

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

IN RE: TONY DiDONATO,)	Protest Decision 2006 ESD 189
)	Issued: April 17, 2006
Protestor.)	OES Case Nos. P-06-138-021006-MW
<hr/>)	and P-06-139-021306-MW

Tony DiDonato, member and delegate candidate from Local Union 705, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“Rules”). The protest in OES Case No. P-06-138-021006-MW alleged that the local union did not correct bad addresses on its membership list until after it issued the list to DiDonato. The protest in OES Case No. P-06-139-021306-MW alleged that the local union intended to send ballots to members not in good standing.

Election Supervisor representative Joe Childers investigated these protests.

Findings of Fact

The first protest alleged that the local union undertook to correct a large volume of bad addresses on its membership list only after it issued its existing list to the protester’s slate. This protest further claimed that the local union should correct bad addresses with information received from employers rather than from local union or its business agents.

The second protest asserted that the local union intended to send ballots to members not in good standing. In particular, it alleged that 8,240 persons who were not members in good standing would be receiving ballots.

Protestor DiDonato told our investigator that he requested a list of the members in good standing and on February 7, 2006 and received a list with 15,260 names. He stated that the local union mailed out 22,374 ballots, which included a lot of members who were not in good standing. He stated that approximately 8,240 members who are not in good standing received ballots. He asserted that these ballots went to members who are friends with the current administration of the local union, including a lot of part-time UPS workers, laid-off members, and members who have quit employment.

Local Union 705 is a non-TITAN local. Joan Somer of the local union’s dues department wrote our investigator stating that “[a]s in past elections, ballots are sent to all members with active employers, regardless of their delinquent status. All members have the opportunity to bring their dues current before the ballot count and final determination of eligibility.” Somer further stated that ballots are sent to members with no active employer who have not yet been made inactive by the suspension process. She stated that more ballots were sent this year because of the large number of seasonal employees at UPS who worked during the holidays in December. Somer told our investigator that UPS pays dues three months in advance and as a result many of these seasonal employees, who have not been rehired by UPS, will most likely appear eligible during the ballot count.

Somer asked Bruce Boyens, the election officer for the delegate and alternate delegate election, whether she was required to send ballots to members with no active employer. Boyens stated that, because UPS dues are deducted so far in advance, ballots must be sent to those members

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whose dues are paid up because they would be eligible to vote. For these reasons, the ballot mailing included 22,384 members.

Somer further explained that the local's suspension process changes members with no active employer to inactive status (suspended) if the member has been unemployed for 3 months, has not had a payment for 3 months, or are delinquent for more than 3 months. She also explained that, as of early March, 875 members with active employers had not paid dues through December 2005. Of these, 259 members at K-Mart are delinquent because K-Mart has suspended dues checkoff while the contract is being negotiated. Most of those members have elected not to pay dues until the contract is settled.

Many of the remaining 875 are on long-term disability or workers compensation. The local union has a long-standing rule that these members may not be placed on withdrawal if they are receiving benefits from the Health and Welfare and/or Pension Funds, or are receiving sick benefits. They will be challenged at the vote count if they have not paid their dues, but if they pay up, they will be eligible to vote.

Somer also told our investigator that the non-TITAN system does not do billing or generate debits if someone is suspended. Nonetheless, such members get ballots, whereas they would not if the system was TITAN. She said there are 2,000 to 3,000 UPS seasonal members who worked during the holidays but who are not currently employed. They received ballots. She expects that when she runs the election control roster (ECR), there will be approximately 5,000 to 6,000 challenged members. These people do not have employers now, but some may be rehired. In addition, the UPS turnover is approximately 1,000 per month. There may be some seasonal people who have worked long enough that they will be eligible to vote.

Somer reported that as of the end of February she had 5,330 members with no active employer. They would show challenged at the count if dues are not paid through February. There are 2,689 members who are not paid through February and who do not have current employers. However, she will be posting dues several times before the final ECR is run for the election.

Somer stated that it is normal for her to correct addresses the week before ballots are mailed, which is consistent with OES instructions to TITAN operators in all local unions. She stated that the correction of addresses between February 7-9 was not directed at Tony DiDonato or his slate. The other slate requested a list to be prepared on February 10, 2006, which included the corrected addresses. That slate received a list with 15,496 members. It is not possible for her to run a list of just those addresses which were corrected. She would now have to run the entire list.

Analysis

Article II, Section 4(a) of the *Rules* requires that local union, in adopting a local union election plan, describe how it will correct bad addresses on its membership list in advance of the election. The effort of Local Union 705 to update its membership list is consistent with this obligation.

The fact that the protestor asked for the list two days before the addresses were corrected is not the fault of the dues department office manager or the local union. If the slate wanted another list after the corrections were made, it could have requested one, since DiDonato knew of the

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corrections by February 9. The protestor did not produce any evidence that the corrected addresses were false or were for friends of the incumbents, nor did the investigator uncover such evidence.

Further, because Local Union 705 is a non-TITAN local, many members who will be ineligible to vote as of the ballot count date will receive ballots. This is unavoidable because Local Union 705's computerized membership system does not exclude persons who might be suspended for not having an active employer. The ballots were mailed this year in accordance with the practice established in prior International officer elections. Local Union 705 will also generate an ECR using updated dues and employer data just before the ballot count, and that will be used to check voter eligibility at the ballot count. Each returned outer envelope will be checked to determine whether the identified member is eligible to vote, and returns from members shown on the updated ECR as ineligible will be challenged. Even though eligibility checking at the count will likely be an extensive undertaking, a member's ballot will not be counted unless the member is first determined to be eligible to vote.

For these reasons, we DENY these protests.

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, New York 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, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20007-5135, 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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