

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

IN RE: HOFFA-HALL 2011,)	Protest Decision 2011 ESD 275
)	Issued: June 7, 2011
Protestor.)	OES Case Nos. P-266-050411-NA
)	& P-267-050411-NA

Hoffa-Hall 2011 filed two 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 campaign of Sandy Pope for IBT General President and Teamsters for a Democratic Union (TDU) each obtained a prohibited employer contribution by placing a *New York* magazine article on Pope’s candidacy on their respective websites.

Election Supervisor representative Kathryn A. Naylor investigated these protests.

Findings of Fact and Analysis

On May 1, 2011, *New York* magazine (NYM) published an article titled, “Would Any of These Guys Buy Jimmy Hoffa a Drink?,” written by Jennifer Gonnerman. The article portrayed Pope’s experience as president of Local Union 805 in New York and her candidacy to unseat incumbent General President James P. Hoffa. NYM is a weekly magazine principally concerned with life, culture, politics and style in New York City. However, the magazine also publishes political and cultural stories of national significance. The magazine hosts a website at www.nymag.com.

The protest in P-266-050411-NA alleged that the full article was featured on the www.sandypope2011.com website without the express permission of or compensation to NYM; this action is said to constitute receipt by Pope of an improper or prohibited employer contribution. Similarly, the protest in P-267-050411-NA alleged that TDU received an improper employer contribution by posting a link to the same article on its website, www.tdu.org, without the express permission of or compensation to NYM.

Investigation showed that a pdf of the article was posted on www.sandypope2011.com from May 2 through 6. After the protest was acknowledged by our office, the Pope campaign removed the posting from its website and replaced it with a hyperlink to the same article posted on NYM’s website. Thereafter, Carl Biers, Pope campaign manager, contacted NYM to advise that the campaign had posted the article on the campaign website and to negotiate the price the campaign would pay NYM for that use of the article. NYM quoted Biers a price of \$400 for a 12-month license for unlimited online use of the article. Biers rejected that offer as the campaign was not interested in a license for such a lengthy period. Instead, Biers proposed to pay for posting and use of the article on its website for the May 2 through 6 period only. NYM agreed to the limited licensing the campaign proposed and set the price at \$50. On May 12, the parties executed a rights release agreement prepared by NYM that incorporated those terms.

The NYM representative who negotiated the agreement, David Bressler, confirmed that NYM’s standard charge for a 12-month license of this kind is \$400, and that the magazine’s

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typical minimum licensing period is one year. However, Bressler said the magazine agreed to a shorter licensing period at Biers' suggestion, and quoted a price greater than the pro-rated amount for a month (approximately \$33) for that period, hence the \$50 charge.

After May 6, the Pope campaign maintained a hyperlink on its site to the article posted on NYM's site. TDU never posted the article on its website; instead, it displayed only a hyperlink to the article on NYM's website. NYM's Bressler told our investigator that NYM does not charge for hyperlinks to articles on its website nor require permission or rights release agreements for such use, stating that NYM encourages such hyperlinks to its website because they ultimately increase viewership to its website.

We note first that the protestor does not contend that *New York* magazine made an impermissible employer contribution to the Pope campaign by publishing an article about Pope and her candidacy, and that is consistent with precedent under the *Rules*. Under the "media employer exception" to the regulation of campaign contributions, past Election Officers have not asserted jurisdiction over "newspaper or magazine articles published by entities which are not owned or whose editorial policies are not controlled by candidates or committees acting on behalf of candidates." *Pressler*, P365 (February 22, 1996); *Brennan*, P971 (October 16, 1991); *Scott*, P969 (October 18, 1991); *see also* 2 U.S.C. § 431(9)(B)(i) (report published in media not owned or controlled by a political party, committee or candidate is not a campaign expenditure); 11 C.F.R. § 100.73 (report published in media not owned or controlled by a political party, committee or candidate is not a campaign contribution).

The protests claim instead that the Pope campaign did not pay fair market value or the normal commercial rate for its online posting of the NYM article and that neither the Pope campaign nor TDU properly compensated NYM for the hyperlink each posted to the NYM article. The protests' claim is contradicted by the facts. The Pope campaign paid NYM fair market value for the right to post the article directly on the campaign website for the period May 2 through 6, even though it negotiated the price of the posting after the fact. The campaign paid NYM's quoted rate for the right to post the article; that rate did not represent a discount on the rate that NYM quotes customers for a twelve-month license. Further, we find that NYM's decision not to charge anyone for placing hyperlinks on their websites to articles published on NYM's website is commercially reasonable, as is its policy not to require permission or rights release agreements for such use. Accordingly, we find that hyperlinks to the NYM article that the Pope campaign and TDU posted on their sites did not result in an impermissible employer contribution to the Pope campaign or to TDU.

Accordingly, we DENY these protests.

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

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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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