

**OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

IN RE: CARL BIERS,)	Protest Decision 2011 ESD 283
)	Issued: June 23, 2011
Protestor.)	OES Case No. P-278-061511-FW
_____)	

Carl Biers, member of Local Union 690, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“Rules”). The protest alleged that Local Union 690 failed to obtain union leave so that Hill could attend the IBT convention as a credentialed observer for the Pope campaign.

Election Supervisor representative Chris Mrak investigated this protest.

Findings of Fact and Analysis

On June 9, 2011, the Pope campaign emailed a request to Val Holstrom, principal officer of Local Union 690, designating local union member Hill as a credential convention observer to the IBT convention. Observer rights for this purpose are provided at Article IX of the *Rules*, viz.

Section 1(a) *** Each candidate for an International Officer position ... shall have the right, at his/her/its expense, to have at least one (1) observer present at each and every phase of the process for nominating candidates for such position, consistent with other provision of these Rules.

Section 1(f) Time spent observing shall be considered as time spent on Union business. Therefore, upon written request of any observer, the appropriate Union officer, business agent, steward, etc. shall so certify to such observer’s employer or to any other person or entity to whom the observer reasonably requests such certification be given.

Carl Biers of the Pope campaign requested that Holstrom “make arrangements with Brother Hill’s employer for him to be released from work on union business for the duration of the Convention, specifically the period June 25 through July 1.”

Holstrom responded to Biers’ email a few hours later the same day, stating “I will be happy to make the request of his employer.” Holstrom asked that Biers complete and forward the OES form for that purpose so that Holstrom could include it with the request he would make for Hill’s union leave. In addition, Holstrom asked the following:

[A]m I correct in understanding the “Sandy Pope 2011 Campaign” will pay for all of Brother Hill’s expenses during the convention, does this include lost time wages for Brother Hill the same as it does for the elected Delegates and Alternates?

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Biers replied the same day: "Thank you for your prompt response. I will send you the form tomorrow morning. We are not requesting or expecting Local 690 to pay any of Brother Hill's Convention expenses or lost time."

The next morning, Friday, June 10, Biers emailed the observer form to Holstrom.

On Monday, June 13, Holstrom emailed Biers as follows:

I was not asking if there was a request for Local 690 to pay Brother Hill's expenses to the convention, specifically I am asking if the "Sandy Pope 2011 Campaign" is paying, as per the election rules "Under Article IX of the Rules, the expenses of any designated observer would be the sole responsibility of the candidate making the designation." for Brothers Hill's expenses and time loss?

Please respond?

Biers replied to Holstrom Tuesday morning, June 14, stating:

Brother Hill's expenses are a matter between him and the Campaign so long as neither the Campaign nor Brother Hill are requesting or expecting Local 690 to pay any of those expenses.

Please advise me on the status of the request to the Employer for release time.

The next day, June 15 at 1:44 p.m. EDT, Holstrom again emailed Biers, stating:

Article IX of the Rules state under Article IX of the Rules, the expenses of any designated observer would be the sole responsibility of the candidate making the designation. I just want to make sure Brother Hill rights, as a member of Local 690, are protected according to the election rules. This is a simple question, yes or no, are the expenses of the designated observer being paid for by the candidate?

Again, I hope you understand I'm just trying to protect our member and make sure his rights are protected according to the Election rules are being followed.

Please respond.

About an hour later on June 15, at 2:49 p.m. EDT, Holstrom emailed OES project manager Dennis Sarsany seeking help in interpreting the *Rules* provision. Thus:

I received a request, and will honor this request to send a letter to Mr. Hill's employer to allow him time off to attend the convention as a "Credentialed candidate Observer". However I have asked for confirmation that according to the Election Rules my member, Mr. Hill's expenses are paid by the Candidate requesting him as an observer. As you can see from these E Mails I can't get a straight answer.

Please advise.

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Before Holstrom received a response to this query, Hill came to the hall and asked Holstrom if he had delivered the request for his union leave to UPS yet. According to Hill, Holstrom said no, that he would not send the letter until he got confirmation from the Pope campaign that all of Hill's expenses would be paid because he did not want to lie to the employer that Hill was a credentialed representative if he really was not. Hill told our investigator that Holstrom said that he was not a credentialed representative if his expenses are not covered. Holstrom said he had sent an email to the Election Supervisor trying to get confirmation about Pope's obligation to pay expenses. He said that as he read the *Rules*, a candidate is required to pay the expenses of an observer. Holstrom said he did not want to cause any more protests by pursuing union leave for Hill if the Pope campaign was not paying his expenses. Hill said that Holstrom asked Hill if he was in Holstrom's position, wouldn't he do the same? Hill agreed that he did not want more protests but disagreed with Holstrom's interpretation of the *Rules* regarding observer expenses.

Holstrom told our investigator that Hill came to the hall to inquire about his leave request and that he told Hill he was trying to be careful because of all the protests that had been filed. He explained to Hill that as he read the *Rules* Pope had to pay Hill's expenses. Holstrom told our investigator that the contract required 48 hours' notice for union leave and that he would deliver the request as soon as he got confirmation from Pope that expenses were being paid or from the Election Supervisor that Pope was not required to pay expenses. He said he asked Hill if he was ok with that and Hill said yes. Holstrom stated that a couple hours later he got a response from Dennis Sarsany saying Pope was not required to pay expenses and he promptly advised Biers and Hill that he was submitting the request to UPS.

Sarsany's response, at 3:31 p.m. EDT on June 15, stated the following:

[T]he purpose of this section of the Election Rules is to make sure that a candidate observer's expenses are not paid by his or her local union. The Rules try to ensure that Mr. Hill, having agreed to work for a candidate, would not look to the Local for reimbursement for the time he spent at the convention just because the Rules describe the activity as being union business. Also, if the local were to pay the expenses of a candidate observer, the amount of the expenses would be considered a campaign contribution and it is not legal under the Rules for union funds to be used to support a candidate.

Whether the Pope campaign pays for Mr. Hill's expenses or he pays for them is a matter for them to agree upon. If he chooses to work for a candidate at his own expense it is his decision.

By email time-stamped 3:57 p.m. EDT on June 15. Holstrom acknowledged Sarsany's response and thanked him for it. At 4:40 p.m. EDT the same day, Holstrom emailed Biers stating: "Received confirmation from the election officer and will forward off the job letter to Brother Hill's employer. Thanks for your patience." Holstrom did so.

Biers filed the protest at 6:59 p.m. EDT on June 15 stating that Holstrom "has refused to process a proper request that a Sandy Pope campaign observer, Tim Hill, be granted time off from UPS as union business to attend the Teamsters Convention." When Holstrom received the protest by email from Biers, he resent his 4:40 p.m. email that stated he had received the OES *Rules* interpretation and had processed the request for time off.

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UPS has granted the request for union business leave for Hill. Based on this result, we deem this protest RESOLVED.

Despite this resolution, Biers seeks a remedy against Holstrom. Biers claimed that Holstrom “doctored the time and date in an email to make it appear that he complied with our request before the protest” Biers stated further that “I never received that email until 8:05 PM, an hour after the protest was filed (it is quite a simple thing to edit text in an email that you are forwarding). I realize that the request for leave time to the employer has been made and granted, but it is important to our campaign that efforts to harass our supporters be properly addressed.”

We DENY Biers’ request for relief against Holstrom. We find that Holstrom acted responsibly in seeking confirmation from the Pope campaign and a *Rules* interpretation from our office concerning the rights and duties the *Rules* grant and impose with respect to the union business request for Hill. We find no evidence that Holstrom “doctored” an email as Biers alleged. Holstrom denied doing so and denied knowing how to do so.

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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