

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

IN RE: MEMBERS WITH)	Protest Decision 2016 ESD 250
MIDDLETON,)	Issued: June 16, 2016
)	OES Case Nos. P-287-051616-FW
Protestor.)	
_____)	

Members With Middleton, a slate of candidates in Local Union 572’s delegates and alternate delegates election, filed a pre-election protest pursuant to Article XIII, Section 2(a) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that a supporter of Teamsters United 572 violated the *Rules* by campaigning on work time in a work area.

Election Supervisor representative Deborah Schaaf investigated this protest.

Findings of Fact and Analysis

The protest alleged that Omar Moreno, a candidate for delegate on the Teamsters United 572 slate, campaigned on work time at UPS Gardena on May 10, 2016, where he is employed and also serves as warehouse union steward. Ballots in the rerun election were mailed May 3 and counted May 27, 2016.

Teamsters United 572 held a fundraiser on May 28, the day after the count, where the drawing for a raffle was to be held. Although the fundraiser carried an admission charge, the raffle was open to any member of Local Union 572 and was designed to encourage voter participation, regardless of which candidates or slate the member supported. A member entered the raffle by writing his/her name and phone number on the ballot stub and submitting the stub for inclusion in the raffle. No information about how the member voted was included on the stub used for the raffle. Although the drawing would be at the fundraiser event, there was no requirement that a member be present to win. The raffle prize was a \$100 Costco gift card.

Moreno is employed by UPS as a so-called 22.3 employee; in this category, he holds two part-time jobs that, combined, give him full-time work. He also performs his union steward function. Moreno logs his time and status in the Delivery Information Acquisition Device, a handheld data collector UPS drivers use to record delivery information. He uses codes to indicate when he is on break, dinner, and union time.

Investigation showed that Moreno solicited participation in the raffle Teamsters United 572 sponsored. He denied doing so on his work time or from employees who were working. However, he stated that if a member asked him about the raffle while either were working, he replied, but then only briefly.

The protest alleged that Moreno solicited participation in the raffle in a work area of UPS Gardena while he and the members he solicited were working. Three witnesses provided evidence of this activity to our investigator. The first, local union business agent John Flammia, told our investigator that he observed Moreno “walking multiple belts” on May 10. Flammia said that Moreno is assigned to small package sort, which he said is at a location remote from the belt area where he saw

Members With Middleton, 2016 ESD 250

June 16, 2016

Moreno. Flammia said he asked Moreno if he was campaigning, and Moreno told him no. Flammia did not hear Moreno speak with any person or overhear the substance of any such exchange. His suspicion that Moreno was campaigning was predicated solely on Moreno being present in an area where he did not work. Flammia noted that the time of shift he saw Moreno was when both Moreno and members assigned to the belt area were working.

Bernie Barrera, a UPS driver who works out of the Gardena facility, told our investigator that on May 10 he was in his package car rearranging packages while his loader was still loading the vehicle and another loader was working in an adjacent space. Barrera said he heard Moreno telling the two loaders they could enter the raffle.

Brett Crofut, another UPS driver from the same facility, told our investigator that he was sorting packages in his vehicle on May 10 when he heard Moreno talk to his loader about the raffle.

In both circumstances, the loaders continued working, and the loading of the package cars was not delayed by the exchange with Moreno.

Moreno told our investigator he was performing his steward function in the belt and loading area on May 10. Crofut stated that it was not unusual to see Moreno there performing as a steward. Moreno stated that he was there to assist Nick Parisi, a member employed as a loader, with grievances. Moreno walked through the belt area looking for Parisi, who as a fairly new employee did not have a permanent load position. He found Parisi, delivered grievance forms to him, and spoke briefly with him concerning the grievances he was attempting to file. Both Moreno and Parisi told our investigator separately that they discussed only the grievance matters and did not discuss the raffle. Parisi said that he was aware of the raffle already because he had heard Moreno describe it previously in the breakroom. Moreno saw Flammia around this time, and Flammia asked Moreno if he was campaigning. Moreno said he was not.

Flammia told our investigator he saw Moreno in the same area the next day, May 11. Moreno recalled to our investigator that he was dealing with some twenty loaders that day who he believed were being pressured to accept a one-day disciplinary suspension for misloads that Moreno said were the result of failed technology. Moreno was attempting to organize a meeting of the loaders for after the shift to address the issue. He denied discussing the raffle with these loaders; there is no contrary evidence.

The *Rules* prohibit campaigning in work areas on work time. However, campaigning incidental to work does not violate the *Rules*. Article VII, Section 12(a). The same incidental exception is available to union representatives. Article VII, Section 12 (b). The exception to the prohibition on campaigning during work hours for “[c]ampaigning incidental to work” 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

Members With Middleton, 2016 ESD 250

June 16, 2016

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 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).

On the facts presented, we hold that the alleged campaign activity ascribed to Moreno, even if proved, would constitute incidental campaigning that is permitted by the *Rules*. Accordingly, 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 250

Members With Middleton, 2016 ESD 250

June 16, 2016

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