OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: KRIS TAYLOR,	Protest Decision 2000 EAD 40
	Issued: October 24, 2000
Protestor.	OEA Case No. PR062001NA

Kris Taylor, a member of Local 745, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election ("*Rules*"), against Teamsters for a Democratic Union ("TDU"). The protestor alleges that TDU has made improper contributions to the Tom Leedham Campaign in violation of Article XI (1)(b)(9)(A) of the Rules because it has allegedly not properly allocated and segregated its resources obtained from sources that are prohibited from making contributions to candidates under the *Rules*, and has thereby made contributions to the Tom Leedham Campaign from prohibited sources. Taylor alleges that TDU contributes to the Leedham campaign while at the same time "improperly receiving monies from an employer, Teamster Rank and File Educational and Legal Defense Foundation ("TRF") and that TDU is 'fronting' TRF's involvement in the election process." August 21, 2000 letter from Attorney James L. Hicks, Jr., enclosing 1998 IRS Form 990's for TDU and TRF.

Taylor (through Hicks) further alleges that the two entities' tax forms show "that TRF is the better heeled of the two and is in a much better position to participate in the election process." *Id.* Further, Taylor asserts that a check from IBT Local 313 "made payable to TRF, but … cashed by TDU", *id.*, shows the lack of an arms-length relationship between the two organizations. Further, Taylor asserts that the 1998 tax returns show that TRF (which concededly receives funds from sources that may not contribute to campaigns under the *Rules*) "contributed approximately $120,000.00 to TDU …", which alleged contribution "does not appear on TDU's 1998 tax return (Form 990) in any form, including as income." *Id.* Relying additionally on the 1998 tax returns, Taylor (through Hicks) also asserts that the alleged $120,000.00 TRF to TDU contribution, viewed in light of the fact that TRF had 1998 employment-related expenses of $193,000.00. "means that employees carried on TRF's payroll actually devoted approximately 62% of their time to TDU matters … [and that] if the relationship between TDU and TRF continues as it was in 1998, those same TRF employees are participating in activities necessary to create and distribute [Convoy Dispatch] written endorsements of the Leedham Slate." *Id.*

On September 14, 2000, Taylor (through Hicks), indicated that he "may have been mistaken in [Hicks' August 21, 2000] letter with respect to the implications of the information contained in the income tax returns of TDU and TRF. TRF's 1998 return indicates that it contributed approximately $120,000.00 to TDU, $117,960.00 of which was for 'reimbursement of costs based on time allocations of staff activity between TDU and TRF.' TDU's tax return for that same year (part 2) shows that it had employment-related expenses as follows: … TOTAL $119,753.00. This would seem to indicate that TRF reimbursed TDU for virtually all of its employment-related expenses. This would also appear to mean that employees of TDU devoted nearly all of their work time to activities of TRF. Logic would dictate that this inference from these figures is not truthful or accurate. It would seem more likely that TRF is simply giving money to TDU to fund its activities. Given that TDU does not, in its return, include this contribution from TRF, it would appear that either TDU is not accounting for that money and hiding it or it is being hidden at the other sources of revenue reflected in TDU's return."

Bruce Dubinsky, a forensic certified public accountant retained by the Election Administrator, investigated the protest.

Background

The Election Officer has previously determined that the TDU is an "independent committee" because it consists of a caucus or group of union members, not controlled by a candidate or slate, that has accepted funds or made expenditures with the "purpose, object or foreseeable effect" of influencing the International election. *Rules***,** Definitions, at Section 22; *Advisory on Campaign Contributions and Disclosure* (Revised November 1997) ("*Advisory*"), p. 19; *Halberg*, P19 (December 14, 1995) (decision on remand). As an "independent committee," the TDU may contribute to International campaigns even if financial assistance is received from sources prohibited under the *Rules*. However, the *Rules* require that monetary support for campaign activities consist exclusively of funds received from IBT members. Funds received from any other sources cannot be contributed to any candidate through TDU, or any other independent committee, and must be properly allocated and segregated. *In re: Gully*, 91 EAM 158 (June 12, 1991), *aff'g*, *Sargent*, P249 (May 21, 1991).

Since the decision in *Gully*, TDU has thus been required to segregate IBT member funds used for campaign activities from other revenues, and to allocate its costs between permitted campaign activities and other non-campaign activities. For example, TRF, a "foundation" supported at least in part by prohibited funds, shares resources with TDU. *See*, *Halberg*, *supra*. However, pursuant to Election Office direction, TDU (through the use of an accounting method known as the Huddleston system, adopted in order to assure compliance with the Election Rules) periodically determines the percentage of overhead and time spent by shared staff on campaign activity and reimburses TRF for this amount from permitted campaign contribution sources. So long as this system is properly maintained and applied to assure that no improper funds are spent to campaign in the IBT election, this resource sharing arrangement does not violate the *Rules*. *Hoffa*, PR39 (March 10, 1998), *aff'd*, 98 EAM 341 (April 9, 1998).

In *Halberg*, 95 EAM 20 (October 3, 1995), the Election Appeals Master described the type of investigation necessary to establish compliance with these allocation principles. There, the Election Appeals Master remanded a decision of the Election Officer and directed that the Election Officer examine TDU's accounting practices, focusing on its identification of potential employer donations, and determine whether it had assured that through proper allocation and segregation of resources no funds from sources that were prohibited from making campaign contributions were used for campaign purposes. The Election Appeals Master held that "the critical inquiry is whether TDU receives funding for its campaign activities from any prohibited source (such as a foundation), or whether all such funding for campaign activities derives from union members." *Id*., p. 3.

In *Halberg*, as here, the protestor had raised the question of the relationship between TRF and TDU with respect to the question of the source of TDU campaign contributions. The Election Appeals Master remanded the Election Officer's original decision because he found the original investigation deficient, in that it had simply relied on TDU's past allocation activities as evidence that TDU was still in compliance, in the absence of contrary evidence put forward by the protestor. As the Election Appeals Master held:

> [In *Sargent*, P249], Mr. Holland determined that the relationship between TDU and TRF did not violate the Rules because both organizations had adopted the "Huddleston System" of accounting, whereby expenses were allocated between campaign and non-campaign categories, and all campaign activities, and the expenses associated with those activities, were paid for by TDU. Id. at 21.
>
> Mr. Holland's decision in *Sargent*, issued on May 21, 199[1], is thoroughly investigated and comprehensive. However, that decision, which addressed the relationship between TDU and TRF more than four years ago, cannot, standing alone, support the factual findings made by the Election Officer in the instant case concerning the present relationship between TDU and TRF. The Election Officer must make at least a preliminary inquiry into the current relationship between TDU and TRF in order to determine whether both organizations still utilize the "Huddleston System" for allocating campaign expense.

Id. at 4-5.

In *Halberg* on remand, P19 (December 14, 1995), the Election Officer described her review of the sharing of resources between TDU and TRF. Her investigation examined whether the sharing of resources between these entities followed the Huddleston system, in order to accomplish the proper allocation of campaign and noncampaign activities and resources. Thus, on remand the Election Officer required TDU to show in detail the manner in which this allocation was accomplished, in order to show that its system comported with the requirements set forth in the *Sargent* decision.

The *Halberg* remand investigation revealed that in the immediate aftermath of the 1991 election, TDU and TRF institutionalized the allocation system that had been in effect during the 1991 election campaign. Allocation through December of 1994 was based upon the percentages between campaign and noncampaign categories from the 1991 election. In January 1995, TDU implemented a refinement of the allocation system to utilize for the upcoming election period.

Under the election period allocation system, each staff member maintained and submitted daily time sheets that were tabulated to determine total time spent in various categories. Weekly summaries were prepared and compiled. Each month these reports were closed out and allocation figures were determined. TDU-related time was percentaged against total time to establish a "TDU percentage" for each staff person. Salaries, benefits, and overhead were paid by the respective organizations based on this percentage.

During the course of the *Halberg* remand investigation, the Election Officer reviewed samples of current activity reports of the TDU/TRF staff. The reporting forms were accompanied by a narrative instruction sheet that clearly defined the activities to which staff must allocate their time. The classification of activity was found to properly distinguish between campaign and non-campaign activity. The Election Officer's investigation also revealed that the staff time charged to TDU was more inclusive than that used and approved in 1991. All membership meetings and organizing activities were paid for by TDU, even though many of these would not involve electoral activity.

The Election Officer in *Halberg* reviewed examples of staff activity reports indicating that each member of the TDU/TRF staff was keeping such reports. The organization's bookkeeper reviewed these reports on a monthly basis to ensure accuracy and correct any entries that he believed were in error. He then calculated the allocation fraction and the portion of staff time associated with campaign activities.

In *Sargent*, the Election Officer found a violation of the election rules, based upon TDU's allocation payment to TRF of overhead costs the month after these expenses were incurred. The Election Officer described this arrangement as akin to TRF supplying TDU with a line of credit without the payment of interest. The Election Officer further noted that TDU could avoid those interest charges by making advance payments to TRF for monthly reimbursable expenses. *See Sargent*, p. 34.

TDU thereafter made an arrangement with TRF that accomplished this result. To avoid being the beneficiary of a no-interest line of credit, TDU began to advance sufficient funds to TRF to allow TRF to deduct any accrued interest charges that would be incurred due any delay in TDU's payment of its allocation amount. The Election Officer found that the provision for such interest payments appropriately implemented the allocation system.

In the *Halberg* remand investigation, the Election Officer concluded after review that the Huddleston system continued to be properly applied. This review included an examination of TDU's classification of activities, its reports of staff activities, its auditing system, and the advances made to TRF to address any interest accrual. This finding did not relieve TDU or TRF from any future Election Officer determination that the approved practices were not followed and that TRF funds, or funds from other impermissible sources, were used to support TDU's campaign-related activity. Based upon the further investigation undertaken by the Election Officer pursuant to the remand in *Halberg*, no such impermissible funding was found to exist at the time the remand decision was issued.

Findings of Fact

The Election Administrator has followed the investigatory path required by the Election Appeals Master in *Halberg*. Thus, instead of relying upon past findings that TDU and TRF have followed the Huddleston allocation system, we have conducted a new investigation to determine if that is the case, while at the same time focusing on the specific allegations of protestor Taylor and attorney Hicks. As a part of our investigation, forensic certified public accountant Dubinsky and his staff interviewed Alan M. Jacobsen, the treasurer of TRF and TDU, and other TDU/TRF staff. Moreover, since protestor Taylor relied upon the tax returns filed by TDU and TRF, we investigated the mechanics of the preparation of the tax returns for both entities. Our investigation revealed that with regard to any allocated expenditures or income from TDU to TRF the following occurs.

TRF pays for certain overhead type expenses incurred in running and maintaining the offices that TDU utilizes. TRF has a 63% ownership interest in the building located at 7437 Michigan Avenue while Labor Notes, another entity, owns the remaining 37%. There is no mortgage on the building and it is owned outright by TRF and Labor Notes. TDU pays a flat monthly rental of $200 per month. This monthly charge has not been adjusted in over 10 years since, accordingly to Jacobsen, the value of the building has remained relatively constant over that time. In Dubinsky's opinion, based upon his visual inspection of the premises and the surrounding neighborhood, this rent appears reasonable. The neighborhood in which the offices of TDU are located would not be supportive of higher rents.

In addition, TRF actually pays for the salaries of those individuals who also provide services for TDU. These individuals, such as Ken Paff and others are actually employees of TRF for W-2 reporting purposes. Their salaries are then allocated based upon detailed daily time sheets that each individual records. Each time sheet breaks down the time spent on activities by the quarter of an hour. It is based upon this allocation that monies are paid by TDU to TRF in order to pay TRF for TDU-related employment costs. Jacobson reviews the time sheets on a weekly basis, and Ken Paff does so on a regular basis. Staff meetings are held periodically to explain and illustrate the proper method for keeping time sheets.

Time is also meticulously maintained to segregate between election and non-election activities. This time is then tallied and computed by the treasurer, Alan Jacobsen, and an apportionment of time is established. Non-election and election percentages are then utilized to allocate the expenses derived above. For instance, if the total election percentage of time equals 2.2%, and occupancy costs = $1,000, then $22.00 would be allocated to TDU as being election related. This portion is then paid for by TDU to TRF from TDU's Special Operating Account. This account only receives campaign or election related contributions from permissible campaign contribution sources. The remaining portion is reimbursed by TDU to TRF from its normal operating funds maintained in its regular checking account.

Accordingly, TDU reimburses TRF, on a monthly basis, for allocated expenses and salary. The reimbursement occurs the month after the close of the month in which the allocation is made. With regard to the specific allegations raised by the attorney Hicks in his letters of August 21 and September 14, 2000, the following was discovered.

Both letters allege that TDU is receiving monies from TRF to indirectly support campaigning activities. Specifically, Hicks alleges that TRF contributed $120,000 to TDU as shown as TRF's income tax return for 1998. Upon investigation, it was confirmed that in fact, TRF *received* monies in the approximate amount of $120,000 from TDU as reimbursement for expenses as described above. Dubinsky obtained copies of the 1998 and 1999 Federal Form 990, Return of Organization Exempt from Income Tax Returns, directly from Alan Jacobsen. Dubinsky confirmed that these copies were identical to those supplied by Hicks as part of the protest documentation. Schedule A, Part VII is entitled "Information Regarding Transfers To and Transactions and Relationships with Noncharitable Exempt Organizations." Accordingly, this section is utilized to report those transactions between such parties. TRF properly reported that it *received* $2,400 in rent reimbursement from TDU for 1998 and $117,960 for "Reimbursement of costs based on time allocations of staff activity between TDU and TRF." Line 6a on page 1 of Form 990 shows that TRF received and claimed as "income" rents received from others. Dubinsky found that this evidences that the amounts recorded on Schedule A, Part VII were for amounts received by TRF and not for amounts paid by TRF as alleged by the protester.

Upon further discussion with Alan Jacobsen, the reason there is no other indication of monies being received by TRF from TDU is that the monies received by TRF were netted against the respective expenses as reported by TRF in their tax returns. Dubinsky determined that this is appropriate reporting since those expenses that have been reimbursed by TDU to TRF would not be properly considered to be reportable expenses of both entities. Therefore, to show the entire expenses as expenses of TRF and then to simply include the reimbursements as income would be improper tax reporting.

As a part of the investigation of the protest, we also examined the method utilized to allocate the expenditures between TDU and TRF. The indirect allocation based upon hours logged by the personnel to election or non-election related activities appeared to be reasonable and proper. In fact, several categories of expenses that are reimbursed by TDU to TRF monthly represent expenses that in all probability are expenses that are not even incurred by TDU. Reimbursement by TDU is made in those instances to be extremely conservative and in a proactive manner to avoid any allegations that TDU is not paying for services (in-kind) rendered by TRF.

Dubinsky examined the canceled checks for the monthly reimbursements and noted no exceptions. All checks were properly endorsed and had cleared the TRF bank account.

Dubinsky then traced the monthly reimbursement checks issued by TDU to TRF directly to the bank statements of TRF and noted no exceptions in this testing. Dubinsky matched the monthly reimbursement checks to the amounts reported by TRF on its 1998 and 1999 Form 990 tax returns and noted no exceptions. The amounts per the tax returns are based upon the monthly allocation spreadsheets and not based upon the amount paid for that month in the subsequent month. (e.g., Dec. 98, even though paid in Jan 99, is included in 1998 tax return on both entities)

With regard to the protestor's allegations regarding the check in the amount of $82.70 payable to TDU but endorsed by TRF, Dubinsky determined that the check was negotiated in this fashion because TDU gave the check to TRF in payment for expenses that TDU properly reimbursed to TRF. Dubinsky advised TDU and TRF that in the future checks payable to one entity should be cashed by that entity, and that payments to the other entity should be handled separately.

Analysis and Conclusion

We assume for purposes of this decision that, as alleged by the protestor, the TDU has made and will continue to make campaign contributions as defined in the *Rules* through the publications of articles in its publication *Convoy Dispatch* and otherwise. In view of the foregoing and the requirements of the *Rules* with respect to prohibited sources of campaign contributions, we conclude that TDU and TRF have continued to properly allocate and segregate their income and expenditures to comply with the Huddleston system as established and elaborated upon in the *Gully, Sargent* and *Halberg* cases discussed above.

Our investigation of this protest was used as an occasion to ensure that TDU and TRF continue to comply with those requirements. We have determined that such compliance is ongoing, and that TRF and TDU have to this date been careful to ensure that the appropriate segregation and allocation of TDU income and expenditures has been followed, in order to assure that all TDU campaign-related expenditures are made only from sources permitted under the *Rules*. Thus, the conduct of TDU and TRF to date complies with the *Rules*.

We also have found no merit into the protestor's claim that TRF is financing most of TDU's personnel expenses, allegedly to the tune of approximately $120,000.00 in the period covered by the two entities' 1998 tax returns. To the contrary, the tax return entry in Part VII of Schedule A of TRF's 1998 return shows its receipt of $117,960 in employment-related expenses paid to it by TDU, based upon both entities' compliance with the Huddleston system's allocation requirements. This tax return, and the backup data examined by the Election Administrator's experts, shows that both entities have fully complied with all accounting, record-keeping and allocation requirements. The protestor's allegations to the contrary are without merit.

Nor does the endorsement by TRF of a $82.70 check made payable by an IBT local union to TDU show any violation of the *Rules*. The check, dated January 20, 2000, before the adoption of the *Rules*, was delivered to TRF by TDU as part of TDU's reimbursement of expenses due to TRF for publications produced by TRF and sold by TDU at cost. The Election Administrator's CPA has suggested that for purposes of clarity in record keeping such reimbursements should not in the future take such form. But the endorsement of the check does not, as alleged, show any inappropriate financing of TDU or TRF campaign activity, if that is in fact what the protestor alleged.

In conclusion, then, the investigation revealed that TDU and TRF have taken appropriate steps to assure that TDU's campaign activity is not subsidized by TRF or by sources of funds from prohibited campaign sources.

For the foregoing reasons, the protest is DENIED.

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 in any such appeal upon evidence that was not presented to the Office of the Election Administrator. 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 all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, c/o International Brotherhood of Teamsters, 25 Louisiana Ave., NW, Washington, DC 20001, all within the time period prescribed above. A copy of the protest must accompany the request for hearing.

William A. Wertheimer, Jr.
William A. Wertheimer, Jr.
Election Administrator

cc: Kenneth Conboy
Bruce Dubinsky, C.P.A.
2000EAD40

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