

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

<b>IN RE: LUPE JUAREZ and,</b>	)	Protest Decision 2010 ESD 17
<b>SAM MARTINEZ,</b>	)	Issued: August 4, 2010
	)	OES Case Nos. P-017-072810-FW
<b>Protestors.</b>	)	& P-018-072810-FW
<hr/>		)

Lupe Juarez, member and delegate candidate from Local Union 948, timely filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). The protest contested the eligibility of Adam Ochoa, Mark Perez, Sylvia Lovato, and Bernardo Reyna to run for delegate and alternate delegate, asserting that “their signatures on the Declaration of Affiliation with a Slate are in violation of the rules.”

Sam Martinez, member and delegate candidate from Local Union 948, timely filed a pre-election protest asserting that the denial of slate status for The Members Slate, Working for You should be reversed.

These protests were consolidated for investigation and decision. Election Supervisor representative Jeffrey Ellison investigated these protests.

**Findings of Fact**

The principal office of Local Union 948 is in Modesto, California. The local union maintains additional offices in Kingsburg and Visalia, some 115 and 140 miles distant, respectively.

The local union held morning and afternoon nominations meetings for the delegates and alternate delegates election on July 22, 2010 in both Modesto and Kingsburg. For the 7 delegate positions, 22 persons were nominated; one subsequently withdrew his candidacy. For the 7 alternate delegate positions, 14 persons were nominated.

Three slate declarations were filed. The Juarez/Alfaro Members 1<sup>st</sup> slate, comprised of 7 candidates each for delegate and alternate delegate, and the Tony Dillion slate, consisting of 6 candidates for delegate and none for alternate delegate, are not at issue in this decision. The protests here concern the slate declaration filed by The Members Slate, Working for You.

This slate declaration consists of 2 pages, both of which are on Election Supervisor Form 10. Each page identifies the slate as The Members Slate, Working for You and states that the slate is comprised of 12 candidates. The first page of the slate declaration lists all 12 names in numbered spaces 1 through 12. Signatures for 8 of the names appear in the corresponding spaces adjacent to the names. No signatures appear on the corresponding signature lines for the following 4 candidates on the first page of the slate declaration form: Adam Ochoa, delegate, line 5; Mark Perez, delegate, line 6; Sylvia Lovato, alternate delegate, line 8; and Bernard Reyna,

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alternate delegate, line 12. For clarity, we insert here the candidate section of the first page of the slate declaration:

NAME OF CANDIDATE (Print or Type)	POSITION SOUGHT	LOCAL UNION (Include CODE, DISTRICT, or BARRETERO BRAND)	SIGNATURE
1. SAM MARTINEZ	DELEGATE	948	Sam Martinez
2. FRANK NICKSON	Delegate	948	Frank Nickson
3. LUIS DIAZ	DELEGATE	948	Luis Diaz
4. MARY HOLLER	DELEGATE	948	Mary Holler
5. ADAM OCHOA			Adam Ochoa
6. MARK PEREZ			Mark Perez
7. ANTONIO PEREZ	Delegate	948	Antonio Perez
8. SYLVIA LOVATO			Sylvia Lovato
9. VANITA ROSAS	alternate	948	Vanita Rosas
10. PHIL GILSTAD	ALTERNATE	948	Phil Gilstad
11. BRETT HARVEY	ALT. DELEGATE	948	Brett Harvey
12. BERNARD REYNA	ALT. DELEGATE	948	Bernard Reyna
13.			

The second page of the slate declaration has the names and signatures of Ochoa, Perez, Lovato, and Reyna, the candidates whose signatures do not appear on the first page of the declaration. However, unlike the first page of the declaration, the second page does not repeat all 12 names of the slate members but instead lists only the 4 names whose signatures do not appear on the first page. These 4 names are printed in the numbered lines on the second page of the slate declaration that correspond to the lines where their names are listed on the first page. Again for clarity, we insert here the candidate section of the second page of the slate declaration:

1.			
2.			
3.			
4.			
5.	ADAM OCHOA	DELEGATE	948
6.	MARK PEREZ	DELEGATE	948
7.			
8.	SYLVIA LOVATO	ALTERNATE	948
9.			
10.			
11.			
12.	BERNARD REYNA	ALTERNATE	948
13.			
14.			

Investigation showed that Sam Martinez, Sylvia Lovato and other candidates met to discuss running together as a slate on July 20, following the monthly Local Union 948 meeting and 2 days before the nominations meetings. Martinez gave Lovato several copies of a list of the names of the potential slate members and the positions for which they would be nominated and asked her to deliver them to Ochoa, Perez and Reyna, all of whom live much closer to the Visalia office than to Modesto. The list of names Martinez prepared was in the same order and identified the same positions sought as appeared on the first page of the slate declaration form set forth above. Lovato delivered the list as requested, telling the others that it was the slate that was being formed for the delegate and alternate delegate election. Ochoa, Perez and Reyna each confirmed to our investigator that they received the list from Lovato several days before they signed the slate declaration.

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Ochoa, Perez, Lovato and Reyna thereafter each received phone calls to go to the Visalia office of the local union on July 26 to sign the slate declaration. Each did so and signed as demonstrated above. All told our investigator that they understood the slate they were joining was the list of candidates prepared by Martinez that they had received several days before they signed the slate declaration. All said that it was not their intention to form a slate comprised merely of the 4 names listed on the declaration they signed. The remaining 8 candidates signed the first page of the slate declaration in Modesto. Sam Martinez, lead candidate on the slate, timely submitted both pages of the slate declaration to seek slate status for The Members Slate, Working for You.

A slate lottery was conducted on July 26 to determine the order of ballot placement for the slates competing in the election. The Juarez/Alfaro Members 1<sup>st</sup> slate won first position, The Members Slate, Working for You second, and the Tony Dillion slate third. Thereafter, a provisional determination was made that the candidates listed on The Members Slate, Working for You slate declarations had not formed a slate under Article VIII of the *Rules*. Martinez appealed.

Simultaneously, protestor Juarez, lead candidate on the Juarez/Alfaro Members 1<sup>st</sup> slate, challenged the candidates listed on the second page of The Members Slate, Working for You slate declaration. Although Juarez's protest stated that he was challenging the "eligibility" of Ochoa, Perez, Lovato and Reyna to run as candidates in the election, the thrust of the protest challenged the slate declaration. Thus:

These members are in clear violation of these rules and could not possibly have formed a slate with all candidates listed, since their names are listed and signed on complete separate Declaration forms. Mutual consent is not evidenced as stated in the second paragraph of the Instructions and Explanation of Election Supervisor Form 10.

Kathy Garcia, employed in the Modesto office of the local union, reported to our investigator that she told Martinez that he needed to list all the slate members on the declaration signed by the Visalia candidates. Martinez did not recall receiving such advice.

### **Analysis**

Article II, Section 9 of the *Rules* provides that candidates for delegate and alternate are permitted to seek nomination, be nominated, campaign and appear on the ballot as members of a slate of candidates, whether that slate is full or partial. "Slate" is defined in Definition 40 of the *Rules* as any grouping by mutual consent of two or more candidates.

Article VIII of the *Rules* governs formation of slates. Section 1(b) of that article provides that "[t]o form a slate, there shall be mutual consent between and among all candidates running on the slate. Such mutual consent shall be evidenced by the signing of a declaration by all members of the slate, giving the position that each candidate seeks and the name, if any, of the slate to be formed. Slate declaration forms for delegate and alternate delegate nominations and elections are to be submitted to the local union's secretary-treasurer (with a copy to the Election Supervisor) ..."

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The published Slate Declaration form (Election Supervisor Form 10) provides the following instructions:

IMPORTANT: All names and signatures of candidates forming a slate must be obtained on a single form. The name of all of the members of the slate must be entered *before* any signatures are entered. In addition, the exact count of candidates must be filled in below before any signatures are executed. To expand a slate, a complete new Slate Declaration form must be executed by each member of the slate."

The body of the form reads:

I, the undersigned, hereby affiliate with the slate of candidates listed below. I declare that I am a candidate for the position listed next to my name. I further declare that I have agreed to form a slate with all candidates listed, and that they have agreed to form a slate with me. I have confirmed that the figure filled in under "Number of Candidates on Slate (Required)" above conforms with the number of candidates who are members of my slate and whose names appear below. I declare that I am a member in good standing of my Local Union and that I am not a member of another slate."

The instructions that appear on the Slate Declaration form are not reflected in the language of the *Rules* themselves.

First, we reject the claim of protestor Juarez that all signatures must appear on the same document. To the contrary, our precedents establish that slate members may overcome the difficulties posed by the geographic separation of their workplaces by obtaining signatures on counterpart originals using facsimile transmissions. To hold otherwise would be to unduly restrain the right of candidates to form slates within the tight time constraints imposed for submission of slate declarations. *Mohawk-Davis*, 2001 EAD 117 (January 30, 2001). The Election Administrator emphasized this point in *Busalacchi*, 2001 EAD 271 (March 27, 2001), noting the following:

[W]e have permitted slates to be formed using multiple slate declaration forms as long as each declaration form lists the same candidates in the same order. By requiring each form to contain the names and order of all slate members, each prospective slate member can see who else will be on the slate before deciding to join. As a result, the combination of declaration forms evidences the same mutual consent ordinarily demonstrated by one form.

We elaborated on the principle in *Ostrach*, 2005 ESD 41 (December 27, 2005), explaining:

[A] slate of twenty candidates could satisfy the "mutual consent" requirement by submitting twenty slate declaration forms each containing a single signature, provided all twenty forms listed the same candidates in the same order and each candidate signed at least one of the forms.

Accordingly, the use by one slate of multiple slate declarations does not, by itself, invalidate slate formation.

The second contention protestor Juarez advances is that the forms in question do not evidence mutual consent to form a slate. In support of Juarez's argument, the *Rules* indeed state a strong preference for use of a properly completed slate declaration form as the only evidence necessary to establish mutual consent. A member signing a form that lists all members of the slate declares his/her consent to run as a slate with the other listed members. When fully signed, the form (or if signed in counterpart originals, the forms) establishes that each slate member knows who, exactly, comprises the slate and that each has consented to run as a slate with every other person listed. Such a declaration evinces the establishment of mutual consent. No other evidence of mutual consent is required.

Slates have been accepted in the past where one or more slate members do not follow the procedure of signing the slate declaration personally. Thus, where a slate member was unavailable to sign the slate declaration form, we have permitted another slate member to sign on behalf of the absent one, provided that the absent member knew the complete membership of the of the slate and authorized the other slate member to sign. *See, e.g., McNeely*, 2001 EAD 254 (March 22, 2001), *aff'd*, 01 EAM 55 (April 10, 2001) (slate declaration was accepted where absent member knew who else was on the slate and authorized that her signature be added to the slate form); and *Gale*, 2006 ESD 125 (March 3, 2006), *aff'd*, 06 EAM 21 (March 10, 2006) (absent member gave authorization to slate representative "to sign 'anything' needed in order to make the slate declaration form submission deadline;" investigation showed that the absent member knew who the other slate members were); but *cf. Shanahan*, P397 (February 6, 1996) (slate held not to be valid where the signature of a purported member was signed without his authorization and where he did not consent to be a member of the slate). Resolution of these cases required evidence that the persons who did not personally sign a slate declaration listing all the names of the slate nonetheless consented to join a slate comprised of those persons.

In the instant case, the page that Ochoa, Perez, Lovato and Reyna signed did not list the 12 members of the slate. Nonetheless, we find sufficient evidence of the requisite mutual consent to form The Members Slate, Working for You slate comprised of 12 candidates. We credit the uncontradicted testimony of slate members Ochoa, Perez, Lovato and Reyna that each had a written list of the full slate before signing the slate declaration, and each signed the declaration to evidence their consent to join the slate comprised of all 12 members. We also note that the declaration these 4 candidates signed was headed with the name of the slate and listed the number of candidates on the slate as "12" although only 4 names were on the page these candidates sign. We take this as indication that the 4 understood they were not forming a slate solely among themselves but were in fact joining a larger slate. We also note that the names listed on the second page of the declaration were not placed on lines 1 through 4 but instead were printed on lines 5, 6, 8, and 12, which we find was another indication to the 4 signers of that form that a second form listing the remaining candidates existed. Finally, we note that the list of names each of the 4 signers received a few days before signing the slate declaration listed the same names in the same order as appear on the first page of the slate declaration, and each signer's name appears in the same position on those lists as it does on the declaration actually signed. Finally, we observe that no person listed on The Members Slate, Working for You has filed a protest challenging the formation of the slate.

Martinez, the lead candidate on the slate, could have rendered this investigation unnecessary simply by listing all 12 slate members on the declaration signed by the Visalia candidates, as Kathy Garcia asserts she told him to do. That he did not caused delay as well as

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expenditure of Election Office resources to investigate what those candidates knew and intended when they signed the declaration.

The purpose of the slate declaration form is to ensure that there is indeed “mutual consent between and among all candidates running on a slate” to their doing so. Where the form alone does not establish this fact but other evidence does, we will evaluate all the circumstances. On the facts presented here, we find sufficient evidence of mutual consent to form a slate. Had we not been able to complete the investigation promptly, slate formation would have failed solely because of the members’ carelessness in completing the form.

We emphasize that the facts of this matter appear unique in the history of the Election Office: research has not found any case in which a slate was formed using declaration pages that listed less than all the members of the slate. This decision is not an endorsement of that practice, or an invitation to submit slate declarations that require this type of further investigation to establish the predicate for mutual consent that should be evident from the form alone.

Accordingly, we DENY the Juarez protest and GRANT the Martinez protest. We find that The Members Slate, Working for You, comprised of 7 delegate candidates and 5 alternate delegate candidates, has been formed and will be permitted to appear on the ballot as a slate, in the place it won as the result of the slate lottery held July 26, 2010.

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, NY 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, 1801 K Street, N.W., Suite 421 L, Washington, D.C. 20006, 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  
*2010 ESD 17*

*Juarez & Martinez*, 2010 ESD 17  
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