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DECISION

Protest SUS-07-15
Campaigning on sick time

By email dated November 6, 2015, John Samuelson, on behalf of the Stand United Slate, filed a protest alleging that Barry Roberts, 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 Roberts campaigned 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, and that prohibit candidates from accepting or using such contributions. 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. Roberts gained an unfair advantage over other candidates who followed the rules and did not call in sick when in fact they were not sick.

Mr. Roberts does not dispute that he was campaigning during time that he was off sick. He has been out sick since falling at home in August and undergoing serious surgery on his leg.

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 he is on sick leave should be considered “similar paid time off” such that he is entitled to campaign.

In a decision issued on October 29, 2015, in SUS-04-15, I held:

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.”

The Slate argues that the purpose of the Election Rule prohibition is two-fold—to prevent an employer from becoming involved and giving assistance to a campaign and to prevent a campaign from using employer resources. While I agree with the Slate’s reading of the Rules, I find that there must be an employer contribution before a slate may be found to have improperly accepted it. The TA paying someone who is out sick and is not supposed to be working is not an employer contribution and a member accepting that sick pay, and doing whatever people on sick leave are permitted to do by TA rules, is not accepting or using an employer contribution in violation of the Election Rules.

The SUS also argues that “when voting members see that a candidate is using employer resources to campaign, it is reasonable for them to assume that the employer is implicitly supporting that particular candidate by allowing them to use those resources (whether or not the employer consented to the use).” I do not find persuasive the Protester’s assertion that voting members will infer from Mr. Roberts’s campaigning on the property that the Transit Authority endorses his candidacy. The Protester has not produced any TA rule that someone on sick leave cannot go onto TA property while out sick, particularly on non-acute, extended sick leave such as Mr. Roberts’s. In the case before me, it is undisputed that Mr. Roberts has a health condition that interfered with his ability to drive a bus, but not with his ability to campaign. I do not address the question of

whether someone who falsely calls in sick in order to campaign may thereby be violating the Election Rules.

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 V(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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By email:
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Elections Committee