

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

IN RE: LaVERNA WHARAM,)	Protest Decision 2011 ESD 303
)	Issued: July 14, 2011
Protestor.)	OES Case Nos. P-301-063011-NA
<hr/>		

LaVerna Wharam, member and elected delegate of Local Union 320, filed a pre-election protest pursuant to Article XIII, Section 2 of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that Hoffa-Hall 2011 delegate whips distributed campaign literature on the floor of the IBT convention while the convention was in session, in violation of the *Rules*.

Election Supervisor representative Jeffrey Ellison investigated this protest.

Findings of Fact and Analysis

Rule 46 of the convention rules¹ adopted by the delegate body of the IBT convention provided the following with respect to campaign activity on the convention floor, *viz.*

[T]he convention floor [and other specified locations] are politically neutral locations: that is, displays of campaign material, signs, banners or similar items promoting the candidacy of anyone are prohibited in these areas. ... Campaign material, signs, banners [and] similar items may only be displayed or distributed on the convention floor during the floor demonstrations permitted by Rule 45 above. Distribution of literature supporting or opposing the candidacy of anyone is prohibited. This prohibition does not extend to the wearing of buttons and t-shirts. ...

Rule 45, referenced in the foregoing rule, allowed floor demonstrations “following the floor nomination of each candidate nominated for general president and general secretary-treasurer.” However, before the convention started the campaigns of each candidate for those positions mutually agreed to waive their rights under Rule 45. Accordingly, floor demonstrations were not allowed at the 28th IBT convention, and distribution of campaign literature on the convention floor was also prohibited.

Notwithstanding this prohibition, delegates wearing Hoffa-Hall 2011 whip vests² distributed sample ballots on the floor of the convention while the convention was in session on

¹ The convention rules incorporated portions of the Supplemental Election Supervisor Rules for the 28th International IBT Convention. The *Supplemental Convention Rules* were approved by the United States District Court by order entered May 5, 2011. The quoted portion of Rule 46 of the convention rules appeared verbatim as Article XI, Section B in the Court-approved *Supplemental Convention Rules*

² At various points during the convention, these whips were observed leading sections of delegates in responding to the convention proceedings, including cheering and booing candidates for International office and the candidates’

July 14, 2011

Thursday, June 30, the fourth day of the convention. This distribution took place less than two hours before that evening's secret ballot vote on the nominations made that morning for the offices of IBT General President and General Secretary-Treasurer. Shortly after 3 p.m. that day, protestor Wharam observed a delegate enter the convention floor carrying a box sized to hold a half case of paper. From this box, the delegate withdrew stacks of printed sheets that he passed to more than a dozen whips, who then fanned across the floor to distribute them. Wharam observed whips pass the flyers one-by-one to delegates wearing Hoffa-Hall vests. She also observed whips walk slowly along the sections of chairs, handing stacks of the flyers to the delegate on the end of each row, who then passed them down the row. The distribution continued for fifteen to twenty minutes during the convention session.

Wharam, wearing a shirt bearing a sticker supporting the candidacy of Sandy Pope for IBT General President, approached a whip and asked for a flyer. The whip looked at her sticker and refused her a flyer. Wharam obtained a flyer from another delegate. She attached the flyer to the protest. The flyer was 8½" x 11" printed on one side of a white sheet. The heading read "Hoffa-Hall Slate Sample Ballot" for Thursday, and listed the candidates who were floor-nominated for General President and for General Secretary-Treasurer. The ovals adjacent to James P. Hoffa and Ken Hall were darkened. Printed on the diagonal across the flyer in large block letters was the word "SAMPLE." The bottom of the flyer bore the Hoffa-Hall 2011 campaign logo in approximate dimensions of 3" x 1¼".

Erik Jensen, another delegate from Local Union 320, also saw the whips distributing the flyers. He followed two of them as they distributed the flyers, telling one that he did not have the right to distribute campaign material on the convention floor. According to Jensen, the whip continued his activity after noting Jensen's name on his delegate's badge.

Hoffa-Hall 2011 presented no evidence to counter the allegation that its supporters distributed campaign literature on the convention floor in contravention of the convention rules.

All the candidates who were floor-nominated for General President or General Secretary-Treasurer received a sufficient number of delegate votes to qualify for the union-wide ballot.

We GRANT the protest. We find that the flyers were campaign material and that they were distributed on the convention floor in violation of clear rule prohibiting such distribution. The rule applied at the convention is the same one that applies in local unions and other subordinate bodies. Campaign literature cannot be distributed at local union meetings, whether they be general or special membership meetings or craft meetings. *See Prisco*, 2010 ESD 6 at 5-7 (July 8, 2010).³

nominators and seconders. The whips wore red "Hoffa-Hall 2011" vests. The word "WHIP" appeared on the back of the vest in large, white block letters.

³ Campaigning is only allowed at a local union meeting if the local union complies with notice and equal access provisions of the *Rules*. Article VII, Section 5.

July 14, 2011

Remedy

When the Election Supervisor determines that the *Rules* have been violated, he “may take whatever remedial action is deemed appropriate.” Article XIII, Section 4. In fashioning the appropriate remedy, the Election Supervisor views the nature and seriousness of the violation as well as its potential for interfering with the election process.

We order candidates and supporters of Hoffa-Hall 2011 to cease and desist from distributing IBT International officer election campaign literature during union meetings, including all types of subordinate body meetings, for the duration that the *Rules* remain in effect.

We also order that the Hoffa-Hall 2011 campaign mail the notice attached to this decision to all delegates and alternate delegates who registered for the IBT convention, including all non-voting delegates. The mailing shall be completed by Monday, July 18, 2011 and a compliance affidavit supplied to OES within two days thereafter. The purpose of the mailing is to remedy the violation and to deter similar distribution of campaign material at other union meetings.

We order no further relief, noting that all floor-nominated candidates for General President and General Secretary-Treasurer, including those who oppose James Hoffa and Ken Hall in their respective candidacies, achieved nomination to the union-wide ballot at the convention. Accordingly, the prohibited distribution did not prejudice the nominees opposed to Hoffa or Hall.

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, NY 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, 1801 K Street, N.W., Suite 421 L, 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
2011 ESD 303

Wharam, 2011 ESD 303

July 14, 2011

DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
braymond@teamster.org

David J. Hoffa
Hoffa Hall 2011
1100 Connecticut Avenue, N.W., Ste. 730
Washington, D.C. 20036
hoffadav@hotmail.com

Ken Paff
Teamsters for a Democratic Union
P.O. Box 10128
Detroit, MI 48210-0128
ken@tdu.org

Barbara Harvey
1394 E. Jefferson Avenue
Detroit, MI 48207
blmharvey@sbcglobal.net

Fred Gegare
P.O. Box 9663
Green Bay, WI 54308-9663
kirchmanb@yahoo.com

Scott D. Soldon
3541 N. Summit Avenue
Shorewood, WI 53211
scottsoldon@gmail.com

Fred Zuckerman
3813 Taylor Blvd.
Louisville, KY 40215
fredzuckerman@aol.com

Robert M. Colone, Esq.
P.O. Box 272
Sellersburg, IN 47172-0272
rmcolone@hotmail.com

Carl Biers
Box 424, 315 Flatbush Avenue
Brooklyn, NY 11217
info@SandyPope2011.org

Julian Gonzalez
Lewis, Clifton & Nikolaidis, P.C.
350 Seventh Avenue, Suite 1800
New York, NY 10001-5013
jgonzalez@lcnlaw.com

LaVerna Wharam
1488 Cumberland Street
St. Paul, MN 55117
wharaml@invergrove.k12.mn.us

Sue Mauren, Secretary-Treasurer
Teamsters Local Union 320
3001 University Avenue SE #500
Minneapolis, MN 55414
local320@teamsterslocal320.org

William C. Broberg
1108 Fincastle Road
Lexington, KY 40502-1838
wcbroberg@aol.com

Maria Ho
Office of the Election Supervisor
1801 K Street, N.W., Suite 421 L
Washington, D.C. 20006
mho@ibtvote.org

Kathryn Naylor
Office of the Election Supervisor
1801 K Street, N.W., Suite 421 L
Washington, D.C. 20006
knaylor@ibtvote.org

Jeffrey Ellison
214 S. Main Street, Ste. 210
Ann Arbor, MI 48104
EllisonEsq@aol.com

OFFICE OF THE ELECTION SUPERVISOR
for the INTERNATIONAL BROTHERHOOD OF TEAMSTERS
1801 K STREET, N.W., SUITE 421 L
WASHINGTON, D.C. 20006
202-429-8683
877-317-2011 TOLL FREE
202-429-6809 FACSIMILE
electionsupervisor@ibtvote.org
www.ibtvote.org

Richard W. Mark
Election Supervisor

**Notice to All Delegates and Alternate Delegates to the IBT Convention,
Including Non-Voting Delegates**

The Hoffa-Hall 2011 campaign violated the convention rules by passing out campaign flyers on the convention floor on Thursday, June 30, 2011.

The convention rules and the Election Rules prohibit what the Hoffa-Hall campaign did. The Election Rules also prohibit candidates or their supporters from distributing campaign flyers in any local union meeting, including general or special membership meetings and craft meetings. The Election Supervisor will not tolerate violations of the Election Rules because they undermine members' confidence that the election of International Union officers is conducted fairly.

The Election Supervisor has ordered the Hoffa-Hall 2011 campaign to mail this notice to all delegates and alternate delegates to the IBT convention, including non-voting delegates.

The Election Supervisor issued this decision in *Wharam*, 2011 ESD 303 (July 14, 2011). You may read it at <http://www.ibtvote.org/protests/2010/2011esd303.htm>.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity that violates the *Rules* should be filed with Richard W. Mark, 1801 K Street, N.W., Suite 421L, Washington, D.C. 20006, telephone: 877-317-2011, fax: 202-429-6809, email: electionsupervisor@ibtvote.org.