

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

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| IN RE: SANDY POPE, |) | Protest Decision 2011 ESD 352 |
| |) | Issued: October 31, 2011 |
| Protestor. |) | OES Case No. P-345-101111-SO |
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The Sandy Pope campaign 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 Hoffa-Hall 2011 supporters campaigned inside facilities and work areas at certain YRC and ABF terminals, in violation of the *Rules*.

Election Supervisor representative Dolores Hall investigated this protest.

Findings of Fact and Analysis

On October 7, 2011, at approximately 7 a.m., Tyson Johnson, Ken Bryant, Ruben Flores and Chris Solis visited the ABF terminal in Houston, Texas, to campaign for the Hoffa-Hall 2011 slate. Johnson and Bryant are members of Local Union 745 in Dallas. Flores and Solis are members of Local Union 988, which has jurisdiction of the facility. Johnson is IBT South region vice president, seeking re-election to that position. Bryant is an IBT South region freight representative. Flores is Local Union 988’s city steward at the facility. Solis is Local Union 988’s business agent responsible for the worksite. The group entered the facility and assembled in the break room, where they met with union members employed there for twenty to thirty minutes.

Johnson told our investigator that when the group arrived at ABF, they went straight to the break room. Johnson explained that when he thinks about it, the interaction with employees “wasn’t so much about campaigning” for election but rather about the lawsuit ABF has filed against YRC and the IBT concerning concessions the IBT gave to YRC but not to ABF. Solis, the business agent, confirmed to our investigator that he, Johnson and the others spoke with members in the break room. In contrast to Johnson’s statement, Solis said that they spoke to “guys coming to work about the election” and asked them “to get out to vote for the Hoffa slate.” Solis said that one member asked about the ABF lawsuit, but “mostly we talked about the election.”

Solis told our investigator that prior to the visit to the site he contacted the terminal manager for the facility and was granted permission for the visit. The terminal manager, Jerry Freeman, told our investigator that he granted permission to Solis because ABF has a contract with the IBT and union representatives have the right to meet with employees with respect to that contract and terms and conditions of employment. In response to our investigator’s direct questioning, Freeman denied that Solis told him that the purpose of the visit was to campaign, denied that he otherwise knew that campaigning was the purpose, and stated that he would have denied a request to campaign inside the worksite had he known that was the visit’s purpose because he said ABF has a strict policy forbidding access to non-public areas of the site by non-employees, including those who would seek to campaign there in a union election.

The same morning at the YRC terminal in Houston, Tim Pagel was campaigning for Sandy Pope outside the main gate. The employee parking lot at the terminal is across the street from the

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main gate. Employees cross the street and walk through the main gate when arriving for and ending their shifts; in addition, employees drive YRC trucks through the gate when departing for and returning from their work assignments. The terminal manager at YRC, Darren Cathey, instructed Pagel that he was not permitted entry to the facility but had to remain outside the gate to campaign. Rank-and-file members our investigator interviewed confirmed that campaigners were never permitted to campaign on company property inside the main gate of the facility. Cathey told our investigator that he preferred Pagel to campaign across the street in the employee parking lot but did not force him to move to that location from where he was standing outside the main gate.

At about 8 a.m., Johnson arrived at the YRC gate to campaign, together with Bryant and Solis, traveling there from the ABF campaign stop. Johnson and his group remained outside the main gate for about thirty minutes, campaigning alongside Pagel. After 5 p.m. the same day, Johnson, Bryant and Solis returned to YRC, again to campaign for Hoffa-Hall 2011. They were joined a short time later by Local Union 988 president Robert Mele. Pagel was not present. On this occasion, the Hoffa campaigners proceeded through the main gate and campaigned on the sidewalk and in the outside break area immediately adjacent to the stairs that led to the loading dock. The outside break area has picnic tables, vending machines, and an awning to provide shelter from sun and rain. The campaigners remained there for about an hour. Mele, arriving late, saw that Johnson, Bryant and Solis were campaigning inside the property. He asked how that occurred and was told that the terminal manager asked the campaigners to come on to the property because they were causing a back-up of trucks at the main gate when they campaigned outside the gate. Mele said he could not recall who gave him that information. This information contrasted with what Johnson told our investigator, who said that the city steward said it was okay for the campaigners to be on the property. Solis told our investigator that he spoke with Cathey directly about the campaign location. According to Solis, Cathey said it was okay as long as they stayed out of doors and did not go up on to the loading dock.

YRC terminal manager Cathey told our investigator that his boss, Bob Price, alerted him on October 3 or 4 that Johnson would be campaigning at the terminal on October 7; Cathey said he was unaware, however, that Johnson would come to the facility twice that day. Cathey learned of the second visit when he went outside to leave the terminal for the day and saw Johnson and the other campaigners on the sidewalk and in the outside break area right next to the entrance door to the terminal. Cathey did not speak to or even approach the campaigners to remove them from the property, nor did he instruct anyone else to do so. Rather, he returned inside and remained there until the campaigners left. He said he did so to insure that the campaigners did not go up onto the loading dock. In contrast to the evidence given by Solis, Cathey denied inviting or giving permission for the campaigners to be on the property, stating instead that he was surprised they had returned, and he stayed at the facility to insure they did not go beyond the break area. Further, Cathey stated that his preference was that campaigning take place in the employee parking lot across the street, but that he tolerated campaigning outside the main gate. Nonetheless, once he saw the Hoffa campaigners at the outside break area on the premises, Cathey insisted to our investigator that Pagel and the Hoffa campaigners were treated the same, even though he had told Pagel that morning to remain outside the main gate. Cathey explained that, had Pagel returned for a second visit that day, Pagel would have been permitted to campaign in the outside break area where Johnson and the others were. Rank-and-file members told our investigator they thought it was unfair that Pagel had to remain outside the main gate while the Johnson group was permitted to come on to the property and campaign in the outside break area for an extended period.

Analysis

We find that Johnson and the other Hoffa-Hall 2011 campaigners gained access to the ABF/Houston break room on October 7 because the terminal manager was led to believe that the purpose of the visit was to discuss union issues with the membership. As such, the campaigners used their status as union representatives to gain access to a location to which they would not have been permitted but for that status, thereby using that status for a campaign purpose and eliciting an involuntary contribution to the Hoffa-Hall 2011 campaign from the employer. As we held in *Brown*, 2006 ESD 113 (February 27, 2006), *aff'd*, 06 EAM 12 (March 3, 2006), the use of a union position to gain access to restricted areas is an expenditure of union funds and violates Title IV, Section 401(g) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §481(g) (1982). *Dole v. Local 226, Hotel and Restaurant Employees Union*, 718 F.Supp. 1479, 1483 (1989). A violation of LMRDA Section 401 (g) is a violation the *Rules*. *Rules*, Article XII. *See also, Milligan*, 2001 EAD 156 (February 12, 2001) (violation to use union office to gain access to employer premises).

We further find that Johnson and the others also gained access to the YRC/Houston break area on the afternoon of October 7 when the same access had been denied to Pagel, campaigning for Pope, earlier that day. We find that the Hoffa-Hall 2011 campaigners were not granted access to or invited onto the premises; instead, they entered without permission under circumstances where they knew or should have known that such entry for a campaign purpose was not permitted. Entering the premises after they had campaigned outside the main gate with Pagel, who had been excluded from the premises earlier in the day, constituted a knowingly discriminatory use of the employer's facility to campaign. That the terminal manager learned of their presence on the property and did not have them leave compounded the violation.

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 Johnson, all other members of the Hoffa-Hall 2011 slate, and all supporters of that slate, to cease and desist from using their status as union representatives to gain campaign access to non-public areas of employer facilities. We further order Johnson, all other members of the Hoffa-Hall 2011 slate, and all supporters of that slate, to cease and desist from entering employer premises to campaign under circumstances where they know or should know that campaigners for other candidates have been excluded from the premises.

We order Local Union 988 to post the notice attached to this decision on its worksite bulletin boards at the ABF/Houston and YRC/Houston terminals. The notice posting must be completed within one day of issuance of this decision. Within one day after the posting is completed, the local union must submit a compliance affidavit to OES.

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To remedy the unfair advantage obtained by the Hoffa-Hall 2011 campaign, we order Hoffa-Hall 2011 to pay all printing and mailing expenses for a campaign mailing by the Pope campaign and a campaign mailing by the Gegare-Sheard campaign to all members of Local Union 988 employed at either the ABF/Houston or the YRC/Houston terminals. Notice of intention to access the remedy ordered here may be given at any time but no later than November 2, 2011 by email to the Hoffa-Hall 2011 campaign with copies to Local Union 988 and to our office; the notice shall identify and give contact information for the mail house the campaign designates to process the mailing. The mailing must be completed as soon as possible but no later than November 4, 2011.

Each candidate or slate that qualifies for a mailing under this decision is entitled under the remedy we order here to a mailing separate from the mailing granted to any other such candidate. The expense for which Hoffa-Hall 2011 is liable under this remedy is the cost of #10 envelopes, mailing labels or address-labeling process, paper and printing (including plate-making) for a one-sheet, two-sided flyer printed on white 20# paper in black ink, and first class postage. Hoffa-Hall 2011 is not responsible for artwork or layout expense associated with the mailing. If any candidate seeks to use other than white 20# paper and/or ink in addition to or instead of black, the incremental cost, if any, of such enhancements is the responsibility of that candidate and not the local union. The local union shall supply the address list for the members entitled to receive the campaign mailings to the mail house designated by any candidate or slate accessing this remedy and in a fashion to permit use of first-class mailing. Hoffa-Hall 2011 shall provide such guarantee of payment as the designated mail house shall reasonably require and shall do so in a time that will not delay the mailing.

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
2011 ESD 352

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Richard W. Mark
Election Supervisor

Notice to All Members of Local Union 988 Employed at the ABF or YRC Houston Terminals

The Election Supervisor has found that Tyson Johnson, Ken Bryant and Chris Solis used their status as union representatives to gain access to the employee break room at the ABF Houston terminal to campaign for the Hoffa-Hall 2011 slate. Union representatives cannot use their official status to enter employer property not open to the public and engage in election campaigning.

The Election Supervisor has also found that Johnson, Bryant, Solis and Local Union 988 president Robert Mele campaigned for the Hoffa-Hall 2011 slate in a break area on employer property in the YRC Houston terminal, when they knew or should have known that a Sandy Pope supporter had been refused access to that location for campaigning. Under the *Election Rules*, employers must treat all campaign supporters the same and must not favor one candidate over another.

The Election Supervisor has found that Johnson, Bryant, Solis and Mele, among others, violated the *Election Rules*. To remedy this violation, the Election Supervisor has ordered that this notice be posted on union bulletin boards at the ABF and YRC terminals. He has also ordered the Hoffa-Hall 2011 campaign to pay for campaign mailings to the members who work there on behalf of the other candidates in the IBT election.

If you have already voted and now desire to change your vote, you may request another ballot by calling the Office of the Election Supervisor for the IBT. The phone number is 877-317-2011 and is toll-free.

Your ballot must be received by November 14, 2011. If we receive two ballots from you, the ballot received later will be counted.

The Election Supervisor has issued this decision in *Pope*, 2011 ESD 352 (October 31, 2011). You may read this decision at <http://www.ibtvote.org/protests/2010/2011esd352.htm>.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity that violates the Election Rules should be filed with Richard W. Mark, 1801 K Street, N.W., Suite 421L, Washington, D.C. 20006, telephone: 877-317-2011, fax: 202-429-6809, email: electionsupervisor@ibtvote.org.