

ELECTION APPEALS MASTER

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IN RE: TEAMSTERS UNITED

Protestor.

2015-2016 EAM 42 (KAR)  
DECISION RE ESD 386

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Protest Decision 2017 ESD 386 (ESD 386) was issued on February 16, 2017. ESD 386 addressed alleged *Rules* violations set forth in post-election protest P-419, which was filed by Teamsters United on December 3, 2016. In pertinent part,<sup>1</sup> Protest 419 asserts that certain pre-election conduct by the Hoffa-Hall campaign may have affected the outcome of the International officer elections. All of the alleged pre-election misconduct was the subject pre-election protests that have been resolved, denied, or granted by the Election Supervisor in decisions that were either not appealed or were affirmed by the Election Appeals Master.

Decision of the Election Supervisor

In P-419, the protestor identified 22 specific protests for which decisions had not issued at the time that P-419 was filed and contended that the *Rules* violations alleged in these 22 protests “in the aggregate” may have affected the outcome of the election. These 22 protests were decided by the Election Supervisor prior to the issuance of ESD 386. The protestor also asserted that remedies ordered in 15 other protest decisions in which *Rules* violations were previously found were inadequate to cure those violations.

With respect to the 22 protests for which decisions had not issued at the time that P-419 was filed, the Election Supervisor noted that:

The lone protest from this list that was granted was *Zuckerman*, 2016 ESD 341 (December 15, 2016), where we found that Dennis Corrigan violated the *Rules* by striking Richard Galvan when Galvan was campaigning. We ordered a remedy against Corrigan. However, we held that Corrigan’s actions did not substantially interfere with the campaign activity of Galvan or Teamsters United. We therefore ordered no additional remedy. *Zuckerman* appealed the decision on this latter point, contending through counsel that Corrigan’s violation impacted Teamsters United. The Election Appeals Master denied the appeal and affirmed our decision, writing: “The appellant has not demonstrated that the Election Supervisor abused his discretion in failing to impose additional unspecified remedial relief for the violation.” *Zuckerman*, 2017 EAM 36 (January 13, 2017). The other 21 protests were either denied (15), resolved (4), or

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<sup>1</sup> One aspect of P-419 was decided in ESD 378, with respect to which an appeal is pending.

deferred for further consideration of a remedy specific to an individual. \* \* \*

Accordingly, because none of the protests that were pending decision at the time of the election resulted in findings of *Rules* violations that interfered with Teamsters United's campaign rights under the *Rules*, we find no basis for the protestor's contention that the conduct alleged in the unresolved protests impermissibly affected the outcome of the election.

With respect to the 15 protest decisions in which *Rules* violations were previously found, the Election Supervisor "categorically" rejected the contention that the remedies ordered did not fully remedy the *Rules* violations found, holding that:

Under the protest procedures laid out in Article XIII of the *Rules*, the protestor had available to it the right of appeal for a decision in which the protestor deemed the ordered remedy unsatisfactory. Failure to appeal, withdrawal of appeal once filed, or affirmance of the remedy ordered by the Election Appeals Master rendered our decision final and binding. The protestor will not be heard later that a remedy previously ordered and implemented was unsatisfactory or ineffective, absent a new violation of the *Rules*. See *Durham*, Post-75-IBT (January 10, 1992) (M. Holland, Election Officer) (protest rulings that are final and binding under the *Rules* are conclusive as to the facts and issues raised and cannot be relitigated in a subsequent protest); *Cheatem*, Post-27-EOH (August 21, 1997) (B.Z. Quindel, Election Officer) (same).

The Election Supervisor further held:

Finally, the aspect of the protest addressed in this decision is not a proper subject for a post-election protest under the *Rules*. Post-election protests are defined as "[p]rotests concerning election day or post election day conduct." Article XIII, Section 3. This protest did not identify conduct that occurred on or after the date the results in the International officers election were announced. To the contrary, it cited only conduct that had occurred previously and either was remedied or was found not to violate the *Rules*. Accordingly, we conclude that this aspect of the protest was untimely filed. *Berg*, 2006 ESD 296 (June 4, 2006), *aff'd*, 2006 EAM 44 (June 15, 2006).

### Appeal of ESD 386

On February 21, 2017, Teamsters United filed an appeal of ESD 386 (TU Appeal). The TU Appeal focuses on seventeen (17) decisions by the Election Supervisor in which a pre-election *Rules* violation was found. The protestor/appellant contends that the Election Supervisor abused his discretion by failing to re-examine these decisions and by failing to conclude that the pre-election misconduct "in the aggregate" may have affected the outcome of the election, and that the remedies imposed on a case-by-case basis were not sufficient to cure the cumulative effect of the violations. The protestor/appellant argues that reexamination of the pre-election protests is warranted because the election was very close.

## Hearing on Appeal

By Notice of Hearing sent to all identified Interested Parties, a telephonic hearing was scheduled for March 15, 2017. On February 27, 2017, the Election Supervisor submitted a written response to the appeal. On March 13 and 14, the Election Appeals Master received pre-hearing submissions from Teamsters United, the Hoffa Campaign, IBT, and TDU, as well as a supplemental submission from the Election Supervisor.

A telephonic hearing on the appeal was held on March 15, 2017, which was attended by Richard Mark, Esq., Election Supervisor, Jeffrey J. Ellison, Esq., on behalf of the Election Supervisor, Paul Dever (OES), Julian Gonzalez, Esq., on behalf of Teamsters United, David J. Hoffa, Esq., on behalf of the Hoffa Campaign, Bradley T. Raymond, Esq., on behalf of the IBT, Barbara Harvey, Esq., on behalf of TDU, Catherine A. Highet, Esq., on behalf of Timothy Sylvester, and David Suetholz, Esq.

## Decision of the Election Appeals Master

Based upon precedent from three Election Officers and Election Appeals Master Conboy-*Durham*, Post-75-IBT (January 10, 1992) (M. Holland, Election Officer) (protest rulings that are final and binding under the *Rules* are conclusive as to the facts and issues raised and cannot be relitigated in a subsequent protest); *Cheatam*, Post-27-EOH (August 21, 1997) (B.Z. Quindel, Election Officer) (same); *DeBella*, PR-409-JC18 NYC (January 28, 1999) (M. Cherkasky, Election Officer), *aff'd* 99 EAM 424 (February 23, 1999) (K. Conboy, EAM) (same)--I find that remedied violations are not subject to collateral attack in a post-election context, and that Teamsters United therefore cannot prevail on its assertion that *Rules* violations addressed in the Election Supervisor's protest rulings issued over the eighteen-month course of the delegates and International officers election warrant a rerun of the International officers election.

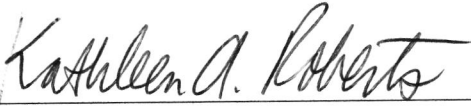
Notwithstanding this above-cited precedent, Teamsters United points to the *Cheatam* decision in support of its request that the Election Appeals Master re-examine the 17 protests granted by the Election Supervisor to assess the adequacy of the remedies imposed. In *Cheatam*, Election Officer Quindel found, citing *Durham*, that post-election protests based upon pre-election conduct were barred by *res judicata*. Nonetheless, she found that "giving the protest its most liberal reading, the protester is apparently arguing that in retrospect, the remedies ordered in those cases can now be seen to be inadequate, and the violations in those cases, taken together, were sufficient to affect the outcome of the election." Based upon this "liberal reading," the Election Officer "reviewed the decisions in each of the protests specified by the protester where a remedy was ordered," concluding that "treated separately or together, each of those remedies was adequate to address the violations found, and that none of the remedied violations, even taken together, were in any way sufficient to have affected the outcome of the election. To the contrary, the violations were part of a vigorous and tumultuous

campaign in which both major candidate slates were found to have committed violations of the election rules and were subjected to remedies of varying severity.”

Adopting the approach of Election Officer Quindel (although not required by law or the *Rules*), I have reviewed the decisions in each of the protests specified by the protester where a remedy was ordered, and have concluded that whether the violations are treated separately or together, the remedies imposed were adequate to “cure” the violations found, and that none of the remedied violations, even taken together, may have affected the outcome of the election. To the contrary, as set forth in the Election Supervisors March 14, 2017 Supplemental Submission, the vast majority of the remedied violations occurred well before the election and the election results show that Teamsters United prevailed – and often by wide margins – in the local unions where remedies were imposed.

For the above reasons, the appeal of ESD 386 is DENIED, and the decision in ESD 386 is affirmed.

SO ORDERED.

/s/   
KATHLEEN A. ROBERTS  
ELECTION APPEALS MASTER

DATED: March 27, 2017