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November 11, 2024

DECISION

Protest I-24-2024 (use of Union resources)

By email dated November 7, 2024, Nasar Abdur-Rahman filed a Protest alleging that Members First candidate and TA Surface Operators officer Alexander Kemp was campaigning while “wearing his TWU vest.” The Protester also alleges that the TA Surface Express newsletter was posted online to the membership. The newsletter constituted an improper use TWU resources to influence the election because it had the faces of Division officers who are members of the Members F1rst Slate “plastered...all over the newsletter” while additional TA Surface officers were excluded from the newsletter because they are on an opposition slate.

Mr. Kemp advises me that he was on a previously scheduled day off on the day he was campaigning. As to the safety vest he was wearing, he had previously been told by supervision that he had to wear a safety vest when campaigning in a safety-sensitive area. The vest he was wearing was a vest that he purchased himself from Amazon three years ago. It was not provided by the Union. Any member would be free to purchase such a vest and have it customized to say TWU on it, as he did. As I held in the decision in I-8-15, “the t-shirts that the candidates in the photograph were wearing are t-shirts that are generally available to all TWU Local 100 members. They are, for example, often distributed at Union events. I therefore find that there is nothing in the Election Rules that prevents a candidate from wearing such a t-shirt while campaigning, including being photographed wearing such a t-shirt in a flyer in support of his or her campaign. I do not agree that being so photographed conveys any message other than that the candidates are proud Union members. The message is that they support their Union, not that the Union supports them.” Similarly here, I

find that Mr. Kemp wearing a safety vest that says TWU on it while campaigning does not constitute the use of Union resources to support any campaign.

Finally, as to the allegation about the TA Surface Express, I find that the protest is untimely. The newsletter was posted online and distributed generally over a month ago. Further, on the merits, I find that a review of the newsletter reveals that it does not constitute campaign material. 29 U.S.C. 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). I find that the TA Surface Express is not a campaign material under these criteria. The newsletter has previously been published, approximately once a year. The tone of the issue is professional and appropriate. The content is related solely to newsworthy items relevant to the operation of the Union. There are no references to the upcoming officer election.

Protest 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(B)(9) of the Election Rules and Article XXII of the International Constitution for the appeal to the International from decisions of Local Unions.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is written in a cursive, flowing style.

Barbara C. Deinhardt
Neutral Monitor

By email:
Nasar Abdur-Rahman
Arthur Schwartz
Denis Engel
Elections Committee