

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: RON SCHERER)	Protest Decision 2000 EAD 63
)	Issued: December 12, 2000
Protestor.)	OEA Case No. PR110301SO
_____)	
)	

Ron Scherer, a member of Local 767, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“*Rules*”) against Local 767. The protestor alleges that Local 767 improperly provided him with an incomplete set of mailing labels with which to mail literature to members of the local in support of his delegate campaign, in violation of Article VII, Section 7 of the *Rules*.

Election Administrator representative Lois Tuttle investigated the protests.

Findings of Fact

Two slates were formed at Local 767 for its local union officer and delegate elections. The “Strength Through Diversity” slate (the “STD slate”) of local union officer candidates consists of Jenkins, Thompson, Shorts, Jill Shipman, Paul Tribble, Mark Hopkins and Terry Johnson. The same seven individuals are candidates for delegate or alternate delegate on the STD convention delegate slate, along with delegate candidate (but not officer candidate) Matt Laakso.

The second slate is known as the “United Teamsters” slate (the “UT slate”). Its candidates for local union office are Scherer, Alton Green, Jerry Watkins, Custer Kesel, Ralph Compton, Mark Grant and Dennis Travis. The same seven individuals are candidates for delegate or alternate delegate on the UT convention delegate slate, along with alternate delegate candidate Ken Cole. Two other Local 767 members are individual candidates for delegate and alternate delegate, respectively.

Local 767’s nomination meeting was held on October 1, 2000. The ballots for Local 767’s delegate election were mailed on November 1, 2000, and the ballots were counted on November 22, 2000. The UT delegate slate candidates did not prevail, with Scherer garnering the highest number of votes of UT slate candidates. Scherer trailed the successful delegate candidate with the least number of votes by 26 out of 1002 votes cast, with 19 undeterminative challenged ballots.

Scherer timely requested that Local 767 provide mailing labels for a UT slate campaign mailing, and received those labels on October 26, 2000. The list provided contained 3,769

names. Shortly thereafter, Scherer states that he learned from Jackie Johnson, a member of his slate's election committee, that the mailing list for the ballots that were sent to the printer on October 23, 2000 contained 3,930 names. Scherer then spoke to the secretary-treasurer, Gerald Thompson, about this.

According to Thompson, the ballot mailing list was received from the IBT and sent directly to the printer retained by the local to assist with ballot mailing. Shortly thereafter, while his TITAN operator Angie Hightower was on a seminar in Las Vegas, Thompson received Scherer's request concerning the UT slate's campaign mailing. Since Hightower was gone, Thompson ran the UT mailing labels himself with Hightower's step-by-step assistance over the phone. According to Thompson, when he ran the list with her assistance, Hightower did not know that he was supposed to include bad addresses. As a result, the list that he gave his own slate (the STD slate) and the list he gave the UT slate contained only 3,769 names (excluding those with a "Bad Address" code). He said that he further reduced his slate's mailing list of 3,769 names by about 30 names that he knew were on Scherer's slate before submitting this list to the printer.

Thompson also spoke with Scherer on November 2 or 3, after the discrepancy in the lists was discovered, and offered to provide Scherer the bad addresses for his campaign mailing and go with Scherer to the printer. Scherer refused.

Our investigator spoke with Steve Echols of Reilly Echols Printing, the vendor hired to do election printing and mailing. Echols stated that the list he received from the IBT on October 11, 2000 contained 3,937 names. He stated that the lists he received for mailing to the STD and UT slates on October 27, 2000 both contained 3,744 names. (It appears that Echols referred to the STD slate list, which, as explained above, contained about 30 names less than the UT slate.) Echols mailed both slates' campaign mailers on November 1, 2000. He kept no record of the mailing lists used for the two slates' mailers, since they were the labels themselves. Echols stated that Johnson and Joe Ardt, the UT and STD slate observers, were present at the mailings and oversaw them. Johnson told our investigator that she knows nothing about this matter except the number of ballots that were mailed.

Analysis

Article VII, Section 7 requires that local unions "shall exercise all reasonable efforts to ensure that each candidate's campaign literature is processed and distributed in a complete and prompt manner."

Here, Local 767 admittedly erred in providing an incomplete set of mailing labels to the UT slate. The same error occurred in providing labels to the opposition STD slate. Once this err was discovered, within 1-2 days of the incomplete mailing, Local 767 offered to provide the UT slate with the missing "bad address code" labels. The UT slate refused the offer.

In these circumstances, where there was no discrimination between slates, and especially where the protestor refused the local's timely offer to correct its err, the protestor must be deemed to have waived any claim of a violation of Article VII, Section 7(e).

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Accordingly, this protest is DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Administrator in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
Suite 1000
885 Third Avenue
New York, New York 10022
Fax: 212-751-4864

Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15th Street NW, 10th Floor, Washington, DC 20005, all within the time period prescribed above. A copy of the protest must accompany the request for hearing.

William A. Wertheimer, Jr.

William A. Wertheimer, Jr.
Election Administrator

cc: Kenneth Conboy
Delores Hall
2000EAD63

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