

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

IN RE: FRED ZUCKERMAN,) Protest Decision 2011 ESD 276
) Issued: June 10, 2011
Protestor.) OES Case Nos. P-235-032811-NA,
) P-240-040111-FW & P-243-040411-FW
_____)

Fred Zuckerman, member of Local Union 89 and candidate for International office, filed three 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”). Two protests alleged that Hoffa-Hall 2011 received an impermissible contribution from the IBT in the form of campaign publicity; the third alleged that Hoffa-Hall 2011 received impermissible campaign publicity from Local Union 396.

Election Supervisor representative Joe Childers investigated these protests.

Findings of Fact

Protest P-235-032811-NA

The IBT maintains a website at www.teamster.org. Late on Saturday, March 26, 2011, photos of a large Los Angeles rally of supporters of labor and collective bargaining were posted to the website. An estimated crowd of 20,000 assembled at the event for a march and rally, at which labor leaders and supporters gave speeches promoting solidarity as the key to protecting collective bargaining and preserving the middle class. Among those who addressed the rally was IBT General President Hoffa. Some 70 photos of the event were posted to the IBT website, including long shots and close-ups of marchers.

One of the photos was a posed shot of three men holding picket signs bearing red and blue placards printed with slogans in white lettering that read, variously, “Stop the War on Workers” and “Our Communities Our Jobs.” The man at the center of the photo also wore a large white sandwich board imprinted with “We Stand With Wisconsin Workers.” That man wore a black long-sleeve sweatshirt. The phrase “Hoffa 2011” was printed on the sweatshirt and was visible approximately five inches above the top edge of the sandwich board.

The gallery of photos was posted to www.teamster.org between 6 and 8 p.m. EDT on Saturday, March 26 under a heading “Workers’ Rights Rally – Los Angeles – March 26, 2011.” The photo of the three men with picket signs was the fourth photo in the series. According to screenshots of the website provided by the protestor, the photos were arranged at the left side of the screen in a column of six photos per page. In this arrangement, the “Hoffa 2011” phrase on the sweatshirt of the man at the center of the group of three men in the fourth photo is not legible on a 13” laptop computer screen. When the photos are viewed in a slideshow format, with each image filling the screen one-by-one, the phrase is clearly visible on close examination, although the viewer’s attention is drawn first to the placards the men carry and then to the men’s faces.

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The protest was filed by email at noon EDT on Sunday, March 27 and was served by protestor's counsel on counsel for the IBT and the Hoffa-Hall 2011 campaign at that time. By 4 p.m. that same day, the photo of the three men with the picket signs was removed from the gallery and no longer appeared on www.teamster.org.

The IBT communications department maintains the website and was responsible for posting the LA rally photos to it on Saturday evening, March 26. Shortly after this incident, staff of that department was instructed to insure that images that include campaign emblems or slogans are not posted to the website.

Protest P-240-040111-FW

Local Union 396, located in greater Los Angeles, maintains a website at teamsterslocal396.com. The webmaster is Matt Linke. Linke also is a free-lance photographer who attended the March 26 Los Angeles rally. Linke posted some 653 photos of the event to a flickr account and then placed a hyperlink on Local Union 396's website to permit direct access to the flickr photo gallery. The photos were arranged chronologically, from early morning gathering of supporters at the local union hall, the bus ride to the event, assembly for the march, pickup of picket signs and placards, the march, the rally surrounding the speakers' platform, and the bus ride back to the local union hall.

Thumbnails of the photos were arranged in nine page-views on the flickr account, with 72 photos per page. One of the photos, the 65th thumbnail on page 4 of the gallery, depicted a man in a black short-sleeved t-shirt; the insignia printed on the left breast of the shirt read "Hoffa-Herrera." Ron Herrera is a candidate for IBT Trustee on the Hoffa-Hall 2011 slate. Two additional photos showed the same man walking in the march, holding a red placard that read in white lettering, "We Stand With Wisconsin;" these photos appeared as the 56th and 57th thumbnails on page 7 of the gallery. A fourth photo, appearing as the 64th thumbnail on page 7 of the gallery, showed a man in profile wearing a black lightweight jacket; the right sleeve of the jacket read "Team Ron Herrera."

The protest alleged that by publishing these photos, "Local 396 has endorsed the Hoffa-Herrera 2011 campaign and provided union resources to perpetuate that endorsement." The photos just described were attached to the protest. Data associated with each photo showed that at the time the protest was filed three had been viewed in the flickr gallery four times and one three times; for each photo, at least one viewing was by the protestor or his counsel.

The protest was filed shortly after 9:30 a.m. EDT on Friday, April 1. By 6 p.m. EDT that same day, the four photos complained of had been removed from the flickr photo gallery.

Protest P-243-040411-FW

A "Stop the War on Workers" rally was held in Indianapolis on March 10. Photos of this event were taken by Chris Howell, a free-lance photographer based in Bloomington, Indiana. He transmitted his photos to the IBT communications department electronically, where they were posted to a flickr account which was connected by hyperlink to the IBT website on March 17. One of the 80 photos in the gallery was an out-of-focus shot of the back of a man wearing a coat with the name "Hoffa" in four-inch block letters printed on the back. To access this photo from

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the IBT website, a user clicked the “Stop the War” graphic on the website home page, then the “photo gallery” link, then the particular gallery the user wanted to view, and finally the specific photograph or “slideshow.”

The protest, filed Monday, April 4, after 3 p.m. EDT, alleged that the IBT “has again endorsed the Hoffa 2011 campaign and provided union resources to perpetuate that endorsement.” That same day, the IBT undertook to remove the photo from the flickr gallery and was successful on Tuesday morning, April 5. At the time the photo was removed, it had been viewed 25 times. At least one of these viewings was by the protestor or his counsel; several more were by IBT staff as they sought to remove the photo.

Following this incident, staff of the IBT communications department was instructed to insure that no images appearing in galleries that were linked to the IBT website include campaign emblems or slogans.

Analysis

Article VII, Section 8 of the *Rules* regulates use of union publications during the electoral period. Specifically, it declares that “[a] Union-financed newspaper or other publication or communication shall not ... contain pictures or articles stating or indicating support of the candidacy of a particular candidate.” This section applies both to traditional newspapers and to web publications of a union.

Article XI, Section 1(b)(3) prohibits a labor organization from contributing anything of value “where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate.” Section 1(b)(13) of the same article makes candidates “strictly liable to insure that each contribution received is permitted under these *Rules*. Prohibited contributions must be returned promptly.”

With respect to Case No. P-235-032811-NA, the IBT’s posting of the photo of the three picketers violated the prohibitions on use of a union publication to support a candidate and on campaign contributions by labor organizations, where the “Hoffa 2011” slogan on the sweatshirt of one of the men was visible in the photo.

Similarly in Case No. P-240-040111-FW, the hyperlink on Local Union 396’s website to a flickr gallery that contained photos of persons wearing campaign emblems violated the same *Rules* provision. Although the photos were not published on the local union’s website directly, the local union was responsible to insure that the content on the web page to which its site was linked did not violate the *Rules*.

Finally in Case No. P-243-040411-FW, the hyperlink on the IBT website to the flickr gallery that displayed the blurred photo of the man in the Hoffa jacket violated the *Rules* for the same reason that Local Union 396’s hyperlink did.

As the posting of the photos on union webpages or union-linked webpages constituted an impermissible contribution to the Hoffa campaign, that campaign’s “receipt” of the contribution also violated the *Rules*.

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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.

In the first of these three protests, the IBT took prompt action to remove the photo from its website when the protest was filed. All told, the photo was posted to the site for some 20 to 22 hours, most of them during the overnight period on a weekend. It was removed within four hours after the protest was filed. Similarly, in the third of the protests, the IBT acted promptly to remove the photo from the flickr gallery that was linked to its website, completing the task by the morning following receipt of the protest.

In addition to this prompt action, the IBT instructed its communications department to examine images for campaign slogans and emblems before posting them to the site to prevent a recurrence of this violation. Further, it instructed its staff to insure that photos appearing in galleries linked to the IBT website by hyperlink not contain campaign slogans or emblems. Since the time these protests were filed, no further violation of this nature has been brought to our attention concerning the IBT site.

Similarly, Local Union 396’s webmaster took prompt action to remove the four photos from the gallery of more than 600 to which the local union’s site was linked, removing them the same day the protest was filed.

We adopt as a cease and desist order the instruction the IBT has imposed internally to prevent publication (whether directly or by hyperlink) of photos and images on its website that contain campaign slogans or emblems. In addition, we order Local Union 396 to cease and desist from publishing on its website or linking to photos that contain campaign slogans or emblems.

We order no further relief with respect to either the IBT or Local Union 396 for two reasons. We find it unlikely given the circumstances of this case that the campaign slogan that appeared in the few photos of hundreds published was seen by an appreciable number of members. Indeed, the data from the gallery linked to Local Union 396’s site showed that each photo was viewed a maximum of four times; the photo in the gallery linked to the IBT site was seen a maximum of 25 times.¹ The second reason we order no further relief here is to encourage a party who violates the *Rules* to remedy the violation promptly on its own initiative.

In ordering only a cease and desist remedy, we distinguish these protests from *Halstead*, 2010 ESD 8 (July 26, 2010), where the local union published three photos that violated the *Rules* in its newsletter distributed to all members and on its website. Each photo depicted a subject wearing a “Hoffa-Keegel 2011” campaign sticker. The sticker was a notable feature in each

¹ No data is available on the number of views of the photos posted directly to the IBT site. However, those photos were posted for a maximum of 22 hours on a weekend, making it unlikely they were viewed many times.

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photo. There, we ordered that the local union publish a remedial notice in its next issue acknowledging that the photos violated the *Rules*. We also ordered that the local union publish the remedial notice on its website for a period of 60 days. Finally, we ordered the local union to fund a campaign mailing to its membership for other candidates for IBT General President. In contrast to *Halstead*, the photos at issue here were published on the web only, were part of large galleries of photos that did not violate the *Rules*, were removed promptly, were not widely seen, and the campaign slogan that appeared in the offending photos were neither a prominent nor even notable feature of them.

We also distinguish these protests from *Hoffa-Hall 2011*, 2011 ESD 228 (April 21, 2011), *aff'd*, 11 EAM 41 (May 6, 2011). In that case, Gegare campaign supporters hung a Gegare for President banner from the back of a truck owned by an IBT joint council so that the banner could be (and was) seen by a throng of people attending a labor rally in Madison, Wisconsin. Use of the truck for that purpose violated the *Rules*. Photos of the event, including some of the Gegare campaign banner on the joint council truck, were posted on the website of a local union and the facebook page of another local union for five and three days respectively. Among other remedies imposed in that case, we ordered the local unions to post notices on their web-based publications acknowledging that the photos of the banner that appeared on their electronic publications violated the *Rules*. The notice ordered there was also ordered to be distributed on local union literature tables because of the use of the joint council truck in the violation, a factor not involved in the present case. Further, the photos at issue in *Hoffa-Hall 2011* were posted for a longer duration than here and the banner on the joint council truck was a notable feature of the published photos.

We order no remedy against *Hoffa-Hall 2011*. The labor organizations removed the offending photos from their websites promptly. While posted, the photos had a small number of views and, for those with counters, a significant portion of the views were attributable to individuals involved in investigating the protest or removing the posts. Aside from those individuals, there is no evidence that the photos, posted without publicity or any effort to drive traffic to them, were seen by more than a handful of people. Thus, there is no evidence that the Hoffa campaign received any value from the violation by the labor organizations and therefore there is nothing for the campaign to disgorge.

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,

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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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