

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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| IN RE: MICHAEL BENNETT, |) | Protest Decision 2011 ESD 75 |
| |) | Issued: January 20, 2011 |
| Protestor. |) | OES Case Nos. P-077-011411-MW |
| _____ |) | |

Michael Bennett, member of Local 705, 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 OES failed to respond to eligibility verification requests timely.

Election Supervisor representative Maria Ho investigated this protest.

Findings of Fact and Analysis

Article VI, Section 4 of the *Rules* recommends that each candidate for delegate or alternate delegate “request that the Election Supervisor verify his/her eligibility for the position in question sufficiently in advance of nomination so as to permit verification prior to the date of nomination. Such request shall be made to the Election Supervisor and shall not be sent to the Union. The Election Supervisor shall issue a report on eligibility, in writing, within five (5) days of such request.”

Local Union 705’s nominations meeting for its delegates and alternate delegates election was held Sunday, January 16, 2011. On January 3, protestor Bennett faxed to our offices eligibility verification requests for himself and 25 others. In accordance with our procedures, our staff reviewed dues payment histories for each of these members. Some requests required investigation to verify that they were on check-off status and had earnings in particular months where their dues payment histories showed that dues were either remitted late or not at all. In many circumstances, our staff had to contact individual members to request proof of earnings; we then had to await receipt of that proof, usually submitted by fax. Despite these hurdles, verifications were completed for most of the members by January 11.

Although Bennett submitted requests for eligibility verification for a number of members, he did not submit authorization from those members permitting us to release our findings on them to him. Without such authorization, we will release our findings only to the member whom it concerns and to no one else.¹ Accordingly, we contacted the individuals for email addresses to

¹ We provide the initial response to an eligibility verification request only to the member personally, or to an authorized third-party, for at least two reasons. First, in the absence of an authorization, the submitting party may not be aligned in interest with the subject of the inquiry, and the eligibility process is not to be used for strategic discovery by an opposing interest. Second, it is up to the member, not an unauthorized third party, to evaluate the response, whether positive or negative, and make a personal decision on further action. For example, if a member is ruled ineligible to stand for election and chooses not to protest, the member may wish to keep the fact of ineligibility a private matter and not publicize it. Eligibility becomes a matter of public record if an individual ruled ineligible chooses to protest the determination; or if an individual participates in the public process of nomination.

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which we could send the written reports on eligibility that the rule requires. As we obtained each email address, we sent the report. If individuals did not have email, we gave oral reports on eligibility to them by phone, after they verified their identities to our satisfaction.

For Bennett, we emailed his written report to the address he gave us on January 12. However, the email address was incorrect. When we obtained the correct address on January 13, we emailed the report again, this time successfully. In total, we contacted all members but one to deliver their eligibility verification by email or phone by January 14 – two days before the local union’s scheduled nomination meeting. The remaining member did not supply checkstubs we requested in a timely manner; as a result, we could not verify that member’s eligibility until that documentation was received. We advised that member that if he could prove earnings for the particular month in question he was eligible; if not, then he was not.

On these facts, we find that we supplied responses to the eligibility requests submitted by Bennett as promptly as permitted, given that our determinations depended on information that was unavailable to us and had to be supplied by the individual candidates.

Accordingly, we DENY this 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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DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
braymond@teamster.org

David J. Hoffa
Hoffa Hall 2011
1100 Connecticut Avenue, N.W., Ste. 730
Washington, D.C. 20036
hoffadav@hotmail.com

Ken Paff
Teamsters for a Democratic Union
P.O. Box 10128
Detroit, MI 48210-0128
ken@tdu.org

Barbara Harvey
1394 E. Jefferson Avenue
Detroit, MI 48207
blmharvey@sbcglobal.net

Fred Gegare
P.O. Box 9663
Green Bay, WI 54308-9663
kirchmanb@yahoo.com

Scott D. Soldon
Previant Goldberg
1555 North RiverCenter Drive, Ste. 202
P.O. Box 12993
Milwaukee, WI 53212
sds@previant.com

Fred Zuckerman, President
Teamsters Local Union 89
3813 Taylor Blvd.
Louisville, KY 40215
fredzuckerman@aol.com

Robert M. Colone, Esq.
P.O. Box 272
Sellersburg, IN 47172-0272
rmcolone@hotmail.com

Carl Biers
Box 424, 315 Flatbush Avenue
Brooklyn, NY 11217
info@SandyPope2011.org

Julian Gonzalez
Lewis, Clifton & Nikolaidis, P.C.
350 Seventh Avenue, Suite 1800
New York, NY 10001-5013
jgonzalez@lcnlaw.com

Michael Bennett
1058 Douglas
Joliet, IL 60435
nos4ra2@msn.com

Stephen Poczowski, Secretary-Treasurer
Teamsters Local Union 705
1645 West Jackson
Chicago, IL 60612
kmeyer@1705ibt.org

William C. Broberg
1108 Fincastle Road
Lexington, KY 40502-1838
wcbroberg@aol.com

Maria Ho
Office of the Election Supervisor
1801 K Street, N.W., Suite 421 L
Washington, D.C. 20006
mho@ibtvote.org

Kathryn Naylor
Office of the Election Supervisor
1801 K Street, N.W., Suite 421 L
Washington, D.C. 20006
knaylor@ibtvote.org

Jeffrey Ellison
214 S. Main Street, Ste. 210
Ann Arbor, MI 48104
EllisonEsq@aol.com