

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: TOIALE JOHNSON,)	Protest Decision 2010 ESD 63
)	Issued: December 28, 2010
Protestor.)	OES Case No. P-065-122210-MW
_____)	

Toiale Johson, member of Local Union 299, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that the local union failed to post notice of the nominations meeting for the delegates and alternate delegates election timely, in violation of the *Rules*.

Election Supervisor representative Joe F. Childers investigated this protest.

Findings of Fact and Analysis

Article II, Section 5(d) requires each local union to mail to each member and post on all union bulletin boards notice of the nominations meeting for the delegates and alternate delegates election. The mailing and posting must occur at least 21 days before the date of the meeting.

Local Union 299’s nomination meeting is scheduled for January 8, 2011. Accordingly, mailing and posting of the meeting notice was required to occur by December 18, 2010, 21 days ahead of the meeting. As December 18 was a Saturday, local union staff sought to complete the mailing and posting by Friday, December 17.

The mailing to members was completed by that date, despite hardship to the local union staff. Beginning December 13 and continuing at least through December 22, the local union hall was without heat. Detroit high temperatures during that span did not rise above freezing. Local union staff continued to work at the hall to complete the mailing, donning extra clothing and using space heaters to make their workspace habitable.

Nearly all the bulletin board postings were completed by the deadline as well. However, as the protest alleged, the notice was not posted at Exel Logistics, MAHS, and Thyssen Krupp until Monday, December 20, two days late. With respect to Exel and MAHS, both stewards told our investigator that they posted the notice the same date it was hand-delivered to them by a retired business agent. Our investigation found no information to explain the untimely posting at Thyssen Krupp.

Although the protest also alleged that the notice was not posted at UPS Freight until December 21, investigation showed that steward Rodney Johnson posted it there on December 13, the day after he received the notice at a stewards’ freight meeting. Johnson stated that a second notice was posted on the same bulletin board on December 21 by another steward.

No complaint was made alleging failure to post timely at the remaining 84 bulletin boards listed in the local union election plan, and an affidavit of posting was filed by the local union’s secretary-treasurer.

February 1, 2011

Timely posting of notices promotes participation in the electoral process, a key goal of the Consent Order and the *Rules*. Where untimely posting has been made, we look to determine whether the local union acted in bad faith and whether members suffered substantial prejudice as a result. *Williamson & Payne, 2005 ESD 20* (October 30, 2005); *King, 2005 ESD 42* (December 28, 2005).

Here, we find that Local Union 299 demonstrated good faith by completing the mailing of the nomination meeting notice to all members despite adverse circumstances. Further, the required posting of notices on nearly all bulletin boards was completed timely, while postings on 3 boards were 2 days late. These isolated untimely postings were substantially mitigated by the fact that the postings were completed on the first business day after they should have been. Our investigation found no evidence of prejudice to the members employed at the locations where the posting was made late, a circumstance made less likely by the fact that the local union mailed the identical notice to all members.

Accordingly, we DENY this 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, NY 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, 1801 K Street, N.W., Suite 421 L, Washington, D.C. 20006, 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
2010 ESD 63

Johnson, 2010 ESD 63

February 1, 2011

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