

ELECTION APPEALS MASTER

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IN RE SCOTT TEMEN,

2015-2016 EAM 40 (KAR) (ESD 368, 369)

PROTESTOR.

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Protest Decisions 2017 ESD 368 and 369 (ESD 368 and ESD 369) were issued on January 14, 2017. ESD 368 addressed a protest by Scott Temen, a member of Local Union 710, alleging that Todd Anderson, a member of Local Union 710, threatened him, in violation of the *Rules*. ESD 369 addressed a protest by Mr. Temen alleging that Local Union 710 business agent Ted Barnhart retaliated against him for protected activity in violation of the *Rules*. The Election Supervisor denied both protests.

Mr. Temen filed timely appeals of ESD 368 and 369 on January 16, 2017. The protestor's appeal email in ESD 368 asserts that "[w]hile I respect & appreciate the decision of the Election Supervisor, I feel there is some misrepresented facts, omissions & outright lies in the findings of facts which contributed to the decision made." Mr. Temen's appeal does not specify any error by the Election Supervisor. The protestor's appeal email in ESD 369 reads: "While I respect & appreciate the decision of the Election Supervisor, I feel there is some misrepresented facts, omissions & outright lies in the findings of facts which contributed to the decision made. Also I was informed at the time I filed the protest someone would be in contact with me to get facts of case, to which no one contacted me. As well as there are other witnesses to these facts that was not investigated." Mr. Temen's appeal does specify any error made by the Election Supervisor and does not specify what additional evidence he would have provided if he had been contacted by an OES representative.

By Notice of Hearing issued by the Election Appeals Master on January 19, 2017, a telephonic hearing was scheduled for January 24, 2017.

On January 22, 2017, Mr. Temen provided to the Election Appeals Master additional documents in support of his appeal. At the direction of the Election Appeals Master, a copy of this submission was provided to all interested parties on January 23, 2017. It is undisputed that the information contained in this submission was available to Mr. Temen at the time he filed his appeals.

On January 23, 2017 (prior to receipt of Mr. Temen's supplemental submission), the Election Supervisor filed a motion to dismiss the appeals of ESD 368 and 369 based upon Mr. Temen's failure to comply with Article XIII, Section 2(i) of the Election Rules, which requires an appellant to specify in writing the basis for the appeal.

Later on January 23, Mr. Temen opposed dismissal of his appeals, stating:

I, Scott Temen, respectfully request that neither case 368,369 be dismissed. I strongly feel that the reasons for the appeal were stated in writing in original request as well as follow up email forwarded to all parties. As far as ESD 369 I am again going to state there was only one phone call to myself & was asked why I called. I explained I was trying to file the protest and it would not send the original form. I explained I was told to just write the basis of protest informally (which I did). At that time I asked if the informal Protest was received & was told it was. It was at that time I gave a FEW facts of the case & I was told I would be called later to go over all the facts & it would be investigated. There was no other phone call. For these reasons I feel the appeal hearing should go forward for both cases.

It is well established that:

An appellant in protest proceedings must identify in writing in advance of the scheduling of hearing the substance of his complaint about the record, conduct or analysis underlying the disposition of a protest by the Election Supervisor under the Election Rules. To deviate from this prudent and time honored requirement would render appeals hearings excessively imprecise, interminable and ultimately unfair. (Original emphasis.)

Webb, 11 EAM 16 (February 4, 2011). Accordingly, in *Gammon*, 2011 EAM 19 (February 16, 2011), the Election Supervisor moved to dismiss the appeal because the appeal's mere statement that "the ruling is contradictory to the facts" did not specify any "complaint about the record, conduct or analysis" underlying the Election Supervisor's protest decision on which the appeal was based; accordingly, the Election Supervisor argued that he could not effectively respond to or prepare for an appellate hearing on such a vague statement. The Election Appeals Master agreed, dismissing the appeal because it "indisputably fails to set forth an adequate statement explaining why the case was wrongly decided." See also *Bucalo*, 2016 EAM 22 (May 31, 2016) (none of the evidence cited by the appellant was unavailable to him at the time he filed his appeals and appellant offered no explanation or excuse for the failure to provide an adequate statement of the basis of the appeals). Nor is the failure to provide a specific statement of the basis for an appeal remedied by the subsequent submission of additional information in response to a motion to dismiss. See *Zuckerman & Hoffa-Hall 2016*, 2017 EAM 36 (January 13, 2017).

With respect to the appeal of ESD 369, Mr. Temen does specifically complain that the Election Supervisor failed to conduct a sufficient investigation. In response to this claim, the Election Supervisor asserts that the OES Investigator in fact interviewed Mr. Temen extensively by phone on the same date he filed the protest. It was through this interview that the OES Investigator learned the detailed and extensive history of "Beetlejuice" as a derogatory nickname the protestor alleged had been used against him--a factual detail not mentioned in the original protest. Finally, the additional evidence offered by Mr. Temen on appeal does not support a finding that the Election Supervisor abused his discretion in determining that he lacked jurisdiction over the protest.

For the foregoing reasons, the appeals of ESD 368 and 369 are DISMISSED.

SO ORDERED.

/s/ *Kathleen A Roberts*
KATHLEEN A. ROBERTS
ELECTION APPEALS MASTER

DATED: January 31, 2017