

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

IN RE: UNITED TEAMSTERS,)	Protest Decision 2016 ESD 230
)	Issued: June 1, 2016
Protestor.)	OES Case No. P-248-040416-NE
_____)	

United Teamsters, a slate of delegate and alternate delegate candidates in Local Union 707, 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 an employer’s false statement about John Kelder, a delegate candidate, constituted an impermissible employer contribution to his opponents in the delegates and alternate delegates election, in violation of the *Rules*.

Election Supervisor representative Peter Marks investigated this protest.

Findings of Fact and Analysis

Local Union 707 is entitled to elect two delegates and four alternate delegates to the IBT convention. At the nominations meeting held February 27, 2016, two full slates were nominated. One slate was led by Kelder; the other by Kevin McCaffrey.

McCaffrey and Kelder were candidates for principal officer of Local Union 707 in an officers election held in Fall 2015. Kelder won that contest and took office January 1, 2016. However, an election protest resulted in a rerun of the officers election, which McCaffrey won. He resumed the position of principal officer on February 5, 2016.

A collective bargaining agreement between WindowRama and Local Union 707 had an expiration date of January 31, 2016. The CBA also had a provision stating that the contract would automatically renew for a period of one year unless either party notified the other in writing at least 60 days before the expiration date that the contract would terminate on the expiration date. Given this language, the deadline for giving the notice that would avoid the automatic one-year renewal was December 2, 2015. McCaffrey was principal officer of Local Union 707 throughout 2015; it was the responsibility of his administration to give the notice necessary to avoid the automatic extension of the WindowRama contract and allow for negotiation of a new agreement. Kelder did not hold union office or union employment in 2015 and was powerless to act on the local union’s behalf on this issue during that year.

The local union did not give 60 days notice to WindowRama of termination of the contract.

When Kelder assumed office in January 2016, his counsel contacted WindowRama to schedule negotiations for a successor collective bargaining agreement, expecting the required notice had been sent. Employer counsel advised that the notice required to terminate the contract had not been given and that the contract therefore had renewed for one year. Nonetheless, the employer indicated its willingness to negotiate a successor agreement that acknowledged the terms of the automatic one-year renewal.

The parties met and executed an extension agreement on January 28, 2016. This agreement extended the terms of the existing collective bargaining agreement through and including February 16,

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2016. It also preserved the employer's position that the local union's failure before December 2, 2015 to give notice of termination of the contract had the effect of extending the existing contract automatically for one year.

About a week after this extension agreement was executed, the local union administration reverted back to McCaffrey, pursuant to the results of the rerun election. Thereafter, the local union under McCaffrey's leadership met with WindowRama on March 10, 2016 and signed a tentative three-year agreement. The tentative agreement was subject to bargaining unit ratification. The ratification vote held Monday, March 28, 2016 showed two votes in favor of accepting the tentative agreement and eighteen votes against.

The same day the ratification vote was held among WindowRama members, ballots in the delegates and alternate delegates election were mailed to all 2,241 members of the local union.

On March 31 or April 1, the employer posted an "open letter" to its bargaining unit personnel on the bulletin board at WindowRama. The letter acknowledged that the members had rejected the tentative agreement and explained the employer's view of the negotiations, *viz.*

To be clear, we had no obligation to enter into negotiations, since the current labor agreement, by its terms, remains in effect through January 31, 2017. This occurred since the Union's leadership (we assume during Mr. Kelder's tenure, but we don't know for sure) failed to provide management with the necessary written notice of its intention to make changes to that agreement as required in Article XXXII. The practical effect of this, among other things, is that the mandatory No Strike clause in our current agreement remains in full force and effect until January 31, 2017. We nonetheless engaged in good faith bargaining that resulted in tentative agreement between the WindowRama management and the Union's current leadership with respect to wages, starting rates, signing bonuses, increased contributions to the Union's Welfare Fund and various other favorable provisions resulting in significant rate increases.

The letter warned the membership that the "no strike" provision of the automatically extended contract was in effect and encouraged them to reconsider the rejection of the tentative successor contract.

At about the same time the open letter was posted on the employer's bulletin board, a copy of the extension agreement signed by Kelder was posted on the union's bulletin board. Investigation showed that the extension agreement was removed from the union's board within a day or two of being posted.

The protest alleged that the employer blamed Kelder for failing to send the requisite notice of renegotiation when the McCaffrey administration was responsible for sending and had failed to send it. The protest further alleged that the employer blamed Kelder for the failure when it knew that Kelder was not responsible for the error. Finally, the protest asserted that the local union's posting of the extension agreement bearing Kelder's signature wrongly conveyed that Kelder was responsible for the contract's automatic one-year extension.

Neither the communication from the employer nor the union made any reference, express or implied, to the delegates election. The employer's representative told our investigator that the employer was unaware even that the election was in process. The open letter was posted to foreclose the

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possibility of a strike, given that an automatically renewed contract was in place, and to highlight the advantages that the tentative contract gave when compared to the status quo.

In *Bucalo*, 2016 ESD 190 (May 4, 2016), *appeal withdrawn*, 2016 EAM 22 (June 1, 2016), we rejected a protest alleging that an employer made a contribution prohibited by the *Rules* by criticizing a union official in the performance of his duties. We said:

We decline Bucalo's invitation to construe the *Rules*' prohibition on employer contributions so broadly as to make it impossible for an employer to communicate with its employees and criticize a union representative for the circumstances giving rise to a strike, where no mention is made in that communication of an election or that representative's candidacy in it.

Here, the criticism directed at Kelder was based on a false premise, but that fact does not change our analysis. As noted, WindowRama's open letter did not mention the delegates election or Kelder's candidacy in it. Moreover, Kelder and his slate had considerable opportunity to respond to the criticism and inform the WindowRama that McCaffrey, not Kelder, was responsible for the contract's automatic renewal. Accordingly, we find no *Rules* violation on the part of the employer.

We also find no *Rules* violation by the union. Posting a copy of the extension agreement between employer and union does not violate the *Rules*.¹

Finally, even had the conduct of the employer or union been found to violate the *Rules*, we would not find that the conduct had an effect on the outcome of the delegates election. The margin between the winning delegate candidate with the fewest votes and the losing candidate with the most votes was seven, but investigation showed that only two WindowRama members cast votes in the election.

For these reasons, 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, 34th 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 17th Street, N.W., Suite 375,

¹ Although the protest suggests that only the second page of the extension agreement – the page bearing Kelder's signature – was posted, investigation showed that both pages were posted.

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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 230

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