

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 TWUS-06-15
Improper use of Union resources

By email dated October 9, 2015, Joseph Campbell, on behalf of the Transport Workers United Slate, filed a protest alleging that Local 100 President John Samuelson improperly used Union resources to benefit the Stand United Slate. In particular, the Protester alleges that a letter sent out by President Samuelson advising the members of the Car Equipment Department that the Executive Board had voted on September 29, 2015 to investigate CED Division Chair Shirley Martin for falsifying Union attendance documents and that she had been taken out of the field pending trial, constituted a contribution by the Union to the Stand United Slate. According to the Protester, the language used by Mr. Samuelson was inflammatory, slanderous and accusatory and was intended both to place the shadow of guilt over Ms Martin before the trial and to discredit her in the minds of the members during the election period. The Protester apparently does not dispute that the letter may have been necessary to inform members of the status of their officers, but asserts that the wording could have been “more specific as to the reasons [for the action] without the use of colorful adverbs and descriptives” intended to defame Ms. Martin. The Protester also claims that the letter was intended to reinforce the message of flyers that had been distributed by SUS supporters accusing Martin of fraud. The Protester requests a retraction of the letter and reimbursement by SUS to the Union of the cost of both mailings.

The Union explains that Ms Martin was recorded making admissions about improper meeting attendance recordkeeping and members lodged complaints. As a result, Ms. Martin was interviewed by Union counsel. A review of the transcript reveals that she admitted that she allowed members to sign the meeting sign-in book who didn't

arrive until after the meeting was adjourned and a diagonal line had been drawn at the end of the sign-in page indicating that the meeting was over and that members might even have stopped her in the hallway or gone up to her office to sign the book after the meeting had concluded and she would let them sign in as if they had been at the meeting. Based on those admissions, the matter was referred to the Executive Board and the Board decided to empanel a trial committee. It was after this vote that President Samuelson decided to take Martin out of the field pending the trial and to notify the membership of what had happened.

The Stand United Slate argues that the letter was not improper and did not constitute a contribution from the Union to the Stand United Slate. As President, Samuelson had a responsibility to advise the members in CED that their Division Chair had been charged with serious misconduct and that was why she had been taken out of the field. Because the action taken by President Samuelson was a serious one (although not as serious as action as he could have taken), it was necessary to explain to the membership the severity of the misconduct with which Ms. Martin had been charged. He specifically noted in the letter, however, that she was entitled to defend herself against the charges and requested members to reserve their judgment.

The SUS also provided a similar letter written by Samuelson in February 2012, not during any election campaign, explaining why he had taken a Union vehicle away from Vice-President Nelson Rivera. The SUS argues that this 2012 letter shows that the recent letter regarding Ms. Martin was not unprecedented or related to the election. In response to the Protester's claim that the timing of the investigation was geared to the election, the SUS states that TWUS made this claim on September 16 at the Executive Board meeting where the vote was taken to empanel a trial committee. The Executive Board rejected the claim at that time. Rather, the SUS argues, the timing was dictated by Ms. Martin's admission that she had falsified meeting attendance documents.

As to the protested flyer, President Samuelson denies any Union involvement, knowledge or funding of the flyer.

The Election Rules prohibit any candidate from receiving a contribution from a labor organization. Under the Rules,

5. A. 1. No candidate for election shall accept or use any contributions or other things of value received from any employer, representative of an employer, foundation, trust, union or similar entity. Nothing herein shall be interpreted to prohibit receipt of contributions from fellow employees and members of Local 100 or the International Union, unless that employee or member is an employer and is contributing money from his/her business.

5. A. 2. No employer shall be permitted to contribute anything to any campaign. The prohibition on employer contributions extends to every employer regardless of the nature of the business, or whether any union represents its employees, and includes but is not limited to political action organizations (other than a candidate's or slate's campaign organization), nonprofit organizations such as churches or civic groups, law firms, and professional organizations. These prohibitions include a ban on the contribution and use of stationery, equipment, facilities and personnel.

5. A. 3. The prohibition on campaign contributions extends to all labor organizations, whether or not they are employers, except as permitted below.

5. B. No Local Union services, facilities, equipment or goods—including, but not limited to, time, staff, copying machines, fax machines, telephones, printing and postage—shall be used to promote the candidacy of any individual or slate unless the Local notifies all candidates of the items available for use and all candidates are provided equal access at equal cost to such goods and services. **The use of the Local Union's official stationery, or its logo or its name is prohibited** irrespective of compensation or access.

29 U.S.C. sec. Section 401(g) of the Labor Management Reporting and Disclosure Act (LMRDA) provides:

No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter.

While LMRDA § 401(g) broadly prohibits the use of union funds to promote candidates, it also contains a "safe harbor" which expressly states that "such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates. . ." 29 U.S.C Sec 401(g). In interpreting these provisions, courts have held that the critical issue is whether the literature in question went beyond the scope of legitimate coverage of newsworthy activities and into the realm of violative union-financed campaign literature. Such a determination necessarily revolves around the timing, tone and content of the literature in question, in the context of the surrounding circumstances. *McLaughlin v. AFM*, 700 F.Supp. 726 (S.D.N.Y. 1988). Citing the court in *Sheldon v. O'Callaghan*, 335 F.Supp. 325, 328 (SDNY 1971), *aff'd sub nom Usery v.*

Intern. Organization of Masters, Mates and Pilots, 538 F.2d 946, 949 (2nd Cir. 1976), the District Court for the District of Columbia held that “[d]uly elected union officials have a right and a responsibility to exercise the powers of their office and to advise and report to the membership on issues of general concern.” *Camarata v. international Brotherhood of Teamsters*, 478 F.Supp. 321, 330 (DDC 1979), *aff’d* 108 LRRM 2924 (DC Cir, 1981).

In examining the letter that is the subject of the Protest and applying the factors set out above, I find that the letter did not constitute an inappropriate campaign contribution by the Union to SUS. The content of the letter was clearly of concern to the members to whom it was sent, relating as it did to the removal of their Division Chair from the field and the accusations that had been made against her. The letter factually recounted the decision by the Executive Board to empanel a trial committee to investigate the charge of falsification of meeting attendance records and the decision to remove Martin from the field pending trial. There is no mention of the election, other than the Election Rules and the impact of the falsification of meeting attendance records on the election, or of John Samuelsen as a candidate. Nor is there any disparagement of Ms. Martin as a candidate. The timing was also legitimate, coming as it did the day that the Executive Board made its decision, which in turn had followed Ms. Martin’s admissions in the recorded interview of August 21.

The Protester indicates a particular objection to the tone of the letter. Contrary to the Protester’s claim, however, I do not find that the tone of the letter was out of line with the seriousness of the subject matter, as it factually described the decision of the Executive Board and the President. The use of the terms “serious breach/violation,” “cheating” and “falsification of records”, under the circumstances, was not inappropriate. In reaching this conclusion, I have considered the admissions made by Ms. Martin that she allowed members to sign the meeting sign-in book who didn’t arrive until after the meeting was adjourned and a diagonal line had been drawn at the end of the sign-in page indicating that the meeting was over and that members might even have stopped her in the hallway or gone up to her office to sign the book after the meeting had concluded and she would let them sign in as if they had been at the meeting. (I note that the use of the word “fraudulent” was not used to describe Martin, but those who were claiming to have attended meetings when they had not.)

There is nothing in the Election Rules that precludes candidates or slates from distributing flyers similar to the one protested. There is no evidence that any Union resources were used for the production or distribution of the flyers.

The protest is denied.

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 IV(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