

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: GARY WATTS,)	Protest Decision 2006 ESD 206
)	Issued: May 1, 2006
Protestor.)	OES Case No. P-06-137-021406-SO
_____)	

Gary Watts, a member and delegate candidate from Local Union 399, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that Watts did not receive a sample ballot before regular ballots were mailed, as required by the local union election plan.

Election Supervisor representative Michael D. Four investigated this protest.

Findings of Fact and Analysis

Watts was a candidate for delegate from Local Union 399, located in Hollywood, California. Local Union 399 contracted with Election Services Corporation of Garden City, New York, to conduct its delegate election. ESC prepared the ballot materials in New York and mailed them out from there.

ESC emailed the sample ballot to candidates for review on January 31, 2006. Although ESC knew that Watts was nominated as a candidate for delegate, ESC did not include Watts in the email distribution because he did not submit an email address to ESC. Sandy Tovin, an ESC representative, told our investigator that candidates were required to submit email addresses. When Watts did not, Tovin stated that ESC telephoned him seeking an email address but was unable to reach him; accordingly, ESC sent Watts the sample ballot by first class mail. The sample ballot sent to Watts carried a postal meter mark from ESC’s office of January 31; however, it was postmarked February 7 by the Garden City, NY post office, the same day the official ballot packages were mailed to the membership. The February 7 postmark indicates the date the sample ballot was actually mailed, even though the envelope was prepared for mailing a week earlier, as indicated by the postal meter mark.

The *Rules* do not require that a candidate have an email address, nor does our Candidate Information Sheet (Form 4), that candidates complete at the candidates’ meeting that follows the nominations meeting.

Because ESC did not provide a sample ballot to Watts before February 7, Watts did not have an opportunity to check the ballot for defects before it was printed and mailed to the local union’s membership. The protestor told our investigator he found no errors in the ballot sent to the membership. He stated he filed the protest to apprise us of this problem so it can be corrected for future elections.

We DENY this protest only because no errors appeared in the ballot sent to the membership. Had an error gone uncorrected because of ESC’s failure to supply Watts with a sample ballot in a timely manner, a remedy – including, potentially, a re-run election – may have proved appropriate.

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While electronic communication has become ubiquitous, the *Rules* and our procedures do not require that candidates possess email addresses or supply them as part of the electoral process. If a means of instantaneous communication is not available to the entity running the delegate election, that entity must take the necessary steps and exercise the appropriate advance planning to insure that the candidate is given the same opportunity to review the sample ballot as that accorded the candidates who have email access. In this case, ESC should have sent *Watts* the sample ballot by overnight mail on January 31, the same date it emailed the sample ballot to the other candidates, or made some other arrangement for prompt transmission of the sample. An expedited mail service is especially appropriate given that ESC is based in Garden City, New York and *Watts*' residence is in Studio City, California. Sending the sample ballot by first class mail on February 7, the same day ballots were mailed to the membership, was the equivalent of not sending it at all.

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 Supervisor 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
885 Third Avenue, Suite 1000
New York, New York 10022
Fax: (212) 751-4864

Copies of the request for hearing must be served upon the parties, as well as upon the Election Supervisor for the International Brotherhood of Teamsters, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20006-1416, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
2006 ESD 206

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