

**Barbara C. Deinhardt**  
**Neutral Monitor**  
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**neutralmonitor@gmail.com**

July 12, 2021

**DECISION**

Protest I-01-21 (Enriquez re  
Surface Transportation Rule)

By email dated July 3, 2021, Michael Enriquez filed a protest objecting to the Election Rules Article III(B)(1) Surface Transportation Rule that a bus operator “may only *run for office* in the Division where their payroll emanates from,” rather than in the Division where they work. The Protester alleges that this Rule violates the LMRDA because, he asserts, it “explicitly hinders the ability for a member in good standing from being eligible as a candidate and to hold office in the division they work in simply because of where their payroll emanates from” and hinders the ability for a member of the labor organization to freely support a candidate, an infringement of the membership's bill of rights as outlined in Title I. The protester requests that the Election Rule be rescinded and that members working in MaBSTOA I and II depots who are employed by NYC Transit and MaBSTOA members working in NYC Transit depots be allowed to not only vote but run for office in the division where they work.

This provision has been in effect since the 2009 officer election and has been challenged in those elections, both with the Neutral Monitor and with the Department of Labor, and has been consistently upheld as lawful. Counsel for the Elections Committee argues here, as in prior challenges to this Rule, that it is not an “unreasonable” restriction on the right to nominate a candidate, given the particular distinctions between MABSTOA and NYCTA drivers. For example., because MABSTOA and NYCTA drivers can pick into each other’s divisions every six months, if a Division VP, Executive Board member or Division officer picked out of the

Division from which s/he had been elected, a vacancy would occur, requiring a new Division-wide election.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

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Neutral Monitor

By email:  
Michael Enriquez  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

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July 15, 2021

**DECISION**

Protest I-02-21 (Valdes re: due  
exoneration rule and meeting  
requirements)

By email dated July 4, 2021, Benjamin Valdes filed a protest objecting to the Election Rules Article I(C) that requires that members to have a year of good standing to run for office and that requests for dues exoneration for periods of non-payment must be made by the 15<sup>th</sup> day of the month after the month during which the illness or injury and related non-payment of dues arose. Protester also objects to the requirement in Article II(D) that “[t]o be nominated for Division Office a candidate must be in good standing, and he or she must have attended at least five (5), or fifty (50) percent, whichever is smaller, of the combined regular meetings of their Division and Section held during the twelve (12) month period immediately preceding the month in which the nominations are held.”

The Protester contends that the good standing requirement is too onerous given the financial hardship that many members and their families experienced during the pandemic. His objection to the dues exoneration rule is that the Union constitution and Bylaws don't set forth a time deadline within which a dues exoneration request must be presented and that the retroactive application of the new dues exoneration rule could preclude some people from running for office. As to the meetings requirement, the Protester asserts that many people might find it unsafe to attend meetings, given the COVID virus, and the 2020 mass membership meeting was canceled, making it more difficult to satisfy the meeting requirement.

Counsel for the Election Committee responds that the Local's position on the exoneration rule, as outlined in the Election Rules, was affirmed by TWU President John Samuelson, in a letter dated July 1, 2021. In essence, if dues are due no later than the 15th of the month after the obligation was created, exoneration of those due to illness, injury or layoff has to be requested by that date. Counsel disputes the Protester's assertion that before this rule was promulgated, there was no deadline to request dues exoneration. In fact, he contends, different Financial Secretaries have used different rules, but at least in recent elections, there have been deadlines.

As to the meetings requirement, the Election Committee notes that the Union followed CDC guidelines when in-person meetings were resumed. The Union used larger rooms than usual in order to allow attendees six feet of distancing. Temperature measuring before entering was required and still is. The use of disposable facemasks and hand sanitizers, which were available then (and currently) to members, was also a requirement before entering. Social distancing was also required and chairs were spread out to create distancing. Members who were not able to attend meetings had the opportunity to exercise their rights to request excusal letters as per the TWU Constitution.

I find that the Union did not act in violation of its Constitution or Bylaws or of federal law in continuing to impose a one-year good standing requirement, with no outstanding dues arrearages, to run for office. This is a rule that has been in effect for many election cycles. Individual financial hardship is dealt with by permitting requests for exoneration in cases of illness, injury or layoff.

As to the dues exoneration rule promulgated in the Election Rules, I find that it is not an unreasonable interpretation of the impact of the Constitutional requirement to pay dues by the 15<sup>th</sup> day of the month following the month in which dues are owed. A member has to either pay dues by then or request permission not to pay by then. I do find, however, that this rule varies from the deadlines imposed before its promulgation. Thus, I find that cases arising before the Election Rules

should be dealt with on an individual basis. Members considering a run for office are strongly encouraged to ascertain their dues status as soon as possible by contacting the Union Dues Office.

I also find that the Union did not act in violation of its Constitution or Bylaws or of federal law in continuing to impose the meeting attendance requirement to run for division office. This too is a rule that has been in effect for many election cycles. Individual hardship is dealt with by permitting requests for excusal.

The protest is denied in part and sustained in part.

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.

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By email:  
Benjamin Valdes  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
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July 23, 2021

**DECISION**

Protest I-03-21 (Rosconi re use of  
Union logo)

By email dated July 9, 2021, Peter Rosconi filed a protest objecting to the use by Wilfredo Pacheco, a supporter of the Stronger Together Slate, of the TWU Local 100 logo in opposition to the incumbent administration. In specific, the Protester attaches a screen shot of a Facebook page showing the TWU Local 100 logo with a statement critical of the current Union administration in front of it. The Protester asks that Pacheco be barred from running for any office. Evangeline Byars, the head of the Stronger Together Slate, argues that Pacheco, who is a supporter of but not a candidate on the Stronger Together Slate, has a First Amendment right to use the TWU logo.

Election Rule VI9E)(4) states:

No Local Union or employer services, facilities, equipment or goods—including, but not limited to, time, staff, copying machines, fax machines, telephones, printing and postage—shall be used to promote the candidacy of any individual or slate unless the Local notifies all candidates of the items available for use and all candidates are provided equal access at equal cost to such goods and services. *The use of the Local Union's official stationery, or its logo or its name, or its initials "TWU" is prohibited, especially in electronic communications, irrespective of compensation or access.* (emphasis added)

The Rules are very clear that the logo cannot be used for campaign purposes, especially in electronic communications, such as Facebook. Pacheco violated the

Rules when he used the graphic. **He and all members and candidates are reminded of this Rule and advised not to use the logo to support or oppose any candidate.** However, under all the circumstances, including the early stage of this election cycle, I do not find that barring Pacheco from candidacy is appropriate.

The protest is denied in part and sustained in part.

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.



Barbara C. Deinhardt  
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By email:  
Peter Rosconi  
Wilfredo Pacheco  
Evangaline Byars  
Stuart Salles  
Tony Utano  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

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August 26, 2021

**DECISION**

Protest I-04-21 (candidate  
campaigning during work time)

By email dated August 16, 2021, John Chiarello filed a protest alleging that Paulie Navarro, a candidate on the Progressive Change Slate, campaigned while on work time paid by the Transit Authority. In particular, the Protester contends that on August 16, Mr. Navarro was campaigning during the Track job pick at West 4<sup>th</sup> Street station. He was at the pick more than an hour before his scheduled pick time and was talking to members about his campaign.

Mr. Navarro states that he was at the pick from about 8:40 AM until after he was able to pick at around 12:20. His pick time was scheduled for 10:00, but there was an unexpected delay from 10:00 until 12:20. He arrived at 8:40 because he had allowed himself time to find parking and then to review the open jobs before his pick time. He found parking more easily than expected and went downstairs to the mezzanine to look at the jobs in the pick room. Unlike in past years, they were not allowing people to go into the pick room before their scheduled time so he went upstairs to have coffee and say hello to people he hadn't seen for a while. He denies campaigning during this time. Some people said they had heard he was running in the election and he agreed that he was. He did not tout his accomplishments or encourage people to vote for him and he did not give out any campaign materials or wear any campaign paraphernalia.

The Election Rule VI(E)(5) prohibits a candidate or other member from campaigning for her/himself or for any other candidate during time that is paid for



by the Local Union or by any employer, unless the campaigning is incidental to regular Local Union business or during paid vacation, paid lunch hours or breaks, or similar paid time off. "This prohibition includes campaigning during the employee's regular tour of duty while out on paid sick leave, FMLA, Workers Compensation, disability leave, or in paid-no work status." Even though Mr. Navarro was out sick, recovering from surgery, the time of the pick was within his regular tour of duty, so campaigning would have been prohibited.

However, I find that the Protester has not provided sufficient evidence that Mr. Navarro was in fact campaigning while he was waiting for his scheduled pick. Further, even assuming Mr. Navarro was talking to people about running for office, it was incidental to his work, as he was just standing around waiting to be able to pick. Under all the circumstances, it was not unreasonable for Mr. Navarro to have arrived early for his 10 AM pick time. It was unforeseeable that the pick would be delayed over two hours.

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 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.

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Neutral Monitor

By email:  
Joe Campbell  
John Chiarello  
Paulie Navarro  
Tony Utano  
Evangeline Byars  
Stuart Salles, Esq.  
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August 29, 2021

**DECISION**

Protest I-06-21 (Thompson  
eligibility)

By email dated August 19, 2021, Trammell Thompson filed a protest objecting to the Election Committee determination that he was ineligible to run for office as he did not have 12 months of continuous good standing. In particular, the Protester argues that the TWU Constitution says that people who are ill, injured or on layoff are excused from paying dues and he argues that there is no deadline in the Union Bylaws or Constitution for requesting exoneration.

The Election Rules I(C) state:

To be eligible for nomination for any of the above positions, a member must be in continuous good standing in Local 100 since September 20, 2020. Exonerations for periods of non-payment shall be granted only if the member makes the proper application as per Article XIII Section 1 and Article XVII Section 4 of the TWU Constitution. Such a request must be made by the 15<sup>th</sup> day of the month after the month during which the illness or injury, and related non-payment of dues arose. The exoneration period may not continue for more than 12 months.

Article XIII(3) of the TWU Constitution states,

Membership dues are due and payable on the first working day in each calendar month. Any member who fails to pay his/her dues for a particular month on or before the fifteenth day of each month shall be in bad standing... Any member... to which dues check-off is not available may, on the application of the Local Union to the International Administrative Committee, and for good cause

shown, secure an extension of the grace period beyond the month covered by the dues payment for not more than one further month during which the member will not lose his/her good standing.

Article XVII (4)(a) of the TWU Constitution states,

Any member who is prevented by illness, injury, or lay-off from earning any wages in a calendar month shall be excused from paying dues for such month and such nonpayment shall not affect his good standing ... **In order to be excused**, such member shall be required to file with his/her Local Financial Secretary-Treasurer a request for exoneration on the official form supplied by the International Secretary-Treasurer. (emphasis added)

According to the Union, and not disputed by Mr. Thompson, the Protester was out sick from March 27, 2020 until February 27, 2021. He paid no dues from May 23, 2020 until the February 27, 2021 pay period, except for two pay periods. On July 15, 2021 he requested exoneration for April, 2020 to February, 2021. This request was denied.

Mr. Thompson's exoneration request should have been made by June 15, 2020, the 15<sup>th</sup> of the month after the month when he first failed to pay dues. He did not file a request until 13 months later, on July 15, 2021. This request was untimely.

The Protester cites the case of Rafsis Cruz, who was granted exoneration in 2018 after he made a request two months after he returned to work. However, after his request was initially denied as untimely, he provided information that his employer had been paying a workers' compensation differential and thus should have been deducting his dues. He was therefore ruled eligible to run as he did not have a break in good standing.

The Protester argues that members have an absolute right to be excused from paying dues if they are out because of sickness, injury or layoff and that there is no requirement to submit an exoneration request. I do not agree. First, the

Constitution makes quite clear that in order to be excused, a member must file a request for exoneration. He also argues that if an action is required to be excused from paying dues, there is no deadline for doing so. I do not agree. Reading Article XIII and Article XVII of the TWU Constitution together, I conclude that just as a member cannot pay dues retroactively and retain continuous good standing, just so s/he cannot request exoneration from those dues retroactively and retain continuous good standing. I find, as set forth in my Decision in I-02-21, “[the Election Rule] is not an unreasonable interpretation of the impact of the Constitutional requirement to pay dues by the 15<sup>th</sup> day of the month following the month in which dues are owed. A member has to either pay dues by then or request permission not to pay by then.”

Pursuant to that interpretation, a request for exoneration must be filed in writing with the Secretary-Treasurer by the 15<sup>th</sup> of the month after the month in which the failure to pay dues occurs. Thus, for example, if an absence due to sickness or injury or layoff with a corresponding failure to pay dues begins in August, 2021, the member must either pay the dues or request exoneration by no later than September 15, 2021. If someone is out for several months, the exoneration request must be made by the 15<sup>th</sup> of the month following the month in which the absence begins, i.e. the first failure to pay dues. If the absence is ongoing, the request can be made for the month in which it begins and on an ongoing basis.

Here, the Protester did not make a request until July 15, 2021. This was too late. He did not maintain 12 months of continuous good standing.

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 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.

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Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Trammell Thompson  
Tony Utano  
Evangeline Byars  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
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September 12, 2021

**DECISION**

Protest I-07-21 (Byars  
eligibility)

By email dated September 1, 2021, Jeanne Mirer, Esq., of Mirer, Mazzocchi & Julien, and Retu Singla, Esq. filed a protest on behalf of Evangeline Byars objecting to the Election Committee determination that she is ineligible to run for office as she does not have 12 months of continuous good standing. In particular, the Protester argues that the TWU Constitution says that if someone pays her dues through check off, she will not go into bad standing if the Employer fails to remit those dues to the Union for any reason, unless she is given written notice by the Union. Further, Ms. Byars paid her dues for the pay period for which the TA did not deduct dues and she should therefore be deemed eligible to run for office.

According to the Union, and not disputed by Ms. Byars, the Protester was out sick from January 26, 2021 until February 24, 2021, when she returned to work. She received a partial paycheck for the period ending January 30, 2021 that appears to include one day of sick leave and one day without pay. As she apparently had no sick leave

available to her for the pay period ending February 13, 2021 and her claim for workers' compensation and differential had not been approved, she had no wages paid to her for that pay period and thus no dues were deducted and paid to the Union. She contacted the Dues Office on April 27, 2021 to inquire about her dues status and then paid her back dues for that period on the same day and is now in good standing.

The Election Rules I(C) state:

“To be eligible for nomination for any of the above positions, a member must be in continuous good standing in Local 100 since September 20, 2020. Exonerations for periods of non-payment shall be granted only if the member makes the proper application as per Article XIII Section 1 and Article XVII Section 4 of the TWU Constitution. Such a request must be made by the 15<sup>th</sup> day of the month after the month during which the illness or injury, and related non-payment of dues arose. The exoneration period may not continue for more than 12 months.”

Article XIII(3) of the TWU Constitution states,

“Membership dues are due and payable on the first working day in each calendar month. Any member who fails to pay his/her dues for a particular month on or before the fifteenth day of each month shall be in bad standing. Any member to whom dues check-off is available and who signs and delivers to the Local Financial Secretary-Treasurer, or other authorized person, a check-off authorization shall be considered in good standing regardless of when in a particular month the employer deducts his/her dues for such month or when the employer pays his/her dues over to the Union.



Where for any reason the dues of a member who pays his/her dues by check-off authorization are not checked off by the employer for any month or months, said member shall remain in good standing until thirty days after the mailing to him/her by registered mail of a notice informing him/ her of his/her indebtedness.”

Article XVII (4)(a) of the TWU Constitution states,

“Any member who is prevented by illness, injury, or lay-off from earning any wages in a calendar month shall be excused from paying dues for such month and such nonpayment shall not affect his good standing ... In order to be excused, such member shall be required to file with his/her Local Financial Secretary-Treasurer a request for exoneration on the official form supplied by the International Secretary-Treasurer.”

The Protester contends that there is no basis in the TWU Constitution or historical practice for her to have been considered out of good standing at any time during the 12 months prior to September 20, 2021. According to the Protester, because she had authorized the payment of her dues by check-off, she was and remained a member to whom dues check-off is available. Thus, when, because she was out sick, her employer failed to remit dues to the Union for the one pay period in February, she remained in good standing until 30 days after she was notified by mail that she owed back dues (which she never was). She submits affidavits from former TWU Local 100 President Roger Toussaint and former TWU Local 100 Elections Committee Chair James Mitchell that historically, members who generally paid their dues by checkoff and then failed to pay dues when temporarily in a non-pay status

(as opposed to members who are terminated or who are on strike) were not considered to be in bad standing.

The essence of the dispute is whether someone who is an active employee of an employer who checks off dues from wages earned remains someone to whom check-off is available if s/he is in a temporary no-pay status due to illness or workers' compensation or layoff. As set forth in a July 1, 2021 letter from TWU International President John Samuelson interpreting the TWU Constitution, "It is important to note that the Constitution differentiates between circumstances where does check-off is available, and where it is not. This provision is about notice. A member whose pay stub reflects that Union dues are begin deducted would have no way of knowing that the Employer has not forwarded such remittances to the Union. On the other hand, a member who is not receiving wages because of injury, illness or layoff does not have dues check-off available. S/he is on notice that no wages are being earned that could be used to pay union dues. As such, the provision of Article XIII, section 3 relating to written notice to the member from the Union by registered mail does not apply...In these circumstances, the member's obligation is to make the dues payment directly, or request an exoneration (in cases involving illness, injury or layoff)."

Going back to at least 2015 and 2018, when I was ruling on this question in my role as Neutral Monitor for the TWU Local 100 officer election, I held that such a member who was not receiving wages because s/he was, e.g., out sick but without sick leave, was not someone to whom dues check-off was available.

For example, in I-16-15 I wrote, “There was no obligation for the Union to notify Mr. Aldridge that his dues were not checked off or that he was in bad standing. The 30-day notice provision in Article XIII(3) applies only to cases where the employer fails to send to the Union the dues of a member to whom checkoff is available and who has authorized it. It is designed to protect the member from mistakes/misdeeds of the employer. It is not meant to deal with a situation where nothing is checked off because there is no income to check it off from because the member is, for example, sick, laid off, suspended or on strike.”

Similarly, in I-07-18 (Weinfeld eligibility), for example, the member was not in good standing from October 10, 2017 until December 18, 2017 when he paid his back dues. December 18, 2017 until October 10, 2018 is not 12 months. There is an exception for a member “to whom dues checkoff is available” whose employer fails to deduct dues from the member’s wages and remit them to the Union. If the employer fails to deduct dues, the member stays in good standing until 30 days after the Union notifies him/her of the indebtedness. But if the member has no wages from which an employer may deduct wages, for example if the member is on workers’ compensation, then the member is not, for that period, a member to whom dues checkoff is available and the exception does not apply. To stay in good standing, the worker must pay his/her own dues while not receiving wages. Thus the Union had no obligation to send a notice to Mr. Weinfeld that he owed dues.”

It is undisputed that for at least the last two or three elections before this election this has been the rule. According to the Union, after 2009, more members started to have their eligibility challenged because of not having

the requisite 12-month good standing because the Department of Labor put the Union on notice that it had to check the eligibility of all candidates, not just the ones who were challenged. As for the period before 2012, I have found no case, nor does the Protester cite a case, to the contrary, i.e. where someone with a break in dues as a result of being in a temporary no-pay status was deemed eligible, consistent with the policy proposed by the Protester.

The Union cites a section of the guidance about candidate eligibility issued by the Department of Labor which states: “A member whose dues have been checked off by the employer may not be disqualified because of a delay or failure by the employer to send the dues to the union. **However, a member on checkoff who has no earnings from which dues can be withheld may be held responsible for paying dues directly to the union in order to remain in good standing.**” (emphasis added) This articulation by the DOL is consistent with the International Union’s and the Local 100 Election Committee’s interpretation of the language in the TWU Constitution.

Pursuant to that interpretation, Ms. Byars should have paid her dues or requested exoneration by March 15, 2021, the 15<sup>th</sup> of the month after the month when she first failed to pay dues. (Contrary to Protester’s assertion, she did not go into bad standing on February 13 when she failed to pay her dues, but on the 15<sup>th</sup> of the following month.) While the Protester asserts that she knew for at least a year that she was planning on running for office and was diligent about protecting her eligibility, the record indicates otherwise. She does not assert that she did not know she had not received any wages for the pay period

ending February 13. She does not assert that she did not know that no dues had been deducted and submitted to the Union on her behalf, only that she assumed they would be at some point in the future. She did not request exoneration at that time or at any time. (Protester incorrectly assumes that exoneration would have been “inappropriate” because she was anticipating a retroactive workers’ compensation check at some indefinite point in the future from which dues could have been deducted.) She did not check her dues status and then pay the back dues owed and then inquire about exoneration until about ten weeks later, six weeks after she went into bad standing, on April 27-28, 2021. (This was several months before my decision in I-02-21 (Valdes) that Protester implies was the cause for her inquiry about her dues status. It is not clear why she inquired about her dues status in April, if she was so sure that she was in good standing.) She was untimely in paying her dues and the Elections Committee determination that she had a break in her good standing and is therefore not eligible to run for office is consistent with the Election Rules, the Union Constitution and By-Laws, and applicable law.

The Protester argues that she was given inaccurate information on several occasions. After she was told that she owed back dues and then paid them, she was told on July 16, 2021 and again on August 17, 2021 that she was eligible to be seated as a delegate, even though that would have required continuous good standing. In addition, she asserts that she “could have been eligible to request exoneration and might have done so if she had been provided with the proper forms to make the request. But instead, she was told [on April 28, 2021] to request a

waiver by the incumbent officers and attorney for the Elections Committee who never provided her with that form either.” She also states that at some point Mr. Phillips told her he would not give her a waiver form because she was a dissident. Mr. Philips denies having said anything like this. Even assuming *arguendo* that the Protester is correct about her assertions that she was given inaccurate or incomplete information or that she improperly denied the requisite form, there is no allegation that any of this happened any time before April 27, 2021 when she paid her back dues. Her dues were already late by then and an exoneration request at that time would also have been late. There is no evidence of any detrimental reliance on any of the misinformation.

She also argues that “[u]nder the Constitution, any member in bad standing is not eligible to attend any union meetings, hold any union positions nor can they vote. However, it is undisputed that Presidential Candidate Byars attended and voted at each of the Executive Board Meetings held on February 26, 2021; March 12, 2021; June 10, 2021 and August 5, 2021. Each and every vote of Ms. Byars’s votes...was accepted by the Executive Board of Local 100.” However, as of the March 12, 2021 meeting, Ms. Byars was still in good standing, not having lost good standing until March 15, 2021, and then, by the time of the June meeting, her good standing had been restored.

The Protester further claims that the Dues Office couldn’t have known that the Transit Authority had not paid any dues for her during the pay period ending February 13, 2021 because the dues are

submitted in an aggregate form to the Union. I have investigated the Protester's assertion and have found it to be incorrect. According to the Accounts Receivable Office, while it is true that the Union gets an aggregate deposit twice a month, it also receives a report along with the deposit that lists every member—name and pass number--whose dues are included in that report and the dues submitted for each. This information is then entered into each member's dues report.

Finally, the Protester claims that the Election Rules were not properly adopted by the Executive Board. Rather, she asserts, only a draft was presented to and approved by the Board. As an initial matter, I would note that a challenge to the Rules that were published and sent to every member over a month ago is untimely, as it is being asserted more than 48 hours after the Protester knew or should have known of the substance of the final Rules. Second, the Union has advised that the version of the Election Rules presented at the Executive Board meeting was entitled Draft because it is always a draft until discussed at the Executive Board. The version that was approved was identical to the Rules that were published except for the number of Executive Board members from each Division and the number of petition signatures required (and a couple of typographical errors that were corrected). These numbers could not be finalized until the Union received the second dues report in July. The Executive Board approval was conditioned on receiving and including these updated membership numbers.

My authority under the Election Rules is only to determine whether the ruling of the Elections Committee violates the Election Rules, the Union Constitution or By-Laws, or applicable law. I find that it does not. 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 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.



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Neutral Monitor

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Retu Singla, Esq.  
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**Barbara C. Deinhardt  
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September 21, 2021

**DECISION**

Protest I-08-21 (Staley  
eligibility)

By email dated September 14, 2021, Anthony Staley filed a protest objecting to the Election Committee determination that he is ineligible to run for office, as he does not have 12 months of continuous good standing. In particular, the Protester argues that there were delays in the TA handling of his workers' compensation case and the Union did not instruct him to request exoneration and then delayed responding to him once he did request exoneration.

The Election Rules I(C) state:

"To be eligible for nomination for any of the above positions, a member must be in continuous good standing in Local 100 since September 20, 2020. Exonerations for periods of non-payment shall be granted only if the member makes the proper application as per Article XIII Section 1 and Article XVII Section 4 of the TWU Constitution. Such a request must be made by the 15<sup>th</sup> day of the month after the month during which the illness or injury, and related non-payment of dues arose. The exoneration period may not continue for more than 12 months."

Article XIII(3) of the TWU Constitution states,

"Membership dues are due and payable on the first working day in each calendar month. Any member who fails to pay his/her dues for a particular month on or before the fifteenth day of each month shall be in bad standing... Any member to whom dues check-off is available and who signs and delivers to the Local Financial Secretary-Treasurer, or other authorized person, a check-off authorization

shall be considered in good standing regardless of when in a particular month the employer deducts his/her dues for such month or when the employer pays his/her dues over to the Union. Where for any reason the dues of a member who pays his/her dues by check-off authorization are not checked off by the employer for any month or months, said member shall remain in good standing until thirty days after the mailing to him/her by registered mail of a notice informing him/her of his/her indebtedness.”

Article XVII (4)(a) of the TWU Constitution states,

“Any member who is prevented by illness, injury, or lay-off from earning any wages in a calendar month shall be excused from paying dues for such month and such nonpayment shall not affect his good standing ... In order to be excused, such member shall be required to file with his/her Local Financial Secretary-Treasurer a request for exoneration on the official form supplied by the International Secretary-Treasurer.”

Protester went out of work on workers’ compensation on September 21, 2019 and still has not returned. He missed many dues payments in 2020 (and one partial payment in 2019), as he claims his workers’ compensation differential, out of which his dues were paid, was paid sporadically, and he has not paid dues at all since November 7, 2020 after he was dismissed by the TA under Section 71 effective October 28, 2020. (He has made no application that the Union knows of to be restored to employment.) He first requested exoneration on June 14, 2021. Since November 7, 2020 (and for many pay periods before that) he has not been paid a salary or sick leave payments or workers’ compensation differential by the TA and has had no dues check off available to him. Protester argues that there were delays beyond his control in the adjudication of his workers’ compensation claim and medical treatment, including the COVID shutdown. He also states that no one in the Union told him to request exoneration and that once he requested exoneration in June 2021, he did not get a timely response.

The essence of the dispute is whether someone who was an active employee of an employer who checks off dues from wages earned remains someone to whom check-off is available if s/he is in a temporary no-pay status due to illness or workers' compensation or layoff. As set forth in a July 1, 2021 letter from TWU International President John Samuelson interpreting the TWU Constitution, "It is important to note that the Constitution differentiates between circumstances where does check-off is available, and where it is not. This provision is about notice. A member whose pay stub reflects that Union dues are begin deducted would have no way of knowing that the Employer has not forwarded such remittances to the Union. On the other hand, a member who is not receiving wages because of injury, illness or layoff does not have dues check-off available. S/he is on notice that no wages are being earned that could be used to pay union dues. As such, the provision of Article XIII, section 3 relating to written notice to the member from the Union by registered mail does not apply...In these circumstances, the member's obligation is to make the dues payment directly, or request an exoneration (in cases involving illness, injury or layoff)."

Going back to at least 2015 and 2018, when I was ruling on this question in my role as Neutral Monitor for the TWU Local 100 officer election, I held that such a member who was not receiving wages because s/he was, e.g., out sick but without sick leave, was not someone to whom dues check-off was available.

For example, in I-16-15 I wrote, "There was no obligation for the Union to notify Mr. Aldridge that his dues were not checked off or that he was in bad standing. The 30-day notice provision in Article XIII(3) applies only to cases where the employer fails to send to the Union the dues of a member to whom checkoff is available and who has authorized it. It is designed to protect the member from mistakes/misdeeds of the employer. It is not meant to deal with a situation where nothing is checked off because there is no income to check it off from because the member is, for example, sick, laid off, suspended or on strike."

Similarly, in I-07-18 (Weinfeld eligibility), for example, the member "was not

in good standing from October 10, 2017 until December 18, 2017 when he paid his back dues. December 18, 2017 until October 10, 2018 is not 12 months. There is an exception for a member 'to whom dues checkoff is available' whose employer fails to deduct dues from the member's wages and remit them to the Union. If the employer fails to deduct dues, the member stays in good standing until 30 days after the Union notifies him/her of the indebtedness. But if the member has no wages from which an employer may deduct wages, for example if the member is on workers' compensation, then the member is not, for that period, a member to whom dues checkoff is available and the exception does not apply. To stay in good standing, the worker must pay his/her own dues while not receiving wages. Thus the Union had no obligation to send a notice to Mr. Weinfeld that he owed dues."

It is undisputed that for at least the last two or three elections before this election this has been the rule. According to the Union, after 2009, more members started to have their eligibility challenged because of not having the requisite 12-month good standing because the Department of Labor put the Union on notice that it had to check the eligibility of all candidates, not just the ones who were challenged. As for the period before 2012, I have found no case, nor does the Protester cite a case, to the contrary, i.e. where someone with a break in dues as a result of being in a temporary no-pay status was deemed eligible, consistent with the policy proposed by the Protester.

The Union cites a section of the guidance about candidate eligibility issued by the Department of Labor which states: "A member whose dues have been checked off by the employer may not be disqualified because of a delay or failure by the employer to send the dues to the union. **However, a member on checkoff who has no earnings from which dues can be withheld may be held responsible for paying dues directly to the union in order to remain in good standing.**" (emphasis added) This articulation by the DOL is consistent with the International Union's and the Local 100 Election Committee's interpretation of the language in the TWU Constitution.

Pursuant to that interpretation, even assuming *arguendo* that exoneration is available to someone on a medical dismissal and even without taking into account the dues missed before he was terminated in October, 2020, Mr. Staley's back dues should have been paid or an exoneration request should have been made by, at the latest, December 15, 2020, the 15<sup>th</sup> of the month after the month when he first failed to pay dues after he was terminated. He did not file a request until six months later, in June, 2021. While it may be true that he did not get a timely response to this request for exoneration, by the time he submitted it, it was already untimely. The Elections Committee determination that he had a break in his good standing, and is still not in good standing, and is therefore not eligible to run for office, is consistent with the Election Rules, the Union Constitution and By-Laws, and applicable law.

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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Anthony Staley  
Jeanne Mirer, Esq.  
Retu Singla, Esq.  
Tony Utano  
Evangeline Byars  
Stuart Salles, Esq.

Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt  
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September 20, 2021

**DECISION**

Protest I-09-21 (Brown  
eligibility)

By email dated September 16, 2021, Jeanne Mirer, Esq., of Mirer, Mazzocchi & Julien, and Retu Singla, Esq., on behalf of Todd Brown, filed a protest objecting to the Election Committee determination that he is ineligible to run for office as he does not have 12 months of continuous good standing. In particular, the Protester argues that he was out of work as a result of a racially motivated disciplinary action and that the Union Constitution allows him to remain in good standing while he was suspended given that he never revoked his authorization for dues checkoff. As set forth in Protester's appeal, "his disciplinary suspension was not justified and was racially motivated. In such a circumstance the equities are in Mr. Brown's favor, who was essentially placed in a position based on unlawful racial animus by the employer and who under [the Election Committee's] interpretation of the constitution would never be able to maintain continuous good standing because exoneration is unavailable to him. In this manner [the Election Committee's] interpretation of the Constitution places members subject to racial animus by the employer in an unfair position, especially when compared to the "entrenched" incumbents who, because they are not working at their "tools" escape such racial animus from their employer. It is undisputed that NYCTA operates an oppressive discipline machine. Now the incumbent officers are using the employer's unfair discipline machine that is part of the employer's "institutional racism" against its own membership by interpreting the Constitution in such a manner as to disenfranchise them from being able to run for office. In this situation the savings clause of the Constitution must be available to him."

The Election Rules I(C) state:

“To be eligible for nomination for any of the above positions, a member must be in continuous good standing in Local 100 since September 20, 2020.”

Article XIII(3) of the TWU Constitution states,

“Membership dues are due and payable on the first working day in each calendar month. Any member who fails to pay his/her dues for a particular month on or before the fifteenth day of each month shall be in bad standing... Any member to whom dues check-off is available and who signs and delivers to the Local Financial Secretary-Treasurer, or other authorized person, a check-off authorization shall be considered in good standing regardless of when in a particular month the employer deducts his/her dues for such month or when the employer pays his/her dues over to the Union. Where for any reason the dues of a member who pays his/her dues by check-off authorization are not checked off by the employer for any month or months, said member shall remain in good standing until thirty days after the mailing to him/her by registered mail of a notice informing him/her of his/her indebtedness.”

Protester was served with a Disciplinary Action Notification and removed from work on an unpaid suspension on December 29, 2020. Following an arbitration at which he was represented by the same attorney who represents him in the instant protest, he was found guilty of two charges and not guilty of two charges and was ordered on May 17, 2021 to be returned to work with a time served suspension. He paid his back dues in full on June 29, 2021 and is now in good standing. He states that he didn't know he had to pay his dues while he was suspended. When he was out on workers' compensation, the TA withheld his dues from his differential. In addition, it is his interpretation of the Constitution that he continued in good standing while he was out and he would get a letter if he went out of good standing, which he never did. He explained that he paid them once he returned because he was advised by Evangeline Byars to check his dues status.



When he did, he found that he was not in good standing and he paid his dues in order to run for office.

The essence of the dispute is whether someone who is an active employee of an employer who checks off dues from wages earned remains someone to whom check-off is available if s/he is in a temporary no-pay status due to illness or workers' compensation or layoff, or, as here, suspension. As set forth in a July 1, 2021 letter from TWU International President John Samuelson interpreting the TWU Constitution, "It is important to note that the Constitution differentiates between circumstances where dues check-off is available, and where it is not. This provision is about notice. A member whose pay stub reflects that Union dues are being deducted would have no way of knowing that the Employer has not forwarded such remittances to the Union. On the other hand, a member who is not receiving wages because of injury, illness or layoff does not have dues check-off available. S/he is on notice that no wages are being earned that could be used to pay union dues. As such, the provision of Article XIII, section 3 relating to written notice to the member from the Union by registered mail does not apply...In these circumstances, the member's obligation is to make the dues payment directly, or request an exoneration (in cases involving illness, injury or layoff.)."

Going back to at least 2015 and 2018, when I was ruling on this question in my role as Neutral Monitor for the TWU Local 100 officer election, I held that such a member who was not receiving wages because s/he was, e.g., suspended, was not someone to whom dues check-off was available.

For example, in I-07-12 (Germain)(incorrectly numbered; should have been I-07-15) I wrote, "By email dated October 23, 2015, Gary Germain appealed the Elections Committee October 21, 2015 determination that he was not eligible to run for office because he did not have 12 months of continuous good standing. He was removed from service by the NYCT on April 12, 2015 until June 21, 2015 due to a dispute over asbestos license recertification and involuntarily carried on "Personal

Business Leave" by the employer. That dispute is the subject of a grievance; of disciplinary action by the employer and of an active PERB case against both the employer and the Union. He did not pay dues while he was held out. The Protester contends that, because automatic dues checkoff was in place with the employer, his good standing at Local 100 continued during the course of my temporary removal from service. He asserts that that is also consistent with past practice at Local 100. The Protester cites the TWU Constitution Article XIII(3)... The provision cited by the Protester only applies to a member "to whom dues check off is available." I find that under the circumstances here, checkoff was not available to Mr. Germain while he was in an inactive work status because there were no wages from which dues could have been deducted. Had he been on inactive status because of being sick, injured or laid off, he could have asked for exoneration under Article XVII(4). Being in suspended status, however, it was his responsibility to cash pay his dues in order to maintain good standing. This he failed to do. There was no obligation for the Union to notify Mr. Germain that his dues were not checked off or that he was in bad standing. The 30-day notice provision in Article XIII(3) applies only to cases where the employer fails to send to the Union the dues of a member to whom checkoff is available and who has authorized it. It is designed to protect the member from mistakes/misdeeds of the employer. It is not meant to deal with a situation where nothing is checked off because there is no income to check it off from because the member is, for example, sick, laid off, suspended or on strike.

Similarly, in TWUS-04-18 (Eligibility Santobello–suspension), for example, I found, "The Union Constitution and the Election Rules state that no member is eligible for nomination or election unless s/he has been in continuous good standing for the 12 months preceding nomination, i.e. for this election, since September 17, 2018. A member who fails to pay dues in any month has a break in that period of good standing. There is an exception for a member 'to whom dues checkoff is available' whose employer fails to deduct dues from the member's wages and remit them to the Union. If the employer fails to deduct dues, the member remains in good

standing until 30 days after the Union notifies him/her of the indebtedness. But if the member has no wages from which an employer may deduct wages, for example if the member is on workers' compensation or has been suspended, then the member is not, for that period, a member to whom dues checkoff is available and the exception does not apply and the requirement that the Union notify the member before placing him/her in bad standing does not apply. To stay in good standing, the worker must pay his/her own dues while not receiving wages. The Union had no obligation to send a notice to Mr. Santobello that he owed dues. The fact that he did not know the requirements of the Constitution is not itself an excuse and does not cure his period of bad standing."

It is undisputed that for at least the last two or three elections before this election this has been the rule. According to the Union, after 2009, more members started to have their eligibility challenged because of not having the requisite 12-month good standing because the Department of Labor put the Union on notice that it had to check the eligibility of all candidates, not just the ones who were challenged. As for the period before 2012, I have found no case, nor does the Protester cite a case, to the contrary, i.e. where someone with a break in dues as a result of being in a temporary no-pay status or someone was out on suspension was deemed eligible, consistent with the policy proposed by the Protester.

The Union cites a section of the guidance about candidate eligibility issued by the Department of Labor which states: "A member whose dues have been checked off by the employer may not be disqualified because of a delay or failure by the employer to send the dues to the union. **However, a member on checkoff who has no earnings from which dues can be withheld may be held responsible for paying dues directly to the union in order to remain in good standing.**" (emphasis added) This articulation by the DOL is consistent with the International Union's and the Local 100 Election Committee's interpretation of the language in the TWU Constitution.

Pursuant to this interpretation, when the Protester was removed from service on December 29, 2020 and stopped receiving a paycheck from which dues could have been deducted, he became someone to whom dues checkoff was not available. Mr. Brown should have paid his dues himself beginning on February 15, 2021, the 15<sup>th</sup> of the month after the month when he first failed to pay dues. He did not pay his back dues until more than four months later, on June 29, 2021. He therefore had a break in his good standing and the Elections Committee did not violate the Election Rules, the Union By-Laws or Constitution or applicable law in finding him ineligible to run for office. It is not the role of the Elections Committee, or the Neutral Monitor, to judge the validity of his Notice of Disciplinary Action. That is to be determined through the contractual grievance arbitration procedure or through court and/or administrative action. Mr. Brown had the option of paying his dues while he was fighting his discipline. He did not do that on a timely basis. He is not eligible to run for office.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:

Joe Campbell

Todd Brown

Jeanne Mirer, Esq.

Retu Singla, Esq.

Tony Utano

Evangeline Byars

Stuart Salles, Esq.

Arthur Schwartz, Esq.

Denis Engel, Esq.

Elections Committee

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September 22, 2021

**DECISION**

Protest I-10-21 (Jones  
eligibility)

By email dated September 20, 2021, Jeanne Mirer, Esq., of Mirer, Mazzocchi & Julien, and Retu Singla, Esq., on behalf of Donna Jones, filed a protest objecting to the Election Committee determination that she is ineligible to run for office, as she does not have 12 months of continuous good standing. In particular, the Protester argues that “[u]pon her hire in September 1999, she provided an automatic dues check off authorization to Transit as part of her onboarding. This automatic dues check off authorization requires Transit to remit dues to Local 100. At no time has [the Protester] ever revoked such automatic dues authorization.” Protester also notes that she signed an authorization for her employer to deduct “additional contributions towards [her]...Union Dues deductions effective within the next two pay periods. I understand that catch up on these deductions will consist of current and retroactive contributions until such time as any outstanding payments or arrears are satisfied.” The TA should have used that authorization to pay her dues when she fell short. Protester also argues that the Election Committee interpretation of the Union constitution is incorrect. She should not have been considered in bad standing because the Union did not send her a letter advising her of her dues indebtedness and giving her an opportunity to bring herself back into good standing.

The Election Committee found as follows:

1. In 2020 you did not pay dues for the following pay periods: 4/4/20, 4/18/20, 5/2/20, 5/30/20 and 7/11/20. During some or all of this period you were not receiving a paycheck. Some records say you were suspended, others say "sick/short term disability."

2. On 8/11/20 you signed an MTA payroll form authorizing double withholding of dues for "the next two pay periods." MTA bus withheld extra dues on the following pay periods (beyond two weeks), 8/22; 9/5; 9/19; 10/3; 10/17 and 10/31. These deductions left you \$36.80 short, a sum you paid on 1/20/21. Assuming that this was an error by MTA Bus, and that they should have made one more extra dues payment on 11/14/20, you did not resume good standing membership until the payments were, or should have been completed. Signing a "double dues deduction form" does not restore good standing. Only the completed payment schedule does.

3. Even if you made every dues payment after 10/31/20 (which you did not) your good standing would have been restored on 11/14/20, less than a year ago.

4. You did not pay dues again for pay periods 5/29/21, 6/26/21, and 7/10/21. You were advised of the debt by the Election Committee, and on 8/2/21 you presented a check for \$102.00 to the Dues Office. Your dues for May and June were paid beyond the deadline in the TWU Constitution (the 15th of the following month). The missing May 29 payment should have been made by June 15, and the missing June 26 payment should have been made by July 15. You re-established good standing on August 2, 2021, less than a year ago.

5. You also missed dues payments on July 24, 2021, and August 7, 2021. You paid these sums dues on 9/17/21. So yesterday you again re-established good standing.

6. At no time, during any of these absences, did you request an exoneration from the Financial Secretary Treasurer.

The Committee therefore determined that she did not have the requisite 12 months of continuous good standing.

The Election Rules I(C) state:

"To be eligible for nomination for any of the above positions, a member must be in continuous good standing in Local 100 since September 20, 2020. Exonerations for periods of non-payment shall be granted only if the member makes the proper application as per Article XIII Section 1 and Article XVII Section 4 of the TWU Constitution. Such a request must be made by the 15<sup>th</sup> day of the month after the month during which the illness or injury, and related non-payment of dues arose. The exoneration period may not continue for more than 12 months."

Article XIII(3) of the TWU Constitution states,

“Membership dues are due and payable on the first working day in each calendar month. Any member who fails to pay his/her dues for a particular month on or before the fifteenth day of each month shall be in bad standing... Any member to whom dues check-off is available and who signs and delivers to the Local Financial Secretary-Treasurer, or other authorized person, a check-off authorization shall be considered in good standing regardless of when in a particular month the employer deducts his/her dues for such month or when the employer pays his/her dues over to the Union. Where for any reason the dues of a member who pays his/her dues by check-off authorization are not checked off by the employer for any month or months, said member shall remain in good standing until thirty days after the mailing to him/her by registered mail of a notice informing him/her of his/her indebtedness.”

Article XVII (4)(a) of the TWU Constitution states,

“Any member who is prevented by illness, injury, or lay-off from earning any wages in a calendar month shall be excused from paying dues for such month and such nonpayment shall not affect his good standing ... In order to be excused, such member shall be required to file with his/her Local Financial Secretary-Treasurer a request for exoneration on the official form supplied by the International Secretary-Treasurer.”

In 2020, Ms. Jones was out for seven pay periods on sick/short term disability and/or discipline. The Protester submits no evidence that she received wages or other compensation for those periods from which dues could have been deducted. She signed an authorization on August 11, 2020, for her employer to deduct extra dues to pay off the arrearage resulting from her absence from March 19 to July 22, 2020. Double dues under this authorization were deducted beginning the next pay period, half of each deduction applied to current dues and half to the dues arrearage. As of September 20, 2020, when the requisite 12-month continuous good



standing period began to run, she had only backpaid her dues for three of the seven missed dues payments, leaving her four dues payments (approximately \$120) short. Thus, regardless of what happened at any time thereafter, she was not in continuous good standing for the requisite 12-month period and is therefore not eligible to run for office. (Given this finding, I do not need to reach the issue of the additional missed dues payments and additional breaks in good standing in 2021.)

The essence of the dispute is whether someone who was an active employee of an employer who checks off dues from wages earned remains someone to whom check-off is available if s/he is in a temporary no-pay status due to illness or workers' compensation or discipline. As set forth in a July 1, 2021 letter from TWU International President John Samuelsen interpreting the TWU Constitution, "It is important to note that the Constitution differentiates between circumstances where does check-off is available, and where it is not. This provision is about notice. A member whose pay stub reflects that Union dues are begin deducted would have no way of knowing that the Employer has not forwarded such remittances to the Union. On the other hand, a member who is not receiving wages because of injury, illness or layoff does not have dues check-off available. S/he is on notice that no wages are being earned that could be used to pay union dues. As such, the provision of Article XIII, section 3 relating to written notice to the member from the Union by registered mail does not apply...In these circumstances, the member's obligation is to make the dues payment directly, or request an exoneration (in cases involving illness, injury or layoff)."

Going back to at least 2015 and 2018, when I was ruling on this question in my role as Neutral Monitor for the TWU Local 100 officer election, I held that such a member who was not receiving wages because s/he was, e.g., out sick but without sick leave, was not someone to whom dues check-off was available.

For example, in I-16-15 I wrote, "There was no obligation for the Union to notify Mr. Aldridge that his dues were not checked off or that he was in bad standing. The 30-day notice provision in Article XIII(3) applies only to cases where

the employer fails to send to the Union the dues of a member to whom checkoff is available and who has authorized it. It is designed to protect the member from mistakes/misdeeds of the employer. It is not meant to deal with a situation where nothing is checked off because there is no income to check it off from because the member is, for example, sick, laid off, suspended or on strike.”

Similarly, in I-07-18 (Weinfeld eligibility), for example, the member “was not in good standing from October 10, 2017 until December 18, 2017 when he paid his back dues. December 18, 2017 until October 10, 2018 is not 12 months. There is an exception for a member ‘to whom dues checkoff is available’ whose employer fails to deduct dues from the member’s wages and remit them to the Union. If the employer fails to deduct dues, the member stays in good standing until 30 days after the Union notifies him/her of the indebtedness. But if the member has no wages from which an employer may deduct wages, for example if the member is on workers’ compensation, then the member is not, for that period, a member to whom dues checkoff is available and the exception does not apply. To stay in good standing, the worker must pay his/her own dues while not receiving wages. Thus the Union had no obligation to send a notice to Mr. Weinfeld that he owed dues.”

It is undisputed that for at least the last two or three elections before this election this has been the rule. According to the Union, after 2009, more members started to have their eligibility challenged because of not having the requisite 12-month good standing because the Department of Labor put the Union on notice that it had to check the eligibility of all candidates, not just the ones who were challenged. As for the period before 2012, I have found no case, nor does the Protester cite a case, to the contrary, i.e. where someone with a break in dues as a result of being in a temporary no-pay status was deemed eligible, consistent with the policy proposed by the Protester.

The Union cites a section of the guidance about candidate eligibility issued by the Department of Labor which states: “A member whose dues have been checked off by the employer may not be disqualified because of a delay or failure by the

employer to send the dues to the union. **However, a member on checkoff who has no earnings from which dues can be withheld may be held responsible for paying dues directly to the union in order to remain in good standing.” (emphasis added)** This articulation by the DOL is consistent with the International Union’s and the Local 100 Election Committee’s interpretation of the language in the TWU Constitution.

The Protester asserts that she “has been diligent in her efforts to meet all qualifications to run for office. However, she suffered inappropriate discipline as well as several workers compensation injuries which the Union has determined has put her in bad standing.” Contrary to this assertion, the Election Committee found that she was **not** diligent in her efforts to meet all qualifications to run for office. She did not pay her dues on a timely basis when dues checkoff was not available to her as a way to pay those dues because she was receiving no pay from which dues could be deducted and she never requested exoneration. Also contrary to this assertion, it was not the discipline or injuries that put her in bad standing. It was her failure to timely pay her dues or request exoneration that put her in bad standing. Ms. Jones’s back dues should have been paid or an exoneration request made by May 15, 2020, the 15<sup>th</sup> of the month after the month when she first failed to pay dues. She did not pay up her back dues and come into good standing until ten months later in January, 2021, less than 12 months before the petition period started. (Even if her employer had continued to deduct double dues until the arrearage was satisfied, she wouldn’t have been in good standing until November, 2020.) The Elections Committee determination that she had a break in her good standing and is therefore not eligible to run for office is consistent with the Election Rules, the Union Constitution and By-Laws, and applicable law.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara C. Deinhardt  
Neutral Monitor

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Joe Campbell  
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Elections Committee

**Barbara C. Deinhardt  
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September 27, 2021

**AMENDED DECISION  
(heading only)**

Protest I-11-21 (Kornegay  
eligibility)

By email dated September 24, 2021, Retu Singla, Esq., on behalf of Wilford Kornegay, filed a protest objecting to the Election Committee determination that he is ineligible to run for office as he does not have 12 months of continuous good standing and he is not able to collect petition signatures or vote because he still owes back dues.

The Election Rules I(C) state:

“To be eligible for nomination for any of the above positions, a member must be in continuous good standing in Local 100 since September 20, 2020.”

Article XIII(3) of the TWU Constitution states,

“Membership dues are due and payable on the first working day in each calendar month. Any member who fails to pay his/her dues for a particular month on or before the fifteenth day of each month shall be in bad standing... Any member to whom dues check-off is available and who signs and delivers to the Local Financial Secretary-Treasurer, or other authorized person, a check-off authorization shall be considered in good standing regardless of when in a particular month the employer deducts his/her dues for such month or when the employer pays his/her dues over to the Union. Where for any reason the dues of a member who pays his/her dues by check-off authorization are not checked off by the employer for any month or months, said member shall remain in good standing until thirty days after

the mailing to him/her by registered mail of a notice informing him/her of his/her indebtedness.”

The Election Committee found that the Protester did not pay his dues for pay periods April 11, 2020, May 9, 2020, June 6, 2020 and June 20, 2020 and still owes \$126.96 in back dues and is not eligible to run for office, collect signatures or vote.

It appears from Mr. Kornegay’s dues record that he did not pay dues for the pay periods noted by the Election Committee or for pay dates July 4, 2020 or July 18, 2020. However, in reviewing the Protester’s pay stubs, which were not produced at the time the Election Committee made its determination, it appears that he was receiving workers’ compensation differential from March 28, 2020 to April 25, 2020, May 10, 2020 to May 23, 2020, and May 29, 2020 to July 30, 2020. However, even for differential periods covering more than one pay period, only one dues deduction was made by the Transit Authority on each pay check. I find, therefore, that for the period in question, he remained someone to whom dues checkoff was available and did not go into bad standing when the TA failed to deduct sufficient dues.

I note that it also appears that he paid double dues on August 15, 2020 and August 29, 2020. While his double dues authorization form is not in evidence, it seems clear that he must have submitted such an authorization. Had the additional deductions continued until the indebtedness was satisfied, he would have been brought into good standing by September 26, 2020, within 12 months of when the petitions are due.

The protest is granted. As of now, although he still owes \$126.96 in back dues, Mr. Kornegay remains in good standing and is eligible to run for office, collect petition signatures, and vote.

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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with the first name "Barbara" being more prominent.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Wilford Kornegay  
Jeanne Mirer, Esq.  
Retu Singla, Esq.  
Tony Utano  
Evangeline Byars  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

September 29, 2021

**DECISION**

Protest I-12-21 (Knowles  
eligibility)

By email dated September 27, 2021, Evangaline Byars, on behalf of Johnnie Knowles, filed a protest objecting to the Election Committee September 24, 2021 determination that he is ineligible to run for office as he does not have 12 months of continuous good standing. No grounds for the appeal were provided, despite a request form the Neutral Monitor.

The Election Rules I(C) state:

“To be eligible for nomination for any of the above positions, a member must be in continuous good standing in Local 100 since September 20, 2020.”

Article XIII(3) of the TWU Constitution states,

“Membership dues are due and payable on the first working day in each calendar month. Any member who fails to pay his/her dues for a particular month on or before the fifteenth day of each month shall be in bad standing... Any member to whom dues check-off is available and who signs and delivers to the Local Financial Secretary-Treasurer, or other authorized person, a check-off authorization shall be considered in good standing regardless of when in a particular month the employer deducts his/her dues for such month or when the employer pays his/her dues over to the Union. Where for any reason the dues of a member who pays his/her dues by check-off authorization are not checked off by the employer for any month or months, said member shall remain in good standing until thirty days after the mailing to him/her by registered mail of a notice informing him/her of his/her



indebtedness.”

The Election Rules, IV(B)(1), (3) and (4) state:

1. All protests alleging a violation of the Local 100 By-Laws, the TWU Constitution, applicable law, the Election Rules adopted by the Local Executive Board, and Supplemental Rules promulgated by Neutral Monitor related to the conduct of the nominations and election, except count-day protests, must be filed within forty-eight (48) hours of the time the complainant(s) knows or should have known of the alleged violation. All complaints made after 48 hours shall be deemed waived.

2. ...

3. All pre-election protests except those regarding disputes over an alleged improper failure to issue a ballot shall be filed by sending the Neutral Monitor a clear and concise written statement of the alleged improper conduct by overnight mail or by email or facsimile transmission and shall be titled “Protest,” and shall include the name(s), address(es), e-mail address(es) and telephone number(s) of the complainant(s) and the name(s) of the person(s) against whom the protest is filed. A copy must also be sent by email or facsimile to the Elections Committee Chair and to counsel for the Elections Committee. The Neutral Monitor shall serve the protest on the designated representative of the affected slate or independent candidate(s) unless it is clear that the protest does not impact on a slate or candidate(s).

4. With respect to any protest, it shall be the burden of the complainant to present evidence that a violation has occurred.

The Election Committee determination was sent to Mr. Knowles at 4:35 PM on September 24, 2021. The protest was not filed until 6:23 PM on September 27. It is therefore untimely. Further, there were no grounds given for the appeal. Even after I asked for the basis of the appeal, there was no response. Finally, no evidence

was provided by Mr. Knowles to the Election Committee or to me to refute the Election Committee finding that the Protester owed \$34 in back dues, for December 13 and December 20, 2020. He then missed 14 dues payments in January, February, March and April, 2021. On April 23, 2021 he paid his back dues and dues forward until August, 2021. However, he was in bad standing from January 15, 2021 until April 23, 2021. He is not eligible to run for office.

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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Johnnie Knowles  
Tony Utano  
Evangeline Byars  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

September 30, 2021

**DECISION**

Protest I-13-21 (Davis re Peace  
campaigning on work time)

By emails dated September 21 and 22, 2021, Richard Davis filed a protest alleging that operator Brett Peace was campaigning during his work time. Specifically, he asserts that Mr. Peace was collecting signatures at the Kingsbridge Depot at approximately 12:42 PM on September 21 and at an unspecified time on September 22.

The Election Rule VI(E)(5) prohibits any candidate or member from campaigning for her/himself or for any other candidate during time that is paid for by the Local Union or by any employer. However, campaigning incidental to regular Local Union business or during paid vacation, paid lunch hours or breaks, or similar paid time off, is permitted.

Mr. Peace states that his shift on the two dates in question—September 21 and 22--was from 7:04 AM to 7:49 PM. His swing was from 11:02 AM to 2:59 PM. It was during his swing that he was collecting signatures in front of the depot. The Protester submitted no evidence contradicting Mr. Peace's assertion. A member's swing is his/her break time when he is not expected to be working. Campaigning is permitted during break time. Therefore there was no violation of the 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 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.

A handwritten signature in black ink, appearing to read 'Barbara C. Deinhardt', written in a cursive style.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Richard Davis  
Tony Utano  
Evangeline Byars  
Jeanne Mirer, Esq.  
Retu Singla, Esq.  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

October 7, 2021

### **DECISION**

Protest I-13-21 (Scichilone re  
Loegel threat)

By email dated October 5, 2021, David Scichilone filed a protest alleging that Local 100 RTO Vice President and candidate for reelection on the Stand United Slate Eric Loegel threatened him for his opposition to the Stand Unite Slate. In specific, the Protester alleges that on September 28, 2021, he was at work when Mr. Loegel came onto his train and engaged him in a conversation about why he was not supporting the Utano team, about the vaccination mandate, and about other issues. Most of the conversation was about why the Protester had changed his support from the incumbent officers to Chris Drummond and about his displeasure about the vaccine mandate, which he asserted the current officers support. According to the Protester, Mr. Loegel then stated, "Tony and I are going to win this election big." The Protester then replied, "That may or may not be the case but whatever happens, I stand with Chris Drummond." Loegel then allegedly said, "I'm going to bury Drummond and bury all the others and then you will pay and regret making me your enemy." The Protester took this as a threat. At the end of the conversation, Mr. Loegel said, "You can support whoever you want and I am here if you need any help."

Mr. Loegel states that he saw the Protester on the train and engaged him a conversation about why he had changed his support after supporting the current officers for so many years. Most of the conversation was about the vaccine-mandate. Mr. Loegel emphasized to the Protester that the officers did not support a vaccine-mandate and explained that there was no vaccine-mandate at the TA. At the end of

the conversation he told the Protester that he [Loegel] was still a Union rep and would help him if he needed help. Loegel agrees that he said that he was going to beat Drummond, but denies making any threats or making any reference to burying any candidate or making anyone pay.

I find that the protest is clearly untimely. The conversation occurred on September 28 and the protest was not filed until a week later. The Rules require that a protest be made within 48 hours. Further, I note that it is generally true that the Rules are not intended to ensure the accuracy or tone of campaign materials or speech. As I held in I-23-15 (Ahmed), "My jurisdiction as Neutral Monitor is to ensure compliance with the Election Rules. I do not have the authority or the ability to regulate all speech between and among members. Generally the remedy for untrue or unwanted or defamatory or hostile speech is more, corrective speech." The only sentence in the conversation that could be considered a threat was a statement that Mr. Loegal adamantly denies making. In this instance I do not have to make a credibility determination, since the protest is untimely.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
David Scichilone  
Eric Loegel  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Evangeline Byars  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

October 19, 2021

### **DECISION**

Protest I-14-21 (Davis re Byars  
misrepresentation)

By email dated October 15, 2021, Brian Davis filed a protest against presidential candidate Evangaline Byars and the Stronger Together Slate alleging that Ms. Byars misrepresented her status as an eligible candidate in the context of a fundraising appeal on Facebook. In her post she wrote, "Guess who made the ballot!" with arrows pointing at her picture. In the comment section she asked for donations to her campaign. According to the Protester, "Byars has continuously lied to members repeatedly stating that she has made the ballot for the upcoming TWU Local 100 election " in order to "deceive the members and get the membership to donate money to her presidential campaign thereby constituting fraud."

A review of the VOTE Evangeline Byars for President of Local100 – 2021 Facebook page reveals that on October 9, Ms. Byars also posted:

Who will not be able to run, vote, or get a ballot in the 2021 TWU LOCAL Wide Elections:

- \* Any member who has been out sick or injured on duty in a no-pay status

- \* Any member whose workers' compensation case has had a disruption resulting in no pay or your case controverted. (At this very moment 100's if not 1000's of our member's comp cases are in a no-pay status)

- \* Any member who has served suspension time.

- \* Any member out No Work Available or in a no-pay status. Especially women denied a reasonable accommodation due to pregnancy



This post remains up as of the date of this decision.

It is not true that Ms. Byars had “made the ballot” at the time of the Facebook post or at any time to date. She has been ruled ineligible by the Elections Committee for not having 12 months of continuous good standing. She protested that decision and I upheld the Elections Committee determination. She appealed to the TWU International Committee on Appeals and no decision has issued overturning either the Election Committee or my determination. She has filed a lawsuit trying to get those determinations overturned, but there has been no ruling as yet.

Ms. Byars also misrepresents the rules for being eligible to receive a ballot and vote. (She also misrepresents the grounds for being disqualified to run for office, but that issue is now moot.) It is not true that someone who has been out sick or on workers’ compensation, or who has been suspended, or who is in a No Work Available or other no-pay status “will not be able to ... vote or get a ballot in the 2021 TWU ... elections.” What is true that if anyone is not paid up on their dues, they will not be able to vote. (They will not be automatically sent a ballot, but will be able to request one.) If they have missed dues because of being out sick or on workers’ compensation or being suspended or being in a No Work Available or other no-pay status, or for any other reason, they have to pay their back dues (or, in some cases, have timely requested dues exoneration) in order to be able to vote. They can pay any dues owed all the way up until the day the ballots are counted and their ballots will be counted.

I note that it is generally true that the Rules are not intended to ensure the accuracy or tone of campaign materials or speech. As I held in I-23-15 (Ahmed), “My jurisdiction as Neutral Monitor is to ensure compliance with the Election Rules. I do not have the authority or the ability to regulate all speech between and among members. Generally the remedy for untrue or unwanted or defamatory or hostile speech is more, corrective speech.” In this case, however, the misrepresentations go

to the heart of the election process. By stating she is an eligible candidate when she is not and by telling people that they cannot receive a ballot and vote if they have, for example, been out sick, Mr. Byars misleads members about their rights. Her misrepresentation could lead members to believe they are not eligible to vote, and thus decide not to vote, when in fact they may be eligible or may take steps to become eligible. Whether or not her intent was to mislead members into donating money to her campaign, her actions violate the Election Rule VI(D) prohibition that “no person or entity shall limit or interfere with the right of any Local 100 member to vote.”

The protest is sustained. The first part of the protest has already been remedied, as Ms. Byars has removed the misleading language. She is cautioned not to advise members that she is eligible to run as a candidate unless and until a court or the TWU International Committee on Appeals makes such a ruling.

She and the Stronger Together Slate are instructed to immediately remove all misleading references to the grounds for eligibility to receive a ballot and vote and are instructed to post on Facebook and any other platforms where the misleading information was posted, no later than close of business today, the following language for at least ten days, the same amount of time that the misleading language has been posted:

**The Neutral Monitor has determined that I misstated the grounds for losing eligibility to receive a ballot and vote in the upcoming election. I have been ordered to advise you that under the Election Rules, a member does not lose the right to vote or receive a ballot just because they have been out sick or in a no pay status. That happens only if they have not paid their dues and it can be remedied.**

**Any member who is in bad standing because they owe back dues can regain good standing and the right to get a ballot and vote by paying their back dues.**

**Any member who does not receive a ballot by November 22 may request one and will be sent one. Members who did not receive a ballot in the initial mailing because they are in bad standing because they owe dues can make sure their vote will count by paying their back dues, right up until the day the vote is counted.**

**Any member who wants to know their dues status can call the Union and find out. You may owe dues for any number of reasons. It might be the employer's fault (for example, the wrong amount was deducted); it might be because you missed a pay check for a wide variety of reasons, such as being out on sick leave, in a no pay status, suspended, contested workers' comp claim, etc.**

**If you have been out sick or on comp with no pay in the last month, you can email the Local 100 Financial Secretary, Earl Phillips, and seek to have your dues forgiven (also known as dues exoneration).**

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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Brian Davis  
Retu Singla, Esq.

Jeanne Mirer, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Evangeline Byars  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

October 31, 2021

**DECISION**

Protest I-15-21 (Fernandez re  
eligibility report)

By email dated October 24, 2021, Winston Fernandez filed a protest that the Final Eligibility Report found him ineligible to run for office because he did not sign any of his Nominating Petitions and therefore did not submit sufficient signatures. In specific, the Protester alleges that he called the Election Committee on Tuesday, October 5 at approximately 9:35 AM. He spoke to Committee Chairman Aquilino Castro and told him that he had forgotten to sign his Petitions. He wanted to come in that day, October 5, to sign them. Mr. Castro refused his request. According to the Protester, the Committee allowed another candidate, Jamel Nicholas, to sign his Petitions after turning them in to the Election Committee and he requests that he be given the same opportunity.

Mr. Castro states that Mr. Fernandez turned in his Petitions on September 28, 2021. He did not request an opportunity to sign them until a week later, more than a day after the deadline for turning in Petitions. According to Mr. Castro, once someone turns possession of Petitions over to the Committee, no changes can be made on them. In the case of Mr. Nicholas, it was determined that he had not yet given up possession and control of his Petitions, but was still preparing them for submission, specifically by signing the witness attestation at the bottom, when they taken from him. It was for that reason, in those very limited circumstances, that he was deemed to have signed them. This was not the case with Mr. Fernandez, who had released the Petitions into the Committee's control a week earlier.

I find the Election Committee's explanation of the difference between the decision made regarding Mr. Nicholas's Petitions and Mr. Fernandez's Petitions to be reasonable and I find no basis for overturning that decision. Mr. Fernandez is not eligible.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Winston Fernandez  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

October 31, 2021

**DECISION**

Protest I-16-21 (Albert re Aremu  
flyer)

By email dated October 26, 2021, Carlos Albert filed a protest alleging that independent candidate for Division Vice-Chair and Executive Board in Track Adekunle Aremu misrepresented himself in a campaign flyer. The flyer reads in part:

Vote for Aremu. Vote for Aremu. ...For change elect Aremu for an end to inequality

Notice of Acceptance

Track – Division Officer

Executive Board Member

... Vote for Aremu. Vote for change and reform.

The Protester asserts that the flyer represents Aremu as a current Division Officer and Executive Board Member in Track when in fact he holds no position. The Protester alleges that “this is misleading and an attempt to get the members’ votes.”

A similar allegation was made in PCS-08-21. There the Protester alleged that a flyer made it seem like the candidate was running for re-election. I wrote,

In terms of the allegation that the flyer misrepresented the status of Jose Melendez as an incumbent officer, I find that the flyer is ambiguous. The word “re- elect” in the logo above the candidates’ heads seems to refer to the Stand United Slate and Tony Utano, not to each of the individuals pictured below. But it is not clear to what the titles below the pictures refer. They can be read, as the Protester and his witnesses do, to indicate (in Melendez’s case, inaccurately) the currently held titles or, alternatively, can be read as

the titles for which each is a candidate. The Protester argues that the shirt Melendez is wearing is a shirt only available to Union officers, but it provides no evidence in support of this assertion and the Union states that this is not correct. Mr. Melendez credibly stated that he personally purchased the shirt online. Further, he notes that the name of the current Train Operator Chair is posted on official RTO contact sheets in crew rooms throughout the system and that he posted on his personal Facebook page that he is a candidate for Train Operator Chair, not the current Chair.

It is generally true that the Rules are not intended to ensure the accuracy and truth of campaign materials or speech. As I held in I-23-15 (Ahmed), "My jurisdiction as Neutral Monitor is to ensure compliance with the Election Rules. I do not have the authority or the ability to regulate all speech between and among members. Generally the remedy for untrue or unwanted or defamatory or hostile speech is more, corrective speech. As I held in protest #I-02-15 (Taaffe), 'Even if the statements alleged were in fact made, they do not rise to the level of a violation of the Election Rules. It is not generally the function of the Election Rules to regulate speech. If someone, such as Taaffe, disagrees with something that someone else, such as Nash and Oduro, is saying, his recourse is to correct the misinformation and to (verbally) confront the person and encourage him to stop, as Taaffe did.' It is up to Mr. Ahmed to publicize the untruth of Mr. Ahmad's statement and to communicate the facts about the campaign event." I therefore decline to analyze whether the campaign flyer here would have misled members. Rather, if the Protester finds it misleading, the Protester should publish the accurate information."

Here, too, I find the flyer ambiguous. It speaks of the need for change, which would make it seem like Aremu is not an incumbent officer. The words "Track – Division Officer" and "Executive Board Member" are set out in the middle of the flyer, but nowhere does the flyer say that he currently holds those positions. Further, even if the flyer were misleading, the remedy is for the Protester to publish accurate information.

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 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.

A handwritten signature in black ink, appearing to read 'Barbara C. Deinhardt', with a stylized, flowing script.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Carlos Albert  
Adekunle Aremu  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

November 2, 2021

**DECISION**

Protest I-17-21 (Argueta re  
Ferretti campaigning)

By email dated October 26, 2021, Jesse Argueta filed a protest alleging that independent candidate for Chair of the Conductor's Division John Ferretti was campaigning during his regular tour of duty on October 25, even though he is out on workers' compensation leave, in violation of Supplemental Notice #5.

Mr. Ferretti states that he was been out of work since August 25, 2021 following an on-the-job injury and has been in no-pay status since September 3, 2021. The Transit Authority is contesting his Workers' Compensation claim. He expects that his claim will not be heard until next year. He asserts that he is not covered by Supplemental Notice #5 because he is not being paid by his employer. He requests that he be permitted to use his vacation for days that he is campaigning.

Supplemental Notice #5 states:

**TWU LOCAL 100, ELECTION 2021  
CAMPAIGNING ON EMPLOYER PAID TIME**

Rule VI(E)(5) bars campaigning during time paid for by the Local Union or by any employer. Campaigning includes all election-related activity on behalf of a candidate or slate. The Rule prohibits campaigning while out on sick leave, disability, or Worker's Compensation during an employee's regular tour of duty, even if the illness or disability would not preclude campaigning. For example, a bus driver with a broken arm cannot campaign during his/her work hours, even though a broken arm would not preclude such campaigning. One purpose of this rule is to ensure that someone out on paid leave does not have an advantage over an actively employed member.

The rule states: "If a candidate or any other member who wishes to campaign is on paid sick leave, FMLA leave, Workers' Compensation leave, disability leave, or is in paid no-work status, they must notify the Elections Committee and the Neutral Monitor, in writing, prior to campaigning, setting forth his or her regular tour of duty." This report should be filed even if the employee plans to campaign during off-duty hours, so that disputes that may arise when someone on paid leave campaigns can be more easily resolved. ...

Mr. Ferretti is correct that a strict reading of Supplemental Rule #5 would have its terms apply only if someone is currently being paid. The Union advises that the Rule should also apply if someone is seeking to be paid for the time out of service. Unless the member is completely waiving pay for the period in question (like taking leave no pay), they must file the form and campaign during non-scheduled hours. If the Union wishes to clarify the Rule in this way, it should post such a clarification on the website. Going forward, unless Mr. Ferretti has returned to work, he should either campaign on vacation time or file the required form and campaign on non-scheduled hours.

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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Jesse Argueto  
John Ferretti  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

October 31, 2021

**DECISION**

Protest I-18-21 (Thompson  
eligibility)

By email dated October 28, 2021, Trammell Thompson filed a protest objecting to the Neutral Monitor decision affirming the Election Committee determination that he was ineligible to run for office as he did not have 12 months of continuous good standing.

The decision was issued on August 29, 2021. I-05-21. As noted in the decision, "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." The Protester appealed and the appeal is pending before the International Committee on Appeals. There is no basis under the Rules to appeal the Neutral Monitor decision to the Neutral Monitor.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Trammell Thompson  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

November 2, 2021

**DECISION**

Protest I-19-21 (Scichilone re  
Loegel conduct)

By email dated October 30, 2021, David Scichilone filed a protest concerning Local 100 RTO Vice President and candidate for reelection on the Stand United Slate Eric Loegel. In specific, the Protester alleges that on October 28, 2021, Mr. Loegel stared at him and entered the subway train on which the Protester was working via the door closest to the conductor cab where the Protester was located. He looked at the cab on several occasions before leaving the train. The Protester alleges that Mr. Loegel intended to intimidate him and make him uncomfortable.

I do not find that the conduct as described by the Protester constitutes intimidation. The Protester acted appropriately by staying in his cab and not engaging with Mr. Loegel, if he was truly uncomfortable. There is, however, no evidence that Mr. Loegel in fact took any intimidating or threatening action or engaged with the Protester at all. He took a train from a stop near the Union hall to a stop near his home, late in the afternoon. I find nothing inherently suspicious about that that warrants further investigation.

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 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.

A handwritten signature in black ink, appearing to read 'Barbara C. Deinhardt', with a stylized, cursive script.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
David Scichilone  
Eric Loegel  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee



**Barbara C. Deinhardt  
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November 18, 2021

**DECISION**

Protest I-20-21 (intimidation)

By email dated November 13, 2021, Robert Martinez filed a protest alleging that the TA Surface Division Stand United Slate was guilty of interference and intimidation. Specifically, the Protester alleges that on November 13, when the progressive Change Slate and the Stand United Slate were both campaigning at the J Shuttle, candidate Keith Wilkes was yelling in Ron Carter's face "aggressively and menacingly," surrounded by Shawn Graves and Willie Rivera.

Mr. Wilkes responds that he and Mr. Carter were having a disagreement and were both talking loudly, in each other's faces. It was heated on both sides. Shawn Graves came between them. According to Mr. Wilkes, Mr. Graves and JP Patafio, Mr. Martinez then grabbed Mr. Graves to pull him away from Mr. Carter and pushed him up against a pole and took a swing at him. I have viewed a video in which Mr. Patafio is seen attempting to deescalate the situation, trying to calm Mr. Martinez down, and Mr. Graves is heard saying to Mr. Martinez, "You hit me twice," (or maybe "you touched me twice") to which Mr. Martinez says, "You got in my face." In another video, Mr. Martinez is heard talking to Mr. Wilkes and, according to Mr. Wilkes, saying something like, "That's why I hit him." Mr. Graves and Mr. Patafio confirm this account.

Mr. Carter states that he and Mr. Wilkes were in a discussion that was heated on both sides. Mr. Graves grabbed him and then Mr. Martinez got between them. Mr. Martinez may have touched Mr. Graves, but Mr. Carter states he did not see Mr.

Martinez take a swing at Mr. Graves.

I find that the evidence does not support the allegation that Stand United Slate candidates violated the Election Rules. Rather it appears that there was a confrontation between candidates on both slates that escalated, with angry words exchanged by both sides.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with a prominent flourish at the end.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Robert Martinez  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

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November 18, 2021

**DECISION**

Protest I-21-21 (Winston re use of  
Union resources)

By email dated November 15, 2021, Winston Fernandez filed a protest alleging that shop steward Chris Lake violated the Election Rules when he used a Union contact list to make campaign-related phone calls. Specifically, the Protester states that Mr. Lake told him that the Election Committee told him he could use the Union Master Contact List so long as he used his personal cell phone to make campaign calls.

Mr. Lake states that he does not have access to any Union Master Contact List. He has phone numbers on his personal cell phone that people have given him over years as a shop steward. He states that he has not made campaign phone calls. If he was talking to someone and they asked him whom he supported, he might tell them, but he does not make campaign phone calls.

I note that the Protester first raised this issue with the Election Committee on November 10 when he told the Election Committee that Mr. Lake had assured him that while he didn't remember if he used his phone to campaign, he would not do so going forward, unless he were to be asked a question about the election while he was talking to a member about something else. The Protester appeared to be satisfied with Mr. Lake's representation, so long as he didn't use the "Master Contact List." The Protester just asked the Election Committee to issue a bulletin that the Union Master Contact List could not be used. Mr. Lake agrees with the Protester's account of that conversation and states that he has not made any campaign calls

since that conversation (and doesn't think he made any even before).

On November 15, the Protester and Mr. Lake got into another conversation about Mr. Lake using his personal phone to campaign. According to Mr. Lake, he told the Protester that he had talked to someone on the Election Committee (it turns out he meant that he had talked to Richard Davis who sometimes works with the Election Committee, but is not a member of the Election Committee) who said he could use his personal cell phone. He denies that there was any discussion about using Union contact information.

I find that the protest is untimely. It was not filed until November 15, when the Protester knew at least as of November 10 that there was an allegation that had been made by a member that Mr. Lake had used his phone and Union contact information to campaign. There was no evidence presented by the Protester that Mr. Lake had used his Union-related phone numbers to campaign at any time after November 10 (or before). In addition, he claims that to the extent that he may have talked to any members about the campaign on his phone before November 10, it was only in response to a question from them. The only thing that happened on November 15 was that he told the Protester that the Election Committee had said he could use his personal cell phone to campaign, which is a true statement.

I remind all Union staff and officers, including shop stewards, that they may not use any Union contact list nor any contact information gathered in their Union capacities to campaign.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Winston Fernandez  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
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**Barbara C. Deinhardt  
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November 28, 2021

**AMENDED DECISION**

Protest I-22-21 (Martinez re Tier 6  
payments)

By email dated November 26, 2021, Robert Martinez filed a protest alleging that on November 24, 2021, the Transit Authority issued refund checks to members participating in the Tier 6 pension plan. According to the Protester, the timing of the payments was calculated to enhance the candidacy of Tony Utano. At the same time, the Union sent emails to members explaining the payments. The Protester writes, "The email failed to maintain a neutral position, placing emphasis on the incumbent presidential candidate Tony Utano discovering the error." The Protester alleges that the Transit Authority and Local 100 thereby made a campaign contribution to the Stand United Slate and the Stand United Slate benefitted from these contributions.

The Union states that, contrary to the Protester's claim, the audit that discovered the need for these payments was not completed in August, 2021. The Union pushed for the payments to be made as quickly as possible after the audit was complete so that members would get the money before the holidays. President Utano was key to discovering the error and getting the TA to admit the error and commit to rectify it. It was not a violation to inform the membership of the reason for the payments. See PCS-07-21.

As the ballots were mailed out on November 15, 2021, no effective remedy could be ordered at this time, even if a violation were to be found. Therefore, this protest should be raised in post-election proceedings, if warranted.

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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt**  
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December 7, 2021

**DECISION**

Protest I-23-21 (use of union  
resources)

By email dated December 5, 2021, Eric Loegel filed a protest alleging that on December 5, 2021, Local 100 member and former RTO VP Kia Phua used a Union contact list he obtained during his tenure as VP to send an email to other members supporting the Progressive Change Slate and other independent candidates and making false and defamatory statements about Stand United Slate and its candidates.

As the ballots were mailed out on November 15, 2021, no effective remedy could be ordered at this time, even if a violation were to be found. Therefore, this protest should be raised in post-election proceedings, if warranted.

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.



Barbara C. Deinhardt  
Neutral Monitor



By email:

Joe Campbell

Eric Loegel

Kia Phua

Tony Utano

Stuart Salles, Esq.

Arthur Schwartz, Esq.

Denis Engel, Esq.

Elections Committee

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December 16, 2021

### **DECISION**

Protest I-24-21post  
(miscellaneous post election  
protest)

By email dated December 10, 2021, Evangaline Byars, on behalf of herself, Jamel Nicholas, Benjamin Welcome and David Smith, filed a post-election protest alleging as follows and requesting a rerun of the entire election:

- 1) The Election Committee allowed members in bad standing to vote;
- 2) There was no screening process to verify voters' good standing;
- 3) Members who requested a duplicate ballot by December 2 were told by the AAA that they could not get one;
- 4) A representative from the Department of Labor recommended to Local 100 that the time for returning a ballot be extended, but the Union did not follow that recommendation;
- 5) Members should have been sent their ballots by overnight mail near the end of the balloting period.

As to the first and second allegations, the Union utilized the same procedure as in prior elections and as set forth in the Election Rules for verifying eligibility to vote, the provisions of which were not protested when the Rules were published. Any protest challenging that Rule now is untimely. The Union sent AAA a master membership mailing list that included all active members who were in good standing as of October 29, 2021. When ballots were returned, AAA staff compared the name on the envelope with the master membership list. All candidates were given notice of this process and an opportunity to observe. If a member was on that

list, s/he was permitted to vote. In addition, anyone could request a ballot and, if they came into good standing by paying back dues by December 8, their vote was counted. (Unlike eligibility to run for office, a member did not need a period of continuous good standing in order to vote. S/he only needed to be in good standing, with all dues paid, before the count.) Any ballots that were returned from people not on the master membership list were examined on the day of the count to see if they had come into good standing. (Observers were permitted to observe this process.) If so, their ballots were counted. If they were still in bad standing on December 8, their ballots were not opened and counted. There were 25 envelopes not opened because the people who sent them in were in bad standing. Despite several requests, the Protester does not cite any particular member in bad standing who was permitted to vote or any member in good standing who was not permitted to vote.

As to the third and fifth allegation, the Election Rules stated that no duplicate ballots would be mailed after December 2. (It was calculated that it would be difficult for any ballot mailed after that to be able to get to the member in time for the member to send back by December 7.) Contrary to the Protester's assertion, this was the same time limitation contained in Election Rules from past elections. There was no protest filed over that Rule when the Rule was published. Any protest challenging that Rule now is untimely. According to the AAA, anyone who called for a duplicate ballot on December 2 was mailed one. Despite several requests, the Protester does not cite any particular member who allegedly called on December 2 and was refused a duplicate ballot. In fact, anyone who called on December 2 was sent a duplicate by overnight mail with an overnight mail return envelope. Contrary to the Protester's assertions, the Union also authorized the use of overnight mail to send replacement ballots for members whose ballots were returned as undeliverable if the Union was able to find an updated address. Over 700 ballots were sent by overnight mail, at great expense to the Union. (Only about 100 of the overnight mail ballots were returned.)

As to the fourth allegation, at the September 2, 2021 candidates meeting, DOL representative Henry Fleary stated that because of Covid and Postal Service delivery issues, unions should consider sending ballots out 20-21 days before the count so that members have at least 15 days to return their ballots. Pursuant to the Local 100 Election Rules, the Union allowed three and a half weeks, a period greater than that recommended by the DOL representative, between the mailing of the ballots and the return deadline. No protest was filed over that schedule when the Rules were published and any protest now would be untimely. Ballots mailed on November 15 began to be returned even before the first mail pick up on November 22, two and a half weeks before the last mail pick up. To ensure that the ballots returned on Tuesday December 7 were picked up and processed, the Union instructed AAA to pick up mail on Wednesday morning the day of the count. The return rate in 2021 was higher than in 2018, prior to Covid.

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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Retu Singla, Esq.  
Jeanne Mirer, Esq.

Evangaline Byars  
Jamel Nicholas  
Benjamin Welcome  
David Smith  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

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December 17, 2021

**DECISION**

Protest I-25-21post (Martinez re  
Tier 6 payments)

By email dated December 10, 2021, Robert Martinez refiled his protest alleging that on November 24, 2021, the Transit Authority issued refund checks to members participating in the Tier 6 pension plan. According to the Protester, the timing of the payments was calculated to enhance the candidacy of Tony Utano. At the same time, the Union sent emails to members explaining the payments. The Protester writes, "The email failed to maintain a neutral position, placing emphasis on the incumbent presidential candidate Tony Utano discovering the error." The Protester alleges that the Transit Authority and Local 100 thereby made a campaign contribution to the Stand United Slate and the Stand United Slate benefitted from these contributions.

According to the Transit Authority, the timeline was as follows:

6/22/2021 MTA received a letter from TWU Local 100 President Tony Utano regarding the Tier 6 member contributions and Local 100's intent to determine whether and to what extent the MTA has over withheld member contributions and to seek reimbursement of any such overpayments.

7/20/2021 The MTA met with the TWU regarding the TWU letter

7/29/2021 An MTA remediation task force was assembled.

11/2/2021 Met with TWU Local 100 and advised them that MTA was going to try to make the payment on the 11/24/2021 pay date, but could not guarantee it because still waiting for a final issue to be resolved.

11/4/2021 The final issue impacting the identification of impacted employees and the calculation of the 2021 repayment was resolved.

11/10/2021 Team met and decided that the repayment could go forward

11/15-16/21 Met with two other unions affected by the same issue

11/24/2021 Payment made on the next pay period payment date after the 11/10/2021 Team meeting. The timing of the check was based on when IT finished their work and were ready to make the changes. Payroll and Timekeeping also didn't want to wait until December since it is a busy month and corrections might have needed to be made if the computer calculations were off.

Based on the timeline above, I find that there is no evidence that Tony Utano, Local 100, or the Local 100 officer election had any influence on the timing of the Tier 6 pension withholding repayments. Further, as I stated in my decision in PCS-07-21, "The article clearly discusses a matter of concern to the members. According to the Union, it was in fact President Utano who discovered the error and took steps to rectify it. There is no mention of the election or of Tony Utano as a candidate. Nor is there any disparagement of any other candidates. The timing was also legitimate, coming as it did soon after the MTA committed to correcting the error." This reasoning applies equally to the email protested here. The only reference to President Utano was two sentences, "TWU Local 100 President Tony Utano raised concerns earlier this year about the MTA's pension calculations, prompting the authority to do a comprehensive review. The review proved the concerns were on target." This does not constitute campaigning, but rather was accurate reporting to

the membership of a matter of interest, sent as the pension repayments were being made.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Robert Martinez  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
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Elections Committee



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July 15, 2021

**DECISION**

Protest PCS-01-21 (campaigning  
on Union time)

By email dated July 7, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that various Union officers and staff campaigned while on work time paid by the Union. In particular, the Protester contends that individuals who are on TA-release time should not be wearing campaign t-shirts.

The Union responds that Union officers wearing campaign t-shirts is campaigning incidental to their Union business.

The Election Rules VI(E)(5) prohibit candidate or other member from campaigning for her/himself or for any other candidate during time that is paid for by the Local Union or by any employer, unless the campaigning is incidental to regular Local Union business or during paid vacation, paid lunch hours or breaks, or similar paid time off. Under Rule VI (C), “[a]ll Local Union members and all Local Union officers and employees, if members, retain the right to participate in campaign activities, including the right to openly support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions.”

Historically in Local 100 elections, all members, whether or not they are Union officers or staff or rank and file members, have been permitted to wear

campaign paraphernalia, including hats and t-shirts, while performing their work, whether that work is paid for by Local 100 or by the TA. The exception would be if the member is required to wear a uniform to meet with the public or if the employer objects for a legitimate operational reason, e.g. to maintain production, discipline or safety or to prevent the alienation of customers.

As noted in an Advisory by the Election Administrator for the IBT election, “Similarly, an unrelated third party might assume that the union entity was supporting or opposing a particular candidate or group of candidates if a union officer, business agent or employee were permitted to wear campaign emblems during the time he/she was representing the union in relations with unrelated third parties. Accordingly, while union officers, business agents, and employees may wear campaign emblems during working hours and while engaged in their regular union business, they may not wear such emblems when representing the union before or with an unrelated third party. Thus, union officers, business agent and employees may not wear campaign emblems when meeting with an employer of IBT members for collective bargaining or grievance resolution, when participating either as an advocate, witness or panel member in grievance hearings, when appearing on behalf of the union before legislative, administrative or judicial tribunals, when making public appearances on behalf of the union, or when engaged in similar type activities where the wearing of a campaign emblem might inappropriately suggest that the Union with which the officer, business agent or employee is affiliated, is, as an entity supporting or opposing any particular candidate or group of candidates.”

I find the above analysis applicable here and so rule.

In addition, I note that campaigning, including the wearing of campaign t-shirts, hats, etc., at the Union hall could be considered as using Union facilities for campaign purposes. Under Election Rule, **VI. E. 4**, “No Local Union services, facilities, equipment or goods—including, but not limited to, time, staff, copying machines, fax machines, telephones, printing and postage—shall be used to promote the candidacy of any individual or slate unless the Local notifies all candidates of the

items available for use and all candidates are provided equal access at equal cost to such goods and services. The use of the Local Union's official stationery, or its logo or its name, or its initials "TWU" is prohibited, especially in electronic communications, irrespective of compensation or access." The Union can decide whether to prohibit all such activities at the Union hall or to permit all candidates and their supporters to conduct such campaigning.

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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

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July 23, 2021

**DECISION**

Protest PCS-02-21 (threats)

By email dated July 15, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that Union VP Richard Davis intimidated a member for his campaign activities. In particular, the Protester forwards statements from Marcos Otero alleging that on various dates in June, Davis (and, on one occasion, Dwayne Ruffin) “threatened” him (no specifics given), stared at him intimidatingly/aggressively, gave a knowing nod and laugh because he (Otero) supported the PCS, and invited him to fight.

Davis denies threatening Otero in any way. In fact he states that it was Otero who threatened him. Six months ago he threatened to fight Davis, taking off his shirt. People had to pull Otero off Davis. Then more recently, on June 24, after Otero cursed at him, Davis told Otero that he couldn’t continue to talk to him in that manner. Otero told Davis that his son had been following Davis and next time they would pull him out of his car and beat him to death. Davis filed a report with the MTA.

I note as an initial matter that this protest is untimely. The conduct complained of took place in June and the protest was not filed until July 15.

However, even on the merits the protest is denied. The Election Rules VI(C) guarantee to all members “the right to participate in campaign activities, including the right to openly support or oppose any candidate, to aid or campaign for any

candidate, and to make personal campaign contributions.”

As noted above, the Election Rules give all members, whether or not Union officers or staff, the right to openly support or oppose any candidate. It certainly cannot be denied that in past Local 100 officer elections, emotions have run high and debate has been robust. It appears that this upcoming election will be no different. **Retaliation (or threats of retaliation) and violence (or threats of violence) related to someone’s choice of candidate are prohibited and will not be tolerated from any member or candidate.** However, the Election Rules cannot and do not regulate all speech or conduct that others might find unfriendly or even hostile. A stare, a nod, or a knowing laugh that the recipient may perceive as aggressive or intimidating or one that he believes is responsive to his support of a particular candidate or slate does not constitute a violation of the Election Rules. As to the invitation to fight that Otero alleges was issued by Davis, I note that Otero writes that after hearing the invitation, he left the elevator and Davis did not pursue. I do not find that invitation, even if made, rose to violence or a threat of violence that would be violative of the 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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee  
Richard Davis  
Evangeline Byars  
Stuart Salles  
Tony Utano

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August 19, 2021

**DECISION**

Protest PCS-03-21 (campaigning  
at pick)

By email dated August 6, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that on August 6, Isabel Camacho, Appointed Chief Line Steward of the Tuskegee Depot, was campaigning for the Stand United Slate by wearing a Stand United t-shirt while acting on behalf of the Union as the Hall Monitor for the Bus Operator's job pick in her depot. The Protester contends that individuals who are on release time should not be wearing campaign t-shirts while working a pick. This constitutes using management's and/or the Union's resources to campaign. According to the Protester, "The pick is a joint Union and management operation. Anyone working the pick must coordinate with management, including General Managers, General Superintendents, Assistant General Managers, General Support managers, and Dispatchers. Coordination with management is constant. The pick room is operated by both the Union and management. All TWU members who work the Local 100 portion of pick room duties are released by either the Union or management and communicate with each other all day."

The Protester cites my previous Decision in PCS-01-21, which reads, in part, "Thus, union officers, business agent and employees may not wear campaign emblems when meeting with an employer of IBT members for collective bargaining or grievance resolution, when participating either as an advocate, witness or panel member in grievance hearings, when appearing on behalf of the union before legislative, administrative or judicial tribunals, when making public appearances on

behalf of the union, or when engaged in similar type activities where the wearing of a campaign emblem might inappropriately suggest that the Union with which the officer, business agent or employee is affiliated, is, as an entity supporting or opposing any particular candidate or group of candidates.”

The Protester contends that under my Decision, members being paid by the Union or the Employer while working the pick should not wear campaign emblems, such as t-shirts: “Jobs are handed out and adjustments are made. Some members must be tracked down. Mistakes are made. Negotiations to keep a smooth running pick happen daily until the pick is done and both sides agree. Is it appropriate for those officers paid by the Union and management, communicating face to face with management, negotiating, working hand in hand enforcing the collective bargaining agreement, with members coming in to pick and witnessing that communication, to be allowed to fairly wear campaign emblems while in those duties?”

The Election Rules VI(E)(5) prohibit candidates or other members from campaigning for her/himself or for any other candidate during time that is paid for by the Local Union or by any employer, unless the campaigning is incidental to regular Local Union business or during paid vacation, paid lunch hours or breaks, or similar paid time off. Under Rule VI (C), “[a]ll Local Union members and all Local Union officers and employees, if members, retain the right to participate in campaign activities, including the right to openly support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions.”

I agree with the Protester that certain jobs involved in running the pick on behalf of the Union would fit within the kinds of roles described in PCS-01-21 as being inappropriate for the wearing of campaign t-shirts. The pick chairman, for instance, does engage in the kinds of negotiations with management in the course of the pick. If that person was wearing a campaign t-shirt inside the pick room, it could



lead management to think that the Union supports the particular slate for which the pick chairman is campaigning. I therefore find that people operating as pick chairmen should not campaign during the pick, including the wearing of a campaign t-shirt. Ms. Camacho, however, was on TA-release time, assigned to the job of Social Distancing Hall Monitor. This position, which is a new position since the onset of COVID-19 in 2020 responsible primarily for controlling traffic flow outside the pick room to ensure social distancing, does not have the kind of interface with management that would bring it within the strictures of the Decision in PCS-01-21.

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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Evangeline Byars  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
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August 19, 2021

**DECISION**

Protest PCS-04-21 (September  
nomination meetings)

By email dated August 7, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that the Division Officers election meeting requirements unfairly disadvantage some potential candidates. In particular, the Protester contends that. "some divisions hold their nominations in September and the majority in October. In the past, nominations meetings did not count towards the meeting requirement to run for division office. (5 meetings minimum within a running year leading up to the nominations meeting). Those divisions who are to hold their nominations in October have one full month to add a meeting to their requirement while those who nominate in September do not." Protester asks that either all of the dates of the nomination meetings be moved to October or the September nomination meeting be allowed to count as a meeting requirement to run for division office.

The Union responds that the protest is late. The schedule of meetings was posted online, on the Union website, on July 2. The Protester was aware of the schedule at that time. The protest is therefore over 30 days late.

On the merits, the Union argues that there is nothing unusual about September nominations meetings. In both 2015 and 2018 several Division nomination meetings were held in September. They are scheduled in September because the Union needs time to do eligibility checks and to allow time for

candidates to appeal appeals at the end of October, since the ballots go out early on November 15 (a Monday) and take several days to prepare.

The Election Rules II(D) requires candidates who wish to be nominated to have attended at least five or 50%, whichever is smaller, of the combined regular meetings of their Division and Section held during the 12-month period immediately preceding the month in which the nominations are held.

As a threshold issue, I find that the protest is late. As noted by the Union, the schedule of meetings was published in early July. The rule about having to attend 5/50% of the meetings held ***during the 12-month period immediately preceding the month in which the nominations are held*** is in the Local 100 By-laws XII (e) and the TWU Constitution. Therefore, once the meeting schedule was published, the Protester knew or should have known of the impact of the schedule. The protest was not filed until over a month later.

On the merits, I note that this rule and the scheduling of both September and October meetings are not new. Members whose nomination meetings are in September are not disadvantaged because they can base their eligibility on meetings attended back 12 months to September 2020 whereas a member whose meeting is in October can only go back to October 2020. All have 12 months of meetings in which to qualify. The Protester responds that the Fall of 2020 was in the middle of COVID and people were not focused on attending nomination meetings or running for office. This speculation is not sufficient to overturn at least six years of precedent. If someone was unable to attend a meeting because of COVID (or for any other reason) s/he could have requested an excusal. If a Division did not hold meetings because of COVID, there would have been fewer overall meetings in the 12-month period and the number of meetings required (50%) would be smaller. There is no unfair prejudice or disadvantage to any particular candidate or slate.

It is not my job to determine if there were other alternatives the Union could have chosen. My authority is to determine if there is a violation of the Election Rules, the Union By-Laws or Constitution, or any applicable law. I find there is no such violation.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Evangeline Byars  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt  
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August 19, 2021

**DECISION**

Protest PCS-05-21 (Transport  
Workers Bulletin; improper use of  
Union resources)

By email dated August 8, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that the Summer Issue of the Transport Workers Bulletin constituted an improper use of Union resources to support the Stand United Slate. In particular, the Protester contends that the issue had an excessive number of photographs of the incumbent officers and no photographs of opposition candidates. According to the protester, the Bulletin includes 19 pictures of the head of the Stand United Slate, Tony Utano, and over 130 pictures of known Stand United candidates, but no pictures of anyone opposing the incumbent Stand United Slate. The Bulletin represents a particularly egregious violation because it includes the Election Rules and was published with the intent to influence members to vote for the incumbent slate.

The Union responds that the Bulletin is published periodically and includes articles about Union activities. The articles in the Summer 2021 Bulletin were not out of the ordinary and in fact contained fewer pictures of Tony Utano than previous Bulletins. The election was not mentioned, other than the Election Rules, and no candidate was praised or denigrated.

The Election Rules prohibit any candidate from receiving a contribution from a labor organization. Under the Rules,

## **E. CAMPAIGN CONTRIBUTIONS**

1. No candidate for election shall accept or use any contributions or other things of value received from any employer, representative of an employer, foundation, trust, union or similar entity. Nothing herein shall be interpreted to prohibit receipt of contributions from fellow employees and members of Local 100 or the International Union, unless that employee or member is an employer.

2. No employer shall be permitted to contribute anything of any value to any campaign. The prohibition on employer contributions extends to every employer regardless of the nature of the business, or whether any union represents its employees, and includes but is not limited to political action organizations (other than a candidate's or slate's campaign organization), nonprofit organizations such as churches or civic groups, law firms, and professional organizations. These prohibitions include a ban on the contribution and use of stationery, equipment, facilities and personnel, or items to be raffled off.

3. The prohibition on campaign contributions extends to all labor organizations, whether or not they are employers, except as permitted below.

4. No Local Union or employer services, facilities, equipment or goods—including, but not limited to, time, staff, copying machines, fax machines, telephones, printing and postage—shall be used to promote the candidacy of any individual or slate unless the Local notifies all candidates of the items available for use and all candidates are provided equal access at equal cost to such goods and services. The use of the Local Union's official stationery, or its logo or its name, or its initials "TWU" is prohibited, especially in electronic communications, irrespective of compensation or access.

29 U.S.C. sec. Section 401(g) of the Labor Management Reporting and Disclosure Act (LMRDA) provides:

No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter.

While LMRDA § 401(g) broadly prohibits the use of union funds to promote candidates, it also contains a "safe harbor" which expressly states that "such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates. . ." 29 U.S.C Sec 401(g). In interpreting these provisions, courts have held that the critical issue is whether the literature in question went beyond the scope of legitimate coverage of newsworthy activities and into the realm of

violative union-financed campaign literature. Such a determination necessarily revolves around the timing, tone and content of the literature in question, in the context of the surrounding circumstances. *McLaughlin v. AFM*, 700 F.Supp. 726 (S.D.N.Y. 1988). Citing the court in *Sheldon v. O'Callaghan*, 335 F.Supp. 325, 328 (SDNY 1971), aff'd sub nom *Usery v. Intern. Organization of Masters, Mates and Pilots*, 538 F.2d 946, 949 (2<sup>nd</sup> Cir. 1976), the District Court for the District of Columbia held that "[d]uly elected union officials have a right and a responsibility to exercise the powers of their office and to advise and report to the membership on issues of general concern." *Camarata v. international Brotherhood of Teamsters*, 478 F.Supp. 321, 330 (DDC 1979), aff'd 108 LRRM 2924 (DC Cir, 1981).

In examining the Summer issue of the Bulletin that is the subject of the Protest and applying the factors set out above, I find that it did not constitute an inappropriate campaign contribution by the Union to SUS. The articles in the issue was clearly of concern to the members to whom it was sent, relating as they did to the election of Eric Adams, the Hometown Heroes parade, the MTA plan to eliminate lunch breaks for Station Agents, the ratification of the Liberty Lines contract, a memorial for a deceased member, the annual picnic, the need for more police on the train, etc. There were pictures of the officers who represented the Union at those events. There is no mention of the election, other than the Election Rules, or of Tony Utano as a candidate. Nor is there any disparagement of any other candidates. There were fewer pictures of Tony Utalno than in prior Bulletins. (For example, where there are about 20 pictures in the Summer 2021 Bulletin, there were about 50 in the Winter 2019 issue.) The timing was also legitimate, coming as it did the same time as the summer issues in past years, which also contained a copy of the Election Rules in an election year. It was also before the election process began, nearly two months before the petition period and before there were announced candidates.

As I held in denying a very similar protest in 2012, "In examining the Fall and Summer Issues of Local 100 Express and applying the factors set out above, I find

that the newspapers did not constitute campaign literature. The content of both publications was clearly newsworthy, relating as it did to recent events relevant to Local 100 members...While the Protester objects to the number of times that Samuelsen's name and picture appear, the Union notes that Samuelsen attended, hosted or represented the Union in most of the events in which he was pictures In addition, it is not unusual to have numerous pictures of the top Union officer in the newsletter. The timing was also legitimate...The tone of both issue was appropriate, as it factually related the events covered, with no reference to members of the Stand United Slate except where relevant to the event described. There is no endorsement of John Samuelsen as a candidate nor any disparagement of the protester. (See Protest TWUS-02i-12 (Omnibus Part I) dated October 5, 2021)

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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Evangeline Byars  
Stuart Salles, Esq.



Tony Utano  
Elections Committee

**Barbara C. Deinhardt  
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September 1, 2021

**AMENDED DECISION**

Protest PCS-06-21 (Union officer  
campaigning during Union time)

By email dated August 16, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that Union officer John Chiarello and another unidentified person campaigned while on work time paid by the Union. In particular, the Protester contends that on August 16, Chiarello, the MOW Vice-President, was campaigning during the Track job pick at West 4<sup>th</sup> Street station. He was instructing others about distributing campaign flyers and hanging up campaign posters. Further, the Protester alleges that an unidentified person had set up a table with Stand United Slate flyers and stickers inside the barriers for the pick. In support of his protest, the Protester submits a photograph of someone sitting by a table with campaign flyers that is next to a barrier and a photograph of SUS posters hanging from a pipe in the station. .

Paulie Navarro states that when he first went downstairs to check on the jobs available he saw someone with SUS materials sitting at a small table inside the barrier. When he came back downstairs after being upstairs for a while, the person was sitting outside the barrier. That is when he took the picture. He does not know how long the table was inside the barrier. He saw SUS posters hanging from pipes in the station. He saw John Chiarello talking to a number of the members and once he saw him lean over to talk the person sitting at the table with the SUS literature. After Chiarello talked to him, the person got up and started handing out flyers. Mr. Navarro could not hear what Mr. Chiarello was saying.

Mr. Chiarello states that he was at the pick to oversee it. He denies campaigning or giving any orders to individuals about handing out flyers or hanging posters and asserts that he was involved in work activities while he was at the location. He also states that the person with the table with campaign flyers was a night shift worker and was stationed outside the barrier establishing the staging area for the pick.

The Election Rules VI(E) prohibit any candidate for election from accepting or using any contributions or other things of value received from any employer. The prohibition on employer contributions includes a ban on the contribution and use of employer facilities. It also states that no employer facilities shall be used to promote the candidacy of any individual or slate. In addition, it prohibits any candidate or member from campaigning for her/himself or for any other candidate during time that is paid for by the Local Union or by any employer. However, campaigning incidental to regular Local Union business or during paid vacation, paid lunch hours or breaks, or similar paid time off, is permitted. (5) prohibit candidate or other member from campaigning for her/himself or for any other candidate during time that is paid for by the Local Union or by any employer, unless the campaigning is incidental to regular Local Union business or during paid vacation, paid lunch hours or breaks, or similar paid time off. Under Rule VI (C), “[a]ll Local Union members and all Local Union officers and employees, if members, retain the right to participate in campaign activities, including the right to openly support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions.”

I find that because Mr. Navarro could not hear what Mr. Chiarello was saying, there is no evidence that he was campaigning during the time he was overseeing the pick. The only evidence is that Mr. Navarro saw Mr. Chiarello say something to an unidentified person after which that person started handing out flyers. Even assuming that Mr. Chiarello suggested that the person hand out the flyers, which he denies, one statement made in the course of his work would be incidental to his work overseeing the pick. Further, even if Mr. Navarro were correct that the SUS

literature table was inside the barrier during work area for an unspecified period of time, it is undisputed that it was moved outside the barrier into a public area and remained there for the balance of the day, thus remedying any potential violation.

According to the Election Rules and rules promulgated by the TA, campaign materials are not permitted to be posted on any NYC Transit property. All members, and particularly candidates, are instructed not to post such materials. Further, as this impermissible posting could be considered a contribution to a candidate or slate, candidates and slate representatives should remove such materials if they see them improperly posted, whether on Union property or TA property. As I wrote in TWUS-11-15, "No evidence was presented ... to establish who put the stickers on the pick boards, which are not locked bulletin boards. ... As the Union representatives monitoring the pick, Rivera and Manzella were responsible for ensuring that no campaign materials were placed on the placard or the pick boards. ... All Union staff and officers are directed to carefully and continuously monitor all Union and TA bulletin boards and to immediately remove any campaign material." Here, Mr. Chiarello, as a candidate and as the person overseeing the pick, should have removed the material. At this early point in the election process, an instruction to do so in the future is sufficient.

The protest is denied in part and sustained in part.

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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
John Chiarello  
Tony Utano  
Evangeline Byars  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt  
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August 30, 2021

**DECISION**

Protest PCS-07-21 (Local 100  
email; improper use of Union  
resources)

By email dated August 19, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that the email sent to the membership on August 17, 2021 announcing a Union victory in getting the TA to correct an error regarding Tier 6 payroll deductions constituted an improper use of Union resources to support the Stand United Slate. In particular, the Protester contends that “[t]he mention of SUS Presidential candidate Tony Utano discovering Tier 6 discrepancies in member’s pay is inaccurate unless he personally searched through 16,000 pay checks for contribution errors. This inaccuracy is, in reality, a purposeful falsehood designed specifically to suggest to the membership that Utano was the sole person and to influence their vote. Secondly, the picture sent with the email message is unnecessary as to the message itself.”

The Union responds that the email concerned a matter of great interest to the membership. It was President Utano who discovered the error.

The Election Rules prohibit any candidate from receiving a contribution from a labor organization. Under the Rules,

**E. CAMPAIGN CONTRIBUTIONS**

1. No candidate for election shall accept or use any contributions or other things of value received from any employer, representative of an employer, foundation, trust, union or similar entity. Nothing herein shall be

interpreted to prohibit receipt of contributions from fellow employees and members of Local 100 or the International Union, unless that employee or member is an employer.

2. No employer shall be permitted to contribute anything of any value to any campaign. The prohibition on employer contributions extends to every employer regardless of the nature of the business, or whether any union represents its employees, and includes but is not limited to political action organizations (other than a candidate's or slate's campaign organization), nonprofit organizations such as churches or civic groups, law firms, and professional organizations. These prohibitions include a ban on the contribution and use of stationery, equipment, facilities and personnel, or items to be raffled off.

3. The prohibition on campaign contributions extends to all labor organizations, whether or not they are employers, except as permitted below.

4. No Local Union or employer services, facilities, equipment or goods—including, but not limited to, time, staff, copying machines, fax machines, telephones, printing and postage—shall be used to promote the candidacy of any individual or slate unless the Local notifies all candidates of the items available for use and all candidates are provided equal access at equal cost to such goods and services. The use of the Local Union's official stationery, or its logo or its name, or its initials "TWU" is prohibited, especially in electronic communications, irrespective of compensation or access.

29 U.S.C. sec. Section 401(g) of the Labor Management Reporting and Disclosure Act (LMRDA) provides:

No moneys received by any labor organization by way of dues, assessment, or similar levy, and no moneys of an employer shall be contributed or applied to promote the candidacy of any person in an election subject to the provisions of this subchapter.

While LMRDA § 401(g) broadly prohibits the use of union funds to promote candidates, it also contains a "safe harbor" which expressly states that "such moneys of a labor organization may be utilized for notices, factual statements of issues not involving candidates. . ." 29 U.S.C Sec 401(g). In interpreting these provisions, courts have held that the critical issue is whether the literature in question went beyond the scope of legitimate coverage of newsworthy activities and into the realm of violative union-financed campaign literature. Such a determination necessarily revolves around the timing, tone and content of the literature in question, in the context of the surrounding circumstances. *McLaughlin v. AFM*, 700 F.Supp. 726

(S.D.N.Y. 1988).Citing the court in *Sheldon v. O'Callaghan*, 335 F.Supp. 325, 328 (SDNY 1971), aff'd sub nom *Usery v. Intern. Organization of Masters, Mates and Pilots*, 538 F.2d 946, 949 (2<sup>nd</sup> Cir. 1976), the District Court for the District of Columbia held that "[d]uly elected union officials have a right and a responsibility to exercise the powers of their office and to advise and report to the membership on issues of general concern." *Camarata v. international Brotherhood of Teamsters*, 478 F.Supp. 321, 330 (DDC 1979), aff'd 108 LRRM 2924 (DC Cir, 1981).

In examining the email that is the subject of the Protest and applying the factors set out above, I find that it did not constitute an inappropriate campaign contribution by the Union to SUS. The email includes a large picture of Utano and reads:

Union discovers MTA mistake on Tier 6 payroll deductions

TWU Local 100 President Tony Utano has uncovered a serious error in how the MTA is calculating paycheck deductions for some Tier 6-covered transit workers who exceed the overtime cap (currently approximately \$17,000 for 2021) under the Tier 6 plan. Utano pointed out his concerns about the pension calculations in a letter to the MTA last month. The MTA subsequently admitted their error after meeting with Utano and union counsel Denis Engel. As a result, the MTA has committed to correcting the situation as soon as possible, probably as soon as September, and to provide refunds to those who have been overcharged. They could not commit to a timeframe for refunds—but Utano made clear that any and all such refunds must be paid as soon as possible...

The article clearly discusses a matter of concern to the members. According to the Union, it was in fact President Utano who discovered the error and took steps to rectify it. There is no mention of the election or of Tony Utano as a candidate. Nor is there any disparagement of any other candidates. The timing was also legitimate, coming as it did soon after the MTA committed to correcting the error. It was also before the election process began, nearly a month before the petition period and before there were announced candidates.

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 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.

A handwritten signature in black ink, appearing to read 'Barbara C. Deinhardt', written in a cursive style.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Evangeline Byars  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

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September 3, 2021

**DECISION**

Protest PCS-08-21 (SUS campaign  
use of Union logo)

By email dated August 26, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that a SUS campaign flyer showing three candidates on the Stand United Slate wearing Union t-shirts constituted an improper use of Union resources to support the Stand United Slate. In particular, the Protester contends that the flyer, which was posted on various social media platforms and on the walls of the TA, showed three people—two incumbent Union officers and one non-incumbent--wearing shirts with the Union logo on them, beneath a SUS logo with the word re-elect, and with the title Train Operator Chair beneath the picture of Jose Melendez, who is not the incumbent chair. The Protester submits evidence that several members who are Train Operators believed from the flyer that Melendez is the current Train Operator chair running for re-election.

The Union responds that the shirts worn in the picture are shirts that are available through a commercial vendor to any Union member. Mr. Melendez states that he purchased his shirt from Logo Sportswear online where he uploaded a picture of the TWU logo.

The Election Rules prohibit any candidate from receiving a contribution from a labor organization. In particular, Rule VI(E)(4) prohibits the use of the Union's name or logo to promote any candidacy.

As I wrote in PAS-07-18, “The Election Rules, VI(E)(4), prohibit the use of the Union’s name or logo ‘to promote any candidacy.’ The purpose of the prohibition is to make sure that Union resources are not expended on behalf of a particular slate or candidate and to make sure that there is no implication, through the use of the Union name or logo, that the Union as an institution supports one candidate over another. There is no implication, through the mere wearing of a Union shirt or hat, apparel available to all candidates and other members, that the Union supports the particular candidate. All the wearing of such apparel implies is that the wearer supports the Union. To rule against such a display would bar any candidate from wearing a Union t-shirt while talking to other members in support of his/her campaign or any candidate from wearing a Union hat in any campaign photograph. I do not believe the Rules require such a result.” This analysis applies in the instant case, as well. I find that the wearing of a shirt with a Union logo in a campaign flyer does not constitute the use of the Union logo to support a candidate and does not imply a Union endorsement of the candidate.

In terms of the allegation that the flyer misrepresented the status of Jose Melendez as an incumbent officer, I find that the flyer is ambiguous. The word “re-elect” in the logo above the candidates’ heads seems to refer to the Stand United Slate and Tony Utano, not to each of the individuals pictured below. But it is not clear to what the titles below the pictures refer. They can be read, as the Protester and his witnesses do, to indicate (in Melendez’s case, inaccurately) the currently held titles or, alternatively, can be read as the titles for which each is a candidate. The Protester argues that the shirt Melendez is wearing is a shirt only available to Union officers, but it provides no evidence in support of this assertion and the Union states that this is not correct. Mr. Melendez credibly stated that he personally purchased the shirt online. Further, he notes that the name of the current Train Operator Chair is posted on official RTO contact sheets in crew rooms throughout the system and that he posted on his personal Facebook page that he is a candidate for Train Operator Chair, not the current Chair.

It is generally true that the Rules are not intended to ensure the accuracy and truth of campaign materials or speech. As I held in I-23-15 (Ahmed), “My jurisdiction as Neutral Monitor is to ensure compliance with the Election Rules. I do not have the authority or the ability to regulate all speech between and among members. Generally the remedy for untrue or unwanted or defamatory or hostile speech is more, corrective speech. As I held in protest #I-02-15 (Taaffe), ‘Even if the statements alleged were in fact made, they do not rise to the level of a violation of the Election Rules. It is not generally the function of the Election Rules to regulate speech. If someone, such as Taaffe, disagrees with something that someone else, such as Nash and Oduro, is saying, his recourse is to correct the misinformation and to (verbally) confront the person and encourage him to stop, as Taaffe did.’ It is up to Mr. Ahmed to publicize the untruth of Mr. Ahmad’s statement and to communicate the facts about the campaign event.” I therefore decline to analyze whether the campaign flyer here would have misled members. Rather, if the Protester finds it misleading, the Protester should publish the accurate information.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Evangeline Byars  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

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October 3, 2021

**DECISION**

Protest PCS-9-21 (Rondon  
harassing members)

By emails dated September 22, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that Chief Shop Steward Monique Rondon was harassing operator Brett Peace while he was collecting signatures at the Kingsbridge Depot on September 22. Specifically, he asserts that “Ms. Rondon’s passive/aggressive challenge of Mr. Peace’s canvassing of signatures included taking a video/picture of signatures on Mr. Peace’s petition.” She is heard on the video repeatedly asking Peace, “What am I signing?” She also videotapes the conversation and tapes herself signing the petition. Petitioner argues that Rondon’s actions constitute Union disruption of the petitioning process with the purpose of keeping people from signing the opposition’s petition. The Union has the power to decide who works overtime and holidays and Ms. Rondon’s surveillance would have a chilling effect.

Ms. Rondon states that she was videotaping because she understood that it was against the Election Rules to be collecting signatures while on one’s swing since it is time paid for by the Transit Authority. She wanted to get Peace on tape confirming that he was collecting petition signatures. At no time did anyone there ask her to stop taping.

The Election Rule VI(E)(5) prohibits any candidate or member from campaigning for her/himself or for any other candidate during time that is paid for by the Local Union or by any employer. However, campaigning incidental to regular Local

Union business or during paid vacation, paid lunch hours or breaks, or similar paid time off is permitted.

As I held in I-13-21, a member's swing is his/her break time when s/he is not expected to be working. Campaigning is permitted during break time, even paid break time. Therefore Mr. Peace was not violating the Rules. However, neither was Ms. Rondon violating the Rules when she was asking him what he was doing and videotaping him. While the Protester is correct that members retain the right to engage in campaigning and petitioning without interference or harassment, the Protester presents no evidence that anyone was prevented from signing the petition or that anyone in fact felt harassed. Rather, it seemed in the video that the members who were collecting signatures were joking around. Further, Ms. Rondon states that no one asked her to stop videotaping. The Protester claims that the Union has power over assignments for members and implies that members would fear retaliation for signing an opposition petition. I would note that names on petitions are not confidential. Anyone can look at a petition while they are signing it and members in good standing have the right to examine filed petitions during the objections period following the submission of the petitions. According to Ms. Rondon, she was on vacation at the time of this incident and she was not acting in her Union representative capacity.

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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Tony Utano  
Evangeline Byars  
Jeanne Mirer, Esq.  
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Denis Engel, Esq.  
Elections Committee



**Barbara C. Deinhardt  
Neutral Monitor  
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September 30, 2021

**DECISION**

Protest PCS-10-21 (candidates on  
supervisor list)

By email dated September 23, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that certain Stand United CED Division candidates are not eligible for nomination because they are on the current civil service list for Maintenance Supervisor Level 1. The Protester asserts that “[a]ccording to the TWU Local 100 bylaws, Article XI, Section (d), “A member who has an application pending for a supervisory non-bargaining unit position, or who is serving in such a capacity for any employer which has a collective bargaining agreement with Local 100, even on an acting basis, shall not be eligible to run for or hold office.” The Protester cites the Neutral Monitor’s decision on the matter, TWUS-23-12 (Walsh Eligibility), and asks that the candidates be disqualified from running for office.

The Union provided documentation that in 2013, the Department of Labor found the disqualification provision to be unlawful. The By-Laws were thereafter amended. The provision was not included in the Election Rules in 2015, 2018 and 2021.

I find that the disqualification provision cited by the Protester is no longer in the Local 100 By-Laws as posted on the TWU Local 100 website (Article XI goes from (c) to (e), omitting (d)) nor in the current Election Rules. There is no basis for disqualifying the candidates named by the Protester. 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 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.

A handwritten signature in black ink, appearing to read 'Barbara C. Deinhardt', with a stylized, flowing script.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Evangeline Byars  
Jeanne Mirer, Esq.  
Retu Singla, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

October 5, 2021

**DECISION**

Protest PCS-11-21 (SUS  
interference with campaigning)

By email dated September 28, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that John Chiarello, a Union officer and a candidate on the Stand United Slate, was campaigning during time paid for by the Union and interfered with a PCS supporter who was collecting petition signatures. Specifically, the Protester asserts that on September 28, Mr. Chiarello went to where Columbo Solimo was collecting signatures, grabbed the petition, wrote "George Washington" on a signature line on the petition, and then wrote "void" on the bottom through the witness signature space. According to the Protester, this action constituted unlawful interference with members who were campaigning. The Protester does not present any witnesses in support of his protest even after requests from the Neutral Monitor.

Mr. Chiarello responds that he had not yet started his shift at the time of the incident in question. His shift is from 9:00 AM to 6:00 PM. A member told him that someone was collecting signatures in the management office. The member said he had signed the petition and then crossed out his name. Chiarello went into the office at around 8:30 and saw someone he now presumes to have been Mr. Solimo and a member named Dominic Rondinello working. There was a petition on the table. Chiarello asked to whom the petition belonged, but no one answered. He repeated the question, adding that they couldn't collect signatures in the TA office. Having gotten no response, he left the office. He denies defacing the petition as alleged.

Election Rules VI(C), Freedom to Exercise Political Rights, guarantees to all Local Union members the right to participate in campaign activities, including the right to openly support or oppose any candidate and to aid or campaign for any candidate. This right includes the right to collect petition signatures.

The Election Rules VI(E)(5) prohibits any candidate or member from campaigning for her/himself or for any other candidate during time that is paid for by the Local Union or by any employer. However, campaigning incidental to regular Local Union business or during paid vacation, paid lunch hours or breaks, or similar paid time off is permitted.

The Election Rules VI(E) prohibit any candidate for election from accepting or using any contributions or other things of value received from any employer. The prohibition on employer contributions includes a ban on the contribution and use of employer facilities. It also states that no employer facilities shall be used to promote the candidacy of any individual or slate. Under this rule, a petition cannot be posted on a bulletin board intended for official TA correspondence

Election Rules I(D)(2) and (3) state “All Petitions shall be numbered by the Elections Committee and each member obtaining Petitions shall be required to sign for them and shall be held responsible for their proper use. ... The member who obtains the signatures on a Petition must complete and sign the statement at the bottom of each Petition, asserting that he or she collected the signatures from persons representing themselves to be members in good standing of Local 100.” The Rules thus prohibit someone from posting or leaving a petition to collect signatures without actually witnessing members signing the petition. A petition should never be left unsupervised, regardless of whether it is on TA or Union property or not.

Mr. Chiarello’s defense that he was campaigning before the start of his shift is undisputed. Similarly, there is no witness to contradict his statement that he tried to find out who was soliciting petition signatures in the foreman’s office but got no response. He

denies defacing the petition and the Protester provides no witness to dispute his account. The other member who was in the office at the time states that he did not see Chiarello handle the PCS petition and did not hear anything said about Chiarello having defaced the petition.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
John Chiarello  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Evangeline Byars  
Retu Singla, Esq.  
Jeanne Mirer, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Stuart Salles, Esq.  
Elections Committee

**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

October 22, 2021

**DECISION**

Protest PCS-12-21 (Chiarello  
interfering with investigation)

By email dated October 19, 2021, Joseph Campbell on behalf of the Progressive Change Slate filed a protest alleging that Local 100 MOW Vice President and candidate for reelection on the Stand United Slate John Chiarello interfered with an Election Committee investigation. In specific, the Protester alleges that Mr. Chiarello called witnesses who signed Progressive Change Slate petitions just before the Elections Committee called those same witnesses. According to the Protester, this was an attempt to coerce those witnesses to say that Duvet Williams did not collect signatures.

Mr. Chiarello states that he had heard from many members that Duvet Williams was not collecting signatures in person but instead was leaving the petitions at various locations and then going back, or having someone else go back, to collect them later. Chiarello filed a protest on this practice that was later withdrawn because the same investigation was going to be conducted in the context of petition objections.

Mr. Chiarello filed objections against 15 PCS petitions. Some of the petitions that were objected to had pinholes or staples in the corners, indicating that they had in fact been posted, as Chiarello alleged. Further, during the investigation of the earlier protest, I had contacted witnesses who indicated that they had seen PCS LES petitions posted or left unattended on tables. Another witness confirmed that he had signed as a witness on petitions for which he did not in fact witness signatures.

He stated he had been asked by Mr. Williams to go to locations to pick up the petitions after they had been signed. Given that there was some corroboration for Mr. Chiarello's objections and some reason to question Mr. Williams's denial of the allegations, the Election Committee asked Chiarello if he had any other evidence in support of his objection. At that point, Mr. Chiarello called a few members who had signed petitions witnessed by Duvet Williams. He had noted down a few random names after reviewing the petitions during the objections period, in case he needed to provide evidence. He states he wrote the names down after he left the room after reviewing the petitions and that he had their telephone numbers in his phone. When he called them he asked if Mr. Williams had given them the petition to sign in front of him. According to Chiarello, the members he called told him that the petitions had been left in the quarters for multiple tours of duty until Williams or someone else came back to pick them up. He reported this information back to the Chair of the Election Committee, who then in turn called those witnesses to confirm what they had told Chiarello. One did not confirm Chiarello's statement; three others did.

I spoke with the members whom Chiarello called. No one said he felt coerced in any way by Chiarello's questions. I find that Mr. Chiarello did not interfere with the investigation, did not coerce witnesses, did not have advance notice of witnesses the Election Committee was going to call, but instead provided names of witnesses to the Election Committee, and only used names he had in his phone from years of working with co-workers. There is no evidence that he used Union lists to get phone numbers of the witnesses.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
John Chiarello  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Evangeline Byars  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee



**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

October 31, 2021

### **DECISION**

Protest PCS-13-21 (eligibility  
report)

By email dated October 24, 2021, Joseph Campbell on behalf of the Progressive Change Slate filed a protest against certain findings of the Election Committee in the Final Eligibility Report issued on October 22, 2021. In specific, the Protester requests that he be able to see the signatures that were disqualified on the MOW Petitions, other than the signatures on Petitions deemed to have been improperly witnessed or witnessed by someone in bad standing. He also asks for the reason that the disqualified witness was in bad standing. Further, he asks for details on the Election Committee determination on his objections related to alleged forgeries on Stand United Slate MTA Bus Petitions.

The 48 MOW Petitions questioned by the Protester had 962 Potentially Valid signatures, of which 768 were found to have been Valid. The candidate for Vice-President needed 803 Valid signatures to qualify. I personally reviewed the Petitions and the spreadsheets summarizing the categories of disqualification. I discovered three additional Valid signatures. Of the remaining 191 disqualifications, there were 15 signatures where there was no match found in the system, 32 members in bad standing, 31 duplicates, and 24 from the wrong division, in addition to the 81 improperly witnessed and 8 witnessed by member in bad standing. The wrong divisions were, in Line Equipment Signal, 1 Track, 7 Car Maintenance, and 9 MaBSTOA; in Track, 2 Power, 4 L/ES, and 1 Stations. I note that, not counting the improperly witnessed and bad standing witness Petitions, there is only about an 11% invalidation rate, much lower than the invalidation rate of the candidates for

the top four offices. Based on my review, I find no basis for overturning the determination of the Elections Committee, as amended above, that there were 102 disqualifications in addition to the 89 due to improper witness/witness in bad standing, resulting in a total of 771 Valid signatures, still less than the 803 required to qualify for nomination. There is no past practice of permitting candidates or slate representatives to review the Petitions after the data entry analysis and I find no basis for ordering such a review here.

According to the Election Committee, the witness found to have been in bad standing was Harvenell Jackson. He owes \$711 in back dues, dating back to the period when the Union went on strike and lost dues checkoff.

In addition, I reviewed the MTA Bus signatures that the Protester objected to as forgeries. I agree that many of the signatures on one of the two Petitions witnessed by Frank Spinelli appear to have been written by Mr. Spinelli himself, rather than by the members whose signatures they purport to be. I not only noted certain similarities in handwriting, but I also pulled the signature exemplars on file with the Union of a number of the signatories and found that the signatures on the Petitions did not match the exemplars. I repeatedly attempted to reach Mr. Spinelli, but he did not return my calls. I can only assume, therefore, that at least some of the signatures on his Petitions are invalid and should not be counted. While some look to me to be valid, given his failure to cooperate, I find it is appropriate to invalidate all of the signatures on the Petition containing the questionable signatures. Therefore all 50 of the signatures on SU14-0008 will be invalidated. As he is not a candidate, nor is there any evidence that his conduct was committed with the knowledge or consent of the Stand United Slate, I have no authority to take any other action.

The protest is denied in part and sustained in part.

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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

November 2, 2021

**DECISION**

Protest PCS-15-21 (Patafio  
campaigning on Union time)

By email dated October 29, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that JP Patafio researched, wrote and filed a protest while on paid Union time.

Mr. Patafio states that he filed the protest on October 27 when he was on his day off. He produced documentation confirming that he was on vacation on October 27.

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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
JP Patafio  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

**Barbara C. Deinhardt  
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917-763-0906  
neutralmonitor@gmail.com**

November 18, 2021

**DECISION**

Protest PCS-16-21 (use of Union  
and Employer resources)

By email dated November 9, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that the Stand United Slate used Union resources for election-related purposes when it posted SUS campaign literature in a locked Union bulletin board, inside the dispatch office and on TA property at the LaGuardia Depot.

The Stand United Slate and the Union respond that the locked bulletin board is available to all candidates to post campaign literature, as has been the practice in past election campaigns, that the flyer referred to was taped on the outside of the dispatch office, not the inside, and that flyers supporting all slates are posted throughout the depot.

While I was investigating the protest, I advised the Protester on November 12 that the Union policy at that depot was that the locked bulletin board was available to all candidates and slates. Frank Spinelli, the Depot Chair, stated that after the protest was filed, he asked PCS candidate Luisito Castro if he wanted to post his flyer on the inside of the bulletin board, but that Castro declined. Mr. Spinelli stated that Recording Secretary Michael Culver, who is not a SUS supporter, also has a key to the bulletin board; Mr. Culver denies that he has a key.

The witnesses I spoke to denied that the flyer was posted on the inside of the dispatch office. The photograph submitted by the Protester is not detailed enough to confirm either account.

The Election Rules VI(E)(4) states, “No Local Union or employer services, facilities, equipment or goods—including, but not limited to, time, staff, copying machines, fax machines, telephones, printing and postage—shall be used to promote the candidacy of any individual or slate unless the Local notifies all candidates of the items available for use and all candidates are provided equal access at equal cost to such goods and services. Access to a locked Union bulletin board is a Union resource that may not be made available to only one slate or candidate. If access is given to one slate, there must be notice to all slates and candidates.” The Union violated the Election Rules when it permitted Stand United Slate to post notices inside a locked Union bulletin board. The defense that no one from the other slate asked is insufficient. However, while it was a violation of the Election Rules, I find that it has been remedied. I notified the Protester that the board was available to everyone and Mr. Spinelli specifically asked Mr. Castro if he wanted to post something inside the glass. As to the other allegations, I find that there is insufficient proof that the flyer was posted on the inside of the dispatch office. Further, while flyers are not supposed to be posted on TA property, at this point in the campaign, it is clear that members are posting literature throughout the depot supporting both slates.

The protest is sustained in part and denied in part.

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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Peter Rosconi  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee



**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

November 18, 2021

**DECISION**

Protest PCS-17-21 (use of Union  
resources)

By email dated November 11, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that Tony Utano, Eric Loegel and Richie Davis, all candidates on the Stand United Slate, used Union resources for election-related purposes when they used Union media devices at the Union Hall to participate in the November 10 Zoom candidates meeting.

The Stand United Slate responds that the three officers were in the Union Hall to attend a Union function. They were in a conference room listening to the meeting via Mr. Utano's cellphone. The Slate argues that listening in on the meeting does not constitute campaigning on behalf of a slate.

I find that it was not a violation for the three Stand United Slate candidates to use Mr. Utano's Union-issued cell phone to listen to the Zoom presentation. Mr. Utano asserts that he is permitted to use his phone for personal calls. I also find it was not a violation for them to have listened to the meeting from the Union conference room. In the same way that many candidates campaign on TA property during their off-duty time, it was not a violation of the Rules for these candidates to sit in an unused Union conference room during a break in their work day to listen to a candidates' meeting about rules related to balloting and the ballot count.

Protest 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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

**Barbara C. Deinhardt  
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November 28, 2021

**AMENDED DECISION**

Protest PCS-20-21p (use of Union  
and Employer resources)

By email dated November 16, 2021, Ron Carter and Robert Martinez, on behalf of the Progressive Chang Slate, filed protests alleging that Willie Rivera, candidate for First Vice-Chair in the TA Surface Operators Division on the Stand United Slate, violated the Union By-Laws when he posted information about internal Union charges that were brought against Mr. Carter in 2019 for sexual harassment, charges that resulted in him being removed from his position as East New York Depot Chair. According to the Protesters, Mr. Rivera misused his position as a Union officer by publishing an internal Union document, i.e. the Trial Committee Report, that sets forth the charges, the evidence adduced at trial, and the recommended penalty.

The Union and the Stand United Slate respond that the Trial Committee proceedings were not private, nor were the results. The Trial Committee Report reproduced in Mr. Rivera's campaign literature was distributed to all 50+ members of the Executive Board at the time of the trial in 2019.

As the ballots were mailed out on November 15, 2021, no effective remedy could be ordered at this time, even if a violation were to be found. Therefore, this protest should be raised in post-election proceedings, if warranted.

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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Ron Carter  
Robert Martinez  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

November 27, 2021

**DECISION**

Protest PCS-19-21 (ballot errors)

By email dated November 21 and 22, 2021, Joe Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that there were errors in the ballots mailed to members last week. Specifically, the Protester asserts that two members, Denise Long and Jason Norris, received their ballots at their old addresses but received Stand United Slate campaign literature and other Union mail at their new address. In addition, the Protester alleges that a number of CED cleaners received Stations ballots when they should have received Car Maintenance ballots; a number of CED EEMs who should have gotten TA Surface Maintenance ballots received Line Equipment Signal ballots; and a number of RTO Train Operator B members received Train Operator A ballots.

As to the two members who received ballots at their old addresses, Ms. Long states that she did not receive the Stand United Slate mailing, as alleged, but she does receive other Union mail at her new address. Mr. Norris states he received the SUS mailing at his new address, but does not still have the envelope. He denies that it had a forwarding sticker on it. Upon investigation, it appears that the membership mailing list from the Union was sent to the vendor who ran it through the NCOA system. He then sent that list back to the Union, which sent it unchanged to the AAA to send out the ballots. I checked and the addresses on the list used by the mail vendor to send the campaign literature to these two members were the same as the addresses on the mailing list used by the AAA to send ballots. The two members never submitted a change of address form to the Union. Other mail that the members perceive as being from “the Union” in fact comes from several other

vendors and databases. For example, mail concerning health benefits is based on a database directly from the Transit Authority. Information on classes comes from a separate entity, the Training and Upgrading Fund, which has its own database of members and will sometimes have a different address from the Union. While it is true that the two members submitted candidate information forms with their new, correct addresses, the Union does not use these forms to effect change of address in the Union membership data base. Members are advised to fill out change of address forms with the Union, which these members did not do.

As to the other protests about members receiving the wrong ballot, the Election Committee reports that the Union used the codes assigned by the Transit Authority to determine which ballot to send. When it became aware of the error, it took immediate steps to have the correct ballot sent to the 334 CED cleaners and the 19 revenue equipment maintainers, with a letter telling them of the problem and asking them to send in the new ballot, even if they had already voted. If the member in fact sends in the new ballot, it will be counted. If they already voted and they do not send in the new correct ballot, the incorrect ballot will be counted for the top four officers.

As to the Train Operator B's who got Train Operator A ballots, the Union has sent correct ballots to the members it is aware of. All members who get the wrong ballot are advised to call the AAA duplicate ballot line and request a correct ballot.

There is no evidence that any action was deliberately taken to disenfranchise any member or group of members. The errors are due to Transit Authority miscoding. There is also no evidence that the miscodes had a disproportionate impact on supporters of any particular slate or candidate. The action taken by the Union to resolve the problem should give members the opportunity to vote in a timely way.

Protest 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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with the first name "Barbara" being more prominent.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

November 28, 2021

**AMENDED DECISION**

Protest PCS-20-21 (Camacho  
pulling down PCS flyers)

By email dated November 22, 2021, Joseph Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that on November 22, 2021, Angel Camacho pulled down Progressive Change Slate campaign flyers and literature while on Union release time.

As the ballots were mailed out on November 15, 2021, no effective remedy could be ordered at this time, even if a violation were to be found. Therefore, this protest should be raised in post-election proceedings, if warranted.

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.



Barbara C. Deinhardt  
Neutral Monitor



By email:  
Joe Campbell  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

December 2, 2021

**DECISION**

Protest PCS-21-21 (Drummond  
using union resources)

By email dated December 1, 2021, Joseph Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that independent candidate Chris Drummond was using his Union contact list to campaign.

Mr. Drummond responds that over his years working with the MTA, he accumulated a personal contact list, which was initiated long before he became active with the Union. The cellphone number cited by the Protester has been his personal phone number for over 16 years and prior to his employment with the MTA or being elected into Union office in 2018. Furthermore, he states that he is neither on Union nor TA payroll at the present.

As the ballots were mailed out on November 15, 2021, no effective remedy could be ordered at this time, even if a violation were to be found. Therefore, this protest should be raised in post-election proceedings, if warranted.

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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Chris Drummond  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

January 15, 2022

**DECISION**

Protest PCS-22-21rerun (SUS  
using union resources)

By email dated January 10, 2022, Joseph Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that the Stand United Slate and JP Patafio had released several members to campaign for Stand United at East New York Depot. Specifically, the Protester alleges that Nicole Tull and Georgette Stirling were placed on Union release time to campaign for SUS and were “heard to say vote the Stand United Slate” sometime between 7 AM and 4 PM. The Protester argues that this constitutes the use of Union resources to campaign.

One witness offered by the Protester states that the two women (the witness did not know their names) were brought in off the bus, even though they had less time than other members, and were inside “helping with the Union.” The witness states that she did not hear the two women campaigning but was told by other operators that the two women had asked them to vote for Stand United. Another witness stated that several operators told her that Ms. Tull was seen standing outside the Union office between 6 AM and 8 AM, asking people to vote for Stand United.

According to Ms. Tull, she was put on Union release time on January 10-14 to backfill for Keith Wilkes. At the beginning and the end of the shifts, she sits at a desk in the swing room outside the Union office performing “COVID duties,” primarily checking the list of people who have not been vaccinated and so are required to get weekly testing to ask them if they have gotten their tests. She denies campaigning

on work time. If a member asks her whom she is voting for, she tells them she is voting for Stand United. Ms. Stirling sates that she was elected as the Depot vice-chair and has been working full-time in that position since January 1. She performs a number of Union-related duties, including helping people get COVID vaccines and calling or talking to people who need to get weekly testing. Sometimes she sits at the desk outside the Union office to do her work. She denies campaigning during her work hours. If someone asks whom she voted for, she will tell them to speak to her at lunch or after work.

I find that the Protester has not provided sufficient probative evidence to prove that either Ms. Tull or Ms. Stirling was campaigning during time paid for by the Union, except perhaps in the case of Ms. Tull, incidental to her paid work. 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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.

Elections Committee

**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

January 15, 2022

**DECISION**

Protest PCS-23-21rerun (SUS  
using union resources)

By email dated January 10, 2022, Joseph Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that the Stand United Slate and JP Patafio had released a member to campaign for Stand United at Flatbush Depot. Specifically, the Protester alleges that Kenneth Wright was placed on Union release time and was sitting outside the Union office with a membership list “to engage members as they go by.” The Protester argues that this constitutes the use of Union and management resources and Union membership list to campaign. The Protester offered no witnesses in support of his protest.

According to Mr. Wright, he has been on release time since November or early December, other than when he was out sick for several weeks in mid-December. His responsibilities are to keep track of members who have not gotten vaccinated for COVID and therefore need to get tested weekly. He gets a list from management every week, which is updated almost daily, of the members who need to be tested. He approaches those members in the swing room to remind them of the need to get tested. He adamantly denies campaigning while performing his duties and he denies having a membership list.

I find that the Protester has not provided evidence to prove that Mr. Wright was campaigning during time paid for by the Union or that he was using a Union membership list to campaign. 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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with the first name "Barbara" being more prominent.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee



**Barbara C. Deinhardt  
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January 15, 2022

**DECISION**

Protest PCS-24-21rerun (SUS  
using management resources)

By email dated January 10, 2022, Joseph Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that the Stand United Slate improperly interfered with PCS campaigning. Specifically, the Protester alleges that on January 8, 2022, JP Patafio told a Yard Bus Dispatcher Frank McBean to approach former PCS candidate Alexander Kemp and tell him to leave the property. Patafio also allegedly told Mr. McBean about Mr. Kemp's status of being out on workers' compensation. The Protester argues that this constitutes the use of management resources to support the Stand United Slate and interfere in the election.

Mr. Kemp states that on Saturday, January 8, he was campaigning at the Jackie Gleason Depot. He saw JP Patafio standing with Lou Marrero and two operators in the yard by the parking lot. Dispatcher Frank McBean was there as well. As he walked by, Mr. McBean asked him if everything was OK. Than later, after Mr. Patafio left, Mr. McBean asked if he could talk to Mr. Kemp. He asked if Mr. Kemp was out on workers' compensation, because if he was, he had to leave. Mr. Kemp stated he was on his regular day off and asked how Mr. McBean knew he was on comp. Mr. Kemp concedes that he did not hear anything said between Patafio and McBean, but argues that Mr. Patafio "must have" said something to Mr. McBean about Mr. Kemp being out on comp. Mr. Kemp had been campaigning at the depot for the last four months and Mr. McBean had never said anything to him before. Mrl. Kemp did not have to leave the premises and was permitted to continue campaigning.

According to Mr. Patafio, he was at the Jackie Gleason Depot on January 8 campaigning. There had been an altercation involving some of the operators. Frank McBean was talking to people about the workplace violence incident. He spoke to McBean very briefly, basically just hello and goodbye. Mr. Patafio denies talking to Mr. McBean about Mr. Kemp.

I was unable to speak with Mr. McBean.

I find that the Protester has not provided sufficient probative evidence to prove that either Mr. Patafio enlisted the assistance of management to interfere with PCS campaigning. 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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
JP Patafio  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt**  
**Neutral Monitor**  
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January 15, 2022

**DECISION**

Protest PCS-25-21rerun (SUS  
campaigning on paid time)

By email dated January 8, 2022, Joseph Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that the Stand United Slate filmed a campaign video during paid time using TA and Union resources. Specifically, the Protester alleges that it is clear from the video that the clips were shot during the day on TA property and states that he believes that the person making the video was on paid Union time using a Union device and service. In addition, the Protester notes that the depot chairs in the video were wearing Union hats “in order to confuse the members into thinking the Union supports these candidates.” The Protester argues that this constitutes the use of Union and management resources to support the Stand United Slate.

The video clip attached to the protest shows different members standing at different locations saying things like “Vote Stand United.” I spoke with the members shown in the video. Each asserted that s/he was filmed during his or her lunch break or after work. Ebony Walton, for example, remembers that the person making the video, Armando Serrano, approached her as she was going to the store to get her food for lunch. When she came back from the store, she recorded her clip outside on the roof. Mike Smith recalls that it was right before he went home at the end of his shift. It was filmed in the train yard lot where they feed the cats. Drew Ramirez states that he has a long swing, from 11 AM to 3 PM, and it was filmed during that swing, outside the depot. Clarence Patterson recalls that it was dark when he was filmed on the roof in the parking lot. The one doing the filming, Armando Serrano,

stated that he filmed people while he was on vacation or on his break and he made sure that the ones he was filming were on their break or finished with work. He states he used his own GoPro equipment.

I find that the Protester has not provided sufficient evidence to prove that Mr. Serrano or any of the members appearing in the video were on paid time or using Union resources when the videos were made. The videos appear to have been made on non-work areas of the TA. I have already ruled (PCS-01-21) that it is not a violation for someone to wear a Union hat while campaigning, at least outside the Union hall. 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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt**  
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January 23, 2022

**DECISION**

Protest PCS-26-21rerun (SUS  
fraud protest)

By email dated January 14, 2022, Joseph Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that the decision issued in Protest SUS-11-21post was not based on reliable evidence and that PCS did not have an opportunity to present evidence. The Protester requests reconsideration and a stop to the ongoing rerun election.

The decision was issued on December 20, 2022. The Protester has already filed an appeal of the decision with the International Committee on Appeals. That is the proper forum in which to raise these issues.

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 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.



Barbara C. Deinhardt

## Neutral Monitor

By email:

Joe Campbell

Tony Utano

Stuart Salles, Esq.

Arthur Schwartz, Esq.

Denis Engel, Esq.

Elections Committee

**Barbara C. Deinhardt  
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917-763-0906  
neutralmonitor@gmail.com**

January 20, 2022

**DECISION**

Protest PCS-27-21rerun (SUS  
fraud)

By email dated January 14, 2022, Joseph Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that SUS candidate Lou Marrero has been calling members and instructing them to lie to the Neutral Monitor and report that Flatbush Chair Richard Thorne stole ballots from their mailboxes and was calling around for ballots. The witness presented by the Protester stated that Mr. Marrero contacted him to tell him that there was something going on with the last election. The witness didn't know what Marrero was talking about. Marrero said something about ballots having been stolen from people's mailboxes and people being asked to bring in their ballots. Marrero sent him the article from The Chief about the decision ordering the rerun because of ballot fraud. The witness said he told Marrero that that had not happened to him. Marrero told him that someone was going to call him and that he should tell the person exactly what he had told Marrero. The witness said he told Marrero that he didn't want anyone to call him. He wanted no part of it. He told me that he didn't know what Marrero was implying and that Marrero did not tell him to lie to me.

Mr. Marrero denies instructing any member to lie about what had happened to him. He stated that he had texted the witness and others, telling them there was a rerun election. He spoke to the witness, who said he had been out with COVID and asked what was going on with the election. Marrero sent him the article from The Chief. The witness told Marrero that someone he knew from work told him that Richard Thorne had been asking people to bring him their ballots. Marrero asked

him if he would be willing to talk to the Neutral Monitor and the witness said he would, so long as his name remained confidential. Marrero said there was no discussion about ballots being stolen from mailboxes.

From my conversation with the witness and with Marrero, it appears that there was some misunderstanding or confusion between the two of them. It does not make sense that Marrero would have told the witness to talk to the Neutral Monitor and repeat exactly what the witness had told Marrero (as the witness reported to me) if Marrero understood the witness to have said that nothing improper had happened. The witness told me that Marrero had not told him to lie, but the witness also did not understand why Marrero was asking him to talk to the Neutral Monitor since nothing had happened to him. There clearly was a disconnect in their conversation. I find that there is insufficient probative evidence to prove that Mr. Marrero instructed any member to lie to the Neutral Monitor. 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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Tony Utano



Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt**  
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**neutralmonitor@gmail.com**

January 26, 2022

**DECISION**

Protest PCS-28-21rerun (AAA mail  
pick up)

By email dated January 13, 2022, Alexander Kemp, on behalf of the Progressive Change Slate, filed a protest alleging that the candidates were not given notice and opportunity to observe a mail pickup by the American Arbitration Association on Monday, January 10. Candidates were told that the first mail pickup would be on January 11, but there were 275 ballots picked up on January 10. The Protester requests that 100 random ballots picked up on January 10 be pulled and the mailing of those ballots confirmed with the sender.

The Protester is correct that all candidates/slates should have been given notice and an opportunity to observe all mail pickups. No candidate or slate nor the Election Committee was given such notice and no one attended the pickup with the AAA. I requested from the AAA an affidavit about the circumstances of the January 10 mail pickup. That affidavit is attached to this decision.

The Protester does not explain his theory about possible fraud. Is the Protester suggesting that the AAA fabricated ballots or permitted the fabrication of ballots? How (let alone why) would the AAA (or the Election Committee or SUS or whoever it is that the Protester believes conspired to fabricate ballots) have known before January 10 which voters would not send in a ballot in the following two weeks and somehow duplicate those ballots, mark them and deliver them to the Post Office or to the AAA office? It does not make any sense. Further, no representative from the Progressive Change Slate took advantage of the opportunity

to go with the AAA to the Post Office on all scheduled pick up days, observe the pick up of the ballots, and accompany the ballots back to safekeeping at the AAA office. The Protester states that he has gone every day to sit or stand outside the Post Office and watch the AAA representative and the Election Committee representative go into the Post Office and come back out. He has not signed in at AA as an observer, has not gone inside the Post Office with them before today, and has not followed to make sure the ballots made it back to the AAA office untampered with. It is not clear, even if he had had the opportunity to do the same thing on January 10, how his presence in his car watching the Post Office could have had any impact on whatever conspiracy or fraud the Protester is imagining.

The AAA is a neutral organization with a reputation for integrity. In view of the explanations and representations in the AAA affidavit, particularly that there was no preferential treatment of any candidate or slate and that the ballots were safeguarded, I find that there has been no impact on the results of the election and thus no remedy is warranted.

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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Alexander Kemp  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**AFFIDAVIT OF SCOTT BOSWELL, DIRECTOR OF ELECTIONS FOR THE AAA**

I, Scott Boswell, am the Director of Elections for the American Arbitration Association (the "AAA") located at 120 Broadway, New York, NY 10271.

Being duly sworn, I hereby swear under oath that:

1. On January 4, 2022, the ballots for the TWU Local 100 rerun election for Ballot number 2 TA Surface Operators (the "TWU Rerun Election") were mailed out.
2. Per request of the union, the AAA provided TWU Local 100 with a schedule for when and where the election committee, candidates and slate representatives could observe ballot returns. This observation entails meeting at AAA's office and accompanying an election worker to the post office to observe as the AAA collects the mailed-in ballot envelopes and brings them to the AAA offices.
3. The first scheduled day of observation for ballot returns was set for Tuesday, January 11, 2022, the date when the AAA anticipated it would start receiving ballot returns. This date was determined based upon AAA's experience administering approximately 250 elections per year and AAA's experience that we typically do not receive ballot returns until at least 7 days after the ballots are mailed. This timing also mirrors the timing for the returned ballots in TWU's November 2021 officer election. In the November election, the ballots were mailed out on November 15, 2021, and the first returns came back on Monday November 22, 2021, or seven (7) days after the mailing. This timing is reflected in the mail log from that election, attached hereto as Exhibit A.
4. On January 10, 2022, Suvery Acevedo, a regular temporary AAA election worker, picked up AAA's Business Reply Mail ("BRM") at approximately 10:00 AM for all the AAA's pending mail-ballot elections. All of the ballots received for all active mail-ballot elections were picked up together. The post office does not segregate AAA's daily Business Reply Mail by election. Accordingly, Ms. Acevedo did not know, when she was at the Post Office, that ballots for the TWU Rerun Election were included in the BRM picked up that day. No one from the Election Committee, nor any candidate or slate representative, was present during this mail pick up.
5. When Ms. Acevedo returned to the office, Ms. Acevedo and a team of core AAA election workers, sorted and segregated the ballots by election. The ballots for the TWU Rerun Election were kept in the secure count room until they were moved that same day to another secured room inside the AAA's election space. The ballots have remained in the second secured room ever since.

[Continued on next page.]

6. At the time of this affidavit, all TWU Rerun Election ballots have been segregated by date of receipt from the Post Office.

Under penalty of perjury, I hereby declare and affirm that the above-mentioned statement is, to the best of my knowledge, true and correct.

Scott Boswell

Scott Boswell

1/22/22  
Date

**Notary Acknowledgment**

State of New York

County of Nassau

Subscribed and sworn to before me on this 22 day of January, 2022,  
by Scott Boswell, proved to me on the basis of satisfactory  
evidence to be the person(s) who appeared before me.

[Signature]

Notary Public Signature





**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

January 27, 2022

**DECISION**

Protest PCS-29-21 (SUS fraud)

By email dated January 20, 2022, Joseph Campbell, on behalf of the Progressive Change Slate, filed a protest alleging that in the initial election, in November and December, 2021, SUS candidates Lou Marrero, JP Patafio and Shawn Graves asked members for their ballots.

This protest is really about the conduct of the last election. The conduct protested allegedly occurred almost two months before the protest was filed. The election has been certified, other than the offices that are currently being rerun. The protest is untimely. 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 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.

A handwritten signature in black ink, appearing to read 'Barbara C. Deinhardt', written in a cursive style.

Barbara C. Deinhardt  
Neutral Monitor



By email:  
Joe Campbell  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

October 19, 2021

**DECISION**

Protest STS-1-21 (Election  
Committee confiscation of  
petitions)

By email dated October 6, 2021, Evangaline Byars filed a protest against the Election Committee for confiscating four petitions brought in by Jamel Nicholas. Specifically, the Protester alleges that on Monday October 4, Mr. Nicholas was signing the witness attestation at the bottom of his petitions and Aquilino Castro, the Chair of the Elections Committee, took the petitions from him before he could finish signing.

The protest is now moot. The Elections Committee has notified the Protester that the four petitions will be deemed to have been signed by Mr. Nicholas before being submitted and will be counted accordingly.

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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Retu Singla, Esq.  
Jeanne Mirer, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Evangeline Byars  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

October 31, 2021

**DECISION**

Protest STS-02-21 (eligibility  
report)

By email dated October 24, 2021, Retu Singla, Esq., on behalf of the Stronger Together Slate, filed a protest against certain findings of the Election Committee in the Final Eligibility Report issued on October 22, 2021. In specific, the Protester alleges as follows:

- 1) The Report is “factually inaccurate and misleading” and “fraudulent” in its statement that ‘Evangaline Byars went to court because she had to receive medical treatment for the emotional and mental distress [from]...harassment’ from the Election Committee.”
- 2) Ms. Byars is seeking to invalidate the interpretation of the TWU Constitution on which the Election Committee and the Neutral monitor relied in finding Ms. Byars ineligible. The Protester requests that the Report not be finalized until the application to reargue has been decided.
- 3) The Report shows that while only 23% of the signatures for the Stand United Slate were invalidated, 31% of the signatures of the Progressive Change Slate and the Stronger Together Slate were invalidated, even though Counsel to the Election Committee has represented that only 6.7% of the membership is in bad standing. The Protester contests the invalidation of the STS signatures. The Protester also requests the number of members disqualified under the Constitutional interpretation being challenged in court. The Protester alleges that “26% of the participating membership has been found to be ineligible to sign nomination petitions.”

- 4) The Protester contests the finding of the Report that 57% of the Stronger Together signatures for the four Executive Board positions in Car Maintenance are invalid.

As to the first allegation, I am advised by the Election Committee that the citation in the Report quotes from the September 29, 2021 affidavit given in court by the Protester that reads,

“26. I feel like I am being targeted and attacked by Local 100 and its Attorney to make sure that I am not in the right frame of mind to petition for the nomination.

27. I went to the hospital in the evening of September 26, 2021 **to receive medical treatment for the emotional and mental distress the harassment of Attorney Schwartz and Local 100 was causing me.”**

This Affidavit was in support of an application to the court for more time to petition because the emotional distress caused to Ms. Byars had prevented her from petitioning.

It is not my job to edit the Eligibility Report, but to determine if the eligibility determinations made by the Committee are correct. I find that this passage in the Report does not render any eligibility decision incorrect.

As to the second allegation, as of the time the Report was issued (and to date), the court had not taken any action to change its ruling of October 19, 2021 that concluded, ***“Plaintiff has failed to present any evidence the [Union’s] interpretation of the provisions are patently unreasonable. Consequently, the plaintiff cannot therefore establish a likelihood of success on the merits*** and a reasonable probability of success. Consequently, the motion seeking an injunction is denied.” (emphasis added) Unless and until there is a change in the court’s ruling, there is no basis to change the Eligibility Report conclusion that Ms. Byars is not eligible and that therefore there is no Stronger Together Slate.

As to the third allegation, it appears that the Protester may not understand the Union’s process for reviewing Petitions. First, the names of the Petition signers

are data entered by name and/or signature and/or pass number. If the information on the Petitions is so incomplete and/or illegible that the signer cannot be identified, the information cannot be entered. Those signatures are then deleted from the number of signatures submitted. The resulting number can be found in the Report as Potentially Valid. The signers whose information is data entered are then checked for bad standing, duplication (i.e. if someone signed more than once for the same candidate, only one signature counts), and signing in the wrong division or department. If the name cannot be matched with anyone in the database, it is marked as no match. Thus, the reduction from Potentially Valid to Valid is not just due to bad standing. Further, there is no way of telling, without analyzing the dues record of each individual member, whether the members eliminated for being in bad standing went into bad standing as a result of having been in a temporary no-pay status. Unless the Union's interpretation of the TWU Constitution being challenged by the Protester is overturned, there is no reason to direct the Union to conduct such an analysis.

Finally, as to the fourth allegation, I reviewed the Car Maintenance Petitions cited by the Protester. She objects to the invalidation of 57% of the signatures. The Stronger Together Slate submitted 377 signatures on behalf of two Executive Board candidates, of which 366 were Potentially Valid. It needed 361 Valid signatures in order for those two candidates to be nominated. Thus it could only lose five signatures. I reviewed the Petitions witnessed by Kevin Foggie and discovered that almost all the names on the five Petitions he witnessed were not Local 100 members in Car Maintenance. (The other Stronger Together Petitions were witnessed by the other candidate, Ernie Jean-Claude Hippolyte. Most, although not all, of her signatures were valid.) A few of Mr. Foggie's Petitions appeared to have been circulated in the Gun Hill Depot and almost all signatories were bus operators. A few appeared to have been circulated at Queens Village, a bus depot with operators represented by ATU, not TWU Local 100. One Petition appeared to have been circulated at a warehouse, as most of the signatories were stock workers.

Petition ST03-0077 40 signatures; 3 valid

Petition ST03-0078 50 signatures; none valid

Petition ST03-0079 50 signatures; none valid

Petition ST03-0081 43 signatures; 11 valid

Petition ST03-0082 17 signatures; 3 valid

I spoke with Mr. Foggie and he confirmed that he had collected the signatures at Gun Hill, Queens Village, and Tiffany Warehouse. He stated that the Slate representatives told him that he could go to any depot to collect signatures. He didn't understand the requirement that he collect signatures only from good standing members of Local 100 in Car Maintenance. It was this misunderstanding that accounts for the low number of valid signatures.

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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Retu Singla, Esq.  
Evangaline Byars  
Arthur Schwartz, Esq.

Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee



**Barbara C. Deinhardt  
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July 15, 2021

**DECISION**

Protest SUS-01-21 (using TWU  
logo for campaign purposes)

By email dated July 2, 2021, John Chiarello, on behalf of the Stand United Slate, filed a protest alleging that Duvet Williams, a potential candidate for MOW VP. Used the TWU logo for campaign purposes. In particular, the Protester alleges that Williams sent around a campaign video from an address that appears to have been an official TWU MOW email address.

The Election Rules prohibit any candidate from receiving a contribution from a labor organization. Under the Rules,

**VI. E. 1.** No candidate for election shall accept or use any contributions or other things of value received from any employer, representative of an employer, foundation, trust, union or similar entity. Nothing herein shall be interpreted to prohibit receipt of contributions from fellow employees and members of Local 100 or the International Union, unless that employee or member is an employer

**VI. E. 2.** No employer shall be permitted to contribute anything of value to any campaign. The prohibition on employer contributions extends to every employer regardless of the nature of the business, or whether any union represents its employees, and includes but is not limited to political action organizations (other than a candidate's or slate's campaign organization), nonprofit organizations such as churches or civic groups, law firms, and professional organizations. These prohibitions include a ban on the contribution and use of stationery, equipment, facilities and personnel, or items to be raffled off.

**VI. E. 4.** No Local Union services, facilities, equipment or goods—including,

but not limited to, time, staff, copying machines, fax machines, telephones, printing and postage—shall be used to promote the candidacy of any individual or slate unless the Local notifies all candidates of the items available for use and all candidates are provided equal access at equal cost to such goods and services. **The use of the Local Union’s official stationery, or its logo or its name, or its initials “TWU” is prohibited, especially in electronic communications,** irrespective of compensation or access.

The above sections of the Election Rules would prohibit anyone from using an email address that is or appears to be an official TUW Local 100 email address for campaign purposes or from sending campaign materials to addresses or phone numbers collected while an officer or on the staff of the Union. Here, the email objected to by the protester was sent from the email address [mowtwu@gmail.com](mailto:mowtwu@gmail.com). Mr. Williams states that he did not send the video around, he does not know who did, and he does not know who uses the email address [mowtwu@gmail.com](mailto:mowtwu@gmail.com). While repeated use of the Union name and/or logo to support a particular candidate could become a violation for the candidate him/herself, even if s/he did not direct it to be done, at this point in the election and under all the circumstances, I do not find that Mr. Williams is guilty of violating the Election Rules. Mr. Williams, and all candidates, are instructed to advise their supporters not to use the Union logo or an email address that appears to be from the Union or use for campaign purposes contact information collected while a Union officer or Union staff.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
John Chiarello  
Duvet Williams  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

October 7, 2021

**DECISION**

Protest SUS-03-21 (campaigning  
while on sick leave)

By email dated October 2, 2021, Eric Loegel, on behalf of the Stand United Slate, filed a protest alleging that Canella Gomez was at the Union Hall submitting petition from 3:00 PM to 4:00 PM on Friday, October 1, 2021. This is when he was out on sick leave. His regular tour of duty is from 2:19 PM to 12:08 AM. In addition, he was seen campaigning at the Far Rockaway A line terminal on September 30 (later amended to October 1) during his regular work hours.

The Election Rules VI(E) states:

No candidate or other member may campaign for her/himself or for any other candidate during time that is paid for by the Local Union or by any employer. However, campaigning incidental to regular Local Union business or during paid vacation, paid lunch hours or breaks, or similar paid time off, is permitted. This prohibition includes campaigning during the employee's regular tour of duty while out on paid sick leave, FMLA, Workers' Compensation, disability leave, or in paid-no work status. If a candidate or other member who wishes to campaign is on paid sick leave, FMLA leave, Workers' Compensation leave, disability leave, or in paid-no work available status, they must notify the Elections Committee (which may create a form) and the Neutral Monitor, in writing, prior to campaigning, setting forth his or her regular tour of duty.

A Supplemental Notice issued on October 7 clarifies that "[c]ampaigning includes all election-related activity on behalf of a candidate or slate." The Supplemental Notice issued today was not in effect on October 1, 2021 when Mr.

Gomez appeared at the Union Hall to deliver petitions. As there may have been some ambiguity about whether such activity was prohibited under the Rules and given that the impact was de minimis, I do not find a violation. Further, as to the Protester's allegation, as amended, that Mr. Gomez was campaigning during his regular tour of duty on Friday, October 1, 2021, I find that the evidence establishes that Mr. Gomez was seen campaigning from 12:15 PM to 12:25 PM. This was before the start of his tour of duty at 2:19 PM. However, I do find that Mr. Gomez failed to submit the required notice to the Election Committee and to the Neutral Monitor before campaigning. I do not find any remedy warranted under the circumstances. He and all candidates and other members are reminded of the requirement in the Election Rules and the Supplemental Notice.

The protest is denied in part and sustained in part.

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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Eric Loegel  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Evangeline Byars  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee

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October 31, 2021

**DECISION**

Protest SUS-04-21 (Byars  
defamation)

By email dated October 25, 2021, John Chiarello, on behalf of the Stand United Slate, filed a protest alleging that Evangaline Byars recorded and distributed a video in which she defames the Neutral Monitor and Mr. Chiarello.

In the recording, Ms. Byars is heard first expressing her opinion that the Neutral Monitor has been moving in an “unbalanced” manner and that it is not in the jurisdiction of the Neutral Monitor to call members to verify anything. According to Ms. Byars, the Neutral Monitor should wait for things to come before her and then make a judgment. Then Ms. Byars expresses her opinion that Mr. Chiarello “stole the election” by calling people to ask them if Duvet Williams brought them a Petition to sign. According to Ms. Byars, this was “intimidation.” It is also her opinion that everyone deserves a right to run for office.

I disagree with Ms. Byars’s opinions expressed in the video. It is obvious that she does not understand the role of the Neutral Monitor. The Election Rules clearly state that “[t]he Neutral Monitor will have the power to investigate and determine the facts prior to applying the law to all disputes brought to the Neutral Monitor’s attention.” It is very much part of my responsibility to contact witnesses and ask questions. I do not understand how Ms. Byars thinks I should make a judgment on matters that come before me if I do not first investigate. Perhaps she should acquaint herself with the Election Rules before making statements that could mislead the membership.

I also disagree with her opinion that Mr. Chiarello intimidated members or attempted to steal the election. A protest was filed on the conduct about which she is complaining and a decision was issued finding no violation. PCS-12-21. As I held in that decision, “I spoke with the members whom Chiarello called. No one said he felt coerced in any way by Chiarello’s questions. I find that Mr. Chiarello did not interfere with the investigation, did not coerce witnesses, did not have advance notice of witnesses the Election Committee was going to call, but instead provided names of witnesses to the Election Committee, and only used names he had in his phone from years of working with co-workers.”

I also disagree, to a certain extent, with Ms. Byars’s opinion that everyone deserves a right to run for office, without regard to whether they have followed all the rules for doing so. I would amend her statement by saying that everyone who meets the eligibility requirements and who presents sufficient signatures on Nominating Petitions that are properly witnessed deserves a right to run for office.

However, the fact that Ms. Byars misstated facts and misrepresented the Election Rules does not make her statements themselves violations of the Election Rules. It is generally true that the Rules are not intended to ensure the accuracy and truth of campaign materials or speech. As I held in I-23-15 (Ahmed), “My jurisdiction as Neutral Monitor is to ensure compliance with the Election Rules. I do not have the authority or the ability to regulate all speech between and among members. Generally the remedy for untrue or unwanted or defamatory or hostile speech is more, corrective speech. As I held in protest #I-02-15 (Taaffe), ‘Even if the statements alleged were in fact made, they do not rise to the level of a violation of the Election Rules. It is not generally the function of the Election Rules to regulate speech. If someone, such as Taaffe, disagrees with something that someone else, such as Nash and Oduro, is saying, his recourse is to correct the misinformation and to (verbally) confront the person and encourage him to stop, as Taaffe did.’ It is up to Mr. Ahmed to publicize the untruth of Mr. Ahmad’s statement and to communicate the facts about the campaign event.” Here, if the Protester finds Ms.

Byars's statements to be inaccurate, misleading or defamatory, the Protester should publish the accurate information.

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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
John Chiarello  
Evangaline Byars  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee



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November 2, 2021

**DECISION**

Protest SUS-05-21 (Byars  
misrepresentation)

By email dated October 26, 2021, Eric Loegel, on behalf of the Stand United Slate, filed a protest alleging that Evangaline Byars and the former Stronger Together Slate have been posting literature and campaigning, making the representation that she is still a candidate and Stronger Together Slate is still a slate. According to the Protester, Ms. Byars and/or others from the former Stronger Together Slate have been posting literature with pictures of Ms. Byars, listed as President Evangaline Byars, and several would-be candidates for Division office who have been ruled ineligible, including Surrena Shoemo, Kristan Webb, and Simone Henderson.

Chris Drummond, who was running for VP on the Stronger Together Slate and is now running as an independent candidate, responded that there are very few Stronger Together posters around. He agrees that “there is no disputing Stronger Together’s entire RTO slate was disqualified and no longer on the ballot. As of today in real time, the positions of Conductors Chair, Recording Secretary, Tower Operators Vice Chair, and Eboard are all running independently. Furthermore, Stronger Together’s Train Operators Slate was also disqualified, which allows me to use my Independent-Stand Alone status to endorse candidates from both Progressive Change and Stand United. TWU 100 members will have two choices on their ballots; ‘Progressive Change’ and ‘Stand United’ to my point, there is no confusion. My original association with ‘Stronger Together’ will not be on the Ballot.” He asserts that the protest is now moot. Ms. Byars responds in a similar

manner, asserting that the posters were put up before the court decisions and just not taken down. She does not dispute that she has been disqualified nor that there is no Stronger Together Slate.

Certainly the flyers submitted by the Protester could confuse the membership into thinking that Ms. Byars is a candidate for president, which as of now she is not, and that Stronger Together is a slate, which as of now it is not. The court rejected her challenge to the Election Committee and Neutral Monitor rulings that she is ineligible. Unless the court changes its position, a position that it reaffirmed just today, Ms. Byars is not eligible to run because she did not keep her dues current for 12 consecutive months. Because the Stronger Together group does not have a candidate for president, it cannot run as a slate. Neither Ms. Byars nor the Stronger Together Slate will be on the ballot. Further, the three pictured candidates for Division office--Shoemo, Webb and Henderson--are not eligible to run. They have not appealed their disqualifications and their names will not be on the ballot.

However, members retain the right to campaign even using inaccurate campaign materials. As I have held in prior decisions, it is generally true that the Rules are not intended to ensure the accuracy and truth of campaign materials or speech. As I held in I-23-15 (Ahmed), "My jurisdiction as Neutral Monitor is to ensure compliance with the Election Rules. I do not have the authority or the ability to regulate all speech between and among members. Generally the remedy for untrue or unwanted or defamatory or hostile speech is more, corrective speech. As I held in protest #I-02-15 (Taaffe), 'Even if the statements alleged were in fact made, they do not rise to the level of a violation of the Election Rules. It is not generally the function of the Election Rules to regulate speech. If someone, such as Taaffe, disagrees with something that someone else, such as Nash and Oduro, is saying, his recourse is to correct the misinformation and to (verbally) confront the person and encourage him to stop, as Taaffe did.' It is up to Mr. Ahmed to publicize the untruth of Mr. Ahmad's statement and to communicate the facts about the campaign event." Here, if the Protester finds the protested flyers to be inaccurate or misleading, the

Protester should publish the accurate information.

In light of the above and the representations of Mr. Drummond and Ms. Byars that to their knowledge Stronger Together is no longer posting slate literature, 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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Eric Loegel  
Evangaline Byars  
Retu Singla  
Jeanne Mirer  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

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November 4, 2021

**DECISION**

Protest SUS-06-21 (Martinez and  
Kemp campaigning)

By email dated October 27, 2021, JP Patafio, on behalf of the Stand United Slate, filed a protest alleging that candidates Roberto Martinez and Alexander Kemp were campaigning while out on sick leave and workers' compensation leave, in violation of Supplemental Notice #5. The Protester cites a campaign video that aired on social media late at night on October 25.

Mr. Kemp did file the notice required by Supplemental Rule #5 on October 13, 2021. The form states that his regular tour of duty is 14:36 to 24:12. Mr. Martinez states that he was on sick leave, but he has recently cleared himself to return to work. He had not filed the required form, but did file it on November 2, 2021. The form states that his regular tour of duty is 16:25 to 2:08. Mr. Martinez and Mr. Kemp both state that the campaign video was taped during the day on Sunday October 24, a non-work day for them both, and then it was streamed several times late at night as if it were live.

Supplemental Notice #5 states:

**TWU LOCAL 100, ELECTION 2021  
CAMPAIGNING ON EMPLOYER PAID TIME**

Rule VI(E)(5) bars campaigning during time paid for by the Local Union or by any employer. Campaigning includes all election-related activity on behalf of a candidate or slate. The Rule prohibits campaigning while out on sick leave, disability, or Worker's Compensation during an employee's regular tour of duty,

even if the illness or disability would not preclude campaigning. For example, a bus driver with a broken arm cannot campaign during his/her work hours, even though a broken arm would not preclude such campaigning. One purpose of this rule is to ensure that someone out on paid leave does not have an advantage over an actively employed member.

The rule states: "If a candidate or any other member who wishes to campaign is on paid sick leave, FMLA leave, Workers' Compensation leave, disability leave, or is in paid no-work status, they must notify the Elections Committee and the Neutral Monitor, in writing, prior to campaigning, setting forth his or her regular tour of duty." This report should be filed even if the employee plans to campaign during off-duty hours, so that disputes that may arise when someone on paid leave campaigns can be more easily resolved. ...

Mr. Kemp did not violate the Rules, as he filed the requisite form in advance of producing the video, which was done on a non-work day. Mr. Martinez did violate the Rule, but only insofar as he did not file the form before engaging in the campaign activity. He has now filed the form so I find under all the circumstances that the violation to have been remedied.

The protest is denied in part and sustained in part, but is found to have been remedied.

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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:

Joe Campbell

JP Patafio

Roberto Martinez

Alexander Kemp

Tony Utano

Stuart Salles, Esq.

Arthur Schwartz, Esq.

Denis Engel, Esq.

Elections Committee

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November 4, 2021

**DECISION**

Protest SUS-07-21 (Castro giving  
away pizza)

By email dated October 27, 2021, Peter Rosconi, on behalf of the Stand United Slate, filed a protest alleging that candidate Luisito Castro was paying for pizza and drinks in exchange for votes. According to the Protester, Mr. Castro had an arrangement with a pizza restaurant across from the depot whereby anyone could go in and ask for a free slice of pizza and a drink if they agreed they were going to vote for Castro in the upcoming election. The pizza restaurant employees would take down the names of the people coming in for free pizza. According to the Protester, this conduct violated the Rules against interfering with members' rights to vote and the prohibition against employer contributions.

A video submitted in support of the protest shows a member going into the pizza restaurant and saying that Castro sent him. The pizza hop employee said that no one had come in for about a week, that the practice had stopped because people were coming in and asking for four or five slices and Castro was paying for it all, but he agreed to give the member a slice. It was the member who said, "He really want that vote" to which the employee responded, "I found that out." That was the only reference to the election. The employee asked for the member's name and the member gave his first name only, with no contact information.

Mr. Castro denies that his practice of giving free pizza and a drink to anyone who needed something to eat was in any way tied to the election. He also denies

having seen any list of names of people who got free pizza. He insists that he paid for all the pizza the restaurant gave away in his name.

The pizza shop employee to whom I spoke said that they knew Mr. Castro because he went into the restaurant often. At first he didn't know anything about Castro paying for free pizza for bus drivers, but then people started to come in and asking for pizza and saying that Castro had said they could get free pizza. The other employee said to go ahead and give it to them. The person with whom I spoke said he didn't know why Mr. Castro was doing this. He thought that maybe Castro was doing it because he was friendly. The restaurant extended Castro credit because they knew him, but he paid for it all. The employees decided to take down the names of the people who got the free pizza; Mr. Castro did not ask them to do it. They only took down the names, not any contact information, and they threw the list away. They aren't giving any free pizza anymore.

There is a significant ambiguity in the evidence about whether the free pizza was in any way tied to the election and, even if so, whether there was some kind of quid pro quo tying the free pizza to a (completely unenforceable) agreement to vote for Castro or merely a desire to do something nice for the drivers so they would think well of him and vote for him. I do not need to resolve this ambiguity. There is no evidence that there was an employer contribution involved here. There is no evidence that Mr. Castro did not in fact pay for all the pizza given away on his behalf by the restaurant. Any extension of credit was de minimis. The taking of names seems to have been something the pizza shop employees did on their own as a way to keep track of how many slices had been given away, rather than to provide Castro with contact information of potential supporters. If the pizza was paid for completely with Mr. Castro's own money, there is no violation. Whether it is by giving away t-shirts or pens or facemasks or pizza slices or throwing a campaign party, a candidate may use his or her own money to publicize his/her campaign or to ingratiate him/herself with voters.



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 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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with the first name "Barbara" being more prominent.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Peter Rosconi  
Luisito Castro  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

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November 18, 2021

**DECISION**

Protest SUS-08-21  
(misrepresentation)

By email dated November 15, 2021, Peter Rosconi, on behalf of the Stand United Slate, filed a protest alleging that the Progressive Change Slate posted flyers on social media as well as depots with the picture of a candidate who was found ineligible still on the flyer. The Protester argues that including the picture of the disqualified candidate is misleading to the membership thinking that Progressive Change has a full slate for the upcoming election.

The Progressive Change Slate responds that campaign flyers are allowed free expression. According to the PCS, “The right side of the flyer [with the pictures] was made and posted prior to any disqualification. Its creation wasn’t an attempt deceive. When the ballot is received, the candidates running will be listed in their correct position.”

Members retain the right to campaign even using inaccurate campaign materials. As I have held in prior decisions, it is generally true that the Rules are not intended to ensure the accuracy and truth of campaign materials or speech. As I held in I-23-15 (Ahmed), “My jurisdiction as Neutral Monitor is to ensure compliance with the Election Rules. I do not have the authority or the ability to regulate all speech between and among members. Generally the remedy for untrue or unwanted or defamatory or hostile speech is more, corrective speech. As I held in protest #I-02-15 (Taaffe), ‘Even if the statements alleged were in fact made, they do not rise to the level of a violation of the Election Rules. It is not generally the function of the

Election Rules to regulate speech. If someone, such as Taaffe, disagrees with something that someone else, such as Nash and Oduro, is saying, his recourse is to correct the misinformation and to (verbally) confront the person and encourage him to stop, as Taaffe did.' It is up to Mr. Ahmed to publicize the untruth of Mr. Ahmad's statement and to communicate the facts about the campaign event." See also SUS-05-21. Here, the picture objected to by the Protester is included next to a copy of the Sample Ballot that does not list the disqualified candidate's name. If the Protester finds the protested flyers to be inaccurate or misleading, the Protester should publish the accurate information.

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 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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Peter Rosconi  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

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November 28, 2021

**AMENDED DECISION**

Protest SUS-09-21 (use of Union  
logo)

By email dated November 17, 2021, Peter Rosconi, on behalf of the Stand United Slate, filed a protest alleging that the Progressive Change Slate posted campaign literature on Facebook using the TWU Local 100 logo. The Protester attaches screen shots of various posts by Wilfredo Pacheco, Lindbergh Ray, Steve St Hill and Willie Colon that show the use of the Union logo in the context of a PCS campaign post.

The Progressive Change Slate responds that the people who posted the image thought that because the logo was a different color, its use would not violate the Election Rules. As soon as the Slate was made aware of the issue, the posts were taken down.

As the ballots were mailed out on November 15, 2021, no effective remedy could be ordered at this time, even if a violation were to be found. Therefore, this protest should be raised in post-election proceedings, if warranted.

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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Peter Rosconi  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

November 28, 2021

**AMENDED DECISION**

Protest SUS-10-21 (Otero pulling  
down SUS flyers)

By email dated November 26, 2021, Richard Davis, on behalf of the Stand United Slate, filed a protest alleging that on November 25 and 26, 2021, Operator Marcos Otero pulled down Stand United Slate campaign flyers and literature, at various locations, shredded them to pieces, and disposed of them in the garbage "in a very aggressive manner." According to the Protester, not only was his behavior very hostile, but he was also on company time.

As the ballots were mailed out on November 15, 2021, no effective remedy could be ordered at this time, even if a violation were to be found. Therefore, this protest should be raised in post-election proceedings, if warranted.

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.



Barbara C. Deinhardt  
Neutral Monitor

By email:

Joe Campbell

Richard Davis

Tony Utano

Stuart Salles, Esq.

Arthur Schwartz, Esq.

Denis Engel, Esq.

Elections Committee

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January 4, 2022

**AMENDED DECISION**

Protest SUS-11-21post (ballot  
collection and fraud)

By email dated December 10, 2021, JP Patafio, on behalf of the Stand United Slate, filed a protest alleging that the Progressive Change Slate engaged in ballot harvesting and voter fraud. Specifically, the Protester points to the “statistical improbability of [the number of] split votes cast” for LaTonya Crisp, “67% (230) of the split votes compared to my 21% (72).” In addition, the Protester notes that “a very large majority of votes casted for Latonya and the PC candidates were marked in a similar way. A neat ‘x’ appears in each individual box, as if by the same hand. By our count there are over 100 of these types of ballots.” He also alleges that the PCS sent out a mass text to operators in the Jackie Gleason Depot telling them they would help them fill out their ballots.

Joe Campbell, on behalf of the PCS, responds that “‘statistical improbabilities’ do not warrant reelections. The protester hasn’t provided any evidence of wrongdoing except his disbelief that his members voted against him and that their cherry picking included LaTonya Crisp. Traditionally, members of a division will choose one of their own on the top. It’s a part of political strategy. The fact that they voted for her and against Patafio can be attributed to the fact, they didn’t like Patafio but they found no offense in LaTonya. She was my direct opponent and I know this.”

VI(D) of the Election Rules, Prohibition on Interference with Voting, reads, “No person or entity shall limit or interfere with the right of any Local 100 member



to vote.” In addition, the Election Committee promulgated the following Supplemental Rule:

**TWU Election Committee Supplemental Election Notice No. 7**

**BALLOT COLLECTION**

Ballot collection by anyone, candidate, or non-candidate, is prohibited. It is too easy for ballot collection to be viewed as an interference with the exercise of a member’s voting rights. No member, candidate or non-candidate should ask another member for their ballot, even if sealed.

I read these two provisions as prohibiting any candidate, officer, or other member from handling, marking, requesting, collecting, and/or mailing another member’s ballot.<sup>1</sup>

I personally reviewed all the original ballots returned from TA Surface Operators. Of the approximately 343 non-slate ballots (1337 total ballots – 994 slate votes), 123 (36%) were marked in one of two identical and very distinctive patterns. 46 voted for all PCS candidates except Oneshia Grace, Tawannah Jordan, and Joe Campbell and instead voted for Stand United Slate candidates Earl Phillips, Lynwood Whichard, and LaTonya Crisp. 77 voted for all PCS candidates except Oneshia Grace and Joe Campbell and instead voted for Stand United Slate candidates Earl Phillips and LaTonya Crisp. The other 220 non-slate ballots were randomly marked. I note that while LaTonya Crisp comes out of this Division, which could perhaps explain the votes for her on ballots that were predominantly in favor of PCS candidates, the other two SUS candidates marked on these questionable ballots do not.

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<sup>1</sup> While NLRB precedent is not relevant to internal Union elections, the case of *Professional Transportation, Inc. and UE Local 1077*, 370 NLRB No. 132 (2021) was cited as controlling, or at least persuasive, by PCS candidate Robert Martinez in his request for a ballot collection rule. In that case, the Board found that a party engages in objectionable conduct that may warrant the setting aside of an election if it collects or otherwise handles mail ballots or even offers to collect an employee’s mail ballot, i.e. if it engages in mail-ballot solicitation, even if the ballot solicitation does not result in ballot tampering.

Of the 123 marked in one of the two distinctive patterns, almost all appeared to be identically marked, with a neat precise “x” completely inside the box. Only a few of the 123 were clearly different—check marks, boxes filled in, x’s that extended outside the lines of the box, etc. A review of the 220 non-pattern, non-slate ballots showed a significantly greater variety of markings.

The Protester produced a number of witnesses (who want to remain anonymous and will therefore be referred to with they/them pronouns). One witness was in the Union office in the Flatbush depot when an operator came in with his blue ballot envelope, which the witness could see was not sealed. The operator handed the envelope to Depot Chair Richard Thorne and said, “I got my ballot in the mail. Here you go,” to which Mr. Thorne said, “OK” as he took the ballot envelope from the operator. Another time Mr. Thorne turned to the witness when Progressive Change slate candidates were in the depot campaigning and, pointing to those campaigning, said, “This is how we’re voting.” This same witness said that a woman (the witness didn’t know her name) came up to them and offered to take the ballot to the Union office, but the witness stated that they would send it in themselves. Another witness stated that they heard Mr. Thorne ask a group of four operators to bring him in their ballots and he would send them in. A third witness said that Mr. Thorne had asked them during the last election in 2018 to bring in their ballot and he, Thorne, would “take care of it.” Mr. Thorne denies ever requesting or receiving a ballot from anyone, answering any questions from anyone about voting, or discussing with or suggesting to anyone how they should vote.

The Protester produced another witness who saw PCS candidate Ronald Carter in the East New York Depot, sitting with two operators and marking the ballot for one of them. Mr. Carter was the one holding the pen/pencil. This occurred in the very early morning hours sometime during Thanksgiving week. Mr. Carter denies ever filling out a ballot for anyone and in fact denies ever campaigning in the depot, “except maybe once” sometime before the ballots were mailed out.

I credit the Protester witnesses. They did not overstate what they saw or heard, did not appear to claim knowledge they did not have, and agreed to talk to me even though they were somewhat apprehensive about doing so. The blanket denials from Mr. Thorne and Mr. Carter, on the other hand, were not persuasive. I do not find it credible, for instance, that Mr. Thorne, a strong PCS supporter, never suggested to anyone how to vote, as he claims. It would not have been a violation of the Election Rules for him to do so and it is highly improbable that he never expressed his opinion to the operators in his depot. His denial that he ever did so calls into question his credibility on the other questions, as well. Similarly, I find it unlikely that Mr. Carter, running for Division Chair and also for Section Chair in his depot, never (or at most once, before the ballots were sent out) campaigned in his own depot. Further, in addition to the witness quoted above, another witness told me that they saw Mr. Carter campaigning in the East New York depot over a week after the ballots were mailed out.

The Protester also cites the social media post from shop steward and PCS candidate Nasar (Nas) Abdurrahman telling people in the Jackie Gleason Depot that if they were confused or needed help filling out their ballots, they could contact him. However, the Protester submits no evidence that any member in fact contacted Mr. Abdurrahman and Mr. Abdurrahman denies that anyone ever contacted him in response to his post and denies suggesting to anyone how they should vote.

While any one factor alone might be merely suspicious, I find that the large number of two distinct and unusual patterns of voting **and** the large number of those ballots that were distinctively marked, **combined with** the testimony of several witnesses about ballot solicitation, collection and/or marking of another member's ballot committed by candidates or supporters of the Progressive Change Slate, compel a conclusion that the election in the TA Surface Operators Division was contaminated by conduct that violated the Election Rules. While the evidence establishes that it is likely that even more than the 123 unusually marked ballots

could have been affected by the Election Rules violations and fraud, at least the results of those elections where a PCS candidate won by less than 246 could have been affected (123 X 2, because to see if the results could have been affected, it is necessary to assume that in the absence of the fraud, the 123 voters who voted for primarily PCS candidates might instead have voted for the SUS candidates and thus it is necessary, in analyzing whether the results could have been affected, to subtract 123 from each winning PCS candidate and add those 123 to each losing SUS candidate, a swing of 246).

I therefore direct that the election for all offices where a PCS candidate won by less than 246 votes be rerun in TA Surface Operators Division. (In the case of the Executive Board, one PCS candidate, Alexander Kemp, would have won even if 123 votes were deducted from his totals and added to the SUS candidates. Pan Chen would have lost even if 123 votes were added to his total. Those two names will not be included in the rerun.) Ballots should be sent out on Tuesday, January 4, 2022 to all members of the Division in good standing as of December 8, 2021 and returned by no later than 6:00 PM on Wednesday, January 26. The count will be on Thursday, January 27. The Election Rules, with dates modified as necessary, remain in effect. I caution all slates, candidates and other members that all members have the right to mark their ballots themselves, in secret, and mail them in themselves. Any interference with this right will result in further consequences. The attached notice is to be included with the ballots and posted immediately (and remain posted) on Union bulletin boards in the TA Surface Operators depots until January 25.

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.



Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
JP Patafio  
Tony Utano  
Stuart Salles, Esq.  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Elections Committee

# NOTICE

BALLOTS ARE BEING SENT OUT IN A RERUN ELECTION FOR CERTAIN POSITIONS IN TA SURFACE OPERATORS DUE TO A FINDING BY THE NEUTRAL MONITOR THAT IN THE LAST ELECTION, SOME OFFICERS AND MEMBERS MARKED OR MAILED BALLOTS FOR OTHER MEMBERS.

YOU HAVE A RIGHT TO MARK YOUR BALLOT IN SECRET AND PUT THE BALLOT IN THE MAIL YOURSELF. IT IS A VIOLATION OF THE ELECTION RULES FOR ANYONE TO ASK YOU FOR YOUR BALLOT.

DO NOT GIVE YOUR BALLOT TO ANYONE ELSE TO MARK AND/OR MAIL.

MARK YOUR BALLOT AS SOON AS YOU GET IT AND MAIL IT IN RIGHT AWAY. IF YOU DO NOT GET A BALLOT, CALL THE AAA AT 800-529-5218 AFTER JANUARY 11. RETURN YOUR BALLOT IN TIME FOR IT TO BE RECEIVED BY JANUARY 26.

**Barbara C. Deinhardt  
Neutral Monitor  
917-763-0906  
neutralmonitor@gmail.com**

January 15, 2022

**DECISION**

Protest SUS-12-21rerun (ballot  
collection)

By email dated January 9, 2022, JP Patafio, on behalf of the Stand United Slate, filed a protest alleging that the Progressive Change Slate engaged in ballot harvesting. Specifically, the Protester alleges that PCS candidates and supporters have been calling members and asking them for their ballots.

One witness offered by the Protester told me that a member told him that a PCS supporter had asked her for her ballot. In the last election she had given this person her unopened ballot and those of some of her friends, but this time she refused to do so. However, the member was not willing to talk to me directly and the person who allegedly asked for the ballot adamantly denied doing so. The other witness did not respond to my outreach.

I find that the Protester has not submitted sufficient probative evidence to support his protest. 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 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.



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**Barbara C. Deinhardt**  
**Neutral Monitor**  
**917-763-0906**  
**neutralmonitor@gmail.com**

December 16, 2021

## **DECISION**

### Requests for recounts

By emails dated December 8 and 10, 2021, the following requests for recounts were submitted:

- 1) Michelle Figueroa requested a recount for Ballot 08, Conductor/Tower, Tower/Operator Vice-Chair. She lost by 6 votes out of 140, a margin of 4.3%.
- 2) Joe Campbell, on behalf of Jamel Chisholm and Gregory Ward, requested a recount for Ballot 09, Stations, Division Chair and Division Vice-Chair. Mr. Chisholm lost by 22 votes out of 1228, a margin of 1.8%. Mr. Ward lost by 3 votes out of 1227, a margin of 0.2%.
- 3) Michael Ortiz requested a recount of Ballot 02, TA Surface Operators. Robert Martinez requested a recount of Ballots 01 and 02, TA Surface Maintenance and TA Surface Operators. The only close race in TA Surface was for Vice-President, where Mr. Martinez lost by 28 votes out of 1817, a margin of 1.5%.

I find that, given that all candidates had the opportunity to view the ballot count and to raise any concerns at that time and given that there are no other factors or anomalies that call the four election results above into question, a 1% margin is a reasonable cutoff for a recount. Therefore the only recount that I am ordering is for Ballot 09, Stations Division, Cleaners Vice-Chair. The means (hand or machine), process (place, observers, etc), and timing of the recount are up to the Election

Committee.

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.

A handwritten signature in black ink, appearing to read "Barbara C. Deinhardt".

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joe Campbell  
Michelle Figueroa  
Michael Ortiz  
Robert Martinez  
Arthur Schwartz, Esq.  
Denis Engel, Esq.  
Stuart Salles, Esq.  
Tony Utano  
Elections Committee