

**Barbara C. Deinhardt, Esq.**  
**Neutral Monitor**  
**52 Third Street**  
**Brooklyn, NY 11231**  
**917-763-0906**  
**718-855-2933 (fax)**  
**neutralmonitor@gmail.com**

September 29, 2015

## **DECISION**

Protest TWUS-03-15  
Improper nominations OA Div2

By email dated September 23, 2012, Joseph Campbell, on behalf of the Transport Workers United Slate, filed a protest alleging that the September 23 nominations process at the regularly scheduled evening MaBSTOA Division 2 meeting was improperly conducted.

According to Anthony Marshall, the evening meeting was chaired by Division Chair Frank Austin. He opened nominations for Division Chair and Mr. Marshall was nominated. Austin asked three more times for additional nominations before closing nominations for Division Chair. Thereafter, after the nominations were closed, Austin reopened the nominations and asked again for nominations. This time, he was also nominated. According to the Protester, Austin used his incumbency to influence and alter the nomination process to benefit the Stand United Slate. TWUS asks that Marshall be considered the only duly nominated Division Chairperson for MaBSTOA Division 2.

According to Aquilino Castro, the member of the Elections Committee who was present at the meeting, and several other witnesses, in a discussion prior to the meeting with Austin, Recording-Secretary Howard Davis, Dennis O'Brian and 3<sup>rd</sup> Division Chair Tony Aiken, Castro proposed that unlike in past years, slate nominations be taken first, before individual nominations. There was no objection. When Castro explained this new procedure during the meeting, there was some confusion about it and he repeated himself. Nevertheless, when Austin opened the nominations, someone nominated only Marshall, rather than all members of the TWUS slate. Because of the confusion and the audible concern voiced by some of those attending the meeting, Castro paused the

proceedings. He asked Marshall whether he was running as an individual or as part of a slate. He said he was being nominated as an individual but would then indicate at the end of the meeting that he was part of the TWUS. The suggestion was then made (several witnesses said it was made by Castro; several witnesses said it was made by Marshall; no one said it was proposed by Austin) to start all over and do the nominations the way they had always been done in the past. No objection was raised and that is what occurred.

In light of the undisputed evidence that there was confusion at the meeting about how the nominations would proceed and in order not to preclude the nomination of a candidate who was clearly intended to be nominated, I find that the Protester has not proven that Frank Austin used his incumbency to influence and alter the nomination process to benefit the Stand United Slate. There is also no evidence that Aquilino Castro acted improperly in trying to ensure on behalf of the Elections Committee that the meeting was conducted fairly and that all members who wished to nominate candidates were given an opportunity to do so. I find that Austin was duly nominated.

The protest is denied.

In accordance with the International Constitution and the Election Rules, any interested party unsatisfied with this determination may appeal to the Transport Workers Union of America Committee on Appeals. Any appeal shall be in writing and shall be filed in accordance with the procedure set forth in Article IV(6)(I)(1) of the Election Rules and Articles XV and XXII of the International Constitution for the appeal to the International from decisions of Local Unions.

/s/ Barbara C. Deinhardt

Barbara C. Deinhardt  
Neutral Monitor

By email:  
Joseph Campbell  
Arthur Schwartz, Esq.  
Vincent O'Hara, Esq.  
Elections Committee