

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

IN RE: FRED ZUCKERMAN,)	Protest Decision 2015 ESD 63
)	Issued: December 28, 2015
Protestor.)	OES Case No. P-001-051115-NA
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Fred Zuckerman, member of Local Union 89 and candidate for International office, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that the Hoffa-Hall 2016 campaign violated the *Rules* by soliciting, accepting, and using an impermissible employer contribution.

Election Supervisor representative Jeffrey Ellison investigated this protest.

Findings of Fact

Hoffa-Hall 2016 held a kick-off rally at the Paris Hotel in Las Vegas, Nevada on Sunday, May 10, 2015. At the event, James Hoffa, current IBT General President and candidate for re-election, introduced the 26 other members of the slate.

The event was scheduled to start after the end of proceedings at the May 10 session of the IBT’s Unity Conference, an annual event the IBT hosts at the Paris convention center except in years in which the IBT holds its quinquennial international convention there.

Todd Thompson is an IBT employee.¹ He also serves as a representative for Hoffa-Hall 2016, a position similar to one he has held for at least the past three election cycles. As campaign representative, he was responsible for arranging space rental from the Paris Hotel for the campaign’s use on the weekend of May 9 and 10. Thus, he rented a conference room in the Bally’s/Paris complex for the morning of Saturday, May 9 for the slate members to discuss campaign issues. In addition, he arranged the ballroom space and cash bar set-up and staffing for the May 10 kick-off event.

In the two weeks running up to the events, Thompson had extensive email exchange and phone conversations with Misty Spano, Assistant Director of Catering/Convention Services for Bally’s/Paris. The hotels are part of the Caesar’s hotel-casino portfolio, and Spano has worked at other Caesar’s properties before coming to Bally’s/Paris. Spano was the Paris representative for dealing with the IBT on arrangements for the 2015 Unity Conference; in that role, her contact with the IBT was W.C. Smith, Executive Assistant to General President Hoffa. In addition, she was the Paris representative for dealing with Thompson on rentals for Hoffa-Hall 2016.

Thompson’s room rental arrangements were largely complete in the initial exchange of emails on April 23. The two-hour rental of the Director’s Room, an intimate ground floor conference room of about 1,100 square feet with advertised capacity of 20, tucked away in Bally’s north tower, was set at \$500. This was acceptable to Thompson, who asked merely that 30 chairs be provided for the room

¹ The IBT’s LM-2 form for the year ending December 31, 2014 identifies Thompson’s job title as “Spcl Asst to GP.”

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even if they did not all fit around the conference table. When Spano discovered on April 29 that the Director's Room was already booked for the requested time by another party, she moved the rental to the Las Vegas 1, a third-floor conference room of about 1,400 square feet in the south tower, and cut the rental price to \$250. She told our investigator she lowered the price as an accommodation because of her mistake in booking a room that was unavailable. When Thompson learned of the change to Las Vegas 1, he asked that the meeting be moved instead to Skyview 6, a 5,500 square foot conference room on the 26th floor of Bally's north tower with advertised banquet capacity of 370. This request was granted; the rental price remained at \$250.

For the kick-off event, Thompson rented the Versailles 1 & 2 ballrooms on the ground floor of the Paris hotel, a combined 3,800 square feet of space. The rental times ran from 3 p.m. to 7 p.m., with the first two hours reserved for set-up, with cash bar starting at 5 p.m. and running for 90 minutes. The rental arrangement set a cash bar minimum of \$1,500; if the minimum was not met, the difference was to be charged as room rental. Spano told our investigator that cash bar sales by Bally's/Paris came to \$3,200,² so Hoffa-Hall 2016 had no rental expense for the ballroom, although it paid \$300 each for two bartenders who staffed the event.

On April 23, when Spano presented the terms of the waived room rental for Versailles if cash bar proceeds reached \$1,500, Thompson asked in email, "Would you give any other person the same agreement?" Spano replied by email, "For the limited amount of time that the room is being used I would make the same arrangement."

On April 25 when discussing by email some details of the rentals, Thompson asked, "Also what would the cost be to deliver recorded call to all rooms in the ibt room block."³ He asked further, "And how much would it be to either hand a flyer to every person in the room block as they check in at front desk and or how much would it be to have a flyer dropped at every room door the night they check in so they see it in the morning?"

Spano did not respond to these questions. On May 5, about ten days later, Thompson asked them again. Spano replied that same day by sending Thompson the Bally's/Paris official price list for "On Property Marketing Opportunities." This list offered "Guest Delivery of Materials," consisting of a choice of delivery "Inside Rooms" for \$3.75, "Outside Room" for \$2.75, or "Door Hangers" for \$2.75, all on a per item basis. The list also offered "Guestroom Voice Message Delivery" for \$1.25 per room, per day (Production \$275). Also available were such things as television channel rental (\$2,500 per channel per day), Streets of Paris lightpole banners (\$10,000 for the duration of the event), customized guestroom key (\$1.25 per key; minimum order 5,800), and blackjack table felts (\$2,000 per table per day), among many others. The official price list did not offer the service of check-in clerks giving guests an arrival package.

On May 7 at 8:21 a.m. PDT, Thompson emailed Spano this question: "Is there a service to have a flyer handed to the person when they check in and get their keys? If so how much for the service?"

² Beverage prices ranged from \$6.50 per drink for spring water and soft drinks to \$12.50 for imported beer and call brand liquor.

³ Thompson used a personal "aol.com" email address for his communications with Spano. He did not use an IBT email for his inquiries to obtain hotel services for the campaign.

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Spano replied less than an hour later at 9:15 a.m. PDT: “I can arrange this. It is \$1.50 per flyer but depends on how many. Can you let me know how many people this would go out to and how would I know who gets the flyer. Also I have to see the flyer to have it approved.”

A few minutes after receiving Spano’s May 7 email, Thompson replied at 9:39 a.m. PDT as follows:

If we decided to do it, we would want it to be on Saturday[, May 9, the day before the Hoffa-Hall 2016 kick-off event]. This is the highest check-in day for the Teamster block about 850 rooms. We did this a few years ago and the front desk agent was able to see that the person checking in was in the Teamster room block.⁴

That was also the way we were able to have the flyers dropped off at the rooms. The campaign is not allowed to get the list from the ibt so that is how we distributed information before.

If things have changed about being able to see the room block let me know.

Spano replied at noon the same day, May 7:

Thank you for the info. Can you let me know today if you will want to do it. **Also I will need to know that this is approved by the teamsters group that I am working with on the convention** and check with the hotel as far as execution for the entire group on check in day [emphasis added].

About a half hour later, at 12:37 p.m. PDT, Thompson replied:

I think if we could speak on the phone for one minute I will be able to make a final decision.

They spoke by phone about 1 p.m. PDT and made the arrangements. According to Thompson, Spano offered to drop the fee altogether for the delivery service, saying that the hotel would do it for free. Thompson said he told Spano he was uncomfortable with this proposal of free delivery, saying that he insisted she charge the campaign for the service. When Spano suggested a \$500 flat rate for check-in clerk distribution of up to 1,000 flyers to arriving guests, Thompson said he asked Spano if she would offer the same rate to anyone else. Thompson said that Spano replied that she would. According to Thompson, nothing was said during the phone call about Spano’s email statement of an hour earlier that she needed to know that the flyer distribution was “approved by the teamsters group that I am working

⁴ Although Thompson’s email to Spano said that “[w]e did this” type of distribution “a few years ago,” Thompson told our investigator that the delivery service by check-in clerks at issue here was the first time such a service had been requested or used in his experience with the campaign spanning several election cycles. Thompson had previously purchased hotel services to distribute campaign literature or information, but those involved literature drops by hotel bell staff at or under guest room doors (*Rushing*, 2000 ESD 51 (November 28, 2000); *Leedham Slate*, 2006 ESD 311 (June 28, 2006) (protest withdrawn after investigation showed that Hoffa campaign paid hotel bell service non-discounted rate to deliver flyers to guest rooms)) and recorded voice messages delivered to guest rooms via the hotel telephone system (*Zuckerman*, 2011 ESD 224 (April 19, 2011)).

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with.” Thompson told our investigator that whether the IBT approved of the distribution was irrelevant to him, saying that he knew he had the right to hire the service he was seeking without IBT approval.

Contradicting Thompson, Spano told our investigator she did not offer the service for free. The service was not listed on any price list, public or internal, and Spano concluded that she had discretion both to offer the service and to set the price for it. She said she did not offer the service for free because she saw the campaign’s request as an opportunity to “up sell” and generate additional revenue for the hotel. She said she ultimately quoted a price of \$500 for distribution of up to 1,000 flyers because she thought it was a fair price for the service. In addition, she said two additional factors led her to the \$500 flat rate. First, the effort involved in distributing the flyers at check-in was considerably less than having bell staff distribute flyers to guestrooms. Second, Spano checked with the check-in staff management and confirmed that the check-in department would not charge back to catering/convention services for the flyer distribution at check-in. The published price for bell staff delivery of flyers to rooms was \$2.75 per room, and Spano reasoned that a significantly lower price commensurate with substantially lower effort would be appropriate for the check-in clerk distribution of the flyer, especially given that the check-in department was not assessing an internal charge-back to catering/convention services. She acknowledged that the \$500 flat rate she charged for check-in clerk delivery of up to 1,000 flyers – approximately 50¢ a flyer – was substantially less than the \$1.50 per item she had initially quoted Thompson. She explained that she pegged her initial price quote “high” to make sure that she would not lose money in the event the check-in desk charged back to catering/convention services. When she learned that no charge-back would be made, Spano said she felt she had flexibility to lower the price while still generating revenue for the hotel.

Contradicting Thompson on another point, Spano told our investigator that she repeated to Thompson during the phone call that she needed to see the flyer before she could agree to have it distributed and that the distribution needed to be approved by the IBT. At 1:43 p.m. PDT, Thompson emailed the flyer to Spano and confirmed the arrangements, *viz.*

Attached is the flyer. Tomorrow afternoon we will provide to you 1000 union printed copies. As agreed we are asking that each person in the IBT room block be given one flyer at check in. (Please only give one per room) We agree to the overall 500 dollar flat rate. Thank you for your assistance with this.

The flyer was a single-page, one-sided, two-color announcement of date, time and place of the Hoffa-Hall 2016 kick-off fundraiser.⁵ Spano told our investigator that the policy of Bally’s/Paris governing such a service had three components: 1) the hotel views the message and determines it to be suitable for distribution, *i.e.*, not offensive; 2) the front desk manager approves, based on workload; and 3) the conference organizer approves. Spano received a copy of the flyer and saw it was not offensive. Check-in clerk workload was apparently not an issue because, as noted, above, that department was not assessing any internal charge to catering for the service. For the third element, Spano said she called W.C. Smith, the IBT official with whom she interfaced on Unity Conference convention services. When she reached him, she said she told him the hotel had been asked by the Hoffa campaign to

⁵ During the investigation, Thompson produced an invoice from PDQ Printing of Las Vegas for 2,500 “Hoffa Hall 2016 Fundraiser Flyer 8.5” x 11” Full Color One Side 100# Gloss Book,” with “Proof: Wed 5/6 Wanted: Thu 5/7” for the sum of \$556.72.

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distribute flyers to arriving guests at check-in. She said she asked Smith if that was “ok” and Smith told her “yes.”

W.C. Smith told our investigator that he arranged catering and space for a Unity Conference event on Monday evening, May 11, but had no other involvement with conference logistics.⁶ He recalled two contacts with Spano. The first was a May 7 in-person meeting when he and three others from the IBT staff met with Bally’s catering staff. Flyer distribution was not a subject of that meeting. The second contact was a Friday, May 8 phone call in which Spano told him that the Hoffa campaign wanted to have check-in clerks pass out Hoffa-Hall flyers to arriving Unity Conference guests on Saturday (May 9). He said she asked if it was okay to distribute the flyers. Smith said he told her: “I don’t see a problem with it.” After the call, Smith took no other action regarding the flyer distribution and had no further involvement in the matter. Smith denies any role in the Hoffa-Hall 2016 campaign.

Spano told our investigator she was unwilling to do anything with hotel guests in a block to which the entity that booked the block might object, so, in this case, she checked with Smith to insure that the distribution was okay. She said she would have done the same thing had any other person, entity or vendor asked that flyers or other materials be distributed to arriving Teamsters. According to Spano, the general rule is that a conference organizer or a guests staying in the block of rooms reserved by the conference organizer can hire the hotel to distribute material at check-in to others in the same block of rooms. Asked specifically, material Spano said could be delivered at check-in included notices of official meetings of the conference, notices of unofficial meetings within the group, or even flyers advertising sale of Girl Scout cookies. She said she had been trained to ask the room block host about such distribution, however, rather than have to answer potentially angry questions from the host after the fact.

After her phone call with Smith, Spano delivered the 1,000 flyers she received from Thompson to front desk supervision on May 9, who parceled them out to check-in clerks with instructions that they be delivered to Teamsters checking in that day. Bally’s/Paris issued an invoice to “Hoffa-Hall 2016 Campaign,” directed to the campaign’s address in Washington, D.C., charging the campaign the agreed-upon \$500.00 sum. Conference attendees checked in on May 8, 9, and 10. While most appear to have checked in on May 9, a substantial number of check-ins were also processed on May 8 and May 10.

During the investigation, other Paris catering/convention coordinators were asked whether the hotel would provide the service of having check-in clerks distribute literature provided by a party unaffiliated with guests booked into a block of rooms. One coordinator said the service would be available only to the convention host that had arranged the guest room block. Another said guest room delivery service could be had for \$3.50 per item per guest but no such service was available at the check-in desk. When our investigator asked Spano about these other responses, she said she was not surprised, given that the service she sold to Thompson did not appear on the price list of available services. She explained that she saw an opportunity to provide a service for a fee and worked to make it happen.

⁶ A fundraiser for an IBT scholarship fund followed the Unity Conference, and Smith was involved in setting up events for that on Tuesday and Wednesday evenings.

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The IBT entered into a Convention Sales Agreement with Bally's/Paris dated June 9, 2009, providing for reserved room block, event and convention space reservations, and other terms and conditions for the 2015 Unity Conference. Among many other terms in the 27-page agreement was paragraph 25, "Contributions/Donations," which included the following provision:

The Hotel understand[s] and agree[s] that as a vendor to the IBT, neither the Hotel nor any individual or entity on the Hotels' behalf [may] make any contribution supporting or opposing any candidate in any internal IBT election and, by signing this agreement, certify[ies] that neither The Hotel nor anyone on their behalf has or will make any such contribution. The Hotel will provide any information reasonably necessary to verify compliance with this prohibition and will cooperate in any investigation that may be conducted by IBT, or anyone on its behalf with respect to any allegation concerning such a contribution.

The same numbered paragraph contained the hotel's agreement to abide by the IBT's Vendor Code of Conduct, which was attached to and incorporated within the convention sales agreement. Of relevance in the Code was paragraph 8, under the heading "Improper Influence and Conflicts of Interest," which read:

Vendors are prohibited from making contributions of any kind, either directly or indirectly, to any candidate or slate of candidates for office either within the International Union or any affiliate, and must certify their compliance with this provision upon request.

Each person attending the kick-off event was charged \$20 to enter; some attendees contributed more than the admission charge. According to the fundraising report the campaign filed with its period 1 CCER, 620 persons attended and \$21,265.00 was raised in contributions.

Thompson told us that the flyers not given to Spano were distributed by campaign volunteers on May 10, who handed them out in the common hallway immediately outside the convention space where the Unity Conference was being held, at the end of the day's session (about 4:00 pm). The kick-off event commenced later that day at 5:00 pm.

Analysis

The *Rules* prohibit employers from making any contributions to influence the election of a candidate. Article XI, Section (b)(2). Also, no union funds, other union things of value, or facilities may be used to influence the election of a candidate unless the union is compensated at fair market value, and all candidates are advised of the opportunity in advance and have equal access to the facilities. Article XI, Section (b)(6). The protest challenges the flyer distribution at check-in as a violation of these provisions, specifically, whether Hoffa-Hall 2016 impermissibly solicited and accepted an employer contribution, whether Bally's/Paris impermissibly granted an employer contribution to the campaign, and whether the IBT impermissibly authorized distribution of campaign materials without providing advance written notice to all known candidates not aligned with the Hoffa campaign of the opportunity for such distribution.

Precedential protest rulings have stated the principle that “[t]he *Rules* do not prohibit purchase of services and rental of facilities at fair market value from an employer” *Zuckerman*, 2011 ESD 224 (April 19, 2011); *see also Rushing*, 2000 ESD 51 (November 28, 2000). Nor is there any bar to “hosting a campaign event at a facility at which the IBT is also conducting union business, provided the candidate pays the expenses associated with the campaign event.” *Zuckerman, supra*. Where the IBT is conducting business at a hotel and a hotel service is made available to a candidate on the condition of the IBT’s approval, however, the service becomes a union resource subject to the rule requiring notice to all candidates and an opportunity for equal access and notice. *Rules*, Article XI, Section (b)(6). And, where service appears to be offered and priced on an *ad hoc* basis, the totality of the circumstances must be considered to determine whether the pricing reflects an improper contribution to a candidate.

Our prior decisions involving campaigns purchasing services from third parties such as hotels concerned whether the service provider improperly contributed to a campaign by selling the services at a discount unavailable to others or clearly motivated by a desire to do a favor for the union. Thus, in *Rushing*, the 2001 “Unity Slate” had a “campaign kickoff” flyer distributed to rooms of persons registered for that year’s IBT Unity conference. Bally’s charged the campaign a distribution fee of \$0.55 per flyer, a discount from standard pricing of \$1.00 per flyer but a rate that the Bally’s manager at the time set to defray the labor cost of personal delivery of 1,800 leaflets to hotel guest rooms.⁷ An IBT official flyer was distributed at the same discounted \$0.55 rate because the IBT was a “significant customer.” The hotel convention services manager made the discounted rate available to the campaign “because of the ‘Hoffa relationship.’” *Rushing*, 2000 EAD 51 at 7-8. The Election Administrator ordered the Unity Slate to reimburse Bally’s for the difference between the discounted price and the hotel’s regular price for the service. *Id.* at 15. The violation was found in *Rushing* because the hotel admitted granting the Unity Slate a special rate not available to similar entities not affiliated with its customer, the IBT. In that case, although Bally’s lowered the service price for the campaign, the IBT had no involvement with the hotel’s decision to make the service available.

Where campaigns obtained services – even at a discount, and even where that was obtained through use of the Teamsters affiliation – past cases have found a discount not to violate the *Rules* where the evidence showed that others apparently could have obtained the same services on equal terms. In *Davies*, P1062 EO (October 29, 1996), an IBT member booked a Ron Carey campaign event at the Vancouver, Canada Biltmore Hotel. The booking was made in the name of Teamsters Canada, and the hotel rented the space at a discount for that reason. The hotel also stated that the discount would be available to “anyone who identified himself as a Teamster.” *Id.* at 5. The Election Officer concluded that the Carey campaign’s misuse of the Teamsters Canada name violated the *Rules*, and ordered the member to cease and desist from similar activity. The protest was denied in all other respects because the hotel charges were not in fact paid by Teamsters Canada or any IBT entity and there was no improper employer contribution to the Carey campaign because the hotel stated it would provide the same discount to any Teamster. *Id.* at 3-4. In *Zuckerman, supra*, the Hoffa-Hall 2011 campaign had contracted with a hotel for a room rental and catering services in connection with a campaign event. UPS national grievance panel meetings were taking place at that same hotel. When asked by the campaign, the hotel distributed to rooms of IBT guests a pre-recorded voicemail invitation to the campaign event. The investigation found that the hotel provided such voicemail services “without

⁷ At a rate of \$0.55 per leaflet, Bally’s charged \$990.00 for the hotel bell staff to distribute leaflets to Unity conference guest rooms in 2000. *Rushing*, 2000 EAD 51 at 7.

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charge to persons doing business with the hotel.” *Id.* at 2. Thus, the free voicemail service was not an improper employer contribution in the form of a discounted deal. As in *Rushing*, the hotel in *Zuckerman* did not involve the IBT in the decision to make the free voicemail service available to the campaign to publicize the event.⁸

In the present case, Thompson, the campaign representative, purchased a service from the hotel. The responsible hotel employee has stated that the service in question – distributing flyers to guests at check-in – would be available to any guests staying in the block of rooms reserved by the conference organizer. The campaign’s dealing with Bally’s/Paris to get its flyers distributed falls squarely within *Zuckerman* and *Rushing*. Counsel’s submission on behalf of Zuckerman implicitly concedes this when it argues that *Zuckerman* was wrongly decided and a violation should be found despite the prior ruling. *Zuckerman*, however, is consistent with the *Rules* and protest rulings dating back through at least three International officer election cycles.

The price for the distribution service, however, presents a separate question. While Spano’s contact with Thompson concerned services to Hoffa-Hall 2016, she was also responsible for the Unity Conference arrangements with the IBT. She told Thompson that she needed “to know that this is approved by the teamsters group that I am working with on the convention” before proceeding. For Spano, the Unity Conference and the leaflet distribution were related. Under the circumstances here, we find that Spano’s flexible approach to pricing was influenced by her simultaneous dealings with the IBT to host the Unity Conference.

The facts of the negotiation support this conclusion. Spano initially quoted Thompson \$1.50 per item, then (according to Thompson) offered the service for free, and finally quoted the \$0.50 per item rate. That final price was, literally, an accommodation to Thompson’s request to charge *something* for the service and Spano appears to have picked a minimal amount *ad hoc*. The charge is less than 20% of the \$2.75 per item price for distribution of flyers outside guest rooms. No doubt handing out a leaflet at check-in with the guest’s room access card would involve less labor than sending bell staff from floor to floor and room to room to slip leaflets under guest doors. But Spano’s approach provides no basis to conclude that the charge bears some relationship to the hotel’s usual concerns for labor costs and profit.⁹ The responses of other catering/convention coordinators to a hypothetical inquiry about distribution provide, at the least, confirmation that Spano’s discretion was influenced (like her predecessor, in *Rushing*) by her dealing with the distribution request contemporaneously with her responsibilities as the hotel’s liaison for the Unity Conference.

Thompson attempted to avoid a *Rules* violation by asking Spano if she would give the same price to any other person. Spano replied that she would. We find this exchange insufficient to avoid the rule

⁸ In *Davies*, the Biltmore apparently provided the discounted rental because it believed Teamsters Canada was actually booking the space. The Election Officer deemed that irrelevant in light of the hotel’s statement that a discount would have been provided to any Teamster, whether for union business or not.

⁹ In *Rushing*, the hotel manager said that the \$0.55 charge per leaflet distributed defrayed the hotel’s labor cost. Using the Department of Labor Consumer Price Index, the \$0.55 charge in *Rushing* to defray personal delivery labor costs in 2000 adjusts to approximately \$0.75 per item in 2015 dollars. Spano’s *ad hoc* figure is almost 30% less, by comparison, than the amount charged in 2000. We do not assume that labor costs at Bally’s/Paris declined so that an allocation of the cost for distribution by check-in clerks would be so much less, in relative terms, than distribution by bell staff.

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set down in *Rushing*. The stated pricing for other comparable distribution of materials and information was significantly higher than the \$0.50 per guest price Thompson received. Thompson has long experience in the IBT International officer campaigns, and should have questioned Spano further about the offer being made in the context of the Unity Conference. Accordingly, we give Thompson's limited inquiry and Spano's answer no weight.

It is true that, had another candidate planned to have a meeting and requested the same flyer distribution service at the 2015 Unity Conference, Bally's/Paris would have had to provide it on terms equal to those afforded to Hoffa-Hall 2016 (in this case, the \$0.50 rate Spano gave Thompson). This is true for two reasons. First, the *Rules* bar an employer from discriminating between candidates. Second, the hotel's contract with the IBT bars it from making any sort of campaign contribution to candidates. While actually providing the same service at the same price to all candidates will generally defeat a claim that an employer has impermissibly discounted its services, in cases like this where the employer has contracted only with one candidate, we will look to the totality of the circumstances to assess whether an impermissible employer contribution in the form of a discount has been provided.

An additional and significant distinction between this protest and the cited precedents is that Spano told Thompson that she had to know if the IBT "approved" the distribution the campaign requested, and then called Smith at the IBT to ask if the IBT approved. Spano stated that hotel policy required her to do this. In *Rushing*, the hotel representative stated that it had accommodated the interests of a significant customer by giving a discount to the campaign based on the "Hoffa relationship," that is, doing something that the hotel believed would be viewed favorably by its significant customer the IBT. Similarly, in this case, Spano asked the IBT if the distribution was "approved" to avoid upsetting that same significant hotel customer.

The IBT's contract with Bally's does not speak to providing these types of services and the Union had no reason to expect Spano's request any more than it would expect such contact relating to contracting for any other service or meeting room. Spano, however, treated this flyer distribution very differently from other services; she had to get the IBT's approval to distribute the campaign flyer at check-in, but she did not need any such approval to rent rooms to the campaign. Thompson knew Spano considered the flyer distribution different than other services because, in contrast to booking meeting rooms, Spano told Thompson specifically that IBT approval was required to distribute the flyer at check-in. And once she made the phone call, Smith knew that Bally's/Paris required the IBT to approve a campaign's use of this particular hotel service. That the IBT was – unexpectedly, from its perspective – put into a position of control is clear. Had Smith disapproved, the flyers would not have been distributed at check-in and Hoffa-Hall 2016 would have been remitted to the volunteer distribution it actually organized plus (if it chose) other hotel services not subject to IBT approval. Bally's/Paris, however, put the IBT in the position of controlling access to distributing information at the point of hotel check-in. And once it approved one campaign's use of that channel, the IBT was obligated under *Rules*, Article XI, Section 1(b)(6) to notify other International officer campaigns of the opportunity to use that channel. Thompson too was obligated to help the IBT comply with that obligation.

The thrusting of control by Bally's/Paris onto the IBT makes this analogous to the situation where a union that intends to open its own facilities to candidates must give all candidates equal access and notice of the availability of the facilities. *Compare Rules*, Article VII, Section 12(c) and Article XI, Section 1(b)(6). We addressed such a situation in *Gegare*, 2010 ESD 20 (August 15, 2010). In that

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case, the campaign manager for an International officer candidate rented the Local Union 533 hall to conduct registration for a campaign fundraiser. The campaign manager told the local union's principal officer that if the hall was made available to one campaign it would have to be made available to other candidates. Although there was no ready precedent for renting the hall, the principal officer set a price, the campaign agreed to the rental and paid the charge, and the event went forward. The local union, however, never notified other candidates that the hall was equally available to them, and other International officer candidates later filed a protest. We found that the local union violated the *Rules* because it did not give the required notice that its facility was equally available to all candidates. *Id.* at 2-3. We also found that the campaign, aware of the notice obligation, should have acted to help the local meet the notice obligation and violated the *Rules* by not doing so. *Id.* In contrast, a local union that had made its union hall available for rental by a campaign avoided a *Rules* violation where the local union president wrote to all known candidates four days before the event and advised them that the union hall was available for campaign rental. *See, Gegare*, 2010 ESD 19 (August 15, 2010).

As in *Gegare*, 2010 ESD 20, Smith at the IBT and Thompson at the Hoffa-Hall 2016 campaign knew that Bally's/Paris had put the IBT in the position of approving whether to distribute campaign flyers at check-in. Infected with that knowledge, and with the IBT allowing the distribution to proceed, the IBT should have provided notice of this service to other, known International officer candidates and Thompson should have offered assistance to the IBT in meeting that obligation.

In *Gegare*, 2010 ESD 20, we noted that the protestors did not allege that they had been denied use of the local union hall for campaign purposes. Here, as well, the protestor did not ask the hotel to distribute campaign flyers so there is no record that the hotel actually denied equal access to this service. This incident may reflect nothing more than one campaign planning to hold an event at the tail end of an IBT conference and then negotiating with the hotel to distribute flyers for publicity (in addition to the campaign's own distribution through volunteers). Nothing impeded any other campaign from organizing a similar event and negotiating with the hotel for similar services. That they chose not to, however, has no bearing on the *Rules* violation we find here. Thompson's ready acceptance of Spano's *ad hoc* pricing far below any listed price for distribution service and the lack of notice to other candidates once Bally's/Paris put the IBT in the position to approve the distribution violate the *Rules*, even though no other candidate sought to hire the same service Thompson contracted for. Both Smith at the IBT, and Thompson for the campaign, should have recognized that notice obligation.

For all these reasons, we GRANT the protest. We find that Bally's/Paris made and the Hoffa-Hall 2016 campaign received an impermissible employer contribution in the form of a discounted price for the flyer distribution service. We find further, that the IBT did not comply with the notice obligation of *Rules*, Article XI, Section 1(b)(6) and that Hoffa-Hall 2016 (knowing the IBT was asked to approve) did not assist in insuring compliance with that requirement.

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. "The Election Supervisor's discretion in fashioning an

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appropriate remedy is broad and is entitled to deference.” [*Hailstone & Martinez*](#), 10 EAM 7 (September 14, 2010).

We direct the IBT, when it controls access to a facility or service that a candidate for International office or delegate seeks to use for purposes of campaigning, to give advance written notice of the availability of the facility or service for campaign use to all candidates without discrimination.

We direct Hoffa-Hall 2016, when seeking campaign use of a union facility or use of a facility where it knows that access is controlled by a union, to advise the service provider of the requirements of the *Rules*, namely, the obligations not to discriminate against any candidate, to charge fair market value for use of the facilities, and that the union is required to provide advance notice to candidates if it approves use of the facility or service. The campaign should assist the union that holds approval authority in complying with the requirement to give advance written notice of the availability of the facility or service by identifying the candidates, assembling contact information for them, and preparing and transmitting the notice, although the notice must come from the union and not from the campaign. Such advance written notice must be provided before concluding a rental or service agreement.

We further order Hoffa-Hall 2016, by January 6, 2016, to pay a fine to OES of \$3,000.00. This fine is strictly remedial in nature and is intended to encourage compliance with and deter future violations of the *Rules*. The basis for the fine is that the price the hotel and the campaign agreed upon for the distribution service at issue here was \$1,000.00 less than the first quote for the service. We treble that figure to impress upon the campaign its *Rules* compliance obligations when engaging services at facilities where the IBT is a significant customer and controls access to those services.

Finally, by January 13, 2016, we order Hoffa-Hall to mail the notice attached to this decision to all Teamster members who registered for the 2015 Unity Conference. We direct the IBT to supply the mailing addresses for these persons to the campaign by January 8, 2016. The campaign may use the list solely for the purpose of complying with the remedy in this case and is prohibited from using the list or any information on the list for any other purpose, including a campaign purpose. This notice publication is strictly remedial in nature and is intended to educate the recipients, many of whom are local union officials who may be in a similar position to that of the IBT to control candidate access to distribution of literature, on the requirements of the *Rules* and our finding that the IBT and Hoffa-Hall 2016 have violated them.

We do not order any further monetary relief and, specifically, do not order any return of funds raised by Hoffa-Hall 2016 at the campaign event. There was nothing improper about holding the campaign kickoff event at Bally’s/Paris. In both *Rushing*, and *Gegare*, 2010 ESD 20, the campaigns were not ordered to disgorge funds raised. The remedy in the former addressed the value of the discount to the campaign, and in the latter advised the union and campaigns to pay particular attention to the requirement of notice. Our remedy here is based on those precedents. We distinguish this case from the decisions in *Committee to Elect Ron Carey*, P-651-IBT (August 14, 1991), *aff’d*, 91 EAM 183 (September 17, 1991), and *Jensen*, 2001 EAD 479 (September 28, 2001), *aff’d*, 01 EAM 93 (October 3, 2001). In both *Committee to Elect* and *Jensen*, the campaign was ordered to disgorge all funds received because, in each case, the campaign event itself was held to violate the *Rules*. Here, by contrast, we hold that the kick-off event was permissible under the *Rules*. We go beyond the remedy ordered in *Rushing* (payment of the published price), however, and add the requirement to distribute a remedial

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notice similar to that ordered in *Gegare*, 2011 ESD 20. Broader dissemination is ordered here than in *Gegare* to raise awareness of the equal access rule throughout the IBT so that union officials and campaign representatives will be able to avoid such violations now that the period for nomination and election of most of the convention delegates is about to start. We also go beyond the monetary remedy ordered in *Rushing*, for two reasons. First, the same campaign manager is involved here who was involved in *Rushing*, demonstrating the need for a more extensive remedy to encourage his compliance with the *Rules*. In addition, we have found a second significant violation by the campaign manager here, warranting an enhanced remedy. This second violation is his failure to recognize the need for the IBT to give advance written notice of the availability of the benefit he was pursuing for his campaign and to decline that benefit unless and until such notice was given.

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:

Kathleen A. Roberts
Election Appeals Master
JAMS
620 Eighth Avenue, 34th floor
New York, NY 10018
kroberts@jamsadr.com

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, 1050 17th Street, N.W., Suite 375, Washington, D.C. 20036, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kathleen A. Roberts
2015 ESD 63

Zuckerman, 2015 ESD 63

December 28, 2015

DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001
braymond@teamster.org

Jeffrey Ellison
214 S. Main Street, Suite 212
Ann Arbor, MI 48104
EllisonEsq@aol.com

David J. Hoffa
1701 K Street NW, Ste 350
Washington DC 20036
hoffadav@hotmail.com

Ken Paff
Teamsters for a Democratic Union
P.O. Box 10128
Detroit, MI 48210-0128
ken@tdu.org

Barbara Harvey
1394 E. Jefferson Avenue
Detroit, MI 48207
blmharvey@sbcglobal.net

Teamsters United
315 Flatbush Avenue, #501
Brooklyn, NY 11217
info@teamstersunited.org

Louie Nikolaidis
350 West 31st Street, Suite 40
New York, NY 10001
lnikolaidis@lcnlaw.com

Julian Gonzalez
350 West 31st Street, Suite 40
New York, NY 10001
jgonzalez@lcnlaw.com

David O'Brien Suetholz
515 Park Avenue
Louisville, KY 45202
dave@unionsidelawyers.com

Fred Zuckerman
P.O. Box 9493
Louisville, KY 40209
fredzuckerman@aol.com

OFFICE OF THE ELECTION SUPERVISOR
for the INTERNATIONAL BROTHERHOOD OF TEAMSTERS
1050 17th Street, N.W., Suite 375
Washington, D.C. 20036
202-429-8683
844-428-8683 Toll Free
202-774-5526 Facsimile
ElectionSupervisor@ibtvote.org
www.ibtvote.org

Richard W. Mark
Election Supervisor

**NOTICE TO ALL TEAMSTERS WHO ATTENDED
THE 2015 TEAMSTERS UNITY CONFERENCE**

The Election Supervisor has found that the distribution of campaign flyers for the Hoffa-Hall 2016 campaign by front desk check-in clerks at the Paris Hotel on May 9, 2015 violated the *Election Rules*.

Under the *Rules*, an employer such as the Paris Hotel is prohibited from making a campaign contribution to a candidate, including a discount for services that is not available to other candidates. The Election Supervisor has found that the Paris Hotel violated the *Rules* by giving a discount to Hoffa-Hall 2016 for check-in clerk distribution of campaign flyers that was not available to other candidates. The Election Supervisor has further found that Hoffa-Hall 2016 violated the *Rules* by accepting that discount. The campaign has been ordered to pay a \$3,000.00 fine to the Election Supervisor (equal to three times the value of the discount), and to distribute this notice to conference registrants.

Under the *Rules*, the union must provide advance written notice of the availability of union campaign assistance to all candidates before any candidate may obtain that assistance. The Paris Hotel asked the IBT if it approved the distribution of campaign flyers for Hoffa-Hall 2016 by Paris Hotel check-in clerks, and the IBT did not object. The hotel's approval request put the IBT in the position of approving the distribution, and the union did not give advance written notice to all other candidates that such a service was available. The Election Supervisor has also found that Hoffa-Hall 2016 violated the *Rules* by accepting that union assistance under circumstances where it knew that no advance written notice of the availability of the service had been made to other candidates.

The Election Supervisor will not permit any such violations of the *Rules*.

The Election Supervisor has issued this decision in *Zuckerman*, 2015 ESD 46 (December 28, 2015). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2015/2015esd063>.

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, 1050 17th Street, N.W., Suite 375, Washington, D.C. 20036, telephone: 844-428-8683, fax: 202-774-5526, email: electionsupervisor@ibtvote.org.