

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

IN RE: KENNETH NELLIGAN,)	Protest Decision 2011 ESD 241
)	Issued: May 8, 2011
Protestor.)	OES Case No. P-122-020811-NE
<hr style="width: 35%; margin-left: 0;"/>		
)	

Kenneth Nelligan, member of Local Union 449, 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 Jimmy Martinez distributed campaign t-shirts in work areas on work time, in violation of the *Rules*.

Election Supervisor representative Deborah Schaaf investigated this protest.

Findings of Fact and Analysis

Martinez is employed at UPS Buffalo as an irregular train operator on the twilight shift. He drives an electric cart in all areas of the hub picking up and delivering irregular packages during the package sort process. Frank Damon is a local union trustee and chief union steward at the hub on Martinez’s shift. Martinez was a candidate for alternate delegate on the Generation Next slate in the local union’s delegates election. Damon supported the No Dues Increase slate in that election.

Damon told our investigator he saw Martinez give campaign t-shirts to employees on work time at three separate times, the first two incidents on January 20 and the third time on January 27. Damon stated all three incidents occurred immediately after break time. Damon immediately reported the matter to UPS twilight manager, Steve Siler, first on January 20 and again on January 27. In both instances, Siler told Damon he did not see Martinez do what Damon alleged; according to Damon, Siler said he would watch Martinez and address any improper campaigning if he saw it.

Martinez denied to our investigator that he campaigned in work areas during work times; he specifically denied handing out campaign t-shirts during work hours in work areas. Martinez stated that he campaigned in designated break areas during designated break times.

Our investigator separately interviewed each of the three employees Damon said received a t-shirt from Martinez. Each stated that he received the shirt outside the UPS building during a break.

We find insufficient evidence to credit Damon’s allegation that campaigning occurred on work time in a work area. 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

Nelligan, 2011 ESD 241

May 8, 2011

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
2011 ESD 241

Nelligan, 2011 ESD 241
May 8, 2011

DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
braymond@teamster.org

David J. Hoffa
Hoffa Hall 2011
1100 Connecticut Avenue, N.W., Ste. 730
Washington, D.C. 20036
hoffadav@hotmail.com

Ken Paff
Teamsters for a Democratic Union
P.O. Box 10128
Detroit, MI 48210-0128
ken@tdu.org

Barbara Harvey
1394 E. Jefferson Avenue
Detroit, MI 48207
blmharvey@sbcglobal.net

Fred Gegare
P.O. Box 9663
Green Bay, WI 54308-9663
kirchmanb@yahoo.com

Scott D. Soldon
3541 N. Summit Avenue
Shorewood, WI 53211
scottsoldon@gmail.com

Fred Zuckerman, President
Teamsters Local Union 89
3813 Taylor Blvd.
Louisville, KY 40215
fredzuckerman@aol.com

Robert M. Colone, Esq.
P.O. Box 272
Sellersburg, IN 47172-0272
rmcolone@hotmail.com

Carl Biers
Box 424, 315 Flatbush Avenue
Brooklyn, NY 11217
info@SandyPope2011.org

Julian Gonzalez
Lewis, Clifton & Nikolaidis, P.C.
350 Seventh Avenue, Suite 1800
New York, NY 10001-5013
jgonzalez@lcnlaw.com

Jimmy Martinez
168 Spicer Creek Run
Grand Island, NY 14072
judo72@yahoo.com

Frank Damon
Teamsters Local Union 449
2175 William Street
Buffalo, NY 14206
teamsters449@adelphia.net

Kenneth Nelligan, Secretary-Treasurer
Teamsters Local Union 449
2175 William Street
Buffalo, NY 14206
teamsters449@adelphia.net

Deborah Schaaf
1118 Coddington Road
Ithaca, NY 14850
debschaaf33@gmail.com

David F. Reilly
22 West Main Street
Wickford, RI 02852
dreilly@dfresq.com

Maria Ho
Office of the Election Supervisor
1801 K Street, N.W., Suite 421 L
Washington, D.C. 20006
mho@ibtvote.org

Kathryn Naylor
Office of the Election Supervisor
1801 K Street, N.W., Suite 421 L
Washington, D.C. 20006
knaylor@ibtvote.org

Jeffrey Ellison
214 S. Main Street, Ste. 210
Ann Arbor, MI 48104
EllisonEsq@aol.com