

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: BOB HASEGAWA,)	Protest Decision 2001 EAD 423
)	Issued: August 8, 2001
)	OEA Case No. PR070911WE
Protestor.)	
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Bob Hasegawa, a candidate for Western Region vice president on the Tom Leedham Rank and File Power slate (the "Leedham slate"), 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*"). He alleges that the lead article in the May-June issue of the Local 174 newsletter, *Front Line*, improperly retaliates against him for exercising his right to protest under the *Rules*. Hasegawa also alleges that the article "set the tone" for attacks and lies in other articles throughout the newsletter. In total, Hasegawa alleges, the newsletter "is obviously designed" to damage his candidacy.

Election Administrator representative Jason Weidenfeld investigated the protest.

Findings of Fact

This protest stems, at least in part, from the facts underlying our decision in *Hasegawa*, 2001 EAD 375 (May 22, 2001). There, we denied a protest by Hasegawa that alleged that an article submitted by Local 174 and published in the February-April *Washington Teamster* violated the *Rules*.

In the May-June *Front Line*, Local 174 secretary-treasurer Scott Sullivan published a one-page article entitled "Protest Response" because, as he states in the article, he felt that he "must comment on [this] protest." This admission followed Sullivan's opening sentence, "There are only a few things that are guaranteed these days, like death, taxes, and protests from Bob Hasegawa." Sullivan chose to respond to Hasegawa's protest in the *Front Line* because Hasegawa "always addresses me in public forums -- such as in pamphlets, discussions with political friends, and court documents."

The remainder of Sullivan's article consists largely of Sullivan stating that he respects each member's right to vote and to have a viewpoint different from his. Sullivan asserts that this asserted respect for different views contrasts with Hasegawa, who, Sullivan alleges, acted "as if he spoke for everyone at the Local." Near the end of the article, Sullivan writes, "I commend [Hasegawa] for his passion. I just wish he could recognize that other people are entitled to have views different than his own." Sullivan concludes his article by mentioning that Local 174's elected delegates and alternates will have space in the next *Front Line*, an opportunity denied "the democratically-elected 1996 Delegates." In 1996, Hasegawa was Local 174's secretary-treasurer.

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In addition to Sullivan's article, Hasegawa claims that a number of articles contain negative comments about the previous administration led by Hasegawa and are aimed at injuring his International officer candidacy. An article by business agent Mike Wilson asserts that Hasegawa's administration, unlike the Sullivan administration, gave little import to the K & L Distributors Bargaining Unit. An article by business agent Mike Werner comments on a "problem inherited from the previous Administration" concerning Airborne Express and on the current Local 174 administration's activities regarding "[Yellow Freight] outstanding issues and concerns that weren't addressed in the past." Hasegawa also objects vehemently to an article by business agent Tim Sullivan, which states that "it appears the former Local 174 Administration did not properly open [an] agreement [with Service Paper, so] our members must wait another year before they can renegotiate their contract."

Hasegawa claims that the entire *Front Line* reflects a concerted attack on his International officer candidacy and on his right to protest under the *Rules*. He asserts that Sullivan's article is retaliation for his filing of a protest and that the other articles were created to further damage his bid for an International officer position.

Analysis

Article VII, Section 8(a) of the *Rules* provides that union-financed publications may not be "used to support or attack any candidate or the candidacy of any person." To determine whether a union publication has been improperly used to support or attack a candidate, we apply the "tone, timing and content" test to the publication. *Pope*, 2000 EAD 4 (August 1, 2000), *aff'd*, 00 EAM 3 (August 29, 2000).

In *Blake*, P245 (December 18, 1995), *aff'd*, 96 EAM 54 (January 12, 1996), the Election Officer held that "generally factual accounts of [protest] decisions" in union publications involving a candidate may be legitimate even when negative references about a candidate are included in the account. 96 EAM 54 at p. 2. *See also*, *Moriarty*, PR 24 (November 6, 1997) and *Mee*, PR36 (December 10, 1997). In *Blake*, the challenged "article contained factually accurate accounts of four protest decisions recently issued by the Election Officer and reviewed by the Election Appeals Master. The findings in [those] decisions were a legitimate, newsworthy subject for a union-financed publication. Moreover, the fact that the decisions contained passages critical of Mr. Carey's conduct did not render the article biased or otherwise improper." 96 EAM 54, p. 5. Moreover, even though the challenged "article focused exclusively on decisions adverse to Mr. Carey and [] the article made specific reference to Mr. Carey's candidacy[,] ... [t]his ... [did] not diminish the fact that the article was newsworthy in content and generally objective in tone."

Here, the article does not report on any of the Election Administrator's decisions as to any of the protests filed by Hasegawa, some of which were found to be meritorious and

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some of which were not.¹ Instead, the article simply states Sullivan's criticism of Hasegawa for filing election protests, along with other criticisms and a comparison of Hasegawa's conduct with that of Sullivan and the rest of the current Local 174 administration. In other words, the tone and content of the article support the claim that rather than being addressed to matters of legitimate interest to IBT members, such as the result of protest decisions (one of which found Sullivan to have violated the *Rules*), the article is devoted primarily to an attack on Hasegawa, an International officer candidate. Similarly, the timing of the article, in the heat of the International officer campaign, weighs on the side of concluding that the article is an improper use of union resources to attack Hasegawa.

Weighed against this is the fact that the article nowhere mentions the fact that Hasegawa is an International officer candidate. This factor alone is not determinative, however, where the fact of Hasegawa's candidacy appears to be well known among the membership of Local 174, given the high visibility political battles both inside and outside the local in which Hasegawa has been and continues to be involved. Accordingly, we GRANT the protest allegation insofar as it complains of improper use of union resources to attack Hasegawa's candidacy.²

By contrast, the other articles in the *Front Line* complained of by Hasegawa are appropriate under the *Rules*. For the most part, these articles focus on events, not opinions. Moreover, notwithstanding their negative comments about the previous (i.e., Hasegawa) administration, these articles are appropriate because they report factually on matters of legitimate interest to union members, such as contract negotiations. Hasegawa is not immune by virtue of his International officer candidacy from any reporting that might reflect negatively on him, at least where the matters are reported in an appropriate

¹ There have been four decisions on protests filed by Hasegawa. In 2001 EAD 235 (March 13, 2001), we denied in part and granted in part a protest alleging that Sullivan used union resources to derogate Hasegawa in the context of the delegate and International officer elections. In 2001 EAD 375 (May 22, 2001), we denied a protest alleging that an article authored by Sullivan in the *Washington Teamster* concerning debate invitations to IBT General President candidates James P. Hoffa and Tom Leedham was improper campaigning through the use of union resources. In 2001 EAD 382 (June 5, 2001), we granted a protest by Hasegawa alleging that IBT member Jerry Halberg retaliated against Hasegawa with respect to the processing of internal union charges filed against Hasegawa. And in 2001 EAD 385 (June 11, 2001), we withdrew the decision in 2001 EAD 382, finding the matter to be resolved. In addition, there are several other outstanding protest decisions involving Hasegawa. See, *Ostrach*, 2001 EAD 121 (February 21, 2001)(deferring decision on protest alleging action against Hasegawa by the IBT in retaliation for his International officer candidacy); *Ostrach*, 2001 EAD 365 (May 11, 2001)(continuing deferral of same protest); *Williams*, 2001 EAD 405 (July 5, 2001)(deferring decision on protest alleging retaliatory act motivated by Hasegawa's candidacy).

² We DENY the protest allegation that the Sullivan article constitutes improper retaliation against Hasegawa. If the article had not been published using union resources, it would be an entirely legitimate part of the robust debate that is and ought to be a part of this election campaign. Statements such as Sullivan's, when made in the course of a campaign debate, and even if they criticize a candidate's protest filings, can not be retaliatory.

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journalistic manner and concern business matters of concern to the union's members. Accordingly, we DENY the remaining protest allegations.

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.

Hasegawa claims that Sullivan has distributed the May-June 2001 *Front Line* to numerous members and nonmembers, including anti-Hasegawa forces in the West and at the IBT. Sullivan admits that the *Front Line* was distributed to all Local 174 members and retirees but claims that his administration has actually limited the distribution to nonmembers compared to the previous administration. The figures from Grosse Mailing, which has mailed the *Front Line* under both administrations, support Sullivan's claim.

As was ordered in *Kilmury*, P303 (February 15, 1996), *aff'd* 96 EAM 109 (February 28, 1996), Hasegawa asks that the Election Administrator order the local union to finance a mailing to the membership by the candidate. However, this remedy was required in *Kilmury* only because the publication schedule of the local union's newspaper precluded a responsive article before the delegate ballot count date. Here, it is our understanding that the Local 174 newspaper will be published before the mailing of International officer ballots on October 9, 2001. In this case, therefore, the publication by the local union of a responsive article by Hasegawa in the next issue of its newspaper will be a sufficient remedy, and we so order. *See Ostrach*, 2001 EAD 68 (December 20, 2000). The Hasegawa article shall be the same size and have the same location in the newspaper as the challenged "Protest Response" article. Any disputes concerning this will be resolved by the Election Administrator. We further order Sullivan and Local 174 to cease and desist from any further violation of the *Rules*.

An order of the Election Administrator, unless otherwise stayed, takes immediate effect against a party found to be in violation of the Rules. *Lopez*, 96 EAM 73 (February 13, 1996).

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

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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 (facsimile: 202-454-1501), all within the time 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 423

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