

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: CODY JOHNSON,)	Protest Decision 2021 ESD 74
)	Issued: March 8, 2021
Protestor.)	OES Case No. P-081-022221-SO
<hr/>		

Cody Johnson, member of Local Union 385, 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 union steward Diane Powers violated the Rules by using her status as steward to interfere with parking lot campaigning by Johnson; the protest further alleged that business agent Walt Howard instructed or encouraged Powers to violate the Rules.

Election Supervisor representative Dolores Hall Investigated this protest.

Findings of Fact

Local Union 385 will elect 10 delegates and 3 alternate delegates to the IBT convention. Two full slates and 1 independent candidate are competing for these positions. The OZ Teamsters United Local 385 slate is headed by Sean Mason and includes delegate candidate Cody Johnson, the protestor here. The Teamsters Unite! Stronger Contracts slate is headed by local union business agent Walt Howard.

On Sunday, February 21, 2021, protestor Johnson and Juan Martin Hoyle, another candidate on the same slate, campaigned in the employer parking lot at Animal Kingdom, a Disney attraction near Orlando FL. Johnson and Hoyle leafletted the bus drivers employed there, who are represented by Local Union 385. They also asked the drivers to provide their names, phone numbers, and email addresses on a slate campaign form so the campaign might contact them in the future. The form was headed with “OZ-TEAMSTERS UNITED LOCAL 385.” In addition, it read, “Choose the right side!” The parking lot where Johnson and Hoyle campaigned is adjacent to a building where drivers take their breaks. Some of the drivers they solicited were reporting for work; others were on scheduled breaks from their duties.

Johnson told our investigator that he arrived at about 10 a.m. and campaigned with Hoyle without incident until about noon. At that point, Powers, the union steward, appeared and began yelling at the drivers coming to work not to listen to the campaigners because they were not with Walt Howard and “that’s who we’re for.” Johnson stated that Powers remained in the parking lot yelling at the members they were trying to solicit, telling them not to listen to the campaigners because they were not “with us.” Johnson stated that, after Powers appeared, the drivers avoided them, and he said it was very embarrassing. He said she kept saying “my bus drivers and I are for Walt Howard.” Johnson stated that Powers stayed in the parking lot, yelling for about a half hour. She did not pass out campaign material and did not ask people to vote for Howard; instead, she yelled that the campaigners were not “with us” and urged people not to pay them any attention.

Hoyle corroborated Johnson’s statements to our investigator, adding that Powers’ first action when she appeared was to tell the campaigners they were not supposed to be there. Hoyle responded by showing Powers the parking lot campaigning order downloaded from the OES

March 8, 2021

website, at which point Powers shifted to yelling that the campaigners should not be there because Disney had its own candidate, Walt Howard. Hoyle said he tried to ignore Powers and continue to distribute campaign literature. When he handed a female employee a campaign flier, however, Powers snatched it out of the employee's hands and handed it back to Hoyle, again yelling that he was not supposed to be there. Hoyle said the female employee looked shocked when Powers grabbed the flier from her. Hoyle said he quit handing out fliers after that. Hoyle stated that Powers did not pass out any campaign literature; instead, she just yelled to everyone not to listen to the campaigners. Hoyle said he wanted no further confrontation, so he and Johnson left the premises.

Powers told our investigator that on Sunday, February 21, two men she did not know were taking names and addresses. She was confused as to who the men were, initially believing they were circulating a petition to get rid of the "paddle," a scheduling system unpopular with Disney employees. She approached the men and asked them who they were and what they were doing. She said one man said they were from the amalgamated union. Powers stated she then called Walt Howard, her business agent, who told her they must be campaigning for the other slate. Powers said that Howard asked her if Sean Mason was campaigning at her location, telling her that he was the head of the other slate and had been fired from UPS for dishonesty. Powers said she asked the two campaigners if one of them was Mason. They said no. Powers said she told people coming to work that the two were from the other side. She said she told them that they were not with "our side." She explained that she told the employees that Walt Howard was "our" slate, by which she meant the people at Disney because Howard is the business agent there.

Howard told our investigator he was at home on Sunday, February 21, when Powers called him to say a group of people were at Animal Kingdom. Howard said that Powers was upset. He said she asked him if he had sent anyone from the local union to the worksite for any reason. He said he had not, and he told her that the people were probably campaigners. He asked if Sean Mason was there, and Powers replied that she did not know who Mason was. Howard denied that he told Powers that Mason had been discharged for dishonesty. In a follow-up interview, however, Howard admitting telling all his stewards that Mason had been fired for that reason. Howard said he told Powers that the campaigners were "okay" and could campaign there.

Analysis

Johnson and Hoyle exercised their rights under Article VII, Section 12 of the Rules to campaign on the parking lot of Animal Kingdom on February 21, 2021. Section 12(a) of that article granted them the right "to aid or campaign for any candidate," including themselves and their slate. Section 12(e) granted them the right to "distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by Union members to park their vehicles in connection with their employment."

While Johnson and Hoyle had the right to present a campaign message, the members working at Animal Kingdom also had the right to receive that message. Thus, Section 12(a) declares that "members of the Union shall have the reciprocal right to hear or otherwise receive such campaign advocacy." Section 12(e)(ii) affirms the same right.

March 8, 2021

Powers impermissibly interfered with these rights by instructing members not to listen to the campaigners and by snatching campaign material away. She used the authority of her position as steward to interfere with campaigners' rights to campaign and members' rights to hear the advocacy violates the Rules. *Thornsberry*, 2005 ESD 13 (October 8, 2005), *aff'd*, 05 EAM 3 (November 4, 2005) (business agent violated the Rules by collecting campaign flyers from members, where the members knew the business agent had responsibility for their worksite and surrendered the flyers to him on account of the office he held); *see also*, *Toole*, 2020 ESD 12 (August 25, 2020) (steward violated the Rules by directing members not to listen to campaigners or sign their petitions). We find that Powers violated the same principle here.

We also find that Powers did not act solely on her own initiative. Rather, she acted either at the instruction or encouragement, or with the approval of, business agent Howard.

In reaching these conclusions, we credit Johnson and Hoyle's evidence concerning the events of that morning. We do not credit Powers. Specifically, we find that, while Powers may have been confused initially about who the campaigners were and what their purpose was, she promptly learned the truth, first from the campaigners directly and second from Howard when she phoned him to ask if he had sent anyone from the union to her worksite. Once she understood the men were campaigning for the slate that opposed the slate her business agent, Howard, led, Powers actively undertook to prevent the members employed there from receiving the campaigners' message.

We also do not credit Howard's statement to our investigator that he told Powers the campaigners were "okay" and were permitted to campaign. We reach this conclusion for two reasons. First, after Powers ended her phone call with Howard, Powers' only actions with respect to the campaigners was to interfere with their activity, something we believe she would not have done if Howard had instructed her to leave them alone. Second, when our investigator asked her to recount her phone conversation with Howard, Powers' detailed account did not include that Howard had told her to allow the campaigners to campaign, an omission that under the circumstances we find incriminating.

For these reasons, we GRANT the protest.

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).

We order Powers and Howard to cease and desist from interfering with campaign activity in employer parking lots, for the duration not only of the election period for Local Union 385's delegates and alternate delegates election but continuing through the election of International officers.

Johnson, 2021 ESD 74

March 8, 2021

We further order Local Union 385, within two days of the date this decision issues, to post on all worksite bulletin boards at Animal Kingdom the notice attached to this decision and to maintain that posting through April 1, 2021, the date ballots are to be counted in the delegates and alternate delegates election. The notice must not be damaged, defaced or covered up. Within two days of posting the remedial notice, Local Union 385 must submit a declaration of posting to OES.

A remedial order of the Election Supervisor is immediately effective, unless stayed. *Lopez*, 96 EAM 73 (February 13, 1996).

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
2021 ESD 74

Johnson, 2021 ESD 74
March 8, 2021

DISTRIBUTION LIST (BY EMAIL UNLESS NOTED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
braymond@teamster.org

Edward Gleason
egleason@gleasonlawdc.com

Patrick Szymanski
szymanski@me.com

Will Bloom
wbloom@dsgchicago.com

Tom Geoghegan
tgeoghegan@dsgchicago.com

Rob Colone
rmcolone@hotmail.com

Barbara Harvey
blmharvey@sbcglobal.net

Kevin Moore
Mooregp2021@gmail.com

F.C. "Chris" Silvera
fitzverity@aol.com

Fred Zuckerman
fredzuckerman@aol.com

Ken Paff
Teamsters for a Democratic Union
ken@tdu.org

Cody Johnson
cojo2810@gmail.com

Teamsters Local Union 385
Michael McElmury, Trustee
mmcelmury@teamster.org

Walt Howard
whoward@local385.org

Dolores Hall
dhall@ibtvote.org

Jeffrey Ellison
EllisonEsq@gmail.com

Office of the Election Supervisor
for the International Brotherhood of Teamsters
1990 M Street, N.W., Suite 650
Washington, D.C. 20036
844-428-8683 Toll Free
202-925-8922 Facsimile
electionsupervisor@ibtvote.org
www.ibtvote.org

Richard W. Mark
Election Supervisor

NOTICE OF ELECTION RULES VIOLATION

TO: All Teamster members employed at Animal Kingdom

Members and candidates have the right under the Election Rules to campaign on employer parking lots where members park their vehicles. Members have the right to hear and receive that campaign advocacy.

The Election Supervisor has found that Teamsters Local Union 385 steward Diane Powers violated the Election Rules on February 21, 2021, by using her union position to interfere with campaign activity by supporters of the OZ Teamsters United Local 385 slate. The Election Supervisor has further found that Teamsters Local Union 385 business agent Walt Howard violated the Rules by instructing, encouraging, or condoning Powers' actions. Such activity impermissibly prevented the campaigners from engaging with members and impermissibly interfered with members' rights to hear and receive that advocacy.

The Election Supervisor will not tolerate violation of the Rules. The Election Supervisor has ordered Teamsters Local Union 385 to post this Notice on all worksite bulletin boards under the local union's jurisdiction at Animal Kingdom to inform members of the Rules' requirements and the violation found.

The Election Supervisor has issued this decision in *Johnson*, 2021 ESD 74 (March 8, 2021). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2020/2021esd074>.

Any protest you have regarding your rights under the Election Rules or any conduct by any person or entity that violates the Rules should be filed with Richard W. Mark, 1990 M Street, N.W., Suite 650, Washington, D.C. 20036, telephone: 844-429-8683, fax: 202-925-8922, email: electionsupervisor@ibtvote.org.

This notice must remain posted through and including April 1, 2021 and must not be damaged, defaced, or covered up.