

FPSU Election Committee's Decision Regarding Frank Sosa's March 5, 2010 Election Objections

I. INTRODUCTION

SEIU Florida Public Services Union (FPSU) members ratified their Constitution & Bylaws at a Convention in Orlando on January 9, 2010.¹ In accordance with Article IX of the Constitution & Bylaws, that same day members also nominated candidates for elections for FPSU's officers and executive board. Five FPSU members had previously volunteered to serve as neutral arbiters to oversee the election: Liza Jacobs (Chair), Judy Green, Richard Jager, Martha Mateen, and Barbara Mitchell. These five members were appointed to FPSU's Election Committee by Provisional President Alphonso Mayfield.

This was FPSU's first officer election, and none of the Committee members had prior experience with running union elections. The Committee decided, consistent with its authority under the Constitution & Bylaws, that the most effective and secure way to manage the election was to hire an experienced and neutral third-party company to conduct the balloting and tallying of results. Accordingly, FPSU hired TrueBallot, a company that provides neutral election services to labor unions and other organizations.

The election was held via mail ballot from January 27 to February 25, and the returned voted ballots were counted by Election Committee Members and TrueBallot representatives at FPSU's Orlando office on February 26. Candidate Alphonso Mayfield won the office of President over candidate Frank Sosa by a margin of 28 votes. Sosa timely filed charges objecting to several aspects of the election and demanding that the election be overturned. The Election Committee has investigated the charges and now issues the following decision.

II. COMMITTEE INVESTIGATION

Article IX, Section 6 of FPSU's Constitution & Bylaws provides:

Challenges and objections to the election must be submitted in writing, with a statement of supporting reasons that includes specific facts as well as any documentation, to the Election Committee within seven (7) calendar days of the tabulation of election results. The Election Committee shall have the authority to conduct a hearing, where it deems it necessary, request evidence and render a decision regarding the objections within thirty (30) calendar days of the submission of the challenge. Appeals of the decision of the Election Committee may be lodged with the International President pursuant to the International's Constitution & Bylaws.

¹ Unless otherwise stated, all dates refer to calendar year 2010.

The Constitution & Bylaws require that any submission of challenges or objections to the outcome of an election include “specific facts as well as any documentation.” On March 5, Sosa sent a letter to the Committee listing several objections to the election, without any supporting documents or witness statements. (Exhibit A.) By email dated March 6, the Committee provided Sosa with seven additional days to submit the required support for his allegations. At this time, the Committee specifically requested that Sosa provide “all evidence supporting each claim in your objections, including documents and written witness statements.” On March 11, Sosa responded, providing one witness statement and several documents and thereby completing his submission of objections. (Ex. B 1-5, 8.) On March 16, the Committee requested clarification on the origin of two documents. Sosa responded, and further submitted an additional fact in support of his objections. (Ex. B 6.) On March 22, the Committee repeated its earlier request for witness statements, in particular reference to specific allegations, and gave an extended deadline of 5 pm on March 24. Sosa submitted two more witness statements in response on March 23. (Ex. B 9-10.)

The Committee applied the same standard from the Constitution & Bylaws to Alphonso Mayfield, the candidate whose campaign’s conduct was challenged by Sosa. Thus on March 12, the day after Sosa completed his submission of objections, the Committee sent Mayfield a copy of the objections, and requested that he provide a response, including witness statements and any documentation that supported his position, within seven days. On March 19, Mayfield submitted statements from himself and campaign supporters Van Church and Rick Smith, with supporting documentation. (Ex. F 1-12.) Based on Smith’s statement, on March 22, the Committee sent two specific clarification questions and required Smith to answer by March 24 at 5 pm. Smith timely responded with a statement and supporting documents. (Ex. F 13-15.)

In addition to the candidates’ statements and supporting evidence, the Committee requested and reviewed evidence from FPSU and TrueBallot. On March 16, the Committee sent requests for specific information to FPSU and TrueBallot, requiring responses by March 19. Both FPSU and TrueBallot responded with answers to the Committee’s questions and supporting documentation, including witness statements, member lists and databases, and post office correspondence and receipts. (Ex. D, E.) The Committee also reviewed its own correspondence where relevant to the allegations. (Ex. C.)

On March 25, the Committee met to review the evidence and discuss Sosa’s objections. At this meeting, the Committee made determinations on each allegation. The Committee has the constitutional authority to hold a hearing if it deems it necessary. A hearing allows the Committee to assess the credibility of witnesses face-to-face and may be helpful in reaching a determination where there are many conflicting witness accounts. In this case, after reviewing all the evidence before it on March 25, the Committee determined unanimously that it was not necessary to hold a hearing on any of the allegations. Witness statements regarding specific facts were not contradictory, so credibility was not an issue.

On April 6, the Committee approved the following written decision, which memorializes the decisions rendered by the Committee at its meeting on March 25.

III. OBJECTIONS

A. Procedure

The Committee, with advice of legal counsel, evaluated whether each allegation in Sosa's objections was true and, if so, constituted a violation of election rules, FPSU's Constitution & Bylaws, SEIU's Constitution & Bylaws, or federal law. If the Committee found sufficient evidence that a violation occurred, it then assessed the potential impact of the violation on the outcome of the election. (In the event of a violation that could have been determinative to the outcome of the election, the February 26 election results would have been invalid and necessitated a re-run election.) The following analysis addresses each allegation in the order raised by Sosa's Objections.

B. Lack of Ballot Security

1. Security Procedures at Post Office

Sosa alleges that there was inadequate protection for ballots at the Orlando Post Office. (Ex. A 1.) (Members mailed their voted ballots directly to a P.O. box that had been set up by FPSU for the election.) In support of this allegation, Sosa submitted a statement from Election Committee Member Judy Green. (Ex. B 1.) Green contacted the post office on March 1, after the election was over. The post office would not give her information about the P.O. box and directed her to FPSU's Director of Communications, Van Church, stating "Church was the only person who had access to the P.O. box." (Ex. B 1.) Sosa has submitted no evidence regarding post office access specifically during the election period (i.e. January 27-February 26).

The Committee previously informed Sosa:

"There is one post office that is collecting ballots. The post office has been advised that NO ONE is allowed to collect, tamper, view the contents until Feb 26 when members of the election committee will pick them up. The post office was given the names of the election committee members and instructed that only those five members are allowed to pick up the ballots on Feb 26th. They will verify their identity with photo ID when picking up the ballots..." (Ex. C 19.)

This information was based on FPSU's instructions to the post office when it set up the P.O. box on December 21, 2009 and when the election commenced. (Ex. D 2.) On

January 27, FPSU, through Church, sent the Pine Castle Branch Post Office the names of the five Committee members with the following specific instructions:

“Beginning this date and lasting until March 1, 2010:

1. Please do not put any mail received for that box in the box itself, but rather hold it in a secure area of your facility and,
2. Do not release any mail received for that box until Friday, February 26, 2010 and,
3. On Friday, February 26, 2010, release the accumulated mail for the box to the members of the Election Committee mentioned above only.
(Ex. D 2.)

Church also instructed the post office to call Committee Chair Liza Jacobs with any questions. (Ex. D 2.)

On February 26, 2010, when Jacobs and TrueBallot President John Seibel went to the post office to retrieve the ballots, post office personnel followed the security procedures as instructed. Jacobs was required to show photo ID before she was allowed access to the ballots, and was then given all the mail the P.O. box had accumulated since January 27. (Ex. G 5.) Jacobs and the TrueBallot representatives, accompanied by Election Committee staffer Caitlin Fishman and Church (who was taking photographs for FPSU’s website), returned to FPSU’s Orlando Office with all ballots from the P.O. box in the trunk of Seibel’s car. (Ex. E 7; F 9; G 5.)

The Committee finds that there is no evidence of improper access to ballots or any lack of ballot security at the post office. Green’s phone call occurred after the election was over and concerns access to the P.O. box on March 1, when election security measures were no longer necessary and FPSU’s instructions had expired. Moreover, all evidence of access during the election shows that appropriate steps were taken to protect the security of the ballots, and that no one obtained access to the ballots between January 27 and February 26.

2. Rights to Observe

a. Printing, Stuffing, and Mailing of Ballots

Sosa alleges that the Election Committee did not inform him or other candidates of “where and when the ballots were to be printed, stuffed, and mailed.” (Ex. A 1.) This allegation is partially true. The Committee informed candidates that ballots would be mailed on January 27, but it did not announce the specific time and place that ballots would be printed, stuffed, or mailed.

FPSU’s Constitution & Bylaws authorizes the Election Committee to “administer” the election and explicitly grants the Committee the authority “to contract with an outside entity to assist in any part of the election procedure as it deems necessary and appropriate” after receiving approval of the financial cost. Art. IX, Sec. 2. For the

election at issue, FPSU contracted TrueBallot to carry out a mail ballot election, including printing, stuffing, mailing, counting, and tallying ballots.

On December 4, 2009, the Committee mailed and posted on FPSU's website a "Nominations and Elections – Rules & Guidelines" to all members, including Sosa. (Ex. C 2-3.) This notice stated, under the heading "Nominations and Elections Timeline," that ballots would be mailed to members on January 27. (Ex. C 2.) It reiterated under "Election Procedures," that "ballots, together with a return envelope shall be mailed to the entire membership at their last known address by **January 27.**" (emphasis in original) (Ex. C 3.) It also instructed candidates that they had the right, once within thirty days prior to the election, to inspect the membership list and make notes. (Ex. C 3). No candidate identified observers prior to February or requested more information about the printing, mailing and stuffing of ballots

In mid to late January, TrueBallot printed the ballots in Bethesda, Maryland and then contracted with another company, Accumail, Inc., to stuff and mail ballots in Landover, Maryland. TrueBallot has provided an invoice from Accumail and a Post Office receipt from Landover, Maryland documenting that 4,724 ballots were prepared and mailed on January 27. (Ex. E 8-10.) (This number corresponds with the total number of members on the database of last-known addresses prepared by SEIU Database Specialist Karmen Pensyl. Ex. D 4.)

The Committee did not provide notice to candidates of the exact time and place that TrueBallot would print, stuff, and mail the ballots. Indeed, the Committee itself did not know the exact time and place that TrueBallot would print, stuff, and mail ballots, beyond its instruction to mail ballots on January 27. No candidate or slate observer was present for the printing, stuffing, or mailing of ballots.

The evidence establishes affirmatively that no one tampered with ballots during the printing, stuffing, or mailing of ballots. A neutral third-party, TrueBallot, oversaw all handling of ballots before they were mailed to members, and there are receipts that corroborate TrueBallot's report that it mailed ballots to the last known address of all members. TrueBallot President John Seibel concluded after the election: "It is our opinion as Impartial Balloting Agency that the results of the Balloting are true and accurate, the Ballots were properly counted, and rigid safeguards were maintained to protect the secrecy of the Ballot." Based on the evidence, the Committee finds that candidates' lack of notice of the exact time and place for printing, stuffing, and mailing of ballots had no impact on the security of the ballots or the integrity of the election. If the Committee's failure to provide candidates with such explicit notice constitutes a technical violation, the Committee finds that it had no actual impact on the outcome of the election.

b. Storage and Transport of Ballots

Sosa claims that the Committee did not inform him of "the time and place where the ballots were to be stored" or "the transport and storage of the ballot packages until the

count began.” (Ex. A 1.) The Committee’s correspondence with Sosa during the election contradicts these allegations.

Ballots were stored in a P.O. box from January 27 to February 26, which was listed on every member’s ballot. On February 11, Sosa sent an email to the Committee with a question about security for “the post office box that is collecting ballots.” (Ex. C 13-14.) The Committee informed Sosa that “the post office was given the names of the elections committee and instructed not to let anyone touch the contents of that box except for those people listed.” (Ex. C 13.)

The week of the vote count, the Committee received further questions from Sosa pertaining to ballot security, storage and transport. (Ex. C 19-20.) The Committee responded specifically to each question raised by Sosa, which included notice that the Committee would pick up the ballots from the post office immediately before the vote count on February 26, and take the ballots directly from the post office to the vote count. (Ex. C 19.) (It also informed him that all ballots had been sent to one post office and that no ballots had been retrieved yet. Ex. C 19. See Section III, B(1), above, for a discussion of security measures at the post office.)

In response to Sosa’s question: “What security measures are being taken to ensure the integrity of the pick-up and transport process?” the Committee stated that Committee members would be “the only ones handling the ballots until the count. Candidates and slates are allowed to have observers with the ballots.” (It also referred Sosa to its earlier description of post office security.) (Ex. C 19.)

The Committee thus communicated to Sosa all pertinent details of ballot storage and transport: that ballots were being stored in the P.O. box until February 26; that only Committee members were authorized to obtain access to the P.O. box; that the Committee would retrieve all ballots on February 26 immediately before the vote count; that only Committee members would handle ballots until the vote count began; and that candidates were allowed to have an observer with the ballots. At no time was Sosa or any other candidate denied his/her right to observe the election process. The Committee has decided that there is insufficient evidence to support finding a violation on this issue.

c. Handling of Ballots Prior to Vote Count

Sosa alleges that when he and his observer arrived at FPSU’s Orlando office for the ballot count on February 26, Caitlin Fishman, Liza Jacobs, Van Church, and two representatives from TrueBallot were meeting, with the ballots, in a room with the door closed. (Ex. A 1.) Jacobs is Chair of the Election Committee and Fishman was the staff assistant assigned to the Committee. Both Jacobs and Fishman confirmed Sosa’s allegation with the exception that Church was not in the room with them and the TrueBallot representatives. (Ex. G 5.) There were no candidate or slate observers present when Jacobs, Fishman and the representatives from TrueBallot entered the room. (Ex. G 5.) Committee member Barbara Mitchell also joined them in the room later. (Ex. G 5.) They were discussing the procedure for the ballot count. As noted above, the

Committee had previously told Sosa that “candidates and slates are allowed to have observers with the ballots.” (Ex. C 19.)

The Committee has decided there is insufficient evidence to support any finding of ballot tampering from the handling of ballots prior to the vote count. There was nothing improper with TrueBallot and Committee members and staff meeting to discuss the procedure for tallying ballots. No observer was denied the right to observe the ballots. Jacobs and the TrueBallot representatives accompanied the ballots at all times. TrueBallot President John Seibel informed the Committee that “[t]he ballots were in my sight the entire time after they were picked up from the PO. NO ONE TAMPERED WITH THE BALLOTS IN ANY WAY” (emphasis in original). (Ex. E 7.)

C. Failure to Mail Out Ballots

1. Ballots for Members of Palm Beach School District

Sosa alleges that approximately two hundred members from Palm Beach School District were not sent ballots. (Ex. A 2.) In support of his allegation, Sosa submitted a chart that he used as an organizing tool in the spring of 2009. (Ex. B 4-6.) The chart shows the number of “card signers” in different employer units. Under PBSU (presumably Palm Beach School District), the chart shows that as of March 15, 2009, organizers had 1743 “cards in hand.” Sosa compared the number of “card signers” from March 2009 to the number of ballots TrueBallot sent, in January 2010, to Palm Beach School District members, and concluded that FPSU failed to mail ballots to a significant number of members. Sosa did not provide evidence showing the number of dues-paying members for this unit at the time of the election. (Only regular dues-paying members of FPSU are entitled to vote. FPSU’s Constitution & Bylaws, Art. V.)

Evidence provided by FPSU and TrueBallot contradicts Sosa’s allegation. SEIU Database Specialist Karmen Pensyl reported to the Committee that in January of 2010, she prepared a spreadsheet from FPSU’s database of members and that, at that time, Palm Beach School District had 1565 members. (Ex. D 3-4.) Seibel informed the Committee that TrueBallot mailed ballots to 1567 members at Palm Beach School District (1565 initially, and 2 additional ballots during the election in response to member requests for new ballots), which was supported by TrueBallot’s database records. (Ex. E 6.)

FPSU’s Membership Coordinator Angelina Whitbeck informed the Committee that she is not familiar with the chart provided by Sosa and that it does not accurately reflect the number of dues-paying members at Palm Beach School District. (Ex. D 10.) She also provided the Committee with payroll reports prepared by Palm Beach School District from December 2009 and January 2010, which corroborate FPSU and TrueBallot’s reports that FPSU sent ballots to all members’ last-known addresses. (These documents are not attached because they include members’ social security numbers.) The Committee has decided that there is insufficient evidence to support a finding of violation on this issue.

2. Palm Beach Gardens Ballots

Sosa alleges that Palm Beach Gardens Steward Kevin Ray and other unnamed members returned ballots that were not counted. (Ex. A 2.) Sosa presented no evidence in support of this allegation beyond citing TrueBallot's report that, out of 25 members at this particular worksite, no valid ballots were returned and counted on February 26.

The Committee has previously found that appropriate ballot security measures prevented anyone from tampering with ballots (see Section III, B(1), above). Furthermore, Sosa failed to provide a witness statement from Ray or even further hearsay allegations of the specific facts, such as when Ray mailed his ballot or whether he left the printed bar code identifying information on the outside ballot intact (which was required for a ballot to be considered valid).

Even assuming that Sosa's hearsay allegation is true, there are legitimate explanations for why Ray's ballot might not have been counted. On February 26, TrueBallot found that five of the returned voted ballots were ineligible—for example, if the ballot was a duplicate or if the member removed identifying information from the ballot's outside envelope (defeating security procedures to verify whether a ballot was a duplicate or not). (Ex. E 1.) Alternatively, Ray's ballot could have arrived at the post office after the Election Committee retrieved the ballots on February 26. (February 25 was announced as the cut-off date for the election. Ex. C 2-3, 8.) The Committee has decided that there is insufficient evidence to support finding a violation.

3. Undeliverable Ballots

Sosa alleges that “there was no attempt to seek new addresses or member information when ballot packages were returned as undeliverables.” (Ex. A 2.) FPSU was required to mail ballots to all members' last-known addresses and to make reasonable efforts before the election to keep its membership list updated.

In the certificate of election results, Seibel reported that, out of 4724 ballots mailed out, 155 were returned to TrueBallot as undeliverable. Seibel informed the Committee that TrueBallot has possession of all returned undeliverable ballots in its office in Maryland. (Ex. E 1, 7.) Seibel also stated that, in his professional experience, a 3% rate of undeliverable ballots was “within the bounds of what would be expected in an election of this size. Had the number of ballots being returned as undeliverable exceeded what [TrueBallot's] experience tells us is within normal limits, we would have advised the local union during the course of the election.” (Ex. E 11.)

Prior to the election, FPSU took steps to update its mailing list and to find accurate addresses for members with incorrect or incomplete addresses. During the fall of 2009, when membership mail was returned to FPSU as undeliverable, Whitbeck would make a checkmark in the membership database for “bad address.” (Ex. D 4.) In preparation for the election, she, Database Specialist Pensyl, and FPSU employee Sheila

Hamilton used internet and United States Postal Service information to update and correct members' addresses that had been marked as "bad." (Ex. D 4.) They also updated the database with any forwarded addresses that were included on returned mail. (Ex. D 4.)

FPSU also established a system for members to request and receive ballots during the course of the election. The Election Notice that the Committee sent out and posted contained clear instructions for voters:

"Voters who do not receive a ballot by mail or are in need of a replacement ballot can request one by sending an email to elections@seiufpsu.org, or by calling Angelina Whitbeck at 407-856-5828." (Ex. C 6.)

This information was repeated, in bold font, in the Voter Election Guide and online on FPSU's website. (Ex. C 8.) Union stewards also instructed members to call Whitbeck for ballots.

The Committee received no email messages from members requesting ballots. Whitbeck, however, assisted 53 members in obtaining ballots during the election. (Ex. D 8.) She explained that members called both her direct office line (the 407-area code number, listed above) and also the Member Resource Center (MRC) toll-free line, which is answered by either Whitbeck or Hamilton. (Ex. D 5-6.)

Whitbeck provided the Committee with a detailed statement of the process FPSU used to respond to member requests for ballots. (Ex. D 6-8.) During the first few days after ballots were mailed, Whitbeck informed members that the "ballots had recently gone out and that they should wait a few days to see whether it comes in the mail. [She] instructed members to call back if their ballots didn't arrive within a couple of days." (Ex. D 7.) Starting on February 4, Whitbeck took member information and processed requests for new or replacement ballots. (Ex. D 7-8.) While the member was on the phone, Whitbeck would confirm the member's address and then submit ballot requests online to TrueBallot. "[The] system was designed to make sure no requests fell through the cracks. By responding immediately to member requests, no backlog of requests accumulated." (Ex. D 8.)

When TrueBallot received each request from Whitbeck via its "password protected duplicate ballot request web site application," it would print and send out a new ballot (—information on the ballot's outside envelope allowed TrueBallot to track ballots and ensure each member voted only once.) (Ex. E 1, 6.) TrueBallot confirmed Whitbeck's account that it received requests and sent ballots to 53 members after the initial mail-out of ballots on January 27. (Ex. E 1.)

Based on FPSU's actions in preparing, checking, and correcting the list of voters' last-known addresses, the Committee has determined that FPSU took reasonable steps to update its member list prior to the election. Siebel's assessment of the undeliverable return rate confirms that FPSU's efforts were not only reasonable but effective as well.

Additionally, FPSU's system for providing duplicate or new ballots during the course of the election allowed 53 members to vote who, despite FPSU's reasonable efforts, did not receive ballots from the initial mail out to last-known addresses. The Committee has decided that there is insufficient evidence to support a finding of violation.

4. Requests for Ballots from Palm Beach School District Members

Sosa alleges that 30 members at Palm Beach School District called the MRC toll-free line (referred to by Sosa as the "866 number") to request a ballot and never received one. (Ex. A 2.) As evidence, he provided a list of 64 employees, entitled "Members who called the 866# to obtain a ballot and never got one." (He later added one additional name to the list from a different bargaining unit.) The Committee requested clarification on his basis of knowledge of the list. Sosa responded: "The Members of the bargaining unit I mention are people that our stewards directed to the 866 number to request their ballots during the campaign. The stewards took their information when a member complained they didn't receive a ballot." Sosa did not submit any witness statements from employees on the list or from the stewards who collected the names, or any further information in support of this allegation.

There is no evidence beyond Sosa's hearsay that the listed employees called the MRC line and requested ballots.² Sosa's explanation for the list is that it shows employees who "stewards *directed* to the 866 number" (instead of stewards receiving the information after a call was actually placed.) Furthermore, Sosa has not provided information about when the conversations between stewards and listed employees took place or what, if any, follow up occurred. (An employee who notified her steward in late January that she had not received her ballot might not have updated the steward upon later receipt of the ballot.)

The Committee considered this ambiguous hearsay evidence in light of the records and statements received from FPSU and TrueBallot. As an initial matter, Whitbeck informed the Committee that twelve of the employees on Sosa's list were not FPSU members entitled to receive a ballot, and her examination of membership records is supported by the employer payroll records that FPSU provided. (Ex. D 10.) (Additionally, approximately ten members' names were presumably misspelled; the name on Sosa's list has been substituted with a likely match from FPSU's membership database. Ex. G 1-3.)

Of the remaining 53 eligible voters on Sosa's list, TrueBallot's election records show that it mailed ballots to 50 of them. (Ex. E 5; G 1-4.) Seven of the mailed ballots

² The Committee investigated whether it was feasible to acquire the phone log for the MRC line from January 27-February 26. The IT department estimated the cost at about \$200. Whitbeck recounted that she receives at least three calls per day on the MRC line pertaining to grievances and other member issues, and so the phone log would likely include nearly 100 phone numbers. Without any further supporting facts or documentation from Sosa (such as witness statements from stewards or the employees themselves) that provide firsthand knowledge or directly contradict the evidence received from FPSU and TrueBallot, the Committee declined to request the phone log.

were returned to TrueBallot as undeliverable, implying that 43 ballots were delivered. (Ex. E 5; G 1-4.)

The only record FPSU or TrueBallot has of anyone on Sosa's list requesting a ballot was for member Regina Vasquez Polo, who, according to TrueBallot's records, was added to the voter list and mailed a ballot. (Ex. E 5; G 1-4.) Given Whitbeck's and Seibel's statements and supporting documentation detailing their process for responding to member requests for ballots during the election, the Committee finds it improbable that the sixty-five employees on Sosa's list could have requested ballots without leaving a record with FPSU or TrueBallot. As noted above, Sosa's hearsay evidence is ambiguous as to when such calls were made or whether they were actually made at all. Even assuming that each employee listed by Sosa did call the MRC line, the calls were likely placed during the first week of the election, when Whitbeck was advising members to wait a few days and call back if their ballot did not arrive in the mail. This would explain why there is no computer record from FPSU or TrueBallot confirming that a request was made by any of the listed employees (with the exception of Vasquez Polo, whose request was documented and to whom TrueBallot sent a new ballot on February 18). Members on the list who called prior to February 4 might have received their ballots the following week, or, if they did not receive a ballot, neglected to call back to complete a ballot request with Whitbeck.

The Committee has decided that there is insufficient evidence to support a finding that members requested and were denied ballots. The Committee has found, however, that Sosa's list includes three members from Palm Beach School District for whom FPSU failed to send a ballot to their last-known address: Claire Frazier, Mary Ferguson, and Carmen Virgil. (Ex. D 6; G 1-2.) FPSU has given no explanation for why these three members were not included in its original membership database. The Committee has not found any evidence of improper conduct on FPSU's part, but nonetheless these three employees should have been on the list and should have been sent ballots. Three ballots, however, had little impact, as they could not have changed the outcome of the officers' election and thus were not determinative.

D. Using Union Resources and Working on Union Time

1. Alphonso Mayfield

Sosa alleges that rival presidential candidate Alphonso Mayfield used union resources to campaign and campaigned during work time. (Ex. A 2.) Specifically he alleges that Mayfield campaigned: (1) at a membership meeting at Belle Glades High on January 12; (2) at a membership meeting at Belle Glades Elementary on January 18; (3) during a phone call with shop steward Norman Williams on January 19; and (4) during a phone call with shop steward Robin Brown on January 19. Sosa has submitted no evidence in support of his allegations, despite the Committee's repeated requests for

witness statements (which included specific requests for statements from Williams and Brown).³

Mayfield admits that he attended meetings in Belle Glades on January 12 and 13, that he spoke with Williams and Brown on January 19, and that all events occurred during work time. (Ex. F 2.) It is thus only the content of the meetings and conversation that is at issue.

Mayfield provided a detailed explanation of the topics discussed for each of Sosa's allegations. (Ex. F 2.) According to Mayfield, the meetings at Belle Glades High and Elementary were part of FPSU's contract campaign for the Palm Beach School District, and he was meeting with members about the impending contract, distributing and receiving surveys for negotiations, and recruiting stewards. (Ex. F 2.) Mayfield also provided detailed descriptions of his January 19 discussions with Williams (on the phone) and Brown (in person):

“[Williams] had doubts over the economic outlook for Riviera Beach. Williams wanted to discuss who would be negotiating future contracts. He expressed concerns about Frank Sosa's ability to negotiate the contract effectively. Williams also wanted to discuss the need for more stewards in Riviera as he was inundated with grievances.”

“Brown had questions regarding when bargaining would begin and who would serve on the bargaining team. I explained to her the importance of a contract campaign and its structure. We reviewed the contract campaign plan and discussed what staff and member roles would be. We also discussed the desire to hold a countywide paraprofessional meeting and possibly a smaller meeting at her school. She committed to doing turnout for a general para meeting. Subsequently meetings occurred on February 8 in West Palm Beach and in Jupiter on February 17.” (Ex. F 2.)

³ Sosa has demanded several times that the Committee “thoroughly” review FPSU's cell phone records for instances of Mayfield's supporters using union resources. The Committee has declined to do so. First of all, phone records would not indicate the content of conversations, which is necessary to determine whether any campaigning took place. Second of all, Mayfield and his supporters frequently initiate and receive calls from members in the course of their work duties. The volume of calls throughout the month of the election would include hundreds of legitimate calls.

Contrary to Sosa's assertion that the Committee should “try to find evidence supporting [his] charges,” the Committee finds that its primary role is to evaluate the specific facts and documentation that Sosa was required to submit in support of his objections. The election objection process is not an opportunity for an open inquiry into election conduct led by the Committee as inquisitor. Particularly where Sosa has failed to submit facts or documentation accessible to him in support of his claims, the Committee has no obligation to undertake an analysis of hundreds of FPSU staff phone calls, compare them with the phone numbers of its 4700 members, request that Mayfield and his staff supporters justify every call to a member throughout the course of a month, and then review the reported content of each call. It is the Committee's opinion that the cost of procuring the phone records and the time spent by Committee members as well as FPSU staff would require significant union resources and is unnecessary to determine the validity of Sosa's objections.

Mayfield's statement of the content of his discussions is undisputed by any other evidence. As supporting documentation, Mayfield provided internal time audits and an online calendar of his schedule for the relevant dates that are consistent with his account. (Ex. F 5-8.) The Committee has decided that there is insufficient evidence to support finding a violation.

2. Van Church

Sosa alleges that Mayfield slate supporter Van Church phone banked members throughout the election process using union facilities and on union time, and also inquired as to how members voted. (Ex. A 2.) Sosa provided two witness statements in support of his allegations. (Ex. B 9-10.) Member Bobby McGehe stated that Church called him at about 6 pm toward the end of the election and made several inquiries about whether McGehe had received his ballot, filled it out properly, and mailed it back. (Ex. B 9.) According to McGehe, Church informed him that he was calling on behalf of Mayfield and McGehe responded that he was not supporting Mayfield. Church said they had the right to disagree, and they ended the conversation. (Ex. B 9.) Member Cheryl Lewis-Hamilton sent an email to FPSU staff and several members complaining that on or about February 15 Church called her and asked her who she voted for, which upset her because she wanted her ballot to be secret. (Ex. B 10.)

Mayfield provided a statement from Church. (Ex. F 9-10.) Church's statement does not contradict McGehe or Lewis-Hamilton's statements. Church admitted that he called members to inquire how they voted, but explained that it was done on personal time using personal resources. (Ex. F 9.) He also said that most members were comfortable answering the question and for the members that were not, he did not press for an answer. (Ex. F 9.) On the broader allegation of phone-banking using union resources, Church explained that he used a personal cell phone to make campaign calls on his own time. (Ex. F 9.) As corroboration, he provided the Committee with a copy of the phone bill for his personal cell phone. He also identified the call to McGehe (561-640-3506) which was placed on February 9 at 6:25 pm.⁴

The Committee finds undisputed evidence that Church called and canvassed members as to how they had voted. This, however, is a typical campaign activity and is not prohibited by campaign rules, union constitutions, or federal law. Sosa has submitted no evidence supporting his allegation that Church campaigned with union resources or on union time. McGehe and Lewis-Hamilton's accounts are consistent with Church's statement and personal cell phone records. (The only evidence Sosa submitted related to time is McGehe's statement that Church called him at 6 pm—after regular working hours.) The Committee has decided that there is insufficient evidence to support finding a violation.

⁴ As this document was voluminous and contains personal information about Church and his wife, who share the phone, the Committee will keep it on file but will not attach it as an exhibit.

3. Rick Smith

a. Conversation with Freda Exum

Sosa alleges that on January 12, Mayfield slate supporter and FPSU Organizing Director Rick Smith campaigned on union time and threatened member Freda Exum, who was running as a candidate on Sosa's slate. (Ex. A 2-3.) Sosa did not submit any evidence in support of this allegation. The Committee, however, previously received a complaint from Exum and will consider that as a witness statement on this issue. (Ex. C 4-5.) Exum stated that on January 12 at about 10:30 am, Smith "expressed his disappointment in [her] for supporting Frank Sosa, as [she was] running on his slate." According to Exum, Smith told her that Sosa was not SEIU International's "candidate of choice," and if Sosa won the election, SEIU International would "pull subsidy money from our local" and that this would result in a "budget shortfall causing layoffs for Local staff and an overall weakening of our union." (Ex. C 4.)

Mayfield provided a statement from Rick Smith. (Ex. F 11-12.) Smith confirmed that he spoke with Exum on the morning of January 12. (Ex. F 11.) According to Smith, they were discussing two worksite issues in relation to Exum's position as FPSU chapter chair: downtown parking privileges, and customer service issues. Smith recounts that during the call, Freda asked him, "Are you mad at me?" and Smith responded to her question by saying that he was disappointed. (Ex. F 11.)

Considering Exum and Smith's statements together, the Committee finds that Sosa's specific allegations as to the content of the conversation are true. Smith does not directly deny or contradict the allegation that he claimed SEIU International would pull subsidy money, and so Exum's account of these statements is undisputed.

Smith and Exum's conversation, however, does not constitute either a threat or campaigning. This was a brief conversation between FPSU staff (Smith) and a candidate (Exum) that arose in the context of legitimate FPSU business. It was initiated by the candidate, as Exum's direct question "Are you mad at me?" prompted Smith's response that he was disappointed she was running on a slate that he did not support. The Committee finds it improbable, given the evidence, that Smith was trying to persuade Exum to vote against her own slate.

Smith does not work for or represent SEIU International, and he clearly has no authority to make or carry out decisions about local subsidies. Smith was expressing his opinion, and Exum treated it as such, indicating her disagreement as follows:

"I've been a proud member of this union for 20 years, so I've been around long enough not to believe that President Andy Stern and his leadership team would approve of punishing our members if they decide to vote for Frank Sosa instead of Alphonso Mayfield. I know President Stern fights hard for working people and has grown our union when all other unions were in decline. And I know they

didn't so it by taking much needed money away from locals for such petty reasons." (Ex. C 4.)

Like Exum, the Committee does not agree with Smith's opinion. Nonetheless, the Committee has decided there is insufficient evidence to support finding a violation on this issue.

b. January 22 Email

Sosa alleges that Smith campaigned on union time by using a union computer to send an email to Mayfield and his slate regarding their campaign schedule. (Ex. A 3.) In support of this allegation, Sosa has provided the Committee with a copy of the email, which was sent from Smith's personal email account to Mayfield's personal email account. (Ex. B 8.) The email was sent at 10:51 am on Friday, January 22, and reads, in pertinent part:

Attached you'll find our campaign schedule from Monday the 25th to Wednesday the 3rd. This is the most critical time of the campaign as people will be receiving their ballots and voting right away. WE HAVE TO REACH OUT TO THE MOST PEOPLE POSSIBLE IN THIS PERIOD!...Please, everyone, respond to what you can attend. We'll be arranging rides, accommodations, etc... for everything—so let me know by SUNDAY. Of course, you can email me here or phone me at 727-698-8620. (Ex. B 8.)

Smith admits that, although the email was sent from his personal email account, he "mistakenly" used a union computer to send the message. (Ex. F 13.) According to Smith, he sent it while he was taking a short break, which he typically takes throughout the day in lieu of a lunch break. (Ex. F 11.) Smith states that he wrote "you can email me here" so that slate candidates would respond to his personal email account (rather than his FPSU account). (Ex. F 11.)⁵ He also provided the Committee with several email messages from slate candidates responding to his personal email account. (Ex. F 15.)

Smith further admits that the phone number listed in the email is his union cell phone number. (Ex. F 13.) He explains that it was "inadvertently listed" because it's the number he uses "95% of the time" and he wasn't "thoughtful about it" when he wrote the e-mail. (Ex. F 13.) He stated that he does not recall receiving any calls on the union cell phone in response to this message, and provided proof of slate candidates responding by email instead. (Ex. F 15.)

According to Smith, the email was a reminder of a campaign schedule that had been "set previously." (Ex. F 13.) It was sent to Mayfield, several candidates running on the same slate as Mayfield ("Change to Move Forward"), and one member who Smith

⁵ Sosa alleges that Smith instructed slate candidates to "call [him] here" meaning his local union office. The text of the email is clear that Smith instructed people to "email [him] here." Compare Ex. A 3 with B 8.

stated had agreed to volunteer for the campaign. (Ex. F 12.) Smith asserts that “the campaign events would have remained in place and the schedule met with or without the memo.” (Ex. F 13.) There is no evidence that contradicts Smith’s explanation of the email.

Smith clearly violated campaign rules by using a union computer to send the email. The Election Committee sent out a memo to all FPSU staff, including Smith, on November 30, 2009, instructing staff that they should not use union resources to campaign, and explicitly listing use of union computers as prohibited. (Ex. C 1.) Regardless of whether this was a “mistake,” it constitutes a violation.

There is no evidence disputing Smith’s statement that he was on break when he sent the email. FPSU staff work long and irregular hours. It is reasonable that, since Smith starts work at 7:30 am, he would have taken a short break three hours into his work day. (Ex. F 11.) Nor is there evidence that anyone responded to the email by calling Smith’s union cell phone, although the fact that his union cell phone number is listed on the email is certainly troubling. Smith has provided documentation supporting his claim that slate candidates responded by emailing his personal account instead of calling his union cell phone. (Ex. F 13-15.)

The Committee has decided that the evidence supports finding a violation on this charge. Accordingly, it will assess the impact of this violation on the outcome of the election. The email was sent to Mayfield and other candidates on the same slate, plus one member who had previously indicated support for the slate. The email requested that candidates respond over the weekend for campaign events that would commence on the following Monday. Given the flexible time frame and the fact that this was not a communication sent to general voters, Smith’s use of union resources to send the email, while obviously improper, had very little impact on the election. If Smith had waited until he had access to a non-union computer to send the email, it would not have had any bearing on the campaign schedule set to commence several days later. Furthermore, the email was an internal memo to slate candidates (and one supporter), so it could not have affected voters’ perception of whether FPSU favored one candidate over another—at most it affected the vote of the one non-candidate member on the list. The email thus had minimal impact and was not determinative to the outcome of the election, and Smith’s violation does not require the election to be overturned.

The Committee recommends that FPSU reprimand Smith for using union resources to campaign, consistent with its disciplinary policy and past practice. If it is feasible to assess the dollar amount that sending the email cost, then FPSU should do so and require Smith to remit reimbursement.

4. Flyer in Largo Office

Sosa alleges that member Dennis Davis found a campaign flyer in support of the Mayfield slate in the copy machine in FPSU’s Largo office. (Ex. A 3.) Sosa has not submitted any evidence in support of this allegation. (Sosa informed the Committee, “I

will supply more information when Mr. Davis responds to me,” but never provided anything.) Accordingly, the Committee has decided that the evidence is insufficient to support finding a violation.

E. Discrimination

1. Work Schedule Changes

In January and February of 2010, Sosa was employed by FPSU as Bargaining Director. He alleges that FPSU, through Provisional President Mayfield, discriminated against him during the election campaign by changing his work schedule. (Ex. A 3-4.) He incorporated a previous charge, dated February 20, alleging discrimination based on Sosa and FPSU employee Maria Perez’s “removal from representing Palm Beach School District employees.” (Ex. A 8.) Sosa has submitted no evidence in support of this allegation beyond his own statements in his Objections and previous Charge.

In particular, Sosa provided no evidence supporting his claim that he was given a heavy schedule (such as specific dates he worked, a copy of his schedule, the tasks assigned, any of the emails he references in his Objections, or how the schedule differed from his previous schedule). It is the responsibility of the member filing Objections to provide specific facts and documentation in support of his allegations.

The specific facts that Sosa did provide relate to his reassignment from Palm Beach School District on or about February 22. Changes to Sosa’s assignment in late February occurred after most members had already voted and mailed their ballots. Additionally, Mayfield has provided a work-related justification for the reassignment. (Ex. F.)⁶

Moreover, the Committee does not have the authority to second-guess FPSU management’s work assignments. Whether FPSU assigned Sosa to Palm Beach School District or another worksite is irrelevant to the election because Sosa is not allowed to campaign while working. For these reasons, the Committee has decided that there is insufficient evidence to support a finding of violation.

2. Election Committee Announcement

Sosa alleges that FPSU discriminated against him based on an announcement the Election Committee sent to members on February 17, urging them to fill out their own ballots. (Ex. A 4-5.) Mayfield had previously brought to the Committee’s attention reports, from at least three worksites, that FPSU stewards were collecting and filling out members’ ballots. (Ex. C 15-16.) Mayfield alleged that it was stewards who were supporting Sosa’s slate that were filling out other members’ ballots, but he did not file a charge or present any evidence to the Committee, and the Committee therefore did not

⁶ The Committee has decided that specific information regarding Sosa’s personnel record is unnecessary to make public. Therefore, it will keep Mayfield’s full letter on file, but has redacted portions of page F 3 from exhibits available to the public.

investigate or make any determinations on the issue. (Ex. 15.) Nevertheless, as this allegation raised serious concerns (and could have been grounds for a challenge to the election's outcome), the Committee issued an announcement urging members to fill out their own ballots and informing them that stewards who asked for their ballots were not acting on behalf of FPSU. (Ex. C 17.)

Sosa claims that, by issuing the February 17 announcement, the Committee "supported" Mayfield's allegations and by inference "support[ed] one candidate over another." In fact, the announcement was entirely neutral and did not mention or refer to any slate or candidate. (Ex. C 17-18.) Furthermore, the announcement was clear that the Committee had not made any findings of wrongdoing, but stated rather that the response was based on "allegations" in a report, which, "if in fact true," could result in election results being overturned. (Ex. C 17.) The Committee has decided that there is insufficient evidence to support a finding of violation.

3. Retaliatory Discharge

Sosa alleges that FPSU discriminated against him by terminating his employment on March 2. (Ex. A 6.) Whether Committee members agree or disagree with FPSU management decisions, the Committee recognizes that a union president has the legal authority to discharge union staff for opposing his candidacy or agenda. The Committee's role is not to evaluate FPSU's management decisions, and the Constitution & Bylaws grants no authority to the Committee to interfere in personnel decisions. Moreover, this allegation concerns events that occurred *after* the election was over and the results announced, and thus could not possibly have affected its outcome. The Committee finds that this allegation fails to state a legitimate complaint about election conduct, and that the evidence is insufficient to support finding a violation.

IV. CONCLUSION

The Committee has carefully reviewed all the evidence received, and has reached decisions on all charges, as described above. The Committee finds that no major campaign violations occurred. The Committee further finds that minor campaign violations did not have a determinative impact on the election's outcome and that the election results certified on February 26 are valid. At most, four votes were impacted by violations, which did not affect the outcome of the presidential race since Mayfield won by a margin of 28 votes. The Committee thus denies Sosa's demand that the election be overturned and re-run. This decision may be appealed to the President of SEIU International within fifteen days, in accordance with SEIU's Constitution & Bylaws, Article VIII, Section 2.

April 7, 2010

FPSU Election Committee