

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

<b>IN RE: LOCAL UNION 710,</b>	)	Protest Decision 2016 ESD 203
	)	Issued: May 6, 2016
<b>Protestor.</b>	)	OES Case No. P-199-030216-MW
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Local Union 710 filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that Gary Friego violated the *Rules* by threatening violence against Bernie Sherlock.

Election Supervisor representative Joe Childers investigated this protest.

**Findings of Fact and Analysis**

Local Union 710 is entitled to elect twenty delegates and eighteen alternate delegates. The protest alleged that Gary Friego, a delegate candidate on the Rebuild 710 Delegate Team slate threatened violence against Bernie Sherlock, a candidate for delegate on the 710 Members First slate. Friego is a steward employed at Jewel Foods, and Sherlock is a business agent employed by the local union. The threat was alleged to have been uttered on March 1, 2016 to Rupa Baskaran, an attorney employed by the local union who had some responsibility for mail ballot administration during the delegate election process.

Baskaran told our investigator that for approximately two weeks prior to March 1, 2016, Friego had accompanied her to the post office to retrieve ballot packages returned as undeliverable. On March 1, Friego as usual accompanied Baskaran to the downtown Chicago post office at approximately 10:00 a.m. During the visit to the post office, Friego expressed frustration to Baskaran about a contract that had recently been negotiated at his employer, Jewel Foods. According to Baskaran, Friego was visibly upset, appeared angry and stressed, and raised his voice while talking about the issue. He particularly was upset because he had been trying to get information from the local about the recently negotiated contract but had not received timely return calls. According to Baskaran, Friego seemed particularly frustrated with business agent Bernie Sherlock, who had been involved in the negotiations over the Jewel Food contract. Baskaran said Friego made a negative comment about Sherlock and mused, “This is the guy that wants to run the local, can you imagine?” According to Baskaran, Friego then said, “The next time I see Bernie I’m going to punch him in the face.” Baskaran replied, “Wow, I’ll tell Bernie to call you.”

Friego told our investigator he did not recall making the comment to Baskaran about punching Sherlock in the face. Friego acknowledged that he had fully supported the negotiated contract with Jewel Foods and had sat next to Sherlock during the long negotiations. He also acknowledged that the drivers at Jewel Foods are “up in arms” about the contract and that he has been angrily confronted, yelled at, and actually spat upon by one driver. Friego said that the former business agent assigned to Jewel Foods had been removed by the trustee and that there had been no business agent assigned to Jewel for two months. When he tried to get someone from the local union to provide details of the contract that he could share with the drivers, no one would call him back and, by the time he saw Baskaran on March 1, he was frustrated and angry. Friego has been a union member for 35 years and a steward for 6 years. He said he had never had any accusations of violence or threats of violence placed

May 6, 2016

against him during his long tenure and said he was taking the charge very seriously. He said he always tries to act professionally.

Sherlock told our investigator that he had never had a problem with Friego, and that they sat side-by-side during the recent Jewel Foods negotiations. Sherlock was aware that Friego had received heat from the drivers at Jewel Foods over the contract. He told our investigator that Baskaran had reported to him Friego's statement that he was going to punch Sherlock in the face, but Sherlock dismissed it. He said there had never been any bad blood between the two. Indeed, Sherlock told our investigator that he had seen Friego the same day our investigator interviewed him, and they had shaken hands. Neither brought up the alleged comment or the protest that resulted. When asked if he would feel uncomfortable at the ballot count if Friego were present, Sherlock replied, "not at all."

### **Analysis**

Article VII, Section 12(g) of the *Rules* prohibits "retaliation or threat of retaliation by ... any member of the IBT ... against a Union member ... for exercising any right guaranteed by" the *Rules*.

The threat of violence can constitute retaliation. *Smith*, P600 (April 30, 1996) (finding remark "You'll be taken out of here in a body bag" to violate rules); *Lopez*, P456 (April 10, 1996) (finding "I'll kill you" to violate rules); *Passo*, P469 (February 29, 1996), *aff'd*, 96 EAM 124 (March 13, 1996) (finding intent to provoke physical confrontation to violate rules); *Kelly*, P600 (March 27, 1991) (finding threat to "kick their ass" made in menacing manner to violate rules). To find an improper threat, activity must constitute a palpable threat of imminent harm. *Ramos*, 2006 ESD 65 (February 3, 2006); *Torres*, 2011 ESD 236 (April 27, 2011) (no impermissible threat where no touching or menacing behavior); *Galvan*, 2011 ESD 238 (April 27, 2011) (same); *Gutierrez*, 2011 ESD 239 (April 27, 2011) (same); *Fauth*, 2016 ESD 176 (April 20, 2016), *aff'd*, 16 EAM 19 (May 2, 2016) (threat to put a member "on the concrete" immediately after shoving him forcefully violated the *Rules*).

Accepting without deciding that Friego made the comment that he was going to punch Sherlock in the face, we find no *Rules* violation. The comment if made did not arise from the delegates election or any activity protected by the *Rules*. Instead, the context suggests that the frustration that produced the alleged remark concerned contract negotiations. Accordingly, it did not violate Article VII, Section 12(g).

Moreover, the alleged statement did not constitute "a palpable threat of imminent harm," which the *Rules* prohibit, because it was not made to or in the presence of Sherlock. Sherlock, the purported target of the threat, deemed the issue resolved when he and Friego shook hands two days after the threat allegedly was made.

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:

**Local Union 710**, 2016 ESD 203

May 6, 2016

Kathleen A. Roberts  
Election Appeals Master  
JAMS  
620 Eighth Avenue, 34<sup>th</sup> floor  
New York, NY 10018  
kroberts@jamsadr.com

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, 1050 17<sup>th</sup> Street, N.W., Suite 375, Washington, D.C. 20036, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark  
Election Supervisor

cc: Kathleen A. Roberts  
*2016 ESD 203*

**Local Union 710**, 2016 ESD 203

May 6, 2016

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