candidates and used their titles for identification purposes in connection with the endorsement. What we have strictly prohibited under the *Rules* are endorsements that come from the Union or Local Union ‘as such.’”

Here, the CSBA as such did not endorse the Floyd slate, nor did its officers or executive board. Accordingly, there was no violation of Article VII, Section 12(b) by CSBA.

However, the Floyd slate violated the *Rules* by publicizing the purported CSBA endorsement. The statement on the Floyd flyer is doubly problematic: it reflects an improper campaign contribution (a union body endorsement) and it is a contribution taken involuntarily from CSBA. 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.” Definition 5 (emphasis supplied). Expressly included in this definition of “campaign contribution” is “[a]n endorsement or counter-endorsement by an individual, group of individuals, or entity.” *Id.*, subsection f. The campaign flyer publicized a purported endorsement by the CSBA of the Floyd slate for the purpose of influencing the election of candidates on that slate. That the purported endorsement was a “thing of value” to the slate is confirmed by the decision to use it on campaign literature. The appropriation of the endorsement by the Floyd slate violated the *Rules*. *Gegare*, 2010 ESD 4 (June 24, 2010), *aff’d in rel. part*, 10 EAM 3 (July 8, 2010).

In reaching this conclusion, we reject the contention that “CSBA Backs the Floyd Slate” is materially different in meaning from a statement that the CSBA endorses the Floyd slate. The plain language of the sentence conveys the meaning that that the CSBA as a union body committed its support to the slate.

We reject the contention that “CSBA” does not mean or imply the union entity but instead means its members. The sentence does not refer either to individual members or officers of the unit and uses “CSBA” solely to identify those individuals’ affiliation. The sentence refers only to CSBA the entity. Were we to accept “CSBA” to refer to its members individually in this context, it would allow easy circumvention of the prohibition on union endorsements.

Accordingly, we GRANT the protest.

Remedy

When the Election Supervisor determines that the *Rules* have been violated, he “may take whatever remedial action is deemed appropriate.” Article XIII, Section 4. In fashioning the appropriate remedy, the Election Supervisor views the nature and seriousness of the violation as well as its potential for interfering with the election process.

Under the approved local union election plan, ballots are to be counted March 2, 2011. This is too close in time to implement mail distribution of a remedial notice. Accordingly, we order that the date for counting ballots in the Local Union 237 delegate election be rescheduled to March 15, 2011.

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We further order that the Floyd slate mail to all members of Local Union 237 to whom the Floyd flyer was addressed the notice attached to this decision (titled "NOTICE TO ALL MEMBERS OF TEAMSTERS LOCAL UNION 237 WHO ARE ALSO MEMBERS OF THE CIVIL SERVICE BAR ASSOCIATION"). This notice is for strictly remedial purposes to advise CSBA members that the CSBA did not, does not, and cannot permissibly endorse the Floyd slate and that the Floyd slate flyer stating to the contrary violated the *Rules*. This mailing is to be completed within two days of receipt of this decision.

We further order that Local Union 237 post the notice attached to this decision (titled "RESCHEDULED COUNTING OF BALLOTS IN DELEGATES AND ALTERNATE DELEGATES ELECTION") rescheduling the date for the counting of ballots on all worksite bulletin boards under the jurisdiction of the local union. Such posting shall be completed by Monday, February 28, 2011 and shall remain posted until replaced the Local Union Ballot Tally Certification (OES Form 13) on or after March 15, 2011.

Finally, we order Local Union 237 to re-mail ballot packages to all members of Local Union 237 to whom the Floyd flyer was addressed on March 2, 2011. Such re-mailing will include the notice attached to this decision (titled, "REMAILING OF BALLOTS").

An affidavit of compliance with the remedies ordered here shall be submitted within two days following completion of each element of the remedy.

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, NY 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, 1801 K Street, N.W., Suite 421 L, Washington, D.C. 20006, 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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Richard W. Mark
Election Supervisor

**NOTICE TO ALL MEMBERS OF TEAMSTERS LOCAL UNION 237 WHO ARE ALSO
MEMBERS OF THE CIVIL SERVICE BAR ASSOCIATION**

The Election Supervisor has found that the Greg Floyd Slate violated the *Election Rules* with a campaign flyer stating that the Civil Service Bar Association (CSBA) endorsed the Floyd slate.

The CSBA did not and does not endorse the Floyd slate or any other candidate or slate in the election.

The CSBA is a union entity and cannot permissibly endorse any candidate or slate of candidates in the delegates and alternate delegates election or the International officers election. Each CSBA member is free to support any candidate or slate in the delegate election.

The Election Supervisor has ordered that ballots for the delegates and alternate delegates election be remailed to members of the CSBA to give them the opportunity to vote again, should they desire it. Your new ballot and instructions for it will be mailed on March 2, 2011.

The Election Supervisor has ordered the Greg Floyd Slate to mail this notice to all members of Local Union 237 to whom the Floyd flyer was addressed.

The Election Supervisor has issued this decision in *Rivers*, 2011 ESD 137 (February 24, 2011). You may read this decision at <http://www.ibtvote.org/protests/2010/2011esd137.htm>.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity that violates the *Rules* should be filed with Richard W. Mark, 1801 K Street, N.W., Suite 421L, Washington, D.C. 20006, telephone: 877-317-2011, fax: 202-429-6809, email: electionsupervisor@ibtvote.org.

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Richard W. Mark
Election Supervisor

NOTICE TO ALL MEMBERS OF TEAMSTERS LOCAL UNION 237

**COUNTING OF BALLOTS IN
DELEGATES AND ALTERNATE DELEGATES ELECTION IS RESCHEDULED TO
MARCH 15, 2011**

The Election Supervisor has ordered that the date for counting ballots in Local Union 237's delegates and alternate delegates election be rescheduled from March 2 to March 15, 2011.

This rescheduling has been ordered to permit a pre-election remedy for a violation of the *Election Rules* by the Greg Floyd Slate. The Election Supervisor found that the Floyd slate mailed out a campaign flyer stating that the Civil Service Bar Association (CSBA), an affiliate of Local Union 237, endorsed the Floyd slate. The CSBA, as a union entity, cannot endorse any candidate or slate in this election and did not, in fact, make such an endorsement. Each CSBA member is free to support any candidate or slate in the delegate election, or to refrain from such support.

If you have not voted and wish to do so, you must mail your ballot so that it is received by March 15, 2011. If you have already voted and wish to re-vote, you may request another ballot by telephoning 800-864-1263. If you submit more than one ballot, only the ballot with the latest postmark will be counted.

The Election Supervisor has issued this decision in *Rivers*, 2011 ESD 137 (February 24, 2011). You may read this decision at <http://www.ibtvote.org/protests/2010/2011esd137.htm>.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity that violates the *Rules* should be filed with Richard W. Mark, 1801 K Street, N.W., Suite 421L, Washington, D.C. 20006, telephone: 877-317-2011, fax: 202-429-6809, email: electionsupervisor@ibtvote.org.

This is an official notice of the Election Supervisor and must remain posted until replaced by the Ballot Tally Certification on or after March 15, 2011. It must not be defaced or covered up.

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Richard W. Mark
Election Supervisor

**NOTICE TO ALL MEMBERS OF TEAMSTERS LOCAL UNION 237 WHO ARE ALSO
MEMBERS OF THE CIVIL SERVICE BAR ASSOCIATION**

REMAILING OF BALLOTS

We are mailing you a new ballot for the Local Union 237 Delegates and Alternate Delegates election. If you have already voted and are satisfied with that vote, you need do nothing and can disregard this notice and the enclosed ballot materials. If you have already voted and wish to change your vote, please do the following:

- Vote the enclosed ballot.
- Seal your ballot inside the enclosed secret ballot envelope, and then seal that envelope inside the blue business reply return envelope that is enclosed.
- Mail the blue business reply return envelope. No postage is necessary to return your ballot.
- Please do not delay. All ballots must be received at the designated post office by 9:00 a.m. on Tuesday, March 15, 2011 in order to be counted.
- Please be assured your vote will be counted and your voter secrecy maintained throughout this process.

Only one ballot per voter will be counted. If two ballots are received from you, only the ballot that was mailed later will be counted.

If you inadvertently discarded, destroyed, or mis-marked your ballot, you may request a duplicate ballot by calling 800-864-1263. If you have any questions about your ballot, please call the IBT Election Supervisor at 877-317-2011. Thank you for your participation in the Local Union 237 Delegates and Alternate Delegates Election.

The election tally will be conducted beginning at on Tuesday, March 15, 2011, at:

Local Union 237
216 West 14th Street
New York, NY 10011-7201

All candidates and their designated observers will be allowed to observe the tally.