

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

IN RE: TEAMSTERS UNITED,)	Protest Decision 2016 ESD 258
)	Issued: June 27, 2016
Protestor.)	OES Case Nos. P-307-062716-NA
_____)	

Teamsters United filed a pre-election protest pursuant to Article XIII, Section 2(a) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that Kevin Moore violated the *Rules* by making partisan remarks during a speech at the IBT convention.

Election Supervisor representative Joe Childers investigated this protest.

Findings of Fact and Analysis

On the morning of the first day of the IBT convention, Kevin Moore addressed the convention at the invitation of General President Hoffa. Moore spoke on the subject of international trade, the proposed Trans-Pacific Partnership (TPP) trade agreement among twelve Pacific Rim nations, and the proposed Transatlantic Trade and Investment Partnership (TTIP) trade agreement between the United States and the European Union. Moore is president and principal officer of Local Union 299 and one of three IBT Trustees.

Moore opened his remarks with the following: “Good morning delegates and guests!” Then, surveying the more than 1,500 delegates seated on the convention floor, he remarked, “Boy, that’s a lot of red!” And then, measuring his words, he emphasized, “That is a lot of red!”

Moore was referring to the delegates who were wearing red Hoffa-Hall 2016 vests. As such, it was a statement in support of that slate. Much of the assembly responded with loud applause and cheering.

Moore told our investigator his remarks were “spontaneous” and not pre-planned.

Counsel for the Hoffa-Hall 2016 slate stated that Moore “was speaking officially and not for the campaign.”

Article VII, Sections 12(c) of the *Rules* states that “Union funds, facilities, equipment ... personnel, etc. may not be used to assist in campaigning unless the Union is reimbursed at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance.”

Rule 46 of the Convention Rules¹ declares the convention floor as a “politically neutral” location.

¹ Moore was scheduled to take the rostrum at 11:12 a.m. The convention rules were adopted less than ten minutes earlier.

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In *Martinez*, 2001 EAD 414 (July 27, 2001), *aff'd*, 01 EAM 87 (August 30, 2001), the Election Administrator found that the IBT had violated the *Rules* by displaying on the large screens employed at the 2001 International convention slogans that had been adopted by or become closely identified with the Hoffa campaign. The Election Appeals Master explained his affirmance of the decision as follows:

To put the matter as clearly as possible, the transmission of an explicitly defined partisan campaign slogan through union resourced facilities without adherence to the narrow and authorized level playing field access provided for in the *Rules*, is a per se violation of the *Rules*.

We find that Moore's comments were an explicit partisan campaign statement made in a politically neutral location during a time when he was granted the exclusive right to address the convention for another purpose. As such, his partisan remarks violated Article VII, Section 12(c) of the *Rules* and Rule 46 of the convention rules.²

This holding is consistent with the analogous but not directly applicable language of Article VII, Section 5 of the *Rules*, which addresses campaigning at local union meetings. That provision states, among other things, that a local union "need not grant [a] candidate the opportunity to address the meeting for the purpose of campaigning unless a similar opportunity is granted to another candidate."

Finally, the provision states that a local union "shall not discriminate or permit discrimination in favor of or against any candidate in conjunction with its meetings or otherwise. This requirement shall apply not only to formal presentations by or on behalf of candidates but also to informal campaign activities, such as, for example, comments on candidates during meetings ..."

The IBT Convention determines many matters of union policy and conducts much business apart from International Officer candidate nominations. That activity is conducted in the interests of the Union and, as the Convention's own rules provide, the floor is a politically neutral zone for that union business. Moore's partisan comments from podium violated that neutrality rule.

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. "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).

² The *Rules*, the Supplemental Election Supervisor Rules for the 29th IBT Convention, and the convention rules provide specific periods during which nomination and seconding of nomination of candidates for International office and acceptance speeches by candidates for General President and General Secretary-Treasurer take place. These periods by their nature are not politically neutral and are therefore exempt from the general prohibition on partisan remarks made at the convention.

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We order Kevin Moore to cease and desist from further violation of the *Rules* and, specifically, to cease and desist from making partisan remarks on the convention floor except during times expressly set aside for nomination of candidates.

We order each slate to deliver a copy of this decision to each candidate on its slate no later than 9 a.m. PDT on Tuesday, June 28, 2016, which will serve to reinforce the *Rules*' requirements with respect to partisan activity on the convention floor. We order each slate to certify by signed declaration its compliance with this directive by 5 p.m. PDT on Tuesday, June 28, 2016.

Finally, to emphasize that partisan activity such as Moore's violates the *Rules* because of the appearance that they are union-authorized and are made from the rostrum without an effective opportunity of opposing candidates to respond under similar circumstances, we order Moore to pay a fine of \$250 to the Office of the Election Supervisor no later than 5 p.m. PDT on Tuesday, June 28, 2016. The fine is strictly remedial in nature and is intended to demonstrate to candidates the importance of refraining from partisan activity during the portions of the convention other than the nominations of candidates and acceptance speeches by candidates for General President and General Secretary-Treasurer.

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
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