

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: TEAMSTER POWER,)	Protest Decision 2020 ESD 6
)	Issued: July 10, 2020
Protestor.)	OES Case No. P-010-070220-NA
_____)	

Teamster Power, a slate of candidates for International office, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2020-2021 IBT International Union Delegate and Officer Election (“Rules”). The protest alleged that the O’Brien-Zuckerman 2021 slate violated the Rules by sending solicitations for campaign contributions to members employed at Teamster affiliates using at their official union email addresses.

Election Supervisor representative Dolores Hall investigated this protest.

Findings of Fact

On June 29, 2020, the O’Brien-Zuckerman 2021 slate sent a fundraising appeal to a list of email addresses. The email solicitation contained two hyperlinks, each when clicked loaded the contribution page of the O’Brien-Zuckerman 2021 website in the recipient’s browser. That page permits the user to make a one-time or recurring monthly credit card contribution to the slate in an amount designated by the user by completing a form requiring his/her name, billing address, email address, phone number, local union number, employer name, and the last four digits of the user’s Social Security number, and by clicking either an “active member” or “retired member” button.

O’Brien-Zuckerman 2021 emailed the solicitation by linking a spreadsheet containing the email addresses to a platform supplied by NationBuilder.com, a vendor. A tool on the vendor’s platform completed the transmission to 9,500 email addresses shortly after 3 p.m. EDT on June 29. Using a mail-merge function, the solicitation addressed each recipient by his/her first name. The email did not request that the solicitation be placed on a local union table or bulletin board reserved for campaign literature.

Protestor alleged that O’Brien-Zuckerman 2021 sent the fundraising appeal to some recipients using their official union addresses. Protestor contended that the use of official union addresses for this purpose violated the Rules.

Upon the protest’s filing, a representative for O’Brien-Zuckerman 2021 conceded that some emails had been sent to recipients at their union email addresses. At our investigator’s request, O’Brien-Zuckerman 2021 supplied us with the full mailing list, in the form of a sortable spreadsheet, that had been linked to the NationBuilder.com platform for email distribution. Sorting the spreadsheet showed that the email solicitation was sent to 369 unique email addresses that ended with Teamster domain names, including domains of the IBT and 124 Teamster local unions and other affiliates.

Some Teamster local unions do not establish Teamster domain names for their official email communications. Instead, they use the email service provided by Gmail, AOL, Yahoo, Comcast, or other providers and select usernames that indicate the official nature of the email

July 10, 2020

address. An example of this style is “teamsters[local union number]@hotmail.com.” Our investigation found that O’Brien-Zuckerman 2021 sent the email solicitation to 56 email addresses of this style at 51 local unions.

The NationBuilder.com platform permits the customer to generate a report of the users who clicked on a solicitation’s hyperlink; the report also records the email addresses from which recipients clicked to the contribution page. The platform also may be queried for a report of the users who “clicked through” the donation page to complete a contribution. We obtained both such reports.

The first report showed that 12 recipients with Teamster domain names and 7 recipients with Teamster usernames clicked on a hyperlink in the solicitation. The second report showed that of those 19 recipients, two made contributions. One of the contributors had received the solicitation at his email address with a Teamster domain name. That member registered for a recurring contribution of \$30 monthly, subject to the individual cap on contributions established by Article XI, Section 1(b)(12) of the Rules. When he completed the contribution form on the O’Brien-Zuckerman 2021 website, he provided a personal email address as part of the registration, rather than the Teamster domain name address at which he received the solicitation.

The other contributor had received the solicitation at an email address with a Teamster username. This member, a local union officer, registered for a recurring contribution of \$50 monthly. The email address at which the member received the solicitation is listed on the local union’s website as the email address for the secretary-treasurer, the president, and the union dues administrative agent. When the member completed the contribution registration form on the O’Brien-Zuckerman 2021 website, he listed the email address at which he received the solicitation – the address with the Teamster username that is listed on the local union website – as the address at which the slate may contact him.

Analysis

Several provisions of the Rules prohibit campaigning using union facilities. Thus:

- Article VII, Section 12(c): “Union ... facilities, ... personnel, etc. may not be used to assist in campaigning unless the Union is reimbursed at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance.”
- Article XI, Section 1(b)(3): “No labor organization ... may contribute, or shall be permitted to contribute, directly or indirectly, anything of value, where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate ... No candidate may accept or use any such contribution. These prohibitions extend beyond strictly monetary contributions made by a labor organization and include contributions and use of the organization’s ... facilities and personnel.”
- Article XI, Section 1(b)(6): “No Union funds or other things of value shall be used, directly or indirectly, to promote the candidacy of any individual. Union ... facilities, ... personnel,

July 10, 2020

etc. may not be used to assist in campaigns unless the Union is compensated at fair market value for such assistance, and unless all candidates are provided with equal access to such assistance and are advised in advance, in writing, of the availability of such assistance.”

Further, several Rules provisions address a candidate’s responsibility with respect to union support of campaigning:

- Article XI, Section 1(b)(1): “Only contributions which are properly solicited ... under these *Rules* may be expended or used by candidates, slates or independent committees for the 2010-2011 International Union Delegate and Officer Election.”
- Article XI, Section 1(b)(13): “Candidates are strictly liable to insure that each contribution received is permitted under these Rules. Prohibited contributions must be returned promptly.”
- Article XI, Section 1(b)(15): “Ignorance by a candidate, by a union and/or by an employer that union or employer funds or other resources were used to promote a candidacy shall not constitute a defense to an allegation of a violation of these Rules.”

It is firmly established under these provisions that a campaign may not mail, fax, or email campaign materials to a local union except where the campaign expressly requests that the material be placed on the local union’s literature table or bulletin board for general distribution and then only if the transmission complies with the requirements of our *Advisory on the Use of Literature Tables*.

In *Reyes*, 2010 ESD 59 (December 22, 2010), we held that a campaign violated the Rules by using the U.S. Mail to send individually addressed campaign literature and solicitations for campaign contributions to recipients at local union addresses. There, the campaign “sent solicitations to members asking for support and campaign contributions, and individually addressed those solicitations to each targeted member using a local union as the mailing address. This use of local union addresses to deliver individually-addressed campaign solicitations violates the *Rules*.” See also *Prisco*, 2010 ESD 6 (July 8, 2010) (business agent violated the Rules in part by using a union-provided email network to spur chief stewards and stewards to circulate slate accreditation petitions).

Just as the use of local union postal mailing addresses was found to violate the Rules in *Reyes*, so too does the use of local union email addresses for individually address campaign solicitations violate the Rules here.

Election Administrator Wertheimer spelled out the rationale prohibiting the use of union addresses for individually addressed campaign material in *Ostrach & Mandaro*, 2000 ESD 29 (October 2, 2000), *aff’d*, 00 EAM 7 (October 10, 2000):

while a local union’s or joint council’s officers may have a real interest in campaign materials for candidates, the Rules require that such campaign materials intended for them,

July 10, 2020

rather than the membership as a whole through campaign literature tables, be sent to the officers at their homes or to campaign addresses.

On these facts, we GRANT the protest. A candidate or slate may not permissibly solicit campaign support or contributions using individuals' union email addresses because such solicitation necessarily relies on a union resource to reach its intended audience.

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. “The Election Supervisor’s discretion in fashioning an appropriate remedy is broad and is entitled to deference.” *Hailstone & Martinez*, 10 EAM 7 (September 14, 2010).

We order O’Brien-Zuckerman 2021 to email the Notice of Election Rules Violation by O’Brien-Zuckerman 2021 attached to this decision to all recipients of the June 29, 2020 campaign solicitation. Such emailing shall be completed within 3 business days of the date this decision issues. The subject line of the email shall state “Notice of Election Rules Violation by O’Brien-Zuckerman 2021.” The purpose of the notice is strictly remedial, to inform the recipients of the requirements of the Rules, the violation found, and the remedy imposed.

In addition, as no candidate or slate may send solicitations for support to recipients at union email addresses, we order O’Brien-Zuckerman 2021 to cease and desist from using union email addresses for such purpose and to purge from any email list it uses for soliciting support all union email addresses, whether they are addresses with union domain names or union usernames. With the issuance of this decision, we have supplied a list of 425 names and email addresses of individuals covered by this cease and desist order directly to O’Brien-Zuckerman 2021 and do not otherwise name them in this decision. O’Brien-Zuckerman 2021 must complete the purge ordered here with 5 business days of the date this decision issues. We have also supplied a list of 65 additional names and email addresses of individuals where the username (in most cases) or the domain name (in 3 instances) suggests that the email addresses are official union addresses. For this list, we have not verified that these email addresses are official union addresses and therefore do not order O’Brien-Zuckerman 2021 to purge them. However, we note that a candidate or slate is strictly liable for impermissibly using a union resource for a campaign purpose. As such, if the campaign uses all or some of them for a campaign purpose without verifying that the email addresses are not official union addresses, it does so at its peril.

Further, as no candidate or slate may use contributions received from members who were improperly solicited at local union addresses, O’Brien-Zuckerman 2021 cannot use or transfer to another candidate, slate, or independent committee for use the funds it has received, or may in the future receive, from members responding to the improper solicitation. Accordingly, we direct O’Brien-Zuckerman 2021 to disgorge those funds that it received from individuals who were improperly solicited at union email addresses and to cancel the contributors’ authorization for recurring monthly contributions. The identified contributions were made when members clicked

July 10, 2020

on the hyperlink in the solicitation we find violated the Rules. Any contributions that may in the future be received by O'Brien-Zuckerman 2021 through the same click-through procedure in response to the solicitation found improper here must also be returned. O'Brien-Zuckerman 2021 will not be permitted to benefit from its improper action.

Respecting the privacy of those individuals, we have supplied their names directly to O'Brien-Zuckerman 2021 and do not name them in this decision. The disgorgement must be accomplished by the campaign issuing checks to the individuals within 5 business days of the date this decision issues. Each such check must be accompanied by the Notice of Return of Campaign Contribution, attached to this decision; the notice must be printed on O'Brien-Zuckerman 2021 letterhead. We recognize that one or both of these individuals may not wish to accept a refund of their campaign contributions from the campaign. Nonetheless, an audit trail must be established showing the return of those funds and subsequent contributions (if any) from such individuals. O'Brien-Zuckerman 2021 must hold each returned sum in escrow until the check is cashed or deposited by the contributor, and the held sum will count against the contributor's contribution limit until and unless the contributor accepts the returned funds by negotiating the check.

O'Brien-Zuckerman 2021 must submit a declaration within 5 business days of the date this decision issues affirming that it has completed the remedies ordered here.

A decision of the Election Supervisor takes immediate effect unless stayed. *Lopez*, 96 EAM 73 (February 13, 1996).

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. Any party requesting a hearing must comply with the requirements of Article XIII, Section 2(i). All parties are reminded that, absent extraordinary circumstances, no party may rely in any such appeal upon evidence that was not presented to the Office of the Election Supervisor. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Barbara Jones
Election Appeals Master
IBTappealsmaster@bracewell.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, all within the time prescribed above. Service may be accomplished by email, using the "reply all" function on the email by which the party received this decision. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Barbara Jones
2020 ESD 6

Teamster Power, 2020 ESD 6
July 10, 2020

DISTRIBUTION LIST (BY EMAIL UNLESS NOTED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
braymond@teamster.org

Edward Gleason
egleason@gleasonlawdc.com

Patrick Szymanski
szymanski@me.com

Will Bloom
wbloom@dsgchicago.com

Tom Geoghegan
tgeoghegan@dsgchicago.com

Kevin Moore
Mooregp2021@gmail.com

Ken Paff
Teamsters for a Democratic Union
ken@tdu.org

Dolores Hall
dhall@ibtvote.org

Jeffrey Ellison
EllisonEsq@gmail.com

Office of the Election Supervisor
for the International Brotherhood of Teamsters
1990 M Street, N.W., Suite 650
Washington, D.C. 20036
844-428-8683 Toll Free
202-925-8922 Facsimile
electionsupervisor@ibtvote.org
www.ibtvote.org

Richard W. Mark
Election Supervisor

**NOTICE OF ELECTION RULES VIOLATION BY
O'BRIEN-ZUCKEMAN 2021 SLATE**

TO: All persons on the O'Brien-Zuckerman 2021 email list

The Election Supervisor has found that the O'Brien-Zuckerman 2021 campaign violated the Election Rules by sending requests for contributions and support individually addressed to some members at their union email addresses. Solicitations for campaign funds and campaign literature generally cannot be addressed to individuals for receipt at their union email addresses because it impermissibly uses union assets to seek support on behalf of a candidate.

The Election Supervisor will not tolerate violation of the Rules. The Election Supervisor has ordered O'Brien-Zuckerman 2021 to send this Notice to all recipients of the slate's June 29, 2020 fundraising appeal to inform them of the Rules' requirements, the violation found, and the remedy imposed. In addition, the Election Supervisor has ordered O'Brien-Zuckerman 2021 to refund contributions made to the campaign by members who received campaign material and solicitations individually addressed to them at their union email addresses. Finally, the Election Supervisor has ordered O'Brien-Zuckerman 2021 to cease and desist from addressing solicitations or campaign mailings to individual members at their union email addresses, unless such material is designated for distribution on a local union literature table open to all and otherwise complies with the requirements of our *Advisory* on that subject.

The Election Supervisor has issued this decision in *Teamster Power*, 2020 ESD 6 (July 10, 2020). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2020/2020esd006>.

Any protest you have regarding your rights under the Election Rules or any conduct by any person or entity that violates the Rules should be filed with Richard W. Mark, 1990 M Street, N.W., Suite 650, Washington, D.C. 20036, telephone: 844-429-8683, fax: 202-925-8922, email: electionsupervisor@ibtvote.org.

[O'Brien-Zuckerman 2021 letterhead]

NOTICE OF RETURN OF CAMPAIGN CONTRIBUTION

The Election Supervisor has determined that the O'Brien-Zuckerman 2021 campaign violated the Election Rules by sending requests for campaign contributions individually addressed to you at your local union email address. Solicitations for campaign funds and campaign literature generally cannot be addressed to individuals for receipt at their union email addresses.

The Election Supervisor has ordered O'Brien-Zuckerman 2021 to refund to you the contributions you made to our campaign and to cancel the recurring monthly contribution you authorized. Enclosed is that refund check.

Once you cash or deposit the enclosed check, the amount of that check will not count against the contribution limit set for individual contributors by the Rules.

O'BRIEN-ZUCKERMAN 2021