

ELECTION APPEALS MASTER

IN RE: FRED GEGARE,

Protestor.

10 Elec. App. 3 (KC)

This matter is an appeal from the Election Supervisor's decision 2010 EAD 4 issued May 31, 2010. Appeals were taken by Frank Halstead of Teamsters Local Union 572, the Hoffa-Keegel Campaign, and the protestor Fred Gegare.

A hearing was held before me on July 2, 2010. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq., for the Election Supervisor; Barbary Harvey, Esq. on behalf of Mr. Halstead; Scott D. Soldon, Esq. on behalf of Mr. Gegare, and David J. Hoffa, Esq. on behalf of the Hoffa-Keegal Campaign.

Fred Gegare, a candidate for General President, filed a protest on June 3, 2010 against the Hoffa-Keegel Campaign ("Hoffa Campaign"), and two of its campaign functionaries, Christy Bailey and Todd Thompson, asserting violations of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election ("Rules"), and the Labor-Management Reporting and Disclosure Act ("LMRDA"). Gegare complained that the Hoffa Campaign had circulated false and misleading campaign material, and that a signature on the material purporting to reflect the support for the Hoffa Campaign of an individual whose consent had not in fact been given, created a false and fraudulent representation that the said individual was supporting, or running for election with, the Hoffa Campaign.

The Election Supervisor investigated Gegare's protest and filed a decision on June 24, 2010 granting the protest and imposing a remedy ("Protest Decision"). His stated findings of fact may be summarized as follows:

- The Hoffa Campaign on May 25, 2010 faxed to all local unions and joint councils a multi-page fax for distribution on campaign literature tables and bulletin boards.
- The material contained a letter on Hoffa Campaign letterhead which referenced the accreditation petition drive, urged its supporters to gather signatures for the Hoffa Slate by the June 30, 2010 deadline, and bore the signatures of 24 current IBT officers and 1 candidate for IBT office.
- Henry Perry, an IBT International Trustee, whose name and signature appeared on the letter, had not in fact given his consent for the use of his name and signature as an endorsement or for any other purpose.
- Perry asserts that he had been told by two IBT officers aligned with the Hoffa Slate that he would not be permitted to run for re-election with the slate. This is not established as a settled investigative finding in the Election Supervisor's Protest Decision.
- Tyson Johnson, IBT Southern region vice-president, according to Perry, told Perry on May 10 in Las Vegas that General President Hoffa had decided that he, Perry, would not be on the Hoffa-Keegel 2011 slate. Further according to Perry, Johnson told him that the Hoffa Campaign

wanted him to resign his International trustee position to allow the vacancy to be filled by an appointee who would run with the slate in the 2011 election. In exchange for this action by Perry, Johnson stated, according to Perry, that Perry's salary as Trustee would be continued through 2011 provided that he campaigned for the slate, raised money for it, and circulated accreditation petitions on its behalf. Johnson urged Perry to speak directly with General President Hoffa. This is not established as a settled investigative finding in the Election Supervisor's Protest Decision.

- Perry said he spoke with Hoffa by telephone on May 18. According to Perry he was told by Hoffa that he was off the Hoffa-Keegal slate and should resign his International position to facilitate the appointment of a successor who would then run for the office as a member of the Hoffa Slate. Hoffa further told Perry, according to Perry, that he should campaign for the Hoffa Slate, including raising campaign contributions, then retire. Perry told Hoffa that he was running for re-election, whether on the Hoffa Slate or not. This is not established as a settled investigative finding in the Election Supervisor's Protest Decision.
- Johnson concedes that he had a conversation with Perry on May 10 in Las Vegas but asserts that he stated to Perry that he had heard that Perry intended to retire, which Perry denied and stated that he intended to run for re-election as International trustee. According to the Election Supervisor's investigator, "Johnson generally denied discussing the 2011

election and specifically denied telling Perry that Perry was or would be off the Hoffa-Keegel 2011 slate.” Protest Decision, 3. This is not established as a settled investigative finding in the Election Supervisor’s Protest Decision.

- On June 1 Gegare alerted Perry that his name and signature appeared on the May 25 campaign letter.
- Perry contacted Todd Thompson of the Hoffa campaign and asked how his name and signature had been placed on the May 25 letter. Thompson apologized and later conceded to the Election Supervisor’s investigator that it had in fact been used without Perry’s authorization or consent. He further stated that he and a campaign colleague, Christy Bailey, had divided the names on the list and contacted them directly for authorization. The Perry name “fell through the cracks” and the failure to contact him “was an oversight,” according to Thompson. Protest Decision 4.

In his legal analysis, the Election Supervisor notes that the Hoffa Campaign interposes three procedural objections to the disposition of the protest. It asserts that its filing was untimely, that the real party in interest is Perry and not Gegare, and that the protest is too vague and indefinite to give adequate notice of the conduct complained of.

With respect to the timeliness question, the Election Supervisor correctly notes that under the Rules, the key date triggering the filing deadline, is when the protestor learned the essential facts, here the lack of authorization for Perry’s signature, which Gegare learned from Perry on June 1. Hence the protest is timely. With respect to the standing question, the Election

Supervisor correctly notes that the Rules plainly confer standing upon any member alleging non-compliance with the Rules, Article XIII, Section 1. Hence there is no standing impediment.

With respect to the lack of specificity question, the Election Supervisor correctly notes that the statement of complaint is sufficient on its face to place the subjects of the protest on notice as to the conduct being protested. Hence the protest complaint is viable.

On the merits, the Hoffa Campaign objects to the granting of the protest on the grounds that the injury to Perry is not answerable or covered under the Rules, and that previous decisions under the Rules do not permit the Election Supervisor to regulate campaign material content. The Election Supervisor correctly interprets the guarantee to all members under Article VII, Section 12(a) to participate in campaign activities and indeed to run for union office, as implicitly embracing the right to refrain from such activities, citing *Jackson & Trupiano*, 2006 ESD 124 (April 17, 2006), *aff'd*, 06 EAM 36 (May 11, 2006). Indeed, it is settled law under the Rules that a member has a personal right to withhold support from a candidate or slate. Further, it is a plausible reading of the Rules and precedent that the effect of the conduct complained of here is the obtaining from Perry of an involuntary campaign contribution, for the reasons stated by the Election Supervisor. Protest Decision 6.

The Election Supervisor persuasively argues that the ruling here does not constitute, or open the door to, the regulation of the content of campaign material by the Election Supervisor. This remedies an injury to an IBT member, Henry Perry, and reiterates that unauthorized campaign contributions are prohibited under the Rules.

The remedy imposed for the stated violation of the Rules is an instruction to the Hoffa Campaign to cease and desist and an order to fax a notice from the Election Supervisor to

all local unions and joint councils summarizing the findings in the Protest Decision. This remedy has been fully complied with.

In papers filed on June 28, 2010 (“Hoffa June 28 Argument”) David J. Hoffa argues that a) the protest was untimely b) Perry was “objectively a Hoffa-Keegel 2011 supporter at the time of the fax” c) Perry consented to the use of his signature and did not file a protest and d) the investigation of the Election Supervisor failed to focus upon and resolve the question of whether, “objectively,” Perry was in fact a supporter of the Hoffa Slate at the time of the fax. Hoffa June 28 Argument, 1.

The argument here made that Perry is the party in interest and had constructive and actual notice of the May 25 fax on May 25 or 26 is not tenable because the issue on timeliness of the protest, as already noted, is when Gegare, not Perry, had actual notice that the Hoffa Campaign letter contained an unauthorized endorsement of the Hoffa Slate. Furthermore, the Election Supervisor has found, as an undisputed fact, that Gegare as a rival candidate for General President was injured by a de facto campaign contribution in the form of the unauthorized Perry endorsement.

Mr. Hoffa’s argument that Perry and Gegare combined to evade the Rules filing deadline is unsupported in the investigatory record. Complaint is made that the Election Supervisor did not interview Christy Bailey. Nothing prevented the Hoffa Campaign from obtaining an affidavit from Ms. Bailey and submitting it to the Election Supervisor. It would then be part of the Protest Record and be considered here. As we have noted many times, we cannot take lawyers’ arguments on events, states of mind and narrative sequences as settled fact at the Appeals Master stage of the proceedings without a basis in the Record. The same

admonition applies to references in Mr. Hoffa's letter as to what the Campaign volunteers "had every reason to believe." Hoffa June 28 Argument, 2.

On the question of whether Perry ratified after the fact the use of his signature, the Election Supervisor has made a credibility decision supporting Perry's version of his conversation with Thompson. That decision is amply supported by the Election Supervisor's reasoning and analysis set for in his ruling. Protest Decision, 4.

The most relevant and probing assertion in the Hoffa June 28 Argument is that the Record supports the Hoffa Campaign's position that Perry was in fact a supporter of Hoffa-Keegel 2011 as of May 25 when the campaign fax and endorsements were transmitted (and therefore were not misleading).

Inexplicably, the Election Supervisor explicitly declined to find as a fact whether or not either or both Tyson Johnson and General President Hoffa told Perry that he was off the ticket for re-election as International trustee. The Election Supervisor, in justifying his narrowed investigative focus, states that the only issue is whether the use of Perry's name on the endorsement sheet was without Perry's consent. This then supports a finding that the Rules violation found was the result of benign and innocent inadvertence, justifying the most mild of remedies. This outcome does not therefore resolve the question of whether or not Perry in fact supported the ticket at the time his endorsement was inadvertently published.

This point is amplified in Mr. Hoffa's supplemental filing of July 1, 2010, which states in relevant part "that the conversation (between Perry and Johnson) was before Perry stood on the stage in support of the kickoff (with other Hoffa Slate supporters) and before the May 20 conference call" in which Perry participated. At. p. 3.

In papers filed on July 1, 2010 (“Ellison July 1 Argument”), Jeffrey J. Ellison for the Election Supervisor does not address the Hoffa Campaign’s argument that Perry’s conduct in publicly standing with Hoffa Slate supporters in Las Vegas shortly before the transmission of the fax containing his endorsement undermines Perry’s credibility in his assertion that he was not a Hoffa Campaign supporter on May 25, 2010. Of course, the finding that the Perry endorsement was in fact a) misleading and b) an improper campaign contribution turns on this issue.

In papers filed on July 1, 2010 (“Harvey July 1 Argument”). Barbara Harvey, counsel for Halstead, argues that her client has standing to appeal. We will hear his appeal. Ms. Harvey’s objection to the remedy imposed by the Election Supervisor (“Harvey June 30 Argument”) is predicated entirely upon speculation. The invalidation of all petitions that may have been affected by the violation is excessive and not warranted on this record.

Ms. Harvey’s principle objection to the Election Supervisor’s decision is that his investigation is manifestly inadequate based upon the very evidence cited in that decision: “In sum, according to Perry, Johnson tried to bribe him with union funds to support the Hoffa-Keegel campaign and then expressly made payment of the bribe contingent upon Perry’s performance of services to the campaign.” Harvey June 30 Argument, 3. Ms. Harvey insists that the Rules, Federal labor law and the integrity of the electoral process all require a full investigation of this matter.

Gegare’s counsel, Scott D. Soldon, forcefully asserts that “The Rules for the IBT International Election, as well as the law, flatly prohibit the use of union money or resources to further the interests of a candidate or campaign.” Soldon June 28, 2010 Argument, 3. He too strongly argues that the integrity of the entire electoral process requires an investigation of the



