

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

IN RE: ROBERT TURNER,)	Protest Decision 2001 EAD 309
)	Issued: April 17, 2001
)	OEA Case No. PT040512CA
Protestor.)	
_____)	

Robert Turner, a member of Local 880, filed a post-election protest pursuant to Article XIII, Section 3(a) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“*Rules*”). He alleges irregularities following the March 29, 2001 ballot count in the local’s delegate election.

Election Administrator representative Gwen Randall investigated the protest.

Findings of Fact and Analysis

One full slate, one partial slate, and two independent candidates were nominated as candidates in Local 880’s delegate election. Three delegates and three alternates were to be elected. Turner was a member of the partial slate running for the position of alternate delegate.

Turner was present for the initial ballot count. The 29 challenged ballots were determinative and had to be resolved, so it was decided to resolve them the next day, March 30. Turner was advised that this would occur, but he was unable to attend. He told Gary Kitchen, the business representative at Local 880, to proceed with the resolution of the challenged ballots. Election Administrator representative Gwen Randall resolved the challenges. After the resolution of challenges, four additional ballots remained to be counted. Kitchen telephoned Turner to advise him of this and again, Turner instructed Kitchen to go ahead. The result of the count after adding the four additional ballots showed Turner as the lead alternate, with one vote more than candidate Robert Plouffe. Plouffe requested a recount, and Randall agreed and told Kitchen to conduct it.

Turner was present at Local 880’s March 30 general membership meeting. While there, Kitchen advised him that the recount would be held on Monday April 2 at 10:00 at the local’s office. Turner was unable to attend and decided not to send an observer. He did not telephone Kitchen to say that he would not be there, but an observer from the other slate, Rick Parent, saw Turner in his truck from a distance that morning. Turner says he assumed that Parent would report to Kitchen that Turner was on the road. Parent did not do this and Kitchen waited until approximately 10:30 before commencing the recount.

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Observers were present from the other slate to observe the recount. No one was present from Turner's slate. Following the recount, the results showed a tie vote between Plouffe and Turner. Kitchen again telephoned Randall, this time to ask how to break the tie. Randall told Kitchen to resolve the tie by a coin toss, a draw of cards, or a draw of names from a hat. The coin toss was chosen, with the toss by a local union secretary. Plouffe won.

Kitchen says that he attempted to reach Turner by telephone when the coin toss became necessary, but that he was unable to reach him. Turner received no message from the local until he returned to the dispatch office at 3:00 p.m. that afternoon. He argues that he should have been present once the coin toss became necessary.

Article IX, Section 3 of the *Rules* provides that:

Observers shall be permitted to be present at any drawing by lot conducted in connection with any phase of the nomination and election process (*e.g.*, determining the placement of slates and individual candidates on the ballot for election of delegate and alternate delegate candidates, the breaking of ties, etc.). Notice shall be given to all affected candidates of the time and place for the conduct of such lotteries.

This provision required notice to Turner before any lottery to break a tie vote, separate from the notice of the recount itself. This is required because Article IX, Section 3 explicitly treats lotteries as discrete events requiring separate notice. Since that notice was not given, the lottery must be re-held after notice to Turner. We therefore GRANT the protest and so order.

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, Tenth Floor, Washington, DC 20005 (fax: 202-454-1501), all within the time

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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
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