

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

<b>IN RE: MARK KLEINERMAN,</b>	)	Protest Decision 2006 ESD 208
	)	Issued: May 2, 2006
<b>Protestor.</b>	)	OES Case No. P-06-253-040506-AT
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Mark Kleinerman, a member of Local Union 97 and candidate for delegate, filed a post-election protest pursuant to the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“Rules”). He asserted that the members of the Gerow/Perez Slate in Support of Hoffa/Keegel 2006 improperly collected ballots.

Election Supervisor representative J. Griffin Morgan investigated this protest.

**Findings of Fact and Analysis**

At the tally of ballots in Local Union 97’s delegate election held April 3, 2006, protestor Kleinerman informed OES Regional Director J. Griffin Morgan that he might wish to challenge ballots based on a phone call he received that morning alleging that ballots had been collected from voters by members or supporters of the slate opposing Kleinerman’s Team with Integrity slate. When Kleinerman made that statement to Morgan, Kleinerman said he had no specific information as to which ballots allegedly had been collected. Kleinerman told Morgan he was waiting for a phone call from a witness with information as to which ballots had been collected. Morgan told Kleinerman that if Kleinerman supplied information identifying ballots allegedly collected, those ballots would be challenged and not counted until the investigation into ballot collection was complete.

Kleinerman did not supply any specific information before ballots were removed from the ballot return envelopes; therefore, no ballots were challenged.

On April 5, two days after the ballot count, Kleinerman’s slate filed a post-election protest alleging that Maria Perez, the local union’s acting secretary-treasurer, Tony Silva, a business agent, and possibly a third unknown person, collected ballots from members at Silverline’s New Brunswick plant. The protest did not identify any witness to the ballot collection or the members from whom ballots allegedly were collected or state when the ballot collection occurred. During the investigation, Louie Nikolaidis, the attorney who filed the protest for the slate, identified 2 witnesses, protestor Kleinerman and Jose Reyes.

Kleinerman told Morgan that he had no independent knowledge of ballot collection. He learned of the ballot collection allegation from Jose Reyes and reported it to attorney Nikolaidis.

Jose Reyes was interviewed twice on April 10, 2006. During the first interview, Reyes explained that he had been a member of Local Union 97 until he was terminated from his job 2½ years ago. While a member of Local Union 97, he supported Kleinerman’s slate in local officer elections. In the course of that work, Reyes developed a list with phone numbers of approximately 50 Spanish-speaking members. Kleinerman contacted Reyes during the delegate election and asked him to call those members and request their support.

Reyes stated that about 20 of the phone numbers he called were disconnected. He spoke with about 15 to 20 members. Reyes stated he made the phone calls roughly 3 weeks to 1 month

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before the date our investigator interviewed him, which would have been between March 10 and March 20, 2006. Ballots were mailed on March 10.

Reyes stated that 3 people told him they gave their ballots either to a shop steward or to Maria Perez. In addition to her position as acting secretary-treasurer of the local union, Perez was a delegate candidate. When our investigator first spoke with him, Reyes did not have his call list in front of him and was unable to identify the 3 individuals who allegedly surrendered their ballots. Reyes stated that 2 of the individuals were husband and wife and that he had spoken with the husband.

Shortly after the first April 10 interview with our investigator ended, Reyes called back and identified the husband he had spoken with as Angelica Garcia and the wife he had spoken with as Patricia Garcia. Reyes identified these two individuals after reviewing his call list. He stated he had made a mark on his list by the names of Angelica and Patricia Garcia to indicate that they had reported they had surrendered their ballots to a collector. Reyes provided our investigator with the phone number for Angelica and Patricia Garcia. Regarding the third person previously reported as having surrendered a ballot to a collector Reyes could not find a third mark on his call list and so could not identify the third individual.

When our investigator telephoned Angelica and Patricia Garcia, he learned that Angelica was a woman and not Patricia's husband. Angelica did not speak English well and her husband translated for her. Angelica stated that she had mailed her ballot and had not given it to anyone, including a steward or Maria Perez. Angelica and her husband reported that Patricia had not worked at Silverline for approximately one year.

A review of the Election Control Roster showed that Angelica Garcia had voted and that no ballot was received from Patricia Garcia. The third individual mentioned by Reyes was never identified.

The New Brunswick Silverline facility maintains a security check point and requires that visitors, including union officials, sign in. Bob Perez (no relation to Maria Perez) is the HR director for Silverline. Mr. Perez stated that Local Union 97 officials are required to report to the HR department before going elsewhere in the plant. Mr. Perez stated that Tony Silva had not been a business agent for Silverline employees for the past year and that he had not seen Silva at the plant since contract negotiations were completed in February 2005. Mr. Perez provided a copy of the visitors' sign-in log for March 2006.

The sign-in log showed that Tony Silva had not signed in at the plant during March 2006. Between the time the ballots were mailed on March 10 and counted on April 3, Maria Perez had been at the plant twice, both on March 20. The first time, she and Local Union 97 president John Gerow signed in at 11:55 a.m. No sign-out time was recorded on the log. Ms. Perez reports she was at the plant for about one hour and that she was introducing members in the plant cafeteria to Gerow. Ms. Perez returned to Silverline with business agent Glenda Reyes at 6:25 p.m. that same day and signed out at 9:25 p.m.

Ms. Perez denied collecting ballots and signed an affidavit that she did not engage in ballot collection. She confirmed that Silva had not worked as a business agent for Silverline employees

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for the last year. Silva signed an affidavit that he did not engage in ballot collection and that he had not been to Silverline in the past year.

Article IV, Section 12 of the *Rules* states the following, in relevant part:

No person or entity shall limit or interfere with the right of any IBT member to vote, including, but not necessarily limited to, the right independently to determine how to cast his/her vote, the right to mark his/her vote in secret and the right to mail the ballot himself/herself. No person or entity may encourage or require an IBT member to mark his/her ballot in the presence of another person or to give his/her ballot to any person or entity for marking or mailing.

Any violation of this rule may result in disqualification of a candidate who benefits from the violation, referral of the matter to the Government for appropriate action under law (including the Consent Order), or such other remedy as the Election Supervisor deems appropriate.

There is no evidence to support the allegation of ballot collection. Reyes asserted the 3 members reported ballot collection to him, but he was able to provide names of only 2 members and never identified a third person. Regarding the 2 identified members, Reyes said they told him that they gave their ballots either to a steward or to Maria Perez, but that report could not be supported. One of the members interviewed denied surrendering her ballot or telling Reyes she had done so, and the other did not vote. No further evidence was provided to support the protest's allegation, and Maria Perez and Tony Silva vigorously deny the charge.

Lacking evidence to substantiate the allegation, we DENY the 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  
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*Kleinerman*, 2006 ESD 208  
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