

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: JOHN HULL,)	Protest Decision 2001 EAD 153
)	Issued: February 10, 2001
)	OEA Case No. PR020212CA
Protestor.)	
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John Hull, a member of Local 938 and candidate on the “938 Members slate” in that local, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules of the 2000 - 2001 IBT International Union Delegate and Officer Election (“Rules”) against Ray Bartolotti, president of Local 938 and candidate on the “Hoffa Canadian Unity slate” in Local 938. The protest alleges that Bartolotti sent a letter to all members of Local 938 from Traders General Insurance Company that promotes Bartolotti. Hull alleges that the letter is in fact campaign literature and that Bartolotti has abused his position as president of Local 938 to campaign with union resources. Hull requests that the Election Administrator order a mailing sent to all members of Local 938 on behalf of the 938 Members slate and that we disqualify Bartolotti and his slate be disqualified from running as candidates in the election.

Election Administrator representative Gwen Randall investigated this protest.

Findings of Fact

The letter in question was sent to all members of IBT Local 938 and received by the protestor on February 2, 2001. The letter was postmarked on January 30, 2001 and was sent in IBT Local 938 envelopes using mailing labels obtained from Local 938. The one page letter is on the letterhead of Traders General Insurance Company. It is addressed to all members of Local 938 concerning a Group Home and Automobile Insurance Program. There are three references to Ray Bartolotti in the letter. They are:

The program was negotiated on your behalf by Ray Bartolotti, President of Teamsters Local 938. To date over 500 of your fellow members have taken advantage of discounted premiums and superior service.

Ray Bartolotti endeavors to seek out services like this to help the members of your Local enjoy the savings associated with group plans and to enhance the value of your membership on Local 938.

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I would like to thank Ray Bartolotti and the members of Teamsters Local 938 for their continued support.

The letter also contains the following:

As an added bonus, you will be eligible to win a DVD player when you contact a Traders Representative for a no obligation quote.

The letter is signed by Joe Pansino, Senior Account Manager, Traders General Insurance Company.

Pansino advised the investigator that this program began in 1999 because of an agreement between Haber Insurance Brokers and GAN Company of Canada. In December 1999, CGU Group Canada (of which Traders General Insurance Company is a part) purchased the GAN Company. As a result, the Group Home and Automobile Insurance Program was then underwritten by Traders General Insurance Company. Pansino said that the company has sent letters annually to members of Local 938, using 938 envelopes and mailing labels. Pansino says that the envelopes, labels and postage are all paid for by Traders General Insurance Company. The enclosure is prepared by Haber Blain Insurance Brokers (successor to Haber Insurance Brokers), edited by Pansino for accurate description of the insurance program. Pansino has not met Bartolotti.

Pansino forwarded copies to the investigator of the two previous letters sent to Local 938 members with respect to this program. The first letter announces the availability of the program and is dated March 30, 1999. It is on Local 938 letterhead and is signed by Bartolotti as president. It advises that the Local 938 executive board has entered into an agreement with Haber Insurance Brokers and GAN Canada to offer the membership an opportunity to participate in a group home and auto insurance program. The 1999 letter closes with Bartolotti saying "on behalf of the Executive Board of Teamsters Local 938, I trust each of you will benefit by this offer." Bartolotti takes no personal credit in the letter for obtaining this program. Pansino also enclosed an invoice from Local 938 dated March 31, 1999 to Haber Insurance Brokers for the costs of letterhead in the sum of \$3,105.00.

The second letter is dated March 2000, is on Traders General Insurance Company letterhead, and is signed by Joe Pansino. It announces the purchase of CGU Group Canada by GAN Company and the continuation of the program. The only reference in this letter to Bartolotti is the following:

We would like to thank Ray Bartolotti and the members of Local 938 for allowing us to serve you.

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There is an invoice from Teamsters Local 938 dated December 8, 1999 for labels, letterhead and envelopes for this letter in the amount of \$2,952.31, and two invoices from J. P. Enterprises for folding, stuffing and postage.

Leo Blain, of Haber Blain Insurance Brokers, advised the investigator that his first contact with Local 938 began when Ray Bartolotti was elected president of Local 938. Blain and Bartolotti are both members of the Hamilton-Wentworth Catholic district school board. The brokerage also deals with other trade unions largely in the building trades, but no other Teamsters locals. Blain acknowledges that he drafted the letter that is the subject of this protest, and that he read the letter to Bartolotti early in January, before it was mailed. He advised Bartolotti that the letter was going out to the members of Local 938 and that, as usual, the insurers would subsidize the cost of the envelopes, labels and postage.

Unlike the prior letters, which did not laud Bartolotti, this letter did – three separate times – and was mailed to members of Local 938 in late January, some two weeks after the second nomination meeting in Local 938 that was held on January 14, 2001. There is a contested election in Local 938 and considerable political conflict in the local (see *McPherson*, 2000 EAD 33 (October 6, 2000)). Ballots are scheduled to be mailed to members of Local 938 on February 20, 2001 and ballots are scheduled to be counted on March 13, 2001. The previous letters' neutral reference to Bartolotti, the presence of repeated praise for Bartolotti in the current letter, and the timing of the letter itself leads us to conclude that the purpose, object or foreseeable effect of the current letter was the promotion of Bartolotti's delegate candidacy.

Both Traders General Insurance Company and Haber Blain Insurance Brokers Ltd. are employers who employ staff. The prohibition against employer contributions is not limited to employers that have contacts with the union (which these employers do) but extends to every employer, regardless of the nature of the business.

Analysis

Article VII, Section 7(a)(1) of the *Rules* provides that each candidate shall be permitted a reasonable opportunity, equal to that of any other candidate, to have his/her literature distributed by the union, at the candidates expense. Article VII, Section 7(c) provides that each candidate shall pay, on a reasonable basis, for the actual cost of distribution, including stationery, duplication, time required to do the work and postage for mailing. Article VII, Section 8(a) provides that no publication or communication financed, directly or indirectly, by a union may be used to support or attack any candidates or the candidacy of any person. Article XI, Section 1(b)(2) provides that no employer may contribute, or shall be permitted to contribute, directly or indirectly, anything of value, where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate. No candidate may accept or use any such contribution. Article XI, Section 1(b)(4) provides that no candidate, slate or independent committee, nor anyone acting on their behalf, may solicit or accept

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financial support, or other direct or indirect support of any kind from any non-member. Article XI, Section 1(b)(6) provides that no union funds or other things of value shall be used, directly or indirectly, to promote the candidacy of any individual. Use of the union's official stationery with union's name, insignia or other mark identifying the union is prohibited, irrespective of compensation or access.

This mailing is clearly in breach of the *Rules* in at least two respects.

First, the letter in question constitutes campaign literature as it promotes the candidacy of Ray Bartolotti to members of Local 938. It goes beyond its predecessor letters in lauding Bartolotti and his negotiating accomplishments, and does so less than three weeks before the mailing date for the delegate election ballots. And, by so lauding Bartolotti, the letter goes beyond the legitimate information provided to members in the letter about the availability of an insurance program. We conclude that the letter was a campaign contribution because it had the purpose, object or foreseeable effect of influencing positively the election of Bartolotti as a delegate.

Since the letter was prepared and paid for by the insurance company and the broker, both of which are employers, it thus constitutes an improper campaign contribution under Article XI, Section 1(b)(2) of the *Rules*.

Second, since Local 938 envelopes and labels were used to do the mailing, we find that union resources were used to promote the candidacy of Ray Bartolotti, in violation of Article XI, Section 1(b)(6) of the *Rules*. Such use of a local union's official stationery is prohibited, irrespective of compensation or reimbursement.

For these reasons this protest is GRANTED.

Remedy

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

As noted above, there has been considerable political conflict in Local 938. A number of pre-election protests have been filed against Bartolotti by this protestor and others. In *Hull*, 2000 EAD 71 (December 21, 2000), we held that Bartolotti violated the *Rules* when he wrote a letter Local 938 letterhead to a member of the 938 Members slate advising that he would not tolerate the distribution of literature by the slate. Bartolotti was ordered to cease preventing or attempting to prevent the slate from distributing campaign literature, to pay Local 938 the sum of \$100 for use of the union's facilities and to post a notice on the bulletin boards of all Local 938 work sites. That decision issued December 21, 2000, but Bartolotti delayed posting of the notice until after nomination

meetings were held in Local 938 by January 14, 2001. In *Hull*, 2001 EAD 116 (January 30, 2001), we found that Bartolotti's delay in posting the notice was inexcusable. He was required to mail a copy of a notice to the residence of each member of Local 938 at his own expense.

As found in *Mazak*, 2001 EAD 104 (January 25, 2001), we held that Bartolotti deliberately removed campaign literature of the 938 Members slate from a union bulletin board. We warned him that any further *Rules* violations by him after his receipt of the *Mazak* decision that interfered with the rights of Local 938 members would, absent good cause, result in his disqualification as a delegate or alternate delegate candidate.

The violation here occurred before the issuance of *Mazak*, when in early January Bartolotti spoke with broker Blain, had the letter read to him, and approved its mailing in local union envelopes and with the local's mailing list, at the expense of the insurance providers. We therefore conclude that it is not appropriate here to invoke the disqualification remedy we warned of in *Mazak*, although we choose not to do so only with considerable reluctance, in that Bartolotti could have stopped the January 30 mailing following his receipt of the *Mazak* decision on the day following its January 25 issuance.

Instead, we order as follows:

1. Bartolotti shall reimburse the insurance company and/or broker the full cost of the mailing by February 16, 2001, and provide proof of payment to the Election Administrator that day, with an itemized breakdown of the elements of the reimbursement.
2. Bartolotti shall reimburse the local union for the cost of production of the mailing list provided by it for the mailing by February 16, 2001, and provide proof of payment to the Election Administrator that day, with an itemized breakdown of the elements of the reimbursement.
3. Bartolotti shall pay the full cost for a one-page mailing of campaign literature by the opposing 938 Members slate and by any independent candidates in the Local 938 delegate election, with such mailing to be conducted, if requested, by February 16, 2001.
4. Bartolotti shall pay to the Election Administrator the full cost of the Election Administrator's mailing of a letter to all members of Local 938 from the Election Administrator in the form of Exhibit A attached hereto. The Election Administrator shall complete this mailing by February 16, 2001.
5. Bartolotti shall cease and desist from any further *Rules* violation.
6. Our order in *Mazak*, *supra*, remains in effect.

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

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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
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