

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: HOFFA-HALL 2011,)	Protest Decision 2010 ESD 46
)	Issued: November 18, 2010
Protestor.)	OES Case No. P-045-102510-NA
_____)	

Hoffa-Hall 2011 filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that several candidates did not file campaign finance reports as required by the *Rules*; the protest further alleged that certain campaign finance reports that were filed failed to account for particular expenses.

Election Supervisor representative Deborah Schaaf investigated this protest.

Findings of Fact and Analysis

The *Rules* closely regulate campaign contributions and expenditures. Candidates for International office and any slates they form must file periodic reports of the contributions received and the expenditures made in support of their campaigns. Candidates and slates are expected to comply with the *Rules*’ limitations on contribution sources and amounts. OES oversight aims to enforce strict compliance with the *Rules*’ campaign finance requirements.

Each candidate for International office must file two reports for each period in which he/she is a candidate. A candidate must file a Campaign Contribution and Expenditure Report (CCER) that documents all contributions received, all expenditures made, cash on hand, loans incurred, and related financial information. In addition, a candidate must file a Supplemental Report No. 1 that documents the contributions received and expenditures incurred for legal and accounting work on behalf of the candidate. Each candidate must file these reports even if he/she received no contributions and made no expenditures in the reporting period in which he/she was a candidate. These reports must be filed electronically through CCERS, a web-based system our office maintains.

The second CCER reporting period commenced June 1, 2010 and concluded September 30, 2010. Reports for this period were due October 15, 2010.

A. First allegation – failure to file timely.

The protest here, filed October 25, alleged that candidates Jerry Conner, Tony Jones, Henry Perry, Lucio Reyes, Robert Ryder, and Brad Slawson, Sr. failed to file any reports for the second reporting period. Investigation proved this allegation true. Our investigator first sought to obtain prompt compliance with the filing requirement.

Our investigator reached Conner by phone on October 27, advised him of his obligation to file the reports, and instructed him to file no later than November 3. Conner filed his CCER

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on November 1 and his Supplemental Report No. 1 on November 2. Both reports showed no contributions received or expenditures made in the second reporting period.

As was done with Conner, our investigator instructed Jones to file by November 4. He filed his CCER on November 1 and his Supplemental Report No. 1 on November 3. Both reports showed no contributions received or expenditures made in the second reporting period.

Our investigator instructed Perry to submit his reports by November 4. He submitted his Supplemental Report No. 1 on November 1 and the CCER on November 2. Both reports showed no contributions received or expenditures made in the second reporting period.

Our investigator instructed Reyes to file by November 3. He submitted both reports on November 2, showing no contributions received or expenditures made in the second reporting period.

Finally, Ryder was instructed to file by November 3. He filed his Supplemental Report No. 1 on October 29 and attempted to file his CCER the same date. However, his click on the "submit" tab on the on-line CCERS system apparently failed to register, and the report was not submitted, although he believed it was. We contacted him again on November 11 to advise that his CCER report was not received. He submitted it that day. Both the CCER and the Supplemental Report No. 1 showed no contributions received or expenditures made in the second reporting period.

Each of these candidates became candidates during the second reporting period. Accordingly, this period was the first for which they were required to file reports. As we were informed of each person's candidacy for International office, we sent a letter advising of the filing requirement and offering training in the CCERS system.

Conner acknowledged receiving our letter; he said he did not file because he believed he was not required to file for a period where he had neither raised nor spent money in support of his campaign.

Jones announced his candidacy by sending us a letter dated September 25, five days before the close of the second reporting period. We received the letter October 8, suggesting it was not mailed until early October. We did not send a CCERS letter to Jones before the October 15 filing deadline. Although a question exists as to whether Jones was a candidate in the second reporting period, he has nonetheless filed reports for that period and is in compliance.

Perry acknowledged receiving our letter and established a CCERS account before the filing deadline. He overlooked the filing deadline because of the press of other business, including his local union election in which he was a candidate. The tally of ballots in that election was October 15, which was also the filing deadline for the second reporting period.

Reyes acknowledged receiving our letter and set up a CCERS account prior to the filing deadline. He too overlooked the filing deadline because of other matters, including a delegates election in his local union in which the tally was conducted on October 28.

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Ryder acknowledged receiving our letter. He did not set up a CCERS account, missed the training class we offered, and said he did not know how to access the system. As with Conner, Ryder stated that he did not believe he was required to file for a reporting period in which he neither raised nor spent funds in support of his campaign.

Our previous decisions addressing untimely CCER filings have balanced the importance of the filing requirement against problems candidates may encounter because of lack of familiarity with the system and technical difficulties that may contribute to late filing. Thus, in *Ostrach*, 2006 ESD 154 (March 20, 2006), candidate Fred Gegare failed to file by the deadline set forth in the *Rules* or by an extension we granted; we responded by guiding Gegare's report preparer through the filing process, and the report was filed 30 days late, 11 days after expiration of the extension we granted. We deemed the protest resolved and imposed no penalty. In that circumstance, we were aware of the technical difficulties the preparer faced in completing the report and knew that the preparer was working diligently day by day to complete the report. In contrast, in *Hoffa 2006 (after remand)*, 2006 ESD 331 (July 19, 2006), we fined candidate Don DiLeo a sum equal to 15% of the contributions reported on untimely filed CCER reports. We did so because DiLeo failed to file CCER reports for 2 consecutive periods and did not request an extension or otherwise contact us to seek assistance. Finally, in *Leedham Slate*, 2006 ESD 339 (August 29, 2006), we fined Southern Region Vice President candidate Ken Wood and Trustee candidate Franklin Gallegos 7.5% of the contributions reported on their untimely filed reports, finding that neither demonstrated the minimum diligence required to satisfy the *Rules'* filing requirements. The fines we imposed against Wood and Gallegos were half the percentage imposed against DiLeo, as Wood and Gallegos missed one filing deadline while DiLeo missed two.

For the reasons that follow, we deem the aspect of the protest that alleged untimely filing RESOLVED. Although each of the candidates identified here failed to file timely, all except Ryder filed both required reports by the extended deadline we imposed. Ryder filed his Supplemental Report No. 1 by the extended deadline and attempted to file his CCER by that date as well but was unsuccessful because of a technical issue he did not recognize until after the deadline had passed. All reports were "zero" returns, showing that none of the candidates raised or expended funds during the reporting period. In some past instances of untimely filed reports, we have imposed fines equal to a percentage of the contributions in the reporting period. Precedent reveals no example where we have fined a candidate for failing timely to report that he/she raised or expended no funds during the period. Although we have authority to impose a fine in that circumstance, we decline to do so here for two reasons: we remain early in the electoral process, and some other candidates for International office who are not respondents in this protest filed their reports for the second reporting period untimely and we have not penalized them. However, all candidates should act diligently to comply with the filing deadlines for the remaining reporting periods. Should a candidate be unable to meet any such deadline, he/she should contact our office and request an extension of time in which to file. Such extensions may be granted only for good cause shown.

A final note with respect to Reyes. In *Aloise et al*, 2010 ESD 22 (August 27, 2010), *aff'd*, 10 EAM 6 (September 3, 2010), we ordered the Reyes campaign to fund remedial mailings to the membership of Local Union 601 for any candidate for General President (or the slate of a candidate for General President) who requested it. We further ordered the Gegare campaign to contribute 10% of the cost of each such mailing. The Hoffa campaign timely requested the

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mailing, and Reyes paid the full cost of that mailing – \$4,623.48 – on September 24, 2010, within the second CCER reporting period. As the remedy was imposed against the Reyes campaign, the Reyes campaign was responsible for the expense. Reyes paid the expense personally. Accordingly, Reyes' CCER for the second reporting period should reflect a contribution and a corresponding expense of \$4,623.48, with Reyes as the member making the contribution¹. We direct Reyes to file an amended CCER for the second reporting period no later than November 29, 2010 to reflect this contribution and expenditure.

B. Second allegation – failure to report in-kind legal contributions

Hoffa-Hall 2011 alleged that the Supplemental Reports No. 1 filed by candidates Zuckerman and Gegare failed to document contributions and expenditures for legal work performed by Robert Colone and Scott Soldon. Colone has been identified to our office as legal counsel to Zuckerman, Soldon as counsel to Gegare.

Zuckerman's report, timely filed on October 15, showed in-kind contribution of legal services from Colone. Gegare's report, also timely filed, showed no contributions (in-kind or monetary) for legal services during the second reporting period. Soldon performed legal work for Gegare during the period. Soldon told our investigator that all of his legal work for Gegare was in-kind and that he had not submitted a billing statement to Gegare reflecting the value of that work. We directed him to do so promptly and to have the Gegare campaign amend its Supplemental Form No. 1. The Gegare campaign filed an amended report on November 17 showing in-kind contribution of legal services from Soldon.

The protest further alleged that Colone performed some legal work for Gegare, Soldon's client, and similarly, that Soldon did some for Zuckerman. Colone named Gegare as an additional protestor in protests P-023 and P-024, filed the same date, alleging that Rome Aloise used union resources to support campaign fundraising events. Soldon named Zuckerman as an additional protestor in protest P-012, which alleged that the Hoffa campaign continued to use the name of C. Thomas Keegel in its campaign material after Keegel withdrew from candidacy. In each of these protests filed by counsel, candidate Slawson was also named as a protestor. The naming of additional protestors was unnecessary to file the protest or to establish our jurisdiction to investigate, but it was done nonetheless. Accordingly, the value of the in-kind service had to be reported by each candidate for the period in which the service was rendered. For this reason, we directed Zuckerman, Gegare, and Slawson to amend their Supplemental Reports No. 1 to reflect these in-kind contributions from Colone and Soldon. Gegare complied on November 17. We have given Zuckerman and Slawson until November 29 to comply. With these amended filings, we will deem this aspect of the protest RESOLVED. We order no further remedy.

C. Third allegation – failure by the Gegare campaign to report a specified expenditure

As noted above, our decision in *Aloise* required the Reyes campaign to fund mailings to the membership of Local Union 601 for each candidate for General President who requested it. We directed the Gegare campaign to fund 10% of the cost of each such mailing. Hoffa-Hall

¹ As Reyes is a candidate for International office, he may contribute a maximum of \$10,000 to his campaign or to the campaign of the slate of which he is a member.

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2011 alleged that the Gegare campaign failed to list its share of the mailing expense on its CCER.

Investigation showed that the Gegare campaign promptly advised Reyes that it intended to pay the 10% contribution. It asked Reyes to forward the billing statement so that payment could be processed. Reyes, who paid the bill by credit card over the phone on September 24, did not receive the billing statement from the mail house and forward it to the Gegare campaign until after the close of the second reporting period. Given these circumstances, the Gegare campaign's reporting obligation for this expense falls in the third reporting period, which commenced October 1, 2010 and closes January 31, 2011. Therefore, 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, NY 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, 1801 K Street, N.W., Suite 421 L, Washington, D.C. 20006, 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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