

ELECTION APPEALS MASTER

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IN RE: DAN GRONE,

PROTESTOR.

2015-2016 EAM 6 (KAR)
DECISION RE 2015 ESD 60

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Protest Decision 2015 ESD 60 (ESD 60), regarding a protest by Dan Grone, a member and delegate candidate of Local Union 100, was issued on December 17, 2015 (OES Case No. P-041-090115-ME). ESD 60 concerns an official Local Union newsletter published on August 24, 2015 (the “Newsletter”), alleged to violate the Article VII, Section 8 of the *Rules* because it constitutes union-funded campaign material. Mr. Grone did not appeal ESD 60. On December 18, 2015, an appeal of ESD 60 was filed by Sam Bucalo, the Secretary-Treasurer of Local 100, and a candidate for delegate in the 2016 delegate election. Mr. Bucalo was on the distribution list for ESD 60, and appeals as an “interested party.” Mr. Bucalo did not file a protest with respect to the Newsletter. By Notice of Hearing sent to all distributees of ESD 60, a telephonic hearing was scheduled for December 30, 2015. On December 28, 2015, the Election Supervisor submitted a written response to the appeal (OES December 28 Letter). Also on December 28, 2015, Mr. Bucalo submitted copies of documentary evidence previously provided during the OES investigation.

A telephonic hearing was held on December 30, 2015. The following individuals attended the hearing: Sam Bucalo, Dan Grone, Jeffrey J. Ellison, Esq., on behalf of the Election Supervisor (OES); Dave Webster (President of Local 100); Dave Hibbard (editor of the Newsletter); Lia Lockert (OES Investigator) and David J. Hoffa.

For the reasons set forth below, the appeal of ESD 60 is DENIED, and the decision of the Election Supervisor is AFFIRMED.

Preliminary Procedural Issue

The Election Supervisor asserts that Mr. Bucalo lacks standing to press this appeal and that the appeal should therefore be dismissed. As noted above, Mr. Grone did not appeal the Election Supervisor’s decision. Neither Local Union 100, its president Dave Webster, nor the Editor of the Newsletter, Dave Hibbard, appealed the Election Supervisor’s decision. The Election Supervisor points out that Mr. Bucalo was neither a protestor nor a respondent in the original protest; nor did the remedy section of the protest decision order any action on his part.

Article XIII, Section 2(i) governs appellate rights under the *Rules*. It states in part that “[t]he protestor(s), the Union(s) involved, any adversely affected candidate(s), or any other person who or entity which is aggrieved by the determination of the protest may * * * appeal the decision to the Election Appeals Master.” It is undisputed that Mr. Bucalo did not protest the Newsletter, is not the union, and was not a candidate at the time the protest was filed.

Accordingly, he must demonstrate that he is an “other person who is aggrieved by the determination of the protest.”

Without excusing Mr. Bucalo’s failure to protest the Newsletter, I find that under the specific facts of this case, he can fairly claim to be “aggrieved by the determination of the protest.” As set forth below, Mr. Bucalo participated actively in the investigation of Mr. Grone’s protest, including allegations regarding aspects of the Newsletter that concerned Mr. Bucalo. These allegations were considered and rejected by the Election Supervisor. These circumstances distinguish this case from the situation in *Castillo*, 11 EAM 38 (April 20, 2011), relied upon by the Election Supervisor, in which Election Appeals Master Conboy summarily dismissed the appeal filed by a member of Local Union 391 of a protest decision that arose in Local Union 767, which decision was appealed by neither the protestor nor the respondent union. In that case Judge Conboy found that the appellant had “no connection” to Local Union 767 or to the protest proceedings below and was accordingly “not a person aggrieved by the determination, as his substantive rights under the Election Rules were not determined or affected by the decision.” Here, by contrast, Mr. Bucalo is a member and Secretary-Treasurer of Local 100, and is the subject of portions of the Newsletter that he alleges violate the *Rules*. Under these circumstances, I find that Mr. Bucalo may appeal 2015 ESD 60 as a “person aggrieved,” and the request of the Election Supervisor for dismissal of the appeal is denied.

Decision of the Election Supervisor

The Newsletter was published about two months after Mr. Bucalo published at his expense a newsletter he titled *Teamster News*, in which among other things he advocated for his own re-election to local union office and for the election to International office of candidates on the Teamsters United slate. In the face of protests claiming that *Teamster News* constituted an impermissible use of union resources to endorse candidates, the Election Supervisor in *Hoffa-Hall 2016 and Meyer*, 2015 ESD 28 (August 28, 2015), found the publication was campaign material funded by Mr. Bucalo and therefore permissible under the *Rules*.

As noted above, the protest in this case was filed by Mr. Grone, a member and steward of Local Union 100. Mr. Grone contended that the Newsletter contained neither significant nor newsworthy material and was instead a puff piece promoting the union officials who will stand for delegate or alternate delegate election against him, and as such was union-funded campaign material that violated Article VII, Section 8(a) of the *Rules*, which prohibits the use of union-financed publications or communications “to support or attack any candidate or the candidacy of any person.” Specifically, Mr. Grone asserted that certain portions of the Newsletter disparaged the *Teamster News* campaign mailer sent by Mr. Bucalo, and that a column titled “Current Status of Local 100 Internal Charges, which contained brief descriptions of five separate cases of alleged misconduct filed under the IBT constitution was “an attack to slander Sam Bucalo.”

The Election Supervisor meticulously reviewed every aspect of the Newsletter objected to by Mr. Grone. Applying the “tone, timing and content” test set forth by Election Appeals Master Conboy in *Martin*, 95 EAM 18 (October 2, 1995), the Election Supervisor concluded that one article violated the *Rules* while the balance of the Newsletter did not.

The Election concluded that statements in the third and final paragraph of the Report of the President, by local union president Dave Webster, violated the *Rules*. This paragraph stated:

[D]espite what may be available to read in certain “campaign” literature, I must say that I have been so impressed with the integrity and accomplishments of those working for Local 100. As President, I want you to know that I was shocked by the publication’s contents when I first saw it. Under no circumstances do I support or endorse the negative contents of that publication and it shouldn’t be construed as an official endorsement by myself or Teamsters Local 100. The Officers and Agents who were attacked by the so-called “*Teamsters News*” have my full support and appreciation for their hard work, integrity and dedication.

The Election Supervisor found:

This paragraph did not involve purely factual reporting that was politically neutral. Instead, it expressed Webster’s opinions about and responses to campaign literature the local union membership received from Bucalo. Webster’s opinions – “I have been so impressed with the integrity and accomplishments...”; “I was shocked...”; “I [do not] endorse the negative contents of that publication...”; persons “who were attacked ... have my full support and appreciation...” – responded directly to Bucalo’s campaign literature. While Webster had the right as a member and candidate to express his views about Bucalo’s campaign claims, Webster could not permissibly use the union-funded newsletter to communicate those views. Accordingly, we find that this paragraph violated the *Rules*.

The Election Supervisor’s determination that the above-quoted paragraph violated the *Rules* is not challenged in Mr. Bucalo’s appeal.

The Election Supervisor held the local union president and the editor of the newsletter responsible for this violation. He ordered Local Union 100 and these individuals to cease and desist from further *Rules* violations, and ordered a remedial notice distribution be made to the local union membership, either printed and distributed to the membership in the next edition of the newsletter on the page containing the Report of the President, or, if Local Union 100 did not publish its newsletter by January 31, 2016, the local union was required to mail the notice to all members by that date.

The Election Supervisor found that the other portions of the Newsletter challenged by Mr. Grone did not violate the *Rules* because they contained purely factual reports on matters of general concern to the membership. ESD 60 at 4-8. These determinations are discussed below to the extent they are the subject of Mr. Bucalo’s appeal.

Appeal by Mr. Bucalo

Mr. Bucalo raises five points of “concern” with respect to ESD 60.

Mr. Bucalo first contends that the paragraph found to violate the *Rules* “poisoned” the entire newsletter and that the members of the local president’s delegate slate (not yet formed under the *Rules*) should therefore be liable for reimbursement of the entire cost of the Newsletter, which Mr. Bucalo calculates to be \$8,000, including production and mailing costs and the salary and benefits of the Newsletter editor attributable to his work on the Newsletter.

It is well-established that the Election Supervisor’s discretion in fashioning an appropriate remedy is broad and is entitled to deference,” *Hailstone & Martinez*, 10 EAM 7 (September 14, 2010), and that the Election Supervisor’s remedy for a *Rules* violation is reviewed for an abuse of discretion. *See, e.g., Gegare*, 10 EAM 1 (June 14, 2010) (“The remedy selected by the Election Supervisor will not be disturbed except where there has been an abuse of discretion.”).

In this case, the Election Supervisor determined that a single paragraph violated the *Rules*, not because it constituted overt campaigning for the election of certain candidates but because it responded to campaign material that previously had been distributed. The remedy selected for this violation was a cease and desist order and notice posting. This remedy restores the *status quo ante*, deters future *Rules* violations, and educates the membership on the requirements of the *Rules*. I therefore find that Mr. Bucalo has failed to demonstrate that the remedy the Election Supervisor selected constituted an abuse of discretion.

Mr. Bucalo’s second point on appeal is that the Election Supervisor erred in finding that the local union president and the newsletter editor were primarily responsible for the *Rules* violation. Mr. Bucalo argues that anyone allied with president Webster who read the newsletter before publication and did not prevent its publication should also be held responsible for the violation. The remedy selected by the Election Supervisor was narrowly tailored to the evidence and the actors who were granted responsibility and editorial control for the Newsletter, *i.e.*, the author of the Report of the president and the editor of the Newsletter. I therefore find that Mr. Bucalo has failed to establish an abuse of discretion by the Election Supervisor.

Mr. Bucalo’s third argument is that all candidates allied with president Webster not only should be required to contribute to reimbursement of the entire cost of the Newsletter, but should also be disqualified from candidacy for delegate and alternate delegate. I agree with the Election Supervisor that such a remedy in this case would be clearly excessive. Disqualification is an anti-democratic remedy because it removes a choice from voters. It is sometimes used, but is reserved only for the most egregious circumstances, where the *Rules* violation has so upset the electoral process as to render a fair election untenable if not impossible. The third paragraph of the Report of the President on page 2 of the newsletter

does not remotely approach the conduct that would prompt consideration of this ultimate remedy.¹

Mr. Bucalo's fourth point on appeal pertains to the summary of the internal union charges that appeared in the Newsletter. Notably, both Mr. Grone and Mr. Bucalo acknowledge that the case descriptions accurately summarize the decisions rendered by the Local 100 trial panel and the Joint Council 26 panel. Mr. Bucalo's complaint is that the summarized decisions were themselves "biased." Mr. Bucalo can and has challenged these decisions. With respect to the Newsletter, the relevant question is whether the reporting was purely factual, a point that Mr. Bucalo concedes. Mr. Bucalo further complains that previous Local 100 newsletters did not publish accounts of internal union disciplinary proceedings. Here again, the relevant question is not the motivation of the publishers, but whether the content is objectively newsworthy. I find that the Election Supervisor did not abuse his discretion in finding the report of internal union disciplinary proceedings newsworthy.²

Finally, Mr. Bucalo complains that the Newsletter was mailed to individuals who should not have received it. Mr. Bucalo asserts that it is the normal practice of Local 100 to mail the Newsletter in July, as opposed to August, to members who were active in July. Apparently, Local Union 100 has a complement of bus driver members who do not work during part of June, all of July, and part of August. Mr. Bucalo complains that these members received the Newsletter mailed August 26, whereas they would not have received a newsletter mailed in July. The Election Supervisor contends that this point was not raised during the investigation and should not be considered now. In any event, I agree with the Election Supervisor that Mr. Bucalo has failed to articulate why persons who were bona fide members of Local Union 100 at the time of a mailing should not have received that mailing.

¹ The use of disqualification as a remedy was affirmed, for example, in *Reyes*, 2011 ESD 281 (June 18, 2011), *aff'd*, 11 EAM 50 (June 24, 2011), where Maria Ashley Alvarado was disqualified for repeated and egregious use of union cash, facilities, and staff to support her candidacy for delegate, while providing false and misleading evidence to the Election Supervisor about such use, this conduct coming after providing substantial evidence to the Election Supervisor of the improper use of union resources by her opponent to support his own candidacy.

² Of course, as the Election Supervisor observed during the hearing on this appeal, having embarked on publication of internal disciplinary charges, Local 100 must fairly report any decisions on challenges to the reported allegations.

Decision of the Election Appeals Master

For the reasons set forth above and for substantially the reasons set forth in ESD 60 and the OES December 28 Letter, the appeal by Mr. Bucalo is DENIED, and ESD 60 is AFFIRMED.

SO ORDERED.

/s/ _____

KATHLEEN A. ROBERTS
ELECTION APPEALS MASTER

DATED: JANUARY 13, 2016