

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: JESSE RUIZ,)	Protest Decision 2021 ESD 158
)	Issued: October 17, 2021
Protestor.)	OES Case No. P-161-072021-SO
_____)	

Jesse Ruiz, member of Local Union 19, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2020-2021 IBT International Union Delegate and Officer Election (“Rules”). The protest alleged that local union officials violated the Rules by attending and interfering with parking lot campaign activity while on union-paid time.

Election Supervisor representatives Dolores Hall and Felicia Hardesty investigated this protest.

Findings of Fact

Local Union 19 represents a large unit of United Airlines (UAL) employees at Houston Intercontinental Airport. Supporters of the O'Brien-Zuckerman 2021 slate conducted parking lot campaigning at the facility on July 19, 2021, publicizing the activity in advance on social media. They set up a tent canopy with table and chairs in the parking adjacent to the walkway that led to the workplace. They campaigned to arriving and departing employees for more than 2 hours, from shortly before 12:30 p.m. until about 2:30 p.m.

Shortly after the campaigners erected their canopy, Robert Clever, principal officer of Local Union 19, appeared, together with all executive board members of the local union but one. They took up a position in a small area between the canopy and the pedestrian portal in the parking lot fencing employees use for parking lot ingress and egress. They remained in that position for the entire time the O'Brien-Zuckerman 2021 supporters campaigned. According to Clever, they attended the event because “we wanted to hear what their vision was.” They did not campaign or counter-campaign, distribute campaign material, pick up campaign material from the campaigners, or ask the campaigners questions about issues in the campaign.

Clever stated that he and the executive board members were at UAL that day for a “walk-through,” a periodic site visit to inspect the worksite and speak with members. He said that one purpose of the visit was to stress to members that they “recertify” their spouses for employer-provided medical insurance. However, evidence showed that the so-called recertification was not time sensitive. Insurance terms are on a calendar-year contract and did not require member action in July, the middle of the term. The local union sent its first written reminder to members about recertification by email mid-morning on July 19, 2021, the same day as the walk-through, with a follow-up reminder posted to the local union website on July 31, 2021.

That Clever and the other executive board members chose July 19 for the walk-through, the same day as the planned campaign activity, was happenstance, according to Clever. He said he learned of the campaign activity that day, during the walk-through, when speaking with members at UAL. He also said the board’s decision to attend the campaign activity *en masse* to “hear the vision” was made on the spur of the moment. Clever’s statement to our investigator was

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contradicted by several witnesses, including executive board members, who said that the date the campaign activity would occur was known days (if not more than a week) before it occurred and “was no secret, we all knew about it.” One witness, a steward at the facility, knew days before the event that Clever and the executive board intended to go to the event and remain, so he came to the site hours before his 2:00 p.m. shift to bring them water in a cooler with ice because “it sounded like they’d be out there awhile.”

Evidence suggested that an executive board walk-through at UAL was a rare event. The board’s pre-planned standing-by for hours to watch campaigning was, however, completely unprecedented. Brent Taylor, candidate for South region vice president on the O’Brien-Zuckerman 2021 slate, campaigned in the UAL parking lot that day. He told our investigator that, seeing the executive board in force, several members told him that they had never seen the board “out there.” According to Taylor, “Just about every guy I talked to said, ‘What are they doing here?’”

The location where Clever and the executive board stood required those employees departing work who used the walkway to the parking lot to navigate past them to get to the campaigners’ canopy and, ultimately, their vehicles. Clever stood first in line at the walkway portal through the chain-link fence. Employees arriving for work passed the canopy, then the executive board, before reaching the walkway. Because of fencing and parked vehicles, members entering and leaving the parking lot using the pedestrian walkway had no choice but to walk within a few feet of the executive board. Witnesses reported that some arriving employees stopped at the canopy to listen to the campaign message and to sign cards pledging their support; they were then stopped by members of the executive board when passing through to the parkway. Clever stated he “only chit-chatted” with members as they passed through his line, asking “how their families were doing, what was going on at work, how they were doing on baling hay, maybe, I don’t know.” He denied speaking about the International election.

Clever and the other executive board members denied to our investigators that they campaigned. The O’Brien-Zuckerman 2021 slate campaigners who were present confirmed that the executive board members did not overtly campaign, stating that the board members had no campaign flyers, stickers, placards, or other material and were not presenting a campaign message they could hear. Nor did the board members obtain the campaign literature of the campaigners or ask questions to “hear the vision” the campaigners have for the IBT. Instead, the board members stood by, in a line members had to pass, for the full duration that the campaigners were present.

Joe Garcia, a member of Local Union 767, took the day off work to campaign to Local Union 19 members in Houston. When he saw the executive board, dressed in what he termed “IBT gear,”¹ with their airport access credentials on lanyards around their necks, he introduced himself and said he was on vacation. Clever replied, “We are, too.” Wamon Hock, a campaigner, said that he asked Angel Cantu, an executive board member, if he was on vacation. According to Hock, Cantu laughed in response and said, “Yeah, we’re on vacation.” Clever’s and Cantu’s statements to campaigners on July 19 contradicted what they and the other board members told our investigators. They uniformly said they worked that day and were not on vacation. Clever and at least one other said they began their day at UAL between 5:00 a.m. and 5:30 a.m. and had

¹ Photos showed that Clever and most of the executive board members wore solid color shirts (short-sleeved, collared, button-down-the-front) with the IBT horses-and-wheel logo emblazoned above the breast pocket.

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completed their allotted 8-hour day by the time the campaigning began 7 to 7½ hours later at 12:30 p.m. However, one board member told our investigator that he arrived at UAL with Clever at 9:30 a.m., a mere 3 hours before the board assembled next to the campaign canopy. Another board member said he too arrived “mid-morning.”

Analysis

The Rules, at Article VII, Section 12(a), guarantee members the right to support or oppose any candidate and to campaign for a candidate and of members to receive that campaign message.

This basic right is reinforced by Article VII, Section 12(f), which prohibits “[r]etaliation or threat of retaliation ... 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.

In *Pollack*, P-008 (October 29, 1990), *aff’d*, 90 EAM 8 (November 7, 1990), Election Officer Holland considered the propriety of conduct by officers of Local Union 732 who, after being removed from a TDU meeting, rented the room directly across the hall and observed members enter and exit the meeting. He wrote:

IBT members have the right to gather and discuss issues concerning the election of delegates and alternate delegates to the International Convention free from interference. Similarly, I find that the actions of the local officials in subjecting IBT members attending the TDU meeting to surveillance or creating the appearance of surveillance to be violative of the Election Rules. Such surveillance or the appearance of surveillance is destructive of the fundamental safeguards of ... free and fair elections outlined in the Consent Decree and the Election Rules.

In *Giacumbo*, P-210 (December 5, 1995), *aff’d*, 95 EAM 45 (December 18, 1995), Election Officer Quindel found that a known Carey supporter violated the *Rules* by camping in the lobby of a club where candidate Hoffa was having a fundraiser and making a record of names of those attending.

In *Richards (after remand)*, 2000 EAD 27 (September 27, 2000), *aff’d*, 00 EAM 8 (October 23, 2000), Election Administrator Wertheimer found that a TDU opponent violated the *Rules* by appearing at a TDU meeting, announcing he was there as a “watchdog,” and refusing to leave.

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 (6th Cir. 1948); *see also*, *NLRB v. Grand Canyon Mining Co.*, 116 F.3d 1039, 1045 (4th Cir. 1997)(“creat[ion of] an *impression* of surveillance” violates

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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).

A finding of surveillance does not require verbal statements of surveillance, note-taking, or photography. We held in *Teamsters United*, 2015 ESD 27 (August 28, 2015), that extended observation by a steward from a distance of 40 feet, without those added elements, was sufficient to sustain a finding of impermissible surveillance.

On the evidence presented here, we find that Clever and the other Local Union 19 executive board members present engaged in prohibited surveillance of the O'Brien-Zuckerman 2021 campaign activity and the members who passed by and stopped at the campaign canopy. Occupying a position in the thick of the campaign activity for a period longer than 2 hours, while uniformly dressed to convey official union status, Clever and the executive board gave the objective appearance of watching and keeping track of the members who interacted with the campaigners. This activity violated the Rules.

The board members compounded the violation by doing so on union-paid time. The board members were not on vacation time, as several told the campaigners, and they had not exhausted their work-day obligation to the local union. We find that most if not all the members were on union-paid status and not on break for the entire time they stood in the parking lot observing the campaign activity.

We find unbelievable the excuses or explanations Clever and the other board members gave for their activity. Clever in particular proved noteworthy for conspicuous false statements. Thus, his claim that he did not know the campaign activity would occur on July 19 until arriving for the walk-through that day, and his additional claim that the decision of the board to attend the event as one for its duration, were contradicted by other members of the board, the steward who brought him water, and the social media advertising of the event. His claim that he arrived before 5:30 a.m. was contradicted by another board member, who said he and Clever arrived at 9:30 a.m. And his claim that he and the board were there to “hear the vision” was contradicted by the utter lack of effort to obtain campaign literature or ask campaigners questions about campaign issues.

For these reasons, we GRANT the protest.

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. “The Election Supervisor’s discretion in fashioning an appropriate remedy is broad and is entitled to deference.” *Hailstone & Martinez*, 10 EAM 7 (September 14, 2010).

We order Robert Clever and other members of the Local Union 19 executive board to cease and desist from interfering with campaign activity protected by the Rules, including by surveilling such activity on union-paid time in parking lots where members park their vehicles.

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We further order Local Union 19 to post the notice attached to this decision on all union bulletin boards at UAL work areas at IAH. The posting must be completed by Tuesday, October 19, 2021, and must remain posted through November 15, 2021. No later than Wednesday, October 20, 2021, the local union must submit a declaration of compliance with this notice-posting order to OES.

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. Any party requesting a hearing must comply with the requirements of Article XIII, Section 2(i). All parties are reminded that, absent extraordinary circumstances, no party may rely in any such appeal upon evidence that was not presented to the Office of the Election Supervisor. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Barbara Jones
Election Appeals Master
IBTappealsmaster@bracewell.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, all within the time prescribed above. Service may be accomplished by email, using the “reply all” function on the email by which the party received this decision. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Barbara Jones
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Richard W. Mark
Election Supervisor

NOTICE OF TEAMSTERS ELECTION RULES VIOLATION BY THE LOCAL UNION 19 PRESIDENT AND EXECUTIVE BOARD

The Election Rules for election of Teamsters International Officers protect the right of members to support and campaign for any candidate or slate. The Rules also protect the right of members to hear and receive campaign messages.

The Rules prohibit interference with these rights.

The Election Supervisor has found that Local Union 19 President Robert Clever and most of the Local Union Executive Board violated the Rules by interfering with campaign activity in the UAL parking lot on July 19, 2021 and doing so on time paid for by the Union.

The Election Supervisor will not tolerate violation of the Election Rules. The Election Supervisor has ordered Clever and the Executive Board to cease and desist from interfering with rights protected by the Rules.

The Election Supervisor has issued this decision in *Ruiz*, 2021 ESD 158 (October 17, 2021). You may read this decision at [https://www.ibtvote.org/Protest-
Decisions/esd2020/2021esd158](https://www.ibtvote.org/Protest-Decisions/esd2020/2021esd158).

Any protest you have regarding your rights under the Election Rules or any conduct by any person or entity that violates the Rules should be filed with Richard W. Mark, 1990 M Street, N.W., Suite 650, Washington, D.C. 20036, telephone: 844-429-8683, fax: 202-925-8922, email: electionsupervisor@ibtvote.org.

This is an official notice ordered by the Election Supervisor. It must remain posted through November 15, 2021 and must not be defaced or covered up.