

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: MIKE HAGENBURG,)	Protest Decision 2006 ESD 268
)	Issued: May 24, 2006
Protestor.)	OES Case No. P-06-241-032406-NE
_____)	

Mike Hagenburg, member and alternate delegate candidate from Local Union 804, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that candidate Ken Reiman left campaign literature inside a work area at the UPS Farmingville facility, in violation of the *Rules*.

Election Supervisor representative Steven R. Newmark investigated this protest.

Findings of Fact

Protestor Hagenburg alleged that Reiman left two stacks of campaign literature inside the security booth at the UPS Farmingville facility on March 22, 2006. All persons who enter or exit the Farmingville work area must pass through the security booth. Hagenburg claimed that he noticed one of the stacks of materials on the entrance counter of the booth immediately after Reiman left the materials there. According to Hagenburg, the guard said he had given Reiman permission to leave the materials there. The guard threw the stack in the trash at Hagenburg’s request. However, Hagenburg claimed he did not notice the second stack of campaign flyers on the exit counter of the booth until later that day, after hundreds of UPS employees had opportunity to view or take them.

Reiman, a UPS employee at the Melville facility, acknowledged that he passed out flyers in the parking lot and on the stairs separating the parking lot from the guard booth on March 22. He further stated that he entered the security booth temporarily to warm up because it was cold outside. He contended that he did not deliberately leave materials in the security booth and never asked the guard for permission to leave materials there. He admitted, however, that he “maybe left one or two pieces of campaign material by the radiator” in the booth.

Although not in the booth at the same time as Reiman, UPS security representative Scott Imperiale supervised the guard on duty that day. Imperiale stated that the guard told him that someone who had been campaigning in the parking lot came inside the booth and put flyers out on the two counters employees must pass when entering or exiting the building. According to Imperiale, the guard also told him that the individual asked the guard to hand out flyers, a request the guard refused, and that the person did not spend much time inside the booth.

Both Local Union 804 business agent Patrick DeFelice and UPS district labor relations manager Kevin DeLibro stated that the security booth is not part of the parking lot nor is it a break area, and that campaigning is strictly prohibited inside the booth. DeFelice explained that a candidate could potentially benefit greatly from leaving campaign materials in the security booth because all employees must pass through the booth upon entering and exiting the work area. DeLibro believed that the guard made an honest mistake in allowing the materials to be placed in the booth.

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No evidence was presented that UPS denied other candidates the same opportunity the security guard granted Reiman to campaign inside the security booth, or that any other candidate requested the opportunity. Our investigation found no such evidence.

Analysis

Article VII, Section 12(d) of the *Rules* provides:

[N]o restrictions shall be placed upon candidates' or members' preexisting rights to solicit support, distribute leaflets or literature, ... or engage in similar activities on employer or Union premises. Such facilities and opportunities shall be made available to all candidates and members on a nondiscriminatory basis.

A preexisting right of members to use employer premises for campaign activity is established by employer policy (*Walter*, 2001 EAD 525 (October 25, 2001); *Berg & Corrigan*, 2001 EAD 267 (March 26, 2001), *aff'd*, 01 EAM 61 (April 23, 2001)), or by past practice (*Hoffa Unity Slate*, 2001 EAD 539 (November 2, 2001); *Brinkman*, P151 (September 18, 1995, *aff'd*, 95 EAM 21 (October 10, 1995))).

The evidence does not support a pre-existing right to campaign inside the security booth. However, we find that the security guard was responsible for enforcing the "no campaigning" rule. He did not do so, a failure we attribute to his misunderstanding of UPS's policy. The evidence demonstrates that the guard permitted Reiman to leave campaign flyers in the booth for pick-up by interested members. We conclude that, had the security guard known the rule, he would have enforced it and told Reiman to take his flyers with him, and Reiman would have complied. However, under circumstances where Reiman requested and was granted permission to campaign inside the security booth, we will not find that he violated the *Rules*, in the absence of evidence that such permission was granted in a discriminatory manner. See *Mee*, P951 (October 2, 1996) (Article VII, Section 12(d) "does not require that candidates be notified that [employer] facilities or resources are available for campaigning"); and *Cobb*, 01 EAM 100 (October 19, 2001), *rehrq. den.*, 01 EAM 100a (October 26, 2001) ("notice by employers to candidates of access rights to employer facilities is not required under the *Rules*").

Accordingly, we DENY the 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. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Supervisor 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
885 Third Avenue, Suite 1000
New York, New York 10022
Fax: (212) 751-4864

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, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20006-1416, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
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