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DECISION

Protest TWUS-18-15
Count day protest

By email dated December 1, 2015, Nicholas Johnson, on behalf of the Transport Workers United Slate, filed a protest alleging that the Elections Committee violated the Election Rules when it asked the candidates, observers and counsel to move from the count room to the adjoining conference room during the electronic tabulation of the election results report.

After all the ballots had been opened and counted/scanned, all observers were asked to leave the count room and observe from behind the two large plate glass windows between the count room and the conference room while AAA staff prepared the results report. Only AAA staff, Elections Committee and counsel, Union counsel and I remained. This was to ensure that no candidate would be able to see the results before the report was completed and all the results released to everyone at the same time. No ballots were handled or scanning decisions made during this time. The only activity was the formatting and production of the 24-page report itself. Several observers had their faces close to the glass overlooking the table where the report was being generated, apparently trying to read the report as it was being prepared. Three or four times, I asked the observers to take a step back from the window, but each time they returned. I therefore had to ask that the blinds by the table be closed. The blinds on the other window were up and most of the room could be observed from that window. After several minutes, a protest was raised directly with me about the exclusion of counsel and I then permitted slate counsel to enter and stay in the room for the duration of the report tabulation. Slate and candidate representatives were called back into the room for the reading of the results.

I find that there was no violation of the Election Rules. Under the Rules, “Candidates/observers are permitted to view all aspects of the election process, but must give the ballot counters room to do their job.” The election process is defined as including “the assembling of ballots at the printer; the picking up of ballots from printers and their transportation to the Post Office for mailing; the eligibility check...; and the count on December 1, 2015.” Here the “election process,” including “the count,” had been completed. All ballots had been cast and counted. The formatting and production of the report itself was not part of the election process. Even if the administrative production of the report were considered part of the election process, a determination was made that to preserve the confidentiality of the results until they were announced, more room was needed for the staff to do their jobs effectively and confidentially. Further, observers were permitted to view the entire tabulation process, just not from a vantage point that would permit the reading of the results before they were released. Under the Rules, counsel is permitted in “the observer area.” During this short period, the observer area was the adjoining conference room from which all activities could be viewed.

In addition, when a protest was raised, the remedy sought was granted—the presence of slate counsel in the room, but at a distance that would not allow reading of the results before they were released. No request was made to redo any part of the report preparation that had been done before counsel came back in the room. Thus, even if there were a violation, it was remedied.

Finally, I find that there was no impact on the results of the election. As noted above, all of the ballots had been cast and counted. No ballots were touched and no scanning decisions were made after the observers moved to the other side of the glass windows. All that was left was to report on the results of the election process that had already been completed.

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 V(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

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By email:
Nicholas Johnson, Esq.
Joseph Campbell
John Samuelson
Arthur Schwartz, Esq.
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Elections Committee