

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: TOM LEEDHAM RANK AND)	Protest Decision 2001 EAD 409
FILE POWER SLATE,)	Issued: July 17, 2001
)	OEA Case No. PR041012NA
Protestor.)	
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The Tom Leedham Rank and File Power slate (the “Leedham slate”) filed the above-captioned pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“*Rules*”). They allege various violations of the campaign finance provisions of the *Rules* by the Hoffa Unity slate (the “Hoffa slate”) and by various Hoffa slate candidates. The protest was filed following submission of CCER reports for the third CCER reporting period.

Election Administrator representative Bruce Dubinsky, CPA investigated this protest. We address the protest allegations seriatim.

1. The Leedham slate alleges that a Hoffa slate supplemental report lists a returned contribution paid to the Washington Court Hotel without any contribution having been previously listed in this name, but with the contribution listed on a previous CCER as being from an individual, not an employer.

The Hoffa slate listed a contribution in its CCER report as having been received by Jim Manion in the amount of \$1,000. Manion was the former general manager of the Washington Court Hotel. At the time of a September 21, 1999 fundraiser (the “Friends of Hoffa”) held at the Washington Court, Manion was no longer the general manager of that property but had been transferred to another property in California owned by the hotel group that owned the Washington Court. The contribution that was received by the campaign was made via a corporate check from the Washington Court Hotel for \$1,000 on September 20, 1999. According to the Hoffa campaign accountant, Gary Kushner, CPA, when campaign workers entered the information into the CCER reporting program, the contributor name was entered as Jim Manion. The next line entered was in the address field of the computer screen and listed “Washington Court Hotel”. However, the contributor field on the printed version of the CCER form depicted Manion as the contributor rather than Washington Court Hotel. The campaign claims that its workers did not realize that the corporate name should have been entered in the “contributor” field and the individual’s name contained in the address field. This in fact is an incorrect method of recording of these contributions and is misleading. The actual person or entity making the contribution should be entered in the “contributor” field in the CCER reporting software program. This assures that the proper contributor is identified in bold in the CCER report. The campaign has since filed an amended CCER report correcting this contributor misidentification. Accordingly, this protest allegation is deemed RESOLVED.

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2. The Leedham slate next alleges that two members of the Hoffa slate, José Cadiz and Joseph McLean have not filed CCER reports. In *Leedham Slate, 2001 EAD 302*, we found that Cadiz had, at that time, not filed any CCER reports while being required to do so under the *Rules*. We ordered Cadiz to do so by April 20, 2001 for reporting periods one through three, and further ordered Cadiz to timely file all future reports. He still has not filed any CCER reports and was not nominated as an International officer candidate at the IBT convention.

Although we have previously dismissed a protest allegation of CCER non-filing as moot where the respondent had ceased to be a candidate, *Rooks, 2001 EAD 398* (June 27, 2001), we cannot do so here, where an Election Administrator remedial order was ignored. Accordingly, we GRANT the protest allegation and order Cadiz to file all required CCER reports with the Office of the Election Administrator by July 26, 2001 and to pay by that same date a fine of \$500.00 to the Election Administrator for failing to abide by the order in 2001 EAD 302. Failure to fully comply with this order will result in further sanctions.

McLean, who was nominated as an International officer candidate at the IBT convention, filed all required CCER reports on April 24, 2001. Since he was subject to the same April 20, 2001 remedial filing date as Cadiz under our decision in 2001 EAD 302, his filing was four days late. McLean thus failed to comply with the order in 2001 EAD 302, and we accordingly GRANT the protest allegation. To remedy his failure to comply with our order in 2001 EAD 302, we order McLean to pay a fine of \$100.00 to the Election Administrator by July 26, 2001 and to timely file all future CCERs.

3. The Leedham slate alleges that International officer candidates Thomas Keegel, Robert Bouvier and Dotty Malinsky improperly filed CCER reports marked as slate rather than individual candidate reports. While this did occur, each of the candidates claim that they were confused since they were “aligned” with the Hoffa 2001 slate. All of the candidates mentioned have been informed that amended CCER reports need to be filed with the Office of the Election Administrator with the correction for the mislabeling. To date, candidate Bouvier has refiled and candidates Keegel and Malinsky have not. We GRANT the protest allegation as to them and order that the required refiling be accomplished by July 26, 2001.

4. The Leedham slate alleges that the Hoffa slate has failed to file a vendor report for the Washington Court Hotel. In addition, the Leedham slate alleges that the information contained on two Hoffa slate vendor filings for Sanatex and JD Custom Printing do not give sufficient information about the essential terms and conditions of the campaign’s dealings with these entities to determine if they are arms-length. Finally, the Leedham slate alleges that the Santangelo/Cammack CCER failed to include a vendor report for Superior Promotions.

At the time of the filing of this protest, a vendor report for the Washington Court Hotel had in fact been filed with the Office of the Election Administrator on September 18, 2000. This vendor report, along with two others, was not originally filed with the CCER

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filing, but rather as a separate filing made directly with the Office of the Election Administrator. The vendor report for Sanatex was incomplete. It failed to include: (a) the telephone number for the company; (b) the specific identity for the “50-60 locals nationwide” with which the vendor did business within the past twelve months; (c) specific information pertaining to the quantity of items provided; and (d) the specific total amount to be paid to the vendor. The vendor report for JD Custom Printing failed to include: (a) the telephone number for the company; (b) specific information pertaining to the quantity of items provided; and (c) the specific total amount to be paid to the vendor.

The Santangelo/Cammack CCER filed the appropriate vendor report for Superior Promotions on February 15, 2001. It was, however, incomplete, in that it lacked: (a) the telephone number of the company; (2) date of filing; (3) the specific information pertaining to the quantity of items provided; and (4) the specific total amount to be paid to the vendor.

Article XI, Section 2(c) of the *Rules* requires that CCER reporting forms as published by the Election Administrator must be fully completed. Since the Hoffa slate and Santangelo/Cammack failed to fully complete vendor reports as detailed above, we GRANT the protest allegation. We order the campaigns to file amended vendor reports curing these deficiencies by July 26, 2001.

5. The Leedham slate next alleges that receipts from other candidates reported on the Hoffa Slate CCER do not match the contributions that the donor campaigns report having made.

The accountant for the Hoffa campaign indicated that the CCER filing reported an “allocated” breakdown of monies received from the various candidates mentioned in this allegation. In essence, the Hoffa campaign has given “credit” to the various candidates listed on the relevant CCER report as having made contributions to the Hoffa campaign. This reporting is incorrect. Irrespective of how the Hoffa 2001 campaign internally “credits” the various candidates with fulfilling fundraising commitments, it is required by the *Rules* to report specifically the source of contributions with the correct amount and the correct date. Any other allocated reporting is improper, and we accordingly GRANT the protest allegation.

Our investigator was provided with a reconciliation by the Hoffa campaign accountants that satisfactorily reconciles the amounts actually received by the campaign from various candidates. We order the Hoffa slate to file an amended CCER by July 26, 2001 that is consistent therewith.

6. The Leedham slate alleges that there are improper inconsistencies on the face of the Hoffa slate’s CCER #3. It alleges that “there are four current period checks listed as outstanding on the bank reconciliation which total \$286. None of these checks are reported as itemized expenses but together they exceed the \$241 reported as ‘not itemized.’”

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Upon investigation, we determined that the four checks referenced in the allegation do not appear to total the amount reported as non-itemized expenses on the CCER. The difference amounts to \$43.98. Accordingly, we GRANT this protest allegation. The Hoffa slate must file an amended CCER by July 26, 2001 to correct this problem.

7. The Leedham slate alleges that International officer candidate Randy Cammack has not filed any individual CCER reports, but rather a joint report labeled as "Santangelo/Cammack." Beginning with the third CCER period, candidate Santangelo filed individual reports but Cammack did not. In 2001 EAD 302, we ordered that separate individual CCERs be filed by each of these candidates.

Subsequent to that decision, the campaigns for Cammack and Santangelo discussed with the Office of the Election Administrator the filing of separate individual CCER reports whereby all activity would be reported on the CCER report for Santangelo from inception through the third CCER filing. At the same time, amended individual CCER reports for Cammack would be filed showing no activity during those same periods. We agreed that, beginning with CCER period 4, the candidates would file individual CCER reports showing the activity directly attributable to each candidate on their own CCER, with any "joint" fundraising activities split equally on each report. On this basis, the protest allegation is deemed RESOLVED.

8. The Leedham slate next alleges that several Hoffa slate candidate campaigns have used the same vendor for campaign material/paraphernalia yet only one campaign filed a vendor report.

Article XI, Section 2(c) of the *Rules* requires the filing of a vendor report by those candidates, slates or independent committees that pay or contract for goods or services of \$5,000.00 or more with vendors that have performed work for the IBT or any of its subordinate bodies within the past twelve months. There is no provision for attribution of one campaign's vendor expenditures to another campaign for determining whether the \$5,000.00 threshold has been met. Since the evidence does not establish that any campaign has spent in excess of the \$5,000.00 reporting threshold for any vendor's goods or services yet failed to file a vendor report as to such vendor, we DENY this protest allegation.

9. The Leedham slate next alleges that two candidates have failed to file completed Addendum #1 ("Fundraising Events Held") with their CCERs. Specifically, it alleges that International officer candidate John Steger reported contributions received from an "11/2" fundraiser, yet has failed to file Addendum #1 for that fundraiser, and that International officer candidate Phil Young reported a raffle prize on its CCER without filing the required and completed Addendum #1.

The Steger CCER reported contributions for a November 2, 2000 fundraiser and did not include an Addendum #1 for that event when originally filed. Steger filed such an addendum on April 18, 2001, after this protest was filed.

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Similarly, the Young campaign reported a payment for a raffle prize for the “Springfield Raffle” but failed to file an Addendum #1 for it. In addition, candidate Young did not include any report of expenses for two other raffles as to which the required addenda were filed, and failed to include copies of the raffle tickets used. The instructions for Addendum #1 specifically state that the campaign is to report such expenses and attach any “announcement or other written publicity of the event.” We also note that the Young CCER omitted the full name, mailing address and zip code for several entries on Schedule B, Part 1. Article XI, Section 2(c) of the *Rules* prohibits such incomplete filings.

Accordingly, we GRANT the protest allegation and order the Young campaign to file completed Addenda #1 by July 26, 2001, and order both campaigns to timely file all required Addenda #1 in the future.

10. The Leedham slate next alleges that International officer candidate Malinsky reported a fundraiser with 60 attendees and failed to report any expenses for the event, or submit any announcements for the event.

Malinsky and Hoffa 2001 campaign manager Todd Thompson were interviewed in conjunction with this allegation of the protest. The event in question was held at the Unicorn Bar outside of Orlando, Florida. According to each witness, the fundraiser was not pre-advertised. Sean Murray, an IBT member from Local 385 whose family owned the Unicorn Bar, distributed a flyer to attendees at a Teamster conference announcing a “Teamsters Night” at a bar owned by his family. The flyer did not publicize any Malinsky fundraiser or make any reference to a specific candidate or slate. According to the witnesses, while IBT members were gathered at the bar, a group of Malinsky supporters decided to “raffle” off a shirt. 50/50 type raffle tickets were utilized and sold only to active IBT members for \$10 each. Drinks were not served at campaign expense, but were instead purchased by individual members on their own behalf. Food was provided as a part of the “public” happy hour set-up by the Unicorn Bar.

We also find no evidence that attendees at the event subsidized their attendance with the official union business which caused them to be in Orlando. In these circumstances, we DENY the protest allegation.

11. The Leedham slate next alleges several additional reporting violations by International officer candidates Patrick Flynn, Tyson Johnson and Richard Volpe. The slate alleges that Flynn listed a payment to a “raffle winner” with no name or address reported, that Johnson reported a suspiciously large amount of \$5,990 in non-itemized expenses on his CCER, and that Volpe inadequately reported four payments totaling \$3,500 where the purpose was listed only as “honorary committee,” with no explanation.

Upon investigation, we have determined that the CCER filed by the Flynn campaign does not provide the required information relating to the payment of funds from a “split the pot” raffle held by the campaign. The report should include the name, address, local union number and other pertinent information as required by the CCER form.

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Accordingly, we GRANT the protest allegation as to Flynn and order the filing of an amended CCER by July 26, 2001.

Our investigation determined that the Johnson campaign refunded \$6,025 of contributions received from a fundraiser in Tennessee. The fundraiser was not organized by the campaign, but rather by supporters of candidate Johnson. However, upon investigation, it was determined that the proper disclaimers were not included in the fundraiser material, proper identification of contributors was not obtained, monies were commingled with the organizer's personal funds, and contributions that appeared to have come from ineligible contributors were accepted. As a result, the Johnson campaign decided to refund all contributions received at the fundraiser to avoid any question or potential violation of the *Rules*. Those refunds have now been made.

Of the \$6,025 in contributions that were refunded, \$1,200 was reported as an itemized expenditure on Schedule B Part 1 on CCER #3 because these returned contributions were in excess of \$100. The remaining \$4,825 of returned contributions were not individually in excess of \$100 and therefore were listed as not itemized expenditures on CCER #3. However, this manner of reporting is contrary to the requirement that all returned contributions of whatever amount be reported on CCER Schedule A, Part 5.

Accordingly, we GRANT the protest allegations against the Johnson campaign as indicated above, and order the filing of appropriate and complete amended CCER report by July 26, 2001.

Volpe reported contributions received from a raffle held at a rally on October 10, 2000. The campaign coined the name "Honorary Committee" for the winners of the raffle. According to Volpe, this was nothing more than a name assigned to the raffle winners to "make them feel important." The payments to the raffle winners were reported on the CCER in that fashion. During the field audit conducted by the forensic accountant for the Election Administrator, all of the cancelled checks were examined and the proper recording of these payments was verified. Based on the foregoing, and upon the verification provided in the field audit, we consider the protest allegation against Volpe RESOLVED.

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 Administrator 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:

Kenneth Conboy
Election Appeals Master

Tom Leedham Rank and File Power Slate, 2001 EAD 409
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Latham & Watkins
Suite 1000
885 Third Avenue
New York, New York 10022
Fax: 212-751-4864

Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15th Street NW, Tenth Floor, Washington, DC 20005 (fax: 202-454-1501), all within the time prescribed above. A copy of the protest must accompany the request for hearing.

William A. Wertheimer, Jr.

William A. Wertheimer, Jr.
Election Administrator

cc: Kenneth Conboy
2001 EAD 409

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