

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

IN RE: RICHARD SANDBERG,)	Protest Decision 2011 ESD 192
ANTHONY ANDERSON,)	Issued: March 28, 2011
and SAM COOK,)	OES Case Nos. P-100-013111-ME,
)	P-103-013111-ME & P-107-020111-ME
Protestors.)	
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Richard Sandberg, Anthony Anderson and Sam Cook, members of Local Union 377, filed separate pre-election protests pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). Sandberg’s protest alleged that John Lesicko, principal officer of Local Union 377 and candidate for delegate, violated the *Rules* with actions and omissions concerning the local union’s TITAN system. Anderson’s protest alleged that Lesicko campaigned on union-paid time and distributed hats purchased with union funds to his political supporters. Cook’s protest alleged that Lesicko’s campaign literature was placed inside locked, glass-enclosed worksite bulletin boards while the same access was denied to Cook.

These protests were consolidated for investigation and decision. Election Supervisor representative Denise Ventura investigated them.

Findings of Fact and Analysis

Local Union 377 will elect four delegates and one alternate delegate. The Team 377 slate is comprised of secretary-treasurer John Lesicko, president Sam Prosser, vice president Kevin Koubec, and Justin Averell as candidates for delegate, and trustee Bob Bonhoff as candidate for alternate delegate; all are business agents except Bonhoff. The Members First slate lists Fred Reali, Scott Fromelt, and Wade Jones as candidates for delegate. The Right Slate consists of Sam Cook, Norma Eble, Bobbi Terwilliger, and Richard Sandberg for delegate, and Kenneth Sabo for alternate delegate.

The mailing of ballots, scheduled to occur February 10, 2011, was postponed because of these protests.

Sandberg’s protest

Sandberg alleged that Local Union 377’s recent failure to send dues receipts to its members interrupted a long-standing practice; without such receipts, Sandberg suggested that members may question their own eligibility to vote and therefore not participate in the delegates election.

Eligibility to vote under the *Rules* is determined under Article V of the *Rules*. Generally, a member is eligible to vote if his/her dues are paid through the month before the election. Article V, Section 1(a). Members on check-off are eligible to vote if they are listed on their employer’s last check-off remittance to the union before the election, provided that remittance

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was received within 90 days before ballots were counted. Eligibility to vote is not determined by whether the local union issues dues receipts to members.

Until approximately November 2010, Local Union 377 issued dues receipts to all members, even those whose dues were paid through check-off. Sandberg's protest alleged that halting the practice of sending out dues receipts may cause members not to vote because they will conclude they are ineligible to do so. He offered nothing, other than his own speculation, as to the likely electoral participation of members as a consequence of not providing dues receipts.

Evidence gathered in this investigation showed that the decision not to send dues receipts was implemented because of a staffing shortage at the local union hall and was applied to all members, including political supporters of the slate comprised of local union officials. Further, for most members on dues check-off, their paycheck stub will provide proof that their dues have been deducted and remitted, countering the alleged impact of the local union's failure to send dues receipts. For these reasons, we find that the failure of the local union to continue sending dues receipts does not violate the *Rules*.

Sandberg also alleged that Lesicko improperly used union resources by accessing the TITAN system to check the eligibility of his political opponents. Lesicko filed eligibility protests against Sam Cook, Norma Eble, Bobbi Terwilliger and Sandberg, four of the five members of the Right Slate. All of the protests were denied. *Eligibility of Eble & Cook*, 2011 ESD 83 (January 24, 2011); *Eligibility of Terwilliger & Sandberg*, 2011 ESD 82 (January 24, 2011). Whether researching, filing and subsequent processing of a protest constitutes an improper use of union funds depends on whether the protest furthers the independent, institutional interest of the union. *Jenne*, 2000 EAD 64 (December 14, 2000); *Koch*, 2006 ESD 169 (April 3, 2006) (protest researched and prepared on union-paid time and filed on union stationery is permissible where it sought to enforce *Rules* provision limiting ballot access to eligible candidates). Local unions can expend their resources to pursue a protest filed to insure proper implementation of the *Rules* as long as they do not take a partisan position or engage in advocacy on behalf of particular candidates. *Id.* When these criteria are met, a local union may use its funds to file and pursue such a protest. It may do so by paying for time spent by its officers in handling such protests and by hiring legal counsel. Local unions cannot, however, use their funds to finance protest activity that advances or damages a candidacy without implicating the institutional interest of the union. We apply a tolerant standard for differentiating between proper and improper expenditures in this context. Although neither of Lesicko's eligibility protests had merit – and indeed demonstrated a fundamental misunderstanding of the eligibility criteria to be applied to candidates and nominators – the protests implicated the institutional interest of the local union in insuring that only those members eligible for nomination are permitted to run for delegate and alternate delegate.

Accordingly, we DENY Sandberg's protest.

Anderson's protest

Anderson alleged that Lesicko campaigned on union-paid time and distributed union-funded merchandise at Stericycle, an employer that employs members of Local Union 377, on January 28, 2011. Investigation showed the following. On December 28, 2010, a month before the visit to Stericycle, Lesicko contacted OES regional director Denise Ventura and asked

whether he could permissibly distribute pins and beanies purchased with local union funds to the local union's stewards. He stated that the local union annually distributed some type of memento to its stewards as a Christmas gift; as an example, he stated that windbreakers were distributed the previous year. Ventura checked with OES and, on December 29, laid out criteria Lesicko had to follow to maintain compliance with the *Rules*. In the event a protest were filed, Lesicko would be required to prove that gifts were given to stewards annually, that they were given at year-end each year, that this year's gift was of equal or lesser value than gifts from previous years, that it was distributed to the same audience, stewards, who had received it previously, and that the distribution was not accompanied by any statement that the gift was in exchange for political support. Lesicko responded to these criteria by stating that gifts were given to stewards every year; that they are normally given out at year-end but last year they came in a little late and were distributed in mid-January; that last year's gift cost \$30 per unit while this year's pins cost \$2.50 each, beanies cost \$7.00, and stickers were \$0.50; that the gifts would only be given to stewards; and that he would not make any statement that they are given for the stewards' support of his candidacy.

On January 28, 2011, Lesicko visited Stericycle; according to him, the purpose of the visit was to set a date and time for a grievance meeting. He said that he distributed hats and pins to seven members employed there. The local union election plan showed that Stericycle employs 46 members; Lesicko asserted that the seven members to whom he gave hats and pins at Stericycle were stewards.

In a second conversation with our investigator on February 2, Lesicko stated that in addition to the seven stewards, Stericycle also has two more stewards for their 35 drivers. Lesicko provided a TITAN print-out to our investigator dated February 3 which showed 149 members of Local Union 377 with status code 02 - steward; he said this was a comprehensive list of all local union stewards. However, the list he supplied showed that the local union has only two stewards at Stericycle. If this list were accurate, Lesicko gave hats to at least five members at Stericycle who are not stewards.

In a third conversation on March 22, Lesicko listed the names of the Stericycle members who received hats and pins and identified for each the segment of the membership they represented (*e.g.*, day-shift steward, afternoon-shift steward, short-haul steward, long-haul steward, *etc.*). He subsequently provided election results from a stewards election conducted in 2010 to substantiate this list. Accordingly, we conclude that the TITAN list is not accurate and that the members who received hats and pins from Lesicko on January 28 were stewards.

Protestor Anderson visited the worksite to campaign on January 28. He was present at the time Lesicko arrived and witnessed Lesicko distribute the hats; Anderson also photographed him doing so. Anderson approached Lesicko and asked for a hat. According to Anderson, Lesicko replied that Anderson could not have a hat because Anderson would not be voting for Lesicko and he was not a steward. Lesicko told our investigator he may have told Anderson he could not give a hat and pin to him because he was not a steward, but Lesicko denied conditioning the distribution on political support. We credit Lesicko on this point.

Further investigation identified four stewards at UPS, five at CSP, two at St. Joseph Health Center, and one at Roth Brothers who have not received the hat or pin that Lesicko distributed to members he claimed to be stewards. All of these stewards are either candidates

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opposing Lesicko's slate or supporters of those candidates. Lesicko told our investigator that those steward have not received the hats and pins because he halted all distribution of them when the protest was filed.

Investigation further showed that the hats were ordered on December 8, 2010 and shipped via UPS on December 16. The Teamster logo pins were ordered on November 18, 2010 and shipped on December 10, 2010. This time frame was consistent with the year-end gifts for stewards from previous years.

Lesicko, however, did not distribute the hats and pins at the usual time for steward gifts. Instead, he distributed them after the nominations meeting for the delegates election had been conducted and in the week immediately preceding the date ballots were to be mailed. When responding to this protest, Lesicko misrepresented to our investigator that either the hats or pins had arrived at the local union hall in mid-January when he knew both had been delivered in mid-December. We find he made this misrepresentation to explain the late-January distribution of the hats and pins.

Article VII, Section 12(c) prohibits use of union resources to assist in campaigning. We find that Lesicko violated this provision by converting the union-funded hats and pins from a gift to stewards for service to the union to campaign material given in token recognition of political support by stewards. We find he did this by delaying distribution of these materials for some six weeks after they were received at the local union hall to a date just before balloting was to begin. The foreseeable effect of the timing of this distribution was to engender a favorable impression of Lesicko among stewards, who may then communicate their impressions to rank-and-file members.

Accordingly, we GRANT Anderson's protest.

Cook's protest

Sam Cook alleged that campaign material supporting Lesicko's Team 377 slate was displayed inside a locked, glass-enclosed bulletin board at Schwebel Baking Company when Cook and Sandberg visited there on January 31, 2011. According to Cook, he and Sandberg went to Schwebel's to distribute their campaign material. They were unable to enter the drivers' door because it was locked; however, they saw the locked, glass-enclosed bulletin board through the window in the door and observed Team 377's campaign flyer on it. Cook said that he emailed Lesicko seeking an appointment with him in order to gain access to the board as well.

In a phone interview with our investigator, Lesicko stated he gave his campaign literature to his steward, Kevin Reynolds, when he stopped at Schwebel's on his way home from work. Later during the same interview, Lesicko stated he just dropped off the literature and left it on the table in the break room and did not know how it got into the locked bulletin board, but assumed Reynolds had done it. Lesicko stated he first learned that his slate's literature was inside the locked board at Schwebel's when protestor Cook approached him at the regular union meeting on February 1 and told him so. Lesicko said he told Cook to take his own campaign literature to Schwebel's, and that Lesicko would tell the steward to post the literature inside the board. According to Lesicko, Cook asked if Lesicko would have the steward remove the Team 377 literature if the steward refused to post Cook's flyer; Lesicko agreed. Lesicko said he later called

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Reynolds and told him to either put up Cook's campaign literature in the locked board or remove Team 377's. Lesicko said he visited Schwebel's on February 2, and Cook's literature was on the bulletin board along with Team 377's.

Lesicko also stated that all any other candidate had to do to get his/her flyers in a worksite break room was to go to the front door of any employer, tell the employer the purpose of the visit, and the employer would permit the candidate to go to the break room and leave literature there or tack it up on a bulletin board. Further, Lesicko said that if the bulletin board is under locked glass, the candidate need merely to ask the steward to post it.

Lesicko stated he was unsure how many employers had locked bulletin boards; he knew that all the freight barns had such boards, and he hadn't heard of any problems with campaign postings there. Lesicko further stated it was the responsibility of OES, not the local union, to make stewards aware of their responsibility to post all candidates' literature equally in locked bulletin boards.

Investigation further showed that Cook visited Schwebel's on February 3, found his slate's flyer on the locked board in the mechanics shop but not on the board in the drivers' room, the one he had complained about. Cook gave a flyer to steward Reynolds and asked that it be posted on the drivers' room board. To date, it is not posted. Protestor Anderson, who supports the Right Slate, followed up on Cook's request that Right Slate campaign material be posted on the enclosed board by asking a Schwebel's driver to post the flyer. The driver said that only a steward could post on the board.

When our investigator questioned Lesicko as to why the Right Slate flyer was not posted on the drivers' board at Schwebel's, Lesicko disputed the claim, asserting that the flyer was posted. Our investigator reported to Lesicko that protestor Cook had identified the bulletin board inside the drivers' room door, not the one in the mechanics shop, as the one where the literature had not been posted. Cook said he could observe the board through a window in the locked drivers' room door and that the Right Slate flyer was not on the board. Lesicko responded by stating that Cook's assertion was false, that the door in question did not have a window, and the bulletin board inside the drivers' door was not glass-enclosed or locked. He further stated that he believed his campaign literature was not on that board. In response, Cook produced several photos to our investigator that depicted the door, the window in the door, the fact that the locked board could be viewed through the window in the door, and that the locked board contained a Team 377 flyer but not a Right Slate flyer.

Article VII, Section 12(c) permits union facilities to be used to assist in campaigning only where "all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance." Locked, glass-enclosed bulletin board to which stewards control access are union facilities. Use of them to assist in campaigning is permissible only upon advance written notice to all candidates and non-discriminatory access by those candidates seeking to use them. Lesicko, as principal officer, was obliged by this provision to give advance written notice to all candidates that the locked, glass-enclosed boards were available for campaign use; he did not. Lesicko, as principal officer, was obliged by this provision to instruct local union stewards at all worksites that any candidate, slate, or supporter was to be permitted access to the glass-enclosed boards for campaigning; he did not and declared that it was OES's obligation to give the stewards such instruction. We find that Lesicko violated

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this provision of the *Rules* by gaining access to glass-enclosed boards while not informing opposing candidates of their right to the same access and failing to instruct or oversee stewards in the proper performance of their obligation to allow access.

Additional investigation

Lesicko's use of union resources to campaign and his false statements to our investigator are not isolated issues. Additional investigation showed that Lesicko failed to have the notice of submission of proposed local union election plan posted timely; that he initially failed to identify the existence of a local union email list in the plan even though the local union had such a list; that he permitted the local union hall to be closed an hour each business day for lunch even though the notice of plan submission (when eventually posted) stated that the hall would be open each business day from 8 a.m. to 4 p.m. so that interested members could review the plan; that he attached an out-of-date worksite list to the proposed local union election plan instead of a current one; that he failed to provide the employer worksite list as part of the local union election plan to members who requested it; and that he failed to provide the updated employer worksite list to those members when it was finally updated. Each of these *Rules* violations was resolved by our investigator without a protest being filed.

We also find that Lesicko, who serves as the local union's designated representative for the literature table at the hall, interfered with the right of candidates he opposed to place campaign literature on table. Investigation showed that candidates opposed to Lesicko placed literature on the table on a frequent basis and that the literature soon disappeared completely from the table while literature promoting Lesicko's slate was present in abundance. The candidates opposing Lesicko responded to this suspicious circumstance by gluing the bottom piece of literature to the literature table. When Lesicko discovered this fact, he attempted to remove the literature and glue from the table and accused his political opponents of vandalism. When re-interviewed, candidates opposed to Lesicko's slate reported that their literature now remains on display on the literature table and is no longer being removed in bulk.

Remedy

When the Election Supervisor determines that the *Rules* have been violated, he "may take whatever remedial action is deemed appropriate." Article XIII, Section 4. In fashioning the appropriate remedy, the Election Supervisor views the nature and seriousness of the violation as well as its potential for interfering with the election process.

Lesicko, the other officers of Local Union 377, and others in the union official apparatus (stewards or business agents) are responsible for maintaining an open and fair election process. While investigation of all these matters (and the resolution of several) delayed the conduct of this delegates election, application of the *Rules* and the need to have a delegates election process that is both fair and perceived to be fair has been made abundantly clear to Lesicko. We order the following remedies so that the balloting about to be conducted will take place in a proper, fair context.

We order Lesicko, any candidate allied with him, and any political supporter to cease and desist from distributing, to stewards or any other local union members, hats, pins, or any other union-funded merchandise until the ballots have been tallied and the election certified in the

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local union's delegates and alternate delegates election. We order this remedy to insure that Lesicko does not use or attempt to use the union-funded merchandise for the purpose, object or foreseeable effect of influencing the outcome of that election. Lesicko is directed to pay to Local Union 377 the sum of \$66.50, representing the cost of the hats and pins improperly distributed to stewards at Stericycle.

The local union also is ordered to post on all worksite bulletin boards a new notice of election to be prepared by OES.

The local union shall distribute to each steward, either by personal delivery or by first-class mail to the steward's home address, a copy of the attached notice informing them of their obligation to respond equally to all delegate candidates' requests for literature postings, and that they cannot, in their official capacity, favor one candidate over any other candidate. The local union shall submit an affidavit attesting to its compliance with this order. The affidavit shall include a list of the names of the stewards to whom the notice was distributed and how it was delivered.

Finally, the local union is to post on all worksite bulletin boards the notice attached to this decision within 2 days of issuance of this decision. Such posting shall remain in place through the date ballots are tallied in the delegates election. The local union shall submit an affidavit attesting to its compliance with this order and identifying the bulletin boards where the notice is posted.

An order of the Election Supervisor is effective immediately, unless stayed.

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
2011 ESD

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Richard W. Mark
Election Supervisor

March 28, 2011

Notice to All Members of Local Union 377

The Election Supervisor has found that John Lesicko, principal officer of the local union and candidate for delegate on the Team 377, committed several serious violations of the Election Rules. Balloting for the delegates election had to be postponed to allow investigation of the allegations of Lesicko's misconduct.

The Election Supervisor's investigation found that Lesicko used union assets to campaign. He distributed small gifts that had been bought with union money to seven stewards when balloting in the delegates election was imminent. The Election Supervisor determined that Lesicko timed the distribution to influence the election. Lesicko has been ordered to cease and desist from using union assets to campaign, and to reimburse the union for the cost of the items he distributed.

Lesicko violated the *Rules* by denying competing candidates access to union bulletin boards. He had stewards post his campaign literature on glass-enclosed worksite bulletin boards while not ensuring that stewards fulfilled requests of his opponents to post their campaign literature on those same bulletin boards. Lesicko also interfered with the rights of candidates to place campaign flyers on the local union's literature table. Finally, the Election Supervisor found that Lesicko made misleading or erroneous statements to the Election Supervisor's representative investigating this protest.

The Election Supervisor will not tolerate such violations of the *Rules*.

You may read the Election Supervisor's decision in *Sandberg et al*, 2011 ESD 192 (March 28, 2011) at <http://www.ibtvote.org/protests/2010/eam/2011esd192.htm>.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity that violates the *Rules* should be filed with Richard W. Mark, 1801 K Street, N.W., Suite 421L, Washington, D.C. 20006, telephone: 877-317-2011, fax: 202-429-6809, email: electionsupervisor@ibtvote.org.

This is an official notice of the Election Supervisor and must remain posted on this bulletin board until the tally of ballots in Local Union 377's delegates and alternate delegate election. It shall not be defaced or covered up.

[Local Union 377 Letterhead, Without Officer Names and Positions]

NOTICE TO ALL SHOP STEWARDS AND ASSISTANT SHOP STEWARDS

The *Rules* that govern the election of delegates to the 28th International Convention of the IBT require an open, honest and fair process in which all nominated candidates receive equal treatment. Local Union 377, its officers, candidates, and members, are all responsible for following the election rules. Because the Election Supervisor found that notices and campaign material were not posted fairly, this notice is issued to remind each Steward to comply with that particular obligation. Specifically:

- Stewards are responsible for posting election material on worksite bulletin boards.
- Official election notices must be posted promptly upon receipt; notices must be displayed so that the full text is readable and not covered up by other paper.
- Candidate requests to have material posted on worksite bulletin boards, including locked bulletin board, must be given equal treatment. A Steward cannot display the literature of a delegate election candidate on a bulletin board and decline to display the literature of another candidate.

In the election protest ruling, the Election Supervisor found that Local Union 377's principal officer, John Lesicko, had his own literature posted on a workplace bulletin board (locked) at Schwebel's and that literature of opposing candidates was not posted on that bulletin board. It is a violation of the *Rules* to deny candidates equal access to union bulletin boards open for general postings.

Stewards, acting in their official capacity, cannot favor one candidate or slate over any other candidate or slate.