

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

**IN RE: YANKO FUENTES,** ) Protest Decision 2006 ESD 199  
 ) Issued: April 21, 2006  
**Protestor.** ) OES Case No. P-06-121-020306-NE  
 \_\_\_\_\_ )

Yanko Fuentes, a member of Local Union 805 and candidate for delegate on the Strength and Integrity Slate, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“Rules”). The protest alleged that Sandy Pope, president of Local Union 805 and candidate for delegate on the Tom Leedham slate, retaliated against him for his exercise of his political rights, in violation of the *Rules*.

Election Supervisor representative David F. Reilly investigated this protest.

**Findings of Fact**

At the nominations meeting held January 29, Fuentes and Pope were nominated for delegate. Fuentes joined the Strength and Integrity slate; Pope, the competing Tom Leedham slate.

On February 2, Pope visited the Harold Levinson Company, where Fuentes works and serves as elected shop steward. Pope announced the local union’s creation of a new shop steward position at Levinson to represent those members employed as helpers. She stated that an election to fill the position would be held, and she scheduled a return visit to conduct nominations and election of the new steward.

Local Union 805 has 313 members employed at Levinson in the following five categories:

Drivers	70
Warehousemen	118
Helpers	56
Sales	44
Office staff	25

Fuentes has served as shop steward to the warehousemen and helpers for some 10 years.

Levinson is one of the largest employers under the local union’s jurisdiction. Most employers of Local Union 805 members have fewer than 50 members and are serviced by one shop steward. Employers that employ more than 50 members have stewards as follows:

<b>Employer</b>	<b>Departments/Members</b>	<b># of Stewards</b>
Panasonic Corporation	Office – 60	1
	Mailroom/warehouse – 15	1
White Rose Frozen Foods	Warehouse (a.m.) – 18	1
	Warehouse (p.m.) – 65	1
	Drivers – 20	1

Fordham University, Bronx Campus	Grounds people – 15 Trades people – 25 Custodians (a.m.) – 60 Custodians (p.m.) – 40	1 1 1 1
Fordham University, Manhattan Campus	Trades people – 15 Custodians (a.m.) – 20 Custodians (p.m.) – 18	1 1 1
Sodexo Food Service (Fordham, Bronx)	80 employees	1 steward 2 asst. stewards
Sodexo Food Service (Fordham, Manhattan)	35 employees	1
American Warehousing	A.M. shift – 50 P.M. shift – 25	1 1

The protest contends that the creating a shop steward position to serve helpers had the purpose to diminish Fuentes' authority as steward and that the decision was made to retaliate against him for his delegate candidacy.

Fuentes contends that the decision to create the new steward's position was made without prior notice and came immediately after and in response to his nomination for delegate. Further, he states that the new position is not needed, and that 50 of the 56 members employed as helpers agree.

In response, Pope states that the plan to create a new steward's position at Levinson had been discussed well prior to the delegate and alternate delegate nominations meeting and that Fuentes had been told of the decision prior to January 2006. Pope stated that the first request for a helpers' steward was made 6 years ago; more recently, she stated that the local union raised the issue with management during contract negotiations in November 2005. Pope contends that Fuentes was aware of the decision to create the position in December 2005, if not earlier. Thus, in advance of Fuentes' reelection to his shop steward's position on December 14, 2005, he wrote in block letters on the notice of election, "WHAREHOUSE (sic) ONLY – NO HELPERS," demonstrating that he knew helpers would soon be represented by their own shop steward.

Pope stated that the local union plans to create another steward's position in the near future to represent members employed in the office staff of Levinson. She denies that the addition of elected steward positions is retaliatory, stating instead that it is simply good union governance.

### Analysis

The *Rules* protect the right of eligible IBT members to run for delegate. As the Election Officer has stated:

Since the *Rules* protect campaign activity as a personal right of members, the exercise of that right cannot be interfered with by labor organizations or employers, including the IBT as an employer.

April 21, 2006

*Hoffa*, P812 (August 16, 1996). Therefore, the IBT and all IBT subordinate bodies, including Local Union 805, are “prohibited from using the electoral preferences or activities of its employees as factors in any employment-related decision.” *Pope*, 2000 EAD 39 (October 17, 2000), *aff’d*, 00 EAM 11. Article VII, Section 12(g) of the *Rules* states this protection: “Retaliation or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or any other person or entity against a Union member, officer or employee for exercising any right guaranteed by this or any other Article of the *Rules* is prohibited.”

To prevail on a claim of retaliation, “the evidence must demonstrate that 1) the alleged victim engaged in activity protected by the Rules, 2) the charged party took adverse action against the alleged victim, and 3) the protected activity was a motivating factor in the adverse action.” *Cooper*, 2005 ESD 8 (September 2, 2005). The Election Supervisor 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 protestor’s protected conduct. *Gilmartin*, P32 (January 5, 1996), *aff’d*, 95 EAM 75. See *Leal*, P51 (October 3, 1995), *aff’d*, 95 EAM 30; *Wsol*, P95 (September 20, 1995), *aff’d*, 95 EAM 17.

Here, Fuentes satisfies the first two elements of his retaliation claim. Thus, he engaged in activity protected by the *Rules* by accepting nomination as delegate. Second, as we have previously held, the transfer of membership from one representative to another can satisfy the “adverse action” element of a retaliation claim. *Bundrant*, 2005 ESD 19 (October 25, 2005), *aff’d*, 05 EAM 4 (November 15, 2005).

However, we find no evidence to support the critical third element of the retaliation claim, that the local union generally or Pope in particular created the helpers’ steward position *because of* Fuentes’ protected activity. Accordingly, we DENY the protest.

While the *Rules* prohibit retaliation for protected activity, we will not presume that a retaliatory motive underlies each decision made by the leadership of a local union during an election season. Decisions with respect to union governance need not be deferred because of a pending election. Accordingly, while Fuentes contends that the timing of the decision to create the steward’s position is dispositive of his claim of retaliation, we view it merely as one relevant factor to consider in evaluating whether the local union has violated the *Rules*.

Other facts substantially undercut the argument that the decision to create a new steward’s position was motivated by Fuentes’ candidacy. Thus, the number of members Fuentes represented before the new position was created – 174 – was significantly greater than the members to steward ratios at other employers under the local union’s jurisdiction, and the local union had discussed a remedy for this disparity for some time, most recently during contract negotiations in November 2005. Further, although Fuentes contends that the establishment of a new steward’s position came without prior notice, the December 14, 2005 notice of election for Fuentes’ position as steward was designated as one for warehouse members only, demonstrating that helpers would have their own steward shortly. Fuentes’ reelection as steward by Levinson’s warehouse employees occurred some 6 weeks before the nominations meeting in the delegate and alternate delegate election and 7 weeks prior to Pope’s announcement that an additional steward’s position was to be created. Such advance notice of the creation of the new position, even if not widely publicized, contradicts Fuentes’ claims that he had no notice of the decision and that the creation of the position was in response to his nomination for delegate.

*Fuentes*, 2006 ESD 199  
April 21, 2006

Accordingly we DENY this protest.

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

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

Copies of the request for hearing must be served upon the parties, as well as upon the Election Supervisor for the International Brotherhood of Teamsters, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20007-5135, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark  
Election Supervisor

cc: Kenneth Conboy  
2006 ESD 199

*Fuentes*, 2006 ESD 199  
April 21, 2006

**DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):**

Bradley T. Raymond, General Counsel  
International Brotherhood of Teamsters  
25 Louisiana Avenue, NW  
Washington, DC 20001-2198  
[braymond@teamster.org](mailto:braymond@teamster.org)

Sarah Riger, Staff Attorney  
International Brotherhood of Teamsters  
25 Louisiana Avenue, NW  
Washington, DC 20001-2198  
[sriger@teamster.org](mailto:sriger@teamster.org)

David J. Hoffa, Esq.  
Hoffa 2006  
30300 Northwestern Highway, Suite 324  
Farmington Hills, MI 48834  
[David@hoffapllc.com](mailto:David@hoffapllc.com)

Barbara Harvey  
645 Griswold Street  
Suite 3060  
Detroit, MI 48226  
[blmharvey@sbcglobal.net](mailto:blmharvey@sbcglobal.net)

Ken Paff  
Teamsters for a Democratic Union  
P.O. Box 10128  
Detroit, MI 48210  
[ken@tdu.org](mailto:ken@tdu.org)

Daniel Clifton  
Lewis, Clifton & Nikolaidis, P.C.  
275 Seventh Avenue, #2300  
New York, NY 10001  
[dclifton@lcnlaw.com](mailto:dclifton@lcnlaw.com)

Stephen Ostrach  
1863 Pioneer Parkway East, #217  
Springfield, OR 97477-3907  
[saostrach@gmail.com](mailto:saostrach@gmail.com)

Yanko Fuentes  
233 Walker Street  
West Babylon, NY 11704

Alexandra Pope, President  
IBT Local Union 805  
44-61 11<sup>th</sup> Street, 3<sup>rd</sup> floor  
Long Island City, NY 11101

David F. Reilly  
22 West Main Street  
P.O. Box 457  
North Kingston, RI 02852  
[dreilly@rootld.com](mailto:dreilly@rootld.com)

Jeffrey Ellison  
510 Highland Avenue, #325  
Milford, MI 48381  
[EllisonEsq@aol.com](mailto:EllisonEsq@aol.com)