

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: STEPHEN PIERCEY,)	Protest Decision 2021 ESD 149
)	Issued: September 29, 2021
Protestor.)	OES Case No. P-164-072921-FW
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Stephen Piercey, member of Local Union 89, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2020-2021 IBT International Union Delegate and Officer Election (“Rules”). The protest alleged that the Teamster Power supporters violated the Rules by affixing a campaign signs to an employer-owned fence when campaigning at an employer facility and that a Teamster Power candidate furthered the violation by posting photos containing the signs to Facebook.

Election Supervisor representative Deborah Schaaf investigated this protest.

Findings of Fact and Analysis

This is the second protest filed by Piercey alleging that Teamster Power campaigners hung campaign signs on employer fencing. In *Piercey*, 2021 ESD 143 (September 17, 2021), we found that a cardboard campaign placard 6 feet by 3 feet was affixed to a chain-link fence at an ABF facility in Chicago Heights IL for approximately 1 hour on July 23, 2021.

In that case, we reiterated that Article VII, Section 12(e) permits members and candidates to campaign in employer parking lots where members park their personal vehicles for work, a right that does not extend to the campaign use of employer fencing or other fixtures by hanging banners or placards from such employer assets. Citing *Teamster Power*, 2020 ESD 4 (July 3, 2020), we ordered the Teamster Power slate and its supporters to cease and desist from such use and to remove from its campaign social media all photos that depicted the impermissible use of employer fencing to campaign.

The instant protest, filed 6 days after the protest in *Piercey* and before we ruled in that case, alleged campaign use of employer fencing at another location. Investigation showed that the campaign event was held in the parking lot of a UPS distribution center in Fresno CA on July 28, 2021. Campaigners there erected a freestanding canopy, from which they hung a large vinyl-coated campaign banner, and campaigned to arriving and departing members. Photos of the event showed UPS members and campaigners posed in front of the canopy and the banner. These photos also revealed that 2 small placards – 1 approximately 12”x18”, the other smaller – hung from employer fencing behind the canopy. The larger placard was affixed to the top edge of black commercial aluminum fencing, the smaller to a strand of barbed wire that topped an adjacent chain-link fence. The placards appeared in 2 photos. One, a wide-angle shot, was taken from sufficient distance so as to include some 32 persons, most in UPS uniforms, arrayed across a space at least 30 feet wide; in this photo, the 2 placards are vanishingly small. The second photo, taken from closer range, depicts 8 members in front of the canopy; the placards are in the background of the shot, 1 at the top left corner and the second along the top edge toward the right of the scene.

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Investigation showed that no candidates were present at the campaign event. The organizer of the event, a steward at the facility, told our investigator that he brought the canopy, banner, and placards to the parking lot and, after setting up the canopy and hanging the banner from it, campaigned with others for 30 minutes. Under questioning, the steward appeared unaware that placards had been hung from fencing. He was certain that none were on fencing when he packed up the campaign material and left the site.

The photos were posted to the Facebook page of Peter Núñez on July 28 and then shared to the Vairma/Herrera 2021 – Teamster Power Slate Facebook page the same date. Núñez told our investigator that he knew employer fencing could not be used for campaigning but did not notice the 2 placards in the photos. When Núñez received the protest, he reposted the photos at issue on August 1, 2021, after digitally removing the signs that were affixed to the fence.

On these facts, we GRANT the protest and repeat the remedy ordered in *Piercey*, that Teamster Power and its supporters cease and desist from using employer fencing when campaigning in employer parking lots and insure that photos depicting campaign use of employer fencing are not disseminated. We order no further remedy.

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. Any party requesting a hearing must comply with the requirements of Article XIII, Section 2(i). All parties are reminded that, absent extraordinary circumstances, no party may rely in any such appeal upon evidence that was not presented to the Office of the Election Supervisor. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Barbara Jones
Election Appeals Master
IBTappealsmaster@bracewell.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, all within the time prescribed above. Service may be accomplished by email, using the “reply all” function on the email by which the party received this decision. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Barbara Jones
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