

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: RICHARD GALVAN,)	Protest Decision 2015 ESD 19
)	Issued: August 11, 2015
Protestor.)	OES Case No. P-021-072715-FW
_____)	

Richard Galvan filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that UPS interfered with campaign activity in the employee parking lot of the UPS Gardena, California facility in violation of the *Rules*.

Election Supervisor representative Michael Miller investigated this protest.

Findings of Fact

Protestor Galvan is an announced candidate for IBT vice president – Western region on the Teamsters United slate. On July 23, starting around 7:00 a.m., he and two other Teamster members solicited accreditation petition signatures in support of Teamsters United at the UPS facility located at 17115 Western Avenue, Gardena, California.

Galvan and his fellow campaigners positioned themselves at the side of the southern entrance to an exterior fenced walkway that runs from the parking lot where employees park their vehicles into the facility where employees work. Two stewards employed at the Gardena facility told Galvan that the spot to the side of the walkway was the location where campaign activity took place in the past, including by Hoffa-Hall supporters a few weeks before Galvan’s July 23 appearance there.

According to a photo supplied with the protest as well as an aerial view appearing on Google Maps, the walkway is approximately ten feet wide. At its southern entrance from the employee parking lot, Galvan and his teammates set up a campaign table in an area about the size of a parking space located to the side of and not in the walkway, where they worked without interference for about two hours, collecting more than 200 signatures in that span.

Shortly before 9:00 a.m., UPS labor relations representative Bob Dunkel walked past the campaigners and exchanged brief pleasantries with them. He reappeared about 15 minutes later and said the campaigners had to move to a customer service counter some distance away from the walkway employees use to get from the parking lot to the facility. According to Galvan, Dunkel was aggressive and belligerent when making this demand. Galvan said he argued the directive with Dunkel because at no time had he or his fellow campaigners blocked or impeded any pedestrian traffic. When Galvan protested, Dunkel said loudly, “I want you to move! Now!” At this, Galvan and his fellow campaigners picked up their tables and moved to the location to which Dunkel directed them, which was more than 250 feet north of their original location, up a flight of five steps and not easily visible to employees entering the facility. There, the campaigners collected only a handful of additional signatures before ending their efforts for the day.

Galvan filed this protest, contending the company had discriminated against him and his fellow campaigners by forcing them to leave the commonly used, highly trafficked location in the employee

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parking lot, while Hoffa-Hall campaigners had been permitted to work that location without interference.

Corroborating Galvan's account of the campaigning were the two individuals who campaigned with him as well as two stewards supporting Teamsters United who work at the Gardena facility. All said that the campaign activity took place where previous campaigning had occurred and did not block or impede the ingress of employees into the facility that morning. All also corroborated Galvan's account of Dunkel's behavior in which he demanded in a belligerent manner that the campaigners relocate to another area away from the walkway that traditionally had been used for campaigning.

In addition to these witnesses, Frank Halstead, a member of Local Union 396, told our investigator that he campaigned during four previous election periods dating to 1996 from the same location that Galvan used on July 23 before he was forced to move.

The final Teamster member our investigator interviewed was identified to us by the Hoffa-Hall campaign. He too agreed that the location Galvan and the others used on July 23 was the same location used by Hoffa-Hall and other campaigners in the past, and that the activity of Galvan and the others on July 23 did not block, impede, or interfere with employee pedestrian traffic into the facility.

Also interviewed were Bob Dunkel, the UPS labor relations representative whose actions prompted this protest, and Roger Flores, UPS Gardena distribution center manager. Both stated that neither Galvan nor either of his two teammates blocked or impeded pedestrian traffic in any way as they solicited signatures on July 23 at the entrance of the walkway in the employee parking lot. They agreed the campaigners were off to the side of the walkway, in a prime area to make contact with workers coming and going to the time clock area and guard shack. Nonetheless, Dunkel said he told Galvan to move because he wanted him in the "customer service counter area" further down the walkway, up a short flight of stairs and recessed behind a building, in a location where motorcycles and bicycles are parked. Both Dunkel and Flores insisted that the customer service area was just as good a location as the walkway. Indeed, Dunkel insisted that this second location was even better than the first, stating that since all workers still came by them on this same path, his demand that they move there was not unreasonable.

Neither Dunkel nor Flores explained why Galvan was directed to relocate his campaign activity from the employee parking lot to the customer service counter area.

Analysis

Article VII, Section 12(e) grants candidates and members the right to campaign in parking lots used by union members to park their cars. In addition, Article VII, Section 12(d) bars an employer from imposing restrictions on the preexisting right of candidates and members to campaign in non-work areas of employer facilities or discriminating against members and candidates in the free exercise of this preexisting right.

For the following reasons, these provisions protected the area where Galvan and his fellow campaigners campaigned on July 23. First, the space was situated fully within the parking lot used by employees to park their vehicles at the Gardena facility and therefore was protected campaign space under Article VII, Section 12(e). Further, it was a non-work location that has been used for campaign

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purposes historically and presently, use that has established a pre-existing right that may not be restricted. Finally, the undisputed evidence that Hoffa-Hall campaigners used precisely the same space for campaigning during the present election cycle reinforced the right of Galvan and his campaigners to use the same space, and Dunkel's action in moving the campaigners violated the *Rules*' non-discrimination provision.

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 direct UPS to cease and desist from restricting or otherwise interfering with campaign rights of candidates or members in its parking lots where employees park their vehicles and in non-work areas during non-work time. We further direct UPS to cease and desist from discriminating against candidates and members in their exercise of protected campaign rights.

Within three (3) days of receipt of this decision, we direct Local Unions 572 and 396 to post on all union worksite bulletin boards at UPS facilities under their jurisdiction the notice attached to this decision, in both the English language version that is attached and a Spanish language version that OES will supply. We impose this remedy to inform members of their rights under the *Rules*. The notice in both languages shall remain posted through October 31, 2015. Within three (3) days of completing the posting, Local Unions 572 and 396 shall submit declarations of posting to our office.

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

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:

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,

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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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Richard W. Mark
Election Supervisor

**NOTICE TO MEMBERS OF TEAMSTERS LOCAL UNIONS 572 AND 396
EMPLOYED BY UPS**

The Election Supervisor has found that UPS violated the *Election Rules* by interfering with the right of members and a candidate to campaign on behalf of candidates for International office in the 2015-2016 IBT Election in an employer parking lot where employees park their vehicles. The Election Supervisor will not tolerate such interference with members' rights to conduct and participate in campaign activities.

Members have the right to campaign on behalf of candidates for International office, candidates for delegate, and candidates for alternate delegate in the 2015-2016 IBT Election in employer parking lots where employees park their vehicles. Members also have the right to engage in campaign activity for the 2015-2016 IBT Election in employer facilities where a pre-existing right to campaign exists, including in non-work areas on non-work time.

The Election Supervisor has issued this decision in *Galvan*, 2015 ESD 19 (August 11, 2015). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2015/2015esd019>.

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, 1050 17th Street, N.W., Suite 375, Washington, D.C. 20036, telephone: 844-428-8683, fax: 202-774-5526, email: electionsupervisor@ibtvote.org.

This is an official notice of the Election Supervisor for the International Brotherhood of Teamsters. It must remain posted on this bulletin board through October 31, 2015. It must not be defaced or covered up.