

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: DOUG BROWN,)	Protest Decision 2006 ESD 194
)	Issued: April 20, 2006
Protestor.)	OES Case No. P-06-236-032206-FW
_____)	

Doug Brown, secretary-treasurer and delegate candidate of Local Union 404M, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that president Paul Garcia conducted a personal investigation and witness interrogation to undermine the protestor’s campaign and that Garcia had unsupervised access to local union mailing labels.

Election Supervisor representative Michael Four investigated this protest.

Findings of Fact

Garcia was protestor Brown’s sole opponent for delegate in Local Union 404M. The protest alleged that Garcia used union-paid time to investigate and interrogate witnesses in an effort to undermine Brown’s campaign for delegate. The protestor was unable to provide specific evidence regarding this allegation; instead, he identified 3 shop stewards as witnesses.

Our investigator interviewed 2 of the 3 witnesses Brown identified; the telephone number for the third witness was incorrect.

Steve Moore, shop steward at Continental Color Craft, stated that Garcia questioned him about Brown’s campaigning at that company. Gene Mayer, shop steward at Kater Lithograph, denied any conversation with Garcia but said that Garcia questioned another employee at his company, John Bishop, and asked Bishop if the company had run Brown’s campaign literature on the company’s presses.

Garcia acknowledged that he contacted these individuals regarding Brown’s activities but said he made the inquiries not to gather information about Brown’s campaign but because he believed Brown was campaigning on union-paid time. Therefore, as president of the local union, Garcia stated that he was seeking to insure that union money was not used to finance Brown’s campaign activity or to pay for time Brown spent campaigning.

Neither Moore nor Mayer recalled exactly when Garcia made his inquiries but said it was sometime during daytime working hours.

The protest also alleged that Garcia improperly removed a set of mailing labels from the Local Union 404M office. The protest expressed concern that the labels could have been used to counterfeit ballots, but does not claim any specific knowledge that the labels were used for that or any other improper purpose.

Garcia denies the allegation. Garcia claimed that he requested a set of mailing labels on Friday, March 17, to be used for an announcement regarding a membership meeting. Joyce Novick, the accountant, stated that after Garcia made the request, she produced the labels and placed them in the local union safe where printed labels are kept along with other important local

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union property. On Monday morning, when she returned to the office, the labels were still in the safe, but had been moved from the original location to another location in the safe.

According to Garcia, he came in the office on Saturday, March 18, intending to use the labels for the mailing. After taking the labels out of the safe, he learned that the meeting was to be cancelled. He therefore never used the labels and returned them to the safe, albeit in a different location than where the accountant had put them the day before.

The protestor offered no evidence or any witnesses that Garcia took the labels out of the office or intended to use them for any purpose other than the official union mailing.

Analysis

On the facts presented here, Garcia's inquiries do not constitute campaigning on work time paid by the Union when he asked about the protestor's campaign activity at Continental Color Craft and Kater Lithograph. Rather, Garcia was investigating the protestor's activity prior to filing a pre-election protest. *See Garcia*, 2006 ESD 193 (April 20, 2006). This was not an abuse of his position as president, and in any case, the right to file protests is protected under the *Rules*, our decisions, and the past decisions of IBT Election Officers. *See Koch*, 2006 ESD 169 (April 3, 2006); *Jenne*, 2000 EAD 64 (December 14, 2000); *Scalf*, P97 (August 16, 1995); *Kieffer*, P360 (March 19, 1996). The right to file a protest is paramount and generally may not be restricted. *Koles*, P487 (March 4, 1996).

Finally, there is no evidence that Garcia improperly tampered with the mailing labels. Our investigation found no violation of the *Rules* was alleged nor was any violation of the *Rules* found.

Accordingly, we DENY the 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:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
885 Third Avenue, Suite 1000
New York, New York 10022
Fax: (212) 751-4864

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, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20007-5135, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

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Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
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