

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: KIMBERLY SCHULTZ,)	Protest Decision 2016 ESD 156
)	Issued: April 1, 2016
Protestor.)	OES Case Nos. P-146-020516-SO
_____)	

Kimberly Schultz, member of Local Union 2011, 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 Local Union 2011’s Facebook page was used for campaign purposes, in violation of the *Rules*.

Election Supervisor representative Dolores Hall investigated this protest.

Findings of Fact and Analysis

Local Union 2011 is a statewide union of Florida Department of Corrections (FDOC) employees, including probation, parole, and correctional officers. Protestor Schultz was a candidate for delegate in Local Union 2011 and is a candidate for International office on the Teamsters United slate. The opposing slate in the local union election was the FDOC Teamsters Strong slate. Schultz alleged that the FDOC Teamsters Strong slate made campaign posts to what Schultz said was the local union’s Facebook page, Teamsters Local 2011, a page she said was reserved only for official union business.

Ballots were mailed in the local union’s delegates and alternate delegates election on February 5 and counted on March 3. Of 4,545 ballot packages mailed, 548 valid ballots were returned and counted. The Teamsters Strong slate won the five delegate and five alternate delegate seats up for election. The margin between the winning delegate candidate with the fewest votes and the losing candidate with the most votes was 26; the corresponding margin in the alternate delegates race was 42.

Investigation showed that several Facebook pages are and have been used to address matters of concern to Local Union 2011 members; some of these were used for campaign publicity in this election, while another, apparently official, Facebook page of the local union was not. Campaign posts were made to Facebook pages named “IBT Teamsters Local 2011,” “Florida Probation Officers Teamsters Local 2011,” “FDOC Teamsters Strong Slate 2016,” and “FDOC Teamsters United.”

The “IBT Teamsters Local 2011” Facebook Page. A Facebook page titled “IBT Teamsters Local 2011” was created December 1, 2011. The page was styled as one for an “organization,” not a person. The “About” page stated that “IBT Teamsters Local 2011 is a Teamsters Local that represents the Florida Dept. of Correctional Officers in collective bargaining and represents the officers in Perc hearings.” During the delegate election period, this page was administered under the title “IBT Teamsters Local 2011” by William Walsh, a candidate on the Teamsters Strong slate. Postings to the page during the delegate election period included non-campaign and campaign-related material.

The protestor presented evidence that the “IBT Teamsters Local 2011” page was originally created by an IBT organizer several years ago. On October 9, 2013, a post was made on “IBT Teamsters Local 2011” announcing that the official union Facebook page would ten days hence shift to a page titled “FDOC Teamsters.” The Facebook page titled “FDOC Teamsters,” announced as the

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official Local Union 2011 page in October 2013, was not used at all for campaign posts during the delegate election period. Indeed, it appears no posts were made to this page after September 27, 2015.

With respect to the page titled “IBT Teamsters Local 2011,” on January 29, 2016 the page administrator (who was William Walsh) made a post under the rubric “IBT Teamsters Local 2011,” , that shared a post from another Facebook page Walsh maintained. The January 29 post provided a link to the Facebook page of the Teamsters Strong slate and images of the five delegate candidates on that slate. A reply to that post dated January 31, again under the rubric of “IBT Teamsters Local 2011,” included the image of a Teamsters Strong campaign flyer that displayed the photos of all ten candidates on that slate. On February 2, the page administrator updated the cover photo for the IBT Teamsters Local 2011 Facebook page to display an image of the FDOC Teamsters Strong slate flyer, which included images of all ten candidates on the slate. On February 6, the page administrator made the following post: “You should receive your ballot Today, remember to vote for me, Bill Walsh and the FDOC Teamsters Strong Slate 2016. We will continue to give you Strong representation in Tallahassee and at the 2016 National Teamsters Convention.” On February 19, after contact by our representative, the page administrator changed the cover photo to an image of several persons holding “Stop the War on Workers” placards, a photo that was not a partisan campaign image.

The “Florida Probation Officers Teamsters Local 2011” Facebook Page. A Facebook page titled “Florida Probation Officers Teamsters Local 2011” was created August 11, 2012. This page was also styled as one for an “organization,” not a person. Its page information stated, “We are the Official Teamster Facebook page for Florida Probation Officers.” During the delegate election period, campaign material was posted to this page. Thus, on January 19, 2016, the page administration, under the rubric “Florida Probation Officers Teamsters Local 2011” made a post that urged readers to vote for the candidates on the Teamsters United slate. Walsh, from the opposing Teamsters Strong slate, replied to this post on January 28, 2016 with a link to the Teamsters Strong Facebook page. The page administrator made a further post on February 5 urging readers to vote for the FDOC Teamsters United slate. The next day, the page administrator posted photos of the candidates on the Teamsters United slate. On February 9, the page administrator posted a message that stated in part, “Ok people, crunch time. The ballots are out and TEAMSTERS UNITED needs your vote.” The post urged readers to complete and mail back their ballots for FDOC Teamsters United, and included an image of a campaign flyer for that slate. The same day, the page administrator updated the cover photo of the Florida Probation Officers Teamsters Local 2011 Facebook page, inserting a FDOC Teamsters United banner that included photos of all five delegate and five alternate delegate candidates. The next day, February 10, the page administrator posted Twitter and Instagram links for the FDOC Teamsters United slate. On February 20, the page administrator posted one more exhortation to vote for the Teamsters United slate.

Both slates also established and maintained Facebook pages that were overtly labeled as slate campaign pages.

The protestor does not assert that she or her allies were blocked from posting campaign material on the Facebook page titled “IBT Teamsters Local 2011.”

No provision of the *Rules* expressly governs use of Facebook for campaign purposes. Rather, the *Rules*’ regulation of Facebook use, to the extent it exists, must be drawn from general provisions. To this end, the protestor asserts that the Facebook page titled “IBT Teamsters Local 2011” was the official Facebook page of Local Union 2011 and therefore a union resource. Under Article VII, Section 12(c),

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union resources may not be used for a campaign purpose “unless all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance.”

We note the similarity between Facebook and a bulletin board, where posted material can be viewed by individuals in actual or virtual proximity to it. Article VII, Section 12(d) states that “[n]o restrictions shall be placed upon candidates’ or members’ preexisting rights to use ... Union bulletin boards for campaign publicity.” The subsection states further that “no restrictions shall be placed upon candidates’ or members’ preexisting rights to solicit support, distribute leaflets or literature ... or engage in similar activities on ... Union premises. Such facilities and opportunities shall be made available to all candidates and members on a non-discriminatory basis.”

The difference between these provisions that is significant to the analysis here is that subsection (c) requires the union affirmatively to provide advance written notice of the availability of a union resource for a campaign purpose, while subsection (d) permits candidates and members to exercise their pre-existing rights to use union bulletin boards and premises for campaigning without action by the union so long as they suffer no discrimination in that exercise.

We conclude that the bulletin board provision of the *Rules* applies to the use of Facebook pages for campaign purposes. Thus, a local union that bars or limits posts to its Facebook page may thereby prevent posting of campaign material to the page in the same way that a local union with a locked, glass-enclosed bulletin board may bar postings on that board except for official union notices and business. In such a circumstance, a *Rules* violation will result only if the administrator of the page allows it to be used for campaigning on a discriminatory basis – allowing posts or comments in support or opposition to a candidate while denying, through a ban on or removal of guest posts, the opportunity for opposing campaign material to be posted, just as the local union that posts campaign material on its locked, glass-enclosed bulletin board violates the *Rules* by preventing rival postings.

Conversely, a local union that does not ban or regulate guest posts on its Facebook page has effectively created an open bulletin board that may permissibly be used under the *Rules* for campaign activity, with a violation arising only if the administrator discriminates against candidates or their allies seeking to post campaign material after permitting the posting of campaign material of rival candidates.

In this case, guests were free to post anything, including campaign material, on the Facebook pages titled “IBT Teamsters Local 2011” and “Florida Probation Officers Teamsters Local 2011.” Therefore, were either or both of those pages owned, administered or controlled by Local Union 2011, the pages would, under our analysis, constitute the virtual equivalent of union bulletin boards on which a pre-existing right to post exists, because the campaign material fit within and was permitted by the broad posting guidelines applied to those pages by Facebook, which effectively created the pre-existing right to post there.

While campaign postings could permissibly be made on these Facebook pages supporting or opposing any candidate without violating the *Rules*, our precedents establish that such postings could not be made by the union or by a person holding himself out as the union. In *Timlin*, 2015 ESD 40 (October 16, 2015), we found that a Facebook page was a union publication because it was sponsored and administered by the joint council; we further found that tagging a photo posted to that page with “Elect George Miranda for VP on the Hoffa Hall Slate” that linked the photo to a campaign Facebook page for candidate Miranda constituted an impermissible use of union resources to support that

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candidate. By contrast, in *Hoffa-Hall 2016*, 2015 ESD 41 (October 16, 2015), we held that a Facebook page that described itself as an “independent rank and file forum ... not affiliated with the Local Union or the present officials” could serve as a host for postings, including partisan campaign postings, without violating the *Rules*.

Under the *Rules*, a union may not endorse a candidate. Article VII, Section 12(b). The *Rules* also prohibit campaign material that conveys a union endorsement of a candidate, even if the union did not make the endorsement. Thus, in *Collins & Strohl*, 2011 ESD 143 (March 2, 2011), the Fletcher slate sent a campaign flyer to all local union members, listing the return address as “International Brotherhood of Teamsters” with no return mailing address and without a disclaimer indicating that the mailing was campaign literature not endorsed by the union. We held the following:

[T]he 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 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).

Here, the page administrator posted endorsements of the Teamsters Strong slate to the Facebook page titled “IBT Teamsters Local 2011.” As such, the postings identified the person or entity making them as “IBT Teamsters Local 2011.” A viewer seeking to determine whether “IBT Teamsters Local 2011” indeed referred to the local union could have read the About section of the page, which identified “IBT Teamsters Local 2011” as “a Teamsters Local that represents the Florida Dept. of Correctional Officers in collective bargaining and represents the officers in Perc hearings.” Under these circumstances, the endorsements of Teamsters Strong were presented to the viewer as having been made by the union, in violation of the *Rules*. The endorsements were exacerbated by the action of the page administrator to change the profile photo to the Teamsters Strong campaign flyer, emphasizing the endorsement of that slate by “IBT Teamsters Local 2011.”

These impermissible endorsements were compounded by the fact that the Facebook page was originally created by the union as an organizing instrument for Florida Corrections Department employees and had frequent postings that addressed collective bargaining and terms and conditions of employment within the Florida correctional system. The Facebook page had 645 “likes” at the time the endorsement postings were made. As each endorsement was posted, notice of the posting would have gone to the Facebook pages of these 645 users. We have no information as to the identity of these 645 Facebook users, but we find it reasonable to infer that a substantial number are employed within the

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Florida correctional system and are members of Local Union 2011, given the narrow focus of the “IBT Teamsters Local 2011” Facebook page.

In contrast, we find the campaign postings to the Facebook page of “Florida Probation Officers Teamsters Local 2011” do not violate the *Rules* as an impermissible union endorsement. Although “Local 2011” is included in the title of the page, the page’s About section makes no reference to the local union, in contrast to the page of “IBT Teamsters Local 2011.” Moreover, and significantly, campaign postings for *both* slates were made to the “Florida Probation Officers Teamsters Local 2011” Facebook page, diminishing the likelihood that viewers of that page might conclude that the union endorsed one slate over another.

Protests considered in a post-election context may remedy *Rules* violations only if those violations “may have affected the outcome of the election.” Article XIII, Section 3(c). In *Richards*, 01 EAM 82 (supplemental) (May 14, 2001), Election Appeals Master Conboy held that “in an election won by a large margin, the Election Administrator can overturn it only by establishing a definitive and causal link between the violation and the outcome.” (Original emphasis.) Here, Teamsters Strong won the delegate contest by 26 votes, suggesting that a lesser causal connection between the violation and the outcome might be sufficient to order relief.

In assessing causation, we examined how Facebook posts from a given page appear in newsfeeds of users who have “liked” that page. Media has explored this subject at length. A representative description was provided by *Time* in “Here’s How Facebook’s News Feed Actually Works” (July 9, 2015):¹

[M]ost users see only a sliver of the potential posts in their network each day. Facebook says the average user has access to about 1,500 posts per day but only looks at 300. (A user who scrolls endlessly will eventually see every post from their friends and a smattering of posts from Pages they follow.)

To ensure that those 300 posts are more interesting than all the rest, Facebook says it uses thousands of factors to determine what shows up in any individual user’s feed. The biggest influences are pretty obvious. How close you are to a person is an increasingly important metric, as judged by how often you like their posts, write on their Timeline, click through their photos or talk with them on Messenger, Facebook’s chat service. The post-type is also a big factor, as Facebook hopes to show more links to people who click lots of links, more videos to people who watch lots of videos and so forth. The algorithm also assumes that content that has attracted a lot of engagement has wide appeal and will place it in more people’s feeds.

But there are other, less intuitive factors to the algorithm. Use a phone with a slow mobile connection and you may see less video. Writing “congratulations” in a comment

¹ <http://time.com/3950525/facebook-news-feed-algorithm/>; see also *The Guardian*, “How Does Facebook Decide What to Show in My News Feed?” (June 30, 2014) (“factors include: how often you interact with a friend, page or public figure; how many likes, shares and comments individual posts have received; how much you have interacted with that kind of post in the past; and whether it’s being hidden and/or reported a lot”) (<http://www.theguardian.com/technology/2014/jun/30/facebook-news-feed-filters-emotion-study>).

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signals the post is probably about a big life event, so it will get a boost. Liking an article after you clicked it is a stronger positive signal than liking before, since it means you probably read the piece and enjoyed it.

We note that the number of Facebook users who “liked” the “IBT Teamsters Local 2011” organization page was nearly 25 times greater than the margin between the winning delegate candidate with the fewest votes and the losing delegate candidate with the most votes. That, however, sheds little light on how posts to “IBT Teamsters Local 2011” were circulated or perceived by others. We have no information as to where in each “liking” user’s newsfeed postings may have appeared. Further, we have little information – nor can we obtain it – as to how individual users interacted with the “IBT Teamsters Local 2011,” the most important factor that determines where in each user’s newsfeed the notice would appear. The information we are able to draw from the “IBT Teamsters Local 2011” Facebook page itself shows that no more than one user “liked” any of the specific postings promoting the Teamsters Strong slate, while up to 9 “likes” (in one instance) were appended to postings on the page that were *not* related to the delegate election.² From this information, we view it as entirely speculative that the campaign postings for the Teamsters Strong slate that were made to the “IBT Teamsters Local 2011” Facebook page would be positioned sufficiently prominently in the newsfeeds of users who at unknown previous points had “liked” the page that they would even notice them. As such, continuing the analogy to a bulletin board, we conclude that the campaign postings appeared on the board (*i.e.*, the newsfeed), but the likelihood is nearly universal that they would not be the only postings there and highly likely that they would be buried below other postings of more immediate interest and concern to each user. Accordingly, we cannot find that users in any significant number saw the campaign postings made to “IBT Teamsters Local 2011.” Without such evidence, we do not find a definitive or causal nexus between the *Rules* violation and the outcome of the election.

For these reasons, we DENY the protest.

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,

² Examples of multiple “likes” for postings on “IBT Teamsters Local 2011” include a new profile banner exhorting “Safety Dignity and Respect for State Correctional Workers” (9 “likes,” 2 “shares”), and a petition seeking equal pay for correctional workers (4 “likes,” 1 “share”). In contrast, the campaign postings for Teamsters Strong had 1 “like” (February 1 posting) and 1 “like” (February 2 posting), respectively.

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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
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