

**OFFICE OF THE ELECTION SUPERVISOR  
for the  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

<b>IN RE: WERNER HOLZWARTH, JR.,</b> )	Protest Decision 2006 ESD 100
)	Issued: February 27, 2006
<b>Protestor.</b> )	OES Case No. P-05-053-122905-MW
_____ )	

Werner Holzwarth, Jr., a member of Local Union 200, 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*”). He alleged that the local union improperly used union resources to support the Buban-Connell slate in the delegate and alternate delegate election.

Election Supervisor representatives Joe Childers investigated this protest.

**Findings of Fact**

On December 20, 2005, Local Union 200 sent a letter to its 200 stewards conveying holiday greetings, reporting on the state of the union, and enclosing a gift certificate redeemable for local union merchandise. The letter read in relevant part as follows:

Dear Steward,

With your support our Local Union has gone from 10 consecutive years of losing members to a gain in membership as of November 2005! In addition to your support of our efforts to reverse the decline in membership, we also want to thank you for your support of the financial changes we have made to bring our Local Union back into the black. In 2003, this Local Union was over \$330,000 in the red. However, as of the end of November 2005, we are in the black by over \$100,000!

Due to our improved financial health and to thank you for your work and support of the Local Union and the members you represent, please accept this certificate for \$50.00 in Local Union 200 merchandise to be redeemed in 2006.

The letter suggested that stewards redeem the certificates toward purchase of American-made, Union-made custom embroidered jackets or other local union items in stock. The letter concluded with the following:

Thank you once again for a very successful 2005. Merry Christmas and Happy New Year!

The letter was signed by local union secretary-treasurer Tim Buban and president Darrell Connell “[o]n behalf of the Executive Board and Staff of Local 200.”

Buban and Connell are candidates for delegate on the Buban-Connell slate. The nomination meeting for the delegate and alternate delegate election was held on January 5, 2006, some two weeks after the December 20 local union letter was mailed. The letter made no reference to the delegate election, the candidacies of Buban and Connell, the campaigns of Hoffa or Leedham, or the IBT convention.

The protest contended that the letter “is an absolute violation of the rules” that prohibit use of union resources to support a candidate. The protest continued as follows:

This rule is very specific and upon examination of the correspondence it is clear that what they have done with my dues dollars was enhance their position in the upcoming delegate election. I believe that this is a deliberate attempt to bribe the stewards, corral them into the confines of local 200 and influence their vote and support. Stewards did not receive an enticement such as this at any time during this administrations tenor [*sic*].

I believe the entire correspondence is filed [*sic*] with illegal and untrue political claims. Their claim on the status of the local 200 treasury is in direct conflict of what the Secretary Treasurer has been reporting at the general meetings and from what he reported to the U.S. Department of Labor in the annual LM-2 from 2003. I believe this lie is intended to politically promote their position.

Specifically I charge that the officers and staff of local 200 have used union stationary [*sic*], union copy machines, and union secretarial staff to generate the documents in question. I further charge that the cost of mailing these documents is a violation. I also believe that the \$50.00 certificate provided to me is politically dishonest, a violation of the election rules and a direct drain on my local 200 treasury.

Investigation showed that 2005 was the first year stewards were sent gift certificates at year end. In previous years, the local union has held a holiday banquet for stewards and spouses. In 2003, the year before Buban and Connell assumed office, the local union spent \$17,000 on the banquet and open bar. In 2004, the local union cut the banquet expense to \$6,000 by providing a cash bar.

Buban told our investigator that the local union executive board decided to provide gift certificates in lieu of a banquet for three reasons. First, while many of the employers under contract with the local union are located in Greater Milwaukee, a substantial number are situated beyond the metropolitan area. Turnout for the annual banquet in Milwaukee among stewards from outlying employers historically has not matched that of Milwaukee-based stewards, and the gift certificate was a means by which the executive board could extend its appreciation to all stewards on an equal basis.

Second, the maximum cost of the gift certificates, if all stewards redeemed them, would run approximately \$9,000, a figure well within the range spent on past banquets.

Finally, stewards who redeem the certificates for the local union jackets will assist in the local union’s organizing efforts, for the jackets themselves advertise the union, build pride and solidarity among the membership, and signal the union’s strength to employers.

Investigation further showed that the local union’s cash on hand on November 30, 2005 was \$533,332, compared with \$291,481 on November 30, 2004. In addition, dues receipts for 2005 were projected to exceed \$2.6 million, up from \$2.5 million in dues collected in 2003 and \$2.3 million collected in 2004.

## Analysis

Article VII, Section 7(a)(1) of the *Rules* provides that each candidate shall be permitted a reasonable opportunity, equal to that of any other candidate, to have his/her literature distributed by the union, at the candidates expense. Article VII, Section 7(c) provides that each candidate shall pay, on a reasonable basis, for the actual cost of distribution, including stationery, duplication, time required to do the work and postage for mailing. Article VII, Section 8(a) provides that no publication or communication financed, directly or indirectly, by a union may be used to support or attack any candidates or the candidacy of any person. Article XI, Section 1(b)(3) provides that no union may contribute, or shall be permitted to contribute, directly or indirectly, anything of value, where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate. Article XI, Section 1(b)(6) provides that no union funds or other things of value shall be used, directly or indirectly, to promote the candidacy of any individual.

In *Reich v. Teamsters Local 843*, 149 LRRM 2358 (D.N.J. 1994), the court reviewed the law with regard to campaign content in union-sponsored communications:

To establish a violation of Section 401(g), it is not necessary that the questioned publication be explicitly or implicitly committed to endorsing specific candidates or attacking the opposition. Rather its overall tone, timing, and content must be evaluated to determine whether there is any blatant encouragement of the incumbent [or challengers].' *Donovan v. Local 719, United Automobile, Aerospace and Agricultural Implement Workers of America*, 561 F.Supp. 54, 58 [113 LRRM 2902, 2906] (N.D. Ill. 1982); accord *Telephone Workers*, 703 F.Supp. at 206, *Usery v. International Org. Masters, Mates and Pilots*, 538 F.2d 946, 949 [92 LRRM 3297] (2d Cir. 1976); *Liquor Salesmen's Union Local No. 2*, 334 F.Supp. at 1369, 1377 [78 LRRM 2020], *aff'd*, 444 F.2d 1344 [78 LRRM 2030] (2d Cir. 1971); *Wirtz v. Independent Workers Union of Florida*, 272 F.Supp. 31, 33 [65 LRRM 2924] (M.D. Fla. 1967). Regarding content, federal regulations interpret LMRDA §401(g) as 'prohibit[ing] any showing of preference' by union-financed publications through praise, endorsement, criticism or attack directed towards a candidate, 29 C.F.R. §452.75 (1994); accord *McLaughlin v. American Fed'n. of Musicians*, 700 F.Supp. 726, 734 [132 LRRM 2508] (S.D.N.Y. 1988) ('promotion of a candidate under §401(g) includes both affirmative statements about the candidate and negative references about the opposition.').

In addition to the timing, tone, and content, courts often consider 'the circumstances surrounding the challenged publications'. *Am Fed'n. Musicians*, 700 F.Supp. at 734 (citing *Liquor Salesmen's Union*, 334 F.Supp. 1377). In *American Fed'n of Musicians*, the court looked beyond the text of the challenged articles to consider the legitimate need for reporting on and discussion of an incumbent union president's activities in a union-financed newspaper, even though such reporting could impact an upcoming election. *American Fed'n. Musicians*, 700 F.Supp. at 734. The court held that 'the continued direct and indirect personal attacks [on the incumbent] ... constituted more than just reporting on issues that concerned the union.' *Id.* at 735.

*Id.*, at 2364. See also, *e.g.*, *Camarata v. Teamsters*, 102 LRRM 3053 (D.D.C. 1979).

Here, the challenged letter did not praise or attack any candidate or otherwise refer to the delegate or International officer election. Moreover, it contained a factual report of the current financial condition of the local union. Finally, credit for the improved finances and increased membership was shared broadly with the stewards without reference to their internal union political affiliation. For these reasons, we find that the December 20 letter did not constitute union-financed campaigning for the Buban-Connell slate or any of its members.

Further, we find that the \$50 gift certificates redeemable for local union merchandise also did not violate the *Rules*. Contrary to the protestor's view that the certificates were a "bribe" to "influence [stewards'] vote and support," we find that they were issued for a legitimate union purpose, their cost was well within the range of the cost of the banquets they replaced, and they had the significant advantage of enhancing the local union's ongoing organizing efforts.

Accordingly, we find no violation of the *Rules* and DENY this 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 Election Supervisor for the International Brotherhood of Teamsters, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20007-5135, 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  
2006 ESD 100

**DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):**

Bradley T. Raymond, General Counsel  
International Brotherhood of Teamsters  
25 Louisiana Avenue, NW  
Washington, DC 20001-2198  
[braymond@teamster.org](mailto:braymond@teamster.org)

Sarah Riger, Staff Attorney  
International Brotherhood of Teamsters  
25 Louisiana Avenue, NW  
Washington, DC 20001-2198  
[sriger@teamster.org](mailto:sriger@teamster.org)

David J. Hoffa, Esq.  
Hoffa 2006  
30300 Northwestern Highway, Suite 324  
Farmington Hills, MI 48834  
[David@hoffapllc.com](mailto:David@hoffapllc.com)

Barbara Harvey  
645 Griswold Street  
Suite 3060  
Detroit, MI 48226  
[blmharvey@sbcglobal.net](mailto:blmharvey@sbcglobal.net)

Ken Paff  
Teamsters for a Democratic Union  
P.O. Box 10128  
Detroit, MI 48210  
[ken@tdu.org](mailto:ken@tdu.org)

Judith Brown Chomsky  
P.O. Box 29726  
Elkins Park, PA 19027  
[jchomsky@igc.org](mailto:jchomsky@igc.org)

Stephen Ostrach  
1863 Pioneer Parkway East, #217  
Springfield, OR 97477-3907  
[saostrach@gmail.com](mailto:saostrach@gmail.com)

Werner Holzwarth, Jr.  
4567 South Whitnall Ave., Apt. 307  
Saint Francis, WI 53235

Tim Buban, Secretary-Treasurer  
Local Union 200  
6200 Bluemound Road  
Milwaukee, WI 53213

Joe F. Childers  
201 West Short Street, Suite 310  
Lexington, KY 40507  
[childerslaw@yahoo.com](mailto:childerslaw@yahoo.com)

William Broberg  
1108 Fincastle Road  
Lexington, KY 40502  
[wcbroberg@aol.com](mailto:wcbroberg@aol.com)

Jeffrey Ellison  
510 Highland Avenue, #325  
Milford, MI 48381  
[EllisonEsq@aol.com](mailto:EllisonEsq@aol.com)