

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

<b>IN RE: DALE VARNEY</b>	)	Protest Decision 2021 ESD 65
<b>and JAMES TODD,</b>	)	Issued: February 27, 2021
	)	OES Case No. P-080-022021-GP
<b>Protestors.</b>	)	
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Dale Varney and James Todd, members of Local Union 222, 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 delegate candidate Britt Miller campaigned inside the facility at ABF, in violation of the Rules.

Election Supervisor representative Jim Devine investigated this protest.

**Findings of Fact and Analysis**

Article VII, Section 12(e) permits campaigning in employer parking lots. Generally, employers are permitted to ban campaigning in work areas inside employer facilities. If an employer imposes such a ban, it must be enforced on a nondiscriminatory basis. Article VII, Section 12(f).

Local Union 222 will elect five delegates and four alternate delegates to the IBT convention. Two slates are contesting the election. The 222 for OZ slate is managed by protestor Varney; protestor Todd is a delegate candidate on that slate, which consists of rank-and-file members. The Teamsters United for Power slate is comprised of principal officer Spencer Hogue, other officers and business agents of the local union, including Miller, and rank-and-file members.

On February 18, 2021, candidates on the Teamsters United for Power slate campaigned in the employer parking lot at ABF in Salt Lake City. They arrived at approximately 5:30 a.m. to meet the arriving morning shift. Miller is vice president of the local union and serves as the business agent for the ABF facility. He took vacation time that day to campaign and to attend to personal business. The campaigners distributed campaign flyers to members and offered them donuts in the ABF parking lot.

The campaigning at ABF ended by 8 a.m. At that point, Miller entered the facility to attend to some business agent duties he had. He did so even though he was on vacation at that time. He took the leftover donuts inside and placed them on a table in a common area for members as well as management to consume. Miller told our investigator that he met with terminal manager Jeremy Sands to discuss grievances, attendance issues, and recent bad weather that had affected the work. Miller remained for the 9 a.m. pre-shift meeting of 8 or 9 drivers. While in the building, Miller said he spoke with drivers and answered questions they had related to their work, the contract, and working conditions. Following the pre-shift meeting, Miller remained for a few minutes to speak with member Mike Capp and two new employees who had questions about the union. Miller answered the questions of the new employees and then left ABF and went home.

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Miller denied campaigning inside ABF. He further denied campaigning to members who were on employer-paid time.

Terminal manager Sands told our investigator that Miller met with him before the pre-shift meeting on the issues described above. He also said that Miller comes to the facility every month or so to discuss grievances, work issues, and to answer drivers' questions. Sands said that Miller left donuts on the table in the common area, which he has done before, describing it as neither common nor unusual for him to do so. Sands did not observe or hear of Miller campaigning inside the building. Sands said that he addressed both sides about campaigning at the start of the electoral period, reminding them that campaigning inside the building was not allowed. He said he has seen nothing from either side that violated that instruction.

Brandy Sturmer, an office clerical employee who is a member of Local Union 222, told our investigator that she saw Miller and others campaigning in the parking lot when she arrived for work that day, and she saw Miller again when he came inside after the campaigning was done. She did not see or hear him campaign inside the building that day and, indeed, has never heard of him campaigning inside the building. She said he brought donuts in, as he sometimes does.

Capp is employed as a dock worker and is a member of the union. He asked Miller to speak with two new employees that morning and stood by as he did so. Capp said that Miller said nothing about the election and did not campaign.

With respect to campaign literature, Miller told our investigator that when he entered the building after campaigning, he saw some of the flyers his group had distributed outside laying on tables inside the building. He denied passing out flyers inside or even having flyers with him to distribute. No witness contradicted his denial.

Protestor Todd is employed at ABF and is a candidate on the 222 for OZ slate. He told our investigator that he arrived for work at 9 a.m. that day. When he entered the building, he saw Miller speaking with a member and handing him a donut. Todd did not hear what Miller said to the member. Miller left shortly after. Todd spoke with the member who he had seen speaking with Miller. He asked the member what Miller said. According to Todd, the member said that Miller encouraged him to vote in the delegates and alternate delegates election but did not state which candidates to vote for. Todd said that the member he spoke with refused to be identified, although Todd knows who he is. Our investigator was unable to interview the member because Todd declined to identify him.

Todd's statements to our investigator are consistent with evidence submitted as part of the protest showing what he previously told to other members of the 222 for OZ slate. The filed protest quotes what it states is a group text message "received from James Todd" the day after the incident, *viz.*

Britt [Miller] in the office yesterday telling people to vote and giving out doughnuts. I guess they were outside the whole time then Britt brought them in. And talked to some of the 0900 [9 a.m.] guys. The [campaign] flyer was on the linehaul dispatch desk all day yesterday. I'm not sure exactly what was said but the brother Britt was talking to said Britt just told him to vote not who to vote for.

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The protest allegation – that Miller “was campaigning inside the facility of ABF Freight” – is demonstrably false, as neither the protest itself, the eyewitness evidence presented to our investigator by protestor Todd, the eyewitness evidence presented by Miller, the terminal manager, the office clerical, or member Capp proved or even suggested that Miller campaigned inside the building. Further, the campaign literature on tables inside the building was not placed there by Miller.

For these reasons, we DENY this protest. Further, we caution the protestors here that should any of them, file a protest in the future that lacks *any* evidentiary support, as the protest here does, they will risk a fine for abusing the protest process.

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  
*2021 ESD 65*

*Varney & Todd*, 2021 ESD 65  
February 27, 2021

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