

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: JOSE PEREZ,) Protest Decision 2020 ESD 15
) Issued: September 1, 2020
Protestor.) OES Case No. P-016-073020-SO
_____)

Jose Perez, member of Local Union 769, 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 Local Union 769 business agent Dan Vera impermissibly interfered with campaigning by Perez and another member on behalf of the O'Brien-Zuckerman 2021 slate and caused or contributed to the decision of UPS contract security to remove them from the parking lot.

Election Supervisor representative Dolores Hall investigated this protest.

Findings of Fact

On July 30, 2020, Perez and another campaigner canvassed for accreditation signatures for O'Brien-Zuckerman 2021 in the parking lot where employees park their vehicles at the UPS Miami hub on NW 25th Street near Miami International Airport. The canvassers set up a small folding table, on which they placed campaign flyers for distribution and placards for display, a few feet from the gate uniformed package car drivers walked through to access the worksite. Perez wore a black t-shirt emblazoned on the front with the Teamsters horses-and-wheel logo and a large “769,” referencing his local union, printed over the hub of the wheel; he also wore a black facemask bearing side-by-side gold UPS logos, and a plain black headband. His fellow campaigner wore a long-sleeved t-shirt with “STEWARD” running down the left arm and “TEAMSTERS” across the shirt’s upper back, and the Teamsters logo on the front left breast flanked above and below by “Local 796” and “Miami FL; he wore a neckerchief with blue and red five-point stars on a white background, and a black ballcap.

The two campaigners arrived at about 7:00 a.m. and began greeting arriving UPS employees, addressing them either in English or Spanish, explaining the election and accreditation processes, and soliciting their signatures. They had campaigned for about an hour and a half when Dan Vera, a Local Union 769 business agent appeared. Vera was dressed in red workout shorts, a faded Yankee-blue t-shirt that read “BRONX BOMBERS,” and a wide-brimmed khaki sun hat. Vera wore a facemask with a small Teamsters logo offset to the left.

The volume of drivers arriving for work swelled significantly after 8:15 a.m. and continued through the time Perez and his fellow canvasser remained on site. Vera told the canvassers he was there to campaign for the competing slate, Teamster Power. However, he had no campaign flyers, placards or signs and did not advocate for Teamster Power. Rather, he called to arriving drivers, alternating in Spanish and English, “These people aren’t with us” or “They’re not with our local.”

The canvassers contested Vera’s statements, telling drivers they are members of Local Union 769 (as their clothing indicated and Vera’s did not), and continuing to speak with them about the upcoming election, the O'Brien-Zuckerman 2021 slate, and the accreditation petitions.

At times Perez addressed Vera directly, telling him that he was violating the Election Rules by his conduct, asking and then stating that he was present in the parking lot on union-paid time, and criticizing his performance as a business agent by calling him a “sell-out.” Vera contested Perez’s statements, stating that he was on his “day off,” and calling Perez “a piece of shit.” Perez countered this insult by calling Vera “a communist.”

Vera told our investigator he did not set up a table, seek accreditation signatures or distribute campaign literature, stating he “never got the chance to set up anything because Perez was already there.” He said he spent his time greeting people coming to work and telling them not to listen to the canvassers because they are for the guys “running against us.” Vera called to arriving drivers to vote for the Herrera slate (*i.e.*, Teamster Power), stating they should not listen to the canvassers because “they are not with us; they are with the people running against us.”

Vera told our investigator that “the local” is backing Teamster Power because the local union president and principal officer, Josh Zivalich, is a candidate for IBT South region vice president on that slate. However, there is no evidence that Vera told arriving members that “the local” is backing a candidate. Thus, neither Perez nor any of the video clips Perez provided us showed that Vera attributed the endorsement of a particular candidate to “the local.” Rather, Vera used the personal pronouns “we” and “us,” which were indefinite concerning the noun to which they referred. On the occasions Vera used the word “local,” he told arriving members that the canvassers were not from “our local.” This statement, untrue because the canvassers indeed are members of Local Union 769, again did not explicitly or impliedly state an endorsement by the local union or falsely attribute an endorsement to it. Instead, the terms “we” and “us” more readily suggested persons rather than an entity.

The back and forth between Perez and Vera continued for more than twenty minutes while drivers arrived for work and occasionally was loud. However, according to the statements our investigator obtained and the video evidence produced, the verbal sparring did not turn into violence or threats of it. It was, however, enough to attract the attention of a contract security guard.

Each witness our investigator interviewed had a different recollection of the guard’s activities. Vera said the guard came to where he and the canvassers were and told them they had to leave. Vera said Perez responded by showing her a piece of paper, which she looked at. According to Vera, the guard then asked where Mike Cortez was. Cortez is the Local Union 769 business agent with responsibility for the facility. Vera phoned Cortez’s number, but the call was not answered. At this, Vera said the guard directed them to leave.

Perez told our investigator that the guard told him that Roly Piña, secretary-treasurer (non-principal officer) of Local Union 769, told her to make them leave the parking lot and to call the police if they did not.

Cortez, who was not at the site that day, told our investigator he did not know the guard and was not contacted while the campaigning was occurring. Piña told our investigator that he was in Atlanta at a training seminar and did not learn of the incident until he returned to Miami the next evening. Zivalich was off work that day and was campaigning at UPS Hialeah. He

received a phone call from Vera after the fact and learned that the guard had ordered the campaigners to leave the parking lot.

The guard, subsequently identified as Maday Alvarez of Allied Universal security services, told our investigator that she reported for her 12½ hour shift that day at 6 a.m. Her job is to circulate around the facility. She had no occasion to go to the employee parking lot until she learned from arriving employees that two men were arguing in the parking lot and it looked like a fight might occur. She went to the parking lot and observed two men cursing and arguing, and she told them to stop. She said she went back inside the building. A short while later when she looked out again, she could see they were still arguing, so she went back out and told them to leave because she was afraid a fight would occur.

Our investigator asked the guard if she spoke with Mike Cortez, the business agent. She professed not to know who Cortez was. She stated that she spoke with Mike Baez, a UPS employee at the facility who serves as local union steward. The guard said she described to Baez what was occurring in the parking lot, and he told her to make them leave.

Baez told our investigator he arrived in the parking lot at about 8:30 or 8:45 a.m. for his 9 a.m. shift and saw and heard two men arguing, one from a pair of campaigners and the other standing alone. Baez said two men were campaigning for “somebody else that was not part of Local 769.” When our investigator asked Baez his meaning, he clarified that the campaigners he referred to were members of Local Union 769, but they were campaigning for another candidate, “not who Local 769 is supporting.” Subsequently, when he had gone inside the facility, Baez said the security guard called him and asked if the campaigners were “with you.” Baez said he replied that they did not belong “to our candidate.” Baez explained to our investigator that Local Union 769’s president was running and was “the Local’s candidate.” He said he told the security guard to have them leave the property because they were not supporting Local Union 769’s candidate, and they were giving the members a “false impression” by being out there campaigning for another candidate. When our investigator asked Baez to explain further, he said they were making it seem that they were “with us” but they were for somebody else.

Baez explained further to our investigator there was another Local Union 769 member there that was “part of our group,” apparently referring to Vera, and he was the one arguing with the man who was campaigning for the other group. Baez said he did not know Vera’s name, but said the man told Baez that the other campaigners were “not part of us and that’s why he was there.” Baez said he saw and heard them arguing when he was in his car coming into the parking lot to start work. He said he told the security guard to make them leave, and she escorted them off the property.

Vera was present when the guard ordered Perez and his fellow campaigner to leave the property. Vera did not intervene to tell the guard the campaigners had the right to be there. Instead, he stood by and recorded the removal on video. Vera supplied the video to our investigator. The video showed a uniformed security guard standing with hands on hips as Perez and his fellow canvasser put flyers, placards, and clipboards holding petitions into a storage bin and broke down their folding table. The campaigners can be seen speaking and gesturing to the guard and, twice, addressing Vera directly. What was said cannot be determined from the video because it had no audio component. Perez told our investigator that they left because the guard stated she would call

the police if they did not. No uniformed UPS employees are seen in the parking lot arriving for work. The digital properties of the video show that it was recorded at 8:59 a.m. on July 30.

A UPS corporate representative told our investigator that in the past several weeks UPS issued a directive to all its facilities notifying them that the Teamsters election would be starting and telling them to expect campaigning in parking lots. Jose Santana, loss prevention investigator at the NW 25th Street facility told our investigator he had not seen the directive. Santana stated he was unaware of the campaign activity at issue here but said that Teamsters “are always in the parking lot passing out flyers for something or other, and the company has no problem with that.” On the date here, Santana said that by the time he learned of the situation and arrived at the scene, the campaigners had already left.

Analysis

Perez and his fellow campaigner exercised their rights under Article VII, Section 12 of the Rules to campaign on the parking lot of UPS Miami on July 30, 2020. Section 12(a) of that article granted them the right “to aid or campaign for any candidate.” Section 12(e) granted both the right to “distribute literature and/or otherwise solicit support ... in any parking lot used by Union members to park their vehicles in connection with their employment.” We find that their campaign advocacy was protected by the Rules.

Vera had the right to advocate as well. Thus, he could present a message for a candidate he favored and/or a counter-message against a candidate he opposed. Vera as a union member had the same campaign access to the parking lot as Perez and his fellow campaigner had. We find that Vera’s campaign advocacy – telling members that Perez was not “with us” – was also protected under the Rules, even though he had no literature to distribute or petitions to be signed.

The repeated verbal exchanges between Perez and Vera did not violate the Rules because they did not constitute threats of violence or retaliation.

We also find that unlike in *Toole*, 2020 ESD 12 (August 25, 2020), Vera did not steer members past the area where canvassers were campaigning to prevent them from engaging the members. The canvassers strategically located their campaign table so as to require members to pass close by, and video evidence shows that members continued to stop and speak with the canvassers despite Vera’s activities.

We find, however, that Baez and Vera are at fault for the removal of Perez and the other campaigner from the parking lot. Baez told the security guard that the campaigners had no right to be on the parking lot, and Vera at minimum condoned their removal by the guard by recording the removal without intervening. Because both Vera and Baez are union representatives – Vera a business agent, Baez the chief steward – we find that Local Union 769 is also at fault for the removal. By their statements to our investigator, both Vera and Baez confirmed their beliefs that parking lot campaigning was permitted only for members aligned politically with the campaign for International office of principal officer Zivalich. The substance of these statements, which they each repeated to our investigator, indicated that the message reflects a consensus of Local Union 769 leadership. Thus, Vera repeatedly told members that the canvassers were not “with us,” a statement he repeated to Baez in the parking lot, and to the guard. He was more explicit

with our investigator, telling her that the canvassers had no right to campaign in the parking lot because they were supporting a candidate other than “the local’s” candidate. Baez was even more direct, first telling the guard that canvassers had no right to campaign there and should be removed, and then repeating the same to our investigator. For these reasons, we find that Vera, Baez, and Local Union 769 have violated the Rules.

Although UPS communicated the essence of the parking lot campaign rule to managers at its facilities, that instruction apparently was not communicated to security guards at the UPS Miami hub—including the security guard who removed the campaigners. Accordingly, we find that UPS has violated the Rules as well.

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 order the following remedy:

1. Dan Vera and Mike Baez shall cease and desist from interfering with the rights of members and candidates to campaign and advocate for candidates in employer parking lots accordance with the Rules.
2. To insure that all Local Union 769 officers, employees, and representatives, including stewards, comply with the Rules, and to insure that members understand their campaign rights under the Rules, Local Union 769 shall post on all worksite bulletin boards under its jurisdiction the notice attached to this decision, in English and in Spanish. The posting shall be completed within two working days of the date this decision issues and shall remain posted through and including October 1, 2020. The notice shall not be damaged, defaced, or covered up during the period it is required to be posted. The local union is ordered to provide a declaration of notice posting to the Election Supervisor within two days following its posting.
3. The UPS Miami facility is directed to comply with Article VII, Section 12(e) of the Rules, and permit parking lot campaigning at the facilities. The UPS Miami facility is further directed to instruct its contract security personnel with respect to the campaign rights that IBT members enjoy in parking lots employees use to park their vehicles.

A remedial order of the Election Supervisor takes immediate effect unless stayed. *Lopez*, 96 EAM 73 (February 13, 1996).

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We do not order Vera or Baez to fund a campaign mailing for the O'Brien-Zuckerman 2021 slate at the UPS Miami facility because we find that the campaigners were able to exercise their rights fully for two hours on July 30 and were removed from the parking lot at 8:59 a.m., just as the 9 a.m. shift was to commence. For this reason, we conclude that the canvassers were not prevented from engaging a sufficient number of additional members that would warrant a campaign mailing.

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 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
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