

IN RE:

KRIS TAYLOR AND HOFFA UNITY SLATE

01 - Elec. App. – 016 (KC)

This matter is an appeal from the Election Administrator's decision 2000 EAD 75, issued December 29, 2000 in the Office of the Election Administrator's Case Nos. PR110302NA; PR110303NA and PR110801NA. The appeal hearing was requested on January 4, 2001 by: (a) James L. Hicks, Esq., on behalf of Kris Taylor, the protestor and a member of Teamsters Local Union 745 in Forest Hill, Texas; and (b) J. Douglas Korney, Esq., on behalf of the Hoffa 2001 Campaign.

A hearing was held before me on January 16, 2001, and continued on January 19, 2001. The following persons were heard by way of teleconference on January 16, 2001: Jeffery J. Ellison, Esq., for the Election Administrator's Office ("EA"); Mr. Hicks; Mr. Korney; Barbara Harvey, Esq., on behalf of Teamsters for a Democratic Union ("TDU"); and Bradley T. Raymond, Esq., on behalf of the International Brotherhood of Teamsters ("IBT"). Submissions were received on January 15, 2001 from Mr. Hicks and Mr. Raymond and on January 16, 2001 from Mr. Korney. The following persons were heard by way of telephone conference on the continued hearing conducted on January 19, 2001: Mr. Ellison for the EA; Barbara Harvey, Esq., for TDU; James L. Hicks, Esq., representing protestor/appellant Kris Taylor; and Bradley T. Raymond, Esq., appearing on behalf of the IBT

The protestors filed several protests against TDU, the Teamster Rank and File Education and Legal Defense Foundation ("TRF") and the Leedham Rank and File Power Slate

(“Leedham”) alleging that these entities violated provisions of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“Rules”) that deal with campaign contributions and disclosure. The EA consolidated these protests under 2000 EAD 75 (the “Decision”) and only Paragraphs 4 and 8 of the Decision are being addressed on this appeal.¹

The protestors allege that certain expenditures made by local unions which subsidized registration fees and travel, lodging and meal expenses of their members who attended the November 2000 TDU convention constituted improper union contributions to the Leedham campaign in violation of the Article XI, Section 1(b)(6) of the Rules. The protestors claim that the campaign-related activities at the convention were not “incidental” to its events and programs but “an integral component of the convention agenda itself” IBT Submission, dated January 15, 2001 at 6. This assertion is made despite the EA’s October 25, 2000 Advisory Opinion in which he stated that, “assuming the percentage of campaign related activity of the convention [to be] similar to 1997 ... any such campaigning [would be] incidental to legitimate union business” and that it would therefore be “proper for the local [unions] to pay the lodging, travel and meal expenses of members attending the convention.” Decision, at 8.

As part of the protest investigation, the EA analyzed TDU’s detailed review of all activities and functionalities at the convention and found that 20.5% of the activities were “campaign-related” and 79.5% were “non-campaign related.” This, he concluded, compares favorably with the past two TDU conventions, where campaign-related activities were found to

¹ In his original appeal hearing request, Mr. Hicks indicated that he was appealing that part of the protest decision “... set forth in [paragraph] 8...” (see Hicks Appeal Letter, dated January 4, 2001). In his January 15, 2001 submission, Mr. Hicks stated his submission was limited to that portion of the decision as set forth in Paragraph 4, with no mention of Paragraph 8. When questioned at the appeal hearing, Mr. Hicks explained that it was his understanding that Mr. Raymond was going to address Paragraph 8 in his presentation, and concluded that he did not need to repeat those arguments. Ms. Harvey objected to any argument addressed to Paragraph 4 at this hearing, asserting that she had had inadequate notice. It was then ordered that argument as to Paragraph 4 of the Decision would be heard on Friday, January 19, 2001.

constitute 14% and 21%, respectively, of convention activity. Therefore, the EA determined that although there were campaign related activities carried out at the convention, these activities were incidental to the Convention's primary purpose of union business and educational workshops. Accordingly, he found that a local union's expenditure for travel, hotel and meal expenses related to the trip is permitted under the Rules, and denied this section of the protest.²

Both the Hoffa 2001 Campaign and the IBT argue that the primary purpose of the convention was not legitimate union business or education but the promotion of the candidacy of the Leedham slate. Mr. Korney, on behalf of the Hoffa 2001 campaign, points to the fact that the schedule of the campaign-related activities was published as part of the convention agenda and that the campaign-related theme of the convention was set by the keynote address given by general presidential candidate Tom Leedham. Mr. Raymond, speaking on behalf of the IBT's institutional concerns, argues that since TDU is not a labor organization, it cannot conduct official union business. He further supports his position that the convention was dominated by campaign related purposes and objectives by pointing to two publications, the Convoy Dispatch, which announced campaign-related workshops, and summary of the convention published by the Bureau of National Affairs' ("BNA"), which stated "... [s]ome 400 members of the [TDU] planned their strategy for ousting incumbent IBT President James P. Hoffa and electing their candidate Tom Leedham..." While these press citations are interesting, they do not, on their face, deal with the question of centrality or incidentality on a quantum basis. This is the standard for resolving this issue that is now settled in both practice and precedent over numerous election cycles.

² The EA ordered that TDU refund \$13.11 of the registration fee to the local unions. This figure represents 20.5% of \$63.95, the amount which the EA determined to represent the non-meal and program part of the registration fee.

Mr. Hicks made an interesting analogy during the argument to the Super Bowl. He noted that there may be pre-game tailgate parties, halftime brass band entertainment and post game ceremony and buzz, but everyone is turned in for the sixty minutes of championship football. The TDU Convention, he insisted, is about Teamster electoral politics, and everything else is cosmetic, pro forma agenda writing or thinly veiled campaigning. His observation is intuitively appealing. Its weakness of course, is that it is a rhetorical construct without any apparent factual foundation to controvert the factual findings on incidentality made by the EA.

None of those in opposition to the decision before us have made any evidentiary, fact-based showing that the factual determinations of the EA as to the percentage of campaign-related activities conducted at the convention is erroneous. I am therefore bound by the analysis done by TDU and reviewed by the EA which establishes that a substantial part of the events held at the convention were nonpolitical and educational in nature. Accordingly, the EA's determination in Paragraph 8 of the Decision is affirmed.

On the Paragraph 4 issue, the protestor Ms. Taylor challenges the lack of adequate detail in the reporting of certain expenditures in TDU's Campaign Contribution and Expenditure Report for the period June 1, 2000 to September 30, 2000 ("CCER #2"). More specifically, Ms. Taylor contends that the box labeled "Purpose of Expenditure" in TDU's CCER #2, Schedule B, "Itemized Expenditures", describing payment made to the Teamster Rank and File Education and Legal Defense Foundation ("TRF") for "rent, allocation of expenses" is not sufficiently "clear and concise" as is required under the Instructions to this Schedule.

The EA found that the description of the payment to TRF was adequate. Following a recent audit, the EA concluded that TDU was in compliance with the previously

approved allocation accounting system, known as the Huddleston system. The EA states that the “category complained of by Taylor adequately describes TDU’s allocation under Huddleston.” Decision, at 6 and that no further disclosure as to this allocation is required.

It is the position of the protestor and the IBT that full and detailed disclosure of TDU’s expenditures to TRF should be required. They argue that the purpose of the CCER reporting requirements is to allow for “complete and open disclosure” and cite to the first Election Officer Michael Holland’s declaration that “... anything other than full disclosure of contributions and expenses undermines the election process.” Hicks January 15th Letter, at 2. Mr. Hicks urges that such a substantial amount of expenditure should not be allowed to be hidden from view and potential criticism. He also notes that the CCER submitted by TRF for the same period of time makes no mention of the monies paid to TRF by TDU.

Mr. Raymond argues that since it is not sufficient for a candidate or slate to submit a gross figure for campaign expenses, such a “... lumping [of] campaign related expenditures under the catch all phrase ‘allocation of expenses’ should not be sufficient for independent committees such as TDU” Raymond January 15th Letter at 3. Mr. Raymond insists that without such full disclosure, “[TDU] could employ or do business with convicted felons, anti-union companies or other unsavory individuals or entities...” Id, in violation of the Rules.

Ms. Harvey asserts that the reporting of expenditures in question was no different than in previous elections, as approved by previous Election Officers and the Election Appeals Master. Accordingly, she insists that under binding precedent no circumvention of the Rules has been established .

The essence of the case is the following assertion in Mr. Hick's letter to me dated January 18, 2001:

In effect, TDU and TRF are avoiding the requirements of disclosure. In combination their CCER's do not reveal the identities of vendors of the purposes of expenditures for those amounts that TDU reimburses to TRF. TDU should be required to provide the detail of those expenditures in its reporting form and its failure to do so undermines the election process.

I note at the outset that the Rules specifically enjoin the EA "to consider and apply, where applicable, precedents and decisions issued during the 1990-91 and 1995-96 International Elections and the 1997-98 Rerun Election." Rules, Article I. Furthermore, Article XI, Section 2(e) of the Rules appears to limit disclosure of disbursement information of Independent Committees. However, the Rule (negotiated jointly by the IBT and the Government in 2000), appears to have given the EA discretion, "at a candidate's request," to directly provide more detailed information about an Independent Committee's expenditures, presumably learned from the EA's Huddleston system review.

In light of the foregoing, the decision of the EA in connection with paragraph 4 therein, specifically, the protest of Kris Taylor, a non-candidate, is affirmed.

I express no view of the application of Article XI, Section 2(e) to any future request of any candidate directly made to the Election Officer regarding such information.

_____/s/Kenneth Conboy_____
Kenneth Conboy
Election Appeals Master

Dated: February 8, 2001