

**OFFICE OF THE ELECTION SUPERVISOR**  
**for the**  
**INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

<b>IN RE: TEAMSTERS UNITED &amp;</b>	)	Protest Decision 2015 ESD 22
<b>HOFFA-HALL 2016</b>	)	Issued: August 13, 2015
	)	OES Case No. P-020-072715-NE &
<b>Protestors.</b>	)	P-026-080415-NE
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Teamsters United 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 Local Union 191 president and business agent Ed Rooney campaigned on union-paid time in violation of the *Rules*. Hoffa-Hall 2016 filed a pre-election protest pursuant to the same *Rules* provision alleging that campaigners for Teamsters United violated the *Rules* by taking photos of Rooney engaged in the conduct that formed the basis of Teamsters United’s protest.

We consolidated these protests for investigation and decision. Election Supervisor representative Peter Marks investigated them.

**Findings of Fact**

On the morning of July 24, 2015, two supporters of Teamsters United circulated accreditation petitions among employees in the parking lot where employees park their vehicles at the UPS facility in Stratford, CT.

At about 8:30 a.m., Rooney appeared in the parking lot. According to the campaigners, Rooney remained in the parking lot for some thirty minutes, an estimate Rooney does not dispute. During the time Rooney was present, he told members that they need not sign the petitions the campaigners were circulating. The campaigners told our investigator they were enjoying fair success in obtaining signatures before Rooney arrived. After he arrived and told members they needn’t sign the petitions, the campaigners were unable to obtain further signatures.

Rooney told our investigator that he traveled to the UPS Stratford facility on the morning of July 24 to discuss the attendance issue of a member with a UPS supervisor; however, he was unable to meet with the supervisor. After the failed meeting, Rooney said he was summoned to the parking lot by a steward. In the parking lot, he said he saw the campaigners and, in response to questions from members, told them they did not have to sign the petitions.

The campaigners learned while campaigning that Rooney was Local Union 191’s president. They told our investigator they believed from the circumstances that Rooney was on union-paid time. For this reason, they took two photos of Rooney to document his presence. The first photo, time-stamped 8:31 a.m. on July 24, shows Rooney walking toward the camera from a distance of about 25 feet, dressed in a black double-knit collared pullover shirt and black slacks. He appears to be walking with a male UPS employee dressed in the brown uniform that package car and feeder drivers wear. The second photo, time-stamped 8:35 a.m. the same day, shows Rooney on his cell phone, standing in the employee parking lot with four males wearing UPS uniforms. The four appear to be watching Rooney as he is on his phone.

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Rooney told our investigator that his only business at the facility that morning was to meet with the supervisor. He does not assert that he was performing union business in the parking lot with the uniformed employees while the campaigners were present.

### Analysis

Article VII, Section 12(a) grants members the right to participate in campaign activities. However, no candidate or member may campaign during his/her working hours. Article VII, Section 12(b) grants these same rights to and imposes the same limitations on union officers and employees, cautioning that they “may not campaign on time that is paid for by the Union.”

Article VII, Section 12(e) grants members the right to campaign in employer parking lots where employees park their vehicles.

We conclude that Rooney violated the *Rules* by campaigning on time paid for by the union. That he was on union-paid time while in the parking lot is not disputed. Rooney engaged in campaigning by taking the position that members need not sign the campaigners’ petitions – a one-way suggestion to members that had the purpose, object, or foreseeable effect of opposing the candidates the campaigners supported. He did not merely respond to questions about the campaigners, or affirm the right of access under the parking lot rule, or suggest that members had the right to hear the campaign message and make their own decisions as to how to respond to the message.

Had Rooney been on personal or leave time when discouraging members from signing the petitions, he would have had the protection of the *Rules* for such counter-campaigning, protection he did not enjoy while on union-paid time. Had Rooney’s presence in the parking lot, and interaction with others been brief, his comments could have been considered “incidental to regular Union business,”<sup>1</sup> which protects campaign activity on union-paid time where the activity is of very brief duration that does not cause the speaker or the audience to deviate from their duties. Our decisions under this exception have emphasized that brief or transient interactions are more likely to be held incidental to work. *Pinder*, 2006 ESD 133 (March 7, 2006) (less than 5 minutes); *Thompson*, 2001 ESD 332 (April 30, 2001), *aff’d*, [01 EAM 73](#) (May 24, 2001) (one-on-one campaign exchange that took place while both employees worked together to set a trailer hitch held incidental); *Cooper*, 2005 ESD 8 (September 2, 2005) (exchange lasting 10 seconds found to be incidental); and *Gibbs*, 2010 ESD 54 (December 9, 2010) (asking for and receiving a campaign postcard held incidental campaigning where exchange took a few seconds). Rooney’s 30-minuted stay in the parking lot far exceeded the very limited time duration that is characteristic of campaigning that is “incidental” to work.

For these reasons, we GRANT Protest P-020-072715-NE filed by Teamsters United.

Turning to the second protest, the protestor contends that the campaigners engaged in impermissible surveillance by photographing Rooney engaged in campaign activity on union-paid time. We reject this contention. The circumstances show that the photos were taken to document activity in support of a protest, which constitutes activity protected by the *Rules*, and were also to be used to confirm Rooney’s identity. There is no evidence that that the photographs were taken with the intent to subject Rooney to coercion or other adverse consequences based on his engaging in protected conduct.

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<sup>1</sup> Article VII, Section 12 (b).

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See, e.g., [Zuckerman](#), 2015 ESD 8 (July 16, 2015) (finding violation based on photography of campaign activity accompanied by photographer’s statement that “we will remember faces and report back”). Under these circumstances, we find that taking the photos was not a *Rules* violation.

Accordingly, we DENY Protest P-026-080415-NE filed by Hoffa-Hall 2016.

**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 Rooney to cease and desist from campaigning on time paid for by the union.

Within three (3) days of receipt of this decision, we direct Local Union 191 to post on all union worksite bulletin boards under its jurisdiction the notice attached to this decision. We impose this remedy to inform members of their rights under the *Rules* and of the violation committed by Rooney, the local union president. The notice shall remain posted through September 14, 2015. Within three (3) days of completing the posting, Local Union 191 shall submit a declaration 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, 34<sup>th</sup> 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 17<sup>th</sup> 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  
2015 ESD 22

**Teamsters United and Hoffa-Hall 2016**, 2015 ESD 22  
August 13, 2015

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Richard W. Mark  
*Election Supervisor*

### **NOTICE TO MEMBERS OF TEAMSTERS LOCAL UNION 191**

The Election Supervisor has found that Local Union 191 president Ed Rooney violated the *Election Rules* by campaigning on time paid for by the union. The Election Supervisor will not tolerate such improper use of union resources.

Union officials 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 but may not do so on time paid for the union.

The Election Supervisor has issued this decision in *Teamsters United*, 2015 ESD 22 (August 13, 2015). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2015/2015esd022>.

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 17<sup>th</sup> Street, N.W., Suite 375, Washington, D.C. 20036, telephone: 844-428-8683, fax: 202-774-5526, email: [electionsupervisor@ibtvote.org](mailto: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 September 14, 2015. It must not be defaced or covered up.***