IN RE:	
KRIS TAYLOR AND HOFFA UNITY SLATE	01 - Elec. App. – 059 (KC)

This matter is an appeal from the Election Administrator's decision 2001 EAD 256, issued March 23, 2001. The appeal hearing was requested on March 27, 2001 by Barbara Harvey, Esq., on behalf of Teamsters for a Democratic Union ("TDU") and the Teamster Rank and File Education and Legal Defense Foundation ("TRF") and on March 29, 2001 by James L. Hicks, Esq., on behalf of Kris Taylor, the protestor and a member of Teamsters Local Union 745 in Forest Hill, Texas.

A hearing was held before me on April 3, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq., for the Election Administrator's Office; Ms. Harvey; Mr. Hicks; Betty Grdina, Esq. on behalf of the Tom Leedham Campaign; J. Douglas Korney, Esq., on behalf of the Hoffa 2001 Campaign; and Bradley T. Raymond, Esq., on behalf of the International Brotherhood of Teamsters ("IBT"). Pre hearing submissions were received on March 27, 2001 from Ms. Harvey and on March 30, 2001 from Mr. Raymond. Post hearing submissions were received on April 6, 2001 from Ms. Harvey, on April 9 and April 12, 2001 from Mr. Raymond and on April 10, 2001 from Mr. Ellison.

This decision joins several protests severed from In Re: Kris Taylor and Hoffa Unity Slate, 2001 EAD 75 (December 29, 2000) for separate consideration, as well as a protest filed by the Hoffa Slate, challenging (a) the reporting of legal and accounting contributions and expenditures as reported by both TDU and TRF in their initial and supplemental CCER's and (b) whether legal and accounting fund contributions can fund the legal and accounting services performed by non-professionals. In the instant decision, EA has determined that "…only

professional services (including the services of non professionals working under direct professional supervision) may be funded through legal and accounting monies." (See, Page 1, from In Re: Kris Taylor and Hoffa Unity Slate, 2001 EAD 256 (March 23, 2001)). However, because he believes that the precedent concerning this matter is wrong, the EA urges that his decision be reversed on appeal.

As the EA points out in his decision, this case turns on the interpretation of Article XI, Section 1(b)(5) of the Rules, which permits financial contributions from non-members to pay the fees for legal and accounting services. The question raised by these protests is whether legal services should be defined by the nature of the services provided or by the provider of the services. The EA, constrained by prior precedent of the Interim Election Officer Benetta Mansfield (the "IEO"), takes the latter position, and has construed legal services as those "… provided by a member of the legal profession holding himself/herself out as a lawyer and engaged in the practice of law…[as well as] certain activities by non lawyer subordinates… who work for and are subject to direct supervision and control of a lawyer." (See, Letter of the IEO, dated March 29, 1997). Ms. Harvey, on behalf of TDU and TRF, takes the former position and argues that legal services should include work performed by non professionals who are not under the direct supervision of licensed professionals. Mr. Raymond, on behalf of the IBT, agrees with the IEO that legal and accounting funds should be paid only to licensed professionals.

In support of his recommendation that his protest decision be reversed, the EA argues that I am not bound by prior precedent under Article I of the Rules and can ignore, in substance, the IEO ruling. Citing to my affirmance of the IEO in Leebove, 97 Elec. App. 328 (KC)(November 24, 1997), the EA also argues that I did not rule specifically on the IEO's reasoning that legal and accounting funds can only be paid to practicing lawyers and those

subject to their direct supervision and control, but only on the question of whether the services provided by Mr. Leebove were … "legal services as distinguished from public relations… ". Finally, the EA refers to the actual text of the section, which defines legal and accounting services only by their purpose and not by the status of the provider of the service.

In support of her position, Ms. Harvey first argues that the EA's analysis of the precedential effect of Leebove is misplaced, since the IEO decision is expressly limited to the facts in the underlying decision. She argues that the question in Leebove was whether the type of services provided could be classified as legal in nature. Here, the question is whether the legal advice and legal advocacy already provided by TDU & TRF non-professionals can be paid by the legal and accounting fund. Therefore, she argues, the EA is not bound by Leebove. As to the argument put forth by Mr. Raymond that to pay non-professionals for election-related work would "…reopen the door to the corrupting influence of non-member contributions" (See, Page 5, Letter of Bradley T. Raymond, Esq., dated March 30, 2001), Ms. Harvey argues that all time expended by TDU/TRF staff has been subject to the scrutiny of all Election Officers, and under the Huddleston method, they have had to account for and categorize every minute of time expended, thus eliminating any question as to type of services provided.

As noted, the principal argument put forth by Mr. Raymond is that the money raised from non-members specifically for legal and accounting funds must be strictly scrutinized to prevent the abuse of funds that occurred in the last election. He argues that the current Rules were carefully drafted with the Leebove decision in mind, and that the language in Article XI, Section 1(b)(5) that funds raised from non-members was to only be used "to pay fees for legal and accounting services" was deliberate. The term "fees", according to Mr. Raymond, contemplates the payment of compensation for professional services, and to extend that meaning

to those "unspecified" services claimed by TDU & TRF as being legal or accounting would stretch the definition of fees beyond its plain and ordinary meaning. Mr. Raymond does not suggest that these non-professionals should not be paid, just that they be paid with funds raised from members and reported as campaign contributions. Finally, Mr. Raymond argues that to allow legal and accounting funds to be used to compensate unsupervised, non-professional staff under the theory that they are sometimes performing legal or accounting work would be an open invitation to abuse. He claims there is no way to accurately account for the time and services spent, pointing to the fact that one of the protests being considered herein is that the services and monies reported in TDU's and TRF's CCER's were inflated and inaccurate. Therefore, to limit payment to licensed professionals, concludes Mr. Raymond, would curtail the likelihood of abuse.

First, I disagree with the EA's overly restrictive interpretation of Article I. The words "consider and apply" (emphasis added) are the operative words of the relevant section, and I do not believe the drafters of the Rules meant to tie the EA to a slavish and rote application of all previous decisions of his predecessors if he should determine that a previous ruling was incorrectly decided. Although the concept of stare decisis is the cornerstone of our legal system, and certainly important to the Rules, the legal framework of an emerging democratic culture in the IBT requires some flexibility for the EA, and was intended here as necessary to meet changing circumstances. Broad fidelity to previous EA decisions is important and must be honored, but such fidelity is not, and should not be, absolute and unbending.

I concur with the position of Ms. Harvey and the EA that payment of legal and accounting funds should not be restricted to licensed professionals. While trying to protect against abuse from the use of non-member contributions, the drafters of these Rules clearly felt

that it was equally important to assure compliance with both election rules and the legal rights of candidates by devising an exception to the use of non-member contributions in connection with legal and accounting services. The Rules do not limit this exception to fees, costs or other expenses incurred only by those who have been certified in either the law or in accounting. In fact, the use of the term "licensed professional" was considered in early drafts of the Rules and rejected. The exception is directed at and serves the rights to be protected, and to say that these rights can be protected only by licensed professionals flies in the face of practicalities.

I am not unmindful of the IBT's concern that the funding of legal and accounting services provided by non-professionals may open up the system to abuse. I find, however, that the EA's requirement that all persons, professional and non-professional, who provide legal or accounting services must file a statement with the EA attesting to the services provided is an adequate safeguard. This reporting system serves as a "timesheet" of the services rendered, and scrutiny by both the EA and candidates serves as an effective check on any potential abuses.

Accordingly, the decision of the EA is reversed in this matter. Legal and accounting services provided by non-professional staff may be funded through legal and accounting funds as long as the services come under the definition of "legal services" and "accounting services" as outlined by the EA in his advisory. TDU and TRF are ordered to provide to the EA necessary details of the legal and accounting services subject to payment.

____s/Kenneth Conboy_____
Kenneth Conboy
Election Appeals Master

Dated: May 24, 2001