

ELECTION APPEALS MASTER

IN RE:

ERIK JENSEN

Protestors.

06 Elec. App. 037 (KC)

ORDER

This matter is an appeal from the Election Supervisor's decisions 2006 ESD 204 and 2006 ESD 167 issued April 22, 2006 and April 25, 2006 respectively.

A hearing was held before me on May 11, 2006. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. on behalf of the Election Supervisor, David Hoffa, Esq. on behalf of Susan Mauren, Secretary-Treasurer of Local Union 320, Barbara Harvey, Esq. on behalf of Erik Jensen, the protester in this matter.

This is a consolidated appeal dealing with two protests asserting improper institutional (not personal capacity) endorsements by Local Union 320 functionaries, in violation of Article VII, Section 12(b) of the Election Rules.

The Election Supervisor denied both protests, on the ground that the facts in one case showed that the institutional entity, a bargaining unit, was not in operational being at the time several of its former members, via a general mailing postcard, endorsed a political slate, and in the other case, that the Local 320's principal officer and lead delegate candidate identified herself only as "from your union" in a campaign taped phone message to local members.

Barbary Harvey, counsel for the protester, argues that the Rules ban political endorsements by individual officers "acting in his or her official capacity," and acting with real or only apparent authority. Letter dated May 1, 2006 at 1.

In the case of the bargaining unit, Ms. Harvey argues that it is irrelevant whether the unit is in fact dormant, disbanded or defunct, if the reader of the postcard reasonably would have concluded that an active union sub-unit apparently was taking sides in campaign politics.

The difficulty with this argument is that the very first line of the message text on the postcard describes the listed signers “As members of the 2005 University Negotiating Committee” (emphasis added). The signatories are, up front, identifying themselves, as it were, as has-beens, last year’s functionaries, yesterday’s players but not today’s. The Election Supervisor found as a fact that the committee does not exist and does not have any official function as a subordinate body of the local union, and that that fact was understood by the targeted local membership employed by the University of Minnesota. Election Supervisor’s preliminary submission dated May 10, 2006 at 1. I endorse that finding as a matter of judicial notice.

In the second case, it is simply untenable to complain that a reference by a campaigning Local officer as being “from your union” implicates the Rules’ ban of institutional (as opposed to individual) political endorsements.

Accordingly, the decision of the Election Supervisor in the consolidated protest cases is in all respects affirmed.

SO ORDERED:

/s/
Kenneth Conboy
Election Appeals Master

Dated: May 12, 2006