**ELECTION JUDGE RULING**

**ARBITRATOR THOMAS F. SONNEBORN**

***In re the Matter of:***

**THE 2023 NOMINATION AND ELECTION ) Bartlett Appeal re: Disclosing**

**OF OFFICERS AND TRUSTEES OF FRATERNAL ) Estimated Ballots Received**

**ORDER OF POLICE, CHICAGO LODGE NO. 7 ) 2022/2023-003**

**I. BACKGROUND OF DISPUTE**

In a February 10, 2023 decision, the Election Committee (“Committee”) unanimously agreed there was no reliable means to determine the number of cast ballots returned to the election PO Box at any point in time, and therefore, decided it would not publish estimates of ballots received prior to March 3rd when the PO Box will be opened, and the ballots counted. On February 13th, candidate Bob Bartlett notified the Committee he was appealing the Committee’s February 10th decision. On February 14th a Committee member asked that the Bartlett appeal be referred to this neutral arbitrator as Election Judge, and on February 15th another member agreed to do so.

**II. ANALYSIS**

Prior to the February 10th decision, a member of the 2023 Committee consulted with the Election Committee Chair from 2020 who informed him the 2020 Committee did not approve giving any interim estimate of ballots received to candidates because of concerns over their accuracy. Lodge attorney Brian Hlavin also reported his recollection that the 2020 Committee did not authorize publishing any ballot estimates prior to when the votes were counted. Hlavin pointed out while he had no way of knowing if an individual committee member might have shared some information with others, nothing in his records indicated it being done by committee decision.

By agreement with the US Postal Service (USPS), the PO Box cannot be opened by anyone for any reason prior to March 3rd. The Committee was informed the USPS could not provide an accurate count of the number of ballots in the bins or trays where ballots are dropped each day, telling the Committee it could only give very rough estimates as the number of pieces of mail may vary widely by bin. Also, the bins could include junk mail and ballots returned as not deliverable, and the Committee received different “estimates” from different postal workers of the number of pieces of mail a bin might hold. In light of these concerns, the Committee decided not to release any ballot estimates as they might prove inaccurate or misleading to the candidates and the membership.

Candidate Bartlett’s appeal contended that 2023 is the first time this information has been denied to candidates. He stated he had “spoken to past presidents who in previous elections have received these numbers.” He only identified one former president by name, that being Kevin Graham, as someone with whom he spoke about the 2020 election. Bartlett included a part of an email from Graham saying he agreed in part and disagreed in part with Lodge attorney Hlavin:

“It is my recollection, that the attorney is correct, and that it is not in the bylaws, and rules to the election committee usually do not include that ‘Number of ballots turned in from the mail box’. However, that is not a true statement when the attorney states that has not been the past practice of the lodge or election committee. On the contrary, we often sometimes on a daily basis, call the post office, and they gave us a count as to how many ballots were in the tray. It was fairly accurate and has been done in past elections.”

Graham did not state whether he recalled the 2020 Committee itself authorizing giving ballot estimates to the candidates, but rather said that he would “sometimes on a daily basis, call the post office, and they gave us a count as to how many ballots were in the tray. It was fairly accurate.” Graham did not explain why he thought the estimates he received from the USPS were “fairly accurate,” did not indicate how he was able to determine how much of the mail reported to him consisted of actual ballots and how much was ballots returned as not deliverable to members or junk mail and did not say whether the information received from the USPS was shared with the remaining Lodge members who were candidates for the various offices in 2020.

After receiving the Bartlett appeal, the same Committee member again checked with the 2020 Committee Chair to confirm his previous statements about the 2020 Committee not releasing estimates to the candidates. This time the 2020 Chair said while he still believed that was the case, he was no longer positive. He also said he himself may have given out some reports of mail received at the PO Box if someone asked, a possibility not previously mentioned.

Even assuming the ballot estimates were obtained by former President Graham or others in the past, and even assuming the 2020 Election Committee Chair released some information on the PO Box contents, there is nothing in the Lodge Constitution and By-Laws or the election rules which requires the 2023 Committee to adhere to such a practice or to provide estimates of the ballots received. The decision to do so is totally within the Committee’s discretion and authority to set policy and establish election rules. The decision not to provide the ballot estimates applies equally to all candidates for all offices. Candidate John Catanzara also inquired how to obtain reports of cast ballots received at the PO box, a request unanimously denied by the Committee.

Candidate Bartlett raised a question about what the Committee’s policy on releasing estimates of cast ballots received “should be” - not whether the policy the Committee actually issued violates the Constitution and By-Laws or the election rules. What the election policy “should be” is a decision for the Election Committee composed of dues paying members to make, not for a non-member election judge to decide. According to Article VII (A) §4, of the Lodge’s Constitution and By-Laws, the Election Judge is to decide disputes about voter eligibility, election procedures, counting of ballots, and to certify the results of the election by ensuring the Lodge’s Constitution and By-Laws and the election rules are followed. This arbitrator has no authority to make a decision based on his own opinions, preferences, or beliefs of what rules he thinks would be in the best interests of the Lodge. His role is not to decide what the rules should be, but rather to enforce the rules issued; therefore, this ruling takes no position on what should be or not be the policy on releasing ballot estimates.

**III. RULING**

A review of the Constitution and By-Laws and the 2023 election rules shows both are silent on the question presented, and therefore, the Committee’s policy as issued did not violate either. The Election Committee has the authority to choose to reconsider its previous policy decision regarding giving estimates of cast ballots received if it wishes to do so, or to choose to allow that decision to stand as previously made. For the reasons set forth above, this appeal is denied.

Date: February 15, 2023 at 3:30 p.m. 

 Thomas F. Sonneborn, Election Judge