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## **DECISION**

Protest SUS-04-15  
Campaigning on sick time

By email dated October 5, 2015, JP Patafio, on behalf of the Stand United Slate, filed a protest alleging that Carlos Clarke, a candidate for Vice-President on the Transport Workers United Slate, improperly campaigned on time paid for by an employer. In specific, SUS alleges that Clarke solicited signatures during times when he had booked off sick. According to the Protester, this is a violation of the Election Rules that prohibit employers from making contributions to any campaign, whether by writing a check or by providing services that would constitute an in-kind contribution.

Witnesses for the Protester state that they saw Clarke soliciting signatures at the Jackie Gleason Depot for about an hour and a half on Thursday, October 1, 2015. Clarke does not deny this. He was also seen at the Grand Avenue Depot on Wednesday September 30 talking to a few members and giving a Petition to another member. Clarke denies campaigning at Grand Avenue. Over the weekend, someone told the Protester that Clarke was out on sick leave. Patafio checked in the daily log in the computer that is available to Union officers and saw that it said that Clarke was on sick leave on Wednesday and Thursday. He did not check Clarke's accruals. This protest followed.

The Protester argues that it is a violation of the Election Rules to campaign on working time and utilizing sick days (as opposed to vacation time) to campaign all day is tantamount to using work time. By campaigning during time that he had booked off sick, Mr. Clarke gained an unfair advantage over other candidates who followed the rules and did not call in sick when in fact they were not sick. The Protester requests that the signatures Clarke solicited be disregarded and that Clarke not be permitted to run for

office or that he be restricted in use of five vacation days for campaign purposes. (The Protester says that he chose five days because he assumed that was how many days Clarke may have campaigned.)

Mr. Clarke responds that he had not in fact booked off sick. Rather, upon a scheduled revisit to the New York City Transit Medical Center on September 28, 2015, he was placed on restricted duty, but there was no restricted duty available. Therefore he was on a TA Medical hold out. In that status he is not subject to the same rules that apply when one has booked off sick and it was not a violation for him to campaign. He provided documentation from the Transit Authority in support of his claim. He does not know whether he will be paid for those days. Contrary to Patafio's claim that Clarke had a right to at least two weeks of restricted duty work, both Clarke and a representative from the Transit Authority state that he had a right to restricted duty only if such work was available and in this case, it was not.

Supplemental Rules, Paragraph 5(C), of the Election Rules provides, "No candidate ...may campaign...during time that is paid for by...any employer. However, campaigning ...during paid vacation, paid lunch hours or breaks, or similar paid time off, is permitted." The question is therefore whether time when someone is not working because work is not available to him should be considered "similar paid time off." A related and similar question is whether someone on workers' compensation or sick leave is entitled to campaign.

This is a case of first impression. In considering whether workers' compensation leave, sick leave or medical hold out should be considered "similar paid time off", I look to the reasoning behind the rule, which is to prevent employers from becoming involved in internal union affairs and trying to influence the results of an election. From the standpoint of the Election Rules, what is significant is whether someone is supposed to be working, i.e. is getting paid for working, and instead is campaigning. Those are the instances in which there is deemed to be an employer contribution.

When someone is campaigning during time when s/he is **not** supposed to be working, whether or not s/he is getting paid by the employer, the same assumption of employer contribution does not follow. There may be other implications for such conduct.

If, for example, someone campaigns while on sick leave, disciplinary action could follow. If the campaigning involves conduct that is inconsistent with representations that the person has made about the extent of his or her abilities or disabilities, his or her workers' compensation benefits could be jeopardized, but that is not the concern of the Election Rules. In addition, if the employer's rules generally prohibit someone who is on sick leave, workers' compensation or medical hold out from having access to the property and that rule is not enforced to permit someone to campaign, then an improper employer contribution could be found.

The protest is denied.

In accordance with the International Constitution and the Election Rules, any interested party unsatisfied with this determination may appeal to the Transport Workers Union of America Committee on Appeals. Any appeal shall be in writing and shall be filed in accordance with the procedure set forth in Article IV(6)(I)(1) of the Election Rules and Articles XV and XXII of the International Constitution for the appeal to the International from decisions of Local Unions.

/s/ Barbara C. Deinhardt

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