



AFSCME®

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June 20, 2006

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JUN 26 2006

JUDICIAL PANEL CASE NO. 06-41
Local 52 Election Protest

ASEA/AFSCME LOCAL 52

GREETINGS:

Enclosed is the decision in the above-captioned case.

In Solidarity,


John Seferian
Judicial Panel Chairperson

JS:ahh

cc: Gerald W. McEntee, International President
William Lucy, International Secretary-Treasurer
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Jim Duncan, Business Manger
Chris Ulmann, Election Committee
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JUDICIAL PANEL CASE NO. 06-41
Local 52 Election Protest

This matter concerns protests of the election for officers held on March 30, 2006 in ASEA Local 52. Chris Pace, Barbara Brandt and Eileen Olson of ASEA/AFSCME Local 52 filed the protests. The local election committee waived jurisdiction and referred the matter to the Judicial Panel.

The case was assigned to Judicial Panel Chairperson John Seferian for investigation and decision. Following due notice to all interested parties, an investigative hearing was held on June 8, 2006 in Anchorage, Alaska.

THE PROTEST

(See attached)

RESULTS OF THE ELECTION

(See attached)

REPORT OF INVESTIGATING OFFICER

Relative to the first item of Sister Brandt's protest, it was undisputed that two members of the MSC chapter members did not receive the proper ballots in this election. It is apparent that once the union printed the ballots, they were presented to a mailing house for stuffing, sorting and mailing. There apparently was a mechanical mistake by the mailing house resulting in these two members receiving the wrong ballot. According to information presented at the investigative hearing, a telephonic spot check was made by the union office by calling members who should have received ballots, which included the Northern Region representative race. The survey did not reveal similar errors. These two members eventually received the proper ballots in time

for them to vote in this election. Neither the election committee nor the union office received notification of other errors.¹ Based on information submitted at the hearing the undersigned cannot conclude that there were incorrect ballots mailed to members that would have affected the outcome of the election. This item of the protest is denied.

The other issue in Sister Brandt's protest dealt with the mailing of Xeroxed ballots. Unbeknownst to the union or the election committee, the mail house apparently ran out of ballots and issued Xeroxed ballots instead of contacting the union office for additional ballots. While there is no prohibition on using a copying machine to "print" the ballots for an AFSCME election, using Xeroxed copies of printed ballots raises obvious questions as to whether improper ballots are being counted in the election. However, there was no evidence that there were any such irregularities in this election. The undersigned was provided copies of the Xeroxed ballot by the election committee and found that the quality of the ballots was such that it should not have confused voters in filling out the ballots. Those items in Sister Brandt's protest that deal with the Xeroxed ballots are therefore denied. The local stated that this mailing house would not be used in future elections.

Item 2 of Sister Brandt's protest is similar to the issues raised in Sister Olsen's protest and in several items of Brother Pace's protest, to wit, the fact that candidates' statements were not included in the ballot mailing to the members. Relative to this issue, Article 7.05, Subsection D-4 of the ASEA Constitution states that the notice of nominations and election to ASEA members shall include a "Notice of the right of each

¹ According to information submitted at the investigative hearing, there were a total of 17 replacement ballots issued in this election.

candidate to submit a statement of their personal qualifications, which should be limited to one 8 ½" X 11" sheet of paper. Such statement, if submitted, will be distributed to the members of the election committee."

Section 22.00.000, Subsection B-8 of the Policy and Procedures manual states:

Each candidate is allowed to submit a statement of the candidate's personal qualifications for the office sought. The candidate's personal qualifications may include education, experience, accomplishment and goals for office. Candidate statements may contain pictures, cartoons and other text objects. The candidate statement process shall be governed by the following procedure: (Subsection a), union headquarters will mail the candidate's statement form to each candidate. The form will be an 8 ½" X 11" sheet of paper and shall contain the standardized union disclaimer noted in 22.00.000.B.8, Subsection C. Those candidates wishing to submit a candidate's statement will use this form.

In the election rules adopted by the election committee, the following is reflected in Section 5 titled "General Information Regarding the Election."

A candidate may submit a personal statement not to exceed one 8 ½" X 11" page to be included with the ballot mailed to members. The union will provide a candidate's statement form. Candidates are responsible for preparing their own final copy or camera-ready statement using only the official candidate statement form. Any statement not on an official candidate's statement form will be invalid.

Upon reviewing the candidates' statements received, the election committee became concerned with the contents of one of the candidate's statements, which indicated that her opponent had a criminal record. Subsequently, the election committee held a teleconference on January 23, 2006. The minutes of the teleconference reflect that the election committee decided that, "no candidate's statement will be sent along with the ballot package." Thereafter, on February 1, 2006, Donald Faulkenburry, election committee chair at that time, sent a letter to all the candidates informing them of the decision of the

election committee not to allow statements to be mailed with the ballots. Brother Faulkenburry stated in his letter, that "a number of the statements were determined to be potentially unacceptable" under the provisions of the Policy and Procedures manual of ASEA and further, some of the statements were "potentially in violation" of a clause in the ASEA Constitution that states that the primary objective of the union is to promote "fellowship, cooperation and unity among state employees." In addition, he stated that "one or more" of the statements might have placed the local at risk of being sued for libel if the statements were published using union funds. Finally, Brother Faulkenburry stated that the election committee concluded that publishing these statements was in violation of the Policy and Procedure Manual, 22.00.000.C, Sub 1, which states that any candidate for union office cannot use union funds for campaigning. The protestants assert that by the aforementioned action, their rights under the ASEA Constitution and the Policy and Procedure manual were abridged with respect to having the right to have their statements included with ballot mailing.

While neither the ASEA Constitution nor the Policy and Procedure manual of the local specifically states that the candidate's statement will be mailed with the ballot, it is clear that the same has been interpreted in past elections to require that the candidates' statements be included with the ballot mailings. It was undisputed that this had occurred in past ASEA elections. Furthermore, the election rules specifically stated that the candidate's statement would be included in the ballot mailing.

The undersigned finds that this decision by the election committee violated the ASEA Constitution, the Policy and Procedure manual and their own election rules by not including the statements with the ballot.

The Judicial Panel has addressed this issue in JPC 00-39 and JPC 01-82, wherein the Panel found that including the candidate's statement with the ballot mailing did not constitute the use of union funds for campaigning. Additionally, in JPC 02-36, the Panel found that a candidate's statement that mentioned another candidate's past criminal conviction was protected under the Free Speech rights afforded to all members in the AFSCME Bill of Rights.

The undersigned concludes that this violation would have affected the outcome of the election. The short timeframe between notifying the candidates of the election committee's decision and the election made it difficult, if not impossible, for some candidates to do fund-raising for their own individual mailings. Consequently, those items that deal with the mailings are found valid.²

As to the item in Brother Pace's protest regarding the appointment of the election committee, Article 8.04, Subsection C, of the ASEA Constitution states that the president "with the approval of the state executive board shall appoint all standing and special committees of the union." On June 3, 2005, ASEA Secretary Williams emailed the executive board requesting their vote on appointments for, among other committees, the election committee. On June 8, the poll was completed and the election committee was approved as recommended by the president. Article 8.02, Subsection 3 states that any action taken as a result of a telephonic poll, "shall constitute action of the board as though

it were in formal session, but the actions taken shall be reviewed at the next meeting of the executive board and shall be part of the minutes." It is undisputed that the next meeting of the executive board was in September and the telephonic poll electing the election committee was never reflected in the minutes, nor was it reflected in subsequent board meeting minutes. The local is governed by *Robert's Rules of Order*, which also has a similar requirement with regard to telephonic polls. The fact that the action taken by telephone poll was not reviewed by the board or reflected in the minutes is a violation of the ASEA Constitution; however, this does not change the fact that the election committee was elected and did take responsibility for the conduct of the election in the local. This technical violation did not affect the outcome of the election. The Judicial Panel has consistently ruled that such technical irregularities in the selection of the election committee are not a basis for an election protest unless it can be shown that there were irregularities in the election that resulted from such defects in the selection of the committee.

As to the final item in Brother Pace's protest, apparently some candidates were utilizing the state's email system and further, were posting campaign literature in unauthorized areas of state facilities. Brother Duncan, business manager of the local, was notified by the state that "electioneering" through the state email, telephones and campaign postings on walls of state buildings was inappropriate and should cease. Brother Duncan so informed all candidates. While it is true that some candidates in the Anchorage area utilized these options before the state's declaration, the same was out of control or oversight of the election committee. The fact that Brother Pace did not have this

² It is noted that for some races the margin of victory was narrow, in one case, the difference being 10 votes.

opportunity was, for lack of a better term, the luck of the draw. It was also undisputed that the Anchorage chapter has its own website and the chapter decided to place candidates' statements on their chapter website for all the candidates for whom the Anchorage chapter was eligible to vote for in this election. Brother Pace stated that there was a statement attributed to him placed on the website; however, he described the statement as an unauthorized publication. The placing of the statements on the website was a violation of the election code in that it constituted the use of union funds for campaigning. While the ASEA Constitution and Policy and Procedures manual permits the mailing of statements without discrimination along with the ballot, this is a limited and a specific exception to the normal rule against using union funds to support a candidate. Any publication of candidate statements other than what is provided for in the local's constitution went beyond what is permitted by the local's constitution and constituted an expenditure in support of candidates. This item of Brother Pace's protest is upheld. This decision made without constitutional authority by the Anchorage chapter was inappropriate.

In view of the violation concerning the candidates' statements, a new election is ordered in ASEA. Having said that, the undersigned is convinced that the election committee and everyone else involved with the election, acted in good faith and made decisions based on their own interpretations of the elections code and various provisions of the ASEA Constitution and Policy and Procedure manual. The undersigned concludes that no actions of the election committee were an attempt by the committee or union staff to influence the electoral process.

Another note, elections in AFSCME are conducted by duly appointed election committees who have "general responsibility for the conduct of the election in accordance with the constitution." The AFSCME Election Manual lists eight basic duties that the election committee performs. These are solely the responsibility of the election committee, and the committee is not required to consult with the executive board, the delegates or the membership in carrying out these duties. Other than approving the funds needed to conduct an election, the only role of the subordinate body in connection with the conduct of the election is to accept or reject the report of the election committee. If members believe that there were violations of Appendix D of the International Constitution or the AFSCME Election Manual, the proper remedy is to file a protest, which was done in this instance.

DECISION

As reflected in the body of this decision, in view of the violations that were found, a new election is ordered in ASEA Local 52. The rerun election shall be conducted within 50 days of receipt of this decision. The candidates shall be the same as in the original election. The International union working in conjunction with the election committee shall supervise the rerun election.

June 20, 2006
Washington, D.C.

John Seferian
Judicial Panel Chairperson
AFSCME, AFL-CIO