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DECISION

Protest TWUS-13-15
Interfering with campaigning

By email dated November 5, 2015, Carlos Clarke, on behalf of the Transport Workers United Slate, filed a protest alleging that TWU Local 100 elected representatives in the TA Surface Division and convention delegate candidates on the Stand United Slate, Clarence Patterson and Moe Del Rio, section chair and vice-chair, respectively, at the Grand Ave Depot, prevented him from campaigning on behalf of the Transport Workers United Slate and had him removed from the Grand Ave Depot. Their actions were also done while being paid by the NYCT.

According to the Protester, he went to Grand Avenue Depot on November 3 to campaign. He had taken a vacation day to do so. He was campaigning in the swing room when Patterson and Del Rio came over to him and told him that he had not given them the courtesy by letting them know he was on the property. He responded that they had now been notified. Mr. Patterson continued repeating the same statement several times. A verbal exchanged followed and then Clarke was "surrounded" by the two individuals. At that point he informed them that he was going video/photo their actions as proof for the Neutral Monitor. Del Rio told Clarke that he had to delete the photo from his phone or he would call security. Clarke refused and security was called. The Personal Property Protection Agents told Clarke to delete the recording and Clarke again refused. AGS Stuart Cohen responded to the commotion and told Clarke that if he did not delete the recording, he would have to leave the building. Clarke then left.

AGS Cohen stated that he told Clarke that since Patterson and Del Rio did not want their picture taken, he needed to delete the pictures or leave the building. Clarke chose to leave rather than delete the photos/recording. Cohen said that employees from other depots are supposed to check in with management when entering the depot but permission is always granted and that is not why he directed Clarke to leave the depot.

Patterson and Del Rio said that they were on their break when Clarke came in. Patterson asked Clarke who he was and said that he should have checked in with him [Patterson] as the Chair of the depot, "as a measure of courtesy." Clarke then became very arrogant and said he didn't have to. Then Del Rio repeated that Clarke should have checked in with them and Clarke said he wasn't talking to Del Rio. Del Rio repeated that he should check in with them the next time and then went back to the swing table. Patterson was across the table from Clarke and Clarke began videotaping them. They asked him not to, but he continued. They then called security, The security agents told him that if he didn't delete the video, he would have to leave the building. The AGS came and said the same thing.

Supplemental Rules, Paragraph 3, of the Election Rules provides, "All Local Union members ...retain the right to participate in campaign activities." I do not think that asking Clarke as a courtesy to check in with the Depot Chair when coming onto the property constitutes interfering with campaigning, but I remind Patterson and Del Rio not to interfere with the right of candidates to campaign at the depot. If someone is supposed to check in with TA management first, the Union officers retain the right to notify management of any unauthorized presence, but not to enforce TA rules themselves.

Clarke, however, should not have taken pictures of them. Clearly he did not need the pictures to support his protest, as the video was not offered as evidence in support of this protest. It was his choice to leave rather than delete the pictures. I do not find that the actions of the AGS in conditioning Clarke's right to remain on his agreement to delete the photos was a violation of the Election Rules. Because I think it was Clarke's choice to leave rather than delete the video, I do not order the further remedies requested.

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