

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

IN RE: TEAMSTERS UNITED,)
)
Protestor.)
_____)

Protest Decision 2016 ESD 284
Issued: September 16, 2016
OES Case No. P-314-063016-NA

Teamsters United filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that Sean O’Brien threatened a delegate and interfered with the exercise of delegate rights during the convention nominations process, in violation of the *Rules*.

Election Supervisor representative Dolores Hall investigated this protest.

Findings of Fact

The nominations process for candidates for IBT General Secretary-Treasurer took place on the floor of the 29th IBT Convention on Thursday morning, June 29, 2016. The incident that is the subject of the protest filed here occurred during the nomination of Teamsters United’s candidate for General Secretary-Treasurer, Tim Sylvester.

The convention floor. Before describing the incident, it is necessary to understand the layout of the convention floor. Approximately 1,600 elected delegates comprised the convention nominating body. Delegate seating was set up in ten separate sections, separated from each other by longitudinal and transverse aisles. Four forward sections roughly square in shape had eight rows, with most rows containing 24 seats. These forward sections were separated by a transverse aisle from four identically shaped rear sections, each also consisting of eight rows, with most rows containing 24 seats. Finally, two smaller sections flanked the center aisle at the rear of the convention floor, each containing two rows of 24 seats and a third of between eight and fifteen seats.

Three longitudinal aisles (a center and two side aisles) and two transverse aisles separated the blocks of seating. The intersections of these aisles created six points at which floor microphones were placed for use by delegates and candidates during the nominations process and by delegates during the remaining portions of the convention. The microphones were numbered 1 through 6, from left to right when viewed from the rostrum, with Microphones 1, 2 and 3 situated at the junctions, respectively, of the forward transverse aisle and the left side aisle, the center aisle, and the right side aisle.¹ Each microphone was situated at or close to the center of its longitudinal aisle, approximately even with the last row of the forward sections of seats that flanked it on either side.

As with all other nominations for International office that occurred during the convention, nominating speeches for General Secretary-Treasurer were made on the floor of the convention from Microphone 1. Each nominating speech was followed by a seconding speech made from Microphone 3. Following each nominating and seconding speech, a candidate acceptance was made from Microphone 2. When the speaker at a given floor microphone was recognized by the Election Supervisor, who

¹ Microphones 4, 5, and 6 were in similar positions at the intersections of the rear transverse aisle and the three longitudinal aisles. These microphones were not used during the nominations process.

chaired the nominations process from the rostrum, the microphone was turned on to amplify the speech through a robust sound system. In addition, live video of the speaker was displayed on four large screens mounted high on the side walls of the hall and two additional screens on the left and right behind the rostrum.

Representatives of the OES were stationed at all three microphones to facilitate their use by nominators, seconders, and candidates. Sergeants at arms were in the immediate vicinity to maintain order.

Thursday nominations. Following nominations for the position of General President, nominations were made for General Secretary-Treasurer. Teamsters United's candidates for each position were nominated second, after those of Hoffa-Hall 2016. Tim Sylvester was nominated for General Secretary-Treasurer on the Teamsters United slate by Local Union 804 delegate Jim Reynolds, speaking at Microphone 1. While Reynolds was speaking, Local Union 251 delegate Matt Taibi was positioned at Microphone 3, to give his seconding speech. Standing shoulder-to-shoulder immediately to Taibi's right were two Teamsters United supporters, wearing the black vests of that slate; a third Teamsters United supporter stood directly behind Taibi.

Thursday was the third and final day of nominations for International office at the IBT convention. By the vests delegates wore that indicated their political support for candidate slates, as well as by the secret ballot voting conducted on Tuesday and Wednesday evenings for nomination to the Union-wide ballot, the number of delegates supporting the Hoffa-Hall 2016 slate of candidates far exceeded the number supporting the Teamsters United slate. During the first two days of nominations, some Hoffa-Hall 2016 supporters attempted to leverage their numerical advantage by crowding the area immediately behind a Teamsters United nominator, seconder, or candidate in order to be in the video shot that was displayed on the large overhead monitors. Some of these Hoffa-Hall 2016 supporters, wearing their red vests, waved their arms, made "thumbs down" or obscene gestures, or otherwise attempted to exhort the convention body to boo and disrupt the Teamsters United speakers and candidates. For Thursday's nominations, the Election Supervisor responded to the previous days' experiences by meeting with representatives of both slates to inform them that the sergeants at arms would be directed to maintain a larger buffer area around the microphones and, specifically, that during nominations no delegates adverse to the speaker would be permitted to stand in the camera shot behind those speaking at the floor microphones. The speaker, however, could have supporters in the camera shot. This instruction was also given to the top officials of the sergeants at arms.

Local Union 332 delegate Nina Bugbee was flanked at Microphone 3 by Hoffa-Hall 2016 partisans during her seconding speech of James Hoffa. Thereafter, each delegate giving a seconding speech at that microphone was accompanied by supporters of the candidate whose nomination was being seconded, with an OES representative insuring that the supporters were given the space to appear in the camera shot. When Taibi moved to Microphone 3 to give his seconding speech for Sylvester, three black-vested supporters of Teamsters United took positions shoulder-to-shoulder with him in the camera shot. Among them were Local Union 89 delegates Zach Pfeiffer and Mike Rankin. It was at this point the incident that is the subject of this protest occurred.

The evidentiary record of the incident. Our investigator interviewed Taibi, Pfeiffer, and Rankin. In addition, she interviewed Tim Hill, another Teamsters United supporter but not an elected delegate, who was granted floor credentials to act as a campaign photographer/videographer for

Teamsters United candidates. Hill was kneeling on the floor of the longitudinal aisle, approximately three rows in front of Microphone 3.

Our investigator interviewed respondent O'Brien. In addition, she interviewed Tom Mari, the secretary-treasurer of Local Union 25 and an elected delegate from that local union. Further, she interviewed Local Union 391 delegate Mike McGaha, Local Union 191 delegate Ed Rooney, Local Union 671 delegates Dave Lucas and Anthony Lepore, and Local Union 677 delegates John Capobianco and Frank Bonacassio. She also interviewed sergeants at arms Joe Smith, Dan Collins, and Manny Rodriguez, all of whom were in close proximity to the persons involved in the incident.

Our investigator also obtained still photographs taken of the portion of the convention floor that included Microphone 3 immediately before and during Taibi's seconding speech of Sylvester. These photos were taken by Local Union 272 delegate Fred Alston, who she also interviewed. In addition, our investigator interviewed OES representative Joe Childers, who was present and dealt with some of the persons involved in the incident.

The IBT supplied us with its audio-visual recording of the entire convention, which included Taibi's seconding speech of the Sylvester nomination.

O'Brien. Sean O'Brien is president and principal officer of Local Union 25. In addition, he is president (not principal officer) of Joint Council 10, which is comprised of some 24 New England Teamster local unions. He is also an IBT vice president for the East region. While serving in each of those capacities, O'Brien was the subject of an investigative report of the Independent Review Board (IRB) issued October 17, 2013 to General President Hoffa, recommending a charge be brought against O'Brien for "bringing reproach upon the IBT by threatening to retaliate against members for exercising rights protected under federal labor law and the IBT constitution, including the rights to seek election to office and support the candidate of one's choice." Specifically, it was alleged that O'Brien appeared at a campaign event for Joe Bairos, who was seeking re-election to his position as principal officer of Local Union 251, and that O'Brien made remarks threatening retaliation against any member who opposed Bairos's candidacy for re-election. Bairos's slate was defeated by a slate led by Matt Taibi, and Taibi's slate comprises the current executive board of Local Union 251. When General President Hoffa received the IRB report and recommendation, he authorized the recommended charge against O'Brien. Before the charge was heard, O'Brien entered into an agreement by which he neither admitted nor denied the charge but agreed to a 14-day suspension without pay from all offices he held. The suspension commenced November 1, 2013 and concluded November 15, 2013; it was a suspension from positions held only and was not from membership. The terms of the agreement were approved by United States District Judge Loretta Preska on December 9, 2013.

The incident. The protest alleged:

O'Brien left his assigned seat with the Local 25 delegation and stood immediately in front of Mic 3 staring at Taibi. Notably, O'Brien was previously suspended from membership [*sic*] in the IBT by the Independent Review Board for threatening to retaliate against Taibi and other Local 251 members. Local 89 member Zach Pfeiffer informed an officer of the OES, who then instructed O'Brien to return to his seat. O'Brien laughed and refused. O'Brien then attempted to provoke a fight, telling Pfeiffer that he "didn't want none" of O'Brien and threatened him by telling him "I know who you are."

O'Brien was an elected convention delegate from Local Union 25. The IBT's convention seating chart showed that Local Union 25 had thirteen seats distributed across the first three rows of Section 2 on the convention floor (three seats in the first row, eight seats in the second, and two in the third). Section 2 was the second section from the right when viewed from the rostrum; it and Section 1 flanked the aisle in which Microphone 3 was positioned. O'Brien's seat was in the front row of Section 2, and the stand for Microphone 3 was positioned approximately even with the eighth rows of Sections 1 and 2.²

Pfeiffer told our investigator that, while the nomination speech for Sylvester was being delivered from Microphone 1, across the hall from his location, he observed O'Brien come up the side aisle and stop immediately in front of Microphone 3, from which Taibi would momentarily deliver the seconding speech. The aisle had a number of delegates in it, impeding a clear path, but O'Brien wended his way through those delegates to a spot immediately between the microphone and a chair near the back of Section 2. At this, Pfeiffer got the attention of Joe Childers, an OES representative assigned to the area, and told him that O'Brien was not in his seat. Childers approached O'Brien and asked him if the seat he was standing near was his. "It is now," was O'Brien's reply, according to Childers. Childers directed him to sit down, but O'Brien did not comply.

Tim Hill, the photographer/videographer for Teamsters United, corroborated Pfeiffer's description of O'Brien appearing at Microphone 3. Hill had successfully captured video from his kneeling position in the aisle as Local Union 89 delegate Avral Thompson seconded the nomination of Fred Zuckerman for General President some fifteen minutes earlier. The aisle was clear of delegates at that time, according to Hill. However, when Taibi moved to the microphone in advance of the seconding of Sylvester's nomination, Hill saw O'Brien, another delegate from Local Union 25 later identified as Tom Mari, and others move into the aisle, substantially clogging it.

With O'Brien remaining in place between an aisle-side chair at the rear of Section 2 and Microphone 3, Pfeiffer told our investigator that O'Brien leaned toward Pfeiffer and addressed him directly, "You are a punk. I know who you are. You are nothing. You don't want none." Pfeiffer said O'Brien then laughed.

Dan Collins, a member of Local Union 107 working the convention as a sergeant at arms, was positioned just to the left of Microphone 3 when viewed from the front of the hall. His duties were to maintain order and a perimeter of space around the microphone. He told our investigator that O'Brien was immediately behind him, and Pfeiffer directly in front of him. Collins heard Pfeiffer say to O'Brien, "I am not afraid of you." Collins did not hear anything that O'Brien may have said before or after Pfeiffer's remark. Collins responded by telling Pfeiffer to "back off."

Still photographs taken by delegate Alston show O'Brien leaning against the back of sergeant at arms Collins in the direction of Pfeiffer, and Pfeiffer making eye contact with O'Brien. As O'Brien is doing so, Mike McGaha is seen standing directly to O'Brien's left, facing O'Brien. McGaha had given the seconding speech from Microphone 3 for Ken Hall, candidate for General Secretary-Treasurer on the

² The base of the microphone stand was even with the last row of chairs of Sections 1 and 2. The microphone was mounted on a boom attached to the stand, so the person speaking into the microphone stood in the transverse aisle, some 12 to 18 inches away from the base of the microphone stand.

Hoffa-Hall 2016 slate³; McGaha was followed at Microphone 3 by Taibi. When McGaha finished his speech, Local Union 671 delegate Dave Lucas offered McGaha his seat. Lucas had the aisle seat on the seventh of eight rows of Section 2. McGaha accepted the offer but stood next to the seat rather than sit down. Photos show McGaha at that location at the time O'Brien is talking to Pfeiffer; McGaha and O'Brien are standing so close to each other that, at times in the press of the people there, they may have made physical contact.

O'Brien denied saying anything to Pfeiffer or any other Teamsters United supporter in the area of Microphone 3. O'Brien admitted that he went to the back of Section 2, close to Microphone 3, but said he did so solely to speak with Local Union 191 delegate Ed Rooney concerning a workplace problem Rooney was trying to solve with UPS in Local Union 191. Rooney's seat was on the aisle of the sixth of eight rows of Section 2, a row in front of the seat delegate Lucas had offered to McGaha.

We reject O'Brien's explanation. It is contradicted by photographs of the scene and other witness testimony, and is not at all credible considering all of the circumstances. First, Rooney told our investigator he saw O'Brien that morning standing near Microphone 3 staring at Taibi at the time of the seconding speech, but Rooney denied speaking with O'Brien at all on Thursday of convention week, whether at that moment or at any other time. Second, Alston's photographs show O'Brien in the area of Microphone 3 with Pfeiffer and McGaha. Third, during nominations, the proceedings around the floor microphones concern nothing but nominations, and those proceedings are loud with the range of crowd noises and shouting. It is not credible that O'Brien would have chosen the time and place of Taibi's seconding speech to go to the area of Microphone 3 for a conversation with another delegate about a workplace issue that O'Brien described to our investigator as not urgent in nature. Finally, and most important, it was no coincidence that O'Brien chose the moment of Taibi's seconding speech to leave his seat for the area of Microphone 3. Taibi is the Local Union 251 member he had previously been charged with intimidating, and we find that O'Brien went to the Microphone 3 area to face Taibi, not to have a work conversation with Rooney unrelated to convention business.

Both still and video images of the aisle shot immediately before and during Taibi's seconding speech showed the aisle was congested with red-vested Hoffa-Hall 2016 delegates. Hill intended to take still shots and video of Taibi delivering his seconding speech of Sylvester's nomination, just as he had of Thompson's seconding speech of Zuckerman. However, the Hoffa-Hall 2016 supporters crowding the aisle blocked his view of Taibi, and he was unable to photograph the speech. Hill recorded audio on his mobile phone, which he subsequently posted to Youtube. We reviewed the recording in evaluating this protest.⁴

We compared the audio that Hill recorded with the official audio-visual recording of convention proceedings recorded by the IBT. From this comparison, we determined that Hill's audio commenced about 30 seconds before Taibi began his seconding speech. We made this determination because the

³ As occurred with Bugbee's seconding speech of James Hoffa's nomination, McGaha was flanked by Hoffa-Hall 2016 partisans during his seconding speech of Ken Hall.

⁴ Hill's audio is actually audio-visual, but because of his position on the floor, the video portion of the recording is unhelpful. Its initial 30+ seconds depict the lower torso of a man wearing a long-sleeve shirt and another man with a two-way radio; much of the balance of the video portion is black, or blurred images. For this reason, we refer to the recording here as audio only. As this decision is issued, it is available at <https://youtu.be/Kc-5X3oiGbA>.

initial seconds of the audio recording Hill made captured the concluding sentences of the nomination speech of Sylvester that Reynolds delivered from Microphone 1, as heard over the convention hall's sound system. These sentences matched the audio-visual recording of the convention the IBT produced to us as well as the official transcript of the convention.⁵

Hill's audio commenced with an exchange, apparently already in progress, between sergeant at arms Joe Smith and Tom Mari, the delegate from Local Union 25 who also serves as the local union's secretary-treasurer. They were discussing the decision of OES representatives on the convention floor to permit Teamsters United supporters to stand immediately behind Taibi as he delivered his seconding speech. The audio picked up in the middle of Smith's explanation of this development to Mari:

Smith: He does today.

Mari: That's fuckin' bullshit! Why the fuck does he have more rights than I do?

Smith: He gave it to him [referring to OES representative Joe Childers].

Mari [to Childers]: That's fuckin' bullshit. Why does he have more rights than me?

Childers: What?

Mari: Why does he have more rights than me?

Childers: You need to calm down.

Mari: That's not right. He has more rights than I do.

Hill's audio captured this exchange beginning at 0:15 and continuing through 0:39. At that point, with the nomination speech of delegate Reynolds concluded, the Election Supervisor said, "Thank you. Let's have order as the nominations proceed." Then, "Microphone No. 3, is there a second to the nomination of Tim Sylvester for General Secretary-Treasurer?"

Taibi responded to this question, at 36:13 of the IBT video, with, "Yes, there is," introducing himself by name, title, and local union, and giving his speech. The IBT audio-visual recording shifted to Microphone 3 at 36:06, immediately after the Election Supervisor said the words "Microphone No. 3." The camera recording the activity at that microphone was mounted on the extreme right end of the rostrum, when viewed from the front of the hall.⁶ When the recording first shifted to the area of Microphone 3, a throng of Hoffa-Hall 2016 partisans crowded the area directly in front of the microphone. Two sergeants at arms can be seen motioning to those persons to get down, and they responded by stooping, squatting, or kneeling to get out of the camera shot. OES's Childers can be seen concluding his words to Mari; Childers then exits to the right side of the shot and Mari stoops down out of view. Hill told our investigator that Mari squatted down directly in front of him and remained there for the duration of Taibi's speech.

Taibi began his speech at 36:13 of the IBT recording, which corresponded with 0:43 of the Hill audio. From that time through 2:35 of the Hill audio, no further words of the Election Supervisor or

⁵ Beginning at 35:35 of the IBT video, Sylvester nominator Jim Reynolds is heard to say, "You can boo and disrespect the 7,000 members of Local 804 who sent us here, but you will never deter the man I nominate today." The same sentence can be heard beginning at 0:05 of the Hill audio.

⁶ The rostrum spanned nearly the width of the hall, was centered by a lectern from which the Election Supervisor conducted the nominations process, and was backed by three large video screens, the two side screens depicting the speaker on the convention floor who was addressing the convention. The camera that recorded Taibi's speech at Microphone 3 was at the Election Supervisor's extreme right.

Taibi that were broadcast over the hall's public address system can be heard on Hill's audio over the ambient noise in the area around Microphone 3. Hill's audio, however, clearly captured the words of Mari, crouching directly in front of Hill and facing Taibi. The convention recording and Hill's recording are on separate planes: Taibi proceeds and presents a seconding speech as Mari yells out threats and insults. The following side-by-side transcriptions show Taibi's speech and Mari's shouted epithets:

IBT audio-visual recording

ELECTION SUPERVISOR MARK: Thank you. Let's have order as the nominations proceed. Microphone No. 3, is there a second to the nomination of Tim Sylvester for General Secretary-Treasurer?

TAIBI: I rise to second the nomination of my friend, Tim Sylvester, for the General Secretary-Treasurer on the Fred Zuckerman Teamsters United slate.

ELECTION SUPERVISOR MARK: Two minutes.

(Chorus of boos)

DELEGATE TAIBI: When Tim Sylvester was elected Local 804 President, he cut officer salaries, he reformed his Local Union Bylaws so members would have a voice in contract negotiations. He stood up to the employers and won contract improvements.

ELECTION SUPERVISOR MARK: Order, please.

(Chorus of boos)

DELEGATE TAIBI: When I was elected in Local 251, my team followed Tim's lead. We cut local officers' salaries, we took on the employers,

we changed our Bylaws to involve members, and real Teamster democracy. We won contract improvements across our local. "Teamster Strong" is a catchy slogan. It looks good on campaign signs. Tim Sylvester is Teamster strong.

He took on UPS, enforced the contract, and won improvements in the 804 supplement. One time UPS told me, "We're the largest

Hill audio

Crowd: Boo, boo, boo, boo, boo...

Crowd: Bullshit, bullshit, bullshit...

Mari: You're a fuckin' scab, you motherfucker!

Mari: You're a fuckin' scab, you fuckin' scumbag!

Teamster employer. We deserve a break. We deserve a special deal.” Not when they’re violating the members’ rights. Not when they’re breaking the contract or the law.

Tim takes them on for our members, for the future of our union. You boo us today out of fear that members will vote you out. My local had enough.

So will the International. I second the nomination of Tim Sylvester on the Fred Zuckerman Teamsters United slate. Thank you.

(Chorus of boos)

ELECTION SUPERVISOR MARK: Thank you. Order, please. Order as the nominations proceed.

Microphone 2. There has been a nomination and a second of Time Sylvester for General Secretary-Treasurer. Mr. Sylvester, do you accept the nomination?

Mari: You’re a fuckin’ scab! Motherfuckin’ scab! You should be fuckin’ ashamed of yourself!

Mari: You’re all fuckin’ dead, motherfuckers.

Mari: You fuckin’ ratfuck! You’re a fuckin’ ratfuck!

Mari: You piece of shit!

Election Supervisor [to candidate Sylvester at Microphone 2]: Microphone two.

Through the crowd’s booing and derisive chanting and Mari’s threatening insults, Taibi completed his seconding speech. Nothing in the transcript or the video suggests that Taibi was deterred by the noise around him (Mari included) as he addressed the convention. He anticipated the audience’s rude booing and incorporated a response to it in his prepared remarks. Taibi told our investigator that he did not hear Mari’s shouts (Mari was about five feet in front of him, crouching). Accordingly, whatever intimidating impact Mari might have intended toward Taibi, there was no effect. Taibi took no notice of Mari, did not hear the obscenities, was not intimidated, and successfully delivered the seconding speech.

Analysis

Article VII, Section 12(g) of the *Rules* prohibits “[r]etaliatio[n] or threat of retaliatio[n] by the International Union, any subordinate body, any member of the IBT, any employer or other person or entity against a Union member, officer or employee for exercising any right guaranteed by this or any other Article of the Rules...”

The protest alleged that Sean O’Brien violated this provision by telling Zach Pfeiffer, “You are a punk. I know who you are. You are nothing. You don’t want none.”

We find that O’Brien said the words attributed to him by Pfeiffer. In reaching this conclusion, we credit Pfeiffer and do not credit O’Brien. We do not credit O’Brien for several reasons, including that his explanation for moving from his front row seat in Section 2 to the rear of the section is not credible, as noted above. Further, the still photography shows O’Brien leaning toward Pfeiffer and Pfeiffer looking directly at him, supporting the conclusion that O’Brien was speaking to Pfeiffer at the time the photographs were taken. In addition, sergeant at arms Collins credibly reported to our investigator that Pfeiffer told O’Brien, “I’m not afraid of you,” a statement that would not make sense except when uttered in response to a previous statement by O’Brien. Finally, the context supports that

O'Brien made his statement to Pfeiffer because Pfeiffer had reported O'Brien's presence to OES's Childers, who had directed O'Brien to sit down. We conclude that O'Brien spoke to Pfeiffer to taunt him for his unsuccessful effort to have O'Brien leave the area.

The protestor submitted that the threatening insults captured on the Hill audio were uttered by O'Brien, arguing that these words were further proof of a *Rules* violation. We reject this submission because we conclude that the insults were made by Mari. We reach this conclusion for several reasons. First, Childers reported that the exchange he had about Teamsters United partisans standing with Taibi was with Mari, not with O'Brien, and we conclude that the insulting shouts heard later in the Hill audio were made by the same person with whom Childers is heard speaking in the earlier part of the audio. Second, Hill, who recorded the audio, said that a person who he thought was "O'Brien's whip" made the statements on the recording. Mari was not a whip, but he was present with O'Brien; sergeant at arms Smith told our investigator when identifying Mari that Mari was not a whip.

When we concluded that Mari rather than O'Brien uttered the threatening insults to Taibi while Taibi was giving his seconding speech, we gave notice to Mari and all interested parties that we were treating Mari as an additional respondent on the protest, so that he would have the opportunity to present evidence to refute the allegation. Under questioning by our investigator, Mari stated emphatically that he did not leave his assigned seat in the front of Section 2 and go to stand in front of Microphone 3. He said he stood in the aisle but he was perhaps fifteen to twenty feet from Microphone 3. Our investigator asked him specifically if he accompanied O'Brien to the front of Microphone 3, and he said that they both stayed in the aisle adjacent to their seats. When our investigator informed Mari that she had photographs of O'Brien standing directly in front of Taibi when Taibi was at Microphone 3, Mari became evasive and then phrased his answer as "I did not deliberately walk up towards mic 3. We stayed in the aisle adjacent to our seats." Several times thereafter he stated that he did not "deliberately" walk to the front of Microphone 3, but he said there were many people in the aisle, that he may have moved six or eight feet from his seat, but "we" (referring to himself and O'Brien) never got closer than fifteen or twenty feet from the microphone. Our investigator again asked whether Mari accompanied O'Brien to the back of his section to stand in front of Microphone 3, telling him she had pictures showing that O'Brien was standing there and that a sergeant at arms who knew Mari said Mari was there also. At this, Mari started several sentences, alternating between "I" and "we" and finally stated that his final answer was that he never walked back to Microphone 3 but stayed in the aisle next to his seat.

We do not credit Mari's explanation and find it contradicted by the audio and video recordings of activity in proximity to Microphone 3, and by witness testimony. We conclude that Mari moved directly to Microphone 3 when Taibi was present, had the loud exchange first with sergeant at arms Smith and then with OES's Childers, and then shouted threatening insults and obscenities during Taibi's speech.

We hold that O'Brien's words to Pfeiffer did not violate the *Rules*. Unlike the threats described in the charges resulting in his fourteen day suspension, the statements to Pfeiffer were mild and arguably not threatening at all. Further distinguishing his 2013 threats, which were made to members of a local union within the joint council in which he held elected office, O'Brien's words to Pfeiffer were to a member of Local Union 89 in Louisville, KY, the home local union of Teamsters United standard bearer Zuckerman, and O'Brien has no power he can leverage against Pfeiffer. Finally, although not dispositive of the protest against O'Brien, we find that Pfeiffer subjectively was not intimidated by O'Brien. His physical posture, facial expressions, and actions as shown on the IBT video are not those of a person who was intimidated. In addition, he told O'Brien, "I'm not afraid of you."

We hold that Mari's insulting threats against Taibi also did not impede the nominations and violate the *Rules*, but we reach this conclusion only because they were not even heard by Taibi amidst the nomination hubbub. As such, despite his intention to be disruptive and intimidating, Mari was doing nothing more than shouting into the void.

For these reasons, we DENY the protest.

Having done so, we conclude that O'Brien and Mari falsely denied their actions to our investigator. These false statements constitute a failure to cooperate with the Election Supervisor. Article XIII, Section 2(g) of the *Rules* requires, *inter alia*, that "all members ... are required to cooperate with the Election Supervisor. Failure to cooperate with the Election Supervisor or Election Appeals Master (including making false statements to the Election Supervisor or Election Appeals Master) may result in referral of the matter to the Government for appropriate action under law (including the Final Order), or such other remedy as the Election Supervisor or Election Appeals Master deems appropriate." Evidence of their conduct in the area of Microphone 3 was corroborated by witnesses and objective materials – particularly Hill's recording. While demonstrably uninhibited on the convention floor, Mari could not bring himself to admit, in the face of a recording of his own voice, that he went out of his way to yell obscenities at a brother Teamster who was engaged in the democratic process of candidate nomination, calling his co-union member a "Motherfuckin' scab" "ratfuck" "piece of shit." Similarly, O'Brien tried to cover up his confrontational conduct by inventing an uncorroborated and incredible tale of walking into the middle of a nomination event just to chat with another delegate about unrelated union business. Nevertheless, we exercise our discretion not to remedy this violation directly with a fine, notice posting, or, in O'Brien's case, disqualification from candidacy, because the convention is concluded, the candidate whose nomination Taibi was seconding was successfully nominated to the Union-wide ballot, and we find no other conduct on the part of O'Brien and Mari that violated the *Rules*. However, we find the conduct of O'Brien in lying to our investigator and the conduct of Mari in attempting to intimidate and lying about it to our investigator sufficiently egregious that we refer it to the Independent Investigations Officer for the investigation and action he deems appropriate under Article XIII, Section 2(g) of the *Rules* (false statements as a failure to cooperate) or Section B(1) of the Rules Governing the Authorities of Independent Disciplinary Officers and the Conduct of Hearings (IIO authorized to investigate, *inter alia*, "use of threats of force or violence against members to interfere with or extort their rights under the IBT Constitution or their union democracy rights under applicable law, including their rights to assemble, express their views, vote, seek election to office, support the candidates of their choice ... or conduct that in the Independent Disciplinary Officer's view brings reproach upon the Union").

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

Teamsters United, 2016 ESD 284
September 16, 2016

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 284

Teamsters United, 2016 ESD 284
September 16, 2016

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