

IN RE:

RON SCHERER

01 - Elec. App. – 017 (KC)

This matter is an appeal from the Election Administrator's (the "EA") decision 2001 EAD 82, issued January 19, 2001. This office received a request for an appeal hearing on January 24, 2001 from Ron Scherer, the protestor and a member of Teamsters Local Union 767 in Forest Hill, Texas.

A hearing was held before me on January 30, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. for the EA's Office; Mr. Scherer; Gerald Thompson, Secretary-Treasurer of Local Union 767; Mr. David Bower, a member of the Local 767 Election Committee; Mr. Curtis Kesel, a member of Mr. Scherer's "United Teamsters" Slate (the "UT Slate") and a member of Local Union 767; and Ms. Jacqueline Johnson, also a member of the Local 767 Election Committee. No further submissions were received by this office.

This appeal results from a remand decision, 01 Elec. App. 013 (KC) (January 3, 2001). During the hearing on this matter I found some ambiguity in the record concerning certain conversations between Mr. Scherer and Mr. Thompson about Mr. Thompson's offer to provide Mr. Scherer with the additional mailing labels which had been mistakenly left out of the original set given to Mr. Scherer on October 26, 2000. At the hearing, Mr. Scherer stated this conversation may have taken place as late as November 7th or 8th and would have given credence to Mr. Scherer's contention that additional labels would have been of no practical use to him at that late date. Therefore, I agreed to the request of the EA's representative and remanded this matter for further investigation concerning the timing of these conversations.

Upon reinvestigation, the EA spoke with Alton Green, a member of Mr. Scherer's UT Slate, as to his conversations with Mr. Thompson regarding the missing labels. The EA concluded that Mr. Green learned of the missing labels between October 26 and November 1, 2000, sometime after the labels were given to the slates but before the ballots were mailed out on November 1st. (See page 4, 2001 EAD 82). Then, on November 3, 2000, Mr. Green spoke with Mr. Thompson about the label deficiency, and both Mr. Green and Mr. Thompson confirm that this conversation took place on November 3, 2000.¹

The EA concluded that it was on this date, November 3, 2001, that the Local Union, through Mr. Thompson, made a timely offer to Mr. Scherer's UT Slate, through Mr. Green, and that an additional mailing by the UT Slate and Mr. Scherer could have been accomplished as early as that date. Therefore the EA reaffirmed his original decision and denied Mr. Scherer's protest.

In his appeal Mr. Scherer took issue with many of the factual findings raised in the EA's reinvestigation. He lists over thirty instances of how he believes the EA's investigation is flawed and inconsistent, and raises, for the first time, an issue of possible ballot fraud. The factual determinations of the EA are entitled to substantial deference. I find the EA's reinvestigation to have been comprehensive and thorough. Mr. Scherer has failed to provide new evidence that challenges effectively these factual findings. Accordingly, I affirm the EA's decision denying Mr. Scherer's protest.

¹ The EA noted that although Mr. Green was not sure of the exact date of Mr. Thompson's offer, Mr. Green was sure that he received an answer to his question about the label deficiency the same day he called and left a message for Mr. Thompson about the problem, which he recalled as being November 3rd (See, page 4, 2001 EAD 82).

____s/Kenneth Conboy_____
Kenneth Conboy
Election Appeals Master

Dated: February 15, 2001