

**OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

IN RE: JOHN COLLINS)	Protest Decision 2011 ESD 143
and BARRY STROHL,)	Issued: March 2, 2011
)	OES Case Nos. P-174-022511-AT
Protestors.)	& P-175-022511-AT
_____)		

John Collins and Barry Strohl, members of Local Union 509 and delegate candidates on the 509 Working Members Slate, filed separate, identical pre-election protests pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). The protests alleged that the L.D. Fletcher Delegate slate violated Article VII of the *Rules* by sending campaign literature to the entire local union membership indicating the IBT and Local Union 509 endorsed Fletcher’s slate in the local union’s delegates and alternate delegates election.

Election Supervisor representative Maureen Geraghty investigated this protest.

Findings of Fact

Local Union 509 will elect five delegates and two alternate delegates to the IBT convention delegates and alternate delegates. At the nominations meeting conducted January 15, 2011, two full slates were nominated. Protestors’ slate, the 509 Working Members Delegate Team, is comprised of rank and file members; the candidates on the L. D. Fletcher Delegate slate are officers or employees of the local union.

Ballots were mailed to all members on February 22, 2011. On the same date, the Fletcher slate contracted with G & H Mail Services to mail campaign literature to all members, by first class mail using the mail house’s postage permit. The literature, a one-page, single-sided flyer, was sent in envelopes that listed “The International Brotherhood of Teamsters” and nothing more in the space where the return address is usually printed. No disclaimer or notice was printed on the envelope indicating that the contents was campaign literature that was not endorsed by the union.

The flyer began “Join With Us and Be Part of the 509 Teamster Team-2011 That Fights Every Day for You.” The flyer stated that ballots would soon arrive in the election of delegates for the IBT convention. The flyer continued:

It is common practice that the Officers and Agents of the current Executive Board who has [*sic*] already been elected by the members attend this very important Convention. Who better has the experience to vote on the issues for Local Union 509 members? In the past John Collins, who now is showing interest in going to the Convention, had the opportunity and responsibility to represent the Local Union as a delegate by attending the 2002 Convention, but declined and stated that the Principle [*sic*] Officer and Executive Board Officers should attend the Convention.

Unfortunately for the Local Union 509 Members, the Delegates Election will cost the local thousands of dollars to conduct, when it became clear in the October Officers [sic] election that the members of Local Union 509 supported the slate headed by President L.D. Fletcher. You will be receiving a secret ballot in the next few days and you will have the opportunity to once again show your support and solidarity by continuing to support the Executive Board that you have supported for many years. We strongly encourage each of you to Vote. Ballots must be returned no later than March 18, 2011 so mark your ballots supporting The L.D. Fletcher Delegate Slate and promptly mail it in.

The flyer was unsigned, did not indicate that it was prepared or sent by the Fletcher slate, and did not contradict that it from any source other than “The International Brotherhood of Teamsters,” as the envelope stated.

The campaign flyer was created by delegate candidates L.D. Fletcher and James Todd, who are, respectively, the president and a trustee of Local Union 509. Both denied that the mailing conveyed any improper endorsement. Instead, they contend the purpose of the flyer was to educate the membership about the process for electing delegates and alternate delegates and to express their view that incumbent officers are more qualified to serve as delegates.

Analysis

Article VII, Section 12(b) of the *Rules* declares that “[t]he Union or a Local Union as such or the General Executive Board or an Executive Board of a Local Union as such may not endorse or otherwise advance a candidacy, even if all members agree on the endorsement or candidacy.”

We held in *Jensen*, 2006 ESD 167 (April 25, 2006), *aff’d*, 06 EAM 37 (May 12, 2006), that “[u]nder the *Rules* and Election Office precedents, endorsement by the Union or Local Union ‘as such’ is essential to finding a violation of Article VII, Section 12(b). Our precedents have given broad scope to individuals, and to groups of union members, who have endorsed candidates and used their titles for identification purposes in connection with the endorsement. What we have strictly prohibited under the *Rules* are endorsements that come from the Union or Local Union ‘as such.’”

Here, the International Brotherhood of Teamsters as such did not endorse the Fletcher slate, nor did its officers or general executive board. Accordingly, there was no violation of Article VII, Section 12(b) by the IBT.

However, the Fletcher slate violated the *Rules* by sending members a flyer, purportedly from the IBT, that endorsed the Fletcher slate. The envelope enclosing the Fletcher flyer is doubly problematic: it reflects an improper campaign contribution (a union body endorsement) and it is a contribution taken involuntarily from the IBT. 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 (emphasis supplied). Expressly included in this definition of “campaign contribution” is “[a]n endorsement or counter-endorsement by an individual, group of individuals, or entity.” *Id.*, subsection f. The campaign mailing publicized a purported endorsement by the IBT of the Fletcher

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slate for the purpose of influencing the election of candidates on that slate. That the purported endorsement was a “thing of value” to the slate is confirmed by the decision to use it on campaign literature. The appropriation of the endorsement by the Fletcher slate violated the *Rules*. *Gegare*, 2010 ESD 4 (June 24, 2010), *aff’d in rel. part*, 10 EAM 3 (July 8, 2010); *Rivers*, 2011 ESD 137 (February 24, 2011).

Accordingly, we GRANT the protest.

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.

Under the approved local union election plan, ballots are to be counted March 18, 2011. This is too close in time to implement mail distribution of a remedial notice. Accordingly, we order that the date for counting ballots in the Local Union 509 delegates election be rescheduled to March 28, 2011.

We further order the Fletcher slate and the candidates on it to cease and desist from advising members that it is endorsed by any union body in the pending delegates election.

We further order that the Fletcher slate mail to all members of Local Union 509 to whom the Fletcher flyer was addressed the notice attached to this decision (titled “NOTICE TO ALL MEMBERS OF TEAMSTERS LOCAL UNION 509”). This notice is for strictly remedial purposes to advise local union members that the IBT did not, does not, and cannot permissibly endorse the Fletcher slate and that the Fletcher slate mailing stating to the contrary violated the *Rules*. This mailing is to be completed within two days of receipt of this decision.

We further order that Local Union 509 post the notice attached to this decision (titled “RESCHEDULED COUNTING OF BALLOTS IN DELEGATES AND ALTERNATE DELEGATES ELECTION”) rescheduling the date for the counting of ballots on all worksite bulletin boards under the jurisdiction of the local union. Such posting shall be completed by Friday, March 4, 2011 and shall remain posted until replaced the Local Union Ballot Tally Certification (OES Form 13) on or after March 28, 2011.

Finally, we further order Local Union 509 to pay the full printing and first-class mailing costs of a one-page, two-sided campaign flyer for the 509 Working Members Delegate Team, on a date of that slate’s choosing. This order is strictly remedial in nature and is intended to restore the level playing field upset when the Fletcher slate improperly conveyed that it was endorsed by the IBT.

An affidavit of compliance with the remedies ordered here shall be submitted within two days following completion of each element of the remedy.

A remedial order of the Election Supervisor takes immediate effect unless stayed.

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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
2011 ESD 143

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March 2, 2011

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Richard W. Mark
Election Supervisor

NOTICE TO ALL MEMBERS OF TEAMSTERS LOCAL UNION 509

The Election Supervisor has found that the L.D. Fletcher Slate violated the *Election Rules* with a campaign mailing indicating that the International Brotherhood of Teamsters (IBT) endorsed the Fletcher slate in Local Union 509's delegates and alternate delegates election.

The IBT did not and does not endorse the Fletcher slate or any other candidate or slate in the election.

The IBT is a union entity and cannot permissibly endorse any candidate or slate of candidates in the delegates and alternate delegates election or the International officers election.

The Election Supervisor has ordered the L.D. Fletcher Slate to mail this notice to all members of Local Union 509 to whom the Fletcher flyer was addressed.

The Election Supervisor has issued this decision in *Collins & Strohl*, 2011 ESD 143 (March 2, 2011). You may read this decision at <http://www.ibtvote.org/protests/2010/2011esd143.htm>.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity that violates the *Rules* should be filed with Richard W. Mark, 1801 K Street, N.W., Suite 421L, Washington, D.C. 20006, telephone: 877-317-2011, fax: 202-429-6809, email: electionsupervisor@ibtvote.org.

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Richard W. Mark
Election Supervisor

NOTICE TO ALL MEMBERS OF TEAMSTERS LOCAL UNION 509

**COUNTING OF BALLOTS IN
DELEGATES AND ALTERNATE DELEGATES ELECTION IS RESCHEDULED TO
MARCH 28, 2011**

The Election Supervisor has ordered that the date for counting ballots in Local Union 509's delegates and alternate delegates election be rescheduled from March 18 to March 28, 2011.

This rescheduling has been ordered to permit a pre-election remedy for a violation of the *Election Rules* by the L.D. Fletcher Slate. The Election Supervisor found that the Fletcher slate mailed out a campaign flyer indicating that the International Brotherhood of Teamsters (IBT) endorsed the Fletcher slate. The IBT, as a labor union, cannot endorse any candidate or slate in this election and did not, in fact, make such an endorsement.

If you have not voted and wish to do so, you must mail your ballot so that it is received by March 28, 2011. If you have already voted and wish to re-vote, you may request another ballot by telephoning (800) 922-2503 (toll free) or (803) 796-6172. If you submit more than one ballot, only the ballot with the latest postmark will be counted.

The Election Supervisor has issued this decision in *Collins & Strohl*, 2011 ESD 143 (March 2, 2011). You may read this decision at <http://www.ibtvote.org/protests/2010/2011esd143.htm>.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity that violates the *Rules* should be filed with Richard W. Mark, 1801 K Street, N.W., Suite 421L, Washington, D.C. 20006, telephone: 877-317-2011, fax: 202-429-6809, email: electionsupervisor@ibtvote.org.

This is an official notice of the Election Supervisor and must remain posted until replaced by the Ballot Tally Certification on or after **April 1, 2011**. It must not be defaced or covered up.