

**OFFICE OF THE ELECTION SUPERVISOR**  
**for the**  
**INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

<b>IN RE: FRED ZUCKERMAN,</b>	)	Protest Decision 2010 ESD 62
	)	Issued: December 28, 2010
<b>Protestor.</b>	)	OES Case No. P-057-120210-NA
_____	)	

Fred Zuckerman, member of Local Union 89 and candidate for International office, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that the Hoffa-Hall 2011 campaign and its supporters surveilled campaign activity of a Gegare/Zuckerman fundraiser event, in violation of the *Rules*.

Election Supervisor representative Joe F. Childers investigated this protest.

**Findings of Fact**

On November 30, 2010, a central region joint arbitration committee meeting was held for carhaul grievances at the Crowne Plaza Hotel in Romulus, Michigan, adjacent to Detroit Metropolitan Airport. Zuckerman attended as the IBT’s director of carhaul.

Zuckerman arranged a campaign fundraiser at the same hotel on the same date, to start after the carhaul grievance meetings ended for the day. In addition to Zuckerman, candidates Fred Gegare, Brad Slawson, Sr., and Henry Perry were on hand for the event, which was set for a third floor conference room.

The grievance meetings broke up between 4:30 and 5 p.m. Just before the campaign event was to start at 6 p.m., Jim Parrinello, a member of Local Union 337 in Detroit and a Gegare/Zuckerman supporter, saw John Hasley in the lobby with a camera. Parrinello told our investigator Hasley’s camera appeared to be a still photo camera with a lens that extended from it. Parrinello did not see Hasley take photos with the camera but did observe it in his hand. After watching Hasley for a few minutes from his seat in the bar off the lobby of the hotel, Parrinello walked over to Zuckerman’s table and told him that Hasley was in the lobby with a camera.

Hasley is a former member of Local Union 299 in Detroit. When he became an owner-operator, he had to transfer his membership to another local union because Local Union 299 does not accept owner-operators as members. Hasley still lives in the Detroit area and many of his carhaul loads originate there. Zuckerman told our investigator that he knew Hasley because the IBT has hired him on occasion to work as a photographer. Hasley has photographed carhaul events for the IBT but did not attend the carhaul panels or take any photos for the union on November 30.

When Parrinello told Zuckerman that Hasley was in the hotel lobby with his camera, both walked to the lobby to investigate. Hasley was not there. Zuckerman walked outside through the hotel’s main entrance and saw Hasley in the driver’s seat of a dark-color GMC pickup truck,

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watching the front door of the hotel. Hasley sat in the driver's seat. Zuckerman did not see Hasley use a camera. Zuckerman said that he saw Roy Gross sitting in the front passenger seat of the pickup truck. Gross is a business agent for Local Union 299 with carhaul responsibilities. Zuckerman said that Gross attended the carhaul grievance meetings that day representing his members. Zuckerman returned inside the hotel to get Brad Slawson to accompany him back outside.

At about the time Zuckerman re-entered the hotel, Parrinello walked out the front door and saw Hasley and Gross sitting in the vehicle. He believed that he could see Hasley using a camera and taking photographs. Parrinello had seen Gross earlier in the bar. According to Parrinello, Gross spoke with someone in the bar but did not stay or order a drink. Gross left the bar and went towards the hotel lobby out of Parrinello's view. Parrinello did not see Gross and Hasley together inside the hotel. After seeing them together in the parking lot, Parrinello reentered the hotel.

Soon after Parrinello came back inside and headed up to the campaign event, Zuckerman and Slawson exited the hotel through the front door. Zuckerman again saw Hasley and Gross in the pickup watching the front door. He motioned to them to drive up to where he was. At this, the driver started the engine, backed up very quickly, and left the lot. Slawson, following Zuckerman several steps behind as they exited the hotel, saw the vehicle leave quickly when Zuckerman motioned to it. Slawson could not identify the two occupants.

At the fundraiser, Toiale Johnson, a member and former business agent and trustee of Local Union 299, told Parrinello about 15 minutes after the event started that he was concerned about members being photographed coming to the fundraiser. Parrinello went back downstairs and outside to see if Hasley and Gross were still present in the parking lot; they were not.

When Johnson left the event at about 8:15, he saw Hasley sitting in a dark-color pickup holding a camera. Johnson said another person was in the truck with Hasley but he could not identify the person. Johnson said that he has known Hasley for years and knows that Hasley commonly takes photographs for Local Union 299.

Gross told our investigator that he attended the carhaul panels during the day on November 30, which he said broke up about 5 p.m. As he left, Gross stopped in the bar off the lobby to speak with Fred Ortiz about a case out of Dearborn, Michigan. Gross had not planned to stop at the bar but he saw Ortiz there as he walked by and recalled the case he needed to speak with Ortiz about. Gross said he did not order a drink; he left after a brief conversation with Ortiz. Gross said he left the hotel in his black Lincoln sedan at about 5:30 p.m. While driving, Gross called a member about a truck accident the member had. According to the information on his cell phone, Gross said the call occurred at 5:36 p.m. Gross confirmed a meeting with the member at the Break Time Bar on Allen Road in Melvindale, about 12 miles east. According to Gross, the two met there until about 8 p.m., when Gross left and went to another bar 10 minutes away where his wife works as a bartender. Gross denied returning to the Crowne Plaza that night and offered alibi witnesses as proof. Our investigator reached one of the witnesses, the member who had met Gross concerning the truck accident, and he corroborated Gross' account.

Hasley told our investigator that he went to the Crowne Plaza on November 30 to see Gross, who he described as a personal friend of 20 years, to return a computer hard drive that

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belonged to Gross. He said he arrived at about 4:30 p.m. and remained in his GMC pickup for a while. He then went into the hotel to use the restroom, saw his former boss from Allied Automotive in the lobby, spoke with him briefly, then returned to his vehicle. Hasley said he parked his GMC pickup truck at the end of the sidewalk that runs to the front door. From that vantage, Hasley said he had a good view of the door so that he could see Gross to return the hard drive to him.

Hasley denied to our investigator that he had his digital camera, a Nikon SLR with him when he entered the hotel. He said the camera was in his truck, as he always keeps it with him. He denied taking photos that night, saying that a flash would be required and the flash would be effective only to 8 feet.

Hasley said he sat in his truck at that position for “a couple hours” waiting for Gross. He said he spoke with Gross that morning to arrange the meeting. He said that he called Gross when he arrived at the hotel that afternoon and called once or twice more while sitting in the truck, never reaching him.

Hasley said he left the hotel parking lot around 8 p.m. and drove straight home, which he said took 40 minutes. His cell phone call log showed a call to Gross at 8:23 p.m. that evening for 10 minutes and 23 seconds. His log also showed a call to Gross 40 minutes earlier – at 7:43 p.m. – which lasted 31 seconds; Hasley believes that this call was routed to Gross’ voicemail. Hasley said his call log had no other calls to Gross that day but surmised that the record of those calls had dropped off his phone as later calls displaced them.

Hasley produced photos he said he had taken around November 30. None were taken at the Crowne Plaza.

Our investigator contacted Gross again after speaking with Hasley. During the second interview, Gross indicated he had spoken with Hasley since his earlier interview. In the second interview, Gross stated that he had loaned a computer hard drive to Hasley and that Hasley had sought to return it to Gross at the Crowne Plaza on November 30 but had missed him. Gross did not say the two had agreed to meet there. Our investigator asked Gross to check his cell phone for missed calls from Hasley that day and to provide the times of those calls. Gross provided nothing further.

Kevin Moore is principal officer of Local Union 299. In May 2010, shortly after Zuckerman declared his candidacy for International office, General President Hoffa directed Zuckerman to include Moore in all meetings and other activity concerning carhaul. See our decision in *Zuckerman*, 2010 ESD 2 (June 7, 2010), for further detail. Moore told our investigator that “everyone in town” knew there was a Gegare fundraiser at the Crowne Plaza on November 30. He denied telling Hasley to go to the hotel the night of the event.

Moore also told our investigator that he spoke with Gross after the protest was filed. According to Moore, Gross told him that Hasley was going to drop off a hard drive and that he was supposed to arrive before Gross left but did not.

David Hoffa for Hoffa-Hall 2011 denied that the campaign has seen any photos or received any report of activity surrounding the event.

### Analysis

Article VII, Section 12(a) guarantees members “the right to participate in campaign activities, including the right to ... support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions.” This basic right is reinforced by Article VII, Section 12(f), which prohibits “[r]etaliatio[n] or threat of retaliation ... against a Union member ... for exercising any right guaranteed” by the *Rules*. Any act that constitutes coercion, interference or harassment of any member in the exercise of these essential rights is forbidden. Surveillance is one of those prohibited acts.

In *Pollack*, P-008 (October 29, 1990), *aff’d*, 90 EAM 8 (November 7, 1990), Election Officer Holland considered the propriety of conduct by officers of Local Union 732 who, after being removed from a TDU meeting, rented the room directly across the hall and observed members enter and exit the meeting. He wrote:

IBT members have the right to gather and discuss issues concerning the election of delegates and alternate delegates to the International Convention free from interference. Similarly, I find that the actions of the local officials in subjecting IBT members attending the TDU meeting to surveillance or creating the appearance of surveillance to be violative of the Election Rules. Such surveillance or the appearance of surveillance is destructive of the fundamental safeguards of ... free and fair elections outlined in the Consent Decree and the Election Rules.

In *Giacumbo*, P-210 (December 5, 1995), *aff’d*, 95 EAM 45 (December 18, 1995), Election Officer Quindel found that a known Carey supporter violated the *Rules* by camping in the lobby of a club where candidate Hoffa was having a fundraiser and making a record of names of those attending.

In *Richards (after remand)*, 2000 EAD 27 (September 27, 2000), *aff’d*, 00 EAM 8 (October 23, 2000), Election Administrator Wertheimer found that a TDU opponent violated the *Rules* by appearing at a TDU meeting, announcing he was there as a “watchdog,” and refusing to leave.

The test of surveillance is an objective one. Where the conduct “creat[es] the appearance of surveillance,” the actor’s claimed subjective motivation to the contrary is unavailing. As Election Administrator Wertheimer noted, “The National Labor Relations Board has long applied an objective test in cases where unlawful restraint and coercion of employee rights is alleged, and, rather than focusing on motive, holds that the appropriate test is whether the challenged conduct ‘may reasonably be said ... to interfere with the free exercise of employee rights under the Act.’ *NLRB v. Ford*, 170 F.2d 735, 738 (6<sup>th</sup> Cir. 1948); *see also*, *NLRB v. Grand Canyon Mining Co.*, 116 F.3d 1039, 1045 (4<sup>th</sup> Cir. 1997)(“creat[ion of] an *impression* of surveillance” violates NLRA prohibition against coercion of employee right to engage in protected union activity (emphasis supplied).); and *BRC Injected Rubber Products, Inc.*, 311 NLRB 66, 71 (1993).

On the evidence presented here, we find that Hasley engaged in prohibited surveillance of members entering and exiting the Crowne Plaza for the Gegare fundraiser. He admits he parked his GMC pickup truck in a position specifically to observe people entering and leaving the hotel through the front door. Hasley was not subtle: he was observed in place by the hosts of the event and by others who attended. The evidence that Hasley chose to drive out of the parking lot quickly when Zuckerman beckoned to him is further objective evidence creating the impression of surveillance.

We do not credit Hasley's claim that he went to the Crowne Plaza to meet Gross in order to return a hard drive. Had that been his objective, Hasley would have called Gross, his friend of 20 years, and arranged to drop off the unit. Hasley claimed he did so, but there is no evidence to support him. Hasley's cell phone log does not show that any call was made between them until 7:43 p.m. Gross, who told our investigator that his cell phone showed a 5:36 p.m. call to the member with the truck accident, had no record from his cell phone reflecting any of the calls that Hasley claimed to have made earlier on that date. That reinforces our conclusion that Hasley did not call Gross to arrange a meeting to hand off the computer. Hasley's account puts him in the Crowne Plaza parking lot, observing the front door, for three and one-half hours. We find that Hasley did that to observe who may have been going to the Zuckerman fundraiser. Hasley did not spend hours idling in his pickup truck hoping for a serendipitous meeting with Gross to return the computer equipment.

We further credit the evidence of Zuckerman and Parrinello that Hasley and Gross were in the truck together for some period of time at or about 6:00 pm on November 30. The alibi does not negate Gross's presence at the Crowne Plaza close to 6:00 pm. The Break Time bar is close enough to the Crowne Plaza such that Gross could have been with Hasley for some time and also have gone to the bar and met with the member consistent with the approximate time frames given by the different witnesses. Gross's 5:36 p.m. cell phone call could have been made from any location and does not necessarily exclude his presence at the Crowne Plaza at that time. We also credit the evidence of Johnson, who saw Hasley around 8:15 pm on November 30, parked in his truck with another person and holding his camera.

Hasley and Gross both deny meeting on November 30; we reject that claim as not credible in light of the two witnesses who separately observed them in the GMC pickup truck. We find that Hasley made up the story of intending to return the hard drive on November 30 to cover for his presence in the parking lot. That Hasley created this as a cover story is consistent with the interviews of Gross. When first interviewed, Gross said nothing about the hard drive or a meeting with Hasley. That Gross would not mention sitting in the pickup truck with Hasley – where both were seen – is consistent with a motive to avoid association with improper surveillance activity. Gross referenced the hard drive in his second interview, after talking with Hasley and being able to learn that cover story from him.

For all of these reasons, we find that Hasley and Gross were in Hasley's truck surveilling the Crowne Plaza entrance to see who attended the Gegare fundraiser.

Investigation produced no photographs taken that night, nor did it produce any evidence that the surveillance was conducted at the request or direction of the local union, the IBT, or the Hoffa-Hall 2011 campaign.

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Accordingly, we GRANT the protest with respect to Hasley and Gross and DENY it as to Local Union 299, the IBT, and the Hoffa-Hall 2011 campaign.

**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 direct Hasley and Gross to cease and desist from any further or similar surveillance, creating the appearance of surveillance, or interfering with the rights of IBT members under the Consent Order or the *Rules* to support or engage in any campaign-related activity on behalf of any candidate for delegate, alternate delegate or International officer of the IBT.

Within four (4) days of receipt of this decision, Hasley and Gross will each sign the enclosed notice and return it to the Election Supervisor. The Election Supervisor will determine the names of all persons who are entitled to receive copies of the signed notice, arrange for the copying and mailing of the notice, and bill Hasley and Gross for all expense incurred in doing so. Hasley and Gross shall pay the statement of expenses immediately upon receipt.

A decision of the Election Supervisor takes immediate effect unless stayed. *Lopez*, 96 EAM 73 (February 13, 1996).

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, NY 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, 1801 K Street, N.W., Suite 421 L, Washington, D.C. 20006, 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  
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## **NOTICE TO MEMBERS OF THE IBT**

You have the right to participate in campaign activities on behalf of candidates for delegate and alternate delegate in the 2010-2011 IBT Election.

You have the right to participate in campaign activities on behalf of candidates for International office in the IBT.

You have the right to attend and participate in fundraising events sponsored by the campaign of Fred Gegare, candidate for General President, or of any other candidate for delegate, alternate delegate or International office, free from any interference, restraint, coercion, or surveillance.

I will not interfere with your exercise of any of these rights or any other right of IBT members under the Consent Decree or the Rules for the 2010-2011 IBT International Union Delegate and Officer Election.

John Hasley

Roy Gross