

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

**IN RE: RICHARD GALVAN,**                    )  
  )  
**Protestor.**                                    )  
  )  
\_\_\_\_\_)

Protest Decision 2016 ESD 125  
Issued: February 27, 2016  
OES Case Nos. P-170-021616-FW

Richard Galvan, member of Local Union 396, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“Rules”). The protest alleged that the ballot format for the local union delegates and alternate delegates election deviates from format used in a past election and is contrary to what was described at the candidates meeting.

Election Supervisor representative Jeffrey Ellison investigated this protest.

**Findings of Fact**

Local Union 396 will elect 12 delegates and 14 alternate delegates to the IBT convention. Two full slates and no unaffiliated candidates are competing in this election. At the candidates meeting held immediately following the nominations meeting, a ballot placement lottery was conducted to determine which slate would be awarded the first position on the ballot. The Galvan Local 396 Teamsters United slate, the protestor’s slate, won the coin toss.

The ballot in the 2011 delegates and alternate delegates election of Local Union 396 was also a contest between two full slates with no unaffiliated candidates. The format for that ballot was a “top over bottom” layout, with one slate appearing in a rectangle spanning the width of the ballot, delegate candidate names grouped on the left side and , alternate delegate candidate names on the right, with the second slate appearing in the same format beneath the first slate. In two local union officers elections held since the 2011 delegates and alternate delegates election, however, the two competing slates have been listed on the ballot in side-by-side columns, with each slate’s candidate for each office to be elected on the same line as the competing slate’s candidate for that office.

Before the coin toss at the February 2016 candidates meeting, the official with the coin announced that the winner of the toss would have “top” position. There was no further discussion of ballot format at the candidates meeting. Subsequently, as discussions ensued concerning ballot layout and proofing of candidates’ and slates’ names, representatives of the slate competing against the protestor’s slate requested consideration of a side-by-side layout of the ballot similar to what was used in the two local union officer elections held since the last delegates and alternate delegates election.

Election Supervisor staff directed that alternative ballot layouts be prepared, one top over bottom and the other side-by-side, and these proofs were presented to representatives for both slates for review and comment. The protestor objected to the side-by-side format as contrary to what was announced at the candidates meeting and an unwarranted deviation from the ballot used in the 2011 delegates and alternate delegates election.

After consideration of the two ballot formats, Election Supervisor staff opted for the side-by-side layout. This protest followed.

## **Analysis**

Article II, Section 10 governs ballots in delegates and alternate delegates elections. This section specifies that ballots must inform the voter as to the number of candidates in each category to be elected and give instructions as to how to vote for individual candidates, slates of candidates, or a combination thereof.

Section 10(b) of the article specifies that the “names of all candidates for delegates and alternates shall be printed on the ballot.” Further, “[t]he names of all candidates of any slate shall be placed under the heading of the slate name or title as designated by the slate declaration form previously submitted to the Local Secretary-Treasurer.”

When slates compete in an election, Section 10(b) requires that the order of appearance on the ballot “shall be determined by lot,” the winner of the lottery being entitled to the superior position. In this case, the superior position in a top over bottom format is top; in a side-by-side column format it is on the left.

As these provisions demonstrate, the ballot must present the information and choices clearly, but otherwise the *Rules* do not mandate a particular format or layout. All candidates have the right to a fair ballot, but no candidate has a right to a particular format. Where a dispute arises as to ballot layout, the Election Supervisor will resolve it to insure that the ballot presentation is fair, within the confines of the cited provisions.

Here, it is the judgment of the Election Supervisor that side-by-side presentation of the electoral choices is easier to understand and therefore a clearer ballot for voters. On viewing, the voter can readily see the candidates who are competing against each other for the separate positions of delegate and alternate delegate, and their slate affiliations. A top over bottom format does not permit such ready comparison of the candidates standing for election for the two positions on the two slates.

We reach this determination despite the top over bottom ballot format used in the previous delegates and alternate delegates election. Local Union 396 itself has used the side-by-side column format in its officers election, showing that to be an appropriate presentation. Both officer elections using that format post-date the 2011 delegates and alternate delegates election, so union members would have more recent exposure to, and be familiar with, the side-by-side format. Further, although the announcement was made at the candidates meeting that the lottery would determine “top” position, we are unwilling to conclude that such language mandated a particular layout, instead concluding only that the lottery winner would have first position on the ballot, which the protestor’s slate has in the side-by-side layout.

Finally, protestor has directed our attention to the ballot used in Local Union 952, which elects 11 delegates and 6 alternate delegates in a contest between two full slates and no unaffiliated candidates. That ballot layout is top over bottom and was approved without objection from any candidate. Here by contrast, an objection was lodged, and we have resolved it in favor of what we conclude is a more clearly presented ballot.

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Accordingly, we find that the side-by-side ballot format with the protestor's slate listed in the first, or left column, position will be maintained.

For the reasons stated, 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:

Kathleen A. Roberts  
Election Appeals Master  
JAMS  
620 Eighth Avenue, 34<sup>th</sup> floor  
New York, NY 10018  
kroberts@jamsadr.com

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, 1050 17<sup>th</sup> Street, N.W., Suite 375, Washington, D.C. 20036, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark  
Election Supervisor

cc: Kathleen A. Roberts  
2016 ESD 125

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