

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

IN RE: HERBERT SANDFORD,)	Protest Decision 2006 ESD 142
)	Issued: April 3, 2006
Protestor.)	OES Case Nos. P-06-198-030106-AT
<hr/>)	& P-06-199-030106-AT

Herbert Sandford, a member of Local Union 11, filed two pre-election protests pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“Rules”). In OES Case No. P-06-198-030106-AT, he asserted that Peter McGourty distributed a campaign flyer that contained information about Sandford that was irrelevant and not true. In OES Case No. P-06-199-030106-AT, Sandford charged that McGourty distributed a “Dear Shop Steward” letter that contained false information about him.

Election Supervisor representative J. Griffin Morgan investigated these protests.

Findings of Fact

From 1991 to 1995, Herbert Sandford was the vice-president of Local Union 999. On November 13, 1995, Local Union 999 was placed in an emergency trusteeship by the IBT General President. In 1998, after a series of investigations, charges, hearings and appeals, Herbert Sandford was barred from holding office or employment with Local Union 999 or any IBT-affiliated entity for a period of five years. Local Union 999 was thereafter merged into Local Union 11.

On January 10, 2006, Sandford was nominated for delegate in Local Union 11’s delegate and alternate delegate election and became head of the Rank and File Underdog slate.

Peter McGourty is the president of Local Union 11. He served as assistant trustee for Local Union 999 when it was in trusteeship. McGourty was nominated for delegate and became head of the Honest Leadership slate in the Local Union 11’s delegate election.

The ballots for the Local Union 11 delegate election were mailed on February 10, 2006 and were tallied on March 7. On 520 ballots counted, McGourty’s slate won all 6 delegate positions. The difference between the winning delegate candidate with the fewest votes and the losing delegate candidate with the most votes was 245 votes (377 to 132).

On or about the same day the local union mailed ballots to all members, McGourty mailed to 206 shop stewards a “Dear Shop Steward” letter. Enclosed with the letter was a flyer entitled “Who is Herbert Sandford?” These two communications are at issue in these protests.

The flyer linked Sandford to financial mismanagement and embezzlement at Local Union 999. It listed internal union charges said to have been made against Sandford and others; the charges alleged breach of fiduciary duty, embezzlement, and mismanagement.

The “Dear Shop Steward” letter was printed on letterhead that read “TEAMSTERS LOCAL UNION NO. 11” and was flanked on the right margin with the IBT official horses-and-wheel logo. The font style and size were identical to those used on the stationery of Local Union 11. However, several differences were apparent between the campaign letterhead and that of the local union. The campaign letterhead contained the phrase “ HONEST LEADERSHIP SLATE” immediately

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beneath the local union's name; it also contained the following language at the bottom margin of the page: "More than ever before you must vote and return your ballot by March 7. Please vote for the 'HONEST LEADERSHIP SLATE.'" In contrast, the local union's letterhead listed above the local union title the categories of employees within the local union's jurisdiction; it listed the address and telephone numbers of the local union immediately beneath the local union title; the names and titles of officers and business agents appeared at the left margin; and, perhaps to state the obvious, the official letterhead contains no partisan campaign message.

The campaign letter began with the following introduction: "I am writing to you as Shop Steward because of my respect of your leadership and influence over the men and women you represent." The letter then discussed Sandford's purported shortcomings, the importance of the delegate election, and the merits of McGourty's slate. Among other criticisms, the letter disparaged Sandford as follows: "Sandford has placed no effort into putting together his six-member delegation, of which two of them have told me that their reason for running was 'Sandford promised them a free trip to Las Vegas.'" The letter continued: "I've enclosed a sheet, which describes who Herbert Sandford is and hope that you will share this information with your fellow members in the work place." The letter concluded: "It is it important that you remind the members to return their ballot and vote by March 7th for the ' HONEST LEADERSHIP SLATE' together we can go forward and not backwards in protecting our members." The letter was signed "Peter McGourty, President."

Sandford's protest against the flyer read in part as follows:

[A]t least one half of the allegations are not true particularly the embezzlement & reimbursement charges so mentioned. This flyer is what I consider to be malicious slander & a distortion of the truth. Regardless, I, do not see what relevance these lies have to do with the current Local 11 Delegate Election. At this time I feel intimidated by Peter McGourty & His Slate due to his stature as President of IBT Local 11. Also I feel this literature, authored and signed by Peter McGourty is very unprofessional & old school dirty slanderous politics. I charge my rights have been violated as per the IBT Delegate election rules of 2006.

The protest against the "Dear Shop Steward" letter stated the following, in part:

I, Charge being threatened by this due to the allegations of embezzlement of \$220,000.00. This is not true, there was not a charge of embezzlement at the time mentioned & no proof of embezzlement by myself. And, I never promised any member of my Slate a free trip to Las Vegas. Most importantly, I, Protest & Charge Peter McGourty of violating the rules of the IBT Delegate Election by directing all shop stewards to assist the members in marking their secret Ballots as noted in the last Paragraph of the attached letter by Peter McGourty. I, request this protest be so noted & investigated by your office?

Investigation showed that McGourty paid for printing and mailing of the flyer and letter from personal funds. For this purpose, he hired the printer that produces the local union letterhead and paid \$482.40 for 1,000 flyers, 250 letters and envelopes, and postage.

Of the 206 stewards to whom the campaign letter and flyer were sent, 72 voted.

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Analysis

The principal means that will achieve the *Rules*' goal of "fair, honest, open and informed elections" is the unfettered right to campaign in accordance with the *Rules*. Article VII, Section 12(a) guarantees to all members "the right to participate in campaign activities, including ... the right to run for office, to support or oppose any candidate, [and] to aid or campaign for any candidate ..."

Election Officers have long held that the *Rules* do not regulate the content of candidate campaign material. Election Officer Holland, in denying a protest alleging that false statements contained in a candidate's campaign literature violated the *Rules*, observed that "the policy of encouraging free and open debate in internal union affairs is consistent with the purpose of the Election Rules." *Meredith*, P63 (March 6, 1991). In *Campanella*, Post-57 (April 23, 1991), *aff'd*, 91 EAM 144 (May 7, 1991), Holland explained:

The model for free and fair Union elections is that of partisan political elections. In those elections, contestants are generally allowed to make whatever assertions, allegations, statements of opinion or even of alleged facts without legal sanctions for their truth or falseness. The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter . . . Thus, the fact that campaign statements are allegedly false, irrelevant or even defamatory does not remove them from the protection of the *Rules*. (citing *National Association of Letter Carriers v. Austin*, 418 U.S. 264 (1974)).

Election Officer Quindel echoed this point in *Landwehr*, P201 (November 15, 1995):

The *Rules*, however, do not impose upon candidates the duty to be truthful in their remarks about opposing candidates or even be accurate in their commentary on the *Rules* themselves – and for very good reasons. Pursuant to Article I, the Election Officer's duty is to "insure fair, honest, open and informed elections." This essential goal is achieved by supporting a "policy of encouraging free and open debate in internal union affairs." *Mora*, P186 (October 19, 1995).

Presented in *Yolland*, P660 (April 3, 1996), with an allegation that a campaign statement was "misleading," Quindel declared that "the *Rules* are not intended to censor ... or ensure the accuracy and truth of campaign materials." She cited favorably Holland's declaration in *Rogers*, P518 (February 21, 1991), *viz.*

The *Rules* ... secure for all candidates the freedom to fully exercise political rights through solicitations, support and the distribution of campaign literature. The Election Officer has consistently applied the *Rules* so as to safeguard the exercise of these political rights. The *Rules* neither prohibit nor regulate the content of campaign literature.

For the same reason, Quindel denied a protest alleging that a campaign flyer violated the *Rules* by listing and commenting on internal union charges against a candidate. *Points*, P519 (March 4, 1996).

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Following this unbroken line of authority, Election Administrator Wertheimer denied protests in *Leedham Slate*, 2001 EAD 343 (May 4, 2001) (flyer claiming to associate Leedham with the 1996 IBT election scandal); *Rodriguez*, 2001 EAD 371 (May 18, 2001) (flyer listing the alleged criminal history of a candidate); and *Romero*, 2001 EAD 140 (February 6, 2001) (flyer calling candidates “inexperienced”). Wertheimer held that “even if the flyer were actionably libelous, we are precluded by the *Rules* from censoring it.” *Leedham Slate*, *id.*

Based on this precedent, we reject Sandford’s contention that the content of McGourty’s campaign material violates the *Rules*. The content of McGourty’s campaign material, whether false or not, is not regulated by the *Rules*. Accordingly, we DENY both protests.

Although not raised by the protestor, our investigation also examined whether McGourty’s use of letterhead similar but not identical to local union letterhead violated the *Rules*. We exercised our authority under Article XIII, Section 4, which permits us to investigate even in the absence of a protest. *See also, McNamara*, P876 (September 18, 1996) (“It is well settled that when the Election Officer uncovers a potential violation of the *Rules* in the course of a protest investigation, she will further investigate and adjudicate any violation which comes to light. *See, e.g., Hoffa*, P812 (August 16, 1996).”)

Two sentences within Article IX, Section 1(b)(6) of the *Rules* bear on use of the union’s name, *viz.*

The use of the Union’s official stationery with the Union’s name, insignia or other mark identifying the Union is prohibited, irrespective of compensation or access. Other use of the Union’s name, insignia or mark by Union members, in connection with the exercise of rights under these *Rules*, is permitted.

The first sentence’s outright prohibition of use of official stationery is intended “to prevent misuse of union resources and to prevent members from drawing the conclusion that the Union as an institution supports one group of candidates to the exclusion of another.” *Saal*, 2001 EAD 138 (February 6, 2001). However, the second sentence permits “[o]ther use of the Union’s name, insignia or mark” in campaigning.

Here, the letterhead McGourty used for the “Dear Shop Steward” letter was not the local union’s official stationery, although the font style and size was identical and the union logo appeared in the same position on both documents. The campaign letterhead lacked features that one would find on official letterhead (and that actually appear on Local Union 11’s letterhead), such as address and telephone numbers, names of officers and business agents, and union affiliations. The campaign letterhead also includes the phrase “ HONEST LEADERSHIP SLATE” at the top of the campaign letterhead and a partisan exhortation at the bottom. Considering all of the differences between Local Union 11’s letterhead and the Honest Leadership Slate campaign letterhead (including the partisan message on the latter), we conclude that the campaign letterhead is sufficiently distinct from local union letterhead that reasonable members would not draw the conclusion that the local union supported the McGourty slate to the exclusion of the Sandford slate. *Cf., Kosuth*, 2001 EAD 503 (October 12, 2001).

Identification of McGourty as “President” in the campaign letter does not require a different conclusion. All members, including those who hold union office, have the right under the *Rules* to

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campaign for and endorse candidates. The *Rules* caution, however, that an endorsement by a union officer may be made only in the officer's "individual capacity." Article VII, Section 12(b). In *Moriarty*, P1071 (November 15, 1991), Election Officer Holland explained that "[t]he *Rules* do not prohibit the members of an Executive Board from identifying themselves as such when [endorsing] candidates; as long as the endorsement is not made as an official endorsement of the Executive Board as an entity, but as individual endorsements by the members of the Executive Board, the *Rules* are not violated." In *Jones*, 2001 EAD 222 (March 8, 2001), Election Administrator Wertheimer held that a local union president who identified himself by that title when endorsing candidates did not violate the *Rules*. The endorsement carried with it no indication that the local union president spoke on behalf of the local union as an entity.

Here, McGourty's use of his title of president did not suggest that he spoke for the local union as an entity when endorsing the election of his slate in the delegate and alternate delegate election. Accordingly, we DENY the protest in all respects.

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
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