

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: HOFFA-HALL 2011,)	Protest Decision 2011 ESD 323
)	Issued: September 11, 2011
Protestor.)	OES Case No. P-295-062911-NA
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Hoffa-Hall 2011 filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”) against Richard Galvan, unsuccessful candidate for IBT Western region vice president on the Gegare slate, and all members of the Gegare slate. The protest alleged that Galvan and the Gegare slate candidates impermissibly retaliated against Ron Herrera, trustee candidate on the Hoffa-Hall 2011 slate, and Jay Phillips, an elected delegate from Herrera’s local union and supporter of Herrera’s candidacy and the Hoffa-Hall 2011 slate. According to the protest, Patricia Galvan, Richard Galvan’s spouse, committed the act of retaliation by assaulting Phillips at the IBT convention.

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

Findings of Fact

Jay Phillips is president of Local Union 396 and served as one of that local union’s twelve elected delegates to the IBT convention. Richard Galvan, a member of Local Union 396, sought election as delegate from that local union; his slate lost all contested positions to Phillips’ slate, which was headed by Local Union 396 secretary-treasurer and principal officer Ron Herrera. Herrera was nominated to the union-wide ballot for the position of IBT trustee as a member of the Hoffa-Hall 2011 slate. The Gegare slate nominated Richard Galvan from the convention floor for IBT Western region vice president. In secret ballot voting conducted Wednesday, June 29, Galvan did not win sufficient delegate support to gain a place on the Western region ballot.

The protest alleged that Patricia Galvan “physically assaulted” Phillips, that her “actions constitute prohibited physical violence, intimidation and retaliation against candidate Herrera, delegate Phillips, and the Hoffa Slate,” and that she “clearly assaulted Phillips for political reasons.”

Phillips told our investigator that he has been a Teamster for 35 years and president of Local Union 396 for six. He said he has known Richard Galvan as a UPS co-worker and friend since 1987 and hired him as a local union business agent in 2003. According to Phillips, Galvan performed well as a business agent for the ensuing three years but elected to leave his employment with the local union and return to his UPS job in about 2006. After UPS discharged him in 2007 and the union negotiated a settlement of his grievance that returned him to work without backpay, Galvan ran for local union office against Herrera in 2008. At that point, according to Phillips, he and Galvan ended their friendship. They have been political rivals in the local union since that time, and most recently were on opposing slates of candidates in the local union delegates election.

September 11, 2011

Phillips was present at the IBT convention as an elected delegate. Richard Galvan attended as an observer for the Gegare slate¹ and in order to accept floor nomination as a candidate for IBT Western region vice president. Galvan was accompanied to Las Vegas by his wife, Patricia, among other family members.

Following floor nominations of candidates for International office that took place during the morning sessions of the convention on Tuesday, Wednesday and Thursday, June 28 through 30, secret ballot votes of delegates were conducted each evening to determine whether floor-nominated candidates had the level of delegate support required to win a position on the ballots for the union-wide referendum on International officer candidates. Balloting took place in a ballroom in Bally's hotel, which is attached to the Paris hotel convention center where convention proceedings were held. A long hallway leading to the voting area was designated a no-campaign zone, and delegates were required to shed their campaign vests, pins and buttons before entering that hallway. As a result, delegates entering the hallway left their campaign material with other persons outside the hallway entrance, some of whom were also delegates but who had already voted or were yet to vote, and retrieved their materials when they completed the voting process. The hallway entrance was adjacent to the low-rise and high-rise elevator banks that served the north tower of Bally's hotel.

Shortly before 6 p.m. on Tuesday, June 28, Phillips was at the entrance to the Bally's hallway that led to the voting area, having just voted in the secret ballot election for union-wide candidates for trustee and vice president at large. He told our investigator that he picked up his Hoffa campaign vest from Local Union 396 member George Turner, who was attending the convention as a guest of the local union. Turner was awaiting Phillips at the hallway entrance. Phillips said he then turned to head back to his room in the Bally's south tower. As he did so, Phillips said he heard a very loud woman's voice behind him, screaming, "There he is! There he is!" Phillips said he saw Patricia Galvan emerge from a bank of elevators with two of her children, but he continued walking in the direction of the south tower. According to Phillips, the next thing he knew, someone came up from behind and threw herself around him by locking her arms around his neck and virtually hanging on him. He said he tried to shake himself free, and she turned toward him on the side, clawing and attempting to slap him, all the while yelling, "You scare my kids! You scare my kids!" As he turned toward her, Phillips said he saw that the woman was Patricia Galvan. He stated he tried to free himself from her grasp but she was pulling his arm and would not let go.

Phillips said that almost at the same time, he saw Turner and Local Union 396 business agent Hector Delgado run to assist him. Phillips said that Turner put his arm between Phillips' face and Galvan's gripped arms and she gradually slipped off him. Once the two were separated, Phillips said he went on his way quickly to avoid any further contact with her. He said he was shaken by the incident and surprised by what he said was Galvan's hysterical, unprovoked and deliberately aggressive behavior.

Phillips did not report the incident to Bally's security that night. Instead, he relayed the incident to secretary-treasurer Herrera, who he said spoke further about it with Hoffa slate attorney David Hoffa. Thereafter, Hoffa-Hall 2011 filed a protest against Richard Galvan for knowingly and

¹ See our decision in *Galvan*, 2011 ESD 284 (June 24, 2011), in which we resolved a protest concerning Galvan's effort to obtain union leave from his employment in order to attend the IBT convention as an observer for the Gegare slate.

September 11, 2011

deliberately arranging to have his wife, according to Phillips, “harass, annoy, harangue, and physically assault” union members attending the convention on legitimate business.

According to the report Phillips gave to Bally’s security the next day, Wednesday, June 29, at 11:59 a.m., “Phillips claimed that Galvan had jumped on his back and repeatedly slapped him in the face.” According to the report, Phillips denied to the reporting security officer that he was injured in the incident and declined the officer’s offer of medical attention. At the request of Bally’s security, Phillips completed a handwritten “voluntary statement” recounting the incident. Phillips’ statement reported that he heard Galvan “scream[] ‘There he is! There he is!’,” that he turned in the direction of the voice and saw Galvan, whom he recognized, and saw that she was pointing at him. The handwritten statement continued as follows:

Sensing she desired a confrontation, I immediately turned left, away from Ms. Galvan. I began walking briskly toward the south tower, where my room is located. My intent was to avoid a confrontation with Ms. Galvan, since she was obviously angry.

As I was walking away, after about 20 or 30 feet, I felt someone jump on my back. The person wrapped their arms around my neck from behind and pulled my head. As I turned I realized it was Patricia Galvan. She was screaming hysterically and slapping and trying to claw at me. She pulled my arm and was flailing at me and striking me.

George Turner and Hector Delgado, two witnesses, ran over and pulled her off of me. I freed myself and turned away. I began walking to my room.

At Phillips’ request, Bally’s security notified the Las Vegas Metropolitan Police Department, and Police Officer J. Ruiz from that agency responded to the hotel and prepared a report of misdemeanor battery after reviewing hotel security video of the incident. The full text of the narrative portion of the report read: “ON 062911 @ APPROX 1757 HRS GALVAN, PATRICIA WAS GRABBING PHILLIPS, JAY [Phillips’ birth date redacted] RIGHT ARM & PULLING ON IT HOLDING ON TO IT APPROX 20 FT INSIDE CONVENTION HALL INSIDE BALLY’S HOTEL/CASINO AS HE WAS TRYING TO WALK AWAY.”

When Phillips, who is a lawyer, returned to Los Angeles following the convention, he commenced a civil action, representing himself, on or before July 8 in Superior Court for Los Angeles County, seeking injunctive relief for personal protection against Patricia Galvan. In his declaration given under penalty of perjury, Phillips described Galvan’s initial “screaming, pointing and yelling” at him and his action in walking away from the area. He then wrote the following:

As I was briskly walking away from the area, I suddenly felt someone jump on my back, put their arms around my neck and begin screaming, hitting and pulling on me. I was in shock. I turned and realized that Defendant [Patricia Galvan] had jumped on my back and was slapping and grabbing me. I attempted to break free, but she would not let go of me. She was screaming at me while she was slapping and grabbing me. She was hysterical and irrational, as she kept yelling “you scare my kids – you scare my kids!” Two witnesses to the event, George Turner and Hector

Delgado, saw her running after me. They ran to the scene and pulled her off me. I then turned and walked to my room.²

Hector Delgado, identified as a witness by Phillips, gave a written statement to Bally's security, was interviewed by our investigator, and submitted a written declaration in support of Phillips' Superior Court suit. The handwritten "voluntary statement" he gave Bally's security on Wednesday, June 29 at 12:50 p.m. stated the following, in its entirety:

On June 28, 2011 at approximately 5:55 p.m., I saw a woman running through the crowd. I followed her visually to see where she was running to. About 10 feet away from the monorail/shop stair she grabbed and pulled, with force, Jay Phillips' right arm. She continued to shake his arm, push and verbally assault Mr. Phillips. I ran toward the scene and got between the woman and Mr. Phillips. I requested her to stop but she continued to shout and try to reach Mr. Phillips as if she wanted to assault him. This continued for about 1 – 2 minutes.

In the interview he gave our investigator on Thursday, June 30, Delgado stated that he first noticed the woman, whom he did not know, running through the crowd. He said he heard her shout, "There he is. There he is." He continued to watch her and said he saw her grab Phillips by the right arm, pull him and twist him around so that Phillips was facing her. According to Delgado, the woman pushed and shoved Phillips and smacked him on the chest. At this, Delgado said he ran over and got between the woman and Phillips and asked her to stop. Delgado further said that he called out to George Turner, saying that "somebody is harassing Jay." Delgado said that Turner responded to the scene as well, and Phillips got behind Delgado and Turner. Delgado stated that the woman was trying to reach past him and Turner to Phillips, shouting, "Jay, why are you doing this?" Delgado said that the woman finally walked away, after apparently recognizing that she could not reach Phillips past him and Turner.

In his declaration given under penalty of perjury in the Superior Court action,³ Delgado said the following:

1. On Tuesday, June 28, 2011, at approximately 5:50 p.m., I noticed a white, middle-aged female running through the Bally's casino floor. The woman ran up behind Jay Phillips and began hitting and grabbing him. She violently pulled his right arm, and then began pushing, shaking and assaulting Mr. Phillips.
2. I ran toward the scene immediately in an effort to stop the assault. As I neared, I saw the woman hit Mr. Phillips in the face. Mr. Phillips kept trying to free himself and move away, but the woman continued to reach at him and

² Underscoring in original.

³ Delgado's declaration was attached to Phillips' petition, which was prepared *in pro per*. Phillips told our investigator that, despite starting the action without attorney representation, he did not prepare or assist in the preparation of Delgado's declaration. Instead, Phillips said he asked a paralegal, Stephen C. John of Family Law Assistance Center, Inc. in Rancho Cucamonga, California, whom he knew from his former family law practice, to prepare Delgado's declaration. Phillips said he directed Delgado to John and did not know whether they met in person or spoke by phone.

try to hit and slap him. I asked her to stop, but she continued. George Turner, a co-worker, helped me free Mr. Phillips from her assault.

George Turner, the other witness identified by Phillips, also gave three statements. The first was a handwritten “voluntary statement” to Bally’s security, the second an oral interview with our investigators, and the third a written declaration under penalty of perjury in the Superior Court case. The statement to security read as follows:

On June 28, 2011 at about 5:45 p.m. I witnessed Pat Galvan attack Jay Phillips. Galvan was hanging on his back slapping Phillips in the face. The attack lasted a few seconds. I and my co-worker Hector Delgado stepped in between them.

Turner told our investigators that he was holding the campaign vests of several delegates at the entrance to the hallway when Phillips returned from voting. Turner said he gave Phillips his vest, and Phillips continued walking. Turner said he then saw Patricia Galvan, whom he knew, exit the elevator and yell at Phillips. Turner said he could not hear what Galvan yelled because the area was too noisy. Turner said he turned his attention to returning campaign vests to other delegates until Hector Delgado yelled, “Jay’s being attacked.” Turner said he then turned and saw Galvan on Phillips’ back with her arms around him. Turner said he ran over to Phillips and put his arm between Phillips and Galvan in an attempt to get her off of him. Turner denied that he pulled Galvan off Phillips, stating that she “sort of slipped off him to the side.” During this period, Turner said that Galvan was “screaming like a mad woman” and “her eyes were wild.” She was addressing Phillips directly, asking, “What are you doing?” and stating, “You are scaring my children,” and “You’re a drunk.” Turner said the entire incident took place in 15 to 25 seconds.

In his declaration made under penalty of perjury in the Superior Court action,⁴ Turner stated the following, in relevant part:

1. On Tuesday, June 28, 2011, at approximately 5:50 p.m., I was standing in the hallway near the north tower of Bally’s Hotel. There were dozens of people milling about, since the Teamster delegates were returning from voting. I heard a co-worker, Hector Delgado, calling out to me. He said Jay Phillips was being attacked. I rushed to his aid, where I saw Patricia Galvan trying to choke Mr. Phillips. When Jay briefly broke free, she struck him in the facial area. After Ms. Galvan struck Jay Phillips, I was able to pull her off of him, with the help of Hector Delgado.
2. After we separated her, she continued to rant and rave hysterically at Mr. Phillips. Jay Phillips then continued on to his room.

Patricia Galvan told our investigator that she saw Phillips when she and her children exited the elevator bank of Bally’s north tower shortly before 6 p.m. on June 28. She said she wanted to speak with him about things that had happened to her and her family in the past several months. She said that she has known Phillips for many years and at one time regarded him as a close friend

⁴ According to Phillips, Turner’s Superior Court statement also was prepared by paralegal John without Phillips’ involvement.

of her husband and family. However, since the time her husband became involved in local union politics in opposition to Herrera and Phillips, she and her family have suffered. Thus, Galvan told our investigator that the night her husband was nominated for local union delegate, their car was vandalized in the driveway of their residence.⁵ A police report was filed but it came to nothing because of lack of proof. Further, she stated that her husband makes overnight runs as a UPS feeder driver, and she has received phone calls at 3 a.m. on nights he is gone in which the caller states that he will assault her sexually. She stated that some of these calls also threaten her family. She is very concerned about the threats made on the calls and whether action will follow on these threats.

Galvan told our investigator further that the threatening calls commenced in earnest after her husband was nominated for delegate, and they continued through and after the delegate election period. She also stated that when she attended union functions with her husband during this period, certain members who she knew to be supporters of Herrera and Phillips stared at her and looked her up and down in a sexually suggestive manner. According to the Galvans, the conduct continued in Las Vegas. Thus, on June 27 in a piano bar restaurant in Bally's, Patricia Galvan said that she, her husband, and another couple were having dinner when a group of Local Union 396 members sitting nearby began taunting them. According to Richard Galvan, one of the group said that he had been with Galvan's wife sexually. When his wife heard the comment, she got up from her seat and verbally challenged the speaker, saying "Why are you doing this? You're grown men."⁶

Galvan told our investigator that she correlated the threatening calls and other harassment with her husband's political activity within the union. Accordingly, she believed Phillips, as a political leader within the local union, had the power to stop the harassment of herself and her children, and she confronted him when she saw him on Bally's main floor on June 28. Galvan said that when she saw Phillips, she started out after him in order to speak with him. She said he saw her coming and hurried away from her, and she ran after him. She said that she caught up to him and grabbed his right arm with her left hand and put her right hand on his chest to get him to stop and talk to her. She said she asked him, "Jay, why are you doing this to my family? Why are you terrorizing my family?" She said that as she spoke to Phillips, two men she did not know came up and one asked, "Why are you doing this to Jay?" She said she replied to the questioner that he had no idea what she had been going through. She said she called Phillips a drunk because she believed

⁵ Local Union 396 conducted its nominations meeting for the delegates election on Sunday, January 8, 2011 at 1 p.m. A Glendora (California) Police Department incident report dated January 9, 2011 documented a report of vandalism to Richard Galvan's vehicle, which was parked in his driveway. The report stated, "AN UNKNOWN SUSPECT VANDALIZED THE VICTIM'S VEHICLE AND STOLE A PIECE OF THE MOLDING." The report indicated that the vandalism occurred between 11:30 p.m. on January 8 and 7 a.m. on January 9. The responding officer stated the following in the narrative portion of the report: "Galvan stated that he was currently running for a union management office against a couple of incumbents. The union members holding office and those running against them had a meeting at Galvan's residence in the evening hours of 01-08-11 that became very heated. Galvan stated that some of the incumbents have 'thugs' that they use to intimidate those in opposition. Galvan believed that one of the incumbents sent one of their 'thugs' out to damage his vehicle in order to intimidate him."

⁶ A 20 second video clip recorded on a smartphone by Enrique Cisneros was supplied to us by him on September 1, 2011. The clip appears to record the final seconds of a longer incident. It depicts Patricia and Richard Galvan standing in the hallway immediately outside the piano bar about 15 feet from the camera and turning as they are about to re-enter the establishment; their dining companions are in the hallway closer to the camera. As Richard Galvan is attempting to guide his wife back into the restaurant, she calls out to Cisneros, "C'mon Enrique; c'mon Enrique, [indecipherable] your mommy." Male voices, one speaking Spanish, are also heard, but the dialog cannot be deciphered. Cisneros and Richard Galvan were involved in a campaign-related confrontation during the delegate election period that is documented in *Galvan*, 2011 ESD 238 (April 27, 2011).

September 11, 2011

he has had a number of DUI tickets. She said that she was very angry because she believed that Phillips was behind everything that had happened to her family.

In her handwritten “voluntary statement” given to Bally’s security on June 29, Galvan wrote the following:

Mr. Jay Phillips, Ron Herrera and a number of other men in their employ or who have relationships with them have been harassing my husband and myself repeatedly for several months now. I have been subjected to threatening phone calls in the middle of the night while my husband is out of town. Our car was vandalized in our driveway. I have been followed by the Phillips/Herrera people. In my frustration upon seeing Mr. Phillips I walked up to him and as he saw me approach, he started to run. I reached out and grabbed his arm and told him I wanted to thank him for being such a brave man and terrorizing my family. I told him he must be very proud of himself. He started walking away and had a lot of men surround him. One of them asked who I was. I said it was none of his business. He said, “you can’t talk to my president” and I said “your president is a drunk and a dirt bag” and then I looked at Mr. Phillips and said “No more DUI’s, Jay” and walked away.

We reviewed security videotape of the incident supplied by Caesars.⁷ As the incident occurred in the casino area of Bally’s main floor, portions of it were captured by four ceiling-mounted fixed cameras. The four relevant segments were produced to us on a single VHS cassette tape. The combination of the four views recorded the entire incident, although no single camera captured the incident from start to finish. Each videotape segment displayed the running time on a 24-hour clock in the lower left of the frame and the date in the lower right. The four segments produced to us, synchronized to a single clock, commenced at 5:56 p.m. and 40 seconds (17:56:40) on June 28.

The segment that provided the most information concerning the incident was shot from a ceiling-mounted security camera positioned about sixty feet SSW of the entrance to the low-rise elevator bay for Bally’s north tower.⁸ The frame is a wide-angle shot looking NNE, with the opening to the elevator bay centered at the top of the frame, flanked on either side by walls. Slot machines are installed against the wall to the left of the elevator bay, at the upper left of the frame, and on the wall at the lower right edge of the frame. In addition, two groups of three slot machines are positioned in the open floor area in the left one-third of the frame. At any given time, some 50 to 60 persons are captured in the image. In the center of the frame, a dense group of some 12 to 15 persons are seen standing and conversing with each other. At the upper reach of that group, a number of men are seen standing side-by-side with their backs to the group and to the camera, surveying a steady stream of delegates exiting the no-campaign hallway at the upper right edge of the frame and traversing the frame to its upper left edge, walking right to left past the opening of the elevator bay.

⁷ Caesars is the proprietor of Bally’s and Paris hotels, where the convention was held. The Government obtained the videotape for our review by issuing a subpoena in *USA v. IBT*.

⁸ The north tower is served by two banks of elevators, low-rise and high-rise. The low-rise bank of eight elevators is situated in a hallway approximately 20 feet wide by 60 feet long; four elevator cars open onto each side of that hallway. The view the first image provides is SSW of the center of the entrance to that elevator hallway, or bay, such that the left-side elevators in that bay cannot be seen and the right-side elevator doors may be viewed at an oblique angle.

As the videotape segment opens at 17:56:40, Jay Phillips is seen in left profile at the right edge of the center, dense group of persons, conversing with Hector Delgado and others. Phillips is wearing a dark short-sleeve, button-front, straight-hem shirt untucked, and trousers. He is not wearing a Hoffa-Hall 2011 vest, and he has nothing in his hands. Delgado, who is to Phillips' right, is facing toward Phillips and the camera. At 17:56:58, Phillips ends the conversation and departs the group, taking a path along the right side of the dense group (from the camera's perspective) toward the bottom of the frame. He is still without his Hoffa-Hall 2011 vest, and his hands are empty.

At 17:56:59, nearly the same moment that Phillips departs the group and heads toward the bottom of the frame, Galvan arrives at the top of the dense group, slightly behind but almost at Delgado's right elbow. She appears to be looking at Phillips, who is walking away from her. Delgado looks to his right at Galvan, who does not appear to note him. Instead, Galvan pursues Phillips at a rapid pace. The pace is a short-strided run, as she negotiated a route through a crowded area. She takes a path around the left edge of the dense group (again, from the camera's perspective), apparently assessing it to be a quicker route to Phillips than the right edge path that Phillips took. Galvan is wearing an off-white short-sleeve pullover top, white capri-length pants, wedge shoes with 3-inch heels, and is carrying a large handbag, the strap over her right shoulder and the bag tucked up under her right upper arm. Her path converges with Phillips' at the bottom of the frame, where she is seen reaching for Phillips' right shoulder with her outstretched left hand. The pair exits the bottom of the frame at 17:57:03.⁹

They are captured in a second view, which they enter at 17:57:02, a second before they leave the range of the first camera. The second view is a long shot, estimated at some eighty feet due west of the camera location that provided the first shot. Within this frame are several installations of slot machines in the open-floor area. At the top right of the frame are a pair of escalators that provide access to and from the lower concourse area of Bally's. A support post is situated in the center of the frame, some forty to fifty feet from the camera. At 17:57:02, Phillips is seen entering the frame in the upper left corner, with Galvan at his right shoulder. Galvan has her left hand on Phillips' right shoulder and her right hand grasping his right upper arm. At 17:57:03, Phillips slows his walk. At 17:57:04, he turns to his right to identify the person who is touching him and then immediately turns to his left, away from Galvan. At 17:57:05, Galvan reaches her right hand, palm down, around to Phillips' chest, in an apparent attempt to arrest his turn away from her. While doing so, she is attempting to run around to place herself in front of him. She is momentarily unsuccessful in that effort, as Phillips continues to turn to his left, but at 17:57:08 she is seen directly facing him for about one second. Her left hand is grasping his right upper arm and her right open palm is on his sternum.

At 17:57:10, Phillips turns about 160 degrees to his left and heads back toward the dense group he had just left. Galvan is grasping Phillips' right upper arm with her left hand and his right forearm with her right hand. As Phillips is walking back to the dense group, he is looking in the direction of Delgado, who appears to meet his gaze, and Phillips is holding his left hand overhead and motioning Delgado to come to him. Phillips is trailing his right arm behind him, which Galvan is holding in the manner just described. The pair exits the upper left edge of this frame at 17:57:14.

⁹ As documented below, Phillips and Galvan reenter this frame at 17:57:13, ten seconds after exiting.

An additional view is provided by a camera situated approximately 30 feet WNW of the first camera and facing toward the first camera. Dominating the foreground of the frame is an installation of three slot machines in the open-floor area. The camera view includes the front of one of the machines, which is being serviced by casino personnel. A woman stands at a second machine, situated to the right of the one being serviced. The slot machines stand approximately four and a half feet high; no stools or chairs accompany the machines. Attached to the top of each machine is illuminated advertising that adds an additional 24 inches to the top of the machine. At 17:57:04, Phillips and Galvan enter the frame, as seen in right profile. At 17:57:06, they disappear from view behind the illuminated advertising that tops the slot machines. They reemerge from behind the advertising in left profile, headed in the opposite direction, at 17:57:10 and leave the left edge of the frame at 17:57:12. During the initial two seconds they are in view, Galvan is grasping Phillips' right arm. During the second two seconds they are in view, Phillips is motioning with his left hand to an unseen audience off the left edge of the frame and is trailing his right arm, which Galvan is holding.

The final view is of little assistance. It is situated approximately 20 feet SSW of the initial view, and is facing NNW. An arrangement of three slot machines dominates the view. At 17:57:03, Galvan's right arm, hip and foot are seen at the extreme right edge of the frame. Phillips is not in view, nor are Galvan's hands.

At any given time, Phillips and Galvan are seen in at least one of the first three views just described. Every moment of their interaction from the start of the incident to its conclusion is captured in at least one of these three views.

Delgado appears in the first-described view for the duration of that segment. It is the only view in which he appears. When Delgado first noticed Galvan running in the direction of Phillips, Delgado appeared to follow her visually for the duration, including when she caught up to and reached for Phillips, grabbed his arm and got in front of him. Delgado appeared to be watching for the 10 seconds when Phillips and Galvan are out of the frame of the first video. To maintain that view, Delgado, who listed his height at 5'7" in his handwritten voluntary statement given to Bally's security, took three steps to his left and stretched to his full height in order to see over or around the persons who otherwise would have obscured his line of sight. Delgado was still watching when Phillips reentered that frame with Galvan holding his right arm. When Phillips raised his left hand to summon assistance, Delgado turned away from Phillips and took three steps toward the top of the frame and tapped the backs of several persons wearing Hoffa-Hall 2011 vests. Delgado then walked six long strides toward Phillips and arrived at Phillips and Galvan, where he first stood close to Phillips and, without using his arms and without touching Galvan, then positioned himself in between Phillips and Galvan. The persons Delgado had tapped on the back turned around in response to his action and came to the location where Phillips, Delgado and Galvan were. Their approach took several seconds. Shortly before they arrived, Phillips lifted his right arm up and away from Galvan, freeing it from her grasp. Phillips does not appear to struggle or exert anything other than minimal effort to free himself from Galvan's grasp. .

Turner appears in the first-described video for its duration as well. As with Delgado, the first view is the only one in which Turner appears. Until 17:57:13, he stood with his back to the camera and appeared to be watching the flow of delegates who are proceeding from right to left

September 11, 2011

across the top of the frame as they returned from voting and exited the no-campaign hallway. Turner has a large plastic bag in his left hand. Given his position with his back to the camera, he could not view Galvan pursue Phillips, catch him or grab him. Turner's first opportunity to view the incident between Phillips and Galvan came when he turned around in response to the tap on the back that Delgado gave him. When he did so, Phillips was taking his final steps back into the frame and turning to face Galvan, as Delgado arrived and stepped between Phillips and Galvan. At 6'4" and 320 pounds,¹⁰ Turner is by far the biggest and tallest person who responded to incident. When he arrived at Phillips' location, he stood immediately to Delgado's left and took no other action. The large plastic bag remained in his left hand. By the time Turner arrived, Phillips had freed his right arm from Galvan's grasp.

Although Galvan no longer held Phillips' arm, she appeared to address him. The video shows her talking to Phillips,¹¹ who is standing immediately behind Delgado's right shoulder. Galvan is gesturing with her left hand, as if lecturing Phillips. Phillips appears to respond verbally to Galvan. In addition, Delgado appears to respond verbally. For several seconds during this portion of the exchange, Delgado appears to gesture with his right thumb over his shoulder in the direction of Phillips, while facing Galvan in front of him and speaking to her. At 17:57:36, Galvan stops talking to Phillips and walks away, heading first to the right in the frame and then toward the elevator bay at the top of the screen. Phillips and the men assembled around him turn to watch her walk away, eventually turning their backs fully to the camera. They then turn and walk toward the camera and exit the bottom of the frame at 17:57:56. At this point, the video ends.

The combination of the first three videos corroborates Phillips' account in the following respects:

- Video confirms that, prior to the start of the incident, he turned from the dense group he was speaking with and walked away from the area.
- Video confirms that Galvan overtook him and grabbed his right arm.

The combination of the first three videos contradicts Phillips' account in the following respects:

- Video shows that Phillips did not retrieve, don, or otherwise reacquire his Hoffa-Hall 2011 vest at any time before or during the incident.
- Video shows that Galvan did not lock her arms around Phillips' neck, as he claimed.
- Video shows that Galvan was not "virtually hanging" on him, as he claimed.
- Video shows that Galvan did not pull his head, as he claimed.
- Video shows that Galvan did not claw him or attempt to claw at him, as he claimed.
- Video shows that Galvan did not slap him or attempt to slap him, as he claimed.
- Video shows that Turner did not interject his arm between Phillips and Galvan, as Phillips claimed.
- Video shows that Galvan did not repeatedly slap Phillips in the face (or ever slap him), as Phillips claimed.

¹⁰ Turner reported his height and weight in the handwritten voluntary statement he gave Bally's security.

¹¹ None of the video segments has a soundtrack.

September 11, 2011

- Video shows that Galvan did not jump on Phillips' back, as Phillips claimed.
- Video shows that Galvan did not flail at Phillips or strike him, as Phillips claimed.
- Video shows that Turner and Delgado did not run over to Phillips' assistance, as Phillips claimed.
- Video shows that Turner and Delgado did not pull Galvan off Phillips, as Phillips claimed.

In addition to the video contradictions of Phillips' evidence, the video contradicted Delgado's claims that Galvan hit, tried to hit, and tried to slap Phillips, that Delgado helped free Phillips from the assault, and that Turner helped Delgado do so.

Finally, the video contradicted George Turner's claim that he saw Galvan "hanging on [Phillips'] back slapping Phillips in the face," both because Galvan never was on Phillips' back and never slapped him anywhere, including in the face, and because Turner had his back to Galvan and Phillips until Delgado summoned his assistance, and therefore he was in no position to observe the interaction between Galvan and Phillips. Further, video contradicted Turner's claim that he saw Galvan "trying to choke Mr. Phillips," and that "[w]hen Jay briefly broke free, she struck him in the facial area" because Galvan did not choke or try to choke Phillips and did not strike or attempt to strike him in the face. Finally, video contradicted Turner's claim that he "was able to pull her off of [Phillips], with the help of Hector Delgado," as neither Turner nor Phillips touched Galvan in any manner, including pulling her off of Phillips.

Phillips told our investigator that although he commenced his Superior Court action by himself, he subsequently retained counsel to represent him in it. His counsel subpoenaed the surveillance video of the incident from Caesars, and Phillips said he has viewed the video once, on September 6, 2011. When asked by our investigator in a phone interview on September 8, 2011 how he reconciled his statements to Bally's security, our investigators, and to the Superior Court, where he claimed that Galvan "wrapped [her] arms around my neck," "slapping and trying to claw at me," "flailing at me and striking me,"¹² "locked her arms around his neck and [was] virtually hanging on him,"¹³ and "jump[ed] on my back, put [her] arms around my neck and begin screaming, hitting and pulling on me ... and ... slapping and grabbing me,"¹⁴ with the security video of the entire incident, which demonstrated that none of those things occurred and that Galvan only grabbed and held his right arm, Phillips replied that he nonetheless believed those things occurred. He told our investigator that he thought the video actually showed the things he said Galvan did to him. He stated he repeated in statements and interviews after the incident his best recollection of the incident, which he said was validated by two things: the LVMPD officer issued a citation to Galvan for misdemeanor battery, and Bally's ejected Galvan from the hotel. Phillips stated that the police officer and Bally's security reviewed the video of the incident out of Phillips' presence before taking those actions. He said he concluded from these facts that Galvan committed an offense.

Members of the OES investigative staff reviewed the video surveillance multiple times. The video, although not of the best quality, contradicts Phillips's account and shows clearly that Galvan did none of those things Phillips claimed, other than pull Phillips' right arm.

¹² Phillips' statement to Bally's security.

¹³ Phillips' statement to OES investigators.

¹⁴ Phillips' sworn declaration to Superior Court.

In a written declaration dated July 21, 2011 Galvan made under penalty of perjury in the Superior Court, she described the events in the Bally's security office the day after the incident differently, *viz.*

9. Prior to viewing the video, [LVMPD] Officer Ruiz questioned me about my statement and asked me to show them (using one of the security officers) exactly how I put my hand on Mr. Phillips' arm. Officer Ruiz asked me if I jumped on Mr. Phillips' back. I said, "No." He asked if I choked him or pulled his head back. I said, "No." He asked if I slapped or scratched him, I said, "No." He asked if it took two men to pull me off him and I said, "No one needed to pull me off because I was never on him." He told me my statement was far different from Mr. Phillips and his friends.

10. This was when the officer proceeded to ask Mr. Phillips why he waited to report this "assault," to which I heard him respond he needed to consult with counsel so he would know the process, he just wasn't sure of the process. The officer asked who his counsel was, and he stated that he was acting as his own counsel at that time because he was an attorney. He then stated that he was very busy with his many responsibilities as a Teamster official at the convention, so he didn't have the time to report the "attack" when it happened. I heard the officer ask if he had any marks on him and he said, "No."

11. The other two officers came in the room after the video had been viewed. Officer Ruiz had asked the officer who viewed the video if he had seen me doing any of the things Mr. Phillips listed in his statement. The viewing officer stated he did not see anything Mr. Phillips listed on his statement and that it appeared to him I had my hand on Mr. Phillips' arm and was trying to have a conversation with him. Officer Ruiz went back in to Mr. Phillips and asked where he wanted to go with it. Mr. Phillips state he wanted me arrested for assault and battery. The officer told Mr. Phillips there was no assault and the most he could do was give me a ticket for misdemeanor battery, but that might require a court appearance. I heard him tell Mr. Phillips that since he was such a busy attorney he probably would not want to travel 230 miles back to Nevada for something like that. Mr. Phillips responded that he was fine with that because he needed to pursue the matter. The officer came back into my room. At this point there were three security officers and the three police officers in the room with me. They explained that I was going to get a ticket for misdemeanor battery. I asked why I was getting a ticket when he was obviously lying and they now knew he was lying. The officer stated that since I did touch Mr. Phillips and he insisted on pursuing the incident it was not their decision to make. If the District Attorney felt there was anything worth pursuing, a judge would make a decision on the battery charge. He stated that what I chose to do if it was dismissed was up to me.

The police officer issued Galvan citation number 104768788 for misdemeanor battery. Because the ticket was issued, hotel security informed Galvan that she would have to leave the hotel, which she did that day.

The citation was assigned case number 11M31237X in the Justice Court for Las Vegas Township. The charge alleged a violation of NRS 200.481(2)(A), which states “a person convicted of a battery ... shall be punished: (a) If the battery is not committed with a deadly weapon, and no substantial bodily harm to the victim results, ... for a misdemeanor.” The statute defines “battery” as “any willful and unlawful use of force or violence upon the person of another.” NRS 200.481(1)(a). In a Disposition Notice and Judgment issued July 13, 2011 in *State v. Galvan, Patricia*, the case was dismissed. The listed reason was “DISMISSED/STATE NOT PROCEEDING.”

Immediately following the phone conversation of September 8, 2011 where our investigator questioned Phillips about the contradictions between his versions of the incident and what the video showed actually happened, Phillips phoned our investigator and stated that he respected the view that the video did not support his statements and said he would withdraw the protest. Our investigator replied that the protest was filed by Hoffa-Hall 2011 and was not Phillips’ to withdraw and, further, that a decision would be issued to address the contradictions between the video and the written and oral statements Phillips gave.

Richard Galvan, Patricia’s husband, denied that he was at the scene of the incident involving his wife and Phillips or knew that it was occurring or would occur. No witness placed him at the scene, and video confirmed he was not present. Similarly, no witness placed any other candidate on the Gegare slate at the scene of the incident, and none is visible in the video.

On September 9, 2011, the Los Angeles Superior Court issued a “Restraining Order After Hearing to Stop Harassment” directing Galvan not to harass or contact Phillips, and to stay at least 50 feet away from Phillips, his home, his vehicles, and his workplace “including but not limited to Teamster Union Meetings or other public & private places” through September 9, 2014.¹⁵

“Harassment” is defined in California law as

unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner.

CA Code Civ. Proc. § 527.6(b)

California law sets a high burden of proof for anti-harassment orders: “[i]f the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment.” CA Code Civ. Proc. § 527.6(d). The order in Phillips’ case, issued on a form CH-140, does not contain any factual findings as a predicate for the restraint (nor is there any space on the form for such findings), although it states that there is no fee to Phillips for service of the order because “The Order is based on a credible threat of violence.”¹⁶ Counsel for the protestor

¹⁵ An anti-harassment injunction “shall have a duration of not more than three years.” CA Code Civ. P. § 527.6(d).

¹⁶ The California Code of Civil Procedure provisions governing anti-harassment injunctions defines “credible threat of violence” as “a knowing and willful statement or course of conduct that would place a reasonable person in fear for his

September 11, 2011

represented to our investigator that the court granted the order based on “the best evidence – the tape of the assault.” Galvan told our investigator that the judge reviewed the tape, noted that the conduct of Galvan reflected on the tape was much less egregious than what Phillips alleged, but concluded that Galvan invaded Phillips’ space. The judge therefore granted the injunction. According to Galvan, the judge made no finding concerning whether Phillips suffered emotional distress or whether a reasonable person in Phillips’ place would have suffered emotional distress.

The order reflects that Phillips attended the hearing with an attorney, John L. Gordon, and that Galvan attended without representation.

Analysis

Article VII, Section 12(g) of the *Rules* prohibits “retaliation or threat of retaliation by ... any member of the IBT ... against a Union member ... for exercising any right guaranteed by” the *Rules*. As we noted recently in *Pope*, 2011 ESD 309 (August 5, 2011), violence can constitute retaliation under the *Rules*.

It is well-established that violence can constitute retaliation under the *Rules*. Thus, in *Teller*, P1086 (December 27, 1991), Election Officer Holland found a violation where a local trustee grabbed a member by the arm, tapped a finger into his chest, grabbed him by the jacket collar and pushed him against the wall. In *Stefanski*, P282 (January 22, 1996), *aff’d*, 96 EAM 94 (February 21, 1996), Election Officer Quindel found a violation where a member seized another by the arm in a menacing manner and ordered him to leave the facility where he was campaigning. In *Rogowski*, P859 (August 13, 1996), a violation was found where a member pulled another’s shirt collar and pushed him from behind with his elbow. *See also, Smith*, 91 EAM 51 (January 29, 1991) (violation where member was struck on the back of the head for expressing unpopular political beliefs). In such cases, there must be evidence that either expressly or inferentially connects the conduct to activity protected by the *Rules*. *Rogowski, supra*.

However, some conduct has been deemed so minor as not to cross the threshold necessary to establish retaliation. Thus, in *Rudolph*, P861 (August 29, 1996), no violation was found where tempers flared briefly on each side, words and a few pushes were exchanged, but both sides took action to end the incident. Similarly, in *Zuckerman*, 2005 ESD 38 (December 15, 2005), we found no violation where one campaigner went “nose-to-nose” with another and “fairly gently” moved his forearm into the other’s chest. The Election Appeals Master has instructed that violence, to constitute prohibited retaliation under the *Rules*, must be an “intentional and forceful act and not an inadvertent and benign contact occurring in a scuffle.” *Berg*, 06 EAM 58 (July 26, 2006).

For several reasons, we find no violation of the *Rules* on the facts presented here. First, we find that Patricia Galvan did not commit an “intentional and forceful act” against Phillips. The video surveillance shows that she grabbed his right arm and held it for several seconds as she

or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.” CA Code Civ. P. § 527.6(b)(2). Assuming that the anti-harassment order was based on a “credible threat of violence,” the CH-140 does not indicate whether the predicate was a “statement” by Galvan, a “course of conduct” by her, or both.

attempted to get in front of him to speak to him, and we find that this was an intentional act on her part but not a forceful one. The *Rules* do not prohibit every unprivileged touching of a person by another. Rather, they prohibit that level of physical conduct through which retaliation or intimidation for *Rules*-protected activity may be communicated. Other than grabbing and holding Phillips' arm for a few seconds, Galvan did not commit acts of the type Phillips alleged (much less any forceful acts), and the surveillance video incontestably discredits Phillips' account.

The findings implicit in the Superior Court's anti-harassment order do not dictate a different result here. We assume, for purposes of this analysis, that the Superior Court found the material it reviewed (including, apparently, the video surveillance), sufficient to carry Phillips' burden to prove, by clear and convincing evidence, the elements of harassment under California law. Our analysis, however, turns on a second-by-second analysis of the video surveillance, which shows that Galvan did not commit an intentional and forceful act sufficient to implicate the *Rules*' prohibition of retaliation and intimidation.

Second, because we conclude that Patricia Galvan's conduct did not violate the *Rules*, we also conclude that Richard Galvan is not liable for it as a member, an unsuccessful delegate candidate, or an unsuccessful candidate for International office. We reach the same conclusion with respect to every other member of the Gegare slate. Leaving aside that no candidate was present or knew that the incident would occur or was occurring, they cannot be held vicariously liable for conduct where that conduct itself does not violate the *Rules*.

Third, for a similar reason, we find that Hoffa-Hall 2011 and Ron Herrera, a member of that slate, suffered no prohibited retaliation or intimidation as the result of Patricia Galvan's actions, as the protest alleged.

Accordingly, we DENY the protest.

We turn now to the conduct of Phillips during the course of this investigation. Article XIII, Section 2(g) of the *Rules* warns that “[f]ailure to cooperate with the Election Supervisor or Election Appeals Master (including making false statements to the Election Supervisor or Election Appeals Master) may result in referral of the matter to the Government for appropriate action under law (including the Consent Order), or such other remedy as the Election Supervisor or the Election Appeals Master deems appropriate.”

We find that Phillips made a number of false statements to our investigators. These statements required us to expend investigative resources in locating and interviewing additional witnesses, reviewing documents, enlisting the efforts of the United States Attorney to obtain the security videotape, and reviewing and analyzing that video evidence. Thus, Phillips asserted that Galvan jumped on his back, locked her arms around his neck, was “virtually hanging” on him, pulled his head, clawed or attempted to claw at him, and slapped and attempted to slap him.¹⁷ As the videotape confirmed, none of that happened. Especially because of the number and variety of

¹⁷ Some of these statements were made to Bally's security, some to our investigators, and some to the Superior Court. However, Phillips told our investigator that he stood by all of his statements, regardless of the person or institution to whom they were made, and he did not disavow or correct any of them. Accordingly, we consider all of the statements made by Phillips as statements made to the Election Supervisor.

acts of violence he claimed Galvan committed against him and the wide divergence between those claims and the objective evidence the videotape provides, we conclude that Phillips made the allegations knowing they were false. Significantly, Phillips maintained his factual position until he learned, on September 8, 2011, that we had reviewed the videotape, whereupon he promptly offered to withdraw the protest. His attempt to withdraw the protest upon learning that we had watched and analyzed the surveillance video is further evidence that he knew he had provided our office with a false account of the encounter with Galvan.

Phillips repeatedly asserted to our investigators that he was jumped on, clawed, punched and slapped in the encounter. This sort of conduct, if proved with other elements, could make out a *Rules* violation for “intentional and forceful” retaliation. Our meticulous review of the video surveillance was done to investigate the protest in light of Phillips’ repeated, detailed descriptions of how he was attacked, and to provide an absolutely sure foundation for our findings. Whatever the conduct shown on the videotape may constitute under California’s anti-harassment law on the record made in Superior Court, we conclude from our review of the surveillance video that Phillips falsely described the encounter to our investigators in the course of this protest investigation and did so in an effort to establish that Galvan’s conduct was sufficiently aggravated to constitute a *Rules* violation.

We conclude that Phillips’ false statements constitute an abuse of the protest procedure, which is in place to insure compliance with the *Rules* so that elections conducted under them will be fair. Manipulating the procedure with false evidence does nothing to promote fair elections and causes the needless expenditure of limited, dues-funded, investigative resources.

In our precedents, conduct evincing flagrant disrespect for the protest process has warranted disqualification as a delegate. *Richards*, 01 EAM 63 (May 14, 2001) (“[a]lthough Jimmy Payne’s election in the Local 728 balloting was, in light of the foregoing, valid, he is disqualified from taking his seat at the convention because I am satisfied that the Election Administrator properly concluded that he obstructed the investigation and gave conspicuously unbelievable and false statements in the course of his interviews by investigators”); and *Reyes*, 2011 ESD 281 (June 18, 2011), *aff’d*, 11 EAM (June 24, 2011). Phillips was an elected delegate to the IBT convention, but revoking his credentials after the convention has concluded would serve no purpose. Fines were assessed against two persons in *Reyes, supra*, in part to remedy false statements they made to our investigators.

Accordingly, we order the following relief. First, we order Phillips to cease and desist from further violations of the *Rules*. Second, we assess a fine of \$500 against Phillips. Finally, we direct Local Union 396 to post on all worksite bulletin boards under its jurisdiction the notice attached to this decision and maintain that posting for 30 consecutive days. This order is strictly remedial in nature and is intended to correct the instant conduct, deter similar conduct, and to give notice to the membership of Local Union 396 that the *Rules* have been violated.

Compliance with the fine and the posting must be completed within two working days of the date of this decision. Within one day following payment of the fine, Phillips must provide an affidavit stating that the fine to OES was paid solely from his personal funds, that no other person, IBT member, candidate, slate, or campaign has transferred or contributed any funds to him for the purpose of paying all or part of the fine, and that he will refuse any such offer, transfer, or

September 11, 2011

contribution. Within one day following completion of the posting, Local Union 396 shall provide an affidavit demonstrating that the posting has been completed.

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 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:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax: (212) 751-4864

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, 1801 K Street, N.W., Suite 421 L, Washington, D.C. 20006, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
2011 ESD 323

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Richard W. Mark
Election Supervisor

ALL MEMBERS OF TEAMSTERS LOCAL UNION 396

The Election Supervisor has found that Local Union 396 President Jay Phillips violated the *Election Rules* by making a series of false statements to investigators employed by the Election Supervisor.

The Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Election Rules*”) require all members to cooperate with investigations of alleged violations of the *Election Rules*. Failure to cooperate – including making false statements to the Election Supervisor – is expressly prohibited by the *Election Rules*.

The Election Supervisor found that Phillips falsely accused Patricia Galvan, wife of Local Union 396 member Richard Galvan, of jumping on Phillips’ back, locking her arms around his neck, virtually hanging on him, pulling his head, slapping him, and clawing at him at the IBT convention in Las Vegas, Nevada on June 28, 2011. Security videotape showed that these accusations by Phillips against Patricia Galvan were false and that Galvan did not do any of those things.

The Election Supervisor will not tolerate violation of the *Election Rules*. The Election Supervisor has ordered Phillips to cease and desist from further violations of the *Election Rules*, and has ordered him to pay a fine from personal funds of \$500 to the Office of the Election Supervisor.

Local Union 396 has been ordered to post this notice on all worksite bulletin boards where members of this local union work.

The Election Supervisor has issued this decision in *Hoffa-Hall 2011*, 2011 ESD 323 (September 11, 2011). You may read it at <http://www.ibtvote.org/protests/2010/2011esd323.htm>.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity that violates the *Rules* should be filed with Richard W. Mark, 1801 K Street, N.W., Suite 421L, Washington, D.C. 20006, telephone: 877-317-2011, fax: 202-429-6809, email: electionsupervisor@ibtvote.org.

This is an official notice of the Election Supervisor and must remain posted on this bulletin board until October 14, 2011 and may not be defaced or covered up.