By email dated November 26, 2018, Peter Rosconi, on behalf of the Stand United Slate, filed a protest alleging that the Transport Workers United Slate (TWUS) received a contribution from the Union when the Union depot chair at LaGuardia Depot sent out a Transport Workers United Slate campaign text blast using a Union phone list. By email dated November 23, Rosconi, on behalf of the Stand United Slate, filed a protest that the Transport Workers United Slate received a contribution from the Union when the Union Depot Chair at LaGuardia Depot posted a TWUS campaign poster in the Union office. The processing of both protests was deferred by decisions dated November 26, 2018, in Protests SUS-06-18 and SUS-07-18, as the ballots had been mailed out on November 14, 2018 and so no effective remedy could be ordered at that time, even if a violation were to be found. The protester refiled the protests on December 8, 2018.

In support of his protest, protester attached a screen shot of a text sent out by Luisito Castro, Chairman of the LaGuardia Depot, showing a facsimile of the AAA ballot with an “X” in the TWUS slate box and a message, “Please support us. Thank you!” Castro states that the text was sent to a list of numbers he has been given by Union members over the years. There are about 350 on the list. He uses the list to send Union information, e.g. about picks, and other
Union business, as well as other messages. He says he doesn't have the phone numbers of everyone in the depot, since he doesn't have a lot of the new members. TWUS states that Castro compiled the text list to “make communications with the members easier.”

As I found in Protest PAS-02-18, “neither of these lists were personal lists of names/numbers used primarily to send out personal communications. Rather, in both cases, the names to which the texts were sent were gathered in the course of Muniz’s and Davis’s Union duties. The Davis text list was used primarily for Union-related communications—overtime opportunities, T-shirt pickups, benefits, Union meetings and parties. ... Thus it would be reasonable for a recipient to assume that the messages were Union-endorsed messages, including the message about West Farms officers endorsing the Tony Utano slate. Similarly, with the Muniz text, the text at issue was primarily for a Union-related purpose—advising members about the MTA cell phones. Then, secondarily, in the same message, he asked for their support in the election. It appears that Muniz had on his Union hat rather than his personal hat when he wrote the text.” Thus I find that the Castro texts violated the Election Rules as they constituted the use of Union resources for campaign purposes.

It was also a violation for Castro to post a campaign sign in the Union office. Such a posting constitutes the use of Union facilities for campaign purposes. Castro concedes that he posted the sign and states he did not realize that such a posting was improper. He removed the poster at my request by 7:00 PM November 26. TWUS submits photographs of SUS stickers affixed to walls in the depot. While such posting is also not proper, there is no evidence as to who posted them or when and no protest was filed.

The question then becomes one of remedy. In Protest PAS-02-18, the violation could be remedied by having a subsequent text blast sent out to the same recipients, stating that the TWU Local 100 does not endorse the Stand
United Slate or any other slate or individual candidate in the upcoming election. Here, because the ballots had already been sent out almost two weeks before, no such remedy was possible at the time the protest was filed. Whether a remedy is appropriate now depends on whether these two violations could have affected the results of the election. The text blast was sent to about 350 people from the LaGuardia Depot. There is no evidence as to how many voters may have seen the poster in the Union office. This was a very close election. The margin of error for MTA Bus Executive Board, Division officers, and delegates and alternate delegates was between 5 and 96. The poster was taken down on November 26, but had been up for several weeks. The text blast was sent on the evening of November 23. 527 MTA Bus ballots were returned to the AAA from November 27 to December 5 (127 on November 27, 95 on November 28, 101 on November 29, 38 on November 30, 28 on December 3, 96 on December 4, and 42 on December 5).

I find that particularly taken together, the posting of the TWUS poster in the Union Chair’s office and the sending of a text blast to 350 members could have affected the results of the election. Therefore the election of MTA Bus Executive Board, Division Officers, and convention delegates and alternate delegates must be rerun as soon as possible. Notices of Election must be posted in all MTA depots. All Election Rules will stay in effect.

Protest sustained.

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(B)(9) of the Election Rules and Article XXII of the International Constitution for the appeal to the International from decisions of Local Unions.
By email:
Joe Campbell
Peter Rosconi
Vincent O’Hara
Denis Engel
Arthur Schwartz
Elections Committee

Barbara C. Deinhardt
Neutral Monitor