



Turning first to the *Teamster*, the August 2011 issue consisted of 68 pages,<sup>3</sup> of which the portion beginning with the front cover and continuing through numbered page 31 is the subject of the protest.<sup>4</sup> As the magazine cover announced, the issue was given over entirely to reporting on the 28<sup>th</sup> IBT convention held in Las Vegas, Nevada from June 27 through July 1, 2011. Four pages reported on pre-convention activities, including convention planning, the exhibition hall, committee actions, and the convention theme. The convention's first day garnered six pages of reporting, with articles on General President Hoffa's five-year report, the war on workers, Teamsters fighting back, and President Obama's video message to the delegate body. Articles reporting on the activities of the convention's second day filled another six pages and included General Secretary-Treasurer Keegel's financial report, profiles of new Teamster members, advances made in the airline division, and speeches by guest speakers. Activities of the third day were summarized in six pages of articles covering mobilizing members, coordinated bargaining, and inspirational profiles. Six pages reported on fourth day activities, including articles on the retirement tribute to Keegel, the announcement of the FedEx organizing campaign, a piece on rail members, and guest speakers. Reporting on the fifth day was devoted to Vice-President Biden's address to the convention and consumed two pages. The final pages at issue in this protest were the table of contents (on the inside front cover) and the page 1 message from General President Hoffa concerning organizing FedEx.

The protest complained that this issue of *Teamster* contained an impermissible number of photos of Hoffa-Hall 2011 supporters. In total, some 135 photos are displayed on the front cover and first 31 pages of the magazine that are at issue in this protest.<sup>5</sup> Of these, 90 photos are either "headshots" of speakers or photos of persons who are not wearing visible partisan emblems that identify them as supporters of a particular candidate or slate. An additional 45 photos show crowd or group photos, most of which are of the convention floor. Of these, delegates wearing Hoffa-Hall 2011 red vests are seen in 38 of the photos, while five photos showed delegates wearing Gegare-Sheard black vests, and two photos depicted Pope supporters in navy short-sleeved shirts. The red vests worn by Hoffa-Hall 2011 delegates bore the name of the slate. However, most of the magazine photos in which red vests could be seen (some 31 of the 38) either did not include the words "Hoffa Hall" because of cropping of the photos or those words were blocked from the camera's view or were seen at such distance as to be indecipherable to the reader of the magazine. The crowd or group shots in which the red vests are seen (regardless of whether the words "Hoffa Hall" can also be seen) constitute approximately 84% of the total number of crowd or group photos. In comparison, similar photos depicting the delegates supporting the Gegare-Sheard slate are approximately 11% of the total, while photos of Pope supporters number approximately 4% of the total. This breakdown correlates roughly to the demographic reflected in the voting to confirm the nominations of candidates for IBT General

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<sup>3</sup> The issue is a self-mailer printed on 16½" x 21½" glossy stock folded and saddle-stitched at the center. It had 64 numbered pages; in addition, it carried photos and text on the front and back outside and inside cover pages, for a total of 68 pages.

<sup>4</sup> Various notices and reports from the Election Supervisor appear on numbered pages 32, 33, 64, and the inside back cover. Candidate "battle pages" authorized by Article VII, Section 3 of the *Rules* are printed on pages 34 through 56. The IRB report appears on pages 58 through 63. Finally, printed on the outside back cover is a non-partisan message encouraging members to vote in the International officer election.

<sup>5</sup> None of the photos bears a caption.

President, where James Hoffa received 82% of the delegate vote and Fred Gegare and Sandy Pope each received 9% of the vote.

Article VII, Section 8(a)(1) declares that a union-financed newspaper or other publication shall not “contain pictures or articles stating or indicating support of the candidacy of a particular candidate.” The protest suggests that *Teamster* violated this provision because the crowd or group photos it contained were weighted heavily in favor Hoffa Hall 2011. We considered a similar argument in *Wright*, 2006 ESD 349 (September 15, 2006), *aff’d*, 06 EAM (October 9, 2006), where a claim made on behalf of General President candidate Leedham argued that the number of photos in the August 2006 issue of *Teamster* was unfairly weighted to Hoffa-Keegel delegates at that convention. There, the magazine printed 52 photos of Hoffa Keegel supporters and 6 of Leedham supporters. We found that “more than 10% of the photographs of supporters are of Leedham supporters. The percentage of delegate votes cast for Leedham for the office of General President totaled approximately 6% percent of the total who cast ballots. As such, the number of supporter photographs fairly approximates the political demographic of the event they attended.” As in *Wright*, the percentage of crowd or group photos depicting Hoffa-Hall supporters printed in the August 2011 issue of *Teamster* (84%) fairly approximated the percentage of delegate votes Hoffa received in the secret ballot election to confirm his nomination for General President, as did the percentage of photos of Gegare and Pope supporters when compared to the percentage of delegate votes each of them received. What is implicit in *Wright* is made explicit by *Hicks*, 2006 ESD 110 (March 2, 2006), and *Bucalo*, 2006 ESD 171 (April 6, 2006): a union does not violate the prohibition on union support for a candidate by reporting factually on newsworthy events. The convention undoubtedly was newsworthy to IBT members, and the photos of the convention floor factually depicted the large majority of delegates wearing red Hoffa-Hallvests. Accordingly, we reject the protest’s claim concerning the photos used in the August 2011 issue of *Teamster*.

The protest presented the same argument with respect to the Summer 2011 issue of *UPS Teamster*. The cover page and pages 8 through 23 of that 28-page publication<sup>6</sup> reported on the convention. Some 40 photos are from the convention. Of these, 21 are crowd or group shots. Although red vests can be seen in 17 of the shots, the names “Hoffa Hall” can be seen in only 6 of them. In comparison, Gegare slate supporters and Pope supporters are seen in one photo each. This ratio also approximately reflects the political demographic of the convention. As such, we reject the protest’s challenge to this publication as well.

The August 2011 issue of *Teamster Industrial Trade News*<sup>7</sup> reported on the convention as well. Because of its limited size, the newsletter published only one photo depicting a crowd or group shot taken at the convention. In this black and white photo, both Hoffa Hall and Gegare vests can be seen, although the majority of delegates wearing vests are supporters of Hoffa Hall. This photo constitutes a factual rendition of the political demographic of the convention and therefore does not violate the *Rules*. Accordingly, we DENY the protest’s complaint that the IBT’s publication of convention photos of Hoffa Hall supporters constituted implicit endorsement of Hoffa Hall 2011 by the IBT.

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<sup>6</sup> The issue contained 24 numbered pages and the outside and inside front and back covers.

<sup>7</sup> This publication was a self-mailer newsletter, printed on both sides of a single sheet of 11” x 17” stock and folded twice, producing four pages.

The protest also challenged the use by the IBT in all three publications of the convention theme, “Vision Solidarity Action.” The protest contends that this slogan is also the theme or slogan of Hoffa Hall 2011 and therefore constitutes endorsement of that slate by the IBT. The basis for the protest is a series of decisions issued by Election Administrator Wertheimer in 2001. Thus, in *Martinez*, 2001 EAD 384 (June 11, 2001), *appeal withdrawn*, (“*Martinez I*”), the Election Administrator held that the terms “unity,” “pride,” and “strength” had become so closely associated with the Hoffa 2001 campaign as to make their use in union-financed publications and communications during the electoral period implicit endorsements of the Hoffa slate. In *Martinez*, 2001 EAD 414 (July 27, 2001), *aff’d* 01 EAM 87 (August 17, 2001, corrected copy issued August 30, 2001) (“*Martinez II*”), the Election Administrator held that “given the pervasive use of the ‘unity’ theme by the Hoffa slate, the permissible contexts in which the IBT may adopt the same slogan during the ongoing electoral campaign are sharply limited.” The Election Appeals Master affirmed *Martinez II*, writing:

The factual record in this case ... indisputably establishes that the IBT repeatedly endorsed the candidacy of the Hoffa Slate by broadly and pervasively repeating the Hoffa Slate campaign slogan (as settled in *Martinez I*) in speeches, visuals and convention paraphernalia. Indeed, the inference is irresistible that this was planned and choreographed with precisely campaign benefits chiefly in mind. This is astonishing, especially in light of the clear and unequivocal governing precedent in *Lopez*, P242 (December 19, 1995), *aff’d*, 96 EAM 51 (January 8, 1996), which held that a union’s use in the masthead of its newsletter of the campaign slogan of a candidate constituted an endorsement of that candidate.]

Here, the protestors have presented no evidence (and we have found none) demonstrating that the IBT convention theme of “Vision Solidarity Action” is associated with the Hoffa Hall 2011 campaign. Accordingly, we DENY this aspect of the protest.

Finally, the protest asserted that the Gegare slate battle pages were not posted to the IBT website in a timely fashion. Article VII, Section 11 of the *Rules* requires the IBT to post on its website the battle pages that it is required to publish in *Teamster* pursuant to Article VII, Section 10. The applicable provision requires that “[t]he campaign literature shall be published to the IBT website simultaneously with the publication of the issue of the IBT Magazine in which the campaign literature appears and shall remain on the IBT website for a period of time to be determined by the Election Supervisor but, in any event, for no fewer than 30 days.” The protest claimed that the battle pages were not posted timely to the IBT website. Investigation showed that *Teamster* was mailed during the week ending August 19 and that the battle pages were uploaded to the website on August 19. We note it is possible that the magazine arrived at some percentage of members’ homes prior to August 19; however, no proof of that fact was presented and we found none. Even if evidence demonstrated that some members received the magazine a day or two before the battle pages were uploaded, we would conclude that the IBT substantially complied with its obligation to post the pages “simultaneously with the publication” of the magazine. Accordingly, we DENY this aspect of 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

***Gegare & Bennett***, 2011 ESD 320  
September 8, 2011

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 320

**Gegare & Bennett**, 2011 ESD 320  
September 8, 2011

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