

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: JOHNNY JOHNSON, Protestor.))))))	Protest Decision 2005 ESD 34 Issued: December 13, 2005 OES Case No. P-05-027-102805-SO
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Johnny Johnson, a member of Local Union 878, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). He alleged that a UPS manager and a local union business agent interfered with the parking lot campaign rights of members of his slate.

Election Supervisor representative Dolores Hall investigated this protest.

Findings of Fact

The protest alleged that, on September 13, 2005, members supporting the Johnny Johnson slate appeared in the employee parking lot of UPS’s Little Rock, Arkansas facility to campaign for the delegate election. Supporters of this slate had campaigned at this location on previous occasions without incident. At 8:15 on this morning, business agent Tim Nichols arrived and spoke with the campaigners. A short time later, UPS labor relations representative Cedric Williams arrived. Williams spoke with Nichols away from the campaigners and asked if the campaigners were with him. Nichols said they were not. Williams then returned to the campaigners and told them they could not be on UPS property. The campaigners had finished their activity for the day, so they left.

More than six weeks later, Johnson filed this protest, alleging that business agent Nichols had prompted Williams to bar the campaigners from the UPS employee parking lot. Nichols and Williams deny this allegation.

UPS, through its counsel, has acknowledged the rule that permits IBT members to campaign in company parking lots where employees park their vehicles and has agreed not to impede or otherwise interfere with those rights.

Analysis

The *Rules* provide the following with respect to campaigning in employee parking lots:

- (e) Subject to the limitations in this Subsection, (i) a candidate for delegate or alternate delegate and any member of the candidate's Local Union may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by that Local Union's members to park their vehicles in connection with their employment; (ii) each member of a candidate's Local Union has the

Johnson, 2005 ESD 34
December 13, 2005

reciprocal right to receive such literature and/or solicitation of support from such candidate or candidate's advocate; (iii) a candidate for International office and any Union member within the regional area(s) in which said candidate is seeking office may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by Union members to park their vehicles in connection with their employment in said regional area(s); (iv) each member of the International Union who is employed within the regional area(s) in which said candidate is seeking office has the reciprocal right to receive such literature and/or solicitation of support from such candidate for International office or candidate's advocate.

The foregoing rights are available only in connection with campaigning during the 2005-2006 IBT International Union Delegate and Officer Election conducted pursuant to the Consent Order and only during hours when the parking lot is normally open to employees. The rights guaranteed in this Subsection are not available to an employee on working time, may not be exercised among employees who are on working time and do not extend to campaigning which would materially interfere with the normal business activities of the employer. An employer may require reasonable identification to assure that a person seeking access to an employee parking lot pursuant to this rule is a candidate or other member entitled to such access. Nothing in this Subsection shall entitle any candidate or other Union member to access to any other part of premises owned, leased, operated or used by an employer or to access to a parking lot for purposes or under circumstances other than as set forth herein.

The foregoing rights are presumptively available, notwithstanding any employer rule or policy to the contrary, based upon the Election Supervisor's finding that an absence of such rights would subvert the Consent Order's objectives of ensuring free, honest, fair and informed elections and opening the Union and its membership to democratic processes. Such presumption may be rebutted, however, by demonstrating to the Election Supervisor that access to Union members in an employee parking lot is neither necessary nor appropriate to meaningful exercise of democratic rights in the course of the 2005-2006 election. An employer seeking to deny access to Union members in an employee parking lot may seek relief from the Election Supervisor at any time.

Article VII, Section 11(e).

As UPS has agreed not to impede or otherwise interfere with exercise of the rights set forth above, we deem this protest RESOLVED. To insure that members of Local 878 employed at the UPS Little Rock facility are informed of their rights, we direct the local

Johnson, 2005 ESD 34
December 13, 2005

union to post the notice attached to this decision on all union bulletin boards at the Little Rock facility for a period of thirty (30) consecutive days. In reaching this result, we need not address the fact that Johnson filed this protest long after the two-day time limit set forth in Article XIII, Section 2(b) of the *Rules*. Likewise, we need not address or resolve the allegation that business agent Nichols improperly interfered with the campaign rights of the supporters of the Johnson slate.

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:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
Suite 1000
885 Third Avenue
New York, New York 10022
Fax: (212) 751-4864

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, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20007-5135, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
2005 ESD 34

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RICHARD W. MARK
Election Supervisor

NOTICE TO ALL TEAMSTER MEMBERS EMPLOYED AT UPS'S LITTLE ROCK FACILITY

The Rules for the 2005-2006 IBT International Union Delegate and Officer Election ("*Rules*") guarantee members the rights to support or oppose any candidate or slate of candidates and to aid or campaign for any candidate or slate of candidates.

In particular, the *Rules* permit IBT members to campaign in company parking lots where employees park their cars, regardless of whether those campaigners are employees of UPS.

It is a violation of the *Rules* to interfere with these rights and the rights of other members to receive, hear or view such campaign advocacy. In particular, it is a violation of the *Rules* to deny parking lot access to or otherwise interfere with members exercising these campaign rights.

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

Richard W. Mark, Esq.
Election Supervisor

Dated: December 13, 2005

This is an official notice prepared and approved by Richard W. Mark, Election Supervisor for the International Brotherhood of Teamsters, and must remain posted on this bulletin board for a period of thirty (30) consecutive days.

Johnson, 2005 ESD 34
December 13, 2005

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