

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: FRANK HALSTEAD,)	Protest Decision 2016 ESD 166
)	Issued: April 8, 2016
Protestor.)	OES Case Nos. P-142-020416-FW
)	& P-175-021716-FW
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Frank Halstead filed pre-election protests pursuant to Article XIII, Section 3(a) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). The protest in Case No. P-142-031416-FW alleged that he and other campaigners were improperly limited by Gate Gourmet from campaigning in a parking lot where members park their vehicles. The protest in Case No. P-175-021716-FW alleged that he and other campaigners were improperly barred by First Student and then the police from campaigning in a parking lot where members park their vehicles and, further, that First Student made an impermissible employer contribution to the slate Halstead opposed. We find that these violations interfered with the campaign activity, or improperly allowed campaign activity, aimed at large identifiable groups of Local Union 572 members, and so “may have affected the outcome” of the election. *Rules*, Article XIII, Section 3(b). Accordingly, as explained below, we order a prompt rerun of the mail ballot election for delegate and alternate delegate from Local Union 572.

Election Supervisor representatives Chris Mrak, Margaret Sheridan, Denise Ventura, Michael Miller, and Jeffrey Ellison investigated these protests. The protests are consolidated for decision here.

Findings of Fact and Analysis

Local Union 572’s election plan provided for the election of twelve delegates and seven alternate delegates to the IBT convention.¹ The January 10, 2016 nominations meeting resulted in a contested election between two full slates and no unaffiliated candidates. As provided in the election plan, ballots were mailed February 12. Protestor Halstead led the Teamsters United 572 slate; local union principal officer Rick Middleton led the Members With Rick Middleton slate. The election count date was March 9, and 2,011 ballots returned by eligible members were counted. All candidates on the Middleton slate received more votes than any candidate on the Halstead slate. The margin between the winning delegate candidate with the fewest votes and the losing delegate candidate with the most votes was 28; the corresponding margin in the alternate delegate election was 29.

The protests here involve campaigning at two employers under the local union’s jurisdiction, Gate Gourmet, and First Student – San Fernando. We address them separately.

Gate Gourmet. Gate Gourmet provides food and beverage services to airlines at Los Angeles International Airport. More than a thousand members of Local Union 572 work at the facility situated

¹ The delegate strength as stated in the election plan was calculated preliminarily in May 2015 and reflects Local Union 572’s two-year average membership of 9,534 as of that date. The March 2016 final delegate strength calculation shows that the local union has a two-year average membership of 9,926 and will therefore be entitled to one additional convention delegate. The additional delegate seat shall be filled by the highest ranked alternate delegate, in accordance with Article III, Section 2 of the *Rules*.

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off Imperial Highway at LAX, making it one of the largest employers under the local union's jurisdiction. The employer provides on-site parking for its employees.

The Gate Gourmet work facility adjoins airport grounds. The north side of the building abuts active airplane taxiways. The west side is the loading dock where vehicles that provide food and beverage service to aircraft are loaded and unloaded. The south and east sides face a parking lot that is restricted to individuals who have keycard access to it. Abutting this parking lot to the east is a much larger parking lot.

In late December 2015, Halstead, Brandon Gaffney, and Francisco Amezcua went to Gate Gourmet and spoke with Angela Jones, a senior human resources manager of the facility. Halstead was a candidate for delegate and Gaffney for alternate delegate; Amezcua was a supporter of the Teamsters United 572 slate. They told Jones the local union delegates election was approaching, and they would be campaigning at the facility in parking areas where Teamster members park their vehicles. Jones told them the restricted lot adjacent to the main entrance on the east side of the building was reserved exclusively for management employees who were not Teamster members. She directed the campaigners to the large lot further to the east, separated from the restricted lot by a chain-link fence topped with barbed wire, as the lot where Teamster members parked.

The restricted lot has approximately 100 parking spaces and is accessed through an electronically controlled gate arm. The general lot, which does not have controlled access, has more than 250 spaces.

Shift changes at Gate Gourmet occurred twice daily, roughly between 5 a.m. and 7 a.m. and again between 5 p.m. and 7 p.m. On four occasions in January 2016, during both early morning and late afternoon shift changes, the campaigners campaigned in the Gate Gourmet general lot Jones identified as the location where Teamster members parked their vehicles. They set up a small card table to display campaign material near a pedestrian passageway in the fence on the west edge of the general lot. Members who parked in the general lot walked through the pedestrian passageway where the campaigners were positioned to or from their cars when the shift changed.

After some time, the campaigners observed employees who appeared to be Teamster members parking in the restricted lot. These individuals entered and exited the building, directly to and from their cars, with no need to go through or even pass nearby the passageway in the general lot where the campaigners were set up. The campaigners confirmed that these individuals were Teamster members and that they entered the restricted lot by using their employee ID badges to raise the gate arm. The restricted lot had much greater availability for overnight shift workers because spots occupied by day-shift management employees were available at night. With some frequency, it appeared to the campaigners that the restricted lot had more cars parked in it than the general lot.

At Halstead's request, Gaffney and Amezcua talked to HR manager Jones again to request access to the restricted lot where Teamster members parked their vehicles. On February 1, 2016, they met her at the front door of the Gate Gourmet facility, told her they were aware that Teamster members parked in both the restricted lot and the general lot, gave her a copy of the *Rules* provision on parking lot access as well as the Court order enforcing it, and asked permission to campaign in the restricted lot as well. Jones replied that Steve Callaghan, Gate Gourmet's general manager at the facility, had instructed that the campaigners were not to be on company property at all, whether in the general lot,

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the restricted lot, or anywhere else. Jones added that Jaime Villanueva, the Local Union 572 business agent responsible for Gate Gourmet, had told her that the campaigners could be kicked off the property.² Jones instructed Gaffney and Amezcua that they were not to return to Gate Gourmet.

We were first made aware of the parking lot access problem at Gate Gourmet on February 1, the same day Jones barred the campaigners from the premises. We attempt to resolve access issues informally when possible, without resort to the protest procedure, by intervening with the employer and explaining the *Rules* provision on access and the Court order enforcing it. Consistent with that approach, our representative contacted Jones on February 1, left voicemail, and reached Callaghan, who promised to look into the matter. The next day when our representative called Callaghan again, Callaghan said he had referred the matter to Laurie Dalton, an HR agent on the East Coast. With no relief forthcoming immediately from Callaghan, Halstead filed a protest. Thereafter, our efforts to reach Dalton multiple times over successive days were unsuccessful. On February 8 and 9, voicemail left for Jones, Callaghan and Dalton were not returned. In addition, business agent Villanueva did not return our investigator's repeated calls requesting his assistance in reaching the employer and rectifying the access situation. Finally, on February 10, Farhana Ali, a senior HR manager on the East Coast, contacted our representative and expressed interest in resolving the matter. Ali, however, was unable to reach the Gate Gourmet managers at LAX, as Callaghan had departed and Jones could not be contacted.

Finally, after shift change Friday afternoon, February 12, Ali obtained assurances that campaigners could set up on the walkway immediately outside the building entrance that all employees used to enter and leave work. This walkway was outside the double doors and turnstiles, and was immediately adjacent to the restricted lot. Gate Gourmet placed three limitations on the access, however. First, it authorized a maximum number of three campaigners; second, it specified a narrow, confined area in the parking lot beyond which the campaigners could not go; finally, it required that the campaigners contact management and be shown the designated campaign space before campaigning there. These restrictions were not lifted until mid-day Saturday, February 13.

When Halstead was advised of the final arrangements under which the employer would permit campaigning, he and others arranged to campaign at the location that weekend. On Sunday, February 14, Halstead contacted Adam Harvey, Gate Gourmet's acting general manager at the site, to notify of the plan to campaign in the area immediately outside the building entrance. According to Halstead, Harvey told him he had no problem with campaigning outside the building entrance, explaining that

² Our investigator contacted Villanueva three times on February 8 and 9 to enlist his assistance in getting Gate Gourmet to reverse its decision barring campaign access and to obtain his statement concerning Jones's claim that he told her the campaigners could be barred from the premises. Villanueva did not return our investigator's calls. After obtaining access for the Halstead campaigners without Villanueva's assistance, our investigator emailed principal officer Middleton on February 15 to advise of the allegation against Villanueva and to report Villanueva's non-cooperation in the protest investigation. More than a month later, on March 18, the local union advised us that Villanueva would be made available for interview. During the phone interview conducted March 24, Villanueva told our investigator that he received the voicemails from our investigator on February 8 and 9 but was busy on a strike detail and did not return the calls. He further stated he spoke with HR manager Jones of Gate Gourmet in late January or early February and "advised her to contact legal counsel" because the campaigners were on "airport property" where they were not permitted. We accept this statement as an admission from Villanueva corroborating Jones's assertion that Villanueva told her the campaigners could be barred from the property.

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Rick Middleton and another person had campaigned there the day before without causing any ingress or egress problems for employees.³

In sum, Halstead and his supporters were barred from campaigning in the restricted parking lot from the inception of their campaign in late December or early January up to February 13. In addition, the Halstead group was barred from all campaigning at Gate Gourmet for two weeks between January 31 and February 13.

Article VII, Section 12(e) permits candidates for local union delegate and alternate delegate and members of that local union to “distribute literature and/or otherwise solicit support in connection with such candidacy *in any parking lot used by that Local Union’s members to park their vehicles in connection with their employment.*”⁴ The purpose of this provision is to permit and encourage face-to-face contact between candidates and their supporters and rank-and-file members in order to foster fair, honest, open, and informed elections. Refusal of an employer to grant access “endangers the free flow of information between candidates for IBT office and the rank-and-file electorate” and, thereby, “threatens the very purposes that the Government and the IBT intended the Consent Decree to serve.” *United States v. IBT*, 945 F. Supp. 609, 623 (S.D.N.Y. 1996).

In 1995, the Court approved the parking lot access rule, finding that “[e]mployers could frustrate the Consent Decree’s goal of ensuring open, free, and democratic IBT elections if they prohibited all campaigning on their property.” *United States v. IBT*, 896 F.Supp. 1349, 1366 (S.D.N.Y. 1995). The Court agreed “with the Election Officer that other methods of campaigning, including mailings, telephone campaigns, home visits, and alternative methods of face-to-face campaigning are woefully inadequate. Restricting candidates to those methods of campaigning will leave IBT members ill-informed regarding the choice of candidates in the 1995-96 IBT election. Thus, the proposed rule is crucial to the achievement of a free, fair, and democratic election process, and this Court’s power to enforce the rule is firmly rooted in this Court’s authority pursuant to the All Writs Act.” *Id.*, 896 F. Supp. at 1367.

We find that Teamster members employed at Gate Gourmet LAX park their vehicles in two lots provided by the employer, the general lot and the restricted lot; that the employer effectively barred campaigners from the restricted lot from the inception of their campaign through February 13, first by misinforming them that Teamsters did not park their vehicles there, and then by barring the campaigners from the property altogether; that the employer barred the campaigners from the general lot for two weeks from January 31 to February 13, a significant pre-election period, after having granted them access to that area over the course of a month previously; that the local union business agent, Villanueva, was complicit in the employer’s decision announced February 1 barring the

³ Middleton’s campaign activity was further corroborated by Ali’s February 15 email to our investigator complaining that “[o]ne of the Teamsters campaigners by the name of Rick has been handing out ‘Vote for Rick’ buttons. We understand that it is to advertise his candidacy and have voters remember him. However, our operations are highly regulated food production where such buttons cannot be worn. It is disruptive to repeatedly have to ask employees to remove them in an already very busy and time constrained environment. Please could you communicate to the campaigners to refrain from handing out such buttons or any other items that can be worn?” This email was forwarded to Middleton by our investigator, who did not deny campaigning at the facility on February 13.

⁴ Emphasis supplied.

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Halstead campaigners from Gate Gourmet, first by telling HR manager Jones that the campaigners were on “airport property” and she should contact her legal counsel, a statement that Jones relied upon as justification for barring the campaigners, and then by failing to return the calls of our investigator seeking his assistance to reverse the employer’s decision barring access; and that Middleton slate campaigners were granted favored access in the restricted area before the details of its availability were provided to protestor Halstead and his campaigners.

Accordingly, we GRANT Case No. P-142-020416-FW with respect to parking lot access at Gate Gourmet.

First Student – San Fernando.

First Student is a national provider of transportation services, principally to school districts. Its facility in San Fernando employs more than 140 members of Local Union 572.

Halstead, Amezcua, and James Motty appeared at the First Student – San Fernando facility on February 17, 2016, intending to campaign in support of Teamsters United 572 slate in the parking lot where employees park their cars. The property First Student occupies is an irregularly shaped parcel on the southwest side of San Fernando Road in San Fernando, abutting freeway right-of-way for the Ronald Reagan Freeway to the south. First Student’s building is an L-shaped structure, the smaller portion closer to the road housing the dispatch office, the drivers’ room, restrooms, and offices of managers, while the larger rear portion covering a number of bays with overhead doors in which mechanics service First Student’s fleet of yellow school buses.

The structure sits on the main parcel of land, rectangular in shape. An adjoining triangular parcel accommodates more than 100 school buses. First Student provides employee parking on the main parcel. The building is set back from the street sufficiently to furnish space for a striped parking lot that provides 36 spaces between two parking islands. In addition, striped parking stalls dedicated to personal vehicles are available at the fence line fronting San Fernando Road (six spaces) and along the southern fence (more than thirty additional spaces). Combined, these parking areas are insufficient to accommodate First Student’s workforce, so employees leave their personal vehicles in the spaces the buses they drive formerly occupied, essentially rendering both parcels “parking lot[s] used by ... members to park their vehicles in connection with their employment.” Article VII, Section 12(e).

Motty was the first to arrive on February 17; he took up a position in the parking lot close to the building and roughly 35 feet from the front door where employees enter the facility. This location was on the asphalt of the parking lot but was not in a lane vehicles used to navigate the lot. Veronica Lopez, a representative of the employer, saw him there and ordered Motty off the premises. Motty discussed Lopez’s directive with her, stating that he had the right under the *Rules* to campaign in parking lots where members park their vehicles. Lopez insisted that he leave, saying that only Lonnie Holmes, the local union business agent, was allowed to come on to the property. Motty objected to Lopez’s directive but moved to the public sidewalk, outside the fence and in front of the facility, to await the arrival of Amezcua and Halstead.

According to Motty, a few minutes after Motty’s encounter with Lopez, Lopez came out to the public sidewalk with Meeghan Flores, the location manager, to speak with Motty. Flores had commenced work at the San Fernando facility only the previous month; although she had been

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employed by First Student prior to her assignment to San Fernando, she had not previously dealt with a unionized workforce. Flores told Motty that she had spoken with Lonnie Holmes by phone, who told her that he, Holmes, was the “only one allowed to come on the property.”⁵ Flores instructed Motty to leave the area. Flores and Lopez then returned to the building, leaving Motty on the public sidewalk.

When Amezcua arrived, Motty told him that Lopez had ordered him off the premises. Motty and Amezcua discussed the matter briefly and then proceeded inside to show management the *Rules* provision and the Court order that permitted members to campaign in employer parking lots where members park their vehicles. They presented the material to Ms. Jackson, who identified herself as the office manager and said Lopez was busy; the campaigners told Jackson they were campaigning for the Local Union 572 delegates election. Jackson made a copy of the materials but said they would have to leave the property, because “anyone can present papers.” Jackson proceeded to escort Motty and Amezcua out of the building.

At this point, Halstead arrived. Apprised of the situation by Motty and Amezcua, Halstead led them back into the building to discuss with management their right to campaign in the parking lot. They proceeded directly to the dispatch counter, and Halstead asked to speak with the location manager, Flores. Flores was in her office and, after a brief period following Halstead’s request, appeared and spoke with Halstead and the others.

While awaiting Flores, Halstead and the others stood at the dispatch counter where employees sign in and out, receive and turn in their bus keys, register for extra work, obtain revisions to their routes, and turn in their daily bus reports and other forms. On the dispatch counter, positioned between the notebook in which drivers sign up for extra work and a list of bus route revisions were multiple copies of Middleton slate campaign material for distribution, consisting of an 8½” x 11” color flyer on regular weight paper stapled to a 3½” x 8½” rack card on card stock. Immediately to the right of the dispatch counter was a bulletin board that displayed employer notices concerning signing up for extra work, payroll procedures associated with signing in and out, and procedures for signing up for ADP services. Arranged side-by-side among these four black-and-white notices were two full-color Middleton slate flyers, one headlined “One VOTE Does It All” and displaying professional-quality portraits of Middleton and the other sixteen candidates on his slate, the other titled “Choose the Delegates Who Understand Your Needs” and showing a photo of Middleton amid several other slate members. The dispatch counter and bulletin boards held official employer forms and notices – and the Middleton slate campaign material. Halstead asked Jackson if the room was a work area or break area; she replied that it was a work area. Halstead took photos of this Middleton slate campaign material. When Jackson observed him taking photos, Jackson told Halstead that he could not take photos. Halstead replied that it was a campaign violation to allow the Middleton Slate to have their campaign material there and distribute their campaign material for them but not give his slate equal access. Halstead told our investigator that he saw drivers picking up the Middleton campaign literature on the counter as they picked up their keys and dispatch notes. Halstead said he objected to the dispatch

⁵ Despite repeated efforts to interview Flores, we were unable to speak with her until March 30, some six weeks after events described here. She told our investigator then that, when she first started at the San Fernando location in January 2016 and was introduced to Lonnie Holmes, “he was very reassuring,” telling her that if any business with the union was to be conducted at the facility he would be there. After the campaigners appeared at the facility, Flores said she called Holmes, told him about the campaigning, and said, “you said you would be present for anything going on with the union.”

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agent, Ms. Martinez, about the literature, and she responded by moving the stack of material down the counter but still within easy reach of drivers using the dispatch area.

When Flores appeared, she was accompanied by a rank-and-file mechanic-driver named John. Halstead explained that he and the other campaigners were members of Local Union 572 and had the right under the *Rules* to campaign in the parking lot. According to Halstead, Flores responded that she had spoken with Lonnie Holmes, who told her that they cannot be there and had to leave. Halstead said he told Flores that Holmes does not make the rules, that this is a government-supervised election, and they have the right to campaign in the parking lot. Flores responded by repeating that “Lonnie Holmes said you can’t be here and you need to leave.” John the mechanic interjected to say he had heard from Holmes that access to campaign anywhere on employer property was forbidden by the election rules. Halstead told John that he did not know why John was involved, that the issue was between the campaigners and Flores, and that John should mind his own business. Halstead then addressed Flores again, offering the parking lot rule and the Court order and, in addition, proposing to phone Chris Mrak, our representative assigned to parking lot access issues, to explain parking lot campaign rights under the *Rules*. Flores refused Halstead’s statement that he had a right to be there as well as his offers, saying “it is your guy [referring to Holmes] who said you aren’t allowed on company property.” Flores ordered Halstead and the others to leave the property. Halstead responded by phoning Mrak. He reached her, briefly described the situation at First Student, and offered the phone to Flores. Flores refused the phone, insisting that Halstead and the others were on private property without her permission and must leave.

When First Student made Flores available for interview on March 30, some six weeks after the event, she told our investigator that she did not speak with Holmes at all on February 17. Holmes contradicted this point to our investigator, stating that Flores called him three times within a span of thirty to forty-five minutes on February 17. The first time he told her that the campaigners had the right to campaign in the parking lot. The second time, when Flores told him that Halstead was inside the building arguing with her, Holmes said he repeated to Flores that the campaigners had the right to be in the parking lot but said they had no right to be inside the building in work areas. A short time after the second call, Holmes said Flores called a third time, stating according to Holmes that Halstead was “in hysterics” about not being able “to be where he wanted to be.” We conclude from the evidence provided by the campaigners, Flores, and Holmes that Flores spoke with Holmes on February 17, consistent with what the campaigners said she told them and contrary to what she told our investigator. Flores repeatedly cited Holmes to the campaigners as her authority for ejecting them from the property. Whatever Holmes said to Flores on February 17, she understood from those communications and from her previous interaction with Holmes that the campaigners as non-employees of First Student had no right to be present anywhere on First Student’s property.

At this, the police arrived. They spoke with First Student management and then to Halstead. Halstead showed the officers the parking lot rule and the Court order enforcing it, saying they had the right to campaign in the parking lot. The officers disagreed and directed them to leave. Halstead asked for and received a business card from the officers. On the back of the card, an officer wrote “Adv[ised] to leave private property at req[uest] of R[eporting] P[erson].” Halstead and the others left the property, repairing to a gas station nearby where Halstead again phoned Mrak. He described the events to her. After that call, Mrak phoned Lourdes Garcia, recording secretary of the local union and a delegate candidate on the Middleton slate, and requested the local union’s assistance in enforcing the parking lot provision at First Student. Mrak reported back to Halstead that Holmes was to contact

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Flores at First Student and inform her of the *Rules*' requirements. Mrak advised Halstead that if he were to return to First Student he should call Flores first to insure a smooth reception. At this, Halstead phoned Flores from the gas station, left voicemail that he understood Holmes was contacting her about the right to campaign, and stating that he and the others were returning to the facility.

When Halstead hung up, they returned to First Student. Because Halstead had not connected directly with Flores by phone, he and the others went inside the building and asked to check in with her to make sure she had spoken with Holmes and that everything was resolved. John the mechanic appeared first, loudly questioning their presence. Halstead replied to him that the issue was resolved. John said that Flores was busy; Halstead replied, "We'll wait." Moments later, Flores appeared, according to Halstead, and said, "I told you to leave!" Flores again cited Holmes as her authority and repeated that Halstead had no right to be there. Halstead asked her if she had just spoken with Holmes; according to Halstead, she refused to answer the question. Halstead asked why Flores was being indignant, stating he merely wanted to discuss the situation with her. She replied that she was not answering his question, that they could not be in the parking lot, stating for the first time that it was a "safety issue." When she threatened again to call the police, Halstead and the others left for the day.

Photos supplied by the campaigners showed the location where they had set up, before being ordered from the premises by Flores and then the police. The location was within eight feet of a stone wall, approximately 18 inches high, that held landscaping at the building front. The campaigners were so close to the building that, although standing on parking lot asphalt, they were in the shade of a small tree planted in the landscaping. They were separated from vehicle lane that ran in front of the building and were in an area that employees used to take breaks outdoors. No evidence was presented suggesting any safety hazard, whether to the campaigners, the employees, or vehicles maneuvering nearby, by the campaigners' presence in that location.

Halstead filed a protest. In response to the protest, Mrak spoke with Tom Secrest, First Student vice president of field human resources and labor relations. Secrest advised Mrak that the campaigners could campaign in the parking lot and did not need Flores's permission. Mrak passed this information to Halstead, who responded by returning to First Student on February 18 at about 9:45 a.m. Flores came out of the building, accompanied by a shop steward and John the mechanic; Flores told Halstead again to leave. Halstead replied with his information from Secrest that it was okay to campaign. Flores said she was going to call the police again. Halstead asked if she had checked her voicemail or email; he then called Mrak. Flores made a phone call as well. When Flores finished her call, she told Halstead that he could stay on the property and campaign but that she did not want him in the building or the back lot. Halstead replied that he agreed with those restrictions, stating that he only wished to exercise his right to campaign in the parking lot, and that he had entered the building the day before only to question management's directive refusing him that right.

Halstead campaigned without incident at First Student on February 18 and 19. On February 19, Halstead observed the locked, glass-enclosed union bulletin board at the facility. It contained Middleton slate literature. He took a photo and supplied it to our investigator.⁶ The photo shows a 24"

⁶ Lourdes Garcia on behalf of Local Union 572 argues that the allegation of campaign material posted on a union bulletin board is beyond the scope of any protest Halstead filed and therefore should be rejected. Halstead promptly brought the issue to our attention in the course of our investigation of other protests. Article XIII, Section 4 grants the Election Supervisor authority to determine whether the *Rules* have been violated and, if so,

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x 36” aluminum-framed, glass-enclosed bulletin board, hinge on the right, lock on the left, on which were posted seven 8½” x 11” sheets of paper, an 8” x 10” form, and a 3½” x 8½” card arranged in three columns. The left and center columns contained side-by-side English language and Spanish language summaries of Local Union 572’s election plan for the delegates and alternate delegates election, above side-by-side English language and Spanish language notices of election, above an English language notice of the results of the nominations meeting (in the left column) and a Middleton slate four-color flyer (in the center column). The right column of the board was topped by an OSHA Form 300A Summary of Work-Related Injuries and Illnesses, above a different Middleton slate four-color flyer,⁷ and at the bottom of the board the Middleton slate rack card. A Local Union 572 business card for Lonnie Holmes was pinned to the board, partially atop but not obscuring any language or image in the upper left corner of the Middleton flyer in the right column.

Garcia told our investigator that this board was a “cheap Home Depot” board and that “everybody has a key,” suggesting that the Middleton campaign material could have been posted by someone other than a union representative. Maria Heredia, the long-time steward at the facility, echoed this notion, describing the lock as “cheesy” and “probably easy” to open. First Student’s location manager, Flores, told our investigator to the contrary that only she and “the union” have keys to the board, although she was unsure which union representative had one. She said she never made any postings to the board or examined its contents, and that Holmes asked to borrow her key once to make a posting. Based on this evidence, we reject the submissions of Garcia and Heredia that attempt to deflect responsibility for the campaign postings on the locked, glass-enclosed union bulletin board to anyone other than a local union representative.

Based on the *Rules* provision and the case law supporting it discussed above, we find that First Student and Flores violated the *Rules* by barring, and using public law enforcement to bar, Halstead and his fellow campaigners from the parking lot used by employees at the facility on February 17 and by harassing the campaigners on February 18.

Article XI, Section 1(b)(2) prohibits any employer from contributing “anything of value, where the purpose, object, or foreseeable effect of the contribution is [to] influence, positively or negatively, the election of a candidate.” The same provision bars any candidate from accepting such a contribution. We find that First Student violated this provision by posting or permitting the posting of Middleton slate material on a bulletin board reserved exclusively for employer postings situated in a high traffic work area. We find further that First Student violated this provision by placing or permitting the placing of a stack of Middleton slate materials on the dispatch counter, the most visible location in the facility, an area under the exclusive and active control of the employer, where employees twice daily transact business with the dispatch staff. *Rodriguez*, 2011 ESD 252 (May 12, 2011) (employer violated *Rules* by distributing candidate literature at driver sign-in table in terminal). Locating or permitting the locating of campaign material here signaled to employees even more than posting it on the employer bulletin board that the employer favored the Middleton slate in the delegates and alternate delegates election. Such an endorsement is an employer contribution prohibited by the *Rules*. That the Middleton slate bears responsibility for this communication is evident by the fact that

the remedy that should be imposed for any violation “as a result of any protest filed or any investigation undertaken by the Election Supervisor with or without a protest.” We therefore reject Garcia’s submission of untimeliness and consider these facts on their merits.

⁷ These flyers were identical to the ones posted on the employer bulletin board adjacent to the dispatch counter.

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the flyers and rack cards were full-color printed materials and were stacked on the counter in volume, suggesting they were reproduced at candidate expense and were supplied in quantity by a campaign operative precisely for the purpose of distribution to employees through the employer's dispatcher.

Article XI, Section 1(b)(3) prohibits the union from contributing to a candidate; the provision uses identical language to that of the prohibition on employer contributions in Section 1(b)(2). We find that the locked, glass-enclosed union bulletin board was reserved exclusively for postings approved by the union, and the posting there of three campaign flyers of the Middleton slate constituted an endorsement by the union of the candidates on that slate. *Moerler*, 2006 ESD 342 (August 28, 2006); *Pope*, 2011 ESD 350 (October 26, 2011). We find further that the flyers were posted there by a union representative who knew or should have known that campaign postings there were prohibited by the *Rules*.

Finally, the slate's acceptance of the employer and union contributions to its campaign place the slate and all of its members in violation of the *Rules*' provision prohibiting receipt of impermissible employer and union contributions.

Accordingly, we GRANT Case No. P-175-021716-FW with respect to parking lot access at First Student – San Fernando as well as employer and union contributions.

Remedy

When the Election Supervisor determines that the *Rules* have been violated, he “may take whatever remedial action is deemed appropriate.” Article XIII, Section 4. In fashioning the appropriate remedy, the Election Supervisor views the nature and seriousness of the violation as well as its potential for interfering with the election process. “The Election Supervisor's discretion in fashioning an appropriate remedy is broad and is entitled to deference.” *Hailstone & Martinez*, 10 EAM 7 (September 14, 2010).

These protests are being considered in a post-election context. Therefore, the Election Supervisor must consider whether the violation “may have affected the outcome of the election,” under Article XIII, Section 3(b) of the *Rules*. A violation of the *Rules* alone is not grounds for setting aside an election with a narrow margin of victory (in this case, 28 votes or 1.4%) unless there is a reasonable probability that the election outcome may have been affected by the violation.

Here, we have three significant violations that affected large numbers of members eligible to vote. At Gate Gourmet, campaigners were barred from campaigning in the restricted lot for the full duration of the period prior to the date ballots were mailed, first through employer misrepresentation that Teamster members did not park in that lot and subsequently by barring the campaigners from all areas of the employer's facility. Going back to the underpinnings of the parking lot rule, as explained by Judge Edelstein, Gate Gourmet's actions left “members ill-informed regarding the choice of candidates” in Local Union 572's delegates and alternate delegates election by narrowly limiting and then barring altogether the Halstead campaigners access to them. Such conduct “endanger[ed] the free flow of information between candidates for IBT office and the rank-and-file electorate,” depriving candidates and members of the opportunity to discuss issues of importance to the membership, and candidates of the opportunity to persuade the members to participate in the election and to vote for

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them. Gate Gourmet is one of the largest employers under the local union's jurisdiction, and access to its membership to establish name recognition and arguments for participation and support is critical to electoral success. That a local union business agent encouraged the removal of the campaigners from the property during a critical pre-election period compounds the violation.

Given the very narrow margin separating winning from losing candidates in this election, the conduct of Gate Gourmet managers as abetted by the local union business agent is sufficient to have affected the outcome of the election. Campaigners diligently sought – and when it was permitted to them, exercised – face-to-face contact with hundreds of Local Union 572 members at that location, but were restricted in their access. We cannot measure with precision the number of contacts that were precluded by the limitations on time and location of campaigning. But, even assuming only thirty voters of the more than 1,000 members at Gate Gourmet would have voted based on direct campaign contact with the Halstead slate, that number would be sufficient to affect the outcome of this close election.

The violations at First Student – San Fernando add significant weight to the determination that misconduct may have affected the election results here. First, ejecting campaigners from a parking lot where they had the right under the *Rules* to campaign barred candidates from communicating with members for the period of the ban. Moreover, doing so in a loud and public manner complete with law enforcement involvement as was done at First Student – San Fernando signals very clearly the employer's preference in the election, a signal reinforced by the employer's one-sided display of campaign literature for the opposing slate on the employer's bulletin board and one-sided distribution of that slate's material at the dispatch counter. The number of members employed at First Student – more than 140 – is significantly less than at Gate Gourmet, but easily large enough that one-sided campaigning to that population may have affected the outcome of this close election.

The display of Middleton slate campaign literature on the union's locked, glass-enclosed bulletin board at First Student conveyed a clear message of official endorsement to members employed there. Thus, bulletin board postings communicated that both the employer and the union supported the Middleton slate. There is no place for such conduct in an election under the *Rules*, and we conclude that these violations may have affected the outcome of the election.

For these reasons, we order Local Union 572 to rerun its delegates and alternate delegates election. We recognize that a rerun election imposes additional expense on the local union and should be used only when the facts are sufficient to support a determination that the *Rules* violations found “may have affected the outcome of the election” and no other remedy is available. As described in the factual findings, and particularly in light of the close margin in the election, we conclude that those circumstances are present in this case.

The local union shall post notice of the rerun election on all union bulletin boards under the jurisdiction of the local union using OES Form 11, modified to indicate that the election is a rerun election, within two days of receipt of this decision, the form approved in advance of posting by our representative. Ballots shall be mailed on Tuesday, April 19, 2016. The tally of ballots shall take place on Friday, May 13, 2016, at 9:00 a.m. at the local union's offices. The notice of re-run election

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shall remain posted until replaced by the Local Union Ballot Tally Certification (OES Form 13) on or after May 13, 2016.

Gate Gourmet and First Student are ordered to cease and desist from interfering with parking lot campaign activity.

First Student is ordered to cease and desist from displaying on employer bulletin boards and distributing at the dispatch counter or elsewhere campaign literature of any candidate.

Local Union 572, its business agents Jaime Villanueva and Lonnie Holmes, and all other officers and employees are ordered to cease and desist in using union resources or permitting union resources to be used to support or oppose a candidate or candidates. In particular, they are ordered not to post or permit the posting of partisan campaign material on union bulletin boards and not to use their influence with employer representatives to interfere with the campaign rights of any candidate.

The local union is directed to send to all members the remedial notice attached to this decision no later than April 13, 2016, both in the English language version attached and a Spanish language version to be supplied by OES. The local union is further directed to post this notice on all worksite bulletin boards under the jurisdiction of the local union no later than April 13, 2016. The posting shall be made within two days of receipt of this decision and shall remain posted until the Local Union Ballot Tally Certification (OES Form 13) is posted on or after May 13, 2016.

The local union is to pay the printing and first-class mailing costs of a one-page, two-sided mailing by Teamsters United 572 to all local union members employed at First Student – San Fernando, on a date of the slate's choosing. The local union is also ordered to supply a current mailing list for these members under arrangements that prevent any candidate from obtaining or possessing the list. OES will resolve disputes concerning this aspect of the order. This order for a campaign mailing is strictly remedial in nature and is intended to restore the level playing field upset when a local union representative posted campaign literature on a locked worksite bulletin board.

A remedial order of the Election Supervisor takes immediate effect unless stayed.

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,

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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 166

Halstead, 2016 ESD 166

April 8, 2016

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Richard W. Mark
Election Supervisor

NOTICE TO MEMBERS OF TEAMSTERS LOCAL UNION 572

The Election Supervisor has ordered Local Union 572 to rerun its delegates and alternate delegates election for three reasons: 1) two employers, Gate Gourmet and First Student – San Fernando, impermissibly interfered with campaign rights of candidates and members, 2) a business agent of Local Union 572 encouraged Gate Gourmet to interfere with campaign rights, 3) First Student – San Fernando impermissibly displayed and distributed campaign literature for the Middleton slate, and 4) Local Union 572 impermissibly displayed campaign literature for the Middleton slate on its locked bulletin board at First Student – San Fernando.

The *Rules* grant rights to candidates and members to campaign on employer parking lots where members park their vehicles. The *Rules* prohibit an employer from interfering with those rights. The *Rules* also prohibit an employer or union from assisting a candidate or slate by displaying or distributing its campaign literature.

The Election Supervisor will not permit any such violations of the *Rules*. The Election Supervisor has ordered Gate Gourmet, First Student, and Local Union 572 to stop violating the *Rules* and has ordered the Middleton slate to stop accepting employer assistance to its campaign.

Ballots for the rerun election will be mailed to members on Tuesday, April 19, 2016 and will be counted on Friday, May 13, 2016.

The election results in the previous delegates and alternate delegates election will be voided.

The Election Supervisor has issued this decision in *Halstead*, 2016 ESD 166 (April 8, 2016). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2015/2016esd166>.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity that violates the *Rules* should be filed with Richard W. Mark, 1050 17th Street, N.W., Suite 375, Washington, D.C. 20036, telephone: 844-428-8683, fax: 202-774-5526, email: electionsupervisor@ibtvote.org.

This is an official notice prepared and approved by Richard W. Mark, Election Supervisor for the International Brotherhood of Teamsters. It must remain posted on this bulletin board through May 13, 2016 and must not be defaced or covered up.