

ELECTION APPEALS MASTER

IN RE:

RICHARD BERG,

Protestor.

06 Elec. App. 058 (KC)

ORDER

This matter is an appeal from the Election Supervisor's decision 2006 ESD P-06-303-062806-HQ issued June 29, 2006.

A hearing was held before me on July 14, 2006. The following persons were heard by way of teleconference: Richard Mark, Steven R. Newmark and Dolores Hall of the Office of the Election Supervisor; David Hoffa, for Richard Lopez; Barbara Harvey and Jay Dennis for Richard Berg, the protestor; William Widmer for Local 743.

This is a case of alleged violence and retaliation, the most serious specifications of misconduct under the Election Rules. To substantiate such allegations, rigor and discipline in the investigation and analysis are essential.

The facts are these: two rival candidates in union politics pass each other in a public area at the IBT Convention in Las Vegas. They exchange heated and derogatory comments in the context of their political rivalry. Political words alone of course are completely protected under the Rules, regardless of how vulgar or aggressive. The two scuffle. The hand of the accused comes into contact with the face of the accuser. The accuser concedes that he received no injury of any kind to his face. Four witnesses at the scene were interviewed, and none saw any blow struck. Security videos were scrutinized and they too contain no evidence of the delivery of a "punch", which is the term utilized (apparently) by the accuser.

There is reference in the Election Supervisor's decision to a "police report" and an "arrest warrant." Neither is in the record, and it became apparent during the Hearing that the Election Supervisor has not examined them, or even confirmed that they exist.

Much is made in the Election Supervisor's decision of the accused's guilt being established by evidence of flight from the scene of the "crime" and evasion of the investigator's questions. At the Hearing, however, it was established that the accused merely moved across the street, and that he voluntarily presented himself to investigators the very next day.

On these facts, I reject the inference of "guilt" relied upon by the Election Supervisor and strike from the record those investigative findings predicated upon the improperly drawn inference.

It is necessary for the integrity of the record that the two aforementioned pieces of police evidence be obtained by the Election Supervisor, and that he evaluate and report upon them.

The only linkage to the Election Supervisor's conclusion that violence occurred in this incident is the selection of the single word "punch" by the accuser (apparently) to describe physical contact caused by the accused. Webster's Third New International Dictionary defines "punch" as follows: "to strike with a hard and forceful blow, usually with a fist," delivered with a "quick forward thrust."

The Election Supervisor's decision does not contain any evidence of careful interrogation of the accuser on the specifics of the physical interaction of the two participants. Astonishingly, it appears that the Election Supervisor simply accepted the protest allegation that "Lopez punched Berg in the mouth with a closed fist" (Decision, page 1) and then made the finding "that Lopez assaulted Berg as alleged in the protest" (Decision, page 3). This is mystifying, since there is no dispute that there was no cut, bleeding, bruise, swelling or even redness, which contradicts the claim that a forceful blow was landed on the face of the accuser.

