

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: BILL ULLOA and)	Protest Decision 2001 EAD 135
ERNESTO PEREZ,)	Issued: February 6, 2001
Protestors.)	OEA Case No. PR112701WE and
<hr/>)	PR121502WE

Bill Ulloa and Ernesto Perez, members of Local 396, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“*Rules*”). Ulloa alleges that Local 396 secretary-treasurer Danny Bruno terminated him from his position as business representative in violation of Article VII, Section 11 and Article XII, and LMRDA Sections 401(e) (voting and campaigning without interference or reprisal), and 609 (prohibition on union discipline for exercising rights under LMRDA), as incorporated by Article XII. Perez alleges that Bruno has retaliated against him based upon his protected conduct under the *Rules*.

Election Administrator representatives Michael Four and Christine Mrak investigated the protests.

Findings of Fact

1. Ulloa alleges that Local 396 principal officer Bruno terminated him from his position as business representative because of his support and campaigning on behalf of Tom Leedham. Ulloa claims that Bruno’s termination and/or removal of various local union representatives that support Leedham form a pattern of retaliation. In addition to his own termination, Ulloa claims that former business agent and current vice president Ernesto Perez, was terminated for supporting Leedham, as were several shop stewards. He claims that there was no basis for his termination or that of any of these individuals, except for their support of Leedham. Perez further claims that on or about December 15, 2000, Bruno told him in the presence of other Local 396 staff members that he would never work on the Local 396 staff again because of his support for Leedham.

Ulloa further alleges that at a series of staff meetings at Local 396, Bruno made numerous statements about his support for the candidacy of General President James P. Hoffa, and said that he expected the employees of the local to also support him. Ulloa claims that Bruno further threatened at several staff meetings (April 13, May 30, June 21, July 18 and August 8) to fire any staff member who did not support Hoffa.

Ulloa further alleges that underlying Bruno’s support for Hoffa was the fact that Bruno was the newly elected secretary-treasurer of the local, after several unsuccessful runs for the office. He took office in January 2000. The former secretary-treasurer whom Bruno defeated, Raul Lopez, subsequently challenged Bruno’s election by filing an internal IBT protest to the

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results. The challenge was pending before the IBT Executive Board during the first six months of 2000. Therefore, so the argument goes, in order to assure that the IBT ruled in his favor, Bruno actively supported Hoffa and wanted to demonstrate to Hoffa that the local fully supported him. As a result, claims Ulloa, Bruno embarked upon his campaign of ridding the local of Leedham supporters, including Ulloa.

In this regard, Ulloa claims that Bruno also distributed Hoffa petitions and instructed the business agents to secure Hoffa signatures while on paid union time. Further, it is claimed that Bruno directed the business agents to inform bargaining unit members of the local's support for Hoffa. Ulloa claims that even after the IBT certified Bruno's election, he continued to threaten retaliation against those who did not support Hoffa by repeatedly telling the employees that they had to be part of the team, which included supporting Hoffa. Finally, Ulloa claims that at a general membership meeting on November 19, 2000, many members in one of the bargaining units he formerly represented appeared and demanded that Ulloa be rehired, and further notes that he was given a salary increase in mid-2000. According to Ulloa, Bruno responded that he would not do so because among the reasons Ulloa was terminated was his support for Leedham.

As set forth below, Bruno claims that Ulloa was terminated for specific work-related reasons, *viz.*, his failure to adequately service and represent the members. Bruno denies that he terminated Ulloa or retaliated against him because of his support of Leedham. According to Bruno, Ulloa's termination occurred only after due warning about his poor performance. Specifically, Bruno says that he was forced to remove Ulloa from servicing three bargaining units after members complained about his service and demanded his removal. He further claims that Ulloa had other work-related problems, a claim we discuss below. Bruno acknowledges that Ulloa received a salary increase, but he contends the local union executive board (which grants such increases) voted to give a number of the staff raises, including one to Ulloa. Bruno says he was opposed to it but in the end hoped it would encourage Ulloa to perform better.

In addition, Bruno claims that he has always respected employees', officers' and members' rights to any political views and to support any candidate they wish. He says that he told his staff on many occasions that they are free to support whom they want, but that while they are on the clock they are not to engage in politics. He says that he has told his staff that they are to be supportive of the local and act as team players, and that while this did not mean that they should support Hoffa, it did mean that they should not mix politics with their union duties. According to Bruno, he told his staff that what they did off the clock was their own business.

Finally, Bruno denies that he engaged in any pattern of attempting to rid the local of Leedham supporters. He states that Perez was never in fact terminated, but that he suggested Perez resign from the local, which he did. Bruno claims that Perez spoke very poor English and that when he was hired, he instructed Perez to take English courses to improve his language skills, which he never did. He thus told Perez after several months that he might be forced to let him go in the future if his speech and work performance did not improve. Bruno claims that he suggested that Perez resign while still on a leave of absence from his former employer, so that he could still return to his former place of employment.

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With respect to the shop stewards, Bruno claims that they were not fired, but rather were in appointed positions and were dismissed from those positions because they were disloyal and acting against the interests of the local. Specifically, Bruno claims that these stewards opposed Bruno's views on various work-related issues, and were promoting their own views by distributing leaflets in opposition to Bruno. This disloyalty, says Bruno, was the reason they were removed from their positions.

2. The main issue here is whether Ulloa's alleged poor work performance was a pretext for what Ulloa claims is the real reason for his termination: his support of Leedham. While our investigation revealed that Bruno felt political animosity toward Ulloa, the specific non-retaliatory reasons articulated by Bruno were the reason for the termination. Our investigation also revealed that Ulloa was aware of the problems with his work, and had been disciplined on that basis before his termination. Further, our investigation revealed that Ulloa was removed from representing members at three bargaining units due to member complaints. In sum, our investigation has caused us to conclude that the reasons given by Bruno for Ulloa's termination were not suddenly concocted as a pretext, but had been ongoing and had originated with member complaints.

Only one witness supported Ulloa's claim that Bruno had told staff members that those who did not support the Hoffa candidacy would be fired. Even the witnesses who were supportive of Ulloa's over-all claims and believe he was terminated because he supported Leedham denied that Bruno made any threatening statements regarding the election. For example, Eddie Sanchez, one of three trustees of the local, and Perez both initially said that they never heard Bruno threaten members.¹ Although they both contend that at times Bruno would become very angry over various issues at executive board and other meetings, they admit this had nothing to do with Hoffa and Leedham.

In addition, our investigator spoke with Jim Smith, Dan Kane, Ron Herrera and Javier Bonales, all current employees of Local 396. Although each was on Ulloa's witness list, none supported his allegations. Instead, all stated that they never heard Bruno threaten any staff members, but rather said on numerous occasions that employees were free to support who they wanted and to have their own political views, so long as they did not engage in politics while on the job. Herrera, for example, stated that Bruno routinely used the term "team player" when referring to employees (which Ulloa alleged), but by that he meant everyone should be working together to represent the best interests of the members. Ulloa, on the other hand, claimed that Bruno used the term "team player" to mean that those who did not support Hoffa were not team players. Only Ulloa and Perez, however, make this claim, and we do not credit their version, given the credible testimony of Ulloa's own witnesses to the contrary.

¹ In a second interview with the help of translation, Perez contended that in an early May 2000 staff meeting, Bruno did make such a threat. The other individuals to whom our investigator spoke all attended this meeting, but all denied Perez's allegation. We do not credit Perez, however, given the other witnesses' statements, his own animosity over his separation from the local, and his close relationship with Ulloa.

Likewise, Jim Smith, a Leedham supporter, stated that he never heard Bruno threaten to fire anyone for supporting Leedham. Smith did say that it was clear that Bruno supported Hoffa and that he thought that it was in the best interests of the local that Hoffa be reelected. Smith said that Bruno gave the impression he wanted the staff to fall in line and support Hoffa for this reason, but that Smith understood that no one was required to support Hoffa nor did anyone need to fear retaliation. Smith stated that Bruno told the staff that they could support who they wanted, but their primary goal should be representing the members. Smith said that Bruno was well aware of his support for Leedham but he has never been threatened, terminated or otherwise disciplined.

In addition, all of the witnesses with whom our investigator spoke, including those who were supportive of Ulloa, denied Ulloa's claim that at the November 2000 general membership meeting, Bruno announced that among the reasons he terminated Ulloa was because of his support for Leedham. All of the witnesses who attended the meeting acknowledged that several members from one of Ulloa's former bargaining units -- BFI -- came to the meeting and made a motion that Ulloa be rehired. It is uncontradicted, however, that Bruno's response was that Ulloa was terminated for specifically delineated work-related problems. Bruno told the meeting that shop stewards and members at several bargaining units requested that Ulloa be removed from representing them.

Ulloa also claimed that Bruno distributed Hoffa petitions while at work and instructed the business agents to obtain signatures while working on the clock. All of the employees to whom our investigator spoke denied this.

3. Bruno firmly contended that politics played no role in his decision to terminate Ulloa. He set forth very specific reasons for doing so. As Bruno stated, and as supported by business agent Billy Huff, Anderson News shop steward Roy Lindeman, and Waste Management shop steward Robert Jacobs, the local began getting complaints from shop stewards and members about Ulloa at Loomis, Fargo & Co., Anderson News and Waste Portables. Bruno stated that from conversations with the shop stewards and the members, he learned that Ulloa was not showing up at, or was late to meetings, was often double-scheduling meetings which meant one meeting was not covered, failed to respond to members' telephone calls, and often failed to adequately follow up on grievances. Therefore, between February and May 2000, Bruno removed Ulloa from representing these bargaining units and replaced him with Billy Huff.

To test Bruno's claims, our investigator spoke to Roy Lindeman, shop steward at one of these facilities -- Anderson News -- and Robert Jacobs, shop steward at Waste Management. Both corroborated Bruno's claim that they requested that Ulloa be replaced as the business agent at the facilities following many member complaints to them about Ulloa's lack of communication and responsiveness to member problems. Further, Bruno produced memos from Ulloa's personnel file setting forth each situation and identifying the stewards. We find that these statements from the stewards and this documentation support Bruno's claims as to Ulloa's work performance. It also supports Bruno's defense that the removals at all three locations were at the request of members and were thus not retaliation. Although Ulloa alleged he was never

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disciplined, the removal of the bargaining units from his service area is documented in Ulloa's personnel file and operates as discipline.

Bruno said that his subsequent investigation of the matter determined that among the reasons Ulloa was not servicing the members properly was because he was covering up for Perez's inadequacies. As discussed above, Bruno believed that Perez had great difficulty speaking English. In this regard, he instructed Perez to take classes to improve his speech. Bruno stated that due to Perez's communication difficulties and other inadequacies, Ulloa was forced to cover up for him by going to various meetings with employers and handling grievances for Perez. In doing this, Ulloa was forced to ignore his other responsibilities, the result of which was member complaints.

Bruno supplied a series of documents that he contends evidences Ulloa's poor work performance. First, he submitted three memos, each documenting Ulloa's removal from the bargaining units for work performance. As set forth above, two shop stewards confirmed Bruno's account. In addition, Bruno produced several other memoranda dated between June and November 2000, each dealing with specific work performance problems by Ulloa. The first document, dated June 27, 2000, discusses the local's inability to locate Ulloa during the workday. According to the memo, there was an emergency call for Ulloa, but when the office tried to reach him at the work location he was scheduled to be at (Waste Management in Sun Valley, California, at 5:00 A.M.) for a grievance meeting, the office was told he was not there and that there was no grievance meeting scheduled that day. The memo indicates that Ulloa could not be contacted that day.

The second document is a "disciplinary letter" dated July 19, 2000. The letter indicates that Ulloa was warned for discussing internal Union business matters "with non-staff personnel." According to the memo, Ulloa met with several bargaining unit members, including Perez, who at that point was no longer working with the local. Bruno explained that Ulloa was meeting with these individuals to share internal union policy matters with them because they were opposed to Bruno's leadership. Ulloa denies he ever shared confidential Union information with non-members.

There is also a memo dated September 25, 2000, which indicates that Ulloa did not support Bruno's decision regarding Perez's employment or re-employment with the local. The memo states that Ulloa "continued to lie to the membership about the situation." Bruno explained that that meant Ulloa continued to cover up for Perez and would not explain to the members that Perez was not adequately representing the members due to his poor language skills. Ulloa says he was honest with the members.

Finally, a memo dated November 1, 2000, documents an incident regarding collective bargaining negotiations with Citrus Feed. According to Bruno, the local (including Bruno) had negotiated a successor collective bargaining agreement with Citrus Feed in October 2000, but Ulloa, contrary to Bruno's instructions, recommended to the members that the contract be rejected. The memo documents that Ulloa was running late to a meeting he set up with Citrus Feed and called the local office to ask a secretary to call the employer representatives to let them

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know he would be fifteen minutes late. He actually arrived forty-five minutes late, but by that time, the employer representatives had already left because there was no further word from Ulloa. The memo also indicates this was not the first occasion he had been late to a negotiating meeting with this company.

Further, Bruno claims that despite his instruction to Ulloa to recommend the proposed contract's approval to the membership, Ulloa went behind his back to ask the employer if its last offer was its best, and then failed to recommend ratification to the members. Subsequently, says Bruno, he handled the negotiations himself and was able to obtain ratification of the contract. Bruno stated, although the memo does not indicate it, that when he spoke to the bargaining unit about the contract, the members told him Ulloa had not adequately explained the contract terms to them and said that if Ulloa had explained it better, it would have been ratified earlier. According to Bruno, this was "the straw that broke the camel's back" and finally led to Ulloa's termination.

Gary Van Dyne, a long-time member of the Citrus Feed bargaining unit, said that as far as he saw, Ulloa handled the negotiations fine. He said he was unaware of member complaints about Ulloa at the unit concerning negotiations, and further said that, contrary to Bruno's claim, Ulloa explained the proposed contract terms clearly. He concedes, however, that Ulloa never recommended approval or rejection of the contract.²

Bruno also submitted copies of the local's "Log Book" which sets forth the business agents' daily schedules. The business agents provide this information to the office secretary. In addition, the business agents, themselves, complete their own calendars of their daily activities. According to Bruno, a comparison of the calendars with the log sheets reflects many inconsistencies which Bruno claims demonstrates that Ulloa was double-scheduling meetings and often was not keeping the staff aware of his work locations. Of course, there was no such comparison of other business agents to determine how accurate others were with their schedules. Over all, the documents are difficult to decipher and show no real pattern.

Ulloa's argument that getting a salary increase (\$50.00 per week) is inconsistent with Bruno's claim of poor work performance does not change our findings. Salary increases do not necessarily correspond to work performance. Further, the executive board granted the increase, not Bruno. Therefore, absent an accompanying positive work evaluation, the raise itself does not support Ulloa's overall protest.

4. On or about January 22, 2001, attorney Michael J. Goldberg, representing Bill Ulloa, faxed our investigator affidavits from Bill Ulloa, Ernesto Perez, Jim Smith and Michael Goldberg. Our investigator reviewed each affidavit and spoke to each affiant, as well as several other witnesses.

² We find it unnecessary to resolve the factual differences between Van Dyne and Bruno's accounts concerning the negotiations. Even accepting Van Dyne's scenario, Ulloa still failed to recommend ratification of the contract, contrary to Bruno's instructions ("try to sell the contract") and was late to at least one negotiating session, forcing the employer representatives to leave.

Smith's Affidavit. First, we note that our investigator interviewed Smith during his initial investigation at Bill Ulloa's request, because Ulloa claimed that Smith would support Ulloa's allegations that Bruno threatened to fire Leedham supporters at the local. At that time, Smith specifically denied that Bruno ever threatened to fire anyone at the local or otherwise discipline them if they supported Leedham. Smith said that Bruno made it clear that he supported Hoffa and that he would like other staff members to fall in line. Nevertheless, Smith also stated that he was an open supporter of Leedham and had had no problems with Bruno at the local. He also indicated at that time that there were numerous other Leedham supporters (whom he did not name) who were also working for the local but have likewise not been fired or disciplined. Smith stated that Bruno told the employees they could support whom they wanted, but that their primary goal should be representing the members.

In the affidavit submitted by Goldberg, Smith changed his prior statements and alleged, in Paragraph 2 of the affidavit, that at a meeting of the staff at Local 396 sometime in mid-2000, Bruno said, "Whoever doesn't support who the local supports shouldn't be working for the local." In Paragraph 3, Smith goes on to state that he "interpreted Bruno's statement as a threat ... Whoever doesn't support who Bruno supports shouldn't be working for the local." Finally, he states in Paragraph 4 that although he is a supporter of Leedham, he is not an active or outspoken supporter "in part because of what Bruno said at that meeting in July."

When our investigator interviewed Smith about the affidavit, he attempted to back off somewhat from the direct quotes in the affidavit. He said that the quotes were not verbatim and that he could not remember exactly what was said. However, says Smith, he never interpreted Bruno's statements to be a threat. Smith tried to draw a distinction between a threat of termination and what he said he actually felt, which was "pressure" from Bruno and other staff members that everyone should support Hoffa. He said he felt pressure that "everyone should be on the same page," which meant to support Hoffa, and that whoever did not support Hoffa "should be quiet" or "quit." Smith emphasized, however, that he is not even sure if any of those words were actually used, but that this merely his general impression as to Bruno's intent. Finally, contrary to his affidavit, Smith told our investigator that although he felt pressure, it really did not affect his political activities because he did not have the time to actively campaign for Leedham.

Nothing in Smith's subsequent submission, when judged against our investigator's interview of Smith, supports Ulloa's claim that Bruno threatened Local 396 staff members with retaliation if they failed to support the Hoffa candidacy. At the most, Smith's recollection of Bruno's "pressure tactics" are vague and ambiguous, and fail to support Ulloa's claims of threatened retaliation. Smith's testimony is also insufficient to support Ulloa's claim that he was terminated for political reasons.

Ulloa's Affidavit. Ulloa claims that he was never told he was replaced as business representative for the three bargaining units because of any work-related problems. He says he never received a written or verbal warning or any serious complaint about his work. Rather, Ulloa claims he was told he was removed from these facilities because he had too much work.

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Bruno, however, claims that he specifically informed Ulloa on many occasions as to why he was being removed. Bruno says he told Ulloa that his work was suffering because he was covering up for Perez, and doing Perez's work. Bruno also says he gave Ulloa every opportunity to improve, which is why he was not fired sooner. Ulloa, according to Bruno, did not improve, and Bruno placed documentation regarding these matters in Ulloa's personnel file. Bruno agrees that he never gave Ulloa copies of the memorandum documenting the reasons why he was removed from the bargaining units. Nevertheless, as discussed above, two shop steward witnesses confirmed independently of each other that they requested Ulloa's removal due to poor service. These independent claims by the shop stewards are the strongest evidence of the work-related basis for terminating Ulloa. We credit their accounts.

Ulloa also states that on June 27, 2000, the date Bruno claims he was unable to locate Ulloa at Waste Management, he actually was there in a meeting. Ulloa claims he was in a meeting with Jose Morales, a Waste Management driver and shop steward. Ulloa provided Morales' home telephone number. Because this was one of Bruno's claims regarding Ulloa's work record (that he was often unable to locate Ulloa), our investigator telephoned Morales. Morales did not return these calls.

Ulloa also discussed an incident where Bruno asked Ulloa to explain to a group of members from the sanitation division why Perez no longer worked for the local. Bruno claims that Ulloa failed to properly inform the members why Perez left. In his affidavit, Ulloa states that he simply told the members "the truth." Our investigator asked Ulloa what he actually told the members, and Ulloa said he told them that Perez "was fired because Bruno wanted him to take English classes but that Perez did not have time to take English classes and learn his new job as a representative." Ulloa acknowledged that that was not what Bruno wanted him to say, and agrees that Bruno asked him to tell the members that Perez was no longer working for the local because he could not do the job because he could not communicate with management due to his poor English skills. This was the reason Bruno gave our investigator for asking Perez to resign, and is what Bruno told Ulloa he wanted the members to be told. Ulloa's failure to do so was among the reasons given by Bruno for Ulloa's termination.

With respect to the Citrus Feed collective bargaining agreement, Ulloa says that he never told the members to strike instead of ratifying the contract. Ulloa, however, agreed in his initial contact with our investigator that Bruno told him to try to "sell the contract" to the members. Based upon our interview of Ulloa, we conclude that he did not do as instructed. Although he may not have directly asked the members to reject the contract or go on strike, he did not recommend ratification. As principal officer of the local union, Bruno was entitled to have his staff carry out his instructions.

Perez's Affidavit. Perez also submitted an affidavit through Goldberg. In the affidavit, Perez includes more specific details regarding Bruno's comments about Leedham. First, he discusses the staff meeting in February or March 2000, where he says that Ron Herrera reported on a discussion with Hoffa during a recent trip to Seattle. Perez claims that during the discussion, Bruno started talking about how everyone at the local had to support Hoffa because Hoffa would help the local with the local's problems. Perez further claims that Ulloa, business

agent Dan Kane and he all separately said that they supported Leedham and that Bruno should respect that, to which Bruno allegedly responded, "I hope you are part of the team, because if you are not part of the team, I can fire you."

In our investigator's conversation with Perez, he confirmed this affidavit testimony. Neither Ron Herrera nor Dan Kane, however, support Perez's allegation. Herrera stated that he had never been to a Teamsters conference in Seattle and in fact has never spoken to Hoffa. He further denied that the conversation ever took place or that Bruno ever made such an allegation at that staff meeting or any other staff meeting. Kane likewise denied that the conversation ever took place. Kane stated that he had just been hired by the local at that time and did not in fact support Hoffa or Leedham. We credit their consistent testimony over the shifting testimony of Perez.

Perez also claims that Bruno offered to rehire him and to have him run on Bruno's slate, but only if he supported Hoffa. Perez identified no corroborating witnesses. Bruno denies this. He says that he told Perez when he left the local that he could come back to work if he went to school and his English improved. He also says that he later told Perez he could run on Bruno's slate, but he never tied coming back to work or running on the slate with supporting Hoffa. Bruno said he asked Perez to run because he was seeking a wide range of people on his slate. He said Perez never responded.

Perez claims that in December 2000, following another meeting of the local's executive board, he tried to talk to Bruno about the offer. He claims Bruno refused and yelled out, "Hey, listen everybody to what I am going to say. Ernesto, you are never going to work for the local, because you are on another slate and on the other side of the fence and are creating problems for the local." In our investigator's interview of Perez, he stated that Herrera, Kane and Smith heard these comments. Each, however, denies that Bruno said this.³

Finally, Perez claims that he had a phone conversation with Ron Herrera to ask Herrera if he would run on Perez's slate. Perez claims that Herrera said, "You know I can't run on your slate because Danny will fire me." Herrera expressly denies ever telling Perez that he could not run on his slate because Bruno would fire him. Rather, he states that Perez asked him if he would run on his slate but that Herrera politely begged off by saying he did not think he could do that, giving no reason for his refusal.

We do not credit Perez's claims regarding the foregoing because other witnesses consistently denied those claims.

Goldberg's Affidavit. Attorney Goldberg submitted his own affidavit summarizing a telephone conversation he had with a Local 396 member that we do not name here. Goldberg claims that this member has information damaging to Bruno and supportive of Ulloa, but did not reveal it because he did not want to get involved. Goldberg quotes the member as saying, "Everybody knows it's political," but he refused to elaborate. Goldberg concludes that the

³ This claim forms the basis for Perez's instant protest.

member's answers (and refusal to elaborate) demonstrate fear of political retaliation. Our investigator called this member several times, but he failed to return any calls. We cannot, accordingly, give any weight to the matters stated in Goldberg's affidavit.

Analysis

The *Rules*, at Article VII, Section 11(f), prohibit "retaliation or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or other person or entity against a Union member, officer or employee" when directed toward the exercise of any election-related right. See *Parisi*, P1095 (December 2, 1991). A protest claiming retaliation cannot be sustained unless a threat or an actual act of retaliation is established. *Giacumbo*, P100 (October 13, 1995), *aff'd*, 95 EAM 27 (October 25, 1995).

To demonstrate retaliation, a protester must show that conduct protected by the *Rules* was a motivating factor in the decision or the conduct in dispute. The Election Administrator will not find retaliation if he concludes that the union officer or entity would have taken the same action even in the absence of the protected conduct. See *Gilmartin*, P32 (January 5, 1996), *Leal*, P51 (October 3, 1995), *aff'd*, 95 EAM 30 (October 30, 1995); *Wsol*, P95 (September 20, 1995), *aff'd*, 95 EAM 17 (October 10, 1995). *Cf.*, *Wright Line*, 251 NLRB 1083 (1980), *enf'd*, 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982).

Here, Bruno articulated specific and non-isolated work-related problems with Ulloa's performance that were corroborated by witnesses other than Bruno. Further, the record as a whole inadequately supports Ulloa's claims of retaliation, although there is some support for Ulloa's claims from his own testimony and that of Perez and, to a limited degree, Smith.

However, we have not credited much of this supporting evidence, and have found the reasons offered for Ulloa's termination to be substantial and credible. Ulloa has failed to demonstrate that his termination was impermissibly motivated. He also has not shown that Bruno would not have terminated him even in the absence of his support for candidate Leedham. We therefore conclude that Ulloa's protest must be DENIED.

We also DENY the Perez protest. We do so because, as stated above, we do not credit Perez's claim that at the local union's December executive board meeting Bruno told Perez in the presence of others that he would never work for Local 396 again because of his support for Leedham.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Administrator in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

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Kenneth Conboy
Election Appeals Master
Latham & Watkins
Suite 1000
885 Third Avenue
New York, New York 10022
Fax: 212-751-4864

Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15th Street NW, Tenth Floor, Washington, DC 20005, all within the time period prescribed above. A copy of the protest must accompany the request for hearing.

William A. Wertheimer, Jr.

William A. Wertheimer, Jr.
Election Administrator

cc: Kenneth Conboy
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