

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

<b>IN RE: MEMBERS WITH</b>	)	Protest Decision 2016 ESD 251
<b>MIDDLETON,</b>	)	Issued: June 16, 2016
<b>Protestor.</b>	)	OES Case Nos. P-287-051616-FW
_____	)	

Members With Middleton, a slate of candidates in Local Union 572’s delegates and alternate delegates election, filed a pre-election protest pursuant to Article XIII, Section 2(a) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that a supporter of Teamsters United 572 violated the *Rules* by using a racial epithet while campaigning.

Election Supervisor representative Deborah Schaaf investigated this protest.

**Findings of Fact and Analysis**

The protest alleged that Johnny Marquez, a supporter of Teamsters United 572, used the expression “nigger please,” an utterance the protest alleged was an act of racial intimidation that violated the *Rules*’ proscription on retaliation.

Investigation showed that on the morning of May 20, 2016, Teamsters United 572 supporters (“TU”) Marquez and Tony Reynaga, and delegate candidates Omar Moreno and Carlos Silva went to the bus company TransDev to campaign. All arrived at the parking lot around 5:00 a.m. Reynaga later left for a period of time, and was not present during the alleged violation.

Around 7:00 a.m., Traci Smith and Andrew Wilson arrived at the TransDev parking lot to campaign for the Members With Middleton slate (MWM). Grace Guitron joined them about 15 minutes later. Smith is a local union business agent.

The campaign area was an open space where employees cross from the employee parking lot to the building entrance, the route marked with yellow paint. The TU campaigners were positioned near the door of the facility to reach employees as they entered the building. When the MWM group arrived, they positioned themselves close by but separated from the TU campaigners, farther from the building entrance. By all accounts, there were few TransDev employees going into or out of the building after the MWM group arrived.

Around 8:00 a.m., Benisha Lewis, a TransDev employee Smith knew, approached the door to the facility. TU’s Moreno presented her with TU literature drawn from a labor report that listed the salaries of Local Union 572 officers and agents. Moreno began to speak with Lewis about the literature when MWM’s Smith, the business agent, joined them. According to the TU witnesses, Smith appeared upset and offended by the conversation and disputed the data in the campaign literature. Accounts differ as to the character of Smith’s actions during the encounter,<sup>1</sup> but all agree

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<sup>1</sup> Moreno told our investigator that Smith “ran over and got into [the employee’s] face..., calling us liars.” TU’s Silva said Smith “came racing over [to where the TU campaigners were], yelling “they are stupid, they don’t know anything, I will show you my W2 and tax return.” TU’s Marquez said Smith was aggressive and “constantly jumping between us”, pulling employees away to show them her W2 on her

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Smith interrupted Moreno, pulled her W2 up on her phone, displayed it insistently to the employee, and took issue with the information on the literature and what Moreno was telling her. Moreno in turn defended the labor report. Smith turned around and walked back to the MWRM group, and Moreno talked to the employee for a few more minutes before she went into the building.

The version of events the two factions recounted for our investigator diverge sharply at this point. The MWM version indicated that as Smith walked back to the MWM campaigners, she repeated over and over, “That is not what I make, that is not what I make.” Smith said she was not addressing the TU campaigners with her comments. Nonetheless, she spoke loudly enough that Moreno could hear. He responded, “The web doesn’t lie.” Then, according to MWM’s Smith and Guitron, TU’s Moreno and Marquez started toward the MWM group as Marquez said to Smith, “Nigga, please.” Guitron interrupted, telling Marquez, “There’s no need for name calling.” Then, Marquez said, “You’re a bunch of bitches.” MWM’s Wilson stepped in front of Moreno and Marquez and started to respond. Guitron told Wilson to “let it go” or “just drop it.”

MWM’s Wilson told our investigator that as soon as the MWM group arrived, the TU campaigners were “giving us mean looks, mad dogging us and shit,” and “bad mouthing us to members, totally contradicting everything we’re about.” Wilson claimed that when Smith started back to the MWM position, “Omar [Moreno] started yelling at us, calling us bitches and all that kind of shit,” and Johnny [Marquez] said to Traci [Smith], “nigga please.” Wilson said Smith was “super offended, she was almost in tears.”

At this point, according to MWM witnesses, a TransDev employee opened the door to the facility, chastised the campaigners for their disrespectful and unprofessional conduct, and told them to quit it. The situation was immediately diffused, and each campaigner returned to his or her corner.

MWM’s Smith and Guitron categorically denied saying anything at all to the TU campaigners, and they especially denied saying or doing anything to provoke the alleged racial threats. Wilson said, “All we were doing was telling members the TUs were lying.” Wilson denied any role in the name-calling, and emphasized that “nothing was said on our side” to provoke them at all, other than “calling them liars.”

The version recounted by the TU campaigners was as follows: Silva and Marquez both stated that as Smith walked back to her position after displaying her W-2 form to the TransDev employee, she was saying, “They’re liars, they’re liars.” (For his part, Moreno said he heard Smith muttering, but could not hear what she was saying.) The TU campaigners told our investigator they then heard the MWMs talking and snickering, but they could not hear what they were saying until Wilson got “puffed up” and “rowdy.” Silva reported that Wilson said, “Fuck them! They don’t fucking drive, they don’t know what it’s really like!” Moreno, Silva and Marquez all stated that they “stood our ground” until Wilson said, “You’re acting like punk bitches” (according to one TU campaigner), “You guys are bunch of bitches anyway” (another version), or “Look at them, they look like a bunch of little bitches” (a third version).

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phone.” MWM’s Smith said she walked over to the employee, who chuckled and said she’d already voted, and noted that both sides were passionate about the election. Smith then took out her phone to show Lewis her W2 form, saying, “Does this look like my salary?” The employee looked at Smith’s phone and said, “That’s not what’s on this piece of paper,” whereupon Smith claimed to calmly walk away.

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At this, the TU campaigners state they turned around and engaged Wilson, whose demeanor they said was forceful and threatening. Marquez said to Wilson, “What’d you say, my nigga? There’s no bitches here!” According to Moreno, Wilson “looked like he was going to rush us, but the girls were holding him back;” and Silva told our investigator that Wilson “got so excited that the Hispanic lady [Guitron] was holding him back.” Moreno said he told the MWM campaigners, “We’re here, if you want to take it to the street we can do that, but we’re just doing our thing here.”

Then, according to the TU campaigners, the facility door swung open and the TransDev employee chastised both sides for being unprofessional. This calmed the scene immediately, and campaigning by both sides continued until shortly after noon without further incident.

Article VII, Section 12(g) prohibits retaliation for activity protected by the *Rules*. The content of campaign speech – even if it features racial epithets, vulgarity, or other offensive language – enjoys strong protection, however.

Here, we have two strongly partisan teams of campaigners who disagreed with each other. The expression of this disagreement first took the form of “liars” before degenerating into more coarse name calling. The protestor asks that we find that the use of the racial term “crosse[d] the line into an actual threat.” In evaluating the totality of the circumstances, we conclude to the contrary that the expression of hostility was bilateral but did not result in violence or a palpable threat of imminent harm that would violate the *Rules*. Instead, despite the malicious epithets, a reasonable measure of decorum was quickly restored, and campaigning continued by both sides in close proximity for hours thereafter. *Sullivan*, 2016 ESD 197 (May 5, 2016).

We find no *Rules* violation and 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:

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 251

**Members With Middleton, 2016 ESD 251**

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