

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: MIKE WHETEN,)	Protest Decision 2006 ESD 302
)	Issued: June 20, 2006
Protestor.)	OES Case No. P-06-291-060506-CA
_____)	

Mike Wheten, member and delegate candidate of TCRC Division 728, filed a post-election protest pursuant to Article XIII, Section 3(a) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that the TCRC elected 9 delegates when it was eligible to elect 10.

Election Supervisor representative Maria Giardini investigated this protest.

Findings of Fact

On April 26, 2006, the TCRC elected 9 delegates and 3 alternate delegates. On May 15, the Election Supervisor issued a notice concerning the recalculation of delegate strength. In that notice, TCRC’s allotment of delegates increased from 9 to 10 pursuant to the determination of the IBT General Secretary-Treasurer. As a result of this recalculation, the Election Supervisor directed that the highest ranking alternate delegate assume the TCRC’s tenth delegate seat.

The protestor complains that the TCRC’s membership that resulted in the initial allotment of 9 delegates seats was incorrectly reported. He states that, had the membership been correctly reported, the TCRC would have been entitled to 10 delegates in the first instance. Had this occurred, the 10 delegate candidates with the highest vote totals would have been elected to the delegate positions; instead, the TCRC’s delegation is filled by the 9 delegate candidates with the highest vote totals and the ranking alternate delegate. The protestor finished tenth in the tally of ballots for delegate and contends that the incorrect initial reporting of membership deprived him of a delegate seat.

The protestor also submits that the decision to make changes to the delegate strength should have been made on or before May 1, 2006.

The TCRC total membership that was initially supplied to the Election Supervisor was 7,064; with this membership strength, the TCRC was entitled to 9 delegates. This fact was published in March 2006. Richard Bell, the executive assistant to the General Secretary-Treasurer of the IBT, told our investigator that the initial membership total was supplied by Robert Bouvier, President of the Teamsters Canada Rail Conference. When the time came to canvass constituent unions for the purpose of recalculating delegate strength, Bell learned from Francois LaPorte, assistant to Bouvier, that the TCRC’s membership had increased to 8,100.

Analysis

Article III, Section 2 of the *Rules* provides that “[o]n or before May 1, 2006, the Election Supervisor shall determine whether the membership of each Local Union has increased or decreased such that the Local Union is entitled to representation by a greater or lesser number of delegates at the Convention than the number of delegates elected in such Local Union’s delegate election. If the Local Union is entitled to a greater number of delegates, the additional delegates

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shall be selected from the alternate delegates by rank.” Based on this provision, the additional delegate was properly selected from the alternate delegates.

We found no evidence to substantiate the protestor’s contention that the initial report of membership in the TCRC was incorrect. Even were such evidence found, the time to challenge the initial delegate strength of the TCRC passed in March 2006 without protest.

Although the recalculation of delegate strength in the TCRC occurred after the May 1, 2006 date specified in the *Rules*, the delayed announcement of increase in delegate strength is not relevant to any issue presented by this protest.

Accordingly, we DENY the protest.

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
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