

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

IN RE: LARRY HART,)	Protest Decision 2001 EAD 189
)	Issued: February 23, 2001
)	OEA Case No. PR012911MW
Protestor.)	
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Larry Hart, a member of Local 705 and a candidate for delegate, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“*Rules*”). His protest alleges that many shop stewards in Local 705 were removed from their positions because of their opposition to the principal officer’s slate of candidates in the upcoming delegate election.

Election Administrator representative Dennis Sarsany investigated the protest.

Findings of Fact and Analysis

Local 705 has more than 450 shop stewards, all of whom are, pursuant to bylaw, appointed by the local’s principal officer. The local recently held officer elections and is readying for its delegate election. On January 4, 2001, after the December 2, 2000, ballot count in the officer election and nearly 3 weeks before the nomination meeting for the delegate election, some 25 to 30 shop stewards were terminated by Gerald Zero, principal officer of the local. Of these, 10 were reinstated because their terminations resulted from erroneous information received from members. Of the remaining 15 to 20 terminations, information provided by Zero indicates they were terminated for cause. According to Zero, stewards are required to work well with their assigned business representatives. In addition, stewards are obliged to attend stewards meetings and regular training sessions. Among the causes cited for the January 4 terminations were the following: poor performance, including failure to write proper grievances; advocating violence against specific member of management; failure to attend stewards’ meetings; making threats against fellow members; making threats against a business representative; applying for a position in management; poor work attendance and disciplinary problems; and refusal to take direction from a business representative.

One of the January 4 terminations was of Rich Carlucci. His termination letter did not state a reason for his discharge, but he alleges his business representative informally advised him that the reason for the termination was his participation in a spirited anti-Zero rally held in Local 705’s parking lot in November 2000 at the height of the local officer election. Carlucci also stated that the business representative, Joseph Strazzante, contacted him after January 21, 2001, and told him that he would be reinstated if he stopped making negative statements about Zero. Strazzante denied making these statements to Carlucci.

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In addition to the stewards terminated January 4, Joe Bakes was terminated from his steward position on January 16, 2001, for his failure to support business representative decisions regarding work issues and solutions. Bakes subsequently was nominated for delegate and is a member of the protestor's slate.

Local 705's delegate nomination meeting was conducted January 21, 2001.

Article VII, Section 11(g) of the *Rules* prohibits "[r]etaliatio[n] or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or other person or entity against a Union member, officer or employee for exercising any right guaranteed by this or any other Article of the *Rules*." To establish a violation of this provision, the protestor must show that conduct protected by the *Rules* was a motivating factor in the adverse decision or conduct in dispute. The Election Administrator will not find retaliation if he concludes that the union officer or entity would have taken the same action even in the absence of the protestor's protected conduct. *Gilmartin*, P32 (1/5/96), *aff'd* 95 EAM 75; *Leal*, P51 (10/3/95), *aff'd* 95 EAM 30; *Wsol*, P95 (9/20/95), *aff'd* 95 EAM 17.

All of the steward terminations at issue here occurred before Local 705's nomination meeting for the delegate election. Indeed, many of the terminations identified by the protestor occurred in 2000, remote in time to the delegate election. The January 2001 terminations each were supported by cause. While some evidence might support the conclusion that one steward was terminated because he opposed Zero in the local's officer election, no evidence links any termination to conduct protected by the *Rules*.

Accordingly, Hart's protest is DENIED.

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 Administrator 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
Suite 1000
885 Third Avenue
New York, New York 10022
Fax: 212-751-4864

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Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15th Street NW, Tenth Floor, Washington, DC 20005, all within the time period prescribed above. A copy of the protest must accompany the request for hearing.

William A. Wertheimer, Jr.

William A. Wertheimer, Jr.
Election Administrator

cc: Kenneth Conboy
2001 EAD 189

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