

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

IN RE: MITCHELL MUMMERT, Protestor.)))))	Protest Decision 2011 ESD 255 Issued: May 12, 2011 OES Case No. P-252-040811-AT
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Mitchell Mummert, member and unsuccessful delegate candidate in Local Union 992, filed a post-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 notice of election posted on two worksite bulletin boards listed the incorrect date for the ballot count, misleading members employed there to believe that they had more time to cast their ballots.

Election Supervisor representative Peter V. Marks, Sr., investigated this protest.

Findings of Fact

Local Union 992 is entitled to one delegate and one alternate delegate to the IBT convention. At the nominations meeting conducted February 13, 2011, two candidates for each position were nominated. Ballots were mailed on March 16 and counted on April 6. The results were as follows:

<u>Delegate candidates</u>	<u>Votes</u>		<u>Alternate delegate candidates</u>	<u>Votes</u>
Robert Fahnestock	154		Samuel D. Trumpower	151
Mitchell Mummert	139		Steve Starliper	139

The protest alleged that the notice of election posted on worksite bulletin boards at UPS Hagerstown and U.S. Silica erroneously showed the date for tallying ballots to be April 16, when the actual date was April 6. The protest asserted that the incorrectly listed date on these election notices led members to believe they had ten additional days to return their ballots. Citing the narrow margin between winning and losing candidates, the protest claimed that this error may have affected the outcome of the election, as ballots not at the post office at the time of the pickup of ballots on April 6 were not counted.

The local union contracted with Election Services Solutions to administer its election. Investigation showed that ESS prepared a candidate information sheet for distribution at the candidates meeting that immediately followed the February 13 nominations meeting. The information sheet stated that the tabulation of election results would occur April 16, 2011. Following the meeting, ESS also prepared a notice of election that listed the incorrect tally date of April 16 and transmitted it to the local union for posting. The notice was posted on all worksite bulletin boards.

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After the posting was completed and the affidavit of posting filed, Tommy Krause, the local union's principal officer, noted the tally date of April 16 on the notice as he was putting it away in a binder. He contacted ESS, which confirmed that the count was April 6 and not April 16. ESS prepared a corrected notice of election and transmitted it to the local union. Krause told our investigator that he and other local union officials then set about to post the corrected notice of election containing the April 6 date for the ballot count.

According to business agent Robert Fahnestock, who was a candidate for delegate in the election, he posted the notice at UPS Hagerstown. The worksite bulletin board there is locked and glass-enclosed. He told our investigator he did not have a key to the board, so he posted the corrected notice on the outside glass directly over where the incorrect notice was posted on the board inside. The local union produced to our investigator various expense records indicating that re-posting of the notice occurred as stated by Krause and Fahnestock. The protestor supplied photos of this board that showed the incorrect notice clearly visible inside the glass, with no notice posted on the outside of the glass over it. No evidence was presented or found to indicate the date the notice was removed at UPS Hagerstown or the identity of the person who removed it.

The protestor also stated that the incorrect notice remained posted and was not replaced at U.S. Silica. A witness our investigator spoke with there stated that the incorrect notice was replaced "a couple of weeks" before the tally date.

The ballot packages mailed to local union members stated the correct date by which ballots had to be returned in order to be counted.

On April 7, the day after ballots were counted, protestor Mummert stated he received a call from Todd Spann, a member employed at UPS Hagerstown, questioning why ballots were counted on April 6 when the notice posted at that facility stated they would be counted on April 16.

This protest followed.

On May 10, 2011, our investigator contacted the post office branch at which the mail box for ballot return envelopes were received to determine the number of ballots, if any, received after the April 6 deadline and pickup. The post office official interviewed stated that a total of four envelopes were received after the pickup of voted ballots on April 6.

Analysis

Article II, Section 7(d) requires that the notice of election be included in the mail ballot package sent to each member. According to the rule, the notice must "state the date(s) by which ballots must be returned." The same provision states that the notice of election must also be posted on all worksite bulletin boards.

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Here, the notice that ESS initially prepared listed the wrong date for counting of ballots. This error was promptly corrected through the efforts of principal officer Krause, and the notice listing the correct count date was posted.

We find that the posting of the correct notice at UPS Hagerstown was ineffective because it did not remain posted there. We note protestor's claim that the posting at U.S. Silica was also ineffective, although a witness to whom he directed our investigator stated that the incorrect notice was replaced "a few weeks" before the count date.

This is a post-election protest. Article XIII, Section 3(b) declares that such protests "shall only be considered and remedied if the alleged violation may have affected the outcome of the election."¹ The protestor presented no witnesses, and we found none, who did not timely mail their ballots because they relied on the erroneous notice. Further, we find that the incorrect notice was promptly replaced at all locations (although apparently did not remain in place at one), and the correct notice was included in all ballot packages mailed to members. Finally, were we to assume that the four ballots received at the post office after the April 6 pickup of voted ballots were returned by members who relied on the erroneous notice posted at UPS Hagerstown, these votes would nonetheless be insufficient to affect the outcome of the election, which was decided by fifteen votes in the race for delegate and twelve for alternate delegate.

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, 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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¹ Excepted from this provision are post-election protests "alleging improper threats, coercion, intimidation, acts of violence or retaliation."

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