

IN RE:
ROBERT TURNER

01 - Elec. App. – 065 (KC)

This matter is an appeal from the Election Administrator’s (the “EA”) decision 2001 EAD 309, issued April 17, 2001. The hearing was requested by Thomas Baldwin, president of Teamsters Local Union 880 in Windsor, Ontario, Canada.

A hearing was held before me on April 24, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. and Gwen Randall, Q.C. for the Election Administrator’s Office; Mr. Baldwin; Gary Kitchen, Anne Brettle and Randy Beuglet, members of the Local Union 880 Election Committee (the “Election Committee”); Robert Turner, the protestor and alternate delegate candidate from Local Union 880; and Robert Plouffe, also an alternate delegate candidate from Local Union 880. An additional submission was received from the Election Committee on April 23, 2001.

The protest alleged that there were irregularities following the Local Union 880 alternate delegate ballot count. Due to the closeness of the alternate delegate election, twenty-nine challenged ballots and four additional ballots had to be resolved, which resulted in Mr. Turner leading Mr. Plouffe by one vote. Mr. Plouffe requested a recount, which was to be held on April 2, 2001. Mr. Turner, who knew of the recount date, did not attend and did not send an observer. The recount resulted in a tie between Mr. Turner and Mr. Plouffe, and to break the tie¹, a coin toss was held and won by Mr. Plouffe.

¹ Gary Kitchen, the business representative from Local Union 880 who was running the recount, called EA representative Gwen Randall for advice on how to break the tie. Ms Randall’s instructions were to use a coin toss, a draw of cards, or to draw the name from a hat.

In his protest, Mr. Turner argued that he should have been present at the coin toss. The EA agreed, citing to Article IX, Section 3 of the Rules that requires that all relevant candidates be given notice of any lottery to break a tie. Since the EA determined that Mr. Turner had no notice, the EA granted the protest and ordered the lottery to be re-held after notice to Mr. Turner.

The appellant Mr. Baldwin argues that the lottery outcome should not have been nullified since the instructions of Ms. Randall were complied with. Ms. Randall conceded at the hearing that she had wrongfully advised the Election Committee that it was unnecessary to give Mr. Turner separate notice of the coin toss. Mr. Baldwin further argues that the outcome would not have been different if Mr. Turner had been present, since the candidates did not have a choice but were assigned the designation of heads or tails at the coin toss. Mr. Kitchen of the Election Committee also argued that a separate notice should not have been required, since he believes that it was understood by the candidates that in event of a tie, a drawing by lot would be necessary.

I concur with the findings and the analysis of the EA. Although it is unfortunate that Ms. Randall incorrectly advised the Election Committee as to the Rules requirement, it is clear under the Rules that a separate notice is required in the event of a tie vote. Accordingly, the EA's decision is affirmed.

_____/Kenneth Conboy _____
Kenneth Conboy
Election Appeals Master

Dated: May 7, 2001