

ELECTION APPEALS MASTER

IN RE: FRED GEGARE,

Protestor.

10 Elec. App. 1 (KC)

This matter is an appeal from the Election Administrator's decision 2010 EAD 1 issued May 31, 2010. The appeal hearing was initially requested by Robert Colone on behalf of Fred Gegare, who subsequently filed an application to withdraw his appeal. Barbara Harvey then requested a hearing de novo for Teamsters for a Democratic Union (TDU), although it had concededly not filed a timely appeal.

A hearing was held before me on June 10, 2010. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq., for the Election Supervisor; Barbary Harvey on behalf of TDU; Robert M. Colone, Esq. on behalf of Fred Gegare and David J. Hoffa, Esq. on behalf of the Hoffa-Keegel 2011 Campaign.

Nothing in the factual record herein is in material dispute. The Election Supervisor's inquiry into, and disposition of the matter, established that the Hoffa-Keegel campaign violated the Election Rules when it faxed to all local unions and joint councils in the United States and Canada copies of accreditation petitions for distribution through literature tables or bulletin boards.

The Office of the Election Supervisor became aware of the matter when it was contacted by several local unions that had received the Hoffa-Keegel faxes. After the Election Supervisor discussed the matter with the campaign's counsel, the campaign conceded that its

faxes violated the Rules, and took immediate steps to remedy the violation. The Election Supervisor concluded that the Hoffa-Keegel campaign had demonstrated, in its remedial actions, a desire to comply with the Rules, and during the hearing before the Appeals Master, stated that the violations had been innocent and not intentionally violative of the Rules. The Election Supervisor imposed a remedy that the protester herein initially asserted as insufficiently severe.

The protester, Fred Gegare, who is a candidate for IBT General President, initially argued for full and final disqualification of the Hoff-Keegel ticket in the 2010-2011 IBT International Officer Election. One day before the scheduled appeal hearing, as noted, Mr. Gegare sought to withdraw his appeal.

TDU, through its counsel, Barbary Harvey, objected to Mr. Gegare's withdrawal of his appeal (e-mail to the Appeals Master, June 9, 2010 11:38 a.m.). As TDU had not filed an appeal of its own within the deadline imposed by the Rules, Ms. Harvey asserted that she had not done so in reliance upon her expectation that Mr. Gegare would follow through on his appeal. Robert Colone, counsel for Mr. Gegare, made it clear during the hearing, that there was no understanding, dialogue or expectation that Mr. Gegare was acting in concert with TDU. Indeed, Mr. Gegare objected to the appeals hearing going forward, as did the Election Supervisor and David Hoffa, counsel to the Hoffa-Keegel campaign.

In two subsequent letters to the Appeals Master, dated June 9 and June 10, 2010, Ms. Harvey cited the settled case authority that time deadlines under the Rules are not jurisdictional but prudential and may be waived to accommodate broader purposes and values inherent in the Rules.

The application of Mr. Gegare to withdraw his appeal is granted. Although I am troubled by Ms. Harvey's somewhat dubious claims to a right of separate appeal for TDU, I have decided to dispose of the discrete and belated appeal of the TDU on the merits.

The Election Supervisor had determined, and confirmed in the Hearing, that the violations in question were inadvertent, ministerial errors.

The remedy selected by the Election Supervisor will not be disturbed except where there has been an abuse of discretion. That is not the case in this matter.

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

SO ORDERED:

A handwritten signature in black ink, appearing to be 'KC' followed by a long horizontal stroke.

Kenneth Conboy
Election Appeals Master

Dated: June 14, 2010