

ELECTION APPEALS MASTER

IN RE:

DAVID THORNSBERRY,

Protestor

05 Elec. App. 003 (KC)

ORDER

David Thornsberry, a member of Local 89 and delegate candidate on the United Rank and File slate, (UR&F) filed a pre-election protest asserting that Local 89 organizing director Kevin Evans acted to impede UR&F campaigning in a parking lot area of a United Parcel work site in Ashbottom, Kentucky. He did so, according to the protest, by simultaneously collecting from recipients campaign flyers that were being distributed by UR&F campaigners.

The Election Supervisor's investigation concluded, based upon a variety of statements taken from persons who were at the campaign site during the incident that is the subject of the protest, that Evans violated Article VII, Section 11(a) by "interfering with the right of the UR&F handbillers to campaign and the reciprocal right of the UPS – Ashbottom employees to receive such campaign advocacy", Protest Decision 2005 ESD 13, at 4. The Election Supervisor further found that Evans improperly used his authority as a Local 89 official to facilitate his interference with the political rights of the insurgents, that the members who surrendered the leaflets knew of his standing in the leadership of the Local, and that they did so because of his union office. The Election Supervisor also found that Evans also violated Article VII, Section 11(b) because he engaged in campaign activity while on union-paid time, and that his conduct constituted a counter-endorsement of a slate of candidates by a union official in violation of Article VII, Section 11(c).

An appeal was taken by the Zuckerman–Bolton Fighting For Your Slate and Local 89, and a hearing was conducted on October 19, 2005. The appealing parties essentially attacked the factual findings and adequacy of investigation of the Election Supervisor. As a preliminary matter, Robert Colone, Esq., who filed both appeals, withdrew as counsel to the Local at the hearing. Barbara Harvey, Esq., counsel for the protestor and the United Rank and File Slate, and Jeffrey J. Ellison, Esq., counsel for the Election Supervisor, urged affirmance of the protest decision based upon an ample evidentiary basis.

The record clearly supports the factual findings and the adequacy of investigation of the Election Supervisor. Accordingly, the Protest Decision herein is in all respects affirmed.

SO ORDERED:

/s/

Kenneth Conboy
Election Appeals Master

Dated: November 4, 2005