

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: HOFFA-HALL 2016,)	Protest Decision 2016 ESD 294
)	Issued: September 28, 2016
Protestor.)	OES Case No. P-357-083116-ME
_____)	

Hoffa-Hall 2016 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 Dana Costello, member of Local Union 623, harassed, intimidated, and surveilled IBT General Secretary-Treasurer Ken Hall and others as they left the International officer candidates forum on August 25, 2016.

Election Supervisor representative Paul Dever investigated this protest.

Findings of Fact and Analysis

The International officer candidates forum was held on a weekday evening at the National Press Club on 14th and F Streets in downtown Washington, DC. General Secretary-Treasurer candidate Ken Hall debated for the Hoffa-Hall 2016 slate. Following the event, Hall exited the building on foot with John Murphy, IBT vice president for the East region, and two Hoffa-Hall 2016 campaign operatives, Christy Bailey and Todd Thompson. The group walked up 14th Street to the southeast corner of 14th and F Streets, crossed 14th in the pedestrian crosswalk to the southwest corner, and continued west a short distance before crossing mid-block to the north side of F and entering The Hamilton restaurant there, a distance door to door of some 200 feet.

For most of this walk, Costello asked Hall several questions, none of which Hall answered. Costello recorded all of his interaction with Hall on video and posted the video on Youtube.¹ The video is titled “Ken Hall confronted about sham contract at National Press Club.” It is four minutes and 47 seconds in length, of which one minute and 47 seconds is the video recording of Hall’s walk.²

Costello told our investigator that he traveled to Washington to confront Hall about Costello’s loss of good healthcare benefits under the current UPS national agreement, on which Hall served as lead negotiator for the IBT.

Near the beginning of the video, Costello is heard saying, “I got a question. I lost my healthcare because of you. You negotiated this contract. Why don’t you give me two minutes?” At this, Hall begins to cross 14th Street. John Murphy looks at the camera, steps toward Costello, and asks, “You got a problem?” Costello ignores Murphy and asks Hall, “Ken, you got a comment? Ken. Ken Hall. I pay your salary.” Hall does not respond.

As the party crosses 14th Street, Murphy, focused on walking between Costello and Hall, bumped into Hall. This contact took Hall by surprise; he thought Costello had touched him. Hall responded, “Hey, hey, hey, hey.” Costello immediately pointed out that Murphy had touched Hall. Costello said, “That’s your buddy. He touched you. I didn’t touch you.” Murphy replied to this with, “Okay.”

¹ As of the date this decision issues, the video is available at <https://www.youtube.com/watch?v=jbiYaHCrTWO>.

² The balance of the video is given over to title frames and recordings of a 2014 questioning of John Murphy and an interaction with Local Union 639 president Tommy Ratliff, filmed the same day as the Hall walk.

As the party reached the sidewalk after crossing 14th Street, Costello complained aloud about Murphy, “He’s touching me. He’s pushing me.” Murphy replied, “I’m just walking across the street.”

Costello then returned to his purpose, asking Hall, “You don’t have a comment? I lost my good healthcare because of you, Ken Hall. You don’t have a comment?”

Costello sensed Murphy trying to interfere with his questioning of Hall. He said to Murphy, “John Murphy, get out of my face.” Murphy replied, “I’m not in your face. I’m just walking down the street. Why don’t you – why don’t you go back with your friends? Why don’t you go back with your friends?”, gesturing over his shoulder to the area they had just walked from. Costello continued with Hall, “Do you have a comment?” Murphy interjected, “Why don’t you just go [*unintelligible*].” Costello again asked Hall, twice, “Do you have a comment?”

At this, the back and forth between Murphy and Costello continued. Murphy: “Why don’t you just go across the street?” Costello: “Why don’t you get out of my face?” And then Costello to Hall: “Ken Hall, do you have a comment, yes or no? I pay your salary. Ken Hall, do you have a comment? Ken Hall, do you have a comment, yes or no? I’m asking you a question. My name is Dana Costello of Local Six Two Three. I am a Vote No leader in Local Six Two Three.” At this, Hall entered the building housing The Hamilton through two sets of doors, with Murphy holding the first door open for him; Costello disengaged from Hall and did not proceed beyond the first set of doors. While between the doors, Costello, still recording, asked Murphy, “You were at my local?” Murphy replied, “That’s right.” Costello: “You were the union yes man.” Murphy: “That’s right.” Costello: “Do you have a comment?” Murphy: “Nope.” Costello: “No? Good.” The walk segment of the video then ended; the next segment was previously recorded when Murphy had traveled to Local Union 623 to urge a “yes” vote on ratification of the UPS contract or an area rider to that contract.

During the incident at issue in this protest, the only moment when Hall looked at Costello was when he mistakenly believed Costello had touched him. Hall’s only words to Costello were at the same moment (“Hey, hey, hey, hey.”) Hall otherwise did not speak to Costello, answer any question posed to him, or give any comment. Hall is seen in profile with a neutral expression for nearly the entirety of the video.

On a previous occasion, Costello travelled to Washington DC to ask Ken Hall the same questions. A video posted to Youtube on August 29, 2014 shows Costello standing in front of IBT headquarters, speaking to the camera.³ Costello is wearing a brown t-shirt emblazoned with a large “VOTE NO” message silk-screened in yellow; a bullhorn is slung over his shoulder. On the video, he describes his effort to meet with Ken Hall, “to get an answer from you, Ken Hall, why did you sell us out? ... I want to know how the hell you’re going to fix this healthcare issue. Are you going to stand up? Are you going to fight for us?” Continuing on the video, he detailed his unsuccessful efforts to meet with Hall, concluding the video by saying, “if they don’t fix this healthcare issue, when we get our ballots, the answer is no.”

Protestor Hoffa-Hall 2016 argues that Costello’s conduct confronting Hall on the walk from the National Press Club to The Hamilton restaurant constituted impermissible harassment, intimidation, and

³ The video is posted to Youtube under the title “Dana Costello at the Teamsters Marble Palace.” At the time this decision issues, it is found at https://www.youtube.com/watch?v=i8zhO_3qgMk.

surveillance prohibited by the *Rules* in connection with the IBT International officer election. The campaign asserts that Costello surveilled Hall and others “to intimidate them for engaging in protected campaign activity.”

We disagree. Consistent with his previous effort to ask Hall about a collective bargaining agreement with which Costello was dissatisfied, Costello on the occasion at issue here sought to question Hall about what Costello regarded as negative changes in Costello’s healthcare benefits. These changes were adopted in a successor collective bargaining agreement negotiated between UPS and the IBT, with Hall serving as the union’s lead negotiator. As such, Costello’s questioning was directed to Hall’s performance of his duties as a union official and did not have any nexus to Hall’s exercise of rights under the *Rules* as a candidate for union office. Costello made this purpose obvious over the one minute and 47 seconds of video, asking Hall no fewer than nine times if Hall had a comment about the change in healthcare that Costello suffered as the result of the new contract. Costello posted video on this same subject when he had tried to meet and question Hall two years earlier at IBT headquarters. The attempt to talk with Hall after the candidates forum is of a piece with Costello’s earlier effort. Accordingly, we find that Costello’s August 25, 2016 activity was not surveillance, intimidation or harassment directed to Hall’s protected rights under the *Rules* to pursue a candidacy for union office or to support any candidate he chose.

Even were Costello questioning Hall about his candidacy, we would still find no *Rules* violation. The *Rules* encourage discourse between candidates and members, and Costello’s questioning of Hall, a candidate and International officer, was consistent with the dialogue the *Rules* contemplate.⁴ Costello asked his question repeatedly, seeking an answer. Costello did not block or impede Hall’s path, touch him or cause any reasonable apprehension that he would touch him, engage in violent or threatening behavior, or even raise his voice.

For these reasons, we DENY this protest.

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

⁴ *Hoffa-Hall 2016* contends that Costello’s conduct should be considered intimidating surveillance. We find it is not. Our surveillance cases apply an objective test in assessing “whether the challenged conduct ‘may reasonably be said ... to interfere with the free exercise of employee rights under the [NLRA].’” *Zuckerman*, 2015 ESD 8 (July 16, 2015) (internal citations omitted). Facts supporting a finding of surveillance usually involve the person conducting surveillance making clear that the conduct observed will be reported to persons with authority over the person surveilled with the actual or implied threat of adverse action against the person surveilled. *Id.* Costello’s video does not support such an inference and the power relationship between a rank-and-file member and the International General Secretary-Treasurer further precludes any such inference.

Hoffa-Hall 2016, 2016 ESD 294
September 28, 2016

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, 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
2016 ESD 294

Hoffa-Hall 2016, 2016 ESD 294
September 28, 2016

DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001
braymond@teamster.org

David J. Hoffa
1701 K Street NW, Ste 350
Washington DC 20036
hoffadav@hotmail.com

Ken Paff
Teamsters for a Democratic Union
P.O. Box 10128
Detroit, MI 48210-0128
ken@tdu.org

Barbara Harvey
1394 E. Jefferson Avenue
Detroit, MI 48207
blmharvey@sbcglobal.net

Teamsters United
315 Flatbush Avenue, #501
Brooklyn, NY 11217
info@teamstersunited.org

Louie Nikolaidis
350 West 31st Street, Suite 40
New York, NY 10001
lnikolaidis@lcnlaw.com

Julian Gonzalez
350 West 31st Street, Suite 40
New York, NY 10001
jgonzalez@lcnlaw.com

David O'Brien Suetholz
515 Park Avenue
Louisville, KY 45202
dave@unionsidelawyers.com

Fred Zuckerman
P.O. Box 9493
Louisville, KY 40209
fredzuckerman@aol.com

Dana Costello
lawncafe@gmail.com

Dana Costello
lawncafe@gmail.com

Teamsters Local Union 623
4369 Richmond Street
Philadelphia, PA 19137
patriciamulhern@teamsters623.org
billshanahan623@gmail.com

John Pegula
1434 Greendale Drive
Pittsburgh, PA 15239
jpegula@ibtvote.org

Paul Dever
1050 17th Street, N.W., Suite 375
Washington, D.C. 20036
pdever@ibtvote.org

Jeffrey Ellison
214 S. Main Street, Suite 212
Ann Arbor, MI 48104
EllisonEsq@aol.com