

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

IN RE: TEAMSTERS UNITED,)
)
Protestor.)
)
_____)

Protest Decision 2017 ESD 386
Issued: February 16, 2017
OES Case No. P-419-120316-NA

Teamsters United, a slate of candidates for International office, filed a post-election protest on December 3, 2016 against Hoffa-Hall 2016, the IBT, and “numerous Teamster employers.” The protest alleged that “the Hoffa slate and the IBT deliberately delayed corruption investigations of Hoffa slate members Ken Hall and Rome Aloise, and refused to produce subpoenaed documents that would have been damaging to the Hoffa campaign’s re-election hopes, until after the election,” denying union members the right to an “informed” election. The protest also alleged that the results of the election were affected by conduct that was the subject of other pre-election protests. We decided the first aspect of the protest with other similar protests in *Lobger et al*, 2017 ESD 378 (February 10, 2017).

We deferred the balance of the protest for later decision, which we now render.

Election Supervisor representative Jeffrey Ellison investigated this protest.

Findings of Fact and Analysis

The protestor’s allegations fall into two categories. First, the protestor identified 22 specific protests for which decisions had not issued at the time that P-419 was filed and contended that the *Rules* violations alleged there “in the aggregate” may have affected the outcome of the election. Second, the protestor asserted that remedies ordered in 15 other protest decisions in which *Rules* violations were previously found were inadequate to cure those violations. For the reasons that follow, we reject these contentions and DENY the balance of this protest.

The 22 listed protests that were undecided at the time of the tallying of ballots in the International officers election have now been decided, as demonstrated by the following table:

Protest number	Protestor	ESD	Result	Appeal
P-093	Zuckerman	359	Resolved	None
P-108	Lizarraga	356	Deny	None
P-168	Halstead	366	Deny	Withdrawn
P-189	Halstead	385	Deferred	None
P-228	Teamsters United	353	Resolved	None
P-236	Zuckerman	360	Resolved/Deny	None
P-301	Villa	370	Resolved	None
P-316	Motty	365	Deny	None
P-330	Zuckerman	340	Deny	Affirmed
P-339	Zuckerman/Lobger	367	Deny	None
P-368	Zuckerman	341	Grant/Deny	Affirmed
P-373	Teamsters United	344	Deny	None

Protest number	Protestor	ESD	Result	Appeal
P-378	Yarbrough	379	Deny	None
P-385	Zuckerman	343	Deny	Affirmed
P-388	Teamsters United	381	Deny	None
P-394	Teamsters United	384	Deny	None
P-400	Zerrougui/Ruelas	354	Deferred	None
P-404	Crooms	345	Deny	None
P-409	Cintron	375	Deny	None
P-410	Lobger	378	Deny	Pending
P-411	Halstead	378	Deny	Pending
P-412	Sylvester	378	Deny	Pending

The lone protest from this list that was granted was *Zuckerman*, 2016 ESD 341 (December 15, 2016), where we found that Dennis Corrigan violated the *Rules* by striking Richard Galvan when Galvan was campaigning. We ordered a remedy against Corrigan. However, we held that Corrigan’s actions did not substantially interfere with the campaign activity of Galvan or Teamsters United. We therefore ordered no additional remedy. Zuckerman appealed the decision on this latter point, contending through counsel that Corrigan’s violation impacted Teamsters United. The Election Appeals Master denied the appeal and affirmed our decision, writing: “The appellant has not demonstrated that the Election Supervisor abused his discretion in failing to impose additional unspecified remedial relief for the violation.” *Zuckerman*, 2017 EAM 36 (January 13, 2017). The other 21 protests were either denied (15), resolved (4), or deferred for further consideration of a remedy specific to an individual. The only appeal pending concerns three protests consolidated in the *Lobger* ruling. Accordingly, because none of the protests that were pending decision at the time of the election resulted in findings of *Rules* violations that interfered with Teamsters United’s campaign rights under the *Rules*, we find no basis for the protestor’s contention that the conduct alleged in the unresolved protests impermissibly affected the outcome of the election.

The instant protest also asserted that 15 decisions where remedies were ordered did not fully remedy the *Rules* violations found. We reject this contention categorically. Under the protest procedures laid out in Article XIII of the *Rules*, the protestor had available to it the right of appeal for decision in which the protestor deemed the ordered remedy unsatisfactory. Failure to appeal, withdrawal of appeal once filed, or affirmance of the remedy ordered by the Election Appeals Master rendered our decision final and binding. The protestor will not be heard later that a remedy previously ordered and implemented was unsatisfactory or ineffective, absent a new violation of the *Rules*. See *Durham*, Post-75-IBT (January 10, 1992) (M. Holland, Election Officer) (protest rulings that are final and binding under the *Rules* are conclusive as to the facts and issues raised and cannot be relitigated in a subsequent protest); *Cheatem*, Post-27-EOH (August 21, 1997) (B.Z. Quindel, Election Officer) (same).

Finally, the aspect of the protest addressed in this decision is not a proper subject for a post-election protest under the *Rules*. Post-election protests are defined as “[p]rotests concerning election day or post election day conduct.” Article XIII, Section 3. This protest did not identify conduct that occurred on or after the date the results in the International officers election were announced. To the contrary, it cited only conduct that had occurred previously and either was remedied or was found not to

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violate the *Rules*. Accordingly, we conclude that this aspect of the protest was untimely filed. *Berg*, 2006 ESD 296 (June 4, 2006), *aff'd*, 2006 EAM 44 (June 15, 2006). In *Lobger, supra*, we exercised our discretion to waive the timeliness defect and consider the other aspect of this protest on its merits. We did so because we were deciding in *Lobger* three other protests on the same subject matter that were timely filed. We do not waive the timeliness defect of the aspect of the instant protest we decide here.

For the foregoing reasons, we DENY the balance of this protest in all respects.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within three (3) 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:

Kathleen A. Roberts
Election Appeals Master
JAMS
620 Eighth Avenue, 34th floor
New York, NY 10018
kroberts@jamsadr.com

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, c/o Jeffrey Ellison, 214 S. Main Street, Suite 212, Ann Arbor, MI 48104, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kathleen A. Roberts
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DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001
braymond@teamster.org

Jeffrey Ellison
214 S. Main Street, Suite 212
Ann Arbor, MI 48104
EllisonEsq@aol.com

David J. Hoffa
1701 K Street NW, Ste 350
Washington DC 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

Teamsters United
315 Flatbush Avenue, #501
Brooklyn, NY 11217
info@teamstersunited.org

Louie Nikolaidis
350 West 31st Street, Suite 40
New York, NY 10001
lnikolaidis@lcnlaw.com

Julian Gonzalez
350 West 31st Street, Suite 40
New York, NY 10001
jgonzalez@lcnlaw.com

David O'Brien Suetholz
515 Park Avenue
Louisville, KY 45202
dave@unionsidelawyers.com

Fred Zuckerman
P.O. Box 9493
Louisville, KY 40209
fredzuckerman@aol.com