

Bulak told our investigator that he took all of the photographs while he was off the clock. He is a package car driver employed at the UPS Peru service center. He stated that the large group photo in front of the UPS package truck was taken in the parking lot used by members to park their vehicles and that all of the members photographed were off the clock before starting their shift. The photographs of the member refueling the truck and the member unloading the truck were taken while those members were on the clock working at UPS. The photograph of the two members standing just inside the UPS building was taken before the shift started, while the two members were off the clock, as was the case for the seven members in a break room inside the UPS facility.

A UPS manager employed at the facility told our investigator that employees are not permitted to take photos while working. However, he said he knew of no rule or policy that prohibited an employee off the clock from taking photos at work.

Analysis

The following principles apply to this case. First, Article VII, Section 12(a) of the *Rules* states that “[n]o candidate or member may campaign during his/her working hours. Campaigning incidental to work is not, however, violative of this section.” Second, campaigning in non-work areas on non-work time is permitted. *Teamsters United*, 2015 ESD 39 (October 15, 2015). Finally, photos depicting members in their work uniforms have been held not to constitute employer contributions. *Ostrach & Hoffa-Keegel 2006*, 2006 ESD 304 (June 24, 2006) (protest denied where “literature depicts people as Teamster members working in or around equipment used in their jobs, or wearing work uniforms. The *Rules* do not prohibit showing members in campaign literature in real – or even staged – work settings.”); *Laszlo*, 2011 ESD 87 (January 27, 2011).

Investigation showed that Bulak was off the clock at the time he took each of the pictures at issue in this case. Further, most of the photos depict members who were not working. As both photographer and subjects were off the clock when the photos were taken, they were not engaged in campaign activity while working and did not violate the *Rules*. Based on the cited precedent, the depiction of off-duty employees in their work uniforms also did not violate the *Rules*.

The photos of one member fueling his vehicle and the other member unloading his show members who were on the clock. However, neither of these photos can fairly be said to depict its subject in the act of campaigning. Instead, they are working. Even if a smile at the camera while working could be construed as campaigning, it would fall within the “incidental” exception to the rule prohibiting campaigning while on the clock. This exception recognizes that some activity that literally fits the definition of “campaign activity” inevitably occurs in members’ everyday interactions on the job. *Rosas*, 2001 EAD 200 (February 27, 2001) (“The *Rules* recognize that as employees engage in normal personal interaction while they work, campaigning should not be excluded from what they may talk about.”). In assessing whether campaign activity is incidental, we look to whether the activity interfered with employees performing their regular work or caused employees to deviate from prescribed duties. *Pinder*, 2006 ESD 133 (March 7, 2006) (campaigning found to be incidental where UPS driver distributed flyers to 2 others while loading truck and encouraged them to vote; conduct did not interfere with duties, and all drivers left terminal on time.) We also consider the duration of the campaigning incident; brief or transient matters are more likely to be held incidental to work. *Pinder* (less than 5 minutes); *Thompson*, 2001 ESD 332 (April 30, 2001), *aff’d*, 01 EAM 73 (May 24, 2001) (one-on-one campaign exchange that took place while both employees worked together to set

Werst, 2016 ESD 123
February 25, 2016

a trailer hitch held incidental); *Cooper*, 2005 ESD 8 (September 2, 2005) (exchange lasting 10 seconds found to be incidental); *Gibbs*, 2010 ESD 54 (December 9, 2010) (asking for and receiving a campaign postcard held incidental campaigning where exchange took a few seconds); and *Joyce*, 2011 ESD 111 (February 14, 2011) (brief comment while employee was on her way to lunch was incidental).

Here, we find that, if looking at a camera and smiling while fueling or unloading a work vehicle constitutes campaigning, it fits the description of “incidental” campaigning which does not violate the *Rules. Gibbs, supra.*

For the reasons stated, we DENY this 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:

Kathleen A. Roberts
Election Appeals Master
JAMS
620 Eighth Avenue, 34th floor
New York, NY 10018
kroberts@jamsadr.com

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, 1050 17th Street, N.W., Suite 375, Washington, D.C. 20036, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kathleen A. Roberts
2016 ESD 123

Werst, 2016 ESD 123
February 25, 2016

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