

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

<b>IN RE: GARY FABIANO,</b>	)	Protest Decision 2011 ESD 208
	)	Issued: April 12, 2011
<b>Protestor.</b>	)	OES Case Nos. P-238-033111-ME
<hr style="width: 35%; margin-left: 0;"/>		

Gary Fabiano, member of Local Union 107, filed a post-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 Local Union 107 misinformed members as to the number of delegate seats available for election. The protest further alleged that the local union is under trusteeship and claimed that members were not informed of special election rules the protestor claimed apply to such local unions.

Election Supervisor representative Denise Ventura investigated this protest.

**Findings of Fact and Analysis**

Ballots in the delegates election at Local Union 107 were mailed on February 15 and counted on March 9, 2011. A slate led by local union officers William Hamilton and Shawn Dougherty won all positions in the election. In previous decisions, we have addressed a variety of issues raised by the candidates who lost the election and an observer for one of those candidates.<sup>1</sup>

In the present protest, Fabiano alleged that, although the local union elected three delegates, the IBT constitution permitted it to elect only two. The protestor noted that the most recent LM-2 for the local union listed 2,394 members, and the number of members to whom ballots were mailed was 2,357. The protestor then asserted that “Hamilton and Dougherty lied on the election plan and to the election supervisor’s office to allow them all three names for delegate on the ballot. I ask that they be disqualified for misleading the members.”

On March 31, our investigator emailed the protestor the following message:

Please refer to the IBT Constitution, Article III, Section 2, which states: “Each Local Union having one thousand (1000) members or less shall be entitled to one (1) delegate, and one (1) delegate for each additional seven hundred fifty (750) members or major fraction thereof...” (Emphasis supplied.) A major fraction of 750 is considered to be 376, or one more than half of 750.

---

<sup>1</sup> In *Fabiano et al*, 2011 ESD 176 (March 23, 2011), *appeal pending*, we decided protests that alleged denial of observer rights at the printing of ballots. In *Taylor et al*, 2011 ESD 177 (March 23, 2011), *appeal pending*, we decided protests that alleged that observer rights were denied and ballot security was compromised at the pickup of ballots returned as undeliverable. In *Taylor & Sgrillo*, 2011 ESD 188 (March 28, 2011), we decided protests alleging that members on withdrawal were improperly not sent ballots. In *Sgrillo*, 2011 ESD 189 (March 28, 2011), *appeal dismissed*, 11 EAM 31 (April 6, 2011), we decided a protest that alleged denial of observer rights for “relabeling and remailing” of ballot packages returned as undeliverable. In *Fabiano*, 2011 ESD 190 (March 28, 2011), *appeal dismissed*, 11 EAM 31 (April 6, 2011), we decided a protest alleging that U.S. postal inspectors improperly interfered with observer rights.

April 12, 2011

Therefore, a local union with up to 1,375 members is entitled to one delegate (1,000 + 375).

A local union with between 1,376 and 2,125 members is entitled to two delegates (1,000 + 750 + 375).

A local union with between 2,126 and 2,875 members is entitled to three delegates (1,000 + 750 + 750 + 375).

Local Union 107 elected the correct number of delegates.

Protestor Fabiano responded to this message by email, stating: “Thank you for explaining how many delegates can be on a ballot. I would now like to withdraw that portion of this protest.” Accordingly, we deem the portion of the protest alleging that Local Union 107 elected too many delegates, that its officers lied on the election plan and to the Election Supervisor, and that those officers should be disqualified for misleading the members WITHDRAWN.

The protestor declined, however, to withdraw the second allegation of his protest in which he claimed that Local Union 107 is currently under trusteeship, that special election rules apply to such a union, and that members were not informed of those rules. Investigation showed that the exhibits hiring hall function of Local Union 107, affecting fewer than some fifty members, is in trusteeship, but that no special election rules apply to the local union because of that partial trusteeship. Nothing in the *Rules* requires special handling for local unions under a full or partial trusteeship. Further, the IBT constitution permits local unions in trusteeship to send delegates to the IBT convention provided they are elected by secret ballot. A secret ballot election was conducted in Local Union 107.

However, any claim that special rules apply to the delegates election in this local union is, of necessity, a pre-election protest, which should have been filed before the local union election plan was approved by the Election Supervisor. Accordingly, we find that this protest, filed more than three weeks *after* ballots were counted, is untimely filed. Article XIII, Section 3 of the *Rules* defines post-election protests as those “concerning election day or post-election day conduct.” As we said in *Berg*, 2006 ESD 296 (June 4, 2006), *aff’d*, 06 EAM 44 (June 15, 2006):

Post-election protests are properly addressed to actions occurring at or after the ballot count itself. They are not to be used to assert violations based on matters that the protestor knew (or should have known) about in the pre-election period. A protestor cannot sit on a pre-election allegation, wait for the outcome of the election, and then seek to upset the entire result based on pre-election conduct that, if a violation, could have been addressed earlier.

*See also*, *Wood*, 2011 ESD 202 (April 4, 2011).

We also note that Fabiano filed four pre-election protests on other issues and was in frequent contact with our representative, Denise Ventura, during the pre-election period about a variety of issues, and did not during that period file a protest on this subject.

Accordingly, we DENY this protest as untimely filed. We state further that, were we to consider the protest on its merits, we would deny it based on the fact that the secret ballot

***Fabiano***, 2011 ESD 208

April 12, 2011

election conducted at Local Union 107 satisfied the constitutional provision for delegates elections in local unions under trusteeship.

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  
*2011 ESD 208*

*Fabiano*, 2011 ESD 208

April 12, 2011

**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 Keegel 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  
3541 N. Summit Avenue  
Shorewood, WI 53211  
scottsoldon@gmail.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

William Hamilton, President  
Teamsters Local Union 107  
2845 Southampton Road  
Philadelphia, PA 19154  
jazz61161@aol.com

Gary Fabiano  
75 Stoneyford Road  
Holland, PA 18966  
fabianog4@aol.com

Anthony Sgrillo  
33 Highland Drive  
Telford, PA 18969  
sgrillos@verizon.net

Edwin Taylor  
378 Cutler Avenue  
Maple Shade, NJ 08052  
teamstered@comcast.net

Karen Matchett  
TLB Solutions  
7331 Greystone Street  
Lakewood Ranch, FL 34202

Denise Ventura  
949 Old Hickory Road  
Pittsburgh, PA 15243  
dmventura@verizon.net

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

Jeffrey J. Ellison  
214 S. Main Street, Suite 210  
Ann Arbor, MI 48104  
ellisonesq@aol.com