

IN RE:

AVRAL THOMPSON  
AND TOM LEEDHAM CAMPAIGN

01 - Elec. App. – 073 (KC)

This matter is an appeal from the Election Administrator's (the "EA") decision 2001 EAD 332, issued April 30, 2001. The hearing was requested by Betty Grdina, Esq., of Yablonski, Both & Edelman, on behalf of the Tom Leedham Slate.

A hearing was held before me on May 9, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. for the Election Administrator's Office; Ms. Grdina; and Stefan Ostrach, Treasurer of the Tom Leedham Rank & File Power Slate (the "Rank and File Slate"). This office received no additional submissions.

Avral Thompson, one of the protestors, a member of Local Union 89 and the Zuckerman/Washburn Slate, alleged<sup>1</sup> that Tom Leedham and his supporters on the Rank and File Slate impermissibly campaigned inside the facilities at three locations in the jurisdiction of Local Union 89: Consolidated Freightways, Holland Trucking and Porcelain Metals. Each of these facilities stated they had policies against campaigning inside their buildings. Upon receiving the news that the Leedham slate had been campaigning inside these premises, Mr. Thompson, on behalf of the Zuckerman/Washburn Slate, called each of the management officials to request similar access, but was denied permission to campaign. The Rank and File Slate does not deny they gained access to these sites without management permission, but claim they were on site for only a few minutes and these visits to the worksites were incidental to their campaign activities in the facilities parking lots.

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<sup>1</sup> Mr. Thompson also alleged that Mark Smith, a delegate candidate from Local Union 41, improperly campaigned on company time. The other protestors, the Tom Leedham Slate, alleged improper surveillance of Leedham campaign activity by candidates and supporters of the Zuckerman/Washburn Unity Slate. These allegations are not before me in this appeal.

The EA's investigation found that the Leedham campaigners who entered the facilities did so without the employers' permission, taking advantage of Leedham supporters/employees access to the inside of the facilities. By entering the buildings, they failed to follow the employers' policy prohibiting campaigning on its premises, and thereby indirectly appropriated a "thing of value" from each of these employers. Therefore, since employer contributions, even those made without the employer's knowledge, are prohibited under the Rules, the access attained by Mr. Leedham and his supporters was found to be a violation. The remedy imposed by the EA was for Mr. Leedham and his supporters to cease and desist from receiving or taking any campaign contributions from any employer, and for a notice to be posted on all Local Union 89 worksite bulletin boards which outlined the violations and remedies imposed.

On behalf of the Leedham campaign, Ms. Grdina argued that even though each of the employers have policies against campaigning on their worksite, their premises are still open to incumbent officials for "incidental campaigning" while they are there on union business. She claims that it is unfair and an undue burden to require Mr. Leedham and his supporters to obtain permission, while incumbents are granted access based on their union status. She disagrees with the EA's analysis and conclusions, arguing that they fail to abide by Rules' purpose to maximize member participation in the election process and that it "contravenes the larger purpose of the Rules in promoting democratic access to members." (See, Page 3, Appeal Request of Betty Grdina, Esq., dated May 3, 2001). Mr. Ostrach argued that the EA's decision has effectively restricted the ability of candidates to campaign at the worksite, making parking lot access as allowed by Article XI, Section 11 ( ) the maximum amount of access a candidate has instead of the minimum amount of candidates' access. He claims that candidates should be allowed access to worksites, and that it is up to the EA to enforce the policy and the Rules.

The factual findings of the EA are to be given substantial deference and I concur with his analysis and conclusions in this matter. Article VII, Section 11(d) of the Rules holds that "... no restrictions shall be placed upon candidates' or members' pre-existing rights to solicit support, distribute leaflets or literature... or engage in similar activities on employer or Union premises." (emphasis added). In this case, the EA's investigation found that each company asserted that it had a policy prohibiting campaigning inside the buildings, and concluded there was no pre-existing policy. Therefore, without proof of a pre-existing right to distribute materials inside the facility, Mr. Leedham and his supporters violated Article XI, Section 11(d) and the EA correctly imposed a remedy.

Accordingly, I affirm the EA's decision in all respects.

\_\_\_\_s/Kenneth Conboy \_\_\_\_\_  
Kenneth Conboy  
Election Appeals Master

Dated: May 24, 2001