

November 4, 1998

VIA FIRST CLASS MAIL

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Re: Election Office Case No. PR-222-TLC-EOH

James P. Hoffa
November 4, 1998
Page 2

Gentlemen:

James P. Hoffa, a candidate for general president and the Hoffa Unity Slate, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*** against Tom Leedham and the Tom Leedham Rank and File Power Slate. Mr. Leedham is an opposing candidate for general president.

The protest also makes allegations against the "Scholars, Artists and Writers for Social Justice" ("SAWSJ"), the Teamsters for a Democratic Union ("TDU") and the Teamsters Rank and File Education and Legal Defense Foundation ("TRF"). The SAWSJ is an academic organization. The TDU is an "independent committee" as that term is defined in the ***Rules***. The TRF is a "foundation" within the meaning of the ***Rules***. As such, the TRF cannot make contributions to the general campaign funds of candidates in the rerun election. See, ***Rules***, Definitions, at Section 22 and Article XII, Section 1(a).

The protest alleges that SAWSJ is an employer that improperly contributed to Mr. Leedham's candidacy by soliciting contributions for his Legal and Accounting Fund. No separate allegations are made against the TDU and the TRF. According to the protest, they are named so that, in the event a violation is determined, these organizations can be ordered to return any contributions which resulted from the improper solicitation. The SAWSJ does not dispute that it is an employer. The TDU and TRF admit that the SAWSJ solicited contributions for Mr. Leedham's Legal and Accounting Fund, but deny that the action constitutes a violation of the ***Rules***.

The protest was investigated by Election Office Counsel David S. Paull.

The facts are not disputed. The SAWSJ regularly posts a "news bulletin" on the Internet and transmits this bulletin to its members. On or about August 8, 1998, the SAWSJ included in its news bulletin a solicitation to contribute funds to the Legal and Accounting Fund maintained by Mr. Leedham's campaign. The exact text of the message appeared on the Internet prior to August 8, 1998. The same Internet posting was the subject of the protest in Hoffa, PR-166-TLC-EOH (Decision on Remand) (September 16, 1998). In that case, the Election Officer found that the Internet posting was a proper solicitation of funds for Mr. Leedham's Legal and Accounting Fund.¹ Neither the originator of the posting nor the person found to have retransmitted it were employers. Additionally, their efforts were volunteered and were therefore not considered to be campaign contributions. See, Hoffa, PR-166-TLC-EOH (July 22, 1998), remanded, 98 - Elec. App. - 368 (KC) (August 6, 1998); Hoffa, PR-249-TLC-EOH (September 18, 1998), aff'd, 98 - Elec., App. 381 (KC) (September 30, 1998).

¹ The question in PR-166 was whether or not the transmission of this proper solicitation was rendered improper when it was retransmitted by a person who might have been an employer. After the Election Officer's initial decision, further evidence established that this question was appropriately answered in the negative and the protest was denied.

In this case, however, the solicitation was made over the Internet by an organization which does not dispute its status as an employer. Employers are prohibited from making campaign contributions to general campaign funds. **Rules**, Article XII, Section 1(b)(1). However, disinterested employers, such as the SAWSJ, may make contributions to any legal and accounting funds established by candidates, as long as the candidate properly designates and segregates those funds from the general election campaign funds. **Rules**, Article XII, Section 1(b)(2).

The *Advisory on Campaign Contributions and Disclosure*, as revised November 1997, (“*Advisory*”) specifically provides that “[l]egal and accounting funds may not be used to pay the expenses of soliciting contributions for the legal and accounting funds; such expenses must be paid with regular campaign funds.” *Advisory*, at 18. Thus, while disinterested employers are free to make contributions to the legal and accounting fund of any candidate, no employer may pay the expenses of soliciting contributions for a legal and accounting fund or any other aspect of a candidate’s campaign activities. Moriarty, PR-066-JHS-EOH (April 10, 1998).

Mr. Leedham and the TDU take issue with the Election Officer’s declaration as set forth in the *Advisory*. Counsel for Mr. Leedham contends that the determination is “not drawn from the Election Rules itself, and is an interpretation without good reason.” Counsel for the TDU maintains that the restriction as stated in the *Advisory* is impractical. Contributions of this nature are not secured “out of the blue,” argues the TDU. “They have to solicit them.”

Both the **Rules** and the *Advisory* are quite specific, however. Article XII, Section 2 strictly limits the use of legal and accounting funds to the payment of “fees for legal or accounting services performed in assuring compliance with applicable election laws, rules or other requirements or in securing, defending, or clarifying the legal rights of candidates.” The **Rules** neither invite nor permit legal and accounting funds to be used for any other purpose.

Accordingly, the protest is GRANTED.

When the Election Officer determines that the **Rules** have been violated, he “may take whatever remedial action is appropriate.” Article XIV, Section 4. In fashioning the appropriate remedy, the Election Officer views the nature and seriousness of the violation as well as its potential for interfering with the election process.

At the request of the Election Officer on August 27, 1998, Mr. Leedham’s campaign representatives asked the SAWSJ to delete the protested posting, reserving its right to defend its position. There is no evidence that either the TDU or the TRF received any moneys as a result of this solicitation. There is further no evidence to show that any monies were contributed to Mr. Leedham’s Legal and Accounting Fund as a result of the improper solicitation.

In consequence, the Election Officer orders Mr. Leedham to immediately cease and desist from accepting improper contributions.

James P. Hoffa
November 4, 1998
Page 4

An order of the Election Officer, unless otherwise stayed, takes immediate effect against a party found to be in violation of the **Rules**. In re Lopez, 96 - Elec. App. - 73 (KC) (February 13, 1996).

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one (1) day of receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing and shall be served on:

Kenneth Conboy, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax: (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 444 North Capitol Street, NW, Suite 445, Washington, DC 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Michael G. Cherkasky
Election Officer

Enclosure

cc: Kenneth Conboy, Election Appeals Master