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November 1, 2024

DECISION

Protest I-23-2024 (conflict of interest)

By email dated October 30, 2024, Benjamin Valdes filed a Protest alleging that Arthur Schwartz and Barbara Deinhardt have conflicts of interest because we serve as counsel and neutral monitor, respectively, for the Subway-Surface Supervisors' Association (SSSA). According to the Protester, "there is a direct correlation between the bias of the neutral monitor and counsel to the union, and working for both the incumbent slate and our employer. They cannot represent the union's best interests while also receiving a paycheck from our employer." The Protester cites two decisions with which he disagrees, as evidence of bias.

Upon review of the Protest, I find no evidence of a conflict of interest. Neither Mr. Schwartz nor I is retained by the Transit Authority nor the incumbent slate nor do we represent the TA or the incumbent slate. Neither of us "receiv[es] a paycheck from [Local 100 members'] employer." The SSSA is a separate employer, distinct from the TA. The fact that it is a union that represents supervisors employed by the TA does not make it an agent of the TA. I do not find any basis for concluding that because I serve as the neutral monitor for the SSSA officers' election I therefore somehow have a conflict of interest when serving as the neutral monitor of the Local 100 officers' election. In each job, I am retained by the Union and my responsibility is to enforce the Election Rules, the Union Bylaws and Constitution, and federal law. Any member has the right to appeal any of my rulings, according to the Election Rules and Union Constitution.

The Protester bases his allegations of bias on two decisions, specifically I-01-24 and PA-01-24. In I-01-24 I held, "The Supplemental Rules prohibit contribution from, inter alia, any employer or representative of an employer, but specifically protect the right of members of the TWU (Local 100 or the International) to make contributions, unless that member is him or herself an employer. There is no evidence that Mr. Wilson is an employer. The allegation is that he is a representative of an employer. I do not need to determine whether the alleged violation here is de minimis or whether the passage of time has so attenuated the incident that it is no longer requires a remedy, if it ever did, or whether a representative of an employer (as opposed to an employer) who is also a TWU member is permitted to make contributions because I find that the Protester has not met his burden of proving that a dispatcher is a representative of an employer." I denied the Protest. The decision was published on the TWU Local 100 website on June 25 and any member was free to appeal.

In PA-01-24 I explained that the Election Committee cannot open nominations until the Division meeting is called to order. It followed the correct nomination procedure at the meetings in question and did not delay nominations to accommodate any candidate. The decision was published on the TWU Local 100 website on October 21 and any member was free to appeal.

I find that there is no basis to reconsider the decisions in those two Protests. They do not constitute any evidence of bias.

Protest 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(B)(9) of the Election Rules and Article XXII of the International Constitution for the appeal to the International from decisions of Local Unions.



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By email:
Benjamin Valdes
Arthur Schwartz
Denis Engel
Elections Committee