

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

<b>IN RE: O'BRIEN-ZUCKERMAN 2021,</b>	)	Protest Decision 2020 ESD 1
	)	Issued: June 23, 2020
<b>Protestor.</b>	)	OES Case No. P-005-061720-NE
_____	)	

O'Brien-Zuckerman 2021 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 a steward of Local Union 122 violated the Rules by informing local union rank-and-file members that the local union backed a slate of candidates in the International officer election.

Election Supervisor representative Peter Marks investigated this protest.

**Findings of Fact and Analysis**

Local Unions 122, 25, and 653 represent separate units of employees at Martignetti Distributors in Massachusetts. In the early morning of June 16, 2020, Sean O'Brien, accompanied by some ten supporters, appeared at Martignetti to gather signatures on accreditation petitions. O'Brien is a candidate for IBT General President on the protestor slate; he is also president and principal officer of Local Union 25, which represents employees of Martignetti. He and the campaigners arrived at approximately 4:45 a.m. and stayed until about 6 a.m.

On June 15, 2020, the day before the campaigning was to occur, Chris O'Leary, elected trustee for Local Union 122 and business agent for Martignetti, concluded that O'Brien would be campaigning there the next day. He texted and phoned Bobby Golden, a Local Union 122 member employed at Martignetti who serves as shop steward, that campaigners were expected. By text message, O'Leary told Golden, "Murphy wants you to go in early tomorrow in case OZ shows up." John Murphy is secretary-treasurer and principal officer of Local Union 122. By phone, Golden told our investigator that O'Leary instructed him to tell rank-and-file members not to sign anything. Golden said that O'Leary told him, "We're not supporting O'Brien. We're supporting Vairma." Vairma is the candidate for IBT General President on the Teamster Power slate. With that information, Golden sent a group text message to the employees in the Local Union 122 unit at Martignetti on June 15, 2020 at 11:36 a.m., as follows:

In case you were not aware there will be an election for the IBT next year. Local Union 122 is backing the Vairma Herrera 2021 Teamster Power Slate. Please do not sign anything related to the election that is presented to you from any member/union representatives from a different local. Thank you!

Golden told our investigator that he acquired the phone numbers for the text message recipients after he became steward by asking members for them individually; the phone numbers were not supplied to him by the local union.

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On the morning of June 16, Golden watched the campaigners interact with Local Union 122 members for some time. According to campaigners for the protestor, some of these members deferred signing the petitions, stating that they could not sign while Golden was observing.

On these facts, the protestor alleged that Golden's text message violated the Rules as an improper union endorsement of the Teamster Power slate. We agree.

Article VII, Section 12(b) states in relevant part that “[a]n endorsement of a candidate may be made by a Union officer or employee, but solely in his/her individual capacity. The Union or a Local Union as such . . . may not endorse or otherwise advance a candidacy, even if all members agree on the endorsement or candidacy.” Article XI, Section 1(b)(3) prohibits a union from contributing anything of value to a candidate.

Case law construing these provisions holds that neither local unions nor executive boards of local unions can endorse a candidate or slate of candidates. *Pope*, 2000 EAD 3 (August 1, 2000) (endorsement adopted by formal resolution of regional union division violated the Rules); *Custer*, P1098 (November 18, 1991) (“While members of the Local Union and Local Union officers have the right as individuals to express their preferences for particular candidates, the Local Union and the Local Union Executive Board as institutions cannot engage in partisan campaign activity or endorse candidates. Such an endorsement is a ‘campaign contribution’ from a Union,” which is prohibited by the Rules.). *See also*, *Gebow*, P963 (October 14, 1991), *aff'd*, 91 EAM 212 (October 28, 1991) (executive board improperly voted to support a particular slate); *Collins & Strohl*, 2011 ESD 143 (March 2, 2011) (campaign mailing that did not identify sender and listed “International Brotherhood of Teamsters” on return address with no disclaimer constituted an impermissible endorsement); *Rivers*, 2011 ESD 137 (February 24, 2011) (campaign mailing stating that formal sub-entity of local union “backs” a candidate constitutes a prohibited endorsement).

Local Union 122 concedes that Golden's text was improper. It argues two points in defense. First, it contends that the local union did not, in fact, make any endorsement in the International officer election. We find this statement to be true. Nonetheless, we find that Golden's statement that an endorsement has been made—a statement made by a steward who otherwise has apparent authority to act on behalf of the local union in communicating with members—violates the Rules. This result must obtain because rank-and-file members, the audience receiving the declaration of endorsement, have no reasonable basis for questioning the statement of endorsement or the means to do so. Were a union able to avoid the prohibition on endorsements by establishing that the steward acted without actual authority, the rule against union endorsements would be undermined.

The local union's second defense is a factual one, that Golden misunderstood O'Leary's use of “we” – as in “we're not supporting O'Brien” – to mean the local union as such. However, whether Golden misconstrued O'Leary's statement does not mitigate what he understood to be the instructions from the business agent and elected union official, and the resulting message he sent to rank-and-file members stated flatly “Local 122 is backing the Vairma Herrera 2021 Teamster Power Slate.” Even were we to agree that the business agent failed to communicate clearly to his shop steward, a contention we are unpersuaded by, it is the clear statement of endorsement the shop steward conveyed to rank-and-file members that violates the Rules and must be remedied.

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For these reasons, we GRANT the protest.

### **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 direct the following remedy:

- a) Bobby Golden, as shop steward for Local Union 122, shall cease and desist from representing to rank-and-file members that the local union endorses or backs any particular candidate or slate of candidates for union office;
- b) Chris O’Leary, as business agent and elected official for Local Union 122, shall cease and desist from informing any member, whether shop steward or otherwise, that “we’re backing” a particular candidate or slate of candidates, unless he states explicitly that he is voicing his personal electoral preference and that the union as such is prohibited from making an endorsement;
- c) No later than June 26, 2020, Bobby Golden shall transmit the following text message to all persons to whom he sent the text message that is the subject of this decision:

Local Union 122 is not backing any candidate or slate in the IBT officers election and is prohibited by the Election Rules from backing any candidate or slate. Every member has the right to support any candidate or slate or to refrain from supporting any candidate or slate. Please disregard the text message I sent you on June 15 that contained contrary information.

- d) No later than June 26, 2020, Local Union 122 shall post the notice attached to this decision on all worksite bulletin boards under its jurisdiction at Martignetti Distributors and shall maintain the posting through July 26, 2020.

The local union shall submit a signed declaration of compliance to the Election Supervisor within three working days of completing the remedies specified in paragraphs c) and d), above.

The remedy imposed is strictly remedial in nature and is intended to inform members of the requirements of the Rules and to undo the harm caused by the violations found here. We limit the notice-posting requirement to Martignetti Distributors because the violations we find in this decision were isolated to that employer.

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

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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 1*

June 23, 2020

**DISTRIBUTION LIST (BY EMAIL UNLESS NOTED):**

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Richard W. Mark  
*Election Supervisor*

**NOTICE TO MEMBERS OF TEAMSTERS LOCAL UNION 122  
EMPLOYED AT MARTIGNETTI DISTRIBUTORS**

No union may endorse a candidate or slate of candidates in the IBT election.

The Election Supervisor has found that shop steward Bobby Golden violated the *Election Rules* by informing union members that Local Union 122 endorsed a slate of candidates in the 2021 IBT election. That statement was incorrect. Local unions are prohibited from backing any candidate or slate in the union election, and Local Union 122 in fact had not endorsed anyone.

All union members, including union officers, business agents, and stewards, have the following rights:

1. You have the right to support – or to withhold support from – any candidates for delegate or alternate delegate and any candidates for International office in the 2020-2021 IBT Election.
2. You have the right to participate in campaign activities on behalf of candidates for International office in the IBT, including signing petitions on their behalf.

The Election Supervisor has issued this decision in *O'Brien-Zuckerman 2021*, 2020 ESD 1 (June 23, 2020). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2020/2020esd001>.

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, 1990 M Street, N.W., Suite 650, Washington, D.C. 20036, telephone: 844-428-8683, fax: 202-925-8922, email: [electionsupervisor@ibtvote.org](mailto:electionsupervisor@ibtvote.org).

***This is an official notice of the Election Supervisor for the International Brotherhood of Teamsters. It must remain posted on this bulletin board through July 26, 2020. It must not be defaced or covered up.***