

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: JAIME VASQUEZ)	Protest Decision 2021 ESD 81
and JAVIER SANCHEZ,)	Issued: March 12, 2021
)	OES Case Nos. P-100-030421-FW,
Protestors.)	P-102-030621-FW & P-103-030821-FW
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Jaime Vasquez, member and principal officer of Local Union 542, filed a pre-election protest in Case No. P-100-030421-FW 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 Craig Chappell violated the Rules by wearing a campaign t-shirt while shopping at Costco.

Javier Sanchez filed two separate protests. The protest in Case No. P-102-030621-FW alleged that Edmond Swank violated the Rules by wearing a campaign t-shirt while shopping at Costco. The protest in Case No. P-103-030821-FW alleged that Maria Sandoval violated the Rules by wearing a Teamsters sweatshirt while working.

Election Supervisor representative Jim Devine investigated these protests. They were consolidated for decision.

Findings of Fact

Local Union 542 will elect 10 delegates and 6 alternate delegates to the IBT convention. The Teamsters 542 Members First slate, consisting of local union officials and rank-and-file members, is competing against the Members for Members 542 slate, comprised of rank-and-file members.

Local Union 542 represents members employed at several Costco stores. The Members for Members 542 slate has sought to campaign at several of the stores. *See Correia et al*, 2021 ESD 75 (March 9, 2021).

Case No. P-100-030421-FW

Protestor Vasquez is the lead delegate candidate on the Teamsters 542 Members First slate; Chappell is a delegate candidate on the Members for Members 542 slate.

On March 2, 2021, Chappell was observed shopping inside the Costco store in San Marcos CA, a facility under the jurisdiction of the local union. He was wearing a t-shirt supporting the Members for Members 542 slate. Chappell confirmed to our investigator that he and his wife have a Costco membership card and were shopping that day. He produced a Costco receipt of that date showing the purchase of groceries. He denied campaigning to any employee of the store, whether verbally or with leaflets.

Business agent Michael West has representational responsibility for local union members employed by Costco. By coincidence, he was in the San Marcos store when Chappell was there, saw him, noted his campaign t-shirt, and followed him around the store to determine whether he

March 12, 2021

was campaigning to members while they were working. He saw no evidence that Chappell spoke with any store employee or distributed leaflets to them. He reported the encounter to protestor Vasquez, nonetheless. Vasquez filed this protest alleging that Chappell violated the Rules by wearing a partisan t-shirt into the store.

Case No. P-102-030621-FW

In this case, protestor Sanchez is a candidate on the Members for Members 542 slate. Swank is a candidate on the Teamsters 542 Members First slate. Swank told our investigator he wore his slate's shirt while on a quick personal shopping trip to the Costco where he works. He was on personal time, bought some items, and left the store within 10 minutes of arriving. He denied passing out any campaign materials or speaking with any employees about the campaign. Sanchez has no information to contradict Swank's denial.

Case No. P-103-030821-FW

In this protest, Sanchez alleged that Sandoval violated the Rules by wearing a Teamsters sweatshirt to work. Sandoval is not a candidate in the delegates and alternate delegates election. Her shirt front read "Local 542" in small print on the left breast; the back featured an 18-inch Teamsters emblem. The shirt did not advocate for any candidate in any election. Sandoval stated that she wears the sweatshirt to work periodically. No supervisor or manager has instructed Sandoval not to wear the shirt.

Costco permits employees to wear Teamsters shirts at work. Our investigator showed photos of the front and back of Sandoval's sweatshirt to the store manager and a labor relations official; both deemed the shirt acceptable.

Analysis

Neither Chappell, Swank, nor Sandoval violated the Rules here. A member generally may wear a partisan t-shirt, pin, sticker, button, and the like, *even while working*, unless the employer forbids such apparel in order to maintain production, discipline, for health and safety reasons, or because the employee interacts with customers or the public.¹ The Rules place no restriction on

¹ See *Republic Aviation Corporation v. NLRB*, 324 U.S. 793 (1945); *Malta Construction*, 276 NLRB 1494 (1985), *enf'd*, 806 F.2d 1009 (11th Cir. 1986); *Saavedra*, P509 (May 1, 1996) (employee who does not meet public in course of duties may wear partisan t-shirt); *Kelder*, 2016 ESD 65 (January 8, 2016) (employer violated the Rules by directing employee to remove a campaign shirt while working, where the employee had no contact with the public and the shirt was inoffensive); *Blanchet*, P228 (January 3, 1996) (employee has a right to wear two-inch campaign button on the job where considerations of safety or customers inapplicable); *Vaule*, 2006 ESD 140 (March 17, 2006) (employee who does not interact with public has pre-existing right to wear campaign button in workplace); *Alvarado*, 2010 ESD 31 (September 28, 2010) (campaign stickers on "bump hats" in cannery are permitted, provided they are firmly affixed so to avoid falling into sanitary product). In comparison, the employer may prevent the wearing of campaign emblems only where the prohibition is necessary to maintain production and discipline, safety, or to prevent the alienation of customers. The basis for these limited exceptions is the right of the employer to prevent unrelated third parties from

Vasquez, 2021 ESD 81
March 12, 2021

the right of an *off-duty* member to wear partisan paraphernalia, even though he/she may come into contact with members who are working, provided that the member does not engage in other campaign activity that distracts or diverts the on-duty members from performance of their duties.

Accordingly, we DENY these protests.

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 81

inappropriately assuming that the employer supports the position advocated by the employee or the employee’s emblem. *UPS v. NLRB*, 41 F.3d 1068 (6th Cir. 1994).

Vasquez, 2021 ESD 81
March 12, 2021

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