

## **REPORT OF UDW ELECTION COMMITTEE**

The following is the report (“Report”) of the UDW Election Committee (“Committee”) regarding protests filed by UDW members regarding conduct of the 2022 UDW Officer and Delegate Election.

### **A. The Election Committee**

The Committee is a constitutional body with authority to oversee UDW elections, including the investigation of post-election protests. With respect to election protests, the Committee’s role is to review the election process and determine whether there were rule violations that could have affected the outcome of any election race. In carrying out this role, the Committee is governed by the following rules:

- Article XVIII, section 2.b of the UDW Constitution, which provides for filing of election protests in writing within 10 days after the ballot count and gives the Committee the job of “hearing and deciding” the protests.
- Section 4.B of the AFSCME International Election Code (Appendix D of the International Constitution), which authorizes election committee of local unions to hear election protests.
- The provisions of the AFSCME Local Union Election Manual governing election protests. The Election Manual cautions the Committee not to focus on “purely technical violations” but to ask the practical question whether the alleged rule violation could have affected the outcome of the election.

The Committee for the 2022 election consisted of the following UDW members in good standing, each representing a geographical district: District 1: Gayle Montisano (vice-chair); District 2: Mary Ann Young; District 3: Joaquina Munoz (chair); District 4: Yvonne Martinez; District 5: Teresa Juarez; District 7: Elvira Mariz. After appointment of the Committee, the member appointed from District 6 became unable to serve and did not participate in the work of the Committee either before or after the ballot count.

### **B. The Election Process**

In the 2022 election cycle, UDW conducted elections for the following offices: (1) UDW principal officers; (2) district board members; and (3) AFSCME Convention delegates.

For many years, UDW has used an outside vendor, MK Elections (“MK”), to provide election services, including the design and printing of the ballots, the management of member/voter data, and the mailing and counting of ballots. MK or its principals have been involved in UDW

elections since 2010. MK coordinated its efforts under the direction of the staff employees assigned to assist with the election, primarily Nader Halawa and Brisa Johnson.

The following is a chronology of the 2022 election process:

- Jan 14<sup>1</sup> Notice of nominations are mailed to all members in good standing. The notice contains extensive information concerning the election process, including (1) the offices to be filled; (2) candidate eligibility rules; (3) the nomination process; (4) the challenge and protest processes; and (5) election and vote tally procedures. The notice enclosed nomination forms for all offices.
- Feb 13 Deadline for receipt of nomination forms.
- Feb 13-23 Written notice is sent on a rolling basis to each nominee regarding his/her eligibility; eligible nominees are sent declination and observer forms. Nominees were also called by staff to confirm intention to run.
- Feb 24 Publication by UDW of list of eligible nominees.
- Mar 6 Deadline for nominee eligibility challenges.
- Mar 24 Ballots are mailed to all eligible voters.
- Apr 7 After discovering printing error on District 7 ballot, Committee orders that corrected ballots be mailed to all District 7 voters with explanation of error. Members in District 7 are given the opportunity to vote using the corrected ballot. Deadline for submission of District 7 ballots extended until May 12.
- Apr. 13 Corrected ballot mailed to all District 7 voters.
- Apr 23 Original ballot return deadline (deadline for all voters other than District 7).
- May 12 Ballot return deadline for District 7 voters.
- May 13 Ballot count at UDW headquarters supervised by MK personnel. Election Committee and candidate observers are present for count.
- May 23 Deadline for filing election protests; five timely protests received.
- June 1 Election protest hearing is conducted at UDW headquarters in San Diego.

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<sup>1</sup> All date references are to 2022.

### C. The Vote Tally and Election Results

Candidates in the UDW election had the option of running as individual candidates or as part of a slate. In the 2022 election, there were two slates—Homecare Workers United and A Stronger Union--that ran candidates for statewide office and that therefore appeared on the ballots in all seven districts. A third slate (Providers in the Imperial Valley for Better Change) was comprised of candidates for district office and appeared only on the ballot for District 7. Individual candidates were on the ballot for one of the statewide offices (president) and various district races.

The ballots were counted by MK elections at UDW headquarter in San Diego on May 13. The physical ballot count is conducted using optical scanners. The Election Committee, candidate observers and relevant UDW staff were present to observe the count, along with five employees of MK Elections.

The numerical breakdown of the results is as follows:

- Total ballots mailed (first mailing): 70,730
- Total ballots mailed (District 7 corrected ballots): 3784
- Total ballots received: 4990 (4672 original ballots; 318 corrected ballots)

A summary produced by MK containing the numerical results in each race is attached to this Report as Exhibit 1. It is important to note that none of the contests was close. In every race, there was a wide margin between the winning candidate and next top finisher. For the three statewide officer races, the smallest margin of victory was 2231 votes (for secretary-treasurer). These numerical margins are important in analyzing whether the violations alleged by the protesters could have affect the outcome of the election.

### D. Post-Election Protests

The deadline for the receipt of election protests was May 23. A total of five written protests were submitted, though there is overlap among them both in terms of the identity of the protestors (some members signed more than one protest) and the substance of the protests (multiple protests alleged the same or similar violations). For the sake of reference, the Committee has designated them collectively Exhibit 2(a) – (f) and attached them to this Report. They can be summarized as follows:

- 1(a) **Protester:** Delfina Gonzalez  
**Pages:** 2  
**Basis for protest:** improper denial of candidate eligibility; omission of candidate's name from certain ballots; 21 ballots not accepted "due to errors of staff."
- 1(b) **Protester:** John Stevenson

**Pages:** 1

**Basis for protest:** members “discouraged from networking”; meetings unfairly promote “approved” candidates.

1(c) **Protester:** Miriam Plotkin

**Pages:** 10

**Basis for protest:** Multiple: candidates denied equal opportunity to member information; staff employee who are candidates have unfair advantage; candidates failed to receive written notice of nomination, ballots and of the election information: omission of candidate (Nuyen) from ballot; inadequate zoom access to ballot count; failure to count “hundreds of ballots.”

1(f) **Protester:** 30 members

**Pages:** 13

**Basis for protest:** Multiple: omission of candidate (Nuyen) from ballot; some members failed to receive “election info, nomination forms and ballots”; candidates denied “equal opportunity”; nominees were not given campaign information.

1(g) **Protester:** Sherrie Nuyen

**Pages:** 2

**Basis for protest:** omission from District 7 ballot

## **E. The Committee’s Investigation**

In accordance with Article XVIII, section 2.b of the UDW Constitution and Section 4.B of the AFSCME International Election Code (Appendix D of the International Constitution), the Election Committee conducted a hearing to gather evidence regarding the election protests. The hearing took place on June 1, 2022, at 12:30 p.m. PDT at the UDW headquarters, 4855 Seminole Dr. San Diego 92115. Members not able to attend in person were allowed to participate by zoom. Approximately 15 members attended in person, and another 10 members witnessed all or part of the proceedings by Zoom. All members in attendance were allowed to make statements and present evidence. The hearing adjourned at 4:50 p.m.

## **F. The Committee’s Findings**

Based on the investigation described above, the Committee makes the following findings regarding the election protests.

### **Protest 1(a)**

Protest 1(a) was submitted by member Delfina Gonzalez, who was present at the vote count as an observer and who made an extensive presentation at the protest hearing. Her protest raises three separate issues, which the Committee discusses below:

**Candidate eligibility.** Gonzalez attempted to run for statewide office (president) and delegate to AFSCME Convention 2022 but was determined to be ineligible for having failed timely to pay dues. She filed a challenge to the determination of ineligibility under Article XVIII, § 2(a) of the Constitution, which the Committee considered and rejected on February 25. That decision was later affirmed by the UDW Executive Board on March 8. Because the Committee has already ruled on the eligibility challenge, it may not consider it as part of the post-election protest.

**Omission of name from District 7 ballot.** The second issue raised in Gonzalez's protest involves a situation in which the Committee itself was involved. Shortly before April 7, the Committee learned from Nader Halawa of an error affecting the ballots that had been mailed to voters in District 7 (Imperial Valley). Mr. Halawa advised the Committee that, as the result of a printing error, the name of one of the candidates for secretary-treasurer, Sherrie S. Nuyen, had been left off the District 7 ballot. The error *only* affected the District 7 ballots. A check of the ballot proofs confirmed that Ms. Nuyen's name correctly appeared on the ballots for all other Districts, a fact that was later confirmed by inspection of the ballots at the count.

The Committee met by zoom on April 7 to consider how to correct the error affecting the District 7 ballot. Based on advice provided by legal counsel, Anthony Segall of Rothner, Segall & Greenstone, the Committee voted on April 7 to take the following steps:

1. A corrected ballot shall be mailed to all District 7 voters no later than April 13. The mailing shall explain the reason for the corrective action and indicate that the corrected ballot must be voted and received by UDW no later than May 12.
2. The mailing will further explain that if the District 7 member has already voted, he/she may submit a second ballot and only the second ballot will be counted. If the member has already voted and does not submit a second ballot, the original cast ballot will be counted.
3. The deadline for the submission of ballots in all districts other than District 7 shall remain unchanged—April 23. Those ballots, however, shall be impounded and not counted until the extended voting period for District 7 closes on May 12. On or after April 23, UDW will send a member message explaining the delay in the counting of ballots.
4. All ballots will be counted according to normal procedures on May 13.

5. In the event that there is a need to conduct a runoff election for any office, the Election Committee will meet to decide on an appropriate schedule

The above steps were implemented by UDW consistent with the Committee's instructions. While numerous members at the protest hearing suggested that the Committee's solution to the problem with the District 7 ballots was unfair or inadequate, none of them could explain why. Certain protesters speculated that there might have been problems with the ballots for other districts. But this is clearly not the case, since the physical ballots were examined at the count and the vote tally reflects that Ms. Nuyen received votes, in roughly similar percentages, in all seven districts.

Finally, it is important to remember that the printing error only affected District 7 ballots. District 7 is a small District; only 590 votes were cast district-wide. Thus, even if Nuyen had received every vote cast in the district, it would not have been enough to overcome the 2231 vote deficit in her race.

There is no basis for finding that the printing error could have affected the outcome of the election.

**21 uncounted ballots.** The final issue raised in Gonzalez's protest involves a problem stemming from the printing error. As discussed above, to correct the printing error, the Committee directed that all District 7 ballots be reprinted, and that if a member submitted two ballots that only the reprinted ballot be counted. To carry out this instruction, the reprinted ballots were marked with a highly visible black "R" on the outer envelope.

On the day of the vote count, MK personnel segregated the reprinted ballots and counted them first. The purpose of this was to ensure that the reprinted ballots would be counted in the instance where a member voted twice, because the tabulation equipment was programmed not to count a second ballot cast by the same member. Once the ballot count was underway using this approach, MK discovered 21 additional, unopened reprinted ballots that had not been properly segregated at the beginning of the process. At the time these ballots were discovered, it was no longer possible to match them with second ballots cast by the same voters. Instead, it was decided that the 21 ballots should remain unopened and set aside until it was determined whether they could potentially affect the outcome of any race.

There is no question that the handling of the 21 ballots was an unfortunate error, though there is no evidence of tampering or bad faith by anyone involved in the process. It is equally clear that the 21 ballots are insufficient in number to have had an effect on the outcome of any race.

**Protest 1(b):**

In both his protest and his oral presentation at the hearing, Mr. Stevenson alleged that union staff improperly assisted the Homecare Workers United slate and "discouraged" other members from networking. He presented no specific facts supporting these allegations. The only specifics he gave involved UDW staff such as Halawa and Johnson in their role of administering the election

process—a completely proper and necessary function for union employees. Stevenson did not prove any violation, much less one affecting the outcome of the election.

**Protest 1(c):**

Miriam Plotkin signed two protests: 1(c) submitted on her behalf alone; and 1(d), which she signed along with 29 other members. In Protest 1(c), Plotkin claims that she was not given equal information about the elections, though she clearly received and completed the nomination form allowing her to run as a convention delegate in District 1. She also alleges that she did not have the opportunity to designate an observer. UDW records indicate that all election mailings were sent to Plotkin at the address maintained in the member data base. Moreover, other members of her slate did receive the observer notice, which was attached to the eligibility letter and which other members of her slate obviously received. In any event, Plotkin's protest confirms that she herself able to watch the vote count on zoom.

Plotkin also complains that she received a telephone call from a UDW employee, Sandra Castillo, confirming her wish to run after she was determined to be eligible. She does not explain what rule this violated or how the call prejudiced her campaign.

Plotkin's protest also references a number of issues dealt with in other section of this Report, such as Delfina Gonzalez's determination of ineligibility and the ballot printing error affecting Nuyen.

**Protest 1(d):**

This protest, entitled *Demand to Redo the UDW Officers and AFSCME Delegates Election*, is signed by 30 members, including all of the members of the A Stronger Union slate. Numerous speakers at the hearing addressed portions of the protest, including Nicanora Montenegro, John Stevenson, Willard Gee, Sherrie Nuyen, Shearl Lambert, Allene Villa, Alise Herbert, Miriam Plotkin, and Joan Thompson.

Most of the issues raised in Protest 1(d) are discussed elsewhere in this Report and there is no need to repeat the discussion. We address two additional issues here.

First, the protest alleges that “some members in good standing did not receive election info, nomination forms, and ballots. P. 4. In fact, the *only* person who stated that she did not receive any election information--the nomination and observer forms—was Plotkin, an allegation we discussed in connection with her previous protest. Not a single member (out of approximately 71,000) came forward at the hearing or is identified by name in the protest as having not received a ballot. There is no evidence of any problems with the ballot mailing, much less problems of the magnitude that would have affected the outcome of the election.

Finally, a number of speakers mentioned the fact that the Homecare Workers United slate sent a campaign mailing. Any member has the right to do so under the AFSCME Local Union Election Manual, which provides as follows:

Any member who has been nominated for office or who announces an intention to run for office has the right to one mailing to the membership made through the union office before the election. This mailing is not to be made at the union's expense.

Manual at p. 10.

The mailing sent by the Homecare Workers United slate was paid for by members of that slate. The mailing was processed by a mailing service selected by UDW, which prepared the mailing based on member data supplied by UDW. UDW did not assist with the preparation of the mailing and at no time did the candidates on the slate have access to the member data. The protesters presented no evidence that they requested or were denied the opportunity to send such a mailing.

**Protest 1(e):**

Sherrie Nuyen's separate Protest 1(e) relates to the printing error and is discussed in connection with Protest 1(a) above.

**Other issues:** Both the written protests and the oral presentations of members at the protest hearing touched on numerous issues that the Committee has chosen not to discuss, either because they have no bearing on the conduct of the election or because they involve policy considerations that the Committee has no constitutional authority to address. For the sake of thoroughness, we list the issues here:

- The content of the job descriptions of UDW staff assisting with the election process.
- Whether the election ballots were printed by a union printer. We note, however, that MK is a union employer and used a union printer to print the election materials.
- Whether meeting snacks are purchased from non-union stores.
- Whether UDW's interpretation services at union meetings are adequate.
- How many times the Election Committee met.
- Whether UDW should conduct a "statewide/widespread election information campaign to inform members of their voting rights and power."

None of these issues is within the Election Committee's authority to address and we therefore do not discuss them in this Report.

## **G. Conclusion**

Based on all of the evidence gathered in the investigation, the Committee determines that there were no violations that could have affected the outcome of the election and no basis for setting aside all or part of the election results.