

SEIU, LOCAL 32BJ 2024 ELECTION COMMITTEE REPORT ON
THE AUGUST 23, 2024 PROTEST OF LUIS LÓPEZ

Background: The Florida District Election

In accordance with the Constitution and Bylaws, members who sought to be elected in the 2024 Election of Officers were required to submit petitions supporting their nomination with the signatures of a certain number of members in good standing. The candidates for District offices in the Florida District were required to submit petitions with at least 100 valid member signatures. Candidates for office in Union-wide offices were required to submit petitions with at least 1,500 valid signatures.

Only one slate of candidates for District office in Florida submitted petitions for nomination. Those petitions satisfied the numerical threshold, and the candidates on that slate were deemed elected as no others had been nominated. See Constitution and Bylaws Article VII, Section 2 (c).

The slate of candidates nominated for Florida District offices was part of a union-wide Slate called Stand Together. The Stand Together slate was the only set of candidates that submitted petitions signed by Florida members. No other slate solicited signatures in Florida or submitted petitions with Florida members' signatures.

The Protest

Luis López sent a protest to the Union on August 23, 2024, and the protest was referred to the Election Committee. Attached to the protest were a link to the

Union's website and the page on the website concerning the 2024 election, a typed version of the protest, a screenshot of a text from Oscar Pineda to Mr. López on the morning of May 8, an image of a text received from Mr. Pineda on May 8, a photograph of Mr. Pineda's phone relating to June 6 assignments, and a photo of a Stand Together petition asserted to have been the subject of a June 6 meeting. A copy of that protest is attached. (Hearing Ex. 1). In the protest, Mr. López alleges the following:

(1) On May 8, at 9:02 a.m., Union staff member Oscar Pineda texted Mr. López (who at the time was also a Union staff member) requesting that he make a contribution to the Stand Together team in support of its campaign. Mr. López agreed. In a follow-up email received by Mr. López at 9:58 that morning, Mr. Pineda confirmed the conversation. Mr. López asserts that Mr. Pineda was not on personal time off on that day and the implication of this protest is that Mr. Pineda was campaigning on Union-paid time.

(2) On June 6, following an action at the airport, Union staff member Helene O'Brien assembled other Union staff members and held a meeting from 1 p.m. to 1:30 p.m. At the meeting, she gave those who were assembled instructions on collecting signatures from members on nominating petitions. Mr. López alleges that she also gave the assembled group "assignments for members for the upcoming Saturday, June 8." He alleges that one of those present in this meeting asked whether it was appropriate for them to be meeting on this subject, and Helene O'Brien stated that "it was fine." The implication of the protest is that Ms. O'Brien and those assembled were engaged in campaign

activity – specifically, securing member signatures on nominating petitions – while on Union-paid time.

(3) On June 28, at “around 4:30 p.m.,” at the direction of Ms. O’Brien, Union staff members gathered on the ground floor of the building in which the Union has its offices (the Union offices are on the fifth floor). They discussed the effort to obtain members’ signatures on nominating petitions. Mr. López acknowledges that the location of the gathering was not Union property, but he asserts that it was conducted during a time when the staff members were on Union-paid time. He also asserts that following this meeting, staff members who had attended went up to the Union offices on the fifth floor and made phone calls to members in furtherance of the nominating petition drive. He asserts that “the majority” of the time spent by staff members in this effort was after 5:00 p.m. but the staff was using “union resources such as cubicles and offices.”

On August 26, Counsel for the Committee wrote to Mr. López acknowledging receipt of his protest and requesting that Mr. López submit all evidence he had in support of the protest, including sworn statements, documents and photographs or any other material he deemed relevant.

On September 6, Mr. López submitted the materials he had already sent and added the declaration that he swore under penalty for perjury that the statements he had made in his protest were correct. (Ex. 2). On September 10, Mr. López submitted a voice recording of a person who stated that her name was Jackeline Bonett. (Ex. 3). In the statement, Ms. Bonett declared that on June 6, she had attended an action at the airport in support of 32BJ. When she decided

to leave, she observed a group of Union staff members gathered at a place in the airport discussing matters amongst themselves. She does not identify the subject of the discussion and noted that she maintained distance from the group out of respect. She states that she swears under penalty for perjury that the statements she is making are true. A translation of the recording was prepared by Election Coordinator Metzli Hamelius and forwarded to Mr. López. Thereafter, Mr. López offered some amendments and additions to the translation. (A copy of the translation and the amendments by Mr. López are contained in Hearing Ex. 4)

The hearing participants

The Committee held a hearing on this protest on September 25, 2024.

Mr. López reiterated that substantive statements contained in his protest. At the commencement of the Hearing, Election Committee Counsel Meginniss advised Mr. López that the Committee agreed that the statements he wrote in his written protest would be deemed his sworn testimony and he did not have to restate them. In addition, Mr. Meginniss informed Mr. López that the Committee accepted as accurate his amendments to the translation of Ms. Bonnet's statement, as set out in Ex. 4. Mr. López did not bring witnesses to the hearing.

Appearing on behalf of the Stand Together campaign, Elizabeth Baker made arguments in opposition to the protest, and Andy Cabrera, Aldo Muirragui, Oscar Pineda, and Lenis Morales-Perez testified.¹

Election Coordinator Metzli Hamelius also testified.

The evidence and the conclusions of the Committee

The testimony and evidence showed the following:

(1) The Stand Together slate contended that although Mr. Pineda was employed by the Union on May 8, he was on vacation, and had been on vacation the entire week. Mr. Pineda testified that he was on vacation that day and Ms. Baker attached a copy of a computer screen entry showing Mr. Pineda's use of paid time off from April 12 through September 19, 2024. Mr. López expressed surprise that Mr. Pineda was on vacation and asked that the Committee request evidence of a corroborating email he believed would have been generated approving a vacation request. Following the hearing, the Committee requested

¹ Mr. López questioned the capacity in which Ms. Baker appeared. He noted that she has a legal background and expressed concern that there might be something inappropriate about her acting as a lawyer for the Stand Together slate if she is a lawyer for the Union. In fact, whatever her legal background, Ms. Baker is an officer of the Union and a member of the slate of candidates of the Stand Together slate. Her interest is the interest of a Union member in the outcome of the hearing. The Committee has accorded her no different status than any other member who might appear in these hearings and offer arguments or testimony. Ms. Baker did not appear in this hearing on behalf of the Union. Mr. Lopez also implied that there might be something improper about a slate representative calling staff witnesses to testify. However, slates are entitled to call witness they believe have relevant and helpful information, including staff. Particularly where a protest is premised on allegations of wrongdoing by staff, it would make sense for the accused slate to address those allegations with staff witnesses.

Mr. López also asked the Committee to recognize that the witnesses who appeared at the behest of the Stand Together slate – Mr. Cabrera, Mr. Muirragui, and Ms. Morales-Perez (but not Mr. Pineda) all occupy managerial positions in the Union. He requested that the Committee consider whether it would be better to hear from non-supervisory staff on the issues presented. The Committee has considered this. The Committee does not believe that there are factual disputes here that would suggest that the testimony of additional non-management staff members would affect the Committee's evaluation of the differing accounts of the events.

and received from the Union's Chief of Operations a record of leaves taken by Mr. Pineda in 2024. The record corroborates the claim that he was on vacation on May 8. Because he was on vacation time, Mr. Pineda's activities on May 8 cannot be characterized as campaigning on work time. When an employee is on such paid time off, the employee is not on Union-paid worktime. Because he was on vacation, Mr. Pineda's activities on May 8 cannot be characterized as campaigning on work time.

(2) On June 6, a group of staff members who were supporters of the Stand Together slate did in fact meet at the Miami airport following a protest that had been conducted by the Union. The issue presented is whether this meeting was conducted on Union-paid worktime. There are some disputes concerning the event, but most of the facts are not in dispute. There is no dispute that the meeting consisted only of Union members who were supporters of the Stand Together slate and that the subject of the discussion at the meeting was the slate's campaign effort. There is no dispute that the meeting took place inside one of the terminals at a point distant from the site of the protest. There is no dispute that staff members who were not involved in the Stand Together campaign were present at the protest that was held before the meeting and these staff members did not attend the meeting.

There were disputes as to the exact time that the meeting took place. Mr. López asserts that the meeting took place in a time slot between 1:00 p.m. and 1:30 p.m. Mr. Muirragui suggests that it occurred somewhat later. There is no dispute that the meeting lasted between 15 and 30 minutes. There is some dispute as to

whether at the conclusion of the protest staff members in attendance were told that they were released from duty or were dismissed for the day. Mr. Muirragui and Mr. Cabrera testified that at the meeting, participants were reminded that rules against campaigning on Union-paid worktime. Mr. López asserts that he did not hear a discussion of those rules.

Mr. López asserts that he never heard anyone announce that staff were released or dismissed following the protest, and that the workloads of the members involved made it unlikely that staff members were free to go home. Mr. Muirragui testified that the decision about being released for the day was a decision of individual department heads. He believed that some may have released staff for the day. He did not. He and Mr. Cabrera both testified that when they went to the post-protest meeting of Stand Together volunteers, they were on break time. However, it is clear from the evidence that at least some of the participants in the post-protest campaign meeting returned to their regular Union work duties following the meeting.

The issue here turns not on what was said about the rules or about being released for the day. The issue is whether the meeting was in fact undertaken during a time when the employees were on Union-paid work time or whether it occurred when they were not. Notably, these staff persons occupied salaried positions as Union representatives. There is no dispute that these positions do not have set hours, and the hours they work varies from day to day. Mr. López, Mr. Cabrera, and Mr. Muirragui agreed that the individuals who hold these positions have discretion to decide when they can take personal breaks during the day, and there was no dispute that they take breaks during the day when their schedule

permits. Breaks are not are not limited to a particular time frame. Just as starting and finishing times vary from day to day, depending on the demands of work, break times vary from day to day for the same reason.

It is clear from the testimony that the meeting was held at a time when the participants were on a break. Mr. López testified that he did not hear anyone call a break. He pointed to a memorandum issued by the Union's General Counsel on April 19 in which she wrote that "For employees who work irregular work hours, where appropriate care should be taken to document work and non-work periods." (Ex. 7). He stated that he did not believe any recording of these breaks had been done.

Yet Mr. López acknowledged that he understood that he was in fact on a break from his regular work while he was in that meeting. He acknowledged that he had engaged in other, similar meetings while on breaks. The issue is not whether it was or was not a break – everyone agrees that the persons involved were taking a break from work. The only question is whether taking that break was consistent with their regular practice.

Union members who are also employees of the Union have all the rights to campaign that other members have. They can engage with other members on their own time to discuss and plan campaign activities. What they cannot do is campaign when they are in fact engaged in Union work.

Mr. López complains that the line between work and campaigning is blurred. But that does not seem to be the case here; there is no suggestion that the members involved in this meeting were in fact also engaged in their Union duties at this

time. The General Counsel's directive that staff should take care to document work time and nonwork time is a good one. But it is not clear that it is in any way practical to require that a member who decides to confer with another member of his/her slate while on lunch or on a break to create some kind of record of that encounter. In any event, for purposes of the Committee's determination, whether or not that record was created is not determinative of the issue whether the employees were on a break. Here, there is no genuine dispute that they were. And there is no claim that such breaks were abused or replacing worktime.

(3) The June 28 meeting at issue took place on the ground floor of the building in which the Union rents office space. The Union's office is on the 5th floor and floors 1 through 4 are occupied by other tenants. There is no dispute that the ground floor is not Union space.² There is no dispute as to some of the salient details. On June 28, there was a looming strike that occupied the staff at least from late morning until the afternoon. At some point in the afternoon (there was a dispute among the witnesses about the exact time), Helene O'Brien announced that the strike had been averted. While Mr. López insisted that the threat of a strike still loomed,³ there is no dispute that the work that was occupying the staff in preparing for the strike was put off. Sometime thereafter,

² There was dispute about whether the space was "public" space. At Mr. López's suggestion, the Committee learned that one or both of the entries to the space may be locked from time to time, though the Stand Together witnesses testified that the door is often left open and the space is accessible to members of the public. In fact, in his protest Mr. López acknowledged that he was not suggesting that the use of the space for the meeting was itself a use of Union resources.

³ Mr. López appeared to be suggesting that the Stand Together witnesses were overstating the meaning of the announcement and suggesting that the matter had been settled. The Committee did not understand those witnesses to have said that the strike had been settled; rather, they understood the witnesses to be saying that immediate crisis had subsided.

the members of the staff who were engaged in Stand Together campaign activities decided to gather downstairs on the ground floor to discuss issues related nomination petitions. They left the Union office and retreated to the ground floor to hold this meeting. There is some dispute as to exactly when the meeting started, but there is no dispute that the meeting lasted between 15 and 30 minutes. There is also no dispute that the sole focus of the meeting was dealing with petition gathering and obtaining corrections to some petitions that had already been gathered but had not been submitted to the Union. Following the meeting, at least some of the persons who were involved in the meeting went back to the Union office.

There is a dispute about some of what was said in the meeting. Mr. López asserts that Ms. O'Brien told participants that corrections had to be made to some of the petitions and the participants in the meeting should go back upstairs and make phone calls to members to start the correction process. Mr. Muirragui and Ms. Morales-Perez testified that they did not hear such a directive. Mr. Muirragui testified that, once again, participants were reminded in the hearing that they must follow the rules and not use Union resources in their campaign work. Mr. López asserts that he heard no such reminder. There is also a dispute about whether employees were released for the day, following the announcement that the strike had been averted and before the meeting on the ground floor.

Again, however, there is no real dispute that the employees who were participating in this meeting – all Stand Together campaign volunteers – were on a

break from work. For all the reasons described above, the Committee cannot conclude that the work was conducted on Union-paid worktime.

There is another issue here that is not identical to the June 6 event. Mr. López testified that, after the meeting concluded on the ground floor, he and some of the other participants returned to the Union's offices. He testified that, at that point, some of the participants began to telephone Union members to pursue the correction of the petitions that Ms. O'Brien had discussed in the meeting downstairs. He did not identify which participants did this. Engaging in campaign calls from Union offices would amount to using Union resources for electoral work. Mr. Muirragui testified that he also went back to the Union offices and did not engage in such phone calls or hear staff engaged in the phone calls. Lenis Morales-Perez also testified that she was among those in the ground floor meeting who returned to the Union's offices to do work and she did not engage in such activity and did not hear others doing so. The Committee has serious doubts about the accuracy of Mr. Lopez's statement or observation. It seems not likely that the Stand Together team would vacate the Union offices to hold a meeting on the issue of calling members to correct petitions – vacating the Union office presumably to avoid being accused of using Union space to conduct campaign activities – but then, at the direction of person who led the meeting, return to the Union offices to conduct the campaign activity discussed in the meeting.

In any event, other evidence adduced at the hearing leads the Committee to conclude that the protest on this subject should be rejected even without resolving that dispute.

In a position statement sent to the Committee by Ms. Baker before the hearing, the Stand Together slate argued that even if the Committee were to find that some calls were made from Union offices that day, there was no impact on the election from this activity. She pointed out that no candidate was nominated for a Florida District office position other than those on the Stand Together slate, and for that reason, no other candidate was disadvantaged by the activity. More importantly, she argued that even if all of the petitions generated by the Florida District were excluded from the count of signatures submitted by the Stand Together slate for their candidates for Union-wide office, the remaining petition signatures for the slate's Union-wide-office candidates were far more than were necessary for nomination. For that reason, any improper activity in the Florida District did not affect the nomination of any candidates for other District offices, and certainly did not affect the nomination of candidates for other District offices.⁴ Third, the Stand Together team in Florida submitted Nominating petitions prior to June 28, and those petitions covered all the Florida District offices. The number of signatures on these earlier-submitted petitions exceeded the threshold needed for nomination. In short, even if signatures on petitions submitted after June 28 were excluded, the nomination of the District Officer candidates would still have been secured by those earlier submitted petitions. For this reason, Ms. Baker argued, even if a transgression occurred on July 28, it cannot be a basis for invalidating the nomination of candidates whose candidacy was secured by those earlier submissions.

⁴ Florida district members are not eligible to support the nominating petitions of candidates for District office in other Districts.

Petitions from all of the different districts of the Union were submitted in support of Union-wide officers running on the Stand Together slate. The number of signatures on petitions from each district were counted separately. Election Coordinator Metzli Hamelius confirmed at the hearing that the Election Committee is able to discern how many signatures tallied in support of the Stand Together slate's candidates for Union-wide office were signatures of Florida members. Put another way, the Committee is able to determine that, if all the Florida members' signatures in support of Union-wide candidates were subtracted from the total of signatures in support of Stand Together Union-wide candidates, those candidates still have enough signatures from members in other districts to meet the 1,500-signature requirement for nomination.

Ms. Hamelius also was able to confirm that the Stand Together Florida team submitted petitions supporting the nomination of the slate's nominees for Florida District offices as well as the slate's nominees for Union-wide office on June 27. The number of signatures on the June 27 batch that were validate was 164 – more than the 100 needed for nomination of the Stand Together candidates for Florida District offices.

If improper conduct occurred on June 28, the Committee would order that all petitions submitted on or after that date be disallowed. This very action was taken in connection with the 2015 election of officers, an action that the Department of Labor approved. Yet, in the circumstances of this protest here, there is no need for such an action because disallowing Florida petitions

submitted on or after June 28 would have no effect at all on the results of the nomination and election of officers.

Committee Decision

The Committee has determined that Mr. López's protests concerning the May 8 communication from Mr. Pineda and the concerning the June 6 and June 28 meetings of Stand Together volunteers must be rejected. With respect to his protest that staff members were engaged in campaign phone calls from Union offices following the June 28 meeting of Stand Together volunteers, the Committee has found insufficient basis for that charge, as well, but has determined that even if it is the accurate, the impropriety of the conduct alleged would have had no effect on the outcome of the election.

In sum, the Committee rejects the protests filed by Mr. López and concludes that those candidates who had the greatest number of votes in the AAA's September 20 certification should be deemed to have won election to their respective offices.

APPEAL RIGHTS

If the slate or any individual candidate wants to appeal this decision, such an appeal must, within 48 hours, be delivered to SEIU Local 32BJ President Pastreich. This may be accomplished by sending an email stating the appeal to President Pastreich care of Metzli Hamelius, Mhamelius@seiu32bj.org. The appeal should state in detail the reason the decision of the Committee should be reversed. The email must be received no later than 6:00 p.m. September 29, 2024.