OFFICE OF THE ELECTION SUPERVISOR for the INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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IN RE: FRANK HALSTEAD,)	Protest Decision 2005 ESD 31
)	Issued: December 6, 2005
Protestor.)	OES Case No. P-05-031-111005-FW
)	

Frank Halstead, a member and shop steward of Local Union 572, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election ("Rules"). He alleged that an employer made an impermissible campaign contribution by displaying a Hoffa 2006 campaign sticker in its establishment, in violation of the Rules.

Election Supervisor representative Michael Four investigated this protest.

Findings of Fact

The protest alleged that Mike's Hockey Burger, a restaurant, displayed a bumper sticker supporting the Hoffa 2006 campaign in the front window of its establishment. Investigation showed that the restaurant is an employer but does not employ Teamster members. The proprietor, Mike Chitjias, told our investigator that Teamsters frequent his establishment and, several months ago, one asked to display the bumper sticker in the front window. Chitjias agreed. Chitjias further told our investigator that he is not involved in the Hoffa campaign and does not actively support the Hoffa candidacy. He stated that he merely sought to please a good customer by consenting to the posting of the Hoffa sticker.

The sticker was displayed in the center of the largest front window of the restaurant. The window contained no other stickers or postings and is directly adjacent to and in direct sight of the door used by patrons to enter and exit the establishment.

As our investigation concluded, the restaurant owner had removed the Hoffa sticker from the restaurant's window and replaced it with holiday decorations.

David Hoffa, counsel to Hoffa 2006, conceded that the campaign had not requested the restaurant to remove the campaign sticker from its premises, but told our investigator that, with the sticker now removed, the matter should be considered closed.

Analysis

The *Rules* prohibit contributions by employers to any candidate. Thus:

No employer may contribute, or shall be permitted to contribute, directly or indirectly, anything of value, where the purpose, object or foreseeable effect of the contribution is [to] influence, positively or negatively, the election of a candidate. No candidate may accept or use any such contribution. These prohibitions are not limited to employers that have contracts with the Union; they extend to every employer, regardless of the nature of the business and

include, but are not limited to, any political action organization that employs any staff; any nonprofit organization, such as a church or civic group that employs any staff; and any law firm or professional organization that employs any staff. These prohibitions extend beyond strictly monetary contributions made by an employer and include contributions or use of employer stationery, equipment, facilities and personnel.

Article XI, Section 1(b)(2).

The *Rules* define "campaign contribution" as "any direct or indirect contribution of money or other thing of value where the purpose, object or foreseeable effect of that contribution is to influence, positively or negatively, the election of a candidate for Convention delegate or alternate delegate or International Officer position." Definition 5. The definition expressly includes "[a]n endorsement or counter-endorsement by an individual, group of individuals, or entity." *Id.*, subparagraph (f). Further, the definition includes "the making available for use of space, equipment, supplies or advertisements." *Id.*, subparagraph (h).

The *Rules* hold candidates "strictly liable to insure that each contribution received is permitted under these *Rules*. Prohibited contributions must be returned promptly. Within three days of the return of any contribution, the candidate or candidate's campaign returning the contribution shall provide to the Election Supervisor an affidavit identifying the original source and the date of the contribution being returned, the amount of the returned contribution, the person to whom or entity to which the contribution was returned and the date on which the contribution was returned." Article XI, Section 1(b)(13).

The strict liability the *Rules* place on candidates is emphasized by Article XI, Section 1(b)(14), *viz*.

Ignorance by a candidate, by a union and/or by an employer that union or employer funds or other resources were used to promote a candidacy shall not constitute a defense to an allegation of a violation of these *Rules*.

We hold that the display of a Hoffa 2006 bumper sticker in the front window of Mike's Hockey Burger constituted a prohibited employer contribution to the Hoffa campaign because such display had the purpose, object or foreseeable effect of influencing the election for General President of the IBT. Patrons of the establishment and passersby may have reasonably concluded that the restaurant supported the Hoffa candidacy, even though the restaurant's owner indicated that he allowed the posting merely to please a customer. Because the *Rules* prohibit even the non-monetary contributions by employers, in the form of endorsements and the use of employer facilities, the employer here violated the *Rules* by permitting the sticker to be affixed and to remain in the front window of the establishment.

Moreover, the Hoffa 2006 campaign, the beneficiary of the display, violated the *Rules* by accepting the impermissible contribution. While the campaign may have been unaware that the sticker had been posted on the employer's premises prior to the date this protest was filed, the campaign was provided a copy of the protest and did not thereafter comply with the *Rules* by requesting that the employer remove the sticker and filing an affidavit attesting to the return of the improper contribution.

Because Mike's Hockey Burger, the employer, removed the campaign sticker from its premises, we deem the protest RESOLVED as to the employer. However, we GRANT the protest as it relates to Hoffa 2006 because the campaign did not fulfill its obligation to return this impermissible contribution.

Remedy

When the Election Supervisor determines that the *Rules* have been violated, he "may take whatever remedial action is deemed appropriate." Article XIII, Section 4. In fashioning the appropriate remedy, the Election Supervisor views the nature and seriousness of the violation as well as its potential for interfering with the election process.

We order the Hoffa 2006 campaign, within three days of receipt of this decision, to return the impermissible employer contribution of Mike's Hockey Burger by advising that employer that the display of Hoffa 2006 campaign material in its establishment is a violation of the *Rules* and to cease and desist from displaying any other campaign material for the balance of the 2005-2006 campaign. We further order the Hoffa 2006 campaign to comply with Article XI, Section 1(b)(13), within the time permitted by that provision, by filing the required affidavit documenting this returned contribution.

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 Supervisor 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
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 the parties, as well as upon the Election Supervisor for the International Brotherhood of Teamsters, 1725 K Street, N.W.,

Suite 1400, Washington, D.C. 20007-5135, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark Election Supervisor

cc: Kenneth Conboy 2005 ESD 31

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