

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: HOFFA 2006,)	Protest Decision 2006 ESD 84
)	Issued: February 23, 2006
Protestor.)	OES Case No. P-05-037-112805-HQ
_____)	

Hoffa 2006 filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that Teamsters for a Democratic Union (“TDU”) did not report certain legal and accounting expenditures, did not properly allocate certain campaign expenses, and improperly compensated non-lawyers from its legal and accounting fund.

Election Supervisor representatives Steven R. Newmark and Bruce Dubinsky, our forensic accountant, investigated this protest.

Findings of Fact and Analysis

Under the *Rules*, an “independent committee” is defined as any “person or entity not controlled by a candidate or slate who/which has accepted any campaign contribution, or who/which has made any expenditure where the purpose, object or foreseeable effect of the contribution is to influence the election of International Officer candidate(s).” An independent committee may contribute to an IBT election campaign even though it receives financial assistance from non-IBT members. “However, the *Rules* require that monetary support for campaign activities consist exclusively of funds received from IBT members. Funds received from any other sources cannot be contributed to any candidate [through an independent committee], and must be properly allocated and segregated.” *In re: Gully*, 91-Elec. App.-158(SA)(June 12, 1991), *aff’g, Sargent*, P-249-LU283-MGN (May 21, 1991)

TDU has carried out the allocation required by the *Rules* under the Huddleston system, which was described as follows in *Halberg*, P-19 (December 14, 1995):

Under the current allocation system, each staff member must maintain and submit daily time sheets which are then tabulated to determine the total time spent in various categories. Weekly summaries are prepared and compiled. Each month these reports are closed out and allocation figures are determined. TDU-related time is percentaged against total time to establish a “TDU percentage” for each staff person. Salaries, benefits, and overhead are paid by the respective organizations on the basis of this percentage.

Under Article XI, Section 2 of the *Rules*, each independent committee must file CCERs documenting the campaign contributions and expenditures it has received and made. However, Article XI, Section 2(e) of the *Rules* prohibits any candidate from inspecting or copying the CCER filed by an independent committee, unless the committee grants written consent for such inspection. This subrule recommends that the Election Supervisor disclose “[r]edacted schedules which reflect the total amount of contributions and total amount of contributors, but which do not reflect the identity of individual contributors or their local unions” and “[r]edacted schedules of expenditures which do not reflect the identity of members of the independent committee or their local unions.” Our Advisory on Campaign Contributions, Expenditures, and Disclosure elaborates on this point further as follows:

Independent committees must also submit to the Office of the Election Supervisor redacted CCER and Supplemental Form No. 1 schedules with the identity of contributors and their local unions deleted. CCER and Supplemental Form No. 1 cannot be redacted through the CCERS. The redacted schedules should also delete the identity of members and their local unions to the extent this information is included in any other place in the schedules. With respect to contribution information, the redacted schedules should provide only the total amount of contributions and the total number of contributors. For further information regarding these redacted schedules, please see the Election Supervisor's opinion letter of September 15, 2000. *See also Taylor*, 2000 EAD 75 (December 29, 2000), pages 11-12 (no requirement that Teamster Rank and File Education and Legal Defense Foundation's contributors be identified on its CCER forms).

It is not the purpose of CCERs to provide a line-item disclosure of an independent committee's day-to-day operations. Instead, the CCERs form a baseline from which the Election Supervisor may subject the entity to full audit scrutiny.

TDU's redacted CCER for the June through September 2005 reporting period was disclosed to Hoffa 2006. The protest that followed alleged several deficiencies in the CCER. These allegations are addressed in the same order the protest presented them.

1. TDU reported "in kind" legal and accounting contributions of \$75,000 and \$2,934.84 in legal and accounting expenditures. The protest questioned "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."

Article XI, Section 1(b)(5) of the *Rules* governs contributions made "to pay fees for legal or accounting services" of candidates. The provision prohibits contributions in excess of \$10,000 from any single nonmember, disinterested employer, foundation or labor organization. However, "[n]othing herein shall prevent or limit legal or accounting professionals (whether or not Union vendors) from making, or a candidate from accepting or using, an in-kind contribution of legal or accounting services, so long as such services are performed in assuring compliance with applicable election laws, rules or other requirements or in securing, defending or clarifying the legal rights of candidates."

Investigation showed that TDU received in-kind legal services during the reporting period. The legal services provider presented satisfactory attestation that the work performed was appropriately valued at \$75,000, based on hours expended at a specified hourly rate. Accordingly, we DENY this aspect of the protest.

2. The protest complains that "the campaign and legal and accounting CCERs contain confusing enumerations of purported 'allocation expenses' which fail to enumerate the expenses that are being 'allocated.'" In this way, TDU is not disclosing the purpose and nature of campaign and legal and accounting expenditures it is reporting."

The “allocated expenses” specified in TDU’s CCER constitute the monthly reimbursement TDU makes to Teamsters Rank and File Legal Defense and Education Foundation (TRF) for the staff time and occupancy expenses which are attributed to campaign activity. Audit of TDU’s Huddleston accounting for this reporting period demonstrated that the allocations it made for campaign and legal and accounting expenditures are appropriate. Accordingly, we DENY this aspect of the protest.

3. The protest next alleges that “TDU is using legal and accounting contributions to compensate Ken Paff and other non lawyers. There is no evidence that Mr. Paff is performing legal and accounting services, whether under the direct supervision of legal and accounting professionals or otherwise.”

Investigation showed that Paff and four other non-lawyers provide paralegal services under the direct supervision of TDU’s attorney, who has presented attestation to this effect. Our forensic accountant reviewed the time records of the individuals involved. Those records, recorded in one-quarter hour increments, detail the time spent on legal and accounting matters directly related to the election. Such attestation and time records satisfy the requirements of the *Rules*. Accordingly, we DENY this aspect of the protest.

4. The protest alleges that “TDU has failed to identify non-members who have made ‘in-kind’ legal and accounting contributions.”

Neither the *Rules* provision nor the advisory quoted above requires identification of donors of in-kind legal or accounting contributions. Accordingly, we DENY this aspect of the protest.

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 Supervisor 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
Latham & Watkins
885 Third Avenue, Suite 1000
New York, New York 10022
Fax: (212) 751-4864

Copies of the request for hearing must be served upon the parties, as well as upon the Office of the Election Supervisor for the International Brotherhood of Teamsters, 1725 K Street, Suite 1400, N.W., Washington, D.C. 20006, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
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