

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: PAT IRONSIDE,)	Protest Decision 2001 EAD 137
)	Issued: February 6, 2001
)	OEA Case No. PR011913CA
Protestor.)	
_____)	

Pat Ironside, a member of Local 31, 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 Local 31 business representative Kathy Peters, a delegate candidate from Local 31. The protest alleges that Peters filed at least two protests using Local 31 resources. Ironside, who is also a candidate, says that he does not have the same access to these facilities. He requests an apology and a promise that Peters will not use the Local 31 assets for the remainder of the campaign.

Election Administrator representative Gwen Randall investigated this protest.

Article VII, Section 11(c) of the *Rules* provides that 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.

Findings of Fact

Peters has filed two pre-election protests, both of which were decided in *Peters*, 2001 EAD 113 (January 30, 2001). In each protest, Peters alleged deficiencies in a slate declaration form.

Peters acknowledged that in each case she faxed the protest to the Election Administrator from Local 31, and that Local 31 employees prepared the protests on the local’s office equipment.

Our investigation revealed that Local 31 has previously allowed protests to be prepared and transmitted from its offices, using its staff and equipment. In fact, Peters noted that one of the slates that was the subject of the decision in *Peters, supra*, (the “Members First” slate), recently faxed protest-related information to an Election Administrator representative from the offices of Local 31.

Ironside filed the instant protest from his personal fax machine. He did not request Local 31 to forward the protest to the Election Administrator.

Analysis

The *Rules* generally prohibit the use of union equipment to advance the campaign of a particular candidate or group of candidates. See Article VII, Section 11(c); Article XI, Section 1(b)(6). At the same time, past decisions have recognized that ordinarily filing a protest “is protected, and does not constitute support for a candidate or campaigning under the *Rules*.” *Reyes*, 2000 EAD 28 (September 27, 2000)(use of union fax machine to file a protest no violation); *Kieffer*, P360 (March 19, 1996).

Prior election rules decisions have, however, recognized limits on this right insofar as the expenditure of union funds is concerned. Thus, use of union funds to file or process a protest will constitute proper use of such funds only when the protest activity furthers the independent, institutional interest of the union. *Jenne*, 2000 EAD 64 (December 14, 2000); *McGinnis*, 91 EAM 150 (May 16, 1991); *Furst*, P711 (July 15, 1991), *aff'd in relevant part*, 91 EAM 172 (July 29, 1991). Accordingly, unions may not use their funds to finance protest activity that advances or damages a candidacy in cases where the institutional interests of the union are not implicated. *Marciel*, P768 (May 20, 1991), *aff'd sub nom Moerler*, 91 EAM 153 (May 30, 1991).

The distinctions drawn in *McGinnis* and reaffirmed in *Furst* between the permissible and impermissible use of union-paid attorneys and other professionals is instructive. In *McGinnis*, the local’s attorney had spent time observing the ballot count, and also prepared submissions on behalf of the winning incumbent slate in response to post-election protests filed by the opposing slate. As for the time spent observing the ballots it was determined that:

The local union [had] an institutional interest in assuring the integrity of the election process affecting the Local. That interest may be served permissibly by retaining an attorney to represent the Local at the counting of the ballots.

As for the other conduct of the attorney it was held that his:

[P]articipation in the post-election protest was not similarly in the service of the Local Union as an institution. A review of the submissions filed by [the attorney] demonstrates that he took a clearly partisan position and incontrovertibly engaged in advocacy on behalf of particular candidates. This conduct, it must be concluded, falls within the proscription of the *Rules*.

Furst, supra, 91 EAM 172, p. 3, quoting *McGinnis* (emphasis in original).

As summarized in *Furst*: a union cannot “escape the Election Rules’ prohibition on improper campaigning [by] hid[ing] behind the guise that it is simply ensuring the proper implementation of the Election Rules when it embroils itself in the protest process,

February 6, 2001

when in reality it is seeking to aid the candidacy of an individual. Such attempts, when challenged, will surely be revealed and the appropriate sanction will be levied.” *Id.*, 91 EAM 172, p. 6.

Here, the protests filed by Peters concerned matters of interest to all members of Local 31, namely, the existence or non-existence of the requisite “mutual consent between and among all candidates” joined together on slates. While not ultimately meritorious, Peters’ protests raised legitimate concerns that warranted investigation by the Election Administrator’s staff. We conclude that the Peters’ protests implicated the institutional interest of the local union in a manner sufficient to preclude a finding of improper use of union resources. We accordingly DENY this 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 Administrator 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 all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15th Street NW, Tenth Floor, Washington, DC 20005, 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
2001 EAD 137

February 6, 2001

DISTRIBUTION LIST VIA UPS NEXT DAY AIR:

Patrick Szymanski
IBT General Counsel
25 Louisiana Ave. NW
Washington, DC 20001

Tom Leedham c/o Stefan Ostrach
110 Mayfair
Eugene, OR 97404

Bradley T. Raymond
Finkel, Whitefield, Selik,
Raymond, Ferrara & Feldman
32300 Northwestern Highway
Suite 200
Farmington Hills, MI 48334

IBT Local 31
Attn: Garnett Zimmerman
Attn: Kathy Peters
1 Grosvenor Square
Delta, BC
Canada V3M 5S1

J. Douglas Korney
Korney & Heldt
30700 Telegraph Road
Suite 1551
Bingham Farms, MI 48025

Pat Ironside
23765 123d Ave.
Maple Ridge, BC
Canada V4R 1N7

Barbara Harvey
Penobscot Building
Suite 1800
645 Griswold
Detroit, MI 48226

Gwen Randall
421 Seventh Ave SW
Suite 3300
Calgary, AB
Canada T2P 4K9

Betty Grdina
Yablonski, Both & Edelman
Suite 800
1140 Connecticut Ave. NW
Washington, D.C. 20036