

IN RE:

JIMI RICHARDS

01 Elec. App. 063 (KC)

This decision supplements my order in this case dated May 3, 2001.

The Election Administrator concluded that Jimmy Payne, business agent of Local 728 and slate member of the Local 728 Unity Slate (“the Unity Slate”) misappropriated a quantity of Local 728 blank buttons customarily used, after political messages are printed, embossed or taped thereon, to communicate those messages in campaign electioneering.

The Election Administrator established as unrebutted fact the following:

- a) the value of the purloined buttons was \$175;
- b) although an unknown number of the buttons, with political messages applied, was distributed at three separate plant facilities employing a total of 1250 IBT members, there was also an unknown number of non-union source (legitimate) campaign buttons distributed by the Unity Slate at these facilities;
- c) specific, numbers-based evidence on the scope of circulation of the Union source buttons shows a volume of 450, being 250 (Stroud statement) and 200 (Payne statement). The evidence of Earl Parker is inconclusive on the relevant number, since apparently “good” and “bad” buttons were distributed simultaneously by the Unity Slate at the work sites studied.

- d) The Unity Slate won all delegate and alternate seats by a wide margin in the election.

The Election Administrator determined that the use by the Unity Slate of \$175 worth of Union owned blank buttons in conjunction with the aforementioned established facts constitutes a basis for concluding that there is a reasonable probability that the election outcome may have been affected by the misappropriation of the blank buttons.

Accordingly, he nullified the election results and ordered a rerun election.

As a preliminary matter, I am satisfied that the Election Administrator should have applied the precedent established by his predecessor in Cheatem Post 27-EOH et al, 102 et seg., to the effect that elections conducted under the IBT's Election Rules and structure are at least the equivalent of those conducted under the supervision of the Department of Labor and that, accordingly, the LMRDA standard ought to, and does control, the assessment under the Election Rules of whether conduct constituting a violation of the Rules can be found to support a probability that the outcome of an election may have been affected by the violation. In other words, the delegate election in Local 728, because it was a supervised election, is presumed to have met a standard of fairness and regularity, and the results cannot be set aside by the Election Administrator without convincing evidence that the violation may have affected the outcome. Note, that Article I of the Rules obligates and requires the Election Administrator to apply the Cheatem precedent in this case.

In any case, there is in this record neither convincing evidence nor any evidence at all to support a probable nexus between the violation and the outcome of the election.

It is difficult to understand how the Election Administrator concluded that such a probable nexus exists in this case. He cites two previous IBT cases as relevant to his analysis. In Platt, Post-1 (March 14, 1996) rev'd on other grounds, 96 EAM 144 (March 29, 1996), the Election Administrator quotes and relies upon language as follows: “to determine whether an effect exists, the Election Officer determines mathematically whether the effect was sufficient in scope to effect the outcome of the election and/or whether there was a causal connection between the violation and the result or outcome of the election” (emphasis added).

Here, the landslide victory of the Unity Slate makes the existence of the probability considerably less likely than that where the winners and losers are separated by a handful of votes. Hence, the “mathematical” determination does not support the conclusion reached here. More to the point, as I noted in In re Carey Slate, 97 Elec. App. 322 (KC) “in fact, margins of victory per se do not support inferences one way or the other with respect to the impact analysis required by the Rules . . . the eventual vote count cannot tell us anything about the dynamic between the [offending] message and the target population,” at 5.

The Election Administrator also quotes Ford, 95 EAM 46 (December 20, 1995) to the effect that “where the benefit conferred by a violation is significant, and the voter outcome is close, the election officer need not find a definitive causal link between the two” (emphasis added). Note that the standard announced in Ford is conjunctive, i.e. the violation must be significant and the outcome must be close to excuse the Election Administrator from demonstrating causality. Here, it is undisputed that the election outcome was not close, indeed it was a landslide for the Unity Slate. Accordingly, Ford requires here the establishment of a definitive causal link, not a generalized nexus, and certainly not a speculation.

As I also noted in In re Carey Slate, *supra*, answering the nexus question in the absence of reliable exit polling data, which is not possible to gather in mail ballot elections, is difficult. In that case, however, prohibited contributions funded over 800,000 pieces of direct campaign mail which were carefully targeted to have the most effect on the voters most likely to make the difference in the outcome. Here, we have a mix of “good” and “bad” buttons, with no issue specific messages, in numbers which could hardly be described as a flood, a torrent or an avalanche burying the opposition. Indeed, the Election Administrator’s entire basis for meeting his burden under Ford of establishing that “the benefit conferred by a violation is significant” is his conclusion that \$175 worth of blank union owned buttons were “widely circulated.” This in turn is bootstrapped by a further conclusion, without adequate support, that the buttons were “distributed en masse at terminal gates.” But even assuming the numbers were per se substantial, the inquiry requires a further step: substantial in reference to what?

Because the buttons bore a message designed to persuade the voters to support the Unity Slate (Decision, id.), the Election Administrator concluded that they “had the foreseeable effect of promoting the election of the Unity Slate” (Decision, id.) This is, under the Rules, not the same as finding a possible effect on the outcome of the election.

In substance, the Election Administrator nullified the democratic will of the Local 728 membership because of the distribution of \$175 worth of blank union owned buttons, later enhanced at the Unity Slate’s expense with political messages, to a relative number of IBT members, who voted in a landslide for that slate. By this analysis, the most de minimus amount of union resources, five cents worth of union blank paper on which to print a master draft of a political circular that is legitimately duplicated and sent to a significant number of voters, or five

dollars of union gasoline to transport a candidate to address a rally of hundreds, or the improper placement of a campaign sticker on a union vehicle's bumper in the plain view of hundreds of potential voting members coming and going to work is sufficient to overturn elections, indeed, even elections that were routs of the complaining losers.

This cannot be a process sanctioned by the Rules. Indeed, the flaw in the analysis in this case is the failure to recognize that the political value (assuming it could be quantified) here is the message (the legitimate slogans added on) and not the medium (the illegitimate blank buttons). The electoral impact, if such there was, came from the persuasive words on the buttons and not the inert and irrelevant bits of paper and wire on which they were mounted. One is put in mind of the old discredited historical causality that explains Napoleon's defeat at Waterloo: "but for a nail the shoe was lost, but for the shoe the horse was lost. . . ."

The crude, "but for" analysis that links worthless buttons, the decisive and Rules neutral political enhancement of those buttons, and the overturning of the broad based electoral voice of Local 728's membership is, per se, forbidden by the Rules, and the cases interpreting the Rules. That is why, in an election won by a large margin, the Election Administrator can overturn it only by establishing a definitive and causal link between the violation and the outcome. This record irrefutably does not meet that appropriately demanding standard.

Accordingly, the Election Administrator's nullification of the election results in Local 728's vote for convention delegates and alternates is reversed.

Although Jimmy Payne's election in the Local 728 balloting was, in light of the foregoing, valid, he is disqualified from taking his seat at the convention because I am satisfied that the Election Administrator properly concluded that he obstructed the investigation and gave conspicuously unbelievable and false statements in the course of his interviews by investigators.

____s/Kenneth Conboy _____
Kenneth Conboy
Election Appeals Master

Dated: May 14, 2001