

**ELECTION APPEALS MASTER
FOR THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

IN RE: O'BRIEN-ZUCKERMAN 2021, Protestor.
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**2020 EAM 3
ISSUED: September 4, 2020
APPEAL OF ELECTION SUPERVISOR
PROTEST DECISION 2020 ESD 14
OES CASE NO. P-021-081320-NE**

Protest Decision 2020 ESD 14 (ESD 14), which addresses a protest filed by O'Brien-Zuckerman/Teamsters United 2021 ("OZ/TU 2021"), a slate of candidates for International Office, was issued on August 25, 2020 (OES Case No. P-021-081320-NE). The protest alleged that a Teamster Power slate candidate violated the Rules for the 2020-2021 IBT International Union Delegate and Officer Election (the "Rules") by campaigning on behalf of himself and the entire Teamster Power slate utilizing official IBT and Local 331 titles without the proper disclaimers.

The Office of Election Supervisor ("OES") denied the protest and ordered OZ/TU 2021 to pay the OES \$1,000 by September 1, 2020 to cover the cost of the work associated with investigating the protest and preparing the report.

On August 27, 2020, OZ/TU 2021 appealed the decision imposed by the OES and requested a stay of the pecuniary remedy pending resolution of the appeal.¹ On August 28, 2020, the Election Appeals Master granted the stay and, by Notice of Hearing, scheduled a telephonic hearing for September 1, 2020.

On August 31, 2020 the Election Supervisor submitted a written response to the appeal (OES August 31 Letter).

¹ OZ/TU 2021 filed an original appeal on August 27, 2020, which was subsequently amended that same day.

A telephonic hearing was held on September 1, 2020. The following individuals attended the hearing: Jeffrey J. Ellison, Esq., and Peter Marks, Esq., on behalf of the Election Supervisor; Edward Gleason, Esq., on behalf of Appellant OZ/TU 2021; and Patrick J. Szymanski, Esq., on behalf of the Teamster Power slate.

Protestor's Claims

On August 12, 2020, IBT Officers Election Candidate Marcus King, with other local union officers, campaigned at a UPS facility in New York City on behalf of himself and the Teamster Power slate. OZ/TU 2021 claimed that the candidates violated Article VII, Section 12(b) of the Rules and Section III(B)(7) of the *Advisory on Campaign Contributions, Expenditures and Disclosure* (the "Campaign Advisory") by utilizing their official IBT and Local 331 titles without proper disclaimers.

Specifically, OZ/TU 2021 claimed that Candidate King advertised his official union titles and his position with the IBT on a banner prominently affixed to the front of a table at the campaign event where he was collecting accreditation signatures. The banner, according to OZ/TU 2021, did not contain the required disclaimer that Candidate King's official union titles and IBT positions were "for identification purposes only." The failure to include the disclaimer may cause members to believe that Candidate King's local union or the IBT endorsed his candidacy, which could constitute a violation of the Rules. *See* Section III(B)(7) of the Campaign Advisory.

Additionally, OZ/TU 2021 claimed that a Teamster Power Facebook post describing the August 12th campaign event included a photo depicting Candidate King's banner – without the appropriate disclaimer – in further violation of the Rules. According to OZ/TU 2021's protest,

the Teamster Power slate was obligated to post any image containing official IBT or local union titles with the appropriate disclaimer, “either in the image or in the narrative of the [Facebook] post.” *See* OZ/TU/2021 Pre-election protest dated August 13, 2020, footnote 2.

Finally, in its appeal, OZ/TU 2021 presented a new claim that the appropriate disclaimer should have been digitally embedded in the Facebook image of the banner.

Findings and Determination of the Election Supervisor

The Election Supervisor conducted an investigation and inspected the banner Candidate King used at the August 12th campaign event and determined that it listed his current union positions and titles. Further, in red letters, the banner contained the following disclaimer: “***Official IBT Titles and Organizations for Identification Only***.” The banner was fully visible at the August 12th campaign event and complied with the Rules.

The Election Supervisor also examined the Teamster Power Facebook page, which revealed that the post regarding the August 12th campaign event also contained the appropriate disclaimer and complied with the Rules. A copy of the post, which was submitted as an exhibit to the protest, stated:

“Vairma/Herrera 2021 – Teamster Power Slate

#teamsterpowerslate candidates Tommy Gesualdi (East Region VP) Marcus King (At-Large VP), and Bernadette Kelly (At-Large VP) hitting the Local 804 UPS facility in NYC. Great support from the members on these petitions. Thanks for all the great support the AM! We even had a visit from our old friend George Miranda! Now you can help the #teamsterpowerslate qualify for the 2021 IBT election ballot from the safety of your own home, worksite or smart phone!

GO TO LINK:

www.ibtvoteaccredit.org/teamsterpowerslate

Offical IBT titles and organizations for identification purposes only”

A collage of five photos accompanied the Facebook post promoting images from the August 12th campaign event. One photo portrayed Candidate King and others standing behind his campaign banner, which was displayed in a way that excluded the bottom of the banner where the disclaimer was located.

Based on its investigation and review of the facts, the Election Supervisor concluded that OZ/TU 2021 did not present evidence of the claimed violation and denied the protest. The Election Supervisor ordered OZ/TU 2021 to pay \$1000 to the OES to cover part of the costs incurred to investigate the protest and prepare the report.

Finally, the Election Supervisor opposed OZ/TU 2021's submission of the new claims presented during the appeal and, during the hearing, explained that they were nevertheless meritless.

Decision of the Election Appeals Master

The Rules require that "it shall be the burden of the protestor to present evidence that a violation has occurred." Article XIII, Section 1. This is a low standard and can be met by, among other things, presenting documents, emails, photos, videos, eyewitness accounts, and even hearsay to support a claim. While the standard for filing protests is low, the Election Supervisor has consistently denied protests when the protestor offers no evidence to corroborate and support the allegations. *See Local Union 726*, 2006 ESD 91 (February 22, 2006) (protest denied because "the sum of protestor'[s] evidence was her bare claim that the candidates were ineligible because she 'never saw' them before"); *Peel*, 2006 ESD 277 (May 28, 2006) (protest denied because allegations either "did not state violations of the Rules or had no bases in fact").

There is no dispute that Candidate King’s campaign banner displayed at the August 12th campaign event contained the appropriate disclaimer. With respect to the image of the banner on the Teamster Power Facebook site, the post described the campaign event and contained the appropriate disclaimer. Notably, the original protest presented by OZ/TU 2021 made it clear that the Facebook disclaimer should be contained “either in the image **or the narrative of the post.**” *See* Pre-election protest dated August 13, 2020, footnote 2. (emphasis added). Here, the disclaimer was contained in the narrative of the post. Given these facts, the protestor did not present evidence that the claimed violation had occurred.

For the first time on appeal, OZ/TU 2021 submitted new arguments and evidence that the disclaimer should have been digitally embedded in the Facebook photo itself. This claim, however, was not presented or addressed in the original protest. Absent extraordinary circumstances, the Election Appeals Master will not consider new claims nor evidence submitted during appeal and, based upon the facts of this case, will not be considered now.²

For these reasons – and the reasons contained in ESD 14 – we AFFIRM the Election Supervisor’s determination denying the protest.

As to the remedy in this matter, it is well settled that if the “Election Supervisor determines that the Rules have been violated...the Election Supervisor may take whatever remedial action is appropriate.” Article XIII, Section 4. The Election Supervisor’s “discretion in fashioning an appropriate remedy is broad and entitled to deference.” *Hailstone & Martinez*, 10 EAM 7 (September 14, 2010). Moreover, remedies often serve to educate the parties and the membership as to the requirements of the Rules and to deter future Rules violations. *See Timlin*, 2015 ESD 40 (October 16, 2015).

² For similar reasons, we do not reach OZ/TU’s other arguments, namely that the Teamster Power slate intentionally cropped the photo to exclude the disclaimer. There is also no evidence in the record to support this claim.

In determining the remedy for this action, the Election Supervisor ordered OZ/TU 2021 to pay \$1000 to cover a portion of the costs of the investigation because there was no evidence that the claimed violation had occurred. The Election Supervisor correctly concluded that the protestor relied on speculation that the disclaimer was missing to support its claim.

The purpose for ordering the payment was remedial in nature and designed to educate the parties with respect to the Rules' requirements and to deter further violations. The remedy here achieves these goals and serves to ensure that, in the future, parties will conduct reasonable inquiries prior to submitting protests and present evidence to support claimed violations of the Rules. As such, the remedy was well within the Election Supervisor's broad remedial authority and is AFFIRMED.

OZ/TU 2021 shall pay the OES \$1,000, by check delivered to the Office of Election Supervisor in Washington, D.C., no later than five business days following the issuance of this decision.

SO ORDERED,

Hon. Barbara S. Jones (Ret.)
ELECTION APPEALS MASTER

DATED: September 4, 2020

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