

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: STEPHEN JONES and)	Protest Decision 2001 EAD 276
ROBERT SMITH,)	Issued: March 28, 2001
)	OEA Case Nos. PR030616SO and
Protestors.)	PR030813SO
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Stephen Jones, a Local 41 member, filed a pre-election protest pursuant to Article XIII, Section 2(b)(5) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“Rules”) against Robert Smith. Jones claims that Smith threatened Al Hellebuyck with physical harm in retaliation for his exercise of his political rights. Smith subsequently filed a pre-election protest against Hellebuyck claiming that Hellebuyck harassed and intimidated him and other ABF employees and campaigned on company time and property.

Election Administrator representative Dolores Hall investigated this protest.

Findings of Fact

Smith and Hellebuyck are Local 41 members and co-workers at the Arkansas Best Freight (“ABF”) facility in Kansas City, MO. They have known each other for approximately thirty years, socialized, and participated in past elections running as alternate delegates for the same slate. For the last several months, they have been on opposite sides of the local’s election for delegate and alternate delegates. Smith supports the Phil Young-Jim Hoffa Members First Slate, headed by the local’s president (Young). Hellebuyck is running as a delegate candidate for the Dennis Speak Team slate, headed by the local’s secretary-treasurer (Speak).

On March 9, 2001, at approximately 7:30 p.m. Hellebuyck followed Smith into the men’s bathroom and started talking to him about the election. During that discussion, Hellebuyck claims that Smith used several threatening phrases, including “if you want to get physical, it can get physical,” and “if you sons of bitches want a bloodbath, there are enough crazy bastards around still to have a bloodbath.” Hellebuyck says that Smith also told him that if Hellebuyck didn’t stop mentioning Smith’s or his wife’s name in discussions with other members, he was going to “kick [Hellebuyck’s] ass.” Hellebuyck admitted that he “blew off” Smith’s comments, and says because of that he did not file a protest over the incident. (His friend, Jones, did, because he was concerned by Smith’s alleged behavior.)

When our investigator told Smith of these allegations, he responded to the effect that: “He told you I said that? Let’s put it this way, I told him if he didn’t stop, I’d take it to the next level and he wouldn’t be happy.” Smith also says that after this, Hellebuyck followed him into the bathroom, placed his hand on Smith’s shoulder against Smith’s wishes, ignored Smith’s repeated instructions to leave him alone and blocked Smith’s attempts to leave.

There were no witnesses to the former friends' verbal exchange. However, one Local 41 member witnessed Hellebuyck blocking the doorway and preventing Smith from leaving.

Smith alleges that Hellebuyck regularly follows him around at work and "badgers" him about the election, even when he tells him not to bother him. He also claims that Hellebuyck campaigns at the ABF facility during working hours by walking around and "interrupting" other employees at work. He says that Hellebuyck also campaigns while on the road by communicating with other members on his truck's radio. He claims that this behavior is such a problem that it has been noticed by ABF supervisor Ron Duncan, who has discussed it with Hellebuyck. Smith claims that Hellebuyck's behavior amounts to "intimidation," "harassment" and "campaigning during working hours" in violation of the *Rules*.

Hellebuyck denies that he constantly "badgers" Smith about the election, although he admits talking to him about election matters on occasion. He admits that he sometimes campaigns by walking around the ABF facility and talking to workers while they are working, but justifies this by claiming he only does so while he is not "on the clock." Hellebuyck also says that any campaigning over the radio while driving is "incidental" to his work as a driver. He denies that Duncan, or any other ABF supervisor, cautioned him about the campaigning he does while on or off work. Duncan agreed that he has never cautioned Hellebuyck about campaigning.

Analysis

We DENY Jones' protest against Smith pursuant to Article XIII, Section 1 of the *Rules*, which provides that protests shall not be considered when the protestor "caused or significantly contributed to the situation giving rise to the protest." Hellebuyck's conduct here merits this result, since he physically blocked Smith from leaving the bathroom in order to avoid a continuation of their interchange, and in doing so may well have touched Smith despite his request that he not do so. We do so even though Jones, rather than Hellebuyck, filed the protest, since Hellebuyck is the real party in interest.

We likewise DENY Smith's protest under the above-referenced provision of Article XIII, Section 1. We do so because of Smith's improper remarks to Hellebuyck during their March 9 interchange. Thus, while Hellebuyck appears to have crossed the line and campaigned in a non-incident manner among his co-workers during their work time, that allegation came before us only in response to the Jones protest, which was caused in part by Smith's behavior. Smith and Hellebuyck must in the future refrain from conduct that is inconsistent with their obligations as IBT members and putative union leaders under the *Rules*.

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 Administrator 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:

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Kenneth Conboy
Election Appeals Master
Latham & Watkins
Suite 1000
885 Third Avenue
New York, New York 10022
Fax: 212-751-4864

Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15th Street NW, Tenth Floor, Washington, DC 20005 (Fax: 202-454-1501), all within the time prescribed above. A copy of the protest must accompany the request for hearing.

William A. Wertheimer, Jr.
William A. Wertheimer, Jr.
Election Administrator

cc: Kenneth Conboy
2001 EAD 276

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