

IN RE:  
ALFONSO VALDEZ AND RICHARD FOULKES

01 - Elec. App. – 068 (KC)

This matter is an appeal from the Election Administrator’s (the “EA”) decision 2001 EAD 304, issued April 16, 2001. The hearing was jointly requested by Alfonso Valdez, a protestor and delegate candidate on the “Strong Teamsters for a Change Slate” (the “Strong Teamsters Slate”) of Teamsters Local Union 741 in Seattle, Washington and Richard Foulkes, a protestor and alternate delegate candidate on the Strong Teamsters Slate and also a member of Local Union 741.

A hearing was held before me on April 30, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. for the Election Administrator’s Office; Mr. Valdez; Mr. Foulkes; Joey Gasca, Secretary-Treasurer of Local Union 741; Ken Thompson, business representative of Local Union 741; Peter Sharp, a member of Local Union 741; and Paul Mougín, a member of Local Union 741. An additional submission was received jointly from Mr. Valdez and Mr. Foulkes on April 27, 2001.

The protest of Mr. Valdez and Mr. Foulkes alleges threats and acts of retaliation against them while they were campaigning at several various worksites in the Local Union 741 jurisdiction, and that the Gasca family and supporters of Pardo/Thompson Unity Slate (the “Unity Slate”) interfered with their right to campaign.<sup>1</sup> The EA denied the interference claims, citing Mr. Foulkes’ lack of credible support for these claims.

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<sup>1</sup> The appellants also alleged bias on the part of Paige Keys, the investigator of this matter, and produced a letter written by Ms. Keys to Paul Mougín, dated April 5, 2001 in support of this charge. In a separate decision, the EA denied the protest. He found that although the appellants may disagree with the EA’s application of these facts, nevertheless the facts were independently verified and Ms. Keys was found to have “... properly fulfilled her function of accurately investigating and reporting those facts”. (See, 2001 EAD 360 (May 10, 2001).

The EA's investigated three instances of claims of threats and retaliation offered by the protestors. First, at the Allied System facility in Renton, Washington, the protestors alleged that Tim McCarthy, a member of the Local Union 741 Election Committee (the "Committee"), restricted the protestors' right to campaign by throwing some of their campaign literature into the garbage in front of other employees in the Allied breakroom. The appellants argue that because of Mr. McCarthy's position on the Committee, members give great weight to his opinion. The EA denied the charge, finding that Mr. McCarthy did not interfere with their distribution of campaign material and had a right to discard the literature. In connection with this incident, there was an angry exchange of words between Mr. McCarthy and Mr. Sharp, who have a history of such exchanges, which the appellants claim intimidated other members. However, the EA determined that this was merely a "heated exchange" and did not rise to the level of improper threats.

The protestors also claim an improper restriction on their ability to campaign occurred later that day when they visited the Consolidated Freight ("CF") facility in Renton, Washington. There, they allege Bobby Gasca, a member of Local Union 741 and CF employee, made threatening moves toward Mr. Foulkes and accused him of making racist remarks about Mexicans. An argument ensued in the breakroom, and Mr. Foulkes and Mr. Valdez were asked to leave. Witnesses confirm the argument was mutual, but the EA did not find it went beyond a heated and mutual debate. As result of this incident, CF sent a letter announcing that they would no longer allow campaigning in the breakroom, hoping to avoid these kinds of disruptive incidents. However, after a protest was filed complaining of this new company policy, the company offered to restore its original policy, which they did on March 21, 2001.

Finally, there is an allegation that during a late morning campaign visit by Mr. Valdez and Mr. Foulkes to Allied Systems in Kent, Washington on March 5, 2001, Ray Gasca, a shop steward at Allied, used a racial slur against Mr. Valdez while he and Mr. Foulkes were handing out campaign literature that contained allegations about his family members. They claim that as a result of this exchange, the members in the room would no longer talk with them. The EA found this incident to be a Rules violation, in that the use of the slur went beyond rude and obnoxious behavior and had the foreseeable effect of intimidating members and inciting them to violence.

In his consideration of this incident in a post election context, the EA rejected the appellants' contention that because of these episodes there was a general feeling of fear and intimidation at the barns which resulted in low voter turnout in the delegate election. To support this claim, the appellants pointed to the fact that only about 460 out of a possible 1500 of the members, or about one third, voted in the delegate election, as opposed to the 600 to 1000 voters in the officer election. Both the EA and I reject this analysis, in that the 33% voter turnout in a delegate election is the norm and as such cannot be correlated as evidence of membership feelings of intimidation. In addition, the EA concluded that due to the relatively small number of members that witnessed the incidents and the wide margin of votes between the winners and losers, a rerun was not required.

I concur with the EA's factual findings and analysis of the incidents in question in that there is no evidence of violence or intimidation as a result of any of these incidents. Feelings can run high during the electoral process, and some nasty language and rudeness is almost inevitable. Politics can be confrontational, aggressive and unpleasant. The role of the EA is to make certain that actual or threatened violence or intimidation are exposed and punished.

Accordingly, I affirm the EA's decision and remedies in this matter in all respects.

\_\_\_\_s/Kenneth Conboy \_\_\_\_\_  
Kenneth Conboy  
Election Appeals Master

Dated: May 14, 2001