

May 28, 2011

2008. He told our investigator that on Monday, January 10 at 10 a.m., he joined the other chief stewards in the regular weekly meeting that business agents Rich Petrovsky and Paul Molenberg run. Petrovsky, a candidate on Griswold/Harren, did not arrive until near the close of the meeting when the “good of the order” item of business was raised. At that time, Sullivan said Petrovsky announced that a notice of the results of the nomination meetings as well as the slate flyer for Griswold/Harren had to be posted on the locked union bulletin boards within five days and an attestation of posting then needed to be signed by the chief stewards. Sullivan told our investigator that he understood the employer code of conduct and the union contract prohibited campaigning on work time and property; he said he was uncomfortable with the request to post the slate flyer during a union meeting, on company time on company property in contravention of the rules as he understood them. According to Sullivan, others shared his concern. Thus, Dan Johnston, grievance committee chair, asked at this meeting whether “we are allowed to put this under the glass on the designated bulletin boards.” Sullivan said that Petrovsky replied “yes,” that he had researched the subject and that federal law overrode the contract to permit it.

Sullivan’s territory covers four acres at UAL-SFO and has seven bulletin boards in that space. He estimated that there are 80 to 100 bulletin boards on the entire UA grounds.³ He said that when he walked over to the business agents’ office following the meeting to get the official notices of the nominations meeting results for posting, Johnston handed him several copies of the Griswold/Harren flyer and said, “Post these at the same time.” Sullivan responded that he thought he should wait until the other slate (his own) produced a flyer and put them all up at the same time. Johnston indicated that he would like the political slate notice posted with the union notices and not to wait. According to Sullivan, Petrovsky also stated that the flyers should be posted at the same time when the official nominations meeting notice was being put up.

The next day, Sullivan spoke with Pat Conlin, another chief steward. By that time, neither Sullivan nor Conlin had posted either the required nominations meeting results notice or the slate flyer. Conlin told Sullivan that he would not post the flyers. Business agent Molenberg joined the conversation, and Sullivan and Conlin stated their concerns to him about the flyers. According to Sullivan, Molenberg stated that he would not comment.

Sullivan said he finally decided to post the notices and the slate flyers on Wednesday, January 12. He said he was prompted to do this by a further conversation with Molenberg, who said the chief stewards would have to attest to the postings. Sullivan said he believed the attestation included the slate posting because of the way Petrovsky had announced that the postings had to go up.

The next day, Thursday, January 13, Sullivan saw Petrovsky again. At that time, Petrovsky told Sullivan to take down all of the slate flyers. Sullivan did so.

Conlon confirmed much of what Sullivan told our investigator. Conlon said he attended the January 10 meeting. Petrovsky came in late and addressed the assembly about the posting of the notices for the nomination meetings. Petrovsky also mentioned the slate flyers and stated that these could be posted on the bulletin boards as well. At this, Conlon asked, “Are you sure about that? Can you show me that in writing?” Conlon said that others also expressed concerns. Petrovsky assured them it was correct, saying that the flyer “could go up with the notices

³ Petrovsky told our investigator that there are 56 boards.

because everyone had an opportunity to post.” According to Conlon, Petrovsky did not say that flyers were required to be posted but that he wanted them posted.

Conlon confirmed that he spoke with Sullivan on Tuesday, January 11. Conlon said he told Sullivan he did not agree with posting the slate flyer on the bulletin board. Molenberg walked up during the conversation and said that “it was ok to post as long as everyone had access.” Conlon said he replied, “I don’t care, I still don’t agree.” According to Conlon, Molenberg seemed neutral on the issue. Conlon said that on Wednesday, January 12, Molenberg went around to Conlon’s nine boards and posted the required union notices but did not post the campaign flyer. Conlon said he never saw anything in writing stating that campaign flyers could be posted on official union boards.

Dan Johnston, grievance committee chair, has been a UAL employee for 22 years. The chief stewards report to him, and he is responsible for the first and second steps of the grievance process. The third step is handled by the business agents. Johnston said he does not have keys or direct responsibility for the union bulletin boards, which he said are “owned” by the chief stewards.

Johnston said he attended the January 10 meeting where Petrovsky briefed the chief stewards on the postings they had to make. According to Johnston, Petrovsky said it was mandatory to post the nominations meeting results notice for Local Union 986 in English and Spanish on all boards. Petrovsky had those notices with him. He did not have Local Union 856’s notice⁴. Johnston said that Petrovsky asked that the slate campaign flyer be posted as well. When questions were asked at the meeting about the propriety of posting the campaign flyer, Johnston said that Petrovsky explained that it was “legal” to post the flyers if everyone had equal opportunity to do so. Johnston said he never saw anything in writing verifying this opportunity. Immediately after the meeting, Petrovsky distributed the nominations meeting results notices. Later that morning, Johnston said he handed Sullivan several copies of the slate flyer and asked if he would mind putting them up at the same time he posted the notices. According to Johnston, Sullivan did not say anything at that time but came back a couple of hours later and said he would wait until he got the Local Union 856 notice and post them all at the same time. Johnston said he responded, “I don’t care if you do that. I get it. I just hope it is not a violation for you to refuse.”⁵

Johnston said he did not give the slate flyers to the other chief stewards. Instead, he said Mike Albertin got them when Albertin and Petrovsky posted them Monday afternoon, January 10.

Johnston stated that on Thursday, January 13, Petrovsky received the order to take down the political flyers. Johnston said the flyers were taken down from Albertin’s boards that day. He said that Sullivan returned his as well.

⁴ Local Unions 986 and 856 share the bargaining unit at UAL, with the members divided between the two local unions alphabetically by last name. Local Union 856’s nomination meeting, held January 5, 2011, resulted in a white ballot. For further discussion of the administration of this unit, see *Prisco*, 2010 ESD 6 (July 8, 2010).

⁵ Johnston’s reply to Sullivan suggested that he thought Sullivan was delaying the posting because he was a candidate on the opposing slate.

Johnston said that he saw a form to be used to attest that the mandatory postings were made. Johnston said the form clearly indicated that it was for the required notices only, not for the campaign flyer, and that no one could be confused. According to Johnston, the information at the meeting was that posting the flyers was optional and all slates had the opportunity to post. Explaining the apparent contradiction between his claim that posting the flyer was optional and his statement to Sullivan suggesting that Sullivan might commit a violation by refusing to post it, Johnston stated that it was very clear what was necessary to post and what was not, and that neither Petrovsky nor Molenberg said the chief stewards had to post the flyer on the union bulletin board.

Harvey Wright is chief steward for the Jet Shop at UAL-SFO and has been for the last three of his 21 years with the employer. He is responsible for twenty locked union boards on company property in a four acre area, and is assisted with postings on these boards by a steward.

On January 8, the day of the nominations meeting, Wright said that Petrovsky called him at home in the early evening and asked if he would come the short distance from his home to the facility to post notices. Wright agreed. The two met at the facility and went around to each board. Wright unlocked them and posted the official union notices; Wright said that Petrovsky posted the slate flyer. While Petrovsky was posting the flyers, Wright said he asked him about the propriety of doing so. Wright said Petrovsky assured him it was perfectly legal as long as everyone had the same opportunity. Wright told our investigator he has never seen anything in writing indicating that slates could post on the official union boards; he said further that doing so was contrary to his understanding of the prior use of the boards.

Wright said he attended the January 10 staff meeting. There, Petrovsky briefed everyone on what had to go up on the boards. Wright said that Petrovsky explained that posting the slate flyer was not mandatory but could be done as long as everyone had an equal opportunity. Wright told our investigator that he recalled Mike Albertin questioning the propriety of the campaign posting and Petrovsky assuring him that it was fine provided there was equal opportunity.

On Thursday or Friday, January 13 or 14, Petrovsky notified Wright that the campaign flyer was a “problem,” and they were all removed the same day.

Petrovsky told our investigator he viewed this protest as political harassment by the opposing slate. He stated he did not call the January 10 meeting for the purpose of getting his slate’s flyers posted on union bulletin board. He said he did not direct that the flyers be posted at the meeting nor did he require anyone to sign an attestation of posting the flyers.

Petrovsky said he attended the nominations meeting on Saturday, January 8 and the candidates meeting that immediately followed it. At that time, he said that local union attorney Debra Goldberg addressed the candidates on the do’s and don’t’s of the election and told them that they could post campaign flyers in locked bulletin boards as long as all candidates had an equal opportunity to do so.⁶ Petrovsky said he did not see written notification to all slates on this issue.

⁶ Dave Elmore, another member of the Griswold/Harren slate, said he attended the meeting and did not recall Goldberg say anything about posting campaign flyers on the union boards. However, Elmore said that Griswold and Harren spoke about posting the official election notices and said that slate flyers could be posted as well.

That same day, Petrovsky contacted Wright, Jet Shop chief steward, and asked if he could meet him at the airport to post the notices. Petrovsky confirmed that Wright posted the official notices and Petrovsky posted the campaign flyer.

In the parking lot before the regularly scheduled weekly meeting with chief stewards on January 10, Petrovsky gave Johnston a number of the campaign flyers. Neither brought the flyers into the meeting. Petrovsky initially told our investigator that he did not mention the campaign flyers at all during the meeting. Instead, he said he briefed the chief stewards on the notices of the nominations meeting results, which had to be posted by Thursday, January 13. In response to our investigator's direct questioning, Petrovsky conceded that he also discussed the slate flyers at the January 10 meeting, saying that he told the chief stewards that posting them on the union board would be permitted if all candidates had equal access. Petrovsky also reported to our investigator that he told the men that he wanted to go around with them when they posted the official notices so that he could insure that the notices were posted properly. He told our investigator that he began to prepare an attestation for each chief steward to sign concerning the posting of the official notices. However, he said he never completed the form, it was not circulated, and it did not concern the political flyer.

When the January 10 meeting broke up, Petrovsky went to his office, followed by Johnston. According to Petrovsky, Johnston stated, "I want you to know I am on my lunch." He then asked Petrovsky, "Is it ok to post the slate flyers on the bulletin boards?" Petrovsky replied that it was, at which point Johnston turned to Sullivan, who was standing there also, and asked, "Will you post this?" (referring to the flyer Johnston held). Petrovsky asked to accompany Sullivan to post on the boards. According to Petrovsky, Sullivan said it would take too much time because the flyers might change. Petrovsky said he replied, "No, the flyers were not changing."

Later, Petrovsky said he accompanied Mike Albertin, on what Petrovsky said was Petrovsky's lunch, to see the board locations and to insure that the notices were properly placed. While accompanying Albertin, Petrovsky posted the slate flyers.

The protest was filed by email shortly after 1 p.m. PST on Wednesday, January 12, with copies sent electronically to Local Union 986, principal officer Griswold, and Petrovsky. After consultation with our investigator, Local Union 986's attorney prepared a memo that principal officer Christopher Griswold distributed to all local union business agents Friday morning, January 14. The memo stated the following:

Please be advised that an election protest was filed Wednesday against Local 986. This matter is currently being investigated by the Office of the Election Supervisor and until there is a final decision reached by the Office of the Election Supervisor, all Business Agents are directed to remove all campaign fliers from any locked bulletin board.

However, please do not remove the required postings – the English and Spanish versions of the Summary of the approved Local Union Election Plan, the Results of the Nomination Meeting, and the Election Notice which must remain posted until you are notified otherwise.

Although this notice was circulated Friday, January 14, most witnesses told our investigator that the campaign flyers were removed from the locked union bulletin boards on Thursday, January 13.

Our investigator interviewed witnesses at other UAL locations under Local Union 986's jurisdiction as well. Witnesses at Las Vegas and Honolulu denied that any campaign flyers were posted on their union bulletin boards. Dave Elmore, the business agent responsible for the UAL facility at LAX, told our investigator that he posted the slate flyer on two unlocked bulletin boards there on Monday, January 10, and removed them on Thursday, January 13.

Ballots were mailed February 7 and counted February 28. All candidates on Griswold/Harren won their elections. The tally showed the following:

Name	Slate	Votes	Elected
Chris Griswold	G/H	1606	Yes
Dave Saucedo	G/H	1582	Yes
Ramon Pineda	G/H	1576	Yes
Rich Petrovsky	G/H	1573	Yes
Fred Wood	G/H	1567	Yes
Ruben Corral	G/H	1567	Yes
Sean Harren	G/H	1559	Yes
Tom Lauer	G/H	1546	Yes
Clacy Griswold	G/H	1543	Yes
Gene Brewer	G/H	1541	Yes
Dave Elmore	G/H	1535	Yes
Al Cetina	G/H	1530	Yes
Audrey Scates	G/H	1529	Yes
Joe Schwirian	G/H	1526	Yes
Justin Muraki	G/H	1522	Yes
Dan Schooler	G/H	1512	Yes
Jerry Dowling	G/H	1511	Yes
Greg Bashem	G/H	1508	Yes
Jack Zuelich	G/H	1495	Yes
Greg Sullivan	986/Pope	640	No
Joseph Prisco	986/Pope	637	No
Douglas Rojas	986/Pope	634	No
Larry Parker	986/Pope	626	No
Neal Syse	986/Pope	591	No
Rex Tubbs	986/Pope	588	No

Analysis

Article VII, Section 12(c) of the *Rules* states that union facilities and equipment may not

be used to assist in campaigning “unless all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance.” This provision applies to locked, glass-enclosed union worksite bulletin boards to prohibit any posting of campaign material there unless the local union provides advance, written notice of the right to use the boards to all candidates.

No such written notice was given.

Petrovsky, in responding to questions from chief stewards about the propriety of posting campaign material on the union boards, stated that it was permissible if the right was extended on a non-discriminatory basis. Non-discrimination is one of the two elements of Article VII, Section 12(c) that will permit posting on union boards; the other element is notice. Both elements must be established before a union board may be used to campaign. That is especially true where the boards are locked and glass-enclosed. The lock effectively denies access to the bulletin board for anything except official union business.⁷ Past practice confirms the limitation on bulletin board use: no witness identified any instance in the past where political messages were posted on the boards.

Petrovsky’s response to the questions about access posed at the meeting (and his responses to similar questions from Wright and Johnston outside the meeting) were not adequate notice to candidates and members that campaign material could be posted on bulletin boards. For purposes of the *Rules*, the notice was deficient in three respects. First, it was oral, not written. Second, it came from Petrovsky, a business agent and candidate, and not from the local union. Finally, it was not disseminated to all candidates, although candidate Sullivan, a chief steward at UAL-SFO, was present, heard the announcement, and was in a position to act on it. The *Rules* require that notice of the availability of union facilities for campaigning be made in advance, in writing to all candidates precisely to insure a fair race and not one where the slate that includes incumbent union officials gets a head start by exercising a “right” that the union has told no one else about.

Accordingly, when the protest was filed, the local union responded correctly by promptly directing that all campaign flyers be removed from all worksite bulletin boards. This was done orally at first, and was followed by written notice to all business agents the next day.

We assess this protest in a post-election context pursuant to Article XIII, Section 2(f)(2). Under that provision, we may consider and remedy a protest only if the alleged violation may have affected the outcome of the election. We find that Petrovsky’s conduct at UAL-SFO violated the *Rules* but did not affect the outcome of the election. We reach the same conclusion with respect Elmore’s conduct at UAL-LAX.

We reach these conclusions for the following reasons. First, the violation was of limited duration. At UAL-SFO, the campaign flyer was posted on Wright’s boards for five days, Albertin’s for three, and Sullivan’s for one. Conlon never posted the campaign flyer on boards he controlled. At UAL-LAX, the flyers were posted on two boards for three days. Brief violations of this nature that are promptly remedied may warrant no additional remedy from the

⁷ However, see *Sandberg*, 2011 ESD 192 (March 28, 2011), *aff’d*, 11 EAM 33 (April 11, 2011), where the remedy ordered for improper campaign postings on locked, glass-enclosed bulletin boards was to give advance written notice to all candidates and stewards that such boards could be used to campaign.

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Election Supervisor. *See, e.g., Esquivel*, 2011 ESD 240 (April 29, 2011).

Second, a substantial period passed between the dates the violation ended and the ballots were mailed. Thus, all flyers were removed by January 13, some three and one-half weeks before the February 7 ballot mailing and nearly seven weeks before ballots were counted.

Third, although the two worksites where the violations occurred are large, the majority of Local Union 986's members are employed at other sites. There is no evidence that the violation was repeated at any other locations.

Finally, the margin between the two slates was substantial. On 2,148 ballots counted, the difference between the winning candidate with the fewest votes and the losing candidate with the most votes was 855 votes. In percentage terms, the last winning candidate polled nearly 70% of the vote, while the first losing candidate tallied 30%. Given this margin, we cannot conclude that the improper, brief posting of campaign flyers on union boards at two worksites affected the outcome of the election, where the flyers were removed more than three weeks before ballots were mailed.

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:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 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, 1801 K Street, N.W., Suite 421 L, Washington, D.C. 20006, 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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