

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

IN RE: LUIS DIAZ,) Protest Decision 2020 ESD 30
) Issued: October 19, 2020
Protestor.) OES Case Nos. P-026-082820-FW
) & P-028-083020-FW

Luis Diaz, member and elected president of Local Union 948, filed two pre-election protests pursuant to Article XIII, Section 2(b) of the Rules for the 2020-2021 IBT International Union Delegate and Officer Election (“Rules”). Case No. P-026-082820-FW alleged that Local Union 948 secretary-treasurer Adam Ochoa discriminated against him for activity protected by the Rules by barring him from taking vacation time in August and September 2020 that he intended to use to campaign. Case No. P-028-083020-FW alleged that Ochoa retaliated against him for activity protected by the Rules by filing internal union charges against him

Election Supervisor representative Deborah Schaaf investigated these protests. They were consolidated for decision here.

Findings of Fact and Analysis

Local Union 948 will elect 5 delegates and 5 alternate delegates based on a preliminary calculation of 3,749 members. It is classified under the IBT constitution as a seasonal agricultural local union because a significant portion of its membership is employed in the seasonal food industry. The local union requested and the Election Supervisor accepted an in-person election plan for delegates and alternate delegates to be held October 24, 2020. The membership will elect its local union officers for the 2021-2023 term the same date.

Protestor Diaz has been the elected president of the local union for a number of years. Ochoa as the elected secretary-treasurer is the principal officer. Ochoa and Diaz were elected to their current respective positions in an election held in fall 2017. They were members of the same political slate. This has now changed. At the nominations meeting held for the delegates and alternate delegates election, Diaz was nominated as a delegate candidate on one slate while Ochoa was nominated as a delegate candidate on an opposing slate. In the subsequent nominations meeting for local union officers, Diaz and Ochoa were nominated as candidates on opposing slates.

Under Local Union 948’s bylaws, Diaz as elected president is designated “an executive officer of this Local Union and shall be a full-time paid representative.” He is designated by those by-laws as the presiding officer at meetings of the general membership and the local union executive board, is permitted to vote on matters before those bodies as specified in the bylaws, and, together with the secretary-treasurer, is empowered to execute official documents of the local union, including collective bargaining agreements, checks, and other contracts. In addition to these duties, Diaz as elected president appoints and serves on all committees and performs other duties assigned him by the local union executive board.

In addition to these duties, Diaz also served as a business representative of the local union and was responsible for administering contracts with particular employers; filing, processing, and adjusting grievances arising under those contracts; and providing information and advice to

members employed by those employers. Further, he managed the work of the staff assigned to the local union office.

Ochoa as secretary-treasurer of the local union serves as its principal officer, per the bylaws. As such, he manages the financial books and records of the union. In addition, he –

--shall supervise, conduct and control all of the business of this Local Union. He shall have general charge and supervision of all the officers and employees of this Local Union; he shall have the power to appoint, suspend or discharge all employees of this Local Union. In all cases where the duties of the officers, business agents, organizers or employees are not specifically prescribed by these Bylaw, the International Constitution, or resolution of the Executive Board, or the membership, they shall obey the directions and orders of the Secretary-Treasurer. Business Agents and/or organizers who are not officers shall not exercise executive functions or determine policy. Business Agents shall be subject to the supervision and direction of the principal executive officer. Business Agents and Part-Time Business Agents shall be appointed and may be removed at will only by the appointing authority.

Local Union 948 Bylaws, Section 5(C)(12), in relevant part.

Although Diaz and Ochoa were elected to office as part of the same slate of candidates, the two grew apart politically in the aftermath of the 2017 election. Diaz told our investigator that in December 2019, he informed Ochoa that he would not run with him in the 2020 election but instead would run against him. Almost immediately thereafter, while he was on vacation and away from the union hall, Diaz reported that grievance files, contracts, and other materials for which he was responsible as business agent for particular employers were removed from his office, a fact he discovered when he returned to the office in early January 2020, after the year-end holidays.

Upon his return to the office, Diaz was summoned to a meeting with Ochoa at which Ochoa presented him with a new job description. The document, titled “New Job Assignment for Luis Diaz,”¹ stripped Diaz of his business agent and office management duties and assigned him the sole task of translating collective bargaining agreements from English to Spanish. The job description read in toto as follows:

1. Translate all Local 948 contracts from English to Spanish starting with Teasdale Foods Inc.
2. You will no longer work in the position as the Officer Manager or Business Agent.
3. You will no longer handle any member related issues such as but not limited to grievances, contract issues, workplace issues or any other Business Agent related type work.
4. If a member contacts you, you are not to advise them in any way except to tell them who the Business Agent or Staff Member is that they need to talk to and that persons [sic] contact information.

¹ Ochoa dated the document “1-2-2019,” but investigation showed that the year the document was presented was 2020.

October 19, 2020

5. Your work Schedule will be Monday-Friday from 8:00am-5:00pm with lunch from 12:00pm-1:00pm. Any deviation from this schedule must first be approved by the Secretary Treasurer or his designee.
6. You are to turn over all records in your possession related to any union matters or union business immediately.
7. You are to turn in your union issued computer, gas card and credit card immediately.
8. Since you are no longer working in the capacity as a Business Agent you will no longer be issued a car allowance. If you are required to travel for any union related business, you will be reimbursed through the appropriate union policy for mileage or expenses.
9. You will be notified if any reimbursement owed to the local for any unused registration or insurance paid to you.

Ochoa told our investigator that he relieved Diaz of his business agent responsibilities because of poor performance. Ochoa conceded that he did not document in writing any performance by Diaz that Ochoa regarded as poor or unsatisfactory, nor did he issue Diaz any form of written warning or criticism for performance in advance of presenting him the new job description. Ochoa explained to our investigator that he had known Diaz a long time, considered him a friend, and did not want to embarrass him with disciplinary action. Ochoa was unable to explain why he was unwilling to issue performance-related warnings or discipline to Diaz yet felt no compunction at stripping Diaz of his duties without advance notice.

Diaz responded to the new job description by writing the following on the document Ochoa presented on January 2, 2020:

I Luis Diaz refuse to sign this document and do not agree to this adverse work change and modification of my past practice powers and duties as an officer of Local #948. This adverse change and unreasonable action against me by Secretary Treasurer Adam Ochoa is being done as a retaliation and as a subterfuge to force my resignation. I will follow the above assignments under protest until clarification from J.C. #7 as well as the I.B.T. is given, and I intend to take any and all actions available to me under the I.B.T. constitution and Local 948 bylaws for the obstructing and interference of my elected position as an executive officer of Local #948.

Diaz worked under the new job description beginning January 2, 2020. His sole duty was to translate contracts from English to Spanish. Because the new job description required him to surrender his union-issued computer, Diaz did the translation work in long-hand, occasionally using his cellphone for assistance in translating particular words and terms.

Diaz protested the change of assignment to the local union executive board. On January 21, 2020, he wrote the board asking that the board direct Ochoa to stop harassing him. Diaz wrote the following, in part:

Ever since I told [Ochoa] I would not make any commitments to support him on his upcoming 2020 re election Adam Ochoa has used intimidating tactics/behaviors, as well as improper interference and reprisal against me for trying

October 19, 2020

to exercise my rights as a member. I have a choice to support anyone without being subject to retaliation.

He has inappropriately removed personal property from my office, in which I had informational handouts from several union sponsored events given to me as an official and executive officer of this local union. He did this without giving me an opportunity to go through my items in my presence and instead intermingled my belongings with other people.

That is wrong. It is unprofessional. You don't sneak to someone's office and search for things and take items that do not belong to you. ... He even took my business cards from my desk, as well as the landline phone from my office. He is not abusing his power by bullying me with demeaning demands and disparate treatment. He has directed me not to engage in conversations with members, strictly telling me to direct them to their business agent and staff member. He has now given me instructions not to deviate from an hourly schedule which is from 8 am to 5 pm with a one hour lunch from 12 noon to 1 pm.

His instruction of telling me not to advise members and not allowing members to speak with me goes against our rights as union officers. I have a right to listen and answer any question, concerns, or complaints from our members when they reach out to me. I have also been stripped away from duties and positions that I have held for many years. I am no longer an Office Manager or Business Agent or Delegate to the Cannery Council. I was directed to turn over my computer, my gas card, union credit card, I am no longer issued a car allowance, car insurance or vehicle registration. I am reaching out to this Executive Board. I am asking for your help to put a stop to this unlawful conduct of harassment by Secretary Treasurer Adam Ochoa.

I am asking or this Executive Board to instruct Secretary-Treasurer Adam Ochoa to return my personal belongings, restore and issue all benefits, allowances, computer lap top and land line phone to its original condition that was unjustly modified in order to retaliate against me.

The executive board did not grant Diaz the relief he requested.

On February 20, 2020, while Diaz was in the office, the local union building superintendent requested his assistance removing and replacing an air conditioner. In addition, the superintendent asked Diaz for guidance on some electrical work. Before assuming full-time union business, Diaz worked electrical jobs and had extensive knowledge in that area. Diaz provided the requested assistance with the air conditioner and gave the electrical advice. On February 26, 2020, Ochoa sent Diaz another copy of the January 2, 2020 job description, appending the following to the bottom of it:

On 2-20-20 from approximately 4:04pm to 5:12pm you were observed doing maintenance work behind the Union Hall located at 1222 I Street Modesto Ca.

October 19, 2020

95354 with building superintendent Les Nelson. Mr. Nelson has advised me that you were doing electrical work with him during this time.

As you can see from the job duties above, there is no Maintenance or Electrical work in your assigned duties nor were you authorized to perform any additional duties. Any deviation from these duties must be authorized by the Secretary Treasurer and at no time are you authorized to amend these duties without prior authorization of the Secretary Treasurer.

This letter will serve as your official warning letter for failure to follow instructions. Failure to follow these instructions will lead to further discipline up to and including Discharge.

Ochoa signed the February 26, 2020 letter, which was printed on Local Union 948 letterhead.

Ochoa told our investigator that he did not issue disciplinary action or warning to Diaz concerning the February maintenance work, yet the foregoing demonstrates to the contrary. We do not credit Ochoa's assertion of poor performance as the motivation for stripping Diaz of his business agent duties, in part because he in fact issued discipline to Diaz because of the maintenance work, while denying to our investigator he had done so.

In March 2020, the COVID-19 pandemic caused Local Union 948 to shift to remote work where possible. On March 20, 2020, Ochoa emailed Diaz, stating that "[i]n light of the State of California's state wide shelter-in-place order, I will need to change your current work assignment with the following modifications highlighted below." Reprinted in the email was the full text of the January 2, 2020 job description. The first item in that job description, requiring translation of contracts from English to Spanish, had three new items indented beneath it. The new items read as follows:

- This work will be performed from home during assigned business hours (see number #5 below) with the exception of Thursdays.
- Your assigned day at the office will be Thursday of each week during assigned business hours (see number #5 below).
- Please send me your work daily via email by either scanning the documents or by taking a clear picture with your phone.

Following issuance of the new job description on January 2, 2020, Diaz performed the translation work assigned him by Ochoa. When Diaz finished one contract, Ochoa assigned him another, and so on through the present time. Diaz sent his output to Ochoa daily or near daily. Ochoa told our investigator that, although the translation work on several contracts and related documents has been completed, Ochoa has not had the accumulated work typed and issued to Spanish speaking members or otherwise made available. Ochoa explained that staff has been busy and has not been able to type up the translations. However, Ochoa also admitted that he has not asked staff to type the translated documents. As a result, the work Ochoa assigned to Diaz has not been used.

October 19, 2020

On Thursday, August 13, 2020, Diaz made written request to Ochoa to use the following vacation days: August 28; September 3, 4, 10, 11, 17, 18, 24, 25; October 1, 2, 8, 9, 15, 16, 19, 20, 21, 22, and 23. According to Diaz, past vacation requests have been acted on by Ochoa promptly. Ochoa did not respond to Diaz's request until Monday, August 24, 2020. When he responded, Ochoa denied all requested days that fell in August and September and granted the days requested for October. Ochoa's explanation to Diaz was this: "All vacations going forward though the end of September are being denied because we're in the season and all staff members need to be available if needed. I have approved your October vacations."

Diaz filed Protest P-026-082820-FW, alleging that Ochoa denied the requested vacation days in August and September because he was aware that Diaz intended to use the days to campaign for delegate as well as local union officer in the elections to be held the same day in October, and he wanted to deny Diaz the opportunity to campaign on those dates.

Ochoa denied this motivation, repeating to our investigator what he had written in the email to Diaz, that peak season for the cannery employers required all staff to be on duty in case they were needed. We reject this explanation. Since January 2020, Ochoa has limited Diaz's duties to contract translation, enforcing that limitation with discipline for even the most minor deviation where the building superintendent requested assistance. Ochoa has further directed Diaz not to have contact with members and, should he be contacted by them, to direct them to the appropriate business agent or staff member. We do not accept Ochoa's contention that he denied Diaz's vacation requests because Ochoa might need to press him into service during the cannery season. Indeed, even with the translation duties Ochoa assigned Diaz, we find this assignment was little more than "make work" that Ochoa did not intend to use for any purpose benefiting the local union or its membership. As such, the only credible explanation for Ochoa's denial of Diaz's requested dates for vacation in August and September was to prevent Diaz from campaigning at worksites on those dates. Where a union employee has banked leave time available to him and no legitimate operational reason prevents its use, the decision to deny its use constitutes retaliation under Article VII, Section 12(g) of the Rules, where as here evidence establishes that the denial is motivated by an intention to interfere with campaign rights.

While this protest was pending and under investigation, Diaz amended his vacation request to Ochoa to add October 5, 6, 7, 13, and 14 to the complement of days already approved for October. Ochoa approved these dates. As such, Diaz will use vacation days for each workday in October that falls prior to the October 24 election except one. When our investigator asked Ochoa how the local union could afford to have Diaz away for those three weeks, he stated that the vacation policy required all days to be used by year-end, and time was running out. We conclude, contrary to Ochoa's explanation, that no valid reason existed for denying Diaz's requested vacation days in August and September, given the narrow duties his job description permitted him to perform. Accordingly, we GRANT Protest P-026-082820-FW.

On August 28, 2020, Ochoa filed internal union charges against Diaz with Joint Council 7. The charges alleged that Diaz spoke on the phone during work hours when his only assignment was to translate contracts. According to the charges, Ochoa undertook an investigation of "all salary staff" for cell phone use. The investigation commenced February 26, 2020, the same date Ochoa issued disciplinary action against Diaz for assisting the building superintendent. Diaz supplied the requested records on April 23, 2020. On August 18, 2020, nearly four months later,

October 19, 2020

Ochoa wrote Diaz stating that “there seems to be an excessive amount of personal calls and texts during the business hours of 8am to 5pm considering your current assignment.” Ochoa informed Diaz that he intended to file charges for “theft of time.”

When Diaz received the charges on August 28, 2020, he filed Protest P-028-083020-FW, alleging that the internal union charges constituted further retaliation prohibited by Article VII, Section 12(g) of the Rules. Ochoa told our investigator that the phone records showed a number of calls with members. Diaz told our investigator that, based on his length of time in service to the union, many members have his phone number. For some members, Diaz concluded that the only union phone number they had was his. On the occasions he received calls from members, he believed he had an obligation as their elected union president to speak with them, learn and discuss the nature of their concern, and determine which union business agent or staff member could best serve their needs. It was these calls that Ochoa regarded as “personal,” and the time Diaz spent on them were the basis of his accusation that Diaz was conducting personal business on union-paid time.

Ochoa has demonstrated a pattern of retaliatory conduct against Diaz, starting with the stripping and circumscribing of Diaz’s duties, the disciplinary action issued against him for assisting the building superintendent, and the denial of requested vacation days. Under these circumstances, we find that the internal union charges Ochoa laid against Diaz are not based in fact or otherwise made in good faith but instead constitute retaliation against Diaz for Diaz’s exercise of rights protected by the Rules, namely, the right to participate in campaign activities, to run for office, to support or oppose any candidate, and to aid or campaign for any candidate. Article VII, Section 12(a). Accordingly, we GRANT Protest P-028-083020-FW.

Remedy

When the Election Supervisor determines that the *Rules* have been violated, he “may take whatever remedial action is deemed appropriate.” Article XIII, Section 4. In fashioning the appropriate remedy, the Election Supervisor views the nature and seriousness of the violation as well as its potential for interfering with the election process. “The Election Supervisor’s discretion in fashioning an appropriate remedy is broad and is entitled to deference.” *Hailstone & Martinez*, 10 EAM 7 (September 14, 2010).

We order Adam Ochoa to cease and desist from retaliating against Luis Diaz in violation of Article VII, Section 12(g). Specifically, we order Ochoa to withdraw and not refile the internal union charges he lodged with Joint Council 7 against Diaz. The withdrawal request shall be initiated no later than Tuesday, October 20, 2020.

We further order Ochoa and Local Union 948 to post on all worksite bulletin boards the notice attached to this decision in English and Spanish. Such posting shall be completed no later than Wednesday, October 21, 2020 and shall remain posted through and including November 20, 2020. The purpose of the posting is strictly remedial and is intended to notify the members of the requirements of the Rules and that Ochoa has violated them.

Diaz, 2020 ESD 30
October 19, 2020

We order no additional relief with respect to the denied vacation time, concluding that the additional days Ochoa permitted Diaz to take in October has substantially remedied the violation.

We direct Ochoa to submit a declaration of compliance with this remedial order to OES no later than Thursday, October 22, 2020.

We reserve any request for further remedial relief for post-election consideration.

A decision of the Election Supervisor takes immediate effect unless stayed. *Lopez*, 96 EAM 73 (February 13, 1996).

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. Any party requesting a hearing must comply with the requirements of Article XIII, Section 2(i). All parties are reminded that, absent extraordinary circumstances, no party may rely in any such appeal upon evidence that was not presented to the Office of the Election Supervisor. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Barbara Jones
Election Appeals Master
IBTappealsmaster@bracewell.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, all within the time prescribed above. Service may be accomplished by email, using the “reply all” function on the email by which the party received this decision. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Barbara Jones
2020 ESD 30

Diaz, 2020 ESD 30
October 19, 2020

DISTRIBUTION LIST (BY EMAIL UNLESS NOTED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
braymond@teamster.org

Teamsters Local Union 948
c/o Adam Ochoa
ochoateamsters948@hotmail.com

Edward Gleason
egleason@gleasonlawdc.com

Luis Diaz
diazkenpo@yahoo.com

Patrick Szymanski
szymanski@me.com

Deborah Schaaf
Dschaaf@ibtvote.org

Will Bloom
wbloom@dsgchicago.com

Jeffrey Ellison
EllisonEsq@gmail.com

Tom Geoghegan
tgeoghegan@dsgchicago.com

Rob Colone
rmcolone@hotmail.com

Barbara Harvey
blmharvey@sbcglobal.net

Kevin Moore
Mooregp2021@gmail.com

F.C. "Chris" Silvera
fitzverity@aol.com

Fred Zuckerman
fredzuckerman@aol.com

Ken Paff
Teamsters for a Democratic Union
ken@tdu.org

Office of the Election Supervisor
for the International Brotherhood of Teamsters
1990 M Street, N.W., Suite 650
Washington, D.C. 20036
844-428-8683 Toll Free
202-925-8922 Facsimile
electionsupervisor@ibtvote.org
www.ibtvote.org

Richard W. Mark
Election Supervisor

**ELECTION RULES VIOLATION FOUND AGAINST
ADAM OCHOA, SECRETARY-TREASURER OF
TEAMSTERS LOCAL UNION 948**

Members and candidates, including local union officers, have the right under the Election Rules to run for office and to support or oppose any candidate. No member, including a local union officer, is permitted to retaliate against any member for exercising their rights under the Rules.

The Election Supervisor has found that Secretary-Treasurer Adam Ochoa violated the Election Rules by denying Luis Diaz his use of vacation time to campaign and by bringing internal union charges against him. The Election Supervisor has concluded that Ochoa took these actions in retaliation for Diaz's decision to run against Ochoa, a decision that was protected by the Rules.

The Election Supervisor will not tolerate violation of the Rules. The Election Supervisor has ordered Ochoa to withdraw the charges he filed against Diaz and, to cease his retaliation against Diaz. The Election Supervisor has further ordered Teamsters Local Union 948 to post this Notice on all worksite bulletin boards under the local union's jurisdiction no later than Wednesday, October 21, 2020.

The Election Supervisor has issued this decision in *Diaz*, 2020 ESD 30 (October 21, 2020). You may read this decision at <https://www.ibtvote.org/Protest-Decisions/esd2020/2020esd030>.

Any protest you have regarding your rights under the Election Rules or any conduct by any person or entity that violates the Rules should be filed with Richard W. Mark, 1990 M Street, N.W., Suite 650, Washington, D.C. 20036, telephone: 844-429-8683, fax: 202-925-8922, email: electionsupervisor@ibtvote.org.

This notice must remain posted through and including November 20, 2020 and must not be damaged, defaced, or covered up.

Oficina del Supervisor de Elecciones
para la International Brotherhood of Teamsters
1990 M Street, N.W., Suite 650
Washington, D.C. 20036
844-428-8683 Línea Telefónica Gratuita
electionsupervisor@ibtvote.org
www.ibtvote.org

Richard W. Mark
Supervisor de Elecciones

**SE DICTAMINA VIOLACIÓN DEL REGLAMENTO ELECTORAL EN CONTRA DE
ADAM OCHOA, SECRETARIO-TESORERO DEL
SINDICATO LOCAL 948 DE LOS TEAMSTERS**

Tanto los miembros como los candidatos, incluidos los dirigentes de los sindicatos locales, tienen el derecho, concedido por el Reglamento Electoral, de presentarse como candidato, así como de apoyar u oponerse a cualquier candidato. No se permite que ningún miembro, ni ningún dirigente de un sindicato local, tome represalias contra un miembro por ejercer sus derechos bajo dicho Reglamento.

El Supervisor de Elecciones ha determinado que el Secretario-Tesorero Adam Ochoa violó una disposición del Reglamento Electoral al denegar a Luis Díaz su uso de vacaciones acumuladas para realizar una campaña como candidato y también al formular cargos en su contra a nivel del sindicato local. El Supervisor Electoral ha llegado a la conclusión de que el señor Ochoa tomó estas acciones como represalia por la decisión del señor Díaz de competir contra el señor Ochoa, decisión esta que se encuentra amparada por el Reglamento Electoral.

El Supervisor de Elecciones no tolerará ninguna violación del Reglamento. El Supervisor de Elecciones ha ordenado al señor Ochoa que retire los cargos que ha presentado contra el señor Díaz y que desista de sus represalias contra el señor Díaz. Asimismo, el Supervisor de Elecciones ha ordenado que el Sindicato Local 948 publique este Aviso a más tardar el miércoles, 21 de octubre de 2020, en todos los tableros para boletines ubicados en centros de trabajo que estén bajo la jurisdicción de dicho Sindicato Local.

El Supervisor de Elecciones ha emitido este dictamen en *Diaz*, 2020 ESD 30 (21 de octubre de 2020). Los interesados pueden leer el dictamen en [https://www.ibtvote.org/Protest-
Decisions/esd2020/2020esd030](https://www.ibtvote.org/Protest-Decisions/esd2020/2020esd030).

Toda protesta que usted tenga en lo relacionado con sus derechos bajo el Reglamento Electoral o con la conducta de cualquier persona o entidad que viole alguna disposición del Reglamento debe presentarse a Richard W. Mark, 1990 M Street, N.W., Suite 650, Washington, D.C. 20036, teléfono: 844-429-8683, correo electrónico: electionsupervisor@ibtvote.org.

Este aviso debe permanecer publicado hasta el 20 de noviembre de 2020 inclusive y no debe ser dañado, maltratado o cubierto.