

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: GRANT MAERTZ,)	Protest Decision 2021 ESD 68
)	Issued: March 4, 2021
Protestor.)	OES Case No. P-069-020421-FW
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Grant Maertz, member and delegate candidate in Local Union 952, 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 Emerson Diaz, member and business agent of Local Union 952, violated the Rules by monitoring and surveillance Maertz and other campaigners as they campaigned in the employer parking lot of the CVS distribution center in La Habra CA on February 3, 2021.

Election Supervisor representative Michael Miller investigated this protest.

Findings of Fact

Local Union 952 will elect 12 delegates and 5 alternate delegates to the IBT convention. A full slate, a partial slate, and an independent candidate are competing in that election. Protestor Maertz is the lead delegate candidate on the Solidarity slate. Respondent Diaz is not a candidate in the delegates and alternate delegates election. The officers of the local union that employs him are candidates on the Members First slate.

This protest arises out of two instances of campaigning by protestor Maertz and other candidates on the Solidarity slate on February 3, 2021, in the employer parking lot at the CVS distribution center in La Habra CA. Campaigning that day with Maertz were delegate candidates Anthony Seiler, Julio Moncada, and Ulises Godinez, and alternate delegate candidate Justin Aguirre, as well as supporters of the slate. Maertz asserts that Diaz improperly interfered with campaigning by engaging in surveillance and intimidation to interrupt candidate communications with members during the midday shift change. Maertz alleges similar disruptive activity by Diaz and shop stewards associated with Diaz during the afternoon.

Maertz told our investigator that his group decided to campaign at CVS to raise the slate’s visibility there. Although Maertz previously was the elected local union president and Godinez was the business agent assigned to CVS La Habra, many candidates on the Solidarity slate are employed at UPS and are not well known at CVS. Maertz arrived around 12:30 p.m., about a half hour after the noon shift campaigning had started. He said he and his team were having no difficulty canvassing and handbilling, until respondent Diaz, the business agent for that worksite, walked out of the center and began observing the campaign activity. Maertz characterized Diaz’s activity as “surveillance,” telling our investigator that Diaz stood about 20 feet away from the campaigners. Maertz said that Diaz glared at them with a disapproving look. Despite this, Maertz said that he and his team were able to successfully handbill and canvass without interference. The campaigners left the parking lot for another location after the noon shift change ended.

At about 4:40 p.m. the same day, Maertz and the other campaigners returned to CVS for the early evening shift change. At that point, according to Maertz, the situation worsened. Maertz

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told our investigator that Diaz came out to the parking lot again, went to his car parked in the lot, and then walked over to “hover” near the campaigners again. At one point, Maertz said that Diaz was within “about a foot” of Maertz’s team, which Maertz saw as an effort to intimidate them. Shortly thereafter, according to Maertz, a negative verbal exchange occurred between the campaigners and a CVS steward. Maertz said that steward Gary Brockett began yelling insults at the campaigners, and the yelling brought the CVS warehouse manager out to the parking lot to observe the back-and-forth. According to Maertz, the warehouse manager was concerned that matters were getting out of hand, so the manager first told the campaigners they had to leave and then called local police to the scene. The police arrived around 5 p.m. and, according to Maertz, stayed for a while, observing the campaign activity from a distance, and then left when it was clear that things were calm. Maertz stated that, aside from this brief incident, neither the warehouse manager nor Diaz took any action to disrupt or interfere with the campaigners’ handbilling and canvassing, either at the midday or later afternoon shift changes. Maertz said that he, Seiler, Moncada, and Aguirre continued their canvassing, which was successful by their accounts. All the while, according to Maertz, Diaz continued to stare at them during both sessions. In addition, Diaz occasionally spoke on his cell phone to a party unidentified to Maertz, which Maertz found somewhat intimidating, given that Diaz clearly was not pleased with the campaign activity. Maertz agreed, however, that Diaz did not actively bother the campaigners, except to tell them one time at the start of their activity that they had no business being there and should leave. Maertz ignored this directive and continued his campaign work, and Diaz did not repeat the statement. Maertz filed his protest because he felt that Diaz had no right to monitor what they were doing for such a long time, and to let his steward group throw insults at Maertz’s team members while they were trying to campaign.

Our investigator interviewed the individuals involved in campaigning (Maertz, Aguirre, Godinez, Moncada, and Seiler), the named respondent (Diaz), and the shop stewards (day-shift stewards Henry Cantu and Job Parra, and afternoon shift stewards Anthony Chavez, Job Parra, and Joshua Peterson). These witnesses all provided detailed information to our investigator. Significantly, there are no material conflicts among the factual accounts of the witnesses, allowing for a clear reconstruction of the protested events.

1. The Midday Campaign Activity

For activity occurring around the noon shift change, the campaigners told our investigator that the canvassing “went great” (Seiler), that there “were no issues” (Godinez), and they were able to handbill many members successfully. One witness estimated that the campaign reached some 400 individuals, as members came and went through the employee entrance during the midday shift change (Moncada).

The campaign witnesses said that Diaz was also in the parking lot during the midday shift change, observing the campaign activity from “about 10-15 yards away” observing their activity, talking on his phone occasionally, and sometimes speaking with members who came up to him (Seiler).¹ Diaz engaged in this activity while, uninterrupted, the Solidarity slate supporters campaigned to members by the employee entrance.

¹ Moncada estimated that Diaz stood about 50-100 feet from the campaigners.

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Diaz has been the business agent for CVS La Habra distribution center since the Jimenez administration took office in January 2020. The volume of grievances and problems at this worksite requires that he spend all day, two to three days per week, at the warehouse, and February 3 was such a day. Diaz was engaged in union business, often inside the building but sometimes in the parking lot, speaking with and representing members. Diaz told our investigator that, on the date in question, he stepped outside at about noon and noticed that Solidarity slate campaigners were handbilling CVS employees around the workers' entrance off the parking lot. Diaz noticed slate members Seiler, Moncada, and Tim Norton actively soliciting support by distributing slate handbills and talking with members coming and going from the parking lot into work. At one point, Moncada approached Diaz and in a teasing manner offered him a handbill; Diaz replied, also teasingly, "no thanks, I have enough toilet paper already at home."

Diaz remained outside, speaking with members, which he said was his routine. He said he has found it productive to meet arriving members and answer their questions as they headed into work, and also meet departing members as they headed home. While engaged in this routine, Diaz said he saw Solidarity slate leader Maertz arrive. Diaz denied telling Maertz or any of his campaign team to leave, or that they had no business being there. Further, neither Diaz nor anyone else disturbed or interfered with the Solidarity slate handbilling. Maertz saw Diaz standing outside and asked why he was there, to which Diaz replied, "I'm here to take care of my members." He told Maertz, "I'm not going to stay and watch you indefinitely," nor did he. At about 12:45, Diaz and stewards Henry Cantu and Job Parra left the facility to go to another location to participate in a union-related conference call. They returned to the warehouse after the call, and by that time the campaigners were gone.

2. The Afternoon Campaign Activity

The Solidarity Slate campaigners returned to the CVS La Habra parking lot around 4 p.m., to campaign to members during the afternoon shift change. Once again, the candidates and volunteers were able to engage in campaigning, as the shift change, although the activity did not proceed as smoothly as it had at midday. Maertz and Godinez were known to CVS stewards, and those stewards addressed comments to them during the afternoon shift change.

Specifically, Seiler told our investigator that when three CVS stewards reported for work on the afternoon shift and walked to the employee entrance, the stewards taunted the campaigners with accusations, which Seiler said made him and the others feel on the spot and unwelcome. Insults were traded back and forth, with the stewards shouting, "you have no business here," "you are not wanted here," and "you left us high and dry," and similar things. One of the stewards was Gary Brockett, but Seiler did not know the other two. According to Seiler, Brockett was particularly vocal, which set Seiler off, so the two confronted each other in front of the employee entrance in a heated argument. When this occurred, Diaz approached to get between the two men, telling Seiler, "don't talk to my stewards that way." Seiler made it clear to the steward and to Diaz that the campaigners "were not going anywhere," and he resented the confrontation that he stated the CVS stewards started.

At that point, according to Seiler, the CVS warehouse manager came out to see what was going on. The manager told the campaigners to leave, but then Diaz approached the manager and told him that the Maertz team was campaigning, and that they had the right to canvass workers off

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the clock in the employer parking lot. To Seiler's observation, Diaz "talked the CVS manager down," which resulted in Maertz's team being allowed to continue canvassing, which they did to cover the late afternoon shift change, until deciding to leave about 5:30 p.m. Seiler and Diaz knew each other from previous encounters, and Seiler said the two talked a bit about the bad feelings between the two groups. Seiler estimated that his group canvassed "about 50 members" during the entire two sessions of handbilling, midday and later in the afternoon.

Other Solidarity slate campaigners gave factual accounts of the afternoon events similar to Seiler's. Moncada described the three stewards arriving in afternoon, watching the Maertz group from about fifty yards away, and eventually walking to the building. As they approached the Maertz workers to go into the building, the stewards shouted insults and profanity at the campaigners. Moncada told our investigator he took offense at the stewards' invective, which he said was heated, loud and abusive. Moncada said the campaigners insulted the stewards in return.

Moncada told our investigator that the exchange between Seiler and CVS steward Gary Brockett was particularly intense, a shouting match, and that business agent Diaz came up to the two of them to keep the shouting from becoming physical. At that point, the CVS manager came out and told the CVS employees either to go inside and clock in or go to their cars. Moncada said that the manager's intervention quieted the situation and separated the two groups. Moncada confirmed that the La Habra police showed up after the shouting match had ended but stayed off to the other side of the parking lot, where, again, Maertz and Diaz spoke to them separately, apparently explaining the situation.

Aguirre and Godinez provided our investigator with similar accounts of events occurring on the afternoon of February 3. All the campaigners witnessed the confrontation between the stewards and the campaigners; the appearance of the CVS manager and Diaz; the ratcheting down of tensions, aided by Diaz; and that campaign activity was carried on. The campaigners generally agreed that they had reached several hundred workers over the afternoon of canvassing, and that the day was a success.

Diaz's account of the afternoon does not differ materially from that of the campaigners. He told our investigator he met with three of his stewards, Gary Brockett, Joshua Peterson, and Anthony Chavez, who arrived in the parking lot around 4:30. At the outset, the stewards asked Diaz why Maertz was there. Diaz told our investigator the stewards regarded Maertz, the former local union president, and Godinez, the previous business agent, as enemies given the "bad blood with the past administration." Diaz said he informed the stewards the Maertz team was there to campaign for the delegates election, and that they had a right to be there doing that, even if the stewards found their presence unwelcome. Diaz told our investigator he did not fire them up about Maertz's presence, nor did he tell them to leave Maertz alone. He merely informed them why Maertz was there, and that the team had a right to do what they were doing.

Diaz said that when Brockett, Chavez, and Peterson went inside to clock in for their shifts, they had to go directly past the Maertz group because the campaigners were clustered in front of the employee entrance. As the stewards walked in, Diaz said a denigrating verbal exchange erupted between the stewards and the Maertz group, and Seiler approached – if not charged – Brockett and got directly in Brockett's face. The shouting between the two men escalated nose to nose, and Diaz immediately walked over to stand between the two men to de-escalate the situation.

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The exchange was loud and intense enough that it brought the CVS manager to the parking lot and prompted a call to the police. The police came shortly thereafter, and the two sides kept their distance from each other, with no other close contact. Diaz talked to the La Habra police officers, explained that the Maertz people “have every right to be here,” and urged that they not be cited for trespass or thrown off the property, even though they were not CVS employees and had not given CVS management any prior notice that they would be coming onto the parking lot and campaigning that day. Diaz left shortly after and heard later that Maertz and his group left around 6 p.m., after they had continued handbilling uninterrupted for both the midday and early evening shift changes.

Diaz insisted that his presence did not intimidate or interfere with what Maertz and his team were doing. Diaz affirmed that he never told Maertz and his people that they had no right to be there. Diaz did not see that his presence to watch Maertz hand billing was in any way interfering or intimidating.

The stewards told our investigator they had come to work early on February 3, as usual, at about 4:30 p.m. before the 5 p.m. start of the shift. Brockett and Chavez had strong negative views of certain of the campaigners, based on what they considered to be their poor performance in the past as business agents. That history resulted in a lot of “bad blood” between the stewards and all of Maertz’s administration.

Brockett, Chavez, and Peters all told our investigator details of the heated language exchanged between the steward and the campaigners. Brockett said that Godinez taunted him by putting one of Maertz’s slate flyers in front of Brockett as he was walking toward the door, to which Brockett responded, “I don’t need your flyers” and kept walking. A lot of insults and foul language ensued, as their walking slowed, and their rhetoric accelerated. The whole situation was heated and tense. Brockett told our investigator that it got worse when Maertz campaigner Seiler came up directly into Brockett’s face, nose to nose. Ultimately, however, the stewards also agree that when the CVS Manager and Diaz came to the site of the confrontation; the tension dissipated, and the stewards entered the building.

The stewards all confirmed to our investigator that Diaz spends all day, several days a week at the CVS warehouse because there is much union business that needs to be handled, and that he typically spends much time in the parking lot at shift changes to meet with members and answer their questions.

Maertz submitted two still photos and three videos taken during the campaign activity. All were taken by a campaigner, presumably Maertz, who was standing at or adjacent to the employee entrance to the warehouse. The first still shot, taken during the midday campaign activity, shows Diaz approximately 50 feet north of the employee entrance area, standing on the lawn beneath a tree and talking with another person. The second still shot, taken later in the afternoon, shows Diaz speaking with a person some 80 feet or more southeast of the employee entrance, in the parking lot near a bicycle rack. This shot, wide-angle and taken at distance, shows no other persons in the frame in the parking lot. In neither shot does Diaz appear to be watching the campaign activity. Neither of these photos demonstrates any improper activity on his part.

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The three videos were shot in the late afternoon, in the aftermath of the exchange between Brockett and Seiler. In the first, which is three seconds in length, Diaz is standing in the midst of a close knot of seven men. Diaz and three of the men, all wearing Teamsters jackets, have their backs to the camera. The other four men are facing Diaz and the first three. Although there is loud talking, none of it can be deciphered, and none of the men are moving toward or away from the others. This very short clip corroborates the evidence that Diaz entered between the men to de-escalate a volatile moment.

The next video is 1 minute and 17 seconds in length. The visual focus of the clip is Diaz, almost exclusively. He is pacing near the employee entrance, waiting for the CVS manager to complete a phone call, after which he addresses the manager. The audio portion of the video records the manager, on the phone, stating the following: “I’ve got things kind of calmed down. I’m asking the guys who aren’t employees to leave the property. They’re still kind of arguing with me. They don’t want to leave. I’m asking them to reach out to Sean separately to set up a time they can be here.” The manager stops speaking while he listens to the other party to his phone call, whose voice is not audible on the video clip. The manager then ends the call. When he does so, he addresses the group again, stating the following: “Guys, I understand everybody’s got the right to be here. My issue right now is it’s shift change, we’ve got the next crew coming in, I need to protect the associates that work here.” At this, Diaz interjects, telling the manager, “Yeah, don’t worry, it’s not going to – whatever happens, they’ll make it to work.” The manager then states, “For right now, I’m asking, if you guys aren’t associates here, please leave the property. Reach out to Sean, set up some other time, ok? Right now I need things to calm down.” At this, Maertz speaks up: “We’re just campaigning. Why is he here [apparently gesturing at Diaz, who remains in the video shot]?” Maertz continues: “We’re campaigning, and he’s opposite, and he’s here causing problems. How is that our fault? It’s not our fault. We’re here peacefully.” The manager then replies, “I understand that, but you’re not employees of CVS and right now my concern is for our associates.” The clip then ends.

The third clip is 33 seconds long and was shot when the police were on the scene. Again, Diaz is the visual focus of the clip. The audio consists of an exchange between Maertz and Diaz, as follows:

Maertz: I’m telling you, you’re not leaving here, you’re 3 feet from us while we’re campaigning.

[cross talk]

Diaz: You guys go do your business. I’m not interfering in your business. Go talk to the members. You have every right to do that. [Pointing off screen] There’s another shop steward right here. You can go talk to my shop steward. You have every right to do that. [Walking away from the camera and in the direction of the police officers, who are seen some 40 feet in the background] I’m going to walk away so you can talk to the members.

Maertz: I’m going to file a charge because you won’t leave us alone.

Although the 3 second clip appears to show the immediate aftermath of the exchange between Brockett and Seiler, as noted, no video shows the exchange itself.

Finally, two posts were made to social media following the campaigning on February 3. The first was from steward Brockett. He wrote the following:

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When Grant Maertz former dismissed and disgraced asshole from the old bullshit slate that ran our local for years and left us hanging shows up to my work to spread his dog shit “solidarity” slate we second shift stewards have to go in and lay the law in true Teamster fashion..and with the help of the police.... I basically told Grant he’s a piece of shit and to never step foot in our yard again. This is our house. Along with some pretty heavy and harsh verbiage. I bet he didn’t see that coming at all. He better think twice about showing his face here again. Because All of us shop stewards will be there in his face and in the faces of his dumpster fire drunk ass slate. Don’t fire me up! CVS HEALTH IS CLOSED FOR BUSINESS GRANT. Go show “solidarity” at Walmart or something.

Brockett removed this post shortly after he made it.

The second post followed the filing of the instant protest and was made by Diaz. It was a comment added to a post that was critical of the position Maertz’s Solidarity slate had on pensions. Diaz’s post read:

Grant is a lying sack of shit! Pressing bullshit charges on me. Have some integrity you fucking sore loser!

Analysis

Under Article VII, Section 12(e) of the Rules, candidates and their supporters have the right to campaign in employer parking lots where employees park their vehicles. The Maertz campaigners exercised this right at the CVS distribution center on February 3.

The protest alleges that business agent Diaz interfered with their campaign right. We reject this allegation, for several reasons. First, we find that Diaz took no action to impede the campaigners or to interfere with their ability to spread their message to members entering and exiting the CVS facility.² We credit Diaz’s statements about his actions that day, both during the midday and late afternoon campaigning, which are corroborated by two day-shift and three afternoon-shift stewards and, importantly, by some of the members of the Maertz team who campaigned at the site. Further, we find from the evidence presented by the campaigners themselves that they were able to reach hundreds of members with their message and that they considered the day highly successful.

The lone exception to this unqualified success, which came only from one or two campaigners, was that the disruption caused by the sharp exchange between Brockett and Seiler may have dampened the campaigners’ efforts to reach even more members than they reached. Notably, the protest is filed against Diaz – who settled the confrontation – not Brockett, who played a major role in it. Further, we find that Diaz took additional steps to protect the campaigners’ right to continue their activity, first by speaking with the warehouse manager to divert him from his initial plan to force the campaigners off the property, and then with the arriving police to explain

² *Cf., e.g., Toole*, 2020 ESD 12 (August 25, 2020), where the steward ushered members from their cars past campaigners so as to frustrate the campaigners’ efforts to disseminate their message.

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that trespass law is overridden by the parking lot access rule and the court order enforcing it. As a result of Diaz's actions, the campaigners were able to remain even after the time the warehouse manager asked them to leave, and they were able to reach even more members because they remained on property.

Further, although some campaigners thought the Brockett-Seiler tete-a-tete diminished their ability to maximize their campaign reach, Brockett's words do not constitute impermissible interference or a threat of violence. We have held that violence or the palpable threat of imminent harm violates the Rules, where conduct short of that does not. *Yocum*, 2000 EAD 18 (September 1, 2000) (loud, rude and obnoxious behavior of union steward as member attempted to have other members sign petition not unlawful); *Godin*, 2016 ESD 127 (February 29, 2016) (same); *Wasilewski*, 2000 EAD 14 (August 14, 2000) (words exchanged between two sides in the context of petitions being signed); *Rudolph*, P861 (August 29, 1996) (no violation where tempers flared briefly on each side, words were exchanged and a few pushes); *Galvan*, 2016 ESD 172 (April 13, 2016) ("Fuck you"/"punk" exchange between opposing campaigners did not violate the Rules where no palpable threat of imminent physical harm existed). Again, we note that the protest was not leveled against Brockett. We further note that Seiler, a campaigner, was at least equally involved in the action with Brockett, which would undermine the merit of any protest that might be filed. See Article XIII, Section 1 ("No protest of any person ... shall be considered if such person ..., or anyone acting under their direction or control or on their behalf, caused or significantly contributed to the situation giving rise to such protest."). Nor does Brockett's social media post, quickly removed, persuade us to any other conclusion. The post, grandiose in its statements, was inconsistent with Brockett's words during the February 3 incident. Although Brockett spoke angrily to the campaigners, no one claims that Brockett sought to physically remove the campaigners from the premises. Rather, he questioned their moral authority to seek the votes of members he believed they had abandoned.

Finally, we reject the protest's claim that Diaz surveilled the campaigners in violation of the Rules. We do so because Diaz engaged in none of the activity necessary to establish the elements of such a claim. See, *Jackson*, 2016 ESD 138 (March 3, 2016) (no objective evidence of impermissible surveillance where alleged surveillers did not take photos, make notes, make statements, or engage in other acts associated with surveillance).

For all of these reasons, 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. 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

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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, 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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