

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

<b>IN RE: FRANK HALSTEAD,</b>	)	Protest Decision 2021 ESD 135
	)	Issued: August 4, 2021
<b>Protestor.</b>	)	OES Case No. P-159-071721-FW
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Frank Halstead, member of Local Union 572, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2020-2021 IBT International Union Delegate and Officer Election (“Rules”). The protest alleged that Joint Council 7 and Rome Aloise violated the Rules by using union resources to support or attack candidates in the International officers election.

Election Supervisor representative Jeffrey Ellison investigated this protest.

**Findings of Fact**

Joint Council 7 is comprised of local unions sited mainly in Northern California. Rome Aloise is the president of the joint council. The joint council publishes a quarterly newsletter titled *Joint Council 7 Teamster*. The July/August/September 2021 issue, mailed to some 83,000 members of the joint council on or about July 14, 2021, consisted of 8 pages.

The President’s Report, authored and accompanied by a photo of Rome Aloise, appeared at the top of the newsletter’s second page. The President’s Report was also posted on Joint Council 7’s website. In the first two paragraphs of the Report, Aloise discussed the just-completed IBT convention with comments not relevant to this protest.

Aloise then turned to the International officers election. In the third paragraph of his report, he wrote:

For the next few months, we will be involved in the campaign for a new administration at the IBT. Ballots will go out sometime in October, and the count will be held in mid-November.

His fourth paragraph set the stage for the paragraphs that followed. It read:

Unfortunately, our union seems to be divided much along the same lines as our country. There is a deep split between the two slates running. Jim Hoffa is retiring and a number of long-time members of the General Executive Board are not running for re-election (including me). Whichever side wins will bring in an almost entirely new group of officers.

Aloise’s fifth and sixth paragraphs prompted the filing of the protest. In them, he wrote:

As we have experienced in the past, one group is supported by an outside, corporate-sponsored entity, that is, in my opinion, out only to undermine and weaken our union. Unfortunately, when Ron Carey was elected in the 1990’s and was supported by this group, his administration bankrupted and almost destroyed

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the Teamsters Union as we know it. They say the things that many members like to hear, but also run a campaign of insults, mistruths and outright lies.

Ultimately, I was happy to be part of the group of Teamsters that defeated these people and brought our union back to the stature that it now has. It is important that we do not let this happen again. I ask each member to talk to your local union officers and officials, get their opinions of who is best equipped to run our union in the future, and who will help our local unions represent our members and their families in the best way possible. Hopefully, your local union will be constantly reminding you to vote, vote, vote when the ballot is mailed to your house.

Halstead's protest alleged that the President's Report – and the fifth and sixth paragraphs of it in particular – violated the Rules because they appeared in a Joint Council 7 publication and attacked a slate of candidates and an independent committee supporting that slate.

Aloise told our investigator that the slate of candidates he referred to with the common noun "one group" in the first sentence of the fifth paragraph was, in his words, "the OZ slate," more formally known as O'Brien-Zuckerman 2021 slate. "That's obvious," he told our investigator. He further stated that the "outside, corporate-sponsored entity" he mentioned in the same sentence was TDU, an independent committee of members under the Rules. Aloise stated that his report referred to TDU in the second and third sentences of the fifth paragraph and in the first sentence of the sixth. The Report recounted his version of what happened to the union the last time a candidate for General President supported by TDU was elected, concluding "[i]t is important that we do not let this happen again."

Aloise agreed with our investigator that, if the proper names of the entities he referred to in the fifth paragraph, first sentence, were placed into the sentence where he used common nouns as substitutes, the sentence would read: "As we have experienced in the past, one group, *the OZ slate*, is supported by an outside, corporate-sponsored entity, *TDU*, that is, in my opinion, out only to undermine and weaken our union."

Although he said it was "obvious" that he was referring to the O'Brien-Zuckerman 2021 slate and TDU in his report, he defended against the protest's allegation, asserting he had not used the proper names of the entities and therefore did not violate the Rules. Nonetheless, he agreed that his writing urged readers not to support a slate of candidates and recounted his reasons in some detail for his opinion.

Aloise acknowledged that the Rules prohibit use of a union publication to support or attack a candidate. When our investigator asked why, in the sixth paragraph, he had instructed readers to "talk to your local union officers and officials" about which candidates to support rather than simply telling readers directly who to vote for, Aloise stated that the Rules prohibited him from stating his endorsement in a union publication. For that reason, he directed readers to their local union officials. Investigation showed that the majority of local unions within Joint Council 7 are led by union officials who have endorsed the Teamster Power slate, the slate opposing the O'Brien-Zuckerman 2021 slate in the International officer election. This complement of local unions represents the large majority of members of the joint council.

Debra Chaplan serves as editor of the newsletter and has for more than 20 years. She stated she is familiar with the Rules' prohibition on use of union publications to support or attack a candidate. In advance of printing of the newsletter that is the subject of this protest, Chaplan contacted the OES regional director for the geographic area that includes Joint Council 7 to determine whether a photo of delegates who attended the in-person convention gathering the joint council sponsored could be used in the newsletter. At least one of the delegates depicted in the photo wore partisan clothing, which was legible in the photo. Chaplan told our investigator that the regional director approved use of the photo only on the condition that the partisan message was obscured so that it could not be read. Chaplan used the photo after pixelating the image to obscure the partisan message in the clothing. Despite the care she exercised to insure that the photo did not violate the Rules, Chaplan stated that she did not submit Aloise's President's Report to the OES official. She stated that "Rome was elusive" with the language he used in the report and, for this reason, she did not recognize that the report might violate the Rules.

After the protest was filed and distributed to Aloise, among other interested parties, Aloise instructed Chaplan to remove the President's Report from Joint Council 7's website or modify it to address the protest's allegations. According to Chaplan, she removed article from the website Monday morning, July 19, 2021. Later that same day, she posted a modified version of the Report. The edited version maintained the original third paragraph verbatim, deleted the fourth and fifth paragraphs in their entirety, and modified the sixth paragraph to read as follows:

I ask each member to investigate who is best equipped to run our union in the future, and who will help our local unions represent our members and their families in the best way possible. Hopefully, your local union will be constantly reminding you to vote, vote, vote when the ballot is mailed to your house.

Chaplan told our investigator that, in editing the Report, she removed the portions of the Report that attacked candidates in the election.

### **Analysis**

Article VII, Section 8 of the Rules declares that "[n]o publication or communication financed, sponsored or used, directly or indirectly, by a Union ... may be used to support or attack any candidate or the candidacy of any person."

Article XI, Section 1(b)(3) provides that no union may contribute, or shall be permitted to contribute, directly or indirectly, anything of value, where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate. Article XI, Section 1(b)(6) provides that no union funds or other things of value shall be used, directly or indirectly, to promote the candidacy of any individual. Article XII adopts expressly by reference LMRDA Section 401(g), which prohibits union assistance to campaigning.

The *Joint Council 7 Teamster* is a union publication within the meaning of Article VII, Section 8 and a "thing of value" within the meaning of Article XI, Section 1(b)(3) and (6).

With respect to LMRDA Section 401(g), the court in *Reich v. Teamsters Local 843*, 869 F.Supp. 1142 (D.N.J. 1994), reviewed the case law under Section 401(g) with regard to campaign content in union-sponsored communications:

To establish a violation of Section 401(g), it is not necessary that the questioned publication be explicitly or implicitly committed to endorsing specific candidates or attacking the opposition. Rather its overall tone, timing, and content must be evaluated to determine whether there is any blatant encouragement of the incumbent [or challengers]. *Donovan v. Local 719, UAW*, 561 F.Supp. 54, 58 [113 LRRM 2902, 2906] (N.D. Ill. 1982); accord [*Brock v. Connecticut Union of Telephone Workers*, 703 F.Supp. [202,] at 206, *Usery v. International Org. Masters, Mates and Pilots*, 538 F.2d 946, 949 (2d Cir. 1976); [*Hodgson v.*] *Liquor Salesmen's Union Local No. 2*, 334 F.Supp. at 1369, 1377, *aff'd*, 444 F.2d 1344 (2d Cir. 1971); *Wirtz v. Independent Workers Union of Florida*, 272 F.Supp. 31, 33 (M.D. Fla. 1967). Regarding content, federal regulations interpret LMRDA §401(g) as ‘prohibit[ing] any showing of preference’ by union-financed publications through praise, endorsement, criticism or attack directed towards a candidate. 29 C.F.R. §452.75 (1994); accord *McLaughlin v. American Fed’n. of Musicians*, 700 F.Supp. 726, 734 (S.D.N.Y. 1988) (‘promotion of a candidate under §401(g) includes both affirmative statements about the candidate and negative references about the opposition.’).

The tone, timing and content test has been the mainstay for examining the alleged use of union publications to support or attack a candidate under Article VII, Section 8(a) of the *Rules*. *Martin*, 95 EAM 18 (October 2, 1995). “To establish that a challenged article does not impermissibly promote a candidate, the publisher of the article must demonstrate that the article’s tone, timing and content, considered together, reflect that it is a valid news article. Specifically, with regard to its tone and content, a challenged article must objectively address a newsworthy subject unrelated to the International election process.” *Kilmury*, 96 EAM 109 (February 28, 1996) (emphasis in original).

The protest here does not present a close case. Joint Council 7 and Aloise have failed completely to establish that the portions of Aloise’s President’s Report quoted in this decision constituted a valid news article. Rather, as is evident both from the plain language of paragraphs 5 and 6 of his report as well as Aloise’s admissions concerning them, the report constituted an explicit attack on the candidates Aloise opposed. While Aloise has the personal right as a union member to support or oppose any candidate, Article VII, Section 12(a), he may not use the union publication to express his electoral preference.

We further find that Aloise’s decision to include the electoral attack in the President’s Report was made with knowledge that the Rules prohibited it.

For these reasons, 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).

We order Joint Council 7 and Aloise to cease and desist from using union publications or other things of value to support or oppose any candidate or slate of candidates for International office. We further order Joint Council 7 and Aloise to cease and desist from any further violations of the Rules.

To remedy the campaign violation, we order Joint Council 7 to pay the expense of printing and mailing to all addresses to whom the July/August/September 2021 edition of *Joint Council 7 Teamster* was mailed a campaign flyer to be supplied by the O'Brien-Zuckerman 2021 slate. The remedial mailing must be made no later than August 18, 2021. The expense for which Joint Council 7 is liable under this remedy is the cost of #10 envelopes, mailing labels or address-labeling process, paper and printing for a one-sheet, two-sided flyer printed in 4-color process on white paper, and mailed at not less than first class pre-sort postage. Joint Council 7 is not responsible for artwork or layout expense associated with the mailing. Joint Council 7 shall supply the address list used to mail the July/August/September 2021 edition of *Joint Council 7 Teamster* to the mail house designated by the O'Brien-Zuckerman 2021 slate. Joint Council 7 shall provide such guarantee of payment as the designated mail house shall reasonably require and shall do so in a time that will not delay the mailing.

We order the foregoing method of mailing, provided, however, that Joint Council 7 may accomplish the mailing to recipients with California addresses by inserting the one-page, two-sided campaign flyer as a separate sheet at the centerfold of a special edition, 4-page *Joint Council 7 Teamster* it intends to mail on August 18, 2021, the subject of the special edition being the recall election for California Governor Gavin Newsom, in lieu of inserting the flyer in #10 envelopes and mailing them by first-class mail to those recipients.<sup>1</sup> If Joint Council 7 elects to mail the campaign flyer to recipients with California addresses as an insert in the special edition of the *Joint Council 7 Teamster*, it must accomplish the mailing no later than August 18, 2021, and must use the same class of postage it used for mailing the July/August/September 2021 edition. The method of mailing to recipients with addresses outside California must be at not less than first class pre-sort postage rate. Any mailing conducted by or under the auspices of Joint Council 7 is an observable event that a representative of the O'Brien-Zuckerman 2021 slate may attend. We order

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<sup>1</sup> We do not extend the option to Joint Council 7 to insert the campaign flyer in the special edition newsletter sent to addresses outside California. Because the principal topic of the special edition newsletter is the California gubernatorial election, we conclude that recipients outside California who are mailed the newsletter will be unlikely to open it to find the campaign flyer, leaving the violation committed among those members unremedied.

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Joint Council 7 to submit a compliance declaration, made under penalty of perjury, no later than August 20, 2021, documenting its compliance with the mailing remedy ordered here.

Aloise has been a repeat violator of the Rules over several election cycles. His violations include the following:

- *Ostrach*, 2000 EAD 57 (December 6, 2000), *aff'd*, 2001 EAM 15 (January 19, 2001): Aloise violated the Rules by threatening to withhold union support for a strike action because the local union officer leading the strike was a candidate for office on the slate Aloise opposed. Aloise was ordered to cease and desist from further Rules violations. “Only because Aloise did not in fact carry out his threat, and indeed, mobilized his local behind Rempfer’s strike efforts is a more draconian penalty not appropriate.” 2001 EAM 15, p. 2.
- *Certain Campaign Contributions*, 2006 ESD 341 (2006): We found Aloise had impermissibly used union resources to create and fund a campaign account. We ordered Aloise and the others involved to cease and desist from further Rules violations and to mail a remedial notice to the local union membership.
- *Reyes*, 2010 ESD 59 (December 22, 2010), *aff'd*, 11 EAM 9 (January 11, 2011): We found Aloise violated the Rules by using union resources to solicit funds for his campaign for International office. We ordered him to refund the contributions he obtained. We further ordered him to pay a fine of \$3,856.
- *Bales*, 2011 ESD 286 (June 28, 2011): We found that Aloise violated a member’s free speech rights under the Rules by bringing internal union charges against him. We further found that Aloise had not been deterred by previous remedial orders. Accordingly, we fined him \$5,000.

Aloise’s violation in the instant matter created an unlevel playing field. He committed this violation knowing that he was not permitted to use union resources to campaign. For this reason, we order Aloise to reimburse Joint Council 7 the sum of \$7,500 for the printing and mailing costs incurred in the remedial mailing we order in this matter and for the legal expense incurred in responding to this protest. We order that the reimbursement be accomplished by personal check no later than August 18, 2021. We further order Aloise to submit a compliance declaration, made under penalty of perjury, that documents his payment of the ordered funds to the joint council and that further states that he is personally responsible for the reimbursement, that he paid it solely from his personal funds, that no other person, union entity, IBT member, candidate, slate, campaign, or employer has transferred or contributed any funds to him for the purpose of paying all or part of the reimbursement, and that he will refuse any such offer, transfer, or contribution. We further order the secretary-treasurer of Joint Council 7 to submit a compliance declaration, made under penalty of perjury, that states that no joint council funds were paid or will be paid to Aloise in whole or in part to reimburse him for the payment ordered here or to waive the payment he is ordered to make. Such declarations must be submitted to OES no later than August 20, 2021.

Finally, we order Joint Council 7 to distribute the notice attached to this decision to all members to whom it sent the July/August/September 2021 edition of *Joint Council 7 Teamster*. For all recipients who are sent the campaign flyer in envelopes by first class mail, the notice must

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be printed on a separate sheet of paper and included in the envelope. For the recipients who receive the campaign flyer as a separate sheet inserted in the special edition of *Joint Council 7 Teamster*, the notice must be printed at the top of page 2 of the special edition without OES letterhead. Joint Council 7 is reminded that the special edition must be submitted for pre-publication review under Article VII, Section 8(e) of the Rules.

The notice, with letterhead, must also be posted on Joint Council 7's website in the "Teamster News" location and again in the "President's Report" location, commencing August 6, 2021. The notice must be maintained in the first, uppermost position in each such location through August 31, 2021, at which point it may be removed from each location.

We retain jurisdiction to supervise implementation of the remedies ordered here.

This order is strictly remedial in nature and is intended to restore a level playing field and deter further Rules violations. A remedial order of the Election Supervisor is immediately effective, unless stayed. *Lopez*, 96 EAM 73 (February 13, 1996).

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. Any party requesting a hearing must comply with the requirements of Article XIII, Section 2(i). All parties are reminded that, absent extraordinary circumstances, no party may rely in any such appeal upon evidence that was not presented to the Office of the Election Supervisor. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Barbara Jones  
Election Appeals Master  
IBTappealsmaster@bracewell.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, all within the time prescribed above. Service may be accomplished by email, using the "reply all" function on the email by which the party received this decision. A copy of the protest must accompany the request for hearing.

Richard W. Mark  
Election Supervisor

cc: Barbara Jones  
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Richard W. Mark  
*Election Supervisor*

## **NOTICE OF TEAMSTERS ELECTION RULES VIOLATION**

The Election Rules for election of Teamster International Officers prohibit union officials from using union publications to support or attack any candidate for International office. Individual members have the right to support or oppose candidates, but the union itself – and the union’s publications – must remain neutral.

The Election Supervisor has found that Joint Council 7 and its president, Rome Aloise, violated the Election Rules by using the joint council’s newsletter to attack a slate of candidates for International office.

The Election Supervisor will not tolerate violation of the Rules. The Election Supervisor has ordered Joint Council 7 to mail, at joint council expense, campaign literature for the slate its newsletter attacked to all members in the joint council. The Election Supervisor has also ordered Aloise to reimburse the joint council the sum of \$7,500 for costs it incurred in connection with this violation.

The Election Supervisor has issued this decision in *Halstead*, 2021 ESD 135 (August 4, 2021). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2020/2021esd135>.

Any protest you have regarding your rights under the Election Rules or any conduct by any person or entity that violates the Rules should be filed with Richard W. Mark, 1990 M Street, N.W., Suite 650, Washington, D.C. 20036, telephone: 844-429-8683, fax: 202-925-8922, email: [electionsupervisor@ibtvote.org](mailto:electionsupervisor@ibtvote.org).