

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: DAVID BARKER,)	Protest Decision 2006 ESD 240
)	Issued: May 15, 2006
Protestor.)	OES Case No. P-06-128-020706-MW
_____)	

David Barker, a member of Local Union 325, 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 the incumbent officers of Local 325, with the approval of the Executive Board, allowed the use of employer or union funds to campaign in the delegate election, in violation of the *Rules*.

Election Supervisor representative Joe F. Childers investigated the protest.

Findings of Fact

The protest alleged that a flyer distributed by Heartland Vision, an eye care company, to members of Local Union 325 constituted an endorsement of the slate of incumbent officers in the local union’s delegate and alternate delegate election. The flyer was a single-page self-mailer printed on both sides and folded to present four 8½” x 5½” pages. The address page listed the local union’s return address and displayed the IBT horses-and-wheel logo. The back page reprinted the logo and listed Richard Thompson and Steve Lindquist, the positions they hold with the local union, and the phrase “Heartland Vision ‘Eye Care Done Right.’” The inside pages printed the name and address of the local union and the Heartland Vision company, and provided information about the optical services available to members and retirees. Also printed inside was a note signed by Thompson and Lindquist recommending Heartland Vision to the members and retirees; the note appeared beneath a photo of Thompson and Lindquist. The flyer did not refer to or mention the delegate and alternate delegate election or laud the accomplishments of Thompson or Lindquist.

Protestor Barker alleged that the inclusion of the photo of Thompson and Lindquist constituted an endorsement of Thompson’s slate, not permitted by Article XI, Section 1(a) of the *Rules*, which prohibits employer contributions to candidates.

Heartland Vision is a regional company providing eye care services to IBT members and retirees in Illinois and Wisconsin. Local Union 325 has a long-standing relationship with Heartland, which has provided services to local union members and retirees through the Central States Pension and Health & Welfare Funds. Each year, the company sends a flyer to members and retirees similar to the flyer at issue here; the flyer reminds beneficiaries of the services available to them. A flyer identical to the one at issue in this protest was mailed to members a year ago. In addition, Wisconsin Vision, the sister company of Heartland Vision serving Wisconsin IBT members, similarly sends an annual flyer to Wisconsin members and retirees; that flyer is nearly identical to the protested flyer.

The flyer in question was produced entirely by Heartland Vision, not Local Union 325. It was mailed by the staff of Heartland Vision from the offices of Local Union 325 using labels supplied by the local union.

Analysis

Article XI, Section 1(b)(2) bars employers from contributing “anything of value, where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate.” We carefully scrutinize vendor mailings to local union membership during an election period to determine whether they constitute impermissible employer contributions to a candidate. In *Hull*, 2001 EAD 153 (February 10, 2001), *aff’d*, 01 EAM 37 (February 21, 2001), a vendor letter that extolled the accomplishments of the local union’s principal officer and candidate for delegate was held to violate the *Rules* because it was sent during the critical pre-election period and went substantially beyond previous membership mailings by the vendor in championing the principal officer’s accomplishments in securing the insurance benefit.¹

Here, the flyer was the annual vendor mailing to local union membership, was substantially unchanged from the mailing sent in previous years, made a factual presentation of the services available, and did not praise the local union leaders. The *Rules* do not prohibit such mailings during election periods that communicate the availability of vendor services. We find no impermissible employer contribution on the facts presented here.

Accordingly, we DENY 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
2006 ESD 240

¹ The mailing in *Hull* stated that the principal officer negotiated the benefit and that he “endeavors to seek out services like this to help the members of your Local enjoy the savings associated with group plans and to enhance the value of your membership ...”

Barker, 2006 ESD 240
May 15, 2006

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

David J. Hoffa, Esq.
Hoffa 2006
30300 Northwestern Highway, Suite 324
Farmington Hills, MI 48834
David@hoffapllc.com

Barbara Harvey
645 Griswold Street
Suite 3060
Detroit, MI 48226
blmharvey@sbcglobal.net

Ken Paff
Teamsters for a Democratic Union
P.O. Box 10128
Detroit, MI 48210
ken@tdu.org

Daniel E. Clifton
Lewis, Clifton & Nikolaidis, P.C.
275 Seventh Avenue, Suite 2300
New York, NY 10001
dclifton@lcnlaw.com

Stephen Ostrach
1863 Pioneer Parkway East, #217
Springfield, OR 97477-3907
saostrach@gmail.com

David Barker
W7939 Sweet Road
Darien, WI 53114

Matthew Fitch
Merriman River Associates
P.O. Box 185332
Hamden, CT 06518
matt@merrimanriver.com

Richard Thompson, Secretary-Treasurer
IBT Local Union 325
5533 Eleventh Street
Rockford, IL 61109

William Broberg
1108 Fincastle Road
Lexington, KY 40502
wcbroberg@aol.com

Joe F. Childers
201 West Short Street, Suite 310
Lexington, KY 40507
childerslaw@yahoo.com

Jeffrey Ellison
510 Highland Avenue, #325
Milford, MI 48381
EllisonEsq@aol.com