

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: TEAMSTERS UNITED,)
)
Protestor.)
_____)

Protest Decision 2016 ESD 279
Issued: August 1, 2016
OES Case Nos. P-313-063016-NA

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 Brian Buhle, Jeff Combs and Shawn Strain of Local Union 135, and other members “engaged in gross acts of intimidation against a convention delegate.” Buhle is an IBT Central Region Vice-President and a candidate on the Hoffa-Hall 2016 slate.

Election Supervisor representative Joe Childers investigated this protest.

Findings of Fact

The protest alleged that a Teamsters United delegate, Tim Carroll of Local Union 357, was intimidated and threatened with physical violence on the floor of the 29th IBT Convention on June 30, 2016, just after the nominations for General President and General Secretary-Treasurer had concluded. The protest alleged that Buhle and others insisted that Carroll leave his assigned seat next to them on the convention floor. When the delegate refused, Buhle, Combs and others surrounded the delegate, swearing at him and insisting that he leave. According to the protest, Combs repeatedly shoved the delegate and threatened him with further violence. Shawn Strain allegedly later threatened “to smash in” the delegate’s head.

Carroll was elected from Local Union 357, which sent two delegates and one alternate delegate to the convention. Carroll is a rank and file member and supported the Teamsters United slate. He told our investigator that on the first day of the convention, he and the other Local Union 357 delegate, Tony Holcak, arrived to find that no seats had been allocated to them in the Joint Council 69 section of the convention floor. When he raised this issue with a sergeant at arms in the area, two chairs were brought for Carroll and Holcak and placed with the Local Union 135 delegates. The seats for the two delegates from Local Union 357 remained in the Local Union 135 for the entire convention week.

On the morning of June 30, 2016, the fourth day of the convention, a scuffle broke out on the convention floor, several rows in front of Carroll’s seat, just after nominations had concluded for General President and General Secretary-Treasurer. The delegates in the area stood up to see what was going on. From the podium, General President Hoffa observed the commotion and asked everyone to sit down. When the standing delegates did not comply, Carroll stood up and yelled “down in front, down in front.”

Delegates from Local Union 135 support the Hoffa-Hall 2016 slate; the local union’s principal officer, Buhle, is a member of the Hoffa-Hall slate. Carroll told our investigator that on each of the first three days of the convention, he often stood and yelled slogans supporting Teamsters United; he also said he jeered the Hoffa-Hall candidates, and cheered loudly for the Teamsters United candidates, even though he was surrounded and heavily out-numbered by the pro-Hoffa Local Union 135 delegates, including Buhle. Buhle told our investigator that he sat close to Carroll (whom he did not know by name) during the convention and had heard the various things that Carroll yelled.

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No incidents between Buhle and Carroll occurred during the first three days of the convention. However, on the fourth day, June 30, tempers flared. When Carroll stood up and yelled “down in front,” Buhle told our investigator that he instructed Carroll not to yell in his ear again. Carroll’s recounting of this exchange was different. According to Carroll, Buhle said “why don’t you get the fuck out of here.” When Carroll replied that he was where he was supposed to be, Carroll said Buhle continued to say “get the fuck out of here” in a loud voice. Carroll said Buhle’s loud directive prompted other members of the Local Union 135 delegation to repeat the phrase, “get the fuck out of here.”

Carroll told our investigator that Jeff Combs, a Local Union 135 delegate, then ran up on him from two rows away and got close to Carroll’s face. According to Carroll, Combs bumped into him with his chest, said “this is my president,” referring to Buhle, and said “you want to go outside?” Carroll refused to move, replying it was his right to remain there. Combs told our investigator he approached Carroll in order to “protect” Buhle, and he placed himself between Carroll and Buhle in order “to keep the peace” rather than start anything. Combs claimed that Carroll was cursing at Buhle, and Combs was simply trying to stop the incident before it got violent. Combs admitted that he told Carroll “fuck you” but claimed he said this only after Carroll made the same remark to him. Combs said that Carroll had been yelling “silly stuff” all week. According to Carroll, other members of Local Union 135 closed in on him and bumped him from behind.

For his part, Buhle said he was facing the stage listening to the General President when he heard Carroll yelling in his ear. Buhle said he turned to Carroll and told him not to yell in his ear again at which time Carroll replied “fuck you.” Buhle admitted that he replied, “no, go fuck yourself” and then turned to face the stage again. At this point, Buhle noticed Combs rush up and place himself between Buhle and Carroll. Buhle heard Combs and Carroll have “words,” but Buhle admitted that he did nothing to stop the escalation. He said he did not try to get Combs to get out of Carroll’s face. He claimed to our investigator that he did not intervene to stop the escalation because he thought that would make it worse and that he did not want to put himself in a position of being accused of doing anything wrong.

A Hoffa whip, Kevin Clark, told our investigator that he was very close by when the incident developed. He said he saw Combs run up and get “very close” to Carroll and that he responded by placing himself between the two. Clark said he heard Combs tell Carroll to “go back to where you belong.” Shawn Strain, a Hoffa delegate from Local Union 135 who was standing behind Combs during the incident, heard Carroll and Buhle “screaming” at each other.

Carroll’s fellow delegate, Holcak, said he witnessed the entire incident as he sat beside Carroll. Holcak said he did not support either slate, stating further that this was his first involvement with Teamster politics, his first convention, and that he attended the convention to learn. He sat beside Carroll during the previous days of the convention since they were delegates from the same local union. According to Holcak, when Carroll rose to yell for the standing delegates to sit down, Buhle said to Carroll “why don’t you go sit up there with you belong,” gesturing to a location where other Teamsters United delegates were seated. Holcak stated that he did not hear Carroll or Buhle use profanities. However, matters quickly escalated when Combs ran up and got nose-to-nose with Carroll. According to Holcak, Combs yelled at Carroll to “shut the fuck up” and “let’s take this outside.” Holcak said he did not see Combs touch or bump Carroll, and any physical touching was prevented by the Hoffa whip, Clark, who rushed in to separate Carroll and Combs. Shortly thereafter, another Teamsters United supporter ran up and pulled

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Carroll back into the guest section to get him away from Combs. Even though other Hoffa supporters from Local Union 135 stood up and closed in on Carroll, Holcak did not see anyone touch Carroll.

Gene Knapp, a delegate from Local Union 364 seated next to the Local Union 135 delegates, came over and placed himself between Carroll and some of the Local Union 135 members and spread his arms to try to stop any escalation. Knapp stated that the whole incident lasted about 2 minutes.

Chris Sell, a sergeant-at-arms standing close by, told our investigator that he witnessed both Carroll and Buhle yelling at each other but he could not hear what they were saying. They were facing each other and no one touched the other. Sell saw Combs rush from two rows away and get between Buhle and Carroll. According to Sell, the whip, Clark, stopped the incident before Sell could get to the scene.

After being escorted to the guest area by another Teamsters United supporter, Carroll waited about an hour before going back on the floor, taking a seat as far from the Local Union 135 delegation as he could. He did not say anything when he returned, preferring to keep to himself. He then rose to get a cup of water, and came back to his seat. Shawn Strain, a delegate and business agent at Local Union 135, then motioned for Carroll to come near him. According to Carroll, Strain first introduced himself, but then got in his face, threatened him, poked him in his chest, said “that’s my president,” in reference to Buhle. Strain then said he would smash Carroll’s face in, that he didn’t care what happened as a result, and further threatened to find Carroll outside of the convention and do physical harm to him. Carroll told Strain not to “fucking touch me.” Carroll then moved away and stood by the sergeant-at-arms for a minute or so. The sergeant-at-arms, Sell, remarked that “we are here to make sure this doesn’t happen and it won’t happen again.” Shortly thereafter, the Local Union 135 delegates left and Carroll went back to his seat. This was approximately an hour after the first incident.

Strain told our investigator that when he asked Carroll to approach, he introduced himself and tried to say this is not about black and red, referring to the respective vest colors of Teamsters United and Hoffa-Hall supporter. Instead, he claimed he said “we are all Teamsters.” He admitted, however, that he had papers in his hand that may have touched Carroll. Strain claimed that Carroll then jumped back and said “don’t fucking touch me, don’t fucking touch me.” Strain admitted that he replied that if he did touch him he’d mash his head in. Strain claimed that he tried to have a conversation with Carroll to the effect that everyone should just get along.

Sell, the sergeant-at-arms, witnessed Strain come up to Carroll and tap him on the chest with rolled up papers. He then heard Strain raise his voice. Sell then stepped in, and Strain took off. Carroll immediately told Sell that Strain had threatened to kick his ass. Sell assured him that he would intervene on the floor and stated that “we are all here for the same cause.” Sell said he never heard Carroll raise his voice during this second incident. Holcak told our investigator that he saw Strain “poke” Carroll in the chest and heard Strain say that if Carroll yelled at “our president” (Buhle) again, he would bash his head in.

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*. Violence can constitute retaliation within the meaning of the rules. *Teller*, P1086 (December 27, 1991) (finding violation where a local trustee grabbed a member by the arm, tapped a finger into his chest,

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grabbed him by the jacket collar and pushed him against the wall); *Stefanski*, P282 (January 22, 1996), *aff'd*, 96 EAM 94 (February 21, 1996) (finding a violation where a member grabbed another's arms in a menacing manner and ordered him to leave the facility where he was campaigning); *Smith*, 91 EAM 51 (January 29, 1991) (finding a violation where a member was struck on the back of the head for expressing unpopular political beliefs); *Rogowski*, P859 (August 13, 1996) (violation to pull the protestor's shirt collar and push him from behind with his elbow in front of other members); *Pope*, 2011 ESD 309 (August 5, 2011) (knocked to ground); *Deszcz & Esquivel*, 2011 ESD 310 (August 12, 2011) (battery).

The threat of violence can also constitute retaliation. *Smith*, P600 (April 30, 1996) (finding remark "You'll be taken out of here in a body bag" to violate rules); *Lopez*, P456 (April 10, 1996) (finding "I'll kill you" to violate rules); *Passo*, P469 (February 29, 1996), *aff'd*, 96 EAM 124 (March 13, 1996) (finding intent to provoke physical confrontation to violate rules); *Kelly*, P600 (March 27, 1991) (finding threat to "kick their ass" made in menacing manner to violate rules). To find an improper threat, activity must constitute a palpable threat of imminent harm. *Ramos*, 2006 ESD 65 (February 3, 2006); *Torres*, 2011 ESD 236 (April 27, 2011) (no impermissible threat where no touching or menacing behavior); *Galvan*, 2011 ESD 238 (April 27, 2011) (same); *Gutierrez*, 2011 ESD 239 (April 27, 2011) (same).

Buhle, Combs and Strain exhibited little credibility. Witnesses described Buhle as yelling at Carroll and Carroll responding similarly. Buhle admitted that he told Carroll to fuck off and refused to intervene when the episode escalated with Combs' involvement.

The Local Union 135 delegates, responding to the interaction between Buhle and Carroll, sought to and succeeded in intimidating the Teamsters United delegate, Carroll. Combs invaded Carroll's personal space. Combs intentionally bumped Carroll, purporting to "protect" Buhle, and attempted to incite a fight. Strain physically touched Carroll, either with his fingers or rolled up papers, and threatened to mash Carroll's head in. We credit Sell's recitation of Carroll's "excited utterance" immediately after Sell intervened and Strain fled, to the effect that Strain threatened to "kick his ass." Violence against members to suppress their political activity is not tolerated under the *Rules*. That Combs and Strain felt no inhibition against threatening another elected delegate on the convention floor shows their intolerance of opposing views and lack of respect for union democracy. Dialogue and heated debate is part of the process; violence is not.

Buhle's conduct stopped short of violence or threats of violence. However, he bears some responsibility for the actions of Combs and Strain. Buhle directed Carroll to move his seat to a location other than that provided him by convention staff that he had occupied all week; Buhle did so because of Carroll's political views. When Carroll objected, Buhle replied with "get the fuck out of here," which led to other members of the Local Union 135 delegation repeating the phrase in a derisive manner to Carroll. Buhle was aware that Combs inserted himself between Carroll and Buhle and heard Combs and Carroll have "words," but, consistent with his previous inciting of his delegation against Carroll, did nothing to halt Combs's aggressive behavior toward Carroll. Buhle is the president of his local union and a member of the General Executive Board. Union members, including Combs and Strain, take cues from Buhle as a national, elected leader on appropriate behavior towards IBT brothers and sisters. In this incident, Buhle failed in his responsibility.

On these facts, we GRANT this protest.

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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 Buhle, Combs, and Strain to cease and desist from further violation of the *Rules* and, specifically, to cease and desist from retaliating or making threats against members who hold opposing political views.

We order Combs and Strain each to pay a fine to the Office of the Election Supervisor in the amount of \$500. These fines are strictly remedial in nature and are intended to encourage future compliance with the *Rules* and to deter future violations.

We also order Buhle to pay a fine to the Office of the Election Supervisor in the amount of \$500. His conduct incited Combs and Strain to take the actions against Carroll that they did, and he made a conscious decision to stand by and not stop events that had unfolded from his interaction with Carroll. We do not expect Buhle or any regular delegate to intervene as a sergeant-at-arms would to break up a physical fight. As an elected leader of the IBT and of his local union, early intervention by Buhle when he heard the Combs start in verbally with Carroll would have deescalated the situation. Such conduct from an official of the IBT requires a remedy, even though Buhle himself did not threaten or assault Carroll.

The fines ordered here must be paid to the Office of Election Supervisor no later than Friday, August 5, 2016. Each fine must be paid from the personal funds of the person fined, and he must certify that he has not received and will not accept contributions from any source to assist him in paying the fine or reimburse him for the fine we impose.

We further order Local Unions 135 and 357 to post the notice attached to this decision on all worksite bulletin boards under their respective jurisdictions and maintain that posting through September 15, 2016. Each local union shall complete this posting no later than August 5, 2016 and shall submit an affidavit of compliance to OES no later than August 8, 2016.

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

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Copies of the request for hearing must be served upon the parties, as well as upon the Election Supervisor for the International Brotherhood of Teamsters, 1050 17th Street, N.W., Suite 375, Washington, D.C. 20036, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kathleen A. Roberts
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Richard W. Mark
Election Supervisor

NOTICE TO MEMBERS OF TEAMSTERS LOCAL UNIONS 135 and 357

On June 30, 2016, Jeff Combs and Shawn Strain, elected delegates of Local Union 135, threatened Tim Carroll, an elected delegate of Local Union 357, on the floor of the 29th IBT Convention in Las Vegas, NV because of Carroll's political beliefs. Brian Buhle, president of Local Union 135 and a member of the IBT General Executive Board, incited the confrontation with Carroll and took no action to halt the threats Combs and Strain made toward Carroll.

The Rules for the 2015-2016 IBT International Union Delegate and International Officer Election ("*Rules*") protect the right of each member "to participate in campaign activities, including the right to run for office, to support or oppose any candidate, [and] to aid or campaign for any candidate." The *Rules* prohibit retaliation or threat of retaliation against a Union member for exercising any right guaranteed by the *Rules*.

The Election Supervisor will not tolerate such retaliation or threats of violence.

The Election Supervisor has ordered Buhle, Combs, and Strain to cease and desist from any further retaliation against any member for their exercise of rights protected by the *Rules*. The Election Supervisor has further fined Buhle, Combs, and Strain for their misconduct and has ordered Local Unions 135 and 357 to post and maintain this notice on all union bulletin boards under their respective jurisdictions through September 15, 2016.

The Election Supervisor has issued this decision in *Teamsters United*, 2016 ESD 279 (August 1, 2016). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2015/2016esd279>.

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 prepared and approved by Richard W. Mark, Election Supervisor for the International Brotherhood of Teamsters. It must remain posted on this bulletin board through September 15, 2016 and must not be defaced or covered up.