

ELECTION APPEALS MASTER

IN RE:

STEFAN OSTRACH,

Protestor

06 Elec. App. 007 (KC)

ORDER

This appeal grows out of a series of protest decisions of the Election Officer dealing with various challenges to accreditation petitions filed under the 2005-2006 IBT International Union Delegate and Officer Election Rules (“Rules”).

The initial protest asserted that accreditation petitions circulated by the Hoffa campaign violated the Rules because slate accreditation petitions may be circulated for only properly formed slates under Article VII, and that any such slate petition must contain the names of all members of the slate when circulated.

The Election Supervisor concluded that signatures collected on a slate petition (Form 16) cannot be counted towards candidate accreditation unless there is a slate declaration showing mutual assent among the candidates that is consistent with the slate representation made by the joint solicitation of member support. He further advised that candidates cannot purport to act as a slate when soliciting support from the IBT membership and then seek accreditation on the basis of that jointly solicited support without also submitting the evidence that they are, in fact, joined together, in the form of slate declarations.

The Election Supervisor granted the protest (2005 ESD 39) and refused to accredit any candidate for International office on the basis of petitions submitted by the Hoffa campaign unless the candidate is a member of a duly formed slate properly established under the

Rules by a slate declaration and that Form 16 petitions, listing the slate members, were submitted with the required minimum number of signatures.

A secondary assertion of the protest, claiming that the Hoffa campaign Form 16 petitions are invalid because they did not list all of the purported slate members who could have been listed on each form, was denied by the Election Supervisor.

Accordingly by his December 21, 2005 decision, the Election Supervisor denied accreditation to eighteen candidates whose names appear on the Hoffa campaign Form 16 petitions because they had not submitted slate declarations.

Six days later, on December 27, 2005 the Election Supervisor issued a further decision (2005 ESD 41) rejecting submissions and argument of the Hoffa campaign purporting to cure the defects found by the Election Supervisor in his previous ruling that led to his refusal to accredit the aforementioned eighteen candidates.

Three days later, on December 30, 2005 the Election Supervisor issued yet a third decision (2005 ESD 43). On December 29, 2005 the Hoffa campaign submitted to the Election Supervisor a series of faxed slate declaration forms, each listing the full roster of candidates, with no single form signed by all the candidates, but with each candidate's signature appearing on at least one form.

Based upon the foregoing, the Election Supervisor reversed his prior rulings and found the Hoffa Slate duly formed in accordance with Article VIII, Section I of the Rules. He further announced that Hoffa slate members for whom sufficient slate accreditation petition signatures have been submitted will be certified as accredited candidates under the Rules.

The Election Supervisor pointedly noted the following:

We decline to construe the *Rules* to require that slates be formed before slate accreditation petitions are submitted or, for that matter, before they are first circulated. Instead, so long as a slate, even one formed after petitions are submitted, includes all of the candidates whose names appear on timely submitted slate accreditation petitions, we will accept the slate accreditation petitions and afford the candidates the rights they may obtain via petition. The purpose of accreditation petitions is to demonstrate that a candidate – or in the case of slate accreditation petitions, a slate of candidates – enjoys substantial support among the membership. Each member who signs a slate accreditation petition indicates his/her support for a slate that includes the candidates listed on the petition. The member's signature on a slate accreditation petition is of no value for accreditation purposes if a slate of the candidates listed on the petition is never formed. However, a slate formed after the date members have signed petitions that includes all candidates listed on the slate accreditation petitions is consistent with the representation the candidates made when they jointly solicited signatures on the petition and with the members' intent in signing the petitions for those candidates jointly. Those petitions will be recognized as valid to support a request for pre-convention accreditation. Decision, at p.3.

A hearing was held before me on December 6, 2005. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. on behalf of the Election Supervisor; Steven R. Newmark, Esq. for the Office of the Election Supervisor, Barbara Harvey, Esq. on behalf of the TDU, Judith B. Chomsky, Esq. on behalf of Stefan Ostrach and the Leedham campaign and Stefan Ostrach; David Hoffa, Esq. on behalf of the Hoffa campaign; Todd Thompson; Al Hobart; Jim Santangelo; Randy Cammack and Michael Poulshack.

In their submissions and at the hearing of this appeal, counsel for the protester, the Leedham campaign, and the TDU disputed the Election Supervisor's aforementioned interpretation of the Rules approving formation of slates subsequent to circulation and/or submission of slate accreditation petitions. They argued that his analysis is contrary to the Rules, weakens the effectiveness and fairness of the electoral process, and undermines rank and file decision making on candidate support. It was further argued that the ruling will encourage candidate manipulation of the slate concept.

None of these arguments are persuasive. Accordingly, the Election Supervisor's decision in 2005 ESD 43 is affirmed.

A supplemental issue emerged, however, when counsel for the protester pointed out that two of five Hoffa candidates in the Western Region were identified as candidates seeking an office called "Western Region Vice President at Large." The two in question were actually two of the Hoffa slate's five candidates for at-large vice president. Counsel for the protester cites Article X, 2(b) that states "[N]o petition shall include regional Vice President candidates from more than (1) region." Of course, the two candidates in issue, Cammack and Taurone are indeed from the Western Region, but counsel insists that "the Hoffa slate cannot offer more than three Western Region vice presidencies, and so Cammack and Taurone were not entitled to be identified on the form as candidates from the 'Western Region.'" Submission of Judith Brown Chomsky, page 4. Counsel further asserts that the petitions "materially misrepresented the number of Western Region vice presidential candidates," (emphasis added) without presenting the slightest evidence that the office designation was anything other than an inadvertent mistake.

The Election Supervisor endorses the reasoning of Ms. Chomsky, and asserts in his submission to me dated January, 5, 2006:

Listing a person on an accreditation petition as candidate for a non-existent position renders the petition void; accordingly, the Election Supervisor's decision to count signatures for Hobart, Mack and Santanglo as candidates for Western Region vice president on the petitions that listed other candidates for a non-existent office was incorrect and should be reversed. Submission, at p.4.

In his analysis, the Election Supervisor reads Article X Section 2(a) which requires on the Petition "title of office(s) sought," to have been violated because the Western Region petitions "identified a non-existent office". . . "Western Region Vice President at large." id. at 5. He then

asks me to grant the Leedham campaign's appeal and reverse his accreditation of candidates Hobart, Mack and Santangelo.

Counsel for the Hoffa campaign argues that the filing requirements under the Rules were substantially complied with and that a rigid and formulaic application of the Rule as urged will disenfranchise 8,400 rank and file members in the Western Region. I agree. Indeed, it will also injure three candidates who had nothing whatever to do with what is obviously a simple, benign human error without any demonstrated malice, fraud or even conscious intent. During the hearing, the union man responsible for the mistake ruefully admitted to it, and nobody challenged his good faith.

The Election Supervisor has exalted technicality over substance, and in the process has given insufficient attention to common sense.

I find that on the filings in question a) "a non-existent office" was not listed, and b) an existent office – Vice President at Large – was listed, with harmless surplusage inadvertently and harmlessly appended. The wording "Western Region," is to be disregarded in assessing compliance with the Rules. I further find that when the parties drafted and agreed upon the Rules and the Federal Court approved them, none could have intended a reading that requires the outcome on the merits here that the Election Supervision is urging.

Accordingly, on the Western Region issue, the appeal of the Leedham campaign is denied. All other claims asserted on the appeal are rejected.

SO ORDERED:

/s/
Kenneth Conboy
Election Appeals Master

Dated: January 9, 2006