

**OFFICE OF THE ELECTION ADMINISTRATOR  
for the  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

<b>IN RE: DONALD JOHNSON, DAVID</b>	)	Eligibility Decision 2001 EAD 194
<b>POTTER, JOSEPH KOBLINSKI,</b>	)	Issued: February 26, 2001
<b>and BRIAN DEVINE,</b>	)	OEA Case Nos.: E020911NE,
	)	E020912NE, E020913NE, and
<b>Prospective Candidates.</b>	)	E020914NE
	)	

---

On February 6, 2001, Local 264 held its nomination meeting for delegate and alternate delegate elections. On February 9, 2001, Thomas Dziedzic and Scott Chismar, candidates for delegate, protested the eligibility of candidates Donald Johnson and Joseph Koblinski based on Johnson's alleged lack of earnings in November 1999 and Koblinski's alleged withdrawal status and "work outside the craft" between April and September 2000. They protested the eligibility of candidates David Potter and Brian Devine based on Johnson's alleged ineligibility to nominate them because of his dues record and work history in late 1999 and early 2000.

Election Administrator representative Lois M. Tuttle investigated this protest.

1. Johnson's Eligibility to Run as a Delegate

To be eligible to run for delegate or alternate delegate, a member must be in continuous good standing with his local union, with his dues paid to the local union for a period of 24 consecutive months prior to the month of the nomination with no interruption in active membership due to suspensions, expulsions, withdrawals, transfers or failure to pay fines or assessments. Article VI, Section 1(a)(1) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election ("*Rules*").

Prior to the nomination meeting date, Johnson had requested our office to verify his eligibility to run as a delegate or alternate delegate. An investigator from our office reviewed Johnson's TITAN record, which showed a history of late but regularly-remitted checkoff payments, and contacted Mr. Johnson's employer, Tops Markets (hereinafter "Tops") to discuss them. An employee from Tops' payroll department stated that Tops remits its checkoff payments on the first of each month for which earnings are paid, so that dues regularly appear late on the member's TITAN record even though the member had earnings from which dues could have been deducted. The payroll employee also verified that Johnson had sufficient income for January 2001 from which dues could have been deducted. Based on this information, on January 25, 2001 our office verified Johnson's eligibility to run as a delegate or alternate delegate.

In their protest, Dziedzic and Chismar allege that Johnson could not have the requisite 24 months of continuous eligibility since he had no earnings from which dues could have been deducted in November 1999 and did not pay his dues that month on a cash basis. Johnson admits that this is true, stating that he agreed to not work during a slowdown at his company in November 1999 so that other members would not be laid off. He admits that he did not pay, or attempt to pay, dues to the local on a cash basis that month. Payroll records obtained from the company confirm that Johnson received no income for November 1999.

Accordingly, we find that Johnson did not timely pay dues for November 1999 and that he is INELIGIBLE to run as a delegate.

2. Johnson's Eligibility to Nominate Candidates Potter and Devine

To be eligible to nominate a candidate for delegate or alternate delegate, a member need not meet the 24-month period of continuous eligibility required of candidates who wish to run in the election. Rather, a nominator need only be a member in good standing, with his or her dues paid through the month prior to the nomination meeting, to be eligible. Article II, Section 5(h) of the *Rules*. Thus, Johnson could be eligible to nominate Potter and Devine even though he is ineligible to run in this election.

Dziedzic and Chismar claim that at the time of the nomination meeting, Johnson was ineligible because of his work history in late 1999 and early 2000. Their focus on that period is misplaced. As of the nomination meeting date (February 6, 2001), Johnson was required only to be in good standing with his dues paid through January 2001 to be eligible as a nominator.

Johnson's TITAN record shows that, at the nomination meeting date, he was a member on checkoff, in good standing, with his dues paid through December 2000. Article X, Section 5(c) of the IBT Constitution provides that where a checkoff member's dues are deducted late (or not at all), the member shall not lose good standing so long as the member had sufficient earnings to pay dues during any month in question and the member's local does not give him the chance (through written notice and a 30-day period) to make payment.

Here, payroll records show that Johnson was receiving sufficient income to pay his dues throughout every month in 2000 and in January 2001. His employer has stated that his dues are transmitted late every month due to company practice and no fault of Johnson's. Also, the local admitted that it never notified Johnson that his dues were behind or gave him the opportunity to bring them current.

Accordingly, we find that Johnson was ELIGIBLE to nominate candidates Potter and Devine, and that they are therefore ELIGIBLE to run as candidates for alternate delegate (Potter) and delegate (Devine).

3. Koblinski's Eligibility to Run as an Alternate Delegate

On January 31, 2001, Koblinski submitted a request to the Election Administrator's office to verify his eligibility to run as a delegate or alternate delegate. His TITAN record showed that he had been on withdrawal beginning mid-April 2000 and ending October 2000, and that no dues were paid by or for Koblinski during this time. The withdrawal occurred after Fleming Foods, the grocery distribution company where Koblinski worked, closed down. As a result, he along with all other Fleming Foods employees were laid off in stages. Koblinski's last day of work was March 31, 2000.

The day after his layoff, Koblinski went in to his local union hall to request that he be placed on voluntary withdrawal. When he did so, he was told that the local was already placing him on withdrawal status along with every other laid off Fleming employee. Koblinski asked whether he had to do anything more with regard to his withdrawal; his local told him no, they had elected to waive the usual withdrawal fee. Koblinski left the union hall and did not ask to come off withdrawal until September 12, 2000, when he regained work with a new company, Christian Salvesen, a frozen foods distributor. At that point, Koblinski signed a new checkoff authorization card and his new employer began paying his dues in early November 2000 (credited toward October 2000).

On February 2, 2001, our office ruled Koblinski eligible based on evidence showing that he had initially been placed on withdrawal as a result of a local union policy with regard to all laid-off employees of Fleming Foods, rather than due to Koblinsky's voluntary request.

Dziedzic and Chismar disagree with our office's characterization of Koblinsky's withdrawal as "involuntary." They correctly point out that, as early as April 1, 2000, Koblinsky knew that the local had placed him on withdrawal, that he did not object to such placement, and that he agreed to continue on such status for many months. In fact, Koblinski by his own admission fully intended to go on voluntary withdrawal beginning April 1, and would have paid the fee and signed a withdrawal card had he not been told that such withdrawal had already been accomplished automatically. Koblinski does not dispute that he continued on withdrawal for several months and paid no dues until he began a new Teamster job in mid-September 2000.

On reconsideration, we find Dziedzic's and Chismar's argument persuasive. Under these facts, we find that Koblinski's withdrawal was voluntary as of April 1, 2000, the date that he first communicated with the local union with regard to such withdrawal. As of that date, Koblinski paid no dues and sought to pay none until he went off withdrawal and signed a new checkoff with Christian Salvesen in mid-September 2000. Therefore, Koblinski was not a member in good standing during the 24-month period.

Dziedzic and Chismar further argue that Koblinski is ineligible because he worked "outside the craft" during the 24-month period, taking a job with the U.S. Postal

*Johnson*, 2001 EAD 194  
February 26, 2001

Service. Koblinski admits that, in fact, he had worked for the U.S. Postal Service on a temporary basis (approximately one- to two- days per week) during four months of his unemployment. However, he argues that this work does not constitute “work outside the craft” because it was temporary, part-time work in which he was engaged while he was actively seeking and available for work within a Teamsters jurisdiction.

As we believe that Koblinski is ineligible based on his voluntary withdrawal and failure to pay dues, we do not here decide whether temporary, part-time work of this sort constitutes “work outside the craft” by an unemployed member who is actively seeking and available for employment.

Koblinski argues that Dzedzic’s and Chismar’s appeals should be denied because they were filed three business days after the local’s nomination meeting. It is true that we have, in the past, afforded little leeway in the case of late-filed eligibility protests, given the strict deadlines under which posting requirements, ballot printing and mailing schedules must be met. *See Daly*, 2001 EAD 141 (February 6, 2001) (*citing Murdoch*, E123 (March 18, 1996); *Milne*, E71 (January 31, 1996); *Mantucci* E24 (January 22, 1996); and *Lawrence*, 2001 EAD 19 (September 8, 2000)). Nevertheless, we do not believe that prudential concerns warrant so strict a policy as to deny this protest filed only one business day after the deadline, given that the day’s late-filing would not compromise our ability to determine this matter on the merits. Therefore, we must dismiss Koblinski’s argument and consider these appeals.

Accordingly, we find Koblinski INELIGIBLE to run as an alternate delegate.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Administrator in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for that appeal, and shall be served upon:

Kenneth Conboy  
Election Appeals Master  
Latham & Watkins  
Suite 1000  
885 Third Avenue  
New York, New York 10022  
Fax: 212-751-4864

Copies of the request for hearing must be served upon the parties listed above, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15<sup>th</sup> Street, N.W., 10<sup>th</sup> Floor, Washington, D.C. 20005, facsimile (202) 454-1501, all within the time period prescribed above. A copy of the protest must accompany the request for hearing.

**Johnson**, 2001 EAD 194  
February 26, 2001

William A. Wertheimer, Jr.

William A. Wertheimer, Jr.  
Election Administrator

cc: Kenneth Conboy, Election Appeals Master  
David F. Reilly, Northeast Area Regional Director

**DISTRIBUTION LIST (BY UPS NEXT DAY AIR UNLESS OTHERWISE SPECIFIED):**

Patrick J. Szymanski  
General Counsel  
International Brotherhood of Teamsters  
25 Louisiana Avenue, N.W.  
Washington, DC 20001  
(By Interoffice Mail)

Bradley T. Raymond  
Finkey, Whitefield, Selik, Raymond,  
Ferrara & Feldman  
32300 Northwestern Highway  
Suite 200  
Farmington Hills, MI 48334

Barbara Harvey  
Suite 1800  
Penobscot Building  
645 Griswold  
Detroit, MI 48226

Donald Johnson  
8245 Jennings Road  
Eden, NY 14057

David Potter  
46 Ashleaf Drive  
Cheektowaga, NY 14227

Joseph Koblinski  
5991 Fairway Court  
Lake View, NY 14085-9721

Tom Leedham  
% Stefan Ostrach  
110 Mayfair Lane  
Eugene, OR 97404

Betty Grdina  
Yablonski, Both & Edelman  
Suite 800  
1140 Connecticut Ave. N.W.  
Washington, DC 20036

J. Douglas Korney  
Korney & Heldt  
30700 Telegraph Rd.  
Suite 1551  
Bingham Farms, MI 48025

Thomas Dziedzic, President  
Scott Chismar, Business Agent  
Local Union 264  
35 Tyrol Drive  
Cheektowaga, NY 14227

E. Joseph Giroux, Jr.  
181 Franklin Street  
Buffalo, NY 14202

Brian Devine  
194 McConkey Drive  
Buffalo, NY 14223