

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: GERALD MOERLER,)	Protest Decision 2006 ESD 342
)	Issued: August 28, 2006
Protestor.)	OES Case Nos. P-06-313-080306-FW
<hr/>)	P-06-316-081006-FW

Gerald Moerler, a member of Local Union 848, filed two pre-election protests pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). In Case No. P-06-313-080306-FW, Moerler alleged that his employer, Vons Grocery, failed to comply with the remedy ordered in *Palmer & Lopez*, 2006 ESD 327 (July 18, 2006) and that Vons was preventing members from campaigning in the break room as had been permitted historically. In Case No. P-06-316-081006-FW, Moerler alleged that Hoffa campaign material was posted inside Local Union 630’s glass-enclosed, official bulletin board at Vons; he repeated his assertion that Vons was not complying with the remedy ordered in 2006 ESD 327.

Election Supervisor representatives Christine Mrak and Dolly Gee investigated these protests.

Findings of Fact and Analysis

1. Vons’ alleged non-compliance with remedial order.

In *Palmer & Lopez*, we ordered, in part, that campaign material not be posted on the official union bulletin boards located at Vons, that Vons replace the general-purpose bulletin board that had been removed from the employee break room during a recent remodeling, and that Vons not restrict members’ campaign rights with respect to the new general-purpose bulletin board.

In compliance with the order, Vons mounted a glass-enclosed general-purpose bulletin board. A picture of the bulletin board provided by the protestor demonstrated that the board can display 6 letter-size sheets of paper. On August 14, 2006, when the board was inspected by our representative, it contained two campaign flyers (one from each campaign), and ample space remained for more campaign material. Vons’ transportation manager, Randy Harris, assured our representative that, although the bulletin board was locked, the key to the board was accessible 24 hours per day in the office directly adjacent to the bulletin board. Harris stated that the board was locked in order to avoid the disruption of having campaign material torn down by unknown persons. Harris further stated that campaign material was not censored and that material was reviewed only to determine that it was not offensive.

Following conversations with our representative, Vons’ attorney communicated the following to members of Vons’ management team:

All employees can campaign on non-work time [in] non-work areas and handout or leave out for pick up Hoffa and Leedham (and whomever else) literature including break rooms and/or post on general purpose bulletin boards.

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Vons' attorney further counseled management that campaign material may not be affixed to mirrors, bathrooms, tables, walls or trucks.

Based on these facts, we conclude that Vons Grocery has complied with the remedy we ordered in *Palmer & Lopez*. It has provided a general-purpose bulletin board of sufficient size to allow candidates to post campaign material and has instructed its management to allow campaigning in non-work areas on non-work time. Vons has a right to prohibit the posting of offensive material on its general-purpose bulletin boards, so long as it does not prohibit the posting of any campaign material related to the International officer election. Campaign material may not be censored because of its content or tone, even if it might be found offensive by some.

Accordingly, we DENY the protest's allegation that Vons failed to comply with the remedy we ordered in *Palmer & Lopez*.

2. *Alleged posting of campaign material on Local Union 630 bulletin board.*

On August 10, 2006, the protestor alleged that Local Union 630's official union bulletin board at Vons contained Hoffa campaign material. The protestor provided photos showing a Hoffa 2006 campaign newsletter posted inside the locked bulletin board and a Hoffa bumper sticker affixed to the board's outside glass. It could not be determined how long this material had been displayed. On August 14, 2006, our representative inspected all the bulletin boards at the Vons warehouse, including bulletin boards in the transportation department, the grocery warehouse, and the crate yard. All campaign material had been removed from the official local union bulletin boards for Local Unions 630 and 848. Our representative spoke with Gary Guillory, Local Union 630 shop steward and recording secretary. Guillory stated that he had the only key to the local union bulletin board and that Local Union 630 secretary-treasurer Paul Kenney had instructed him to keep all campaign materials out of the local union's bulletin board.

Article VII, Section 12(c) of the *Rules* provides:

Union funds, facilities, equipment, stationery, personnel, etc., may not be used to assist in campaigning unless the Union is reimbursed at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance

The photos provided by the protestor show Hoffa campaign material inside the locked official Local Union 630 bulletin board. The statement of Guillory, steward and elected local union official, that he had the lone key to the bulletin board demonstrates that the campaign material was placed beneath the glass either by Guillory or with his consent. Accordingly, we find Local Union 630 resources were used to support the candidacy of Hoffa 2006 and 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.

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We order the following relief:

1. All Local Union 630 officers, agents and shop stewards shall cease and desist from posting campaign literature relating to the 2005-2006 IBT International Officer Election on Local Union 630 bulletin boards.

2. Local Union 630 shall post the notice attached to this decision on the union bulletin board at the Vons Grocery Company in El Monte, California, and shall maintain the posting for a period of 30 consecutive days from the date of posting.

3. Local Union 630 shall pay \$500.00 to the Leedham Campaign for permitting the improper use of union resources to support the Hoffa 2006 campaign. This is a strictly remedial provision to deter use of union resources for campaigning. In ordering this remedy, we distinguish this case from *Meyer*, 2006 ESD 335 (July 31, 2005), *aff'd*, 06 EAM 62 (August 16, 2006), where we deemed resolved a protest that campaign paraphernalia had been placed on an official union literature table in violation of our advisory limiting use of such tables to campaign literature. In *Meyer*, we insured that the paraphernalia had been removed and instructed the local union employee responsible for maintaining the literature table in her duties; we issued no penalty or other remedy to grant the Leedham campaign equal access. Here, the *Rules* violation was committed by an elected official of the local union who placed campaign literature on a board he knew was reserved solely for official notices from the local union. Such conduct is not excusable by a claim of ignorance of the *Rules*. Rather, it constitutes a knowing and intentional violation of local union neutrality and must be met by a remedy designed to get the attention of the local union that such conduct will not be tolerated.

4. All remedies ordered here shall be completed within 3 working days of receipt of this decision. Local Union 630 shall forward affidavit(s) of compliance with the remedies ordered in paragraphs 2 and 3, above, within 2 working days of completing the remedies.

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

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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, 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.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
2006 ESD 342

NOTICE TO ALL MEMBERS OF TEAMSTERS LOCAL UNION 630 EMPLOYED AT VONS GROCERY'S EL MONTE FACILITY

The Rules for the 2005-2006 IBT International Union Delegate and International Officer Election ("*Rules*") prohibit union assistance to and union endorsement of any candidate.

The Election Supervisor has found that Gary Guillory, Local Union 630 shop steward and Recording Secretary, violated the *Rules* by posting or permitting the posting of campaign material inside and on the locked, glass-enclosed official union bulletin board at the El Monte facility of Von Grocery.

The Election Supervisor will not tolerate such a *Rules* violation.

The Election Supervisor has ordered all officials, employees and stewards of Local Union 630 to cease and desist from using union resources to assist a candidate's campaign. Local Union 630 has been ordered to pay \$500.00 to the Leedham Campaign for having allowed the improper use of union resources to campaign for a candidate.

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
IBT 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 for 30 consecutive days and must not be defaced or covered up.

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