

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: RICHARD BERG,)	Protest Decision 2006 ESD 315
)	Issued: June 29, 2006
Protestor.)	OES Case No. P-06-303-062806-HQ
_____)	

Richard Berg, a member of Local Union 743, 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 Richard Lopez violated the *Rules* by assaulting Berg on June 27, 2006 at the site of the IBT convention in Las Vegas, Nevada.

Election Supervisor representative Dolores Hall investigated this protest.

Findings of Fact

Lopez is secretary-treasurer of Local Union 743, an elected delegate to the IBT convention, and a supporter of the Hoffa slate. Berg was an unsuccessful candidate for delegate from Local Union 743 and is a candidate for Regional Vice President for the Central Region on the Tom Leedham Strong Contracts Good Pensions slate. Berg was present at the IBT convention in Las Vegas, Nevada to accept nomination to that position. On Tuesday, June 27, the Election Supervisor conducted floor nominations for regional vice president positions. Pursuant to Article III, Section 5(g), the secret ballot vote of delegates to confirm or reject the floor nominations for regional vice presidents was conducted Tuesday evening, June 27, from 5:00 to 7:00 p.m. The results of the balloting were announced at 8:00 p.m. that evening.

The protest alleged that, on Tuesday evening at about 9:00 p.m., as Berg walked from the convention center in the Paris Hotel and Casino to the adjacent Bally’s Hotel, Lopez approached him walking in the opposite direction. According to the protest, Lopez “started yelling loudly and shouting insults at Berg.” Lopez yelled that Berg “was a loser, that Leedham was a loser, something about TDU, and other remarks.” The protest stated that Berg told Lopez, “You’re a small man.” Lopez then approached Berg “so closely that the two men were touching. Without warning, Lopez punched Berg in the mouth with closed fist. Another man then intervened and pulled Lopez away from Berg and sent him off.”

The protest asserted the following:

Mr. Lopez’ physical attack against Berg was unprovoked retaliation for Mr. Berg’s right to be a candidate on the Leedham slate and for his activities as a candidate and active supporter of the Leedham campaign. Before winning nomination as a Leedham slate candidate, Mr. Berg had filed numerous election protests, focusing in particular on deficiencies in the Local 743 membership list and difficulties he had encountered in attempting to exercise his right to inspect the list. As a result of his pre-election protest about the state of the membership list, Local 743 was required to take certain steps by the Election Supervisor to address deficiencies in the list. Mr. Lopez, as secretary-treasurer, was the Local 743 officer who was responsible for the membership list and its integrity.

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Investigation showed that Berg reported the incident to hotel security immediately after it occurred. Berg then contacted Las Vegas police; responding officers took a report of misdemeanor battery.

Berg's interview with our investigator repeated the facts recited in the protest. Berg stated further that Lopez' punch took him by surprise but did not injure him. His lip was not cut, and he suffered no swelling.

Berg stated that Lopez was accompanied by Local Union 743 business agent Harold Johnson and an unidentified woman. Berg stated that he did not observe Johnson and the woman commit any aggressive acts or take any role in the incident.

Berg further stated that, after Lopez struck him, a man stepped in between the two. Lopez then left the scene. The man who intervened was dressed in a black, buttoned shirt and told Berg, "Don't worry about Lopez; we'll take care of him." The man stated he was with the hotel but identified himself only as "Fred" and declined to state his last name. However, according to Berg, the man referred to Lopez by name, indicating that he knew Lopez' identity.

Our investigator contacted hotel security for the Paris Hotel. No security employee observed the incident, and the hotel does not employ a security employee named "Fred." Further, hotel security reviewed video recording from the security camera near the incident's location and reported to our investigator that video evidence was non-conclusive.

Sgt. Tony Spencer, security supervisor for Paris Hotel, stated that Las Vegas Police had issued a warrant for Lopez' arrest.

Our investigator reviewed the scene of the incident and canvassed restaurants and shops to identify any witnesses to the incident. One such witness was found. Silvia Garcia, a counter employee of Le Creperie, stated that at the time of the incident she observed 2 men "yelling at each other." She could not recall what they said, but stated that they stood very close to each other. She turned to telephone hotel security; when she looked back at the men, she observed a third person had stepped between the 2 men. She did not observe any blows.

Our investigator's efforts to interview Lopez on June 28 and the morning of June 29 were unsuccessful. Although 3 days remained in the IBT convention at the time of the incident and nominations for at large vice presidents, General President and General Secretary-Treasurer had not yet occurred, hotel records demonstrated that Lopez checked out of his room early in the morning of Wednesday, June 28. He did not participate in the secret balloting of delegates for the positions of vice president at large on the evening of Wednesday, June 28; further, electronic records produced by the IBT demonstrated that he did not attend floor sessions of the convention on June 28. Moreover, he did not transfer his delegate credentials to the ranking Local Union 743 alternate delegate present in Las Vegas; as a result, the local union was represented by 13 delegates instead of the 14 to which it was entitled. A recording on the telephone number for the local union offices in Chicago, Illinois, stated that the local union was closed this week.

David Hoffa, counsel to Hoffa 2006, contacted our investigator shortly after noon on Thursday, June 29, more than 24 hours after the protest was filed and distributed to interested parties, and offered to produce Lopez for interview at 3:30 p.m. that day. At the interview, Lopez

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admitted physical contact with Berg but stated that it was defensive in nature. Lopez denied punching or assaulting Berg. He stated that their bodies were bumping “belly to belly” and that he reached up with his right hand, palm up, to push Berg away. According to Lopez, he “caught” Berg with the heel of his hand on the mouth. Lopez denied making a fist. He stated that his wife (the female Berg was unable to identify) and Johnson then stepped between them and the incident ended.

Lopez claimed that he and his wife checked out of Bally’s Hotel early on the morning of June 28. Lopez claimed that his wife was concerned that another incident might occur between Lopez and Berg. However, Lopez filed no report with hotel security or Las Vegas police. The couple moved to a room at the Flamingo Hotel rented under the name of Bob Walston, who is president of Local Union 743.

Dolceta Lopez, Lopez’ wife, told our investigator that Lopez and Berg merely “bumped bellies.” She did not state that Lopez used his hand against Berg, as Lopez claimed.

Paul Peters, an attorney present at the IBT convention as a guest of Local Union 743, also was present at the incident. He stated he was walking with Johnson about 15 feet in front of Lopez as they proceeded to the Paris Hotel. He heard heated words behind him and turned to investigate. He said that he saw Lopez turned around in the direction of Bally’s addressing Berg in a loud voice. Berg too was speaking in a loud voice. Peters characterized both participants as using angry words. He said he saw both men with their arms raised but did not believe any punch was thrown. Peters looked around the area for security staff to intervene. When he refocused on the 2 participants, a man in a black shirt was between them.

Johnson told our investigator that he was walking with Peters, but stated that the 2 were walking 15 feet behind Lopez, not in front of them as Peters stated. Johnson stated that he heard a commotion occur in front of him between Lopez and Berg. The 2 were very close to each other when, according to Johnson, Berg bumped his belly into Lopez. Lopez raised his open hand to push Berg away and made contact with him in the “head area.” Johnson denied that Lopez used his fist. Johnson stated that a man in a black shirt then intervened.

Our investigation was unable to identify or interview the man in the black shirt.

Analysis

We find that Lopez assaulted Berg as alleged by the protest. The evidence available to us demonstrates that Lopez approached Berg in an aggressive manner, yelled at him in a loud voice, and struck him without provocation. Further, we find that Lopez engaged in these acts because of Berg’s protected activity under the *Rules*. Announcement had just been made that Berg’s name would appear on the ballot for Regional Vice President for the Central Region. Further, Lopez’ verbal conduct included insults of Leedham and TDU, demonstrating that his verbal attack on Berg had a political motivation.

We find that Lopez fled the site of the convention in the immediate aftermath of the incident and that such flight is evidence that Lopez knew he had violated the *Rules*. We do not credit Lopez’ explanation that his wife insisted that they move to another lodging to avoid encountering Berg. Lopez, as a prominent Hoffa supporter, was in an environment at the

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convention site where Hoffa supporters were ubiquitous. We find Lopez' claimed fear of another incident under these circumstances not supportable, reasonable, or at all credible given the makeup of the Convention's delegate body. We also note that Lopez' failure to participate in convention activities for more than a full day is unrelated to any claimed desire to avoid another incident with Berg, who was not a delegate and had no access to the convention floor. Instead, we determine that Lopez' disappearance from Bally's Hotel and the Paris Convention Center was motivated by a desire to avoid our investigation.

Article VII, Section 12(g) of the *Rules* prohibit "retaliation or threat of retaliation by ... any member of the IBT ... against a Union member ... for exercising any right guaranteed by" the *Rules*.

It is settled that violence may constitute prohibited retaliation under 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, 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 violation where a member grabbed another's arms in a menacing manner and order him to leave the facility where he was campaigning); *Smith*, 91 EAM 51 (January 29, 1991) (finding 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.) Violence ... has absolutely no place in the conduct of fair, honest and open elections, pursuant to the Election *Rules*. *Smith, supra*.

Accordingly, we GRANT the protest.

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.

We order the following relief:

1. Richard Lopez shall cease and desist from any further retaliation, threat of retaliation, violence and threat of violence against any candidate for International office or against any member of the IBT.
2. Richard Lopez shall forfeit his credentials to sit as a delegate at the IBT convention.
3. Richard Lopez is barred from the site of the IBT convention, being the Bally's Hotel and Paris Hotel, Las Vegas, Nevada, through Friday, June 30, 2006, the date the convention is scheduled to adjourn. We direct the IBT forthwith to notify the convention sergeants-at-arms to enforce this bar and to summon hotel security immediately in the event Lopez is observed on the premises. We further direct the IBT to deliver Lopez' name and photo to the security staffs of the hotels with a copy of this decision.
4. Richard Lopez shall pay a fine of \$1,000 to the Office of the Election Supervisor within 2 working days of receipt of this decision. Lopez shall pay the fine solely from personal funds. When paying the fine, Lopez shall submit an affidavit stating that the fine is paid solely from personal funds, that no other person, IBT member, candidate, slate, or

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campaign has transferred or contributed any funds to him for the purpose of paying all or part of the fine, and that Lopez will refuse any such offer, transfer, or contribution.

5. Richard Lopez shall not accept from Local Union 743 the per diem authorized by his local union for attendance at the IBT convention. In the event he has already received such per diem from the local union, he shall reimburse the amount to the local union. The local union shall supply an affidavit documenting that Lopez has not been paid or retained the per diem. Said affidavit shall be supplied to our office within 5 working days of receipt of this decision.
6. Local Union 743 shall post on all union bulletin boards under the jurisdiction of Local Union 743 the notice attached to this decision and shall be responsible for maintaining such posting through November 30, 2006.

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. 20006-1416, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
2006 ESD 315

NOTICE TO ALL MEMBERS OF IBT LOCAL UNION 743 FROM RICHARD W. MARK

The Rules for the 2005-2006 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* further prohibit retaliation or threat of retaliation by the Union against a Union member for exercising any right guaranteed by the *Rules* is prohibited.

The Election Supervisor has found that Richard Lopez retaliated against Richard Berg, an IBT member and a candidate for Regional Vice President for the Central Region, by assaulting him on June 27, 2006 at the site of the IBT convention in Las Vegas, Nevada.

The Election Supervisor will not tolerate such retaliation or violence.

The Election Supervisor has ordered Lopez 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 ordered Lopez to pay a fine of \$1,000.00 from personal funds, to forfeit his credentials to serve as delegate to the IBT convention, to refuse to accept certain reimbursement of expenses from the local union for his attendance at the IBT convention, and to post and maintain this notice on all union bulletin boards under the jurisdiction of Local Union 743 through November 30, 2006.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity which violates the Rules should be filed with Richard W. Mark, Election Supervisor, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20006, telephone: 888-IBT-2006, fax: 202-454-1501, email: electionsupervisor@ibtvote.org.

Richard W. Mark
Election Supervisor

This is an official notice prepared and approved by Richard W. Mark, Election Supervisor for the International Brotherhood of Teamsters. It must remain posted through November 30, 2006 and must not be defaced or covered up.

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