

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

IN RE: TEAMSTERS UNITED,)	Protest Decision 2015 ESD 27
)	Issued: August 28, 2015
Protestor.)	OES Case Nos. P-029-080615-FW
)	and P-031-080715-FW
_____)		

Teamsters United filed two pre-election protests pursuant to Article XIII, Section 2(b) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). Both protests alleged that Republic Services violated the *Rules* by refusing parking lot access to Teamsters United supporters at two southern California locations. These protests were resolved in *Teamsters United*, 2015 ESD 25 (August 28, 2015).

Protest P-029-080615-FW also alleged that Local Union 396 steward Mauricio Thomas participated in and abetted the denial of campaign access at Republic Services’ Long Beach, CA facility. Protest P-031-080715-FW alleged that Local Union 396 conspired with or encouraged Republic Services to deny campaign access at Republic’s Gardena, CA facility.

We severed these allegations from the allegations against Republic Services and consolidated them for investigation and decision. Election Supervisor representative Michael Miller investigated these protests.

Findings of Fact

Long Beach. At approximately 3:45 p.m. on Tuesday afternoon, August 4, 2015, Teamsters United campaigners began campaigning inside the parking lot at Republic Services’ Long Beach facility where employees park their cars in order to solicit signatures on slate accreditation petitions. The location where the campaigners set up was well inside the parking lot, immediately adjacent to the gate that employees walk through to enter the workplace from the parking lot. Shortly after they arrived, the facility’s operations manager, Chardon Thompson, and Local Union 396’s steward, Mauricio Thomas, approached the campaigners and told them they were trespassing on private property and had to leave. Thompson and Thomas both explained to the campaigners that the company had a firm no-trespass rule that barred parking lot access to persons not employed by the company.

Operations manager Thompson sought to move the campaigners to a small vehicle pull-out area outside the fenced employee parking lot. Steward Thomas supported Thompson in this effort. The campaigners objected to the location Thompson suggested because it was on the street outside the parking lot and would require the campaigners to stop employees in their cars in order to campaign to them.

The campaigners presented a copy of the *Rules* provision authorizing campaign access, as well as the Election Supervisor’s advisory on the same subject. Operations manager Thompson maintained his position denying them access. At times, the operations manager consulted with steward Thomas, who was standing close at hand, and then renewed his directive to the campaigners that they leave the parking lot. The campaigners called the OES from the parking lot at 4:20 p.m. Speaking with an OES representative, a campaigner handed the phone to operations manager Thompson, and the OES

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representative explained that the campaigners as Teamster members had the right under the *Rules* to campaign in the parking lot where employees park their cars, even though the campaigners were not employed by Republic. The OES representative emphasized that the access provision was enforced by a court order and that Thompson would be violating that court order by denying the campaigners access. Thompson told the OES representative that the company's no-trespass rule would be enforced nonetheless, and he ended the call.

The campaigners continued to object to Thompson's directive that they move. A second phone call with another OES representative ensued; this time Thompson refused to speak with the OES representative.

During this confrontation between the campaigners on one side, and facility manager Thompson and steward Thomas on the other, scores of employees passed the campaign table entering and leaving the workplace. The campaigners were unable to solicit these employees because of the ongoing controversy over their right to be in the parking lot.

After more than a half hour of standoff, with two calls with OES representatives, Thompson and Thomas finally relented and allowed the campaigners to remain at the location inside the employee parking lot and immediately adjacent to the gate to the workplace. Thompson and Thomas did not leave the area, however. Instead, they withdrew inside the gate to a canopied space approximately forty feet from the campaign table. Employees entering the workplace thus walked directly past both the campaigners and the facility manager and steward when reporting for or leaving work. There, the two remained until 6 p.m., watching the campaigners and the employees with whom they interacted.

Steward Thomas clocked in timely for his 3 p.m. shift and was on company time but not working the entire time he and the operations manager sought to enforce the no-trespass rule and then watched the campaigning. Members reported that Thomas told them not to sign the petitions while he stood under the canopy. Thomas finally left the canopy at approximately 6 p.m. to resume working.

Gardena. At about 1:30 p.m. on Thursday afternoon, August 6, 2015, Teamsters United candidate Richard Galvan and other campaigners sought campaign access to the parking lot at Republic Services' Gardena facility where employees park their cars. Jay Fowler, the facility's general manager, denied access, relying on advice from human resources director Shelley Stratton, despite presentation by Galvan of paper copies of the parking lot access rule and the court order approving the *Rules*. Galvan debated the issue with Fowler for about an hour. Fowler did not relent, and Galvan and the other campaigners then left the area.

Galvan alleged that Local Union 396 officials forewarned Republic representatives that Galvan would be appearing at the Gardena facility on August 6 to campaign and encouraged that Galvan be denied access. Galvan presented no evidence to support his allegation. Fowler denied to our investigator that he had any contact with the local union concerning Galvan specifically or campaigning generally. Local Union 396's president, Jay Phillips, denied to our investigator that he or anyone else at the local union knew or paid attention to Galvan's scheduled days off or had advance knowledge of any worksite where Galvan intended to campaign. Phillips also denied contact with Fowler or Republic concerning campaign access to employer facilities.

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Analysis

It is well-established that Teamster members have the right under the *Rules* to campaign in employer parking lots where employees park their vehicles. The parking lot access right is available to all Teamster members, not merely those who are employees at the employer's facility where they seek to campaign.

As noted in *Teamsters United*, 2015 ESD 25 (August 28, 2015), Republic's interference with the campaign rights at Long Beach and its attempt to eject the campaigners from the parking lot violated the *Rules*. Steward Thomas violated the *Rules* by supporting Republic's violation and by actively interfering with the campaigners' rights.

Steward Thomas compounded this violation by maintaining an active watch of the campaign activity for at least ninety minutes after withdrawing with operations manager Thompson to the canopy. Such active watch had the chilling effect of surveillance. In addition, he counter-campaigned while on employer-paid time by telling members not to sign the campaigners' petitions.

In contrast to the active interference with campaign rights by a union steward at Long Beach, the evidence showed no union involvement in the denial of access rights to the campaigners at Gardena.

Accordingly, we GRANT Protest P-029-080615-FW with respect to steward Thomas and DENY Protest P-031-080715-FW with respect to Local Union 396.

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 direct Thomas to cease and desist from interfering with members' campaign rights generally and their parking lot access rights in particular. We further direct Thomas to cease and desist from surveilling or giving the appearance of surveilling campaign activity. Finally, we direct Thomas to cease and desist from engaging in campaign activity on employer-paid time.

Within three (3) days of receipt of this decision, we direct Local Union 396 to post the notice attached to this decision titled "Notice to Members of Local Union 396 Employed at Republic Services – Long Beach" on all union worksite bulletin boards at Republic Services' Long Beach facility, in both the English language version that is attached and a Spanish language version that OES will supply. We impose this remedy to inform members of their rights under the *Rules* and of the violations committed by Thomas. The notice in both languages shall remain posted through September 30, 2015. Within three (3) days of completing the posting, Local Union 396 shall submit a declaration of posting to our office.

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We also direct Local Union 396 to distribute the notice attached to this decision entitled “Notice to Local Union 396 Business Agents and Stewards Concerning Parking Lot Campaign Rights” to all business agents and stewards of the local union within three (3) days of receipt of this decision. Within three (3) days following completion of the distribution of that notice, Local Union 396 shall submit a declaration of distribution to our office.

A decision of the Election Supervisor takes immediate effect 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. 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
2015 ESD 27

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August 28, 2015

DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

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Richard W. Mark
Election Supervisor

**NOTICE TO MEMBERS OF TEAMSTERS LOCAL UNION 396
EMPLOYED AT REPUBLIC SERVICES – LONG BEACH**

The Election Supervisor has found that union steward Mauricio Thomas violated the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”) by interfering with the rights of members to campaign in the employee parking lot at Republic Services – Long Beach, by conducting surveillance of their campaign activity, and by campaigning on employer-paid time.

The *Rules* protect the right of all IBT members to campaign on employer parking lots where union members park their cars. The *Rules* prohibit surveillance of any IBT member for engaging in such protected conduct. The *Rules* further prohibit campaigning on employer-paid time.

The Election Supervisor will not permit any such violations of the *Rules*. The Election Supervisor has ordered Thomas not to violate the *Rules*.

The Election Supervisor has issued this decision in *Teamsters United*, 2015 ESD 27 (August 28, 2015). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2015/2015esd027>.

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 September 30, 2015 and must not be defaced or covered up.

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for the INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Richard W. Mark
Election Supervisor

**NOTICE TO BUSINESS AGENTS AND STEWARDS
OF TEAMSTERS LOCAL UNION 396**

Teamster members have the right to campaign for candidates for delegate or alternate delegate and for candidates for International office and are permitted to do so in employer parking lots where members park their vehicles. This right is guaranteed to members under the Rules for the 2015-2016 IBT International Union Delegate and Officer Election ("*Rules*"). Members have the right to campaign in such employer parking lots by speaking with members, distributing campaign flyers and other material to them, and by seeking petition signatures from them. There is no requirement that members campaigning in an employer's parking lot also be employed by that employer.

Any person who removes or attempts to remove or who interferes with members exercising their rights to campaign in employer parking lots violates the *Rules*. In addition, any person who conducts surveillance on members campaigning in employer parking lots violates the *Rules*.

The Election Supervisor will not permit any such violations of the *Rules*.