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

IN RE: HOFFA-HALL 2016,

**Protestor.** 

Protest Decision 2016 ESD 335 Issued: December 2, 2016 OES Case No. P-387-101116-NE

Hoffa-Hall 2016 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 a rank-and-file member of Local Union 355 campaigned on work time in work premises, in violation of the *Rules*.

Election Supervisor representative Peter Marks investigated this protest.

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## **Findings of Fact and Analysis**

On October 7, 2016, at the conclusion of a "Communications Meeting" convened by UPS at its Harrington, DE facility, rank-and-file member Dale Pink spoke up to remind those present to vote in the International officers election. According to the protest, he stated: "[b]allots for the International Election were mailed out yesterday. Fill the ballot out and mail it in. The current administration has been in for seventeen years and it's time for them to go."

The protest alleged that Pink's statement constituted campaigning on work time and in the work place and therefore was prohibited by the *Rules*.

Investigation showed that UPS as a practice convenes meetings similar to the October 7 Harrington meeting at its facilities across North America. They take place on employer-paid time in the workplace, address production and workplace issues, and typically are very brief. These attributes also describe the October 7 meeting at issue here.

UPS employees attending such meetings are acting in the scope of their employment when doing so, even though their regular work is to sort packages, load trucks, make deliveries, or the like.

Pink told our representative that, as the meeting was breaking up and employees were preparing to return to their jobs, he made the statement the protest attributed to him. The last sentence of his statement took approximately five seconds to utter. According to Pink, his statement did not cause any employee to deviate from the work of the employer. Pink further told our investigator that no more than five rank-and-file employees were present at the meeting when he made his statement.

Occasionally, local union business agents are present at such communications meetings, and Local Union 355 business agent Eric Wood was present on October 7. Wood was on union-paid time while visiting the facility. Wood submitted a signed statement recounting Pink's remark. Wood told our representative that, while present at the UPS facility, he also delivered campaign material in support of Hoffa-Hall 2016 to a steward for the steward's use in spreading that slate's campaign message.

Article VII, Section 12(a) states in part that "[n]o candidate or member may campaign during his/her working hours. Campaigning incidental to work is not, however, violative of this section." The

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exception to the prohibition on campaigning during work hours for "[c]ampaigning incidental to work" recognizes that some activity that literally fits the definition of "campaign activity" inevitably occurs in members' everyday interactions on the job. Rosas, 2001 EAD 200 (February 27, 2001) ("The Rules recognize that as employees engage in normal personal interaction while they work, campaigning should not be excluded from what they may talk about."). In assessing whether campaign activity is incidental, we look to whether the activity interfered with employees performing their regular work or caused employees to deviate from prescribed duties. Pinder, 2006 ESD 133 (March 7, 2006) (campaigning found to be incidental where UPS driver distributed flyers to two others while loading truck and encouraged them to vote; conduct did not interfere with duties, and all drivers left terminal on time.) We also consider the duration of the campaigning incident; brief or transient matters are more likely to be held incidental to work. *Pinder* (less than 5 minutes); *Thompson*, 2001 ESD 332 (April 30, 2001), aff'd, 01 EAM 73 (May 24, 2001) (one-on-one campaign exchange that took place while both employees worked together to set a trailer hitch held incidental); Cooper, 2005 ESD 8 (September 2, 2005) (exchange lasting 10 seconds found to be incidental); Gibbs, 2010 ESD 54 (December 9, 2010) (asking for and receiving a campaign postcard held incidental campaigning where exchange took a few seconds); and Joyce, 2011 ESD 111 (February 14, 2011) (brief comment while employee was on her way to lunch was incidental).

We conclude that Pink's extremely brief comment fell within the incidental exception and therefore did not violate the *Rules*.<sup>1</sup> Supporting our conclusion are the facts that Pink did not convene the meeting and could not compel the attendance of employees there any more than he could compel them to perform their regular duties for the employer.

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

<sup>&</sup>lt;sup>1</sup> We note the possibility that the complaining witness, business agent Wood, also engaged in incidental campaigning when delivering campaign material to a steward at the facility. The analysis for campaigning incidental to union business is similar to that for campaigning incidental to work, where we examine whether the activity caused an employee to fail to perform work, deviate from prescribed duties, or interfere with another employee's work. *Pinder*, 2006 ESD 133 (March 7, 2006). Delivery of campaign material may constitute incidental campaigning if it is indeed incidental to the performance of union business. *See Hoffa*, P179 (November 17, 1995) (distribution of a few campaign buttons before meeting incidental to union business). However, where the campaign activity is the sole or primary purpose of a business agent's visit to a facility, it fails the incidental exception. *Garcia*, 2006 ESD 193 (April 20, 2006), *aff'd*, 06 EAM 38 (May 12, 2006).

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 2016 ESD 335

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