

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

**IN RE: CHRIS JACKSON,** ) Protest Decision 2016 ESD 138  
 ) Issued: March 3, 2016  
**Protestor.** ) OES Case No. P-070-111015-SO  
 )  
\_\_\_\_\_ )

Chris Jackson, member of Local Union 745, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that local union stewards surveilled, harassed and intimidated him and other local union members because of activity protected by the *Rules*.

Election Supervisor representative Dolores Hall investigated this protest.

**Findings of Fact and Analysis**

On November 8, 2015, protestor Jackson attended a fundraiser barbeque on behalf of Teamsters United, a slate of candidates for International office. The event was held at a public park in the Greater Dallas/Ft. Worth area and was headlined by Fred Zuckerman and John Palmer, candidates for International office on the Teamsters United slate. Protestor Jackson attended as a supporter of the slate.

Jackson told our investigator that, after he was present at the event for a period of time, he thought he observed two of his co-workers from the UPS Garland facility where he and they are employed. The co-workers, Omija Pittman and Gary Batiste, two stewards from the Garland facility, were walking away from the gathering and in the direction of the parking lot; Jackson saw their backs but believed it to be them. Jackson did not approach or speak to them at that time. Instead, he asked a co-worker, whether Pittman and Batiste had been present at the event; according to Jackson, the co-worker stated they were walking around the perimeter of the park. Jackson asked Pittman a couple of days later if he was there and Pittman confirmed that he was, but he said he left after “having words” with candidate John Palmer. Jackson stated that, shortly after Pittman and Batiste left the park, Jackson received a text message from Clifford Haney, chief steward at UPS Garland, that stated, “Peek-a-boo.” These facts caused Jackson to conclude that Pittman and Batiste were present at the park to surveil the event.

Pittman told our investigator that he attended the rally to “hear what the other side had to say.” He denied that he told Jackson that he had words with Palmer. He stated he has never talked to Palmer and did not know who he was until that day. Pittman stated he did not know that Jackson was at the rally and, when asked by Jackson a couple of day later why he did not stay and eat, Pittman replied that he was not hungry.

Batiste stated he went to the rally because he wanted to hear what was being said so that he could decide how he wanted to vote. He stated he did not see Jackson there and stayed back from the area where speeches were being made. He said he did not want people to see him since he is a union steward. He said that he and Pittman stayed there for about an hour and left without eating.

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Haney did not attend the event. When questioned about the “Peek-a-boo” text message, Haney stated that the message was intended for his wife, Christina, whose name and number are immediately below Chris Jackson’s number in his cell phone. Haney stated his wife is very jittery and she was in their sun porch that morning folding clothes when he snuck up behind her and shouted “Boo.” He said she was startled and got angry with him. He said that, later in the day, he sent the text message. Haney said he later got a call from Jackson asking why he had sent the text. Haney said that’s when he realized he must have hit Jackson’s name by mistake when sending the text. He said he told Jackson it was a mistake. Haney said that Jackson indicated he did not believe Haney, and the call terminated.

The relationship between protestor Jackson and the group comprised of Haney, Pittman and Batiste is antagonistic and has been for a considerable time predating the current electoral period. Jackson recounted several incidents well outside the protest time limit in which Haney, Pittman, Batiste, or others unknown to him engaged in behavior toward him that was either objectively offensive or that he perceived as offensive. Included in these incidents was the smearing of heavy axle grease on the door handle, steering wheel and other places on his work rig he had to touch to operate the vehicle; hanging a picture of a rat on his work vehicle; and criticizing him in group settings for complaining to management about these and other incidents.

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]etaliati[on] or threat of retaliati[on] ... 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.

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).

Here, we are unable to conclude that Pittman and Batiste engaged in prohibited surveillance by attending the park where the Teamsters United fundraiser was held. No evidence was presented that, aside from their presence in the park, either took photos, made notes, or engaged in the other acts associated with surveillance. Moreover, there is no evidence that either made statements to suggest that the presence of those attending the event was being noted or would be remembered or reported. *Cf.*, *e.g.*, *Zuckerman*, 2010 ESD 62 (December 28, 2010) (taking photos of members entering campaign fundraiser was prohibited surveillance); and *Zuckerman*, 2015 ESD 8 (July 16, 2015) (taking photos of members and their vehicles at a campaign fundraiser, and being seen taking such

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photos, coupled with the statement “we will remember faces and report back” constituted prohibited surveillance).

Accordingly, we DENY this 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 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:

Kathleen A. Roberts  
Election Appeals Master  
JAMS  
620 Eighth Avenue, 34<sup>th</sup> floor  
New York, NY 10018  
kroberts@jamsadr.com

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, 1050 17<sup>th</sup> Street, N.W., Suite 375, Washington, D.C. 20036, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark  
Election Supervisor

cc: Kathleen A. Roberts  
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