

IN RE:

DENNIS SPEAK

01 - Elec. App. – 053(KC)

This matter is an appeal from the Election Administrator’s (the “EA”) decision 2001 EAD 240, issued March 15, 2001¹. The hearing was requested by Dan Johnson, business agent and member of Teamsters Local Union 41 in Kansas City, Missouri.

A hearing was held before me on March 22, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. and Dolores Hall, Esq. for the Election Administrator’s Office; Mr. Johnson; Phil Young, president of Local Union 41; Dennis Speak, the protestor and delegate candidate from Local Union 41; Harold McLaughlin, United Parcel Service (“UPS”) representative from Local Union 41; and Gary Tocci, Esq. and John Nadler, Esq., counsel for UPS. No additional submissions were received by this office.

Mr. Johnson appealed that part of the protest that accused him and Mr. Young of improperly gaining access to a UPS facility for the purpose of campaigning. On February 12, 2001, Mr. Johnson and Mr. Young took a vacation day to campaign at the UPS facility in Kansas City. The EA’s investigation found that they subsequently entered the building to continue their campaigning on the pretext of discussing union business with UPS Pre-Load manager Gary Allen. This determination was based on the fact that (a) after a short conversation with Mr. Allen, Mr. Young remained in the facility for at least another fifteen minutes and was seen

¹ Mr. Johnson originally appealed the remedy set forth in 2001 EAD 239 (March 14, 2000). However, when the EA in his decision of the instant protest withdrew that remedy, Mr. Johnson requested, by letter dated March 19, 2001, that we consider his appeal transferred to the instant protest and I granted his request.

shaking hands with two other UPS employees; (b) UPS employees, who had last seen Mr. Young at the facility three years ago during the last delegate election, could have inferred his return that day was for the same purpose; and (c) since UPS employees saw Mr. Young and Mr. Johnson campaigning in the parking lot that morning, they would presume they had continued their campaigning inside the facility.

Both Mr. Young and Mr. Johnson dispute the EA's findings. Mr. Johnson, in his appeal letter, explained that he went into the facility after campaigning to deal with an on-going work site problem. Mr. Young states that his presence in the building was to take the opportunity to observe this matter first hand.

The EA concluded that Mr. Young and Mr. Johnson gained access to the East Center facility without the permission of UPS for purposes of campaigning. Because employees might conclude that UPS had allowed the prohibited activity and was endorsing Mr. Young's slate, the EA required UPS to post and read a notice to the East Center employees that stated that UPS does not favor or oppose any candidates, permit access to its facilities for campaigning purposes and that Mr. Young and Mr. Johnson improperly gained access to the East Center facility without the company's permission.

The factual findings of the EA are to be given substantial deference.

Accordingly, I affirm the EA's decision.

s/Kenneth Conboy
Kenneth Conboy
Election Appeals Master

Dated: March 27, 2001