

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

IN RE: HOBE WILLIAMS and)	Protest Decision 2001 EAD 405
PATRICK FREY,)	Issued: July 5, 2001
)	OEA Case Nos. PR050111WE
Protestors.)	and PR060712WE
<hr/>)

Hobe Williams and Patrick Frey, members of Local 174, filed pre-election protests pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“Rules”). Williams alleges that the Local 174 executive board (the “Board”) intentionally delayed deciding whether to uphold internal union charges against Bob Hasegawa because he is an International officer candidate for vice president on the Tom Leedham slate. Frey alleges that the Board ruled against him in retaliation for his political support of Hasegawa generally and in both the delegate and International officer elections.

Election Administrator representative Jason Weidenfeld investigated these protests.

Findings of Fact and Analysis

In a hotly contested local union officer election at Local 174, IBT representative John Williams, secretary-treasurer of Local 117, determined that Hasegawa lost his position as secretary-treasurer by two votes, a result that is still under dispute.¹ Hasegawa’s tenure as secretary-treasurer ended on December 31, 2000.

Local 174 publishes a newsletter entitled *Front Line*. The last issue of the newsletter written during Hasegawa’s term of office was dropped off by the local’s printer at the mailer on December 28, 2000, a few days before the end of Hasegawa’s term. It was not mailed until January 2, 2001, two days after the end of the term. Moore’s internal union charges against Hasegawa and Frey followed.

The charges were filed on January 9, 2001, by Local 174 member Dana Moore. Moore alleged that Hasegawa and Frey violated several provisions of the IBT Constitution by authorizing the distribution of *Front Line* after the end of Hasegawa’s term of office. Moore alleges that the expenditures for the newsletter could only be approved by “the officers-elect and the membership.” He also alleges that these expenditures resulted in violations by Hasegawa and Frey of their oaths of office and loyalty. Further, alleges Moore, Hasegawa and Frey converted union funds “by expending Local 174 membership money without authorization and in violation of the Constitution.”

The local union’s hearing on the charges ended on February 28, 2001. During the hearing, Frey testified that Hasegawa had no reason to believe that the newsletter would be

¹ For a detailed description of the Local 174 officer election, see *Ostrach*, 2001 EAD 121 (February 1, 2001) and 2001 EAD 365 (May 11, 2001).

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distributed after the end of his term of office. Based upon the record before us, it is difficult to see how the charges against International officer candidate Hasegawa could have merit.

When the hearing did not result in a decision “[w]ithin twenty (20) days after the completion of the hearing . . .”, as provided by the local’s bylaws, Williams filed his protest. He alleges that the Board intentionally delayed its decision on the charges against Hasegawa to harm the Leedham slate (on which Hasegawa was recently nominated for International vice president). Williams believes that Hasegawa offers superior name recognition to other Leedham supporters and that a long-delayed ruling making him ineligible to run for International office would cause irreparable harm to the Leedham slate.

On May 14, 2001, Local 174 attorney Kenneth Pedersen told our investigator that he anticipated a decision being published during the week. He also stated that the local bylaw’s provision requiring the Board to determine a case within twenty days is simply a guideline and that it would not be fair to a charging party to dismiss a charge simply because it went beyond twenty days. The decisions finally issued on June 5, 2001, ninety-seven days after the hearing.²

The Board’s decisions with respect to Hasegawa and Frey differ, at least in part, because Hasegawa was the former principal officer of Local 174, while Frey was not an officer. During the hearing, Frey alleged that bias prevented four of the seven local union executive board members from rendering a fair hearing. After discussing the point of order with the local’s attorney, the Board decided to continue hearing the charges. After the hearing, however, the Board reconsidered its position and sought legal precedent to determine whether it could properly hear the charges. Ultimately, the Board recused itself from deciding the charges against Hasegawa, based primarily on *Snyder v. Freight Construction General Drivers, Warehousemen and Helpers*, 175 F.3d 680 (9th Cir. 1999). The Board requested that Joint Council 28 conduct a hearing *de novo* to resolve these charges.

The Board decided the charges against Frey. It determined that Frey stood in a different position than Hasegawa with respect to the claim of bias by the officers hearing the charges: “Frey was not . . . a candidate for Local Union office in November 2000 nor in the Local Union delegate elections. He has not been either an electoral opponent of the members of the hearing panel, nor did he run on the slate for delegate that included Trustee Dan Scott.”

On the merits, the Board found Frey guilty of approving an extraordinary expenditure and converting local union funds by approving the distribution of the *Front Line* after December 31, 2000. Consequently, the board also found Frey guilty of breaching his oath of loyalty. Frey has appealed these findings to Joint Council 28.

Frey’s protest followed the issuance of the decision against him. He alleges that the Board’s decision against him amounts to retaliation for his political support of Hasegawa and his slate in the Local 174 delegate election, and Hasegawa’s candidacy in the IBT International officer election. Frey states in his protest that six of the seven executive board members who

² Pedersen claims that Hasegawa’s failure to attend the hearings before the Board contributed to its delayed decision.

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found him guilty, as well as the party who filed the local union charges, ran on a delegate slate against Hasegawa. Frey was nominated as a delegate candidate for the Hasegawa slate in case any candidate on the slate was deemed ineligible; he withdrew once he knew that all other members of the slate would be eligible and would comprise a full slate. Frey nominated nearly the entire slate headed by Hasegawa. Frey also alleges that he has run against Moore and at least two of the Board's members in past elections, contrary to the Board's statement that he has never been "an electoral opponent of the members of the hearing panel."

Joint Council 28 has yet to decide the charges against Hasegawa and Frey. Hasegawa will receive a hearing *de novo*, and Frey has appealed Local 174's ruling against him. We DEFER for the present time any decision on either of the pending protests. Similar to *Ostrach*, PR121501WE (May 11, 2001), our involvement with these local union charges arises solely out of the allegation that the conduct of the Board and Moore reflects an attempt to harm the International officer candidacy of Hasegawa and to punish Frey for his political support of Hasegawa. Our deferral may be revoked at any time.

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 (facsimile: 202-454-1501), all within the time 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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