

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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| IN RE: HOFFA 2006, |) | Protest Decision 2006 ESD 321 |
| |) | Issued: July 8, 2006 |
| Protestor. |) | OES Case No. P-06-219-031406-HQ |
| _____ |) | |

Hoffa 2006 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”). The protest alleged a number of irregularities in the CCERs filed by TDU and the Leedham Slate including lack of detail regarding allocations, failure to report legal and accounting contributions, contributions by paralegals, fundraising earnings, travel expenses, and contributions and expenditures for the Leedham slate members.

Election Supervisor representative Steven R. Newmark investigated this protest.

Findings of Fact and Analysis

The protest specified 6 discrete allegations against TDU and the Leedham slate:

1. *Allocations.* With respect to TDU’s CCER #3, the protest questioned the lack of detail as to the purpose and nature of the allocation between TRF and TDU, the allocation factor itself, and the lack of detail and disclosure of the allocations. In addition, the protest asserted that the use of the “Huddleston” allocation concept should no longer be accepted without independent verification.

The “allocated expenses” specified in TDU’s CCER #3 constituted the monthly reimbursement TDU made to Teamsters Rank and File Legal Defense and Education Foundation (TRF) for the staff time and occupancy expenses that were attributed to campaign activity. Audit of TDU’s Huddleston accounting for this reporting period demonstrated that the expenses incurred by TRF on behalf of TDU were properly allocated to TDU and were properly reimbursed to TRF from permitted campaign contributions received by TDU.

As we explained in *Hoffa 2006*, 2006 ESD 180 (April 14, 2006), *aff’d*, 2006 EAM 39 (May 15, 2006):

“Allocation of expenses” is a phrase that the precedents established under the Consent Decree have defined as the election-related staff and overhead costs performed by TRF employees on behalf of TDU and reimbursed to TRF by TDU pursuant to the Huddleston system. The allocated expense is funded by TDU through the process of ascertaining the costs of staff time and overhead expended each month on campaign activity, expressed as a percentage of total staff costs and overhead paid by TRF, and reimbursing to TRF that percentage of staff costs and overhead. The allocation percentage is calculated and changes as often as each month, as the volume of campaign work performed by TRF employees on TDU’s behalf rises and falls. As *Taylor* shows, “allocation expenses” has a recognized meaning in the context of the IBT election and its use has been expressly approved to describe the expenditures at issue here. When the government and the IBT carried forward the campaign finance disclosure regime

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from 2001 and prior elections, and instructed the Election Supervisor to function similarly to prior Election Officers and the Election Administrator, that expressed the parties' intent to continue using established forms, practices, and conventions such as the term "allocation expenses." Under the *Rules*, *Halberg*, *Taylor*, and the March 18, 2005 Order of Appointment, TDU could reasonably expect that it could fulfill its reporting obligations using the methods and terminology it had employed in previous elections.

The Election Appeals Master affirmed, in 2006 EAM 39 (May 15, 2006), observing as follows:

The current *Rules*' provisions and standards controlling such matters are irrefutably the result of a balanced, progressive and thoughtful analysis endorsed by all interested parties over many years and election cycles, including the current elected leadership of the International Brotherhood of Teamsters. Indeed, the IBT specifically approved placing ultimate compliance oversight on campaign contributions and expenditures in the Election Supervisor and not politically driven slates or candidates, and cautioned, as did the Government, that deference must be given to the history, custom and practice on the matter, as reflected in the legal precedents that have shaped the rules and their application.

I am satisfied on the basis of the present record that the Huddleston system and the *Rules* sanctioned procedures followed by the Election Supervisor in these cases adequately ensures that TDU and TRF are in compliance with their obligations under the *Rules*.

The argument *Hoffa 2006* presented with respect to TDU's CCER #3 is identical to that considered and rejected in *Hoffa 2006*, *supra*. Investigation of TDU's CCER for the reporting period at issue showed no violation of the *Rules*. Accordingly, we DENY this portion of the protest.

2. *Legal and Accounting Contributions*. The protest next complained that both TDU and the Leedham slate failed to report in-kind legal and accounting contributions in their CCERs #3. The protest questioned how TDU claimed \$75,000 in in-kind legal expenses in CCER #2, yet reported none in CCER #3. The protest further contended that attorney Barbara Harvey had filed protests and appeared at Election Appeal hearings yet TDU had failed to report her contributions.

The protest allegation that TDU failed to report in-kind legal services is simply wrong: TDU's redacted CCER #3 (Supplemental Form No. 1) disclosed total in-kind legal contributions of \$32,690.39 for the reporting period. Attestation provided by the service provider demonstrated that the hours supplied were for legal services provided directly by the provider.

Article XI, Section 1(b)(5) of the *Rules* governs contributions made "to pay fees for legal or accounting services" of candidates. The provision prohibits monetary contributions in excess of \$10,000 from any single nonmember, disinterested employer, foundation, or labor organization. However, "[n]othing herein shall prevent or limit legal or accounting professionals (whether or not Union vendors) from making, or a candidate from accepting or using, an in-kind contribution of legal or accounting services, so long as such services are performed in assuring compliance with applicable election laws, rules or other requirements or in securing, defending

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or clarifying the legal rights of candidates.” Investigation showed no evidence that TDU’s CCER #3 failed accurately to report the in-kind legal and accounting contributions it received.

With respect to the Leedham campaign CCER, no legal and accounting contributions were received or expenditures made during the reporting period. For that reason, the Leedham campaign had nothing to report in this regard.

Accordingly, we DENY this aspect of the protest.

3. *Paralegals*. The protest alleged that TDU’s CCER #3 failed to account for the contributions of five paralegals.

TDU’s CCER #3 reported legal services expenditures of \$672.94 and accounting services expenditures of \$2,234.23. Attestation from the licensed legal services provider demonstrated that unlicensed persons performed factual investigations in connection with election-related matters.

The *Rules* permit use of legal and accounting contributions to compensate non-lawyers for services provided in complying with and enforcing the *Rules*. *Hoffa 2006*, 2006 ESD 180 (April 14, 2006), *aff’d*, 2006 EAM 39 (May 15, 2006).

The protestor’s request for the identity of the persons performing paralegal work seeks a level of detail not required of any independent committee, slate or candidate.

Accordingly, we DENY this aspect of the protest.

4. *Fundraising*. The protest alleged that the Leedham slate failed to report fundraising contributions. The protest referred to a TDU newsletter which stated that “Teamsters at the TDU convention donated close to \$40,000 to build and sustain TDU over the next year. In the same night we raised over \$25,000 to help jumpstart the Tom Leedham Strong Contracts, Good Pensions Slate.” The protest noted that Leedham’s CCER #3 reported only \$37,000 for that period and that TDU reported the sum of all contributions to the Leedham Slate during the reporting period was \$8,368.

Investigation found that the figures reported in the TDU newsletter included pledges of contributions to be paid in the future as well as cash and checks actually received. Some contributors have chosen to make monthly contributions, which are charged to their credit cards. CCERs report contributions and expenditures on a cash basis. Since contributions are not reportable on CCERs until they are actually received, an announcement by a candidate or independent committee of funds raised may exceed the amount reported on the CCER for the relevant period because it includes pledges of contributions not yet received.

Accordingly, we DENY this portion of the protest.

5. *Travel*. The protest alleged that the Leedham slate failed to report travel expenses in CCER #3 even though the slate members traveled to the TDU convention and other campaign events. Our internal audit showed that all expenses have been properly reported.

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Travel and lodging expenses Leedham slate candidates incurred to attend the TDU convention were paid from personal funds, as was the case for the large majority of the persons attending that convention.

Further, although the protest alleged that Tom Leedham traveled to Tennessee in January 2006 for a campaign purpose, the Leedham campaign denied the allegation and our investigation found no evidence that he did as alleged.

Accordingly, we DENY this portion of the protest.

6. *Reporting of Slate Members.* The protest alleges that the Leedham slate members failed to report contributions and expenses in CCER #3. Audit reveals that all Leedham slate members who raised and spent money for a campaign purpose did so on behalf of the Tom Leedham Strong Contacts Good Pensions Slate. As such, candidates running on the Leedham slate have no contributions or expenditures to report and filed individual candidate CCERs so indicating.

Accordingly, we DENY this aspect of the protest.

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
885 Third Avenue, Suite 1000
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
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