

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

<b>IN RE: LUCIO REYES,</b>	)	Protest Decision 2010 ESD 18
	)	Issued: August 5, 2010
<b>Protestor.</b>	)	OES Case Nos. P-022-080210-FW
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Lucio Reyes, principal officer of Local Union 601 and candidate for delegate and for International office, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged Patricia Alvarado, a Reyes supporter, suffered intimidation and coercion in violation of the *Rules* while circulating accreditation petitions for Reyes.

Election Supervisor representatives Rochelle Goffe and Michael Miller investigated this protest.

**Findings of Fact**

Patricia Alvarez, a member of Local Union 948 and a supporter of Reyes’ candidacy for International office, is employed at Unilever Best Foods in Stockton, California. At 1:15 p.m. on July 31, 2010, she circulated an accreditation petition among her co-workers near the break room on what she said was her break time. Alvarez told our investigator that she approached Dave Wilson, a supporter of Reyes’ opponent in the local union’s delegate and alternate delegate election, and asked him to sign the petition. Wilson refused. According to Alvarez, there were no bad words between them at that time.

Wilson told our investigator that his work cubicle is adjacent to the forklift operators’ break room. At 1:45 p.m. on July 31, he saw 4 operators sitting on the benches outside the break room talking to Alvarez, who had a Reyes petition. The operators called Wilson over and asked him if he wanted to sign the petition. He declined, as did at least one of the operators. He told our investigator that he didn’t think there was anything noteworthy exchanged between Alvarez and him.

Wilson, however, spoke to the employer about Alvarez’s campaign activity. He did so because on July 29 he had been instructed by an employer security guard to halt leafleting he was doing for the opposing slate on public property outside the facility gate. Wilson was leafleting there because he understood that the employer prohibited all campaign activity on employer premises. The guard contended that Wilson’s activity presented a safety issue; Wilson disagreed. The guard reported Wilson to HR; Wilson told HR he had violated no employer rule because he was on public property and did not cause a safety issue or a disturbance. When he saw Alvarez campaigning inside the plant 2 days later, Wilson questioned why she was permitted to campaign inside the plant when he had been reported to HR for campaigning off premises. The employer finally clarified its policy and told Wilson on August 1 that campaigning could take place in break rooms on break time.

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Alvarez learned that Wilson had spoken to HR about her activity. She told our investigator that she did not feel intimidated or threatened by Wilson's refusal to sign the petition or his action in speaking to the employer. Nonetheless, she reported both to Reyes.

Reyes did not witness the incident between Alvarez and Wilson. He filed the protest after speaking with Alvarez. The protest asserted that Wilson "used foul language against" Alvarez and the 4 forklift drivers who were signing her petition. The protest argues that Wilson "cannot intimidate, cuss or coerce anyone; they have the right to support whomever they please."

The facts we find – indeed, the facts presented by the protestor's sole witness who was personally involved in the conduct underlying the protest – directly contradict the protest's allegation. Neither of the principals claims that Wilson used foul language in the presence of Alvarez or the fork lift drivers, or did anything intimidating or coercive. Even if he had used foul language, we have repeatedly held that "loud and sensational language is part of the election process, and the *Rules* do not bar that sort of zealous campaigning." See *Yocum*, 2000 EAD 18 (September 1, 2000) (loud, rude and obnoxious behavior not unlawful), *aff'd*, 00 EAM 5 (September 18, 2000); *Wasilewski*, 2000 EAD 14 (August 14, 2000) (words exchanged between two sides not unlawful); *Rudolph*, P861 (August 29, 1996) (no violation where tempers flared briefly on each side, words and a few pushes were exchanged); and *Zuckerman*, 2005 ESD 38 (December 15, 2005) (loud behavior that stopped short of violence is no violation).

Accordingly, we DENY this protest.

In doing so, we note this is the sixth protest filed by Reyes or his son, Juanlucio Reyes, who serves as Reyes' campaign manager. We have denied each. Thus, in *Reyes*, 2010 ESD 9 (July 27, 2010), we disposed on timeliness grounds of 2 protests filed July 20 that alleged violations said to have occurred in February and May. In *Reyes*, 2010 ESD 12 (August 4, 2010), we denied 2 more protests for which no evidence was presented and that failed even to allege violations of the *Rules*. Finally, in *Reyes*, 2010 ESD 14 (August 4, 2010), we denied a protest alleging that an opponent's campaign rhetoric was false; in doing so, we relied on well-settled precedent that the *Rules* do not regulate the content of campaign speech. These protests, all lacking merit, suggest an intention to use the *Rules'* protest procedures to harass and retaliate against Reyes' opposition, although we decline to make such a finding at present. Investigating and deciding them consumes valuable resources of this office, resources that are provided ultimately by the IBT. Accordingly, we caution Reyes in the future to exercise judgment when filing a protest. Should this advice not be heeded, we will implement appropriate remedies.

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  
885 Third Avenue, Suite 1000  
New York, NY 10022  
Fax: (212) 751-4864

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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, 1801 K Street, N.W., Suite 421 L, Washington, D.C. 20006, 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  
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