

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: FRED ZUCKERMAN,)
)
Protestor.)
)
_____)

Protest Decision 2016 ESD 267
Issued: June 30, 2016
OES Case Nos. P-309-062816-NA

Fred Zuckerman filed a pre-election protest pursuant to Article XIII, Section 2(a) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“Rules”). The protest alleged that Bernadette Kelly violated the *Rules* by making partisan remarks during a speech at the IBT convention.

Election Supervisor representatives Dolores Hall and Jeffrey Ellison investigated this protest.

Findings of Fact and Analysis

At the end of the afternoon session of the first day of the IBT convention, Bernadette Kelly addressed the convention from a microphone located at the rear of the convention floor, after being recognized from the rostrum by General President Hoffa. Catherine Cortes Masto, former Attorney General of Nevada and current candidate for U.S. Senate, had just finished addressing the convention. After the applause that met her remarks died out, General President Hoffa as convention chair returned to the podium and called out, “Mike 6,” recognizing and granting the floor to a delegate who wished to address the convention.

That delegate, Bernadette Kelly from Local Union 210, did not address General Masto’s remarks concerning the Senate campaign in Nevada or any other business that had come before the convention that day. Instead, after identifying herself, Kelly stated::

I have a point of privilege, Mr. Chairman. I have worked with you since 1994 in lock step to rebuild this union, and I’m impressed with the breadth and the depth of the success of the IBT and the power of the Teamsters. And the incredible leadership of Jim Hoffa and Ken Hall is on display for all of us to see, and the unity is from coast to coast and from Canada to Puerto Rico.¹

Yet this union is threatened by a small minority. They’re trying to force the IBT to spend millions of dollars that could go to organizing and other programs to bring this union forward in a futile attempt to gain office.²

I’m appealing to you. I’m appealing to those people to join with us to move this union forward instead of attempting to divide us for the next five months!³

(Cheers and applause)

There is room for all of us. There is room for all of us.

¹ Kelly spoke for thirty seconds to reach this point in her speech.

² Kelly completed this point at the 44 second mark.

³ Kelly reached this point at the 57 second mark.

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(Cheers and applause)

[So] move ahead or get out of the way. We got too much to do, General President Hoffa.
We've got too much to do, Fellow Delegates!

29th International Convention, First Day—Afternoon Session at 82. At this point, one minute and sixteen seconds into the speech, General President Hoffa struck the gavel for the first time and said, “You’re out of order” as the cheers and applause rose in crescendo.

Kelly responded to the crowd, “Thank you.”

The General President repeated, “Out of order.”

Kelly continued, “Join us. Hoffa! Hoffa!” The crowd responded by chanting “Hoffa! Hoffa! Hoffa!,” which continued as the General President once more called, “Out of order.”

With the crowd continuing its “Hoffa, Hoffa, Hoffa!” chant, the General President said, “All right. Getting ready to adjourn. Thank you very much. Thank you.” The chant faded, an announcement was made for the Resolutions Committee to meet immediately following the session, and the General President said, “The convention is recessed until 9:00 tomorrow morning. We’ll see you tomorrow morning.”

Video of Kelly produced by the IBT showed that she was speaking from notes. She told our investigator that she prepared her notes while sitting in her seat on the convention floor. Four pages of notes were produced in the investigation; she spoke from one page, and the remaining pages were preliminary drafts that Kelly did not use.

Kelly told our investigator that she raised a point of personal privilege because she felt she had the right to do so as an elected delegate.

David Hoffa for the Hoffa-Hall 2016 campaign told our investigator that Christy Bailey of the campaign “heard Bernadette wanted to make some form of statement from the floor and far be it from the Hoffa Campaign to interfere with what elected delegates want to say.” Subsequently, Hoffa clarified that “Christy knew Bernadette wanted to say something about Zuckerman.”

The Hoffa-Hall slate prepares a “campaign daily sheet,” a brief newsletter printed on both sides of a single page, for distribution to delegates as they arrive for the morning session of each day of the convention. The campaign concluded that Kelly’s speech was newsworthy. Its daily sheet distributed Tuesday morning following Kelly’s Monday afternoon speech included an article about it titled “Don’t Divide Our Union – Join With Us Now!” It read as follows:

In a dramatic moment at the close of Monday’s convention session, Local 210 delegate Bernadette Kelly brought cheering delegates to their feet with an appeal to the tiny “Teamsters United” contingent to abandon its futile election campaign and save our union millions of dollars and unnecessary division.

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“I am impressed by the breadth and depth of the successes of the IBT,” declared Kelly.

“The power of the Teamsters, the great leadership of Jim Hoffa and Ken Hall, and the incredible unity of our ranks from coast to coast is on display for all to see at this Convention.”

“Yet this Union is threatened by a small minority who will force the IBT to spend millions of dollars that could go to organizing, in a futile attempt to gain office.

“I appeal to those brothers and sisters to join with us in moving this Union forward instead of dividing us for the next five months,” Kelly concluded to thundering applause.

Article XI, Section B of the *Supplemental Rules* and Rule 46 of the convention rules declare that the convention floor is a “politically neutral” location relating to the International Officer Election except during nominations of candidates and the acceptance speeches of candidates for General President and General Secretary-Treasurer. See *Teamsters United*, 2016 ESD 258 (June 27, 2016), *aff’d*, 2016 EAM 26 (June 28, 2016). The late afternoon of the first day of the convention was a time when the hall was to be politically neutral. As Election Appeals Master Roberts held in *Teamsters United*, *supra*, “the only reasonable interpretation of the Rule is that partisan campaign speech in addressing the delegate body is prohibited on the convention floor except during designated proceedings. Moreover, the ‘point of personal privilege’ cannot and should not be used to circumvent the requirement of a ‘politically neutral space.’”

Kelly’s speech was explicitly partisan, attacking the slate she opposed for “spending millions” in a “futile attempt to gain office” and urging them to abandon that effort and instead “join with us.” She violated the political neutrality rule by asserting a “personal privilege” to deliver a campaign speech on the convention floor.

The Hoffa-Hall campaign knew Kelly intended to make remarks on the convention floor “about Zuckerman” before Kelly spoke. After Kelly spoke, the Hoffa-Hall campaign took political advantage of the violation by publishing a laudatory report of it in the campaign’s daily sheet released the following morning. This action amplified and celebrated the violation.

The protestor asserted that the IBT was complicit in the violation. We defer for further investigation whether Kelly’s violation was coordinated with the IBT.

Accordingly, we GRANT the protest with respect to Kelly and Hoffa-Hall 2016 and DEFER the protest with respect to the IBT.

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).

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We order Bernadette Kelly to cease and desist from further violation of the *Rules* and, specifically, to cease and desist from making partisan remarks on the convention floor except during times expressly set aside for nomination of candidates.

We order each slate to deliver a copy of this decision to each candidate on its slate no later than 9 a.m. PDT on Friday, July 1, 2016, which will serve to reinforce the *Rules*' requirements with respect to partisan activity on the politically neutral convention floor. We order each slate to certify by signed declaration its compliance with this directive by 5 p.m. PDT on Friday, July 1, 2016.

In addition, to emphasize that partisan activity such as Kelly's violates the *Rules*, we order Kelly to pay a fine of \$500.00 to the Office of the Election Supervisor. The fine is strictly remedial in nature and is intended to demonstrate the importance of refraining from partisan activity during the portions of the convention other than the nominations of candidates and acceptance speeches by candidates for General President and General Secretary-Treasurer.

The fine we impose on Kelly is higher than that imposed on Kevin Moore in *Teamsters United, supra*. However, there are significant differences between his violation and Kelly's. First, Moore's was brief and apparently spontaneous, while Kelly's was extensive, deliberate, and planned. Second, Moore has not been held responsible for any *Rules* violations this election cycle until his action at the IBT convention this week, while Kelly's violation is her third this cycle. Thus, in *Timlin*, 2015 ESD 40 (October 16, 2015), we found Kelly had caused Joint Council 16 to use union resources impermissibly to support the candidacy of IBT vice president George Miranda by linking an image of him on an official Joint Council 16 Facebook page to a campaign-sponsored Facebook page. In *Teamsters United*, 2015 ESD 61 (December 19, 2015), we found that Kelly, in her role as assistant trustee of Local Union 456, violated the *Rules* by failing or refusing in bad faith to produce a worksite list for that local union to Teamsters United, despite multiple requests for it. We ordered Kelly to cease and desist from further *Rules* violations and fined her the sum of \$500 to "impress upon her the seriousness of her obligations as a member and union official to comply with the *Rules*." While we could disqualify her from her delegate standing for the violation found in this decision, we exercise our discretion to impose a fine once again, one we conclude is commensurate with the misconduct found and reasonably calculated to deter further *Rules* violations.

To remedy the violation found with respect to Hoffa-Hall 2016, we order the campaign to cease and desist from abetting a violation by its supporter and reaping the benefit of that violation in its campaign literature. To impress upon the campaign that it may not seek to benefit from the *Rules* violations of its surrogates, we impose upon the campaign a fine in the amount of \$500.00.

The fines ordered here must be paid to the Office of Election Supervisor no later than noon PDT on Friday, July 1, 2016. Kelly's fine must be paid from her personal funds, and she must certify that she has not received and will not accept contributions from any source to assist her in paying the fine or reimburse her for the fine we impose.

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. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not

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presented to the Office of the Election Supervisor in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Kathleen A. Roberts
Election Appeals Master
JAMS
620 Eighth Avenue, 34th floor
New York, NY 10018
kroberts@jamsadr.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, 1050 17th Street, N.W., Suite 375, Washington, D.C. 20036, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kathleen A. Roberts
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