

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

IN RE: LORNE SMITH,) Protest Decision 2011 ESD 163
) Issued: March 14, 2011
Protestor.) OES Case No. P-164-022211-NE
_____)

Lorne Smith, member of Local Union 340 and delegate candidate in the local union's delegates and alternate delegates election, 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 secretary-treasurer did not insure that the notice of nominations meeting results was posted on all worksite bulletin boards, in violation of the *Rules*. The protest further alleged that the secretary-treasurer submitted an affidavit of posting to OES without verifying that the notice required to be posted actually was posted.

Election Supervisor representative Deborah Schaaf investigated this protest.

Findings of Fact and Analysis

Local Union 340 is entitled to elect 5 delegates and 2 alternate delegates to the IBT convention. It held its nominations meeting for that election on January 9, 2011. Protestor Smith was nominated for delegate as part of a full slate of candidates. The local union's secretary-treasurer, Carl Guinard, is a delegate candidate on an opposing slate.

Article II, Section 6(a) requires the local union secretary-treasurer, no later than five days after the nominations meeting, to "post on all Union bulletin boards a list of all nominated candidates, by name (and by slate affiliation, if known at the time)." Local Union 340's notice was required to be posted no later than January 14, 2011.

Smith filed this protest on Saturday, February 20, 2011, 42 days after the nominations meeting, 37 days after the deadline for posting, and 9 days after ballots were mailed to local union members. Article XIII, Section 2(b) requires that protests be filed "within two (2) working days of the day when the protestor becomes aware or reasonably should have become aware of the action protested or such protests shall be waived."

We DENY this protest because it was not filed timely. In reaching this conclusion, we note that protestor Smith filed another protest on January 21 alleging that the local union secretary-treasurer failed to post notice of submission of the proposed local union plan or the notice of election. We denied that protest as untimely filed in *Smith*, 2011 ESD 106 (February 8, 2011), *aff'd*, 11 EAM 22 (February 22, 2011). Smith did not allege in that protest that the notice of nominations meeting results was not posted. He provided no explanation to our investigator for failing to timely protest this alleged violation in the January 21 protest or for waiting until February 22 to file the instant protest. Finally, the present protest was filed well after ballots were mailed. Given that the ballots themselves provide notice to members of the candidates competing in the election, a remedial notice posting would have little effect, were we to order one.

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Investigation showed that the local union prepared the required notice and mailed it to 312 stewards on January 11, 2011. However, the mailing did not include any instruction to the stewards to post the notice, nor has the local union established a system for verifying that the notice has been posted. As a result, investigation showed that the notice was not posted at many worksites.

The *Rules*' requirement for an affidavit attesting to compliance with the notice posting obligation, Article II, Section 6(b), inherently requires the affiant to have a factual basis for the attestation. It is not sufficient to disseminate notices and simply to assume that the recipients will know what to do. To prevent further failure to post required notices, we direct Local Union 340 to improve its process for notice posting. Notices distributed to stewards, whether by mail or by personal delivery, must include written instruction to the stewards to post the notices. In addition, for each posting, the local union must provide each steward with a verification for the steward to sign and return to the local union indicating that the notice has been posted. The distribution must also include an addressed, stamped return envelope the steward will use to return the verification to the local union. The local union must maintain a log to track responses from stewards, and must follow up with stewards from whom it receives no verification to insure that the notice is posted.

This procedure should result in a factual basis that supports the posting affidavit. Other local unions may follow this procedure to document that notice postings have been made as required, but this specific procedure is not mandated for all local unions. The appropriate procedure and extent of documentation needed to prove posting will depend on factors such as the local union's size, the number of shops where postings must be made, and the number of bulletin boards involved. A local union may use any regular procedure, reasonable for its circumstances, that results in equivalent oversight of the posting process.

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
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