

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

IN RE: JOHN KELDER,) Protest Decision 2016 ESD 65
) Issued: January 8, 2016
Protestor.) OES Case No. P-025-073115-NE
_____)

John Kelder, member of Local Union 707 and employee of YRC, 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 YRC disciplined him for protected campaign activity, in violation of the *Rules*.

Election Supervisor representative Peter Marks investigated this protest.

Findings of Fact and Analysis

Kelder is employed as a linehaul driver for YRC. In this capacity, he hauls freight from one YRC terminal to another. He does not wear a uniform and does not interact with customers or the public.

Before his 8 a.m. shift on July 31, 2015, Kelder was in the employee parking lot of the YRC terminal where he works, soliciting accreditation signatures for Teamsters United, a slate of International officer candidates. The t-shirt he wore during this campaign activity read, “Your Retirement Cancelled.” When he reported for his shift, Kelder’s linehaul manager, Peter Romano, called him into the office and ordered him to take off the shirt. Kelder refused. Romano responded by sending Kelder home for the day and issuing him a warning letter that stated the following, in relevant part:

On Friday, July 31st, 2015, you violated Teamster Election guidelines by wearing a shirt, while on duty, that negatively impacts the company’s public image.

Future occurrences of this or a similar nature may result in further disciplinary action up to and including discharge.

Kelder had worn the same shirt to work without incident on numerous previous occasions. July 31, 2015 was the first time he had been directed to remove the shirt.

On May 27, 2015, YRC published guidelines for its supervisors and managers titled “Distribution of Literature and Solicitation – Teamsters International Union Delegate and Officer Elections.” Of relevance here is section 2 of the guidelines, which reads in its entirety as follows:

2. Campaign Buttons, Clothing and Paraphernalia

Employers generally cannot prohibit employees from wearing union insignia (*e.g.*, campaign buttons, T-shirts, hats), except in the following circumstances:

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- Where employees are in contact with customers and/or the public and the employer can demonstrate the need to uphold an established public image (*e.g.*, employer’s long-standing policy requiring employees to wear uniforms);
- Content of the message on the campaign paraphernalia interferes with production or discipline; or
- Campaign paraphernalia presents serious safety concerns.

The *Rules* protect members’ pre-existing rights to solicit campaign support in employer facilities. Article VII, Section 12(d). Among the pre-existing rights protected by the *Rules* is the right to wear campaign emblems on buttons, t-shirts or hats while working. *Republic Aviation Corporation v. NLRB*, 324 U.S. 793 (1945); *Malta Construction*, 276 NLRB 1494 (1985), *enfd*, 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); *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 28 (September 21, 2010) (campaign stickers on “bump hats” in cannery), but see *Alvarado*, 2010 ESD 31 (September 28, 2010) (campaign stickers on “bump hats” in cannery, provided they are firmly affixed so to avoid falling into sanitary product).

While this right is not without limitation, 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 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).

Here, we conclude Kelder had the pre-existing right to wear the t-shirt he was ordered to remove. We find first that the shirt bore a message that advocated for pension protection, a campaign issue in the pending election. We find further that Kelder, an employee who was not required to wear a uniform and did not wear one, did not interact with customers or the public in the course of his duties. Accordingly, he was free to choose the clothes he wore to work and in fact had worn the same t-shirt on numerous previous occasions without objection or even comment from supervision or management. We find in addition that the shirt choice Kelder made did not affect production, safety, or discipline. Finally, because Kelder did not interact with customers, the shirt’s message had no potential to alienate those customers. Indeed, under YRC’s own policy, antedating this incident, Kelder had the right to wear the campaign t-shirt in these circumstances and the *Rules* protect his exercise of that right.

For these reasons, we find that YRC’s decisions to order Kelder to remove the shirt, to issue him a disciplinary warning letter, and to send him home for the day because of the shirt violated Kelder’s pre-existing rights to engage in protected campaign activity under the *Rules*. In addition, we find that YRC had no authority to declare that Kelder’s clothing violated the *Rules*, a determination reserved exclusively to the Election Supervisor, subject to appeal.

Accordingly, 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 YRC to cease and desist from interfering with its employees’ pre-existing rights under the *Rules* to engage in protected campaign activity, including the right of employees who are not required to wear a uniform and who do not interact with customers to wear partisan t-shirts, buttons, stickers, and hats without fear or threat of discipline from the employer.

We further order YRC to remove the warning letter and any related discipline from Kelder’s employee file and to give it no consideration in the event Kelder is subject to any further disciplinary action or dismissal by YRC. In the event Kelder was paid less than the amount he would have earned had he not been sent home on July 31, 2015, we order YRC to pay him the difference within fourteen (14) days of receipt of this decision.

We order Local Union 707, with three (3) days of receipt of this decision, to post the notice attached to this decision on all union worksite bulletin at YRC facilities under its jurisdiction. The purpose of the notice is to inform members of their rights under the *Rules* and that YRC has violated those rights.

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
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

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Richard W. Mark
Election Supervisor

**NOTICE TO MEMBERS OF TEAMSTERS LOCAL UNION 707
EMPLOYED BY YRC**

The Election Supervisor has found that YRC violated the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”) by ordering John Kelder to remove a campaign t-shirt he wore to work and by issuing him discipline for refusing to do so.

On July 31, 2015, YRC ordered Kelder to remove a campaign t-shirt he wore to work. Kelder was employed in job that did not interact with customers or the public. Accordingly, Kelder had the right under the *Rules* to choose what clothing to wear to work, subject only to safety considerations, and YRC had no right to object to his choice of clothing.

The *Rules* prohibit an employer from interfering with an employee’s exercise of protected campaign rights.

The Election Supervisor will not permit any such violations of the *Rules*. The Election Supervisor has ordered YRC to stop interfering with its employees’ rights under the *Rules*. The Election Supervisor has also ordered YRC to remove the disciplinary action from Kelder’s employee file and, if he lost wages as the result of the discipline, to restore those wages to him.

The Election Supervisor has issued this decision in *Kelder*, 2016 ESD 65 (January 8, 2016). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2015/2016esd065>.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity that violates the *Rules* should be filed with Richard W. Mark, 1050 17th Street, N.W., Suite 375, Washington, D.C. 20036, telephone: 844-428-8683, fax: 202-774-5526, email: electionsupervisor@ibtvote.org.

This is an official notice prepared and approved by Richard W. Mark, Election Supervisor for the International Brotherhood of Teamsters. It must remain posted on this bulletin board through February 15, 2016 and must not be defaced or covered up.