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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*.¹ 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, 34th floor
New York, NY 10018
kroberts@jamsadr.com

¹ 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).

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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 17th 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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DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001
braymond@teamster.org

David J. Hoffa
1701 K Street NW, Ste 350
Washington DC 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

Teamsters United
315 Flatbush Avenue, #501
Brooklyn, NY 11217
info@teamstersunited.org

Louie Nikolaidis
350 West 31st Street, Suite 40
New York, NY 10001
lnikolaidis@lcnlaw.com

Julian Gonzalez
350 West 31st Street, Suite 40
New York, NY 10001
jgonzalez@lcnlaw.com

David O'Brien Suetholz
515 Park Avenue
Louisville, KY 45202
dave@unionsidelawyers.com

Fred Zuckerman
P.O. Box 9493
Louisville, KY 40209
fredzuckerman@aol.com

Teamsters Local Union 355
1030 S. Dukeland St.
Baltimore, MD 21223
dwhite@teamsters355.com
gbrown@teamsters355.com

Dale Pink
Pecan904@aol.com

Eric Wood
ewood@teamsters355.com

Peter Marks
116 Nagle St
Harrisburg, PA 17104
pmarks@ibtvote.org

Paul Dever
1050 17th St NW, Suite 375
Washington, DC 20036
pdever@ibtvote.org

Jeffrey Ellison
214 S. Main Street, Suite 212
Ann Arbor, MI 48104
EllisonEsq@aol.com