



Delegates and Alternates receiving a salary must be paid their regular salary for one week, which will be deemed to cover the period of time spent at the Convention. Delegates and alternates who are paid on an hourly basis must be paid their *straight time wages* for forty hours, excluding overtime, mileage, and or other premiums. Straight time wages will be deemed to cover the period of time spent at the Convention. Where a delegate or alternate delegate receives employer-provided full or partial payment of health and welfare and/or pension contributions, the Local Union will insure that contributions are not lost because of attendance to the Convention. If any periodic benefit contribution would not be made solely because of the delegate or alternate delegate's Convention attendance, the Local Union will either persuade the employer to make the necessary contributions, will make the contributions itself directly to the appropriate funds, or will reimburse the delegate or alternate delegate for contributions actually made that the delegate or alternate delegate would not have been required to make but for his/her attendance at the Convention. Local unions are not required to pay lost wages of a delegate or alternate delegate who is not otherwise employed at the time of the convention. *Smith*, 2011 ESD 285 (June 28, 2011). No delegate or alternate will be required to use his or her vacation time to attend the Convention.

(Italics emphasis added.)

For most IBT members, dues are set at “two and one-half (2.5) times the hourly earnings rate.” IBT constitution, Article X, Section 3(d)(i). The constitution further provides that “[a]ll future dues adjustments shall be calculated based upon the member’s hourly earnings rate...” In particular, “[d]ues shall be adjusted whenever an increase in hourly earnings ... is provided in a collective bargaining agreement, to become effective the first day of the second calendar month following the month in which the increase is implemented.” Article X, Section 3(d). The constitution further states that “[q]uestions relating to the determination of the ‘hourly earnings’ and problems which arise generally over the interpretation of this subsection shall be resolved by the General Secretary-Treasurer with the approval of the General Executive Board.”

The General Executive Board (GEB) has adopted interpretations of the phrase “hourly earnings” as used in Article X, Section 3(d) applicable to a variety of employments. For members whose earnings are calculated on the basis of mileage or work performed, GEB policy interpreting the IBT constitution provides the following:

Where a stated hourly earnings rate for work performed does not exist, a member paid on a mileage basis shall have their equivalent hourly earnings rate calculated using the member’s annual earnings ... Where the member’s equivalent hourly earnings rate is calculated on the basis of annual earnings, the resulting equivalent hourly earnings rate shall be considered to be in effect on January 1 with the resulting dues increase to be implemented for dues payable for the month of March.

When using annual earnings to compute a member’s equivalent hourly earnings rate, only include earnings for regular work performed. Do not include earnings representing compensation for overtime, premium pay, etc.

Local Union 118 has for many years used the GEB policy to calculate union dues for certain members in driver classifications employed at Wegman's, including Figliotti. Thus, for dues to be paid in 2016, the local union sent Figliotti a letter dated February 1, 2016 stating the following:

In accordance with Article 10, Section 3(d) of the International Constitution, Union dues shall be adjusted whenever an increase in hourly earnings is provided in the Collective Bargaining Agreement. Per the I.B.T. Dues Policy any employee paid using a mileage or performance method shall have their dues calculated according the following formula:

- Dues shall be 2 ½ times the adjusted hourly rate.
- The adjusted hourly rate shall be based on last year's Gross Annual Wages / Hours Worked.
- Hours worked will be adjusted for straight time and missed lunches.

Your dues for 2016 will be based on a formula using the information supplied to our office by Wegman's Payroll department.

The letter then stated Figliotti's gross earnings for calendar year 2015 and the total number of hours he worked. Based on these figures, the letter reported that "[y]our monthly dues for 2016 based on your "Adjusted Hourly Wage" and the \$2.00 Death Benefit Assessment will be \$94." To reach this calculation, the "hours worked" figure was adjusted in two ways: first, the portion in excess of 2,080 was multiplied by 1½ in order to convert to straight-time the portion of the earnings that were the result of overtime premiums; second, 130 hours were added to the total hours worked in order to account for unpaid lunch time that was included in the hours figure. The effect of these adjustments was to increase the hours worked figure and thereby reduce the adjusted hourly rate (and thereby reduce the dues rate), such that Figliotti's "adjusted hour wage" was \$36.69.

Our Advisory requires that elected delegates and alternate delegates who are not salaried be provided wage reimbursement equal to forty hours at their "straight time wages." Although the Advisory does not specify that the wage rate to be used for this calculation is the rate specified in the collective bargaining agreement applicable to the job the particular delegate or alternate delegate holds, for the vast majority of such members who are employed on an hourly basis, that rate will be the one used. However, for a member employed on a mileage or performance basis, we conclude that the method used by the GEB for determining the hourly rate to be used for calculating the dues to be assessed against the member is the method by which "straight time wages" for convention wage reimbursement should be calculated under our Advisory. Both methods, by their terms, explicitly do not include overtime compensation or other premium pay. Accordingly, where the union has calculated the dues rate a member employed on a mileage or performance basis is required to pay using a rate higher than that specified in a collective bargaining agreement applicable to that member, we hold that the wage reimbursement our Advisory requires must be calculated using the same rate required for calculation of dues under the GEB dues policy.

The protest alleged that Richard Militello, a Wegman's driver whose dues are calculated per the "adjusted hourly rate" process used for protestor Figliotti and similarly situated drivers employed there, served as a member of Local Union 118's delegation to the 2006 and 2011 IBT convention and was given wage reimbursement based on the "adjusted hourly rate" the local union used to calculate his dues. Militello told our representative that he was elected to represent the local union at the convention as a member of a slate that included local union secretary-treasurer Chris Toole. In 2006, he initially received

wage reimbursement that was calculated according to the hourly wage set forth in the collective bargaining agreement between Wegman's and Local Union 118. He said he asked Toole why his wage reimbursement was not calculated based on the adjusted hourly rate used to calculate his dues, a rate that was higher than the wage figure laid out in the contract. According to Militello, Toole agreed and paid him based on the higher hourly rate. Militello stated that when he attended the 2011 IBT convention as an elected member of the local union delegation, he again received wage reimbursement calculated at the adjusted hourly rate used to calculate his monthly dues, just as had been done in 2006, a rate that was higher than the hourly wage rate set forth in the collective bargaining agreement. Militello told our representative that the issue of how to calculate his wage reimbursement for each convention was resolved without a request for assistance of the Election Supervisor or an election protest.

In an email exchange with Toole that occurred before the protest was filed, protestor Figliotti stated that Militello's wage reimbursement in 2011 had been calculated at the adjusted hourly rate used to calculate his union dues, after the situation was "reviewed by the Election Supervisor." Toole replied merely that he was "not aware of a decision by the Election Supervisor concerning Richard Militello," without confirming or refuting that Militello was given wage reimbursement based on the adjusted hourly rate.

Toole told our representative that he had no recollection of the exchange Militello said the two had. Toole further denied that Militello was paid in any way other than the hourly wage set out in the Wegman's collective bargaining agreement.

We make no finding concerning the wage reimbursement calculation used for Militello, finding it unnecessary to do so given the analysis set forth above.

For reasons articulated, we GRANT the protest. As remedy, we direct Local Union 118 to tender to protestor Figliotti a check for wage reimbursement for his attendance at the 2016 IBT convention calculated by multiplying 40 times \$36.69. The local union is entitled to a credit against this sum for the wage reimbursement it has already tendered to Figliotti. The local union shall comply with this order no later than Friday, February 3, 2017. It shall provide its declaration of compliance with this order, made under penalty of perjury, to OES no later than Monday, February 6, 2017.

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

*Figliotti*, 2017 ESD 377

January 30, 2017

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  
*2017 ESD 377*

**Figliotti**, 2017 ESD 377  
January 30, 2017

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