

Barbara C. Deinhardt, Esq.
Neutral Monitor
52 Third Street
Brooklyn, NY 11231
917-763-0906
718-855-2933 (fax)
neutralmonitor@gmail.com

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DECISION

Protest SUS-03-15
Improper employer contribution

By email dated October 14, 2015, Vincent O'Hara, on behalf of the Stand United Slate, filed a protest alleging that the Transport Workers United Slate received two improper employer contributions. While there was some confusion and, I believe, a conflation of two separate events, the essence of the Protester's allegations relates to the Block Party/Family Day/BBQ held on August 29, 2014. (There was also an Employer-sponsored Employee Appreciation Day held on September 4, but there is no evidence of any improper conduct related to that event.) According to the Protester, this was understood to be a Union event, but it was in fact a campaign fundraiser for the Transport Workers United Slate. The Transit Authority donated the use of a vintage bus for the event and Stuart Goldstein, a representative of an employer, the Rubin Abramson law firm, donated football tickets that were raffled off at the event to raise money for the TWUS campaign. The Protester asserts that both the TA donation of the bus and Goldstein's donation of the tickets were improper employer contributions to the TWUS campaign.

The TWUS first asserts that the protest is untimely. It was filed over six weeks after the event in question. In response, the Protester argues that its witness did not inform them until the day before the protest was filed that it was Mr. Goldstein who had donated the football tickets and that the TA had donated a bus donation for the event. It provided an email to confirm its assertion about when the witness notified the Slate about what had happened. The witness stated that he did not find out that Goldstein had donated the tickets for the raffle until the day before he notified the Slate.

Under the Election Rules, a protest must be filed within 48 hours of the time the protester knows or should have known of the violation. I find that the protest is untimely as to the TA contribution and timely as to the Goldstein contribution. The witness who advised the Slate of the allegations was himself a candidate on the Slate. He knew as of the day of the event all the facts that would lead the TA donation to be an improper employer contribution. However, he states that he did not know until the day before he notified the Slate that the football tickets had come from the representative of an employer and there is no evidence to contradict that contention. Thus, the protest is timely as to that allegation.

Even if timely, I find that the donation by the TA of the vintage bus was not improper. The TWUS argues that this was not in fact a Union event. The organizers of the event—Ron Childs, local steward Marjorie Johnson and Antonio Robinson—say they were organizing it as individuals. The event was intended to promote unity at the LaGuardia garage and do something nice for the community. People were asked to chip in \$20 to pay for the food, drinks, DJ, games and port-a-potty. The women and children from the nearby women’s shelter were also invited. It was not a Union event. The Protester cites an email from AGM Michael Morales that states that “the Local Union is holding a Family Day event” on 8/29. Mr. Morales stated to me that the Local Union stewards—Margie Johnson and Jack Desena—approached him and said “we’re having a family day” and asked if they could use the street outside the depot. According to Morales, they didn’t say explicitly it was organized by the Union. I do not find it necessary to determine if it was an official Union event or not. The real question is whether it was a campaign event.

TWUS argues that it was not a campaign event. I agree. I do not find sufficient evidence that the entire event was a campaign event. The poster for the event did not mention the campaign. There is no evidence that there were any speeches or campaign materials. Protester witnesses state that that Mr. Campbell and Mr. Comrie attended the event, but that in itself does not make it a campaign event. One witness for the Protester stated that one of the organizers of the event asked him for \$20 “for a fundraiser party,” but she did not tell him what it was a fundraiser for. A “couple of drivers” later told him it was a fundraiser, but he didn’t hear what it was for. Another witness also said that

someone had told him a few days after the event that it had been a fundraiser for Cambell's slate. This evidence is not sufficient to make the entire event a campaign event such that the TA donation and assistance would have been improper.

The remaining issue is whether the raffle was a fundraiser for the campaign and whether, if it was, the Goldstein donation constituted an employer contribution. As to the first issue, Jack Desena, a witness for the Protester, stated that it was decided in the course of the event to hold a raffle to raise money to buy the rest of the food that was needed, as they were running out. He contends that his wife went to a 99 cent store during the party to get the tickets. He said about \$250-\$320 was raised from the raffle, but there is no accounting of how much. Near the end of the party, he and his cousin used the money to go to the grocery to buy more food, but he does not know how much was spent and he has no receipts. He said that he had invited Goldstein to the event and Goldstein happened to bring football tickets with him, which he agreed to donate. Until Goldstein arrived, Desena didn't know there would be a raffle.

Marjorie Johnson also stated that the idea for the raffle came about as the party was going on, to pay for additional food that was needed, but said that Desena had the tickets with him when he got there. Ron Childs, one of the organizers, stated that he paid for all the food and other expenses out of his pocket and was reimbursed from the money that people paid for tickets. He didn't know anything about a raffle and stated definitively that "no raffle money paid for expenses for the event. None."

A witness for the Protester stated that Goldstein told him that when Desena first approached him about making a donation, he was under the impression that it was for the Family Day event, but that he found out later that it had been for a campaign fundraiser. Goldstein stated that Desena had asked him in advance of the event if he would attend and donate tickets for a raffle for the Family Day event. Desena didn't say anything about the campaign. According to Goldstein, it was the Protester witness who later told him it had been for the campaign.

One witness for the Protester stated that when Desena sold him the raffle ticket, he said it was for the Campbell/Comrie campaign. Another witness said that Desena said only that it was a raffle for football tickets, but not where the money was going.

I find that the weight of the evidence is that some, if not all, of the receipts from the raffle went for campaign purposes. One witness stated that he was told explicitly that the raffle was for the Campbell/Comrie campaign. I am particularly concerned that the people who organized the event and the person who conducted the raffle were not able to credibly explain how the raffle came about and where the money from the raffle went. Goldstein, who has no motive not to tell the truth, states that Desena asked him in advance to donate tickets for a raffle for the event. That makes sense. It does not make sense that, as Desena claims, Goldstein just happened to have Jets tickets in his pocket when he attended the event and then, when the food started to run out, Desena quickly decided to organize a raffle, discovered that Goldstein had football tickets that he was willing to donate, sent his wife to a nearby store to buy the paper tickets, sold \$250-\$320 worth of raffle tickets and, near the end of the event, went to the store and spent it all on meat, without the event organizer who was paying all the bills—Ron Childs—knowing anything about it.

The question then becomes whether it was an improper employer contribution. Supplemental Rules, Paragraph 5(A)(1), of the Election Rules provides, “No candidate for election shall accept or use any contributions or other things of value received from any employer, representative of an employer...or similar entity.” Mr. Goldstein is not a principal in the firm of Rubin Abramson. He is a licensed representative representing workers’ compensation claimants. Therefore, he is not employer himself. According to Mr. Desena, he has referred clients to Goldstein over the years, but states that Goldstein gave him the tickets because Goldstein is a friend of the family. I think that the business relationship, i.e. that Desena frequently sends injured members to Goldstein for their compensation hearings, is enough to lead me to infer that Goldstein made the donation as a representative of Rubin Abramson.

I do not find that there was any wrongdoing on the part of Mr. Goldstein as he was under the impression that he was making a legitimate donation for the Family Day event. However, I find that the Transport Workers United Slate accepted an improper employer contribution. There is no accounting whatsoever for the amount of money raised from the raffle. Desena said it was between \$250 and \$320. The Transport

Workers United Slate is directed to make a contribution to the Local 100 Widows and Orphans Fund of \$320.

In accordance with the International Constitution and the Election Rules, any interested party unsatisfied with this determination may appeal to the Transport Workers Union of America Committee on Appeals. Any appeal shall be in writing and shall be filed in accordance with the procedure set forth in Article V(6)(I)(1) of the Election Rules and Articles XV and XXII of the International Constitution for the appeal to the International from decisions of Local Unions.

/s/ Barbara C. Deinhardt

Barbara C. Deinhardt
Neutral Monitor

By email:
Joseph Campbell
John Samuelson
Arthur Schwartz, Esq.
Vincent O'Hara, Esq.
Elections Committee