

ELECTION APPEALS MASTER

IN RE:

HOFFA 2006

Protestor.

06 Elec. App. 011 (KC)

ORDER

This matter is an appeal from the Election Supervisor's decision 2006 ESD 84 issued February 22, 2006.

A hearing was held before me on March 2, 2006. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. and Steven Newmark, Esq. on behalf of the Election Supervisor, Barbara Harvey, Esq., Keith Neus, Esq. on behalf of Bruce Dubinsky, Bruce Dubinsky, David Hoffa, Esq. on behalf of Hoffa 2006, Christy Bailey and Todd Thompson.

The Hoffa 2006 Campaign filed a protest (it is not part of the record before me) summarized the Election Supervisor's decision as alleging that Teamsters for a Democratic Union ("TDU") "did not report certain legal and accounting expenditures, did not allocate certain campaign expenses, and improperly compensated non-lawyers from its legal and accounting fund, Decision, at 1."

The redacted CCER in question is inexplicably not part of the record before me.

The Election Supervisor states, without demonstrating, that "TDU has carried out the allocation required by the Rules..." at 1. It is not clear, however, that the protestor is actually challenging the allocation per se, but rather "confusing enumerations of expenses that are being allocated." Decision, at 2. The Election Supervisor further states, as a fact, without any Rules or

decisional reference, that “[I]t is not the purpose of the CCERs to provide a line-item disclosure of an independent committee’s day to day operations.” This is a confusing characterization of the protest, since nowhere in the decision is the protest cited as demanding such a disclosure.

The Election Supervisor quotes the protest as questioning “how such large ‘in kind’ legal and accounting services could conceivably have been made during this time frame, in light of the minimal legal and accounting services that were performed in connection with the 2005 – 06 election during this same time period,” Decision, at 2.

In a not uncharacteristic rhetorical device regrettably resorted to in too many of the Election Supervisor’s decisions, he then quotes a passage from the Rules and sidesteps the question raised by the protestor. He then declares that he has investigated, and that the in services provider presented “satisfactory attestation” (presumably a sworn affidavit but not described as such and in any case not made part of the record) that the work was performed.

The protest, as noted, is further quoted as complaining that “the campaign and legal and accounting CCERs contain confusing enumerations of purported ‘allocation expenses’ that are being ‘allocated.’ In this way, TDU is not disclosing the purpose and nature of the campaign and legal and accounting expenditures it is reporting,” emphasis added, Decision, at 2. This emerged as the central issue at the hearing.

The Election Supervisor, after quoting the protestor’s complaint, as noted above, of inadequate disclosure of the purpose and nature of the campaign’s expenditures, ignored that complaint and DENIED this aspect of the protest, on the ground that allocation of expenses between TDU and a third party legal defense fund (TRF) are appropriate.

A further complaint asserted that TDU is improperly compensating, out of legal and accounting contributions, “Ken Paff and other non-lawyers.” The Election Supervisor asserts that Paff and four other non-lawyers act as paralegals and that they do so “under the direct supervision of TDU’s attorney, who has presented attestation to this effect,” Decision at 3. Unfortunately, it is unclear from this characterization whether this attestation addresses only the fact of supervision, or the specific monetary claims reflected in the CCER in question. This attestation is also regrettably absent from the record.

The final claim of the protester as quoted by the Election Supervisor asserts that “TDU has failed to identify non-members who have made “in kind” legal and accounting contributions. The Election Supervisor disposes of this issue by noting that as the Rules or Advisory don’t require the identification (i.e. are silent thereon) of such donors, he is denying this aspect of the protest. No discussion of the policies, goals or disclosure values behind the Consent Decree, the Rules, and previous decisions in the Election Office is deemed appropriate, useful or germane.

On the hearing, counsel for the protestor explicitly renounced any interest in obtaining the identities of donors or service providers. He is specifically seeking more detailed information on the redacted schedules of expenditures (Article XI, Section 2(e) of the Rules) that do not compromise the identities protected in U.S. v. IBT, 968 F2d 1506 (2d cir. 1992). This claim is nowhere addressed in the Election Supervisor’s decision.

Accordingly, that decision is vacated, and the matter is remanded for further review, enlargement and/or investigation, as necessary in light of this order, and the assemblage of a proper record, including the original protest, which I will treat as a strict pleading,

attestations noted and relied upon in the present decision, and a properly redacted copy of the CCER in dispute. All future appeals will require as part of the record the submission by the Election Supervisor of the filed protest, attestations and investigative statements or admissions explicitly relied upon in his decision, and any properly redacted document that is in any respect germane to a disputed issue.

SO ORDERED:

/s/
Kenneth Conboy
Election Appeals Master

Dated: March 3, 2006