

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: ELIGIBILITY OF
JAKWAN RIVERS

) Protest Decision 2015 ESD 32
) Issued: September 21, 2015
) OES Case No. E-040-083115-NA
)

Ruben Torres, secretary-treasurer of Local Union 237, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2015-2016 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that Jakwan Rivers, candidate for International office, is ineligible to be nominated for office. The protest alleged further that the accreditation petitions of Teamsters United, the slate of which Rivers is a member, should be invalidated because they include the name of an ineligible candidate.

Election Supervisor representative Paul Dever investigated this protest.

Findings of Fact

To be eligible to run for office, one must be a member in “continuous good standing of the Local Union, with one’s dues paid to the Local Union for a period of twenty-four (24) consecutive months prior to the month of nomination for said position with no interruptions in active membership due to suspensions, expulsions, withdrawals, transfers or failure to pay fines or assessments;” be employed at the craft within the jurisdiction of the local union for a period of 24 consecutive months prior to the month of nomination; and be eligible to hold office if elected. Article VI, Section 1(a). The 24-month eligibility period runs through the month prior to the month in which the nominations meeting is held. For nomination of International officer candidates that will occur at the IBT convention in June 2016, the 24-month eligibility period is June 2014 through May 2016.

Jakwan Rivers is a candidate for International vice president at large on the Teamsters United slate. He is employed by the New York City Housing Authority (NYCHA) and is a member of Local Union 237, the IBT’s largest local union. Local Union 237 maintains its own dues accounting system and is not on TITAN, the IBT-sponsored system used by nearly every other local union.

All members of Local Union 237 are employed by the City of New York or an agency of the city and are on check-off. Check-off and membership standing are assessed on a pay-period basis, instead of the monthly basis used in almost all other local unions. Generally, if a member of Local Union 237 has pay or earnings in a given pay period, the city deducts and remits dues from that pay. The amount of dues deducted for an employee on a bi-weekly pay schedule is not the member’s monthly dues obligation; instead, it is 1/26th of the annual dues obligation, and the amount deducted and remitted is uniform from one pay period to the next.

The checkoff authorization signed by each employee that permits the employer to deduct dues declares that the document is the employer’s “authority to deduct from my salary or wages an amount certified by the union as my current monthly dues.” With each dues remittance the city sends the local union, it also forwards a manifest of the employees for whom dues are remitted and the amount of each member’s dues.

Rivers was injured at work in October 2014 and was out of work because of the injury beginning October 28, 2014. He collected sick leave benefits for a brief period into November 2014, but then received no compensation from the employer – no wages, holiday pay, sick leave benefits, or longevity pay – from the date in November 2014 when his sick leave benefits were exhausted until June 25, 2015, when he received a lump sum of workers’ compensation benefits.

Rivers contended the injury was compensable under New York’s workers’ compensation law. The employer disputed the compensability of the injury and denied workers’ compensation benefits. Rivers initiated a workers’ compensation case, which was heard on May 21, 2015. The Notice of Decision, filed May 27, 2015, found in Rivers’ favor, awarding him “temporary partial disability” benefits of \$349.17 per week for 28.8 weeks from November 3, 2014 through May 22, 2015, and continuing temporary partial disability benefits in the same weekly amount going forward. The award directed that payment of compensation be issued within 10 days, “except where the carrier has filed an application” for review, modification, or rescission. No request for review was made, and Rivers received a lump sum payment of benefits on or about June 25, 2015, his first compensation in more than seven months.

Because Rivers had no compensation from his employer in December 2014 and January, February, March, April, and May 2015 from which dues could be deducted via his checkoff authorization, no dues were remitted to the local union by the employer during those months.

When a check-off deduction is not made for any reason from a given member’s wages, the local union generates and mails the member a notice, designated by the local union as a “#99” notice, stating that dues were not remitted for that pay period and informing the member to pay the dues “in order to remain a member in good standing” with the local union. The #99 notice does not indicate the amount to be paid or the deadline for submitting payment.

The local union generated a letter to Rivers dated November 14, 2014, stating that “[a]ccording to the latest records received from your employer, you have gone off dues check-off, which means that your dues deductions are not being made. In order to remain a member in good standing you are obligated to pay your dues directly to Teamsters Local 237.” The letter was sent by first-class mail to Rivers’ address as shown in the union’s database (and as later confirmed by Rivers) – an address in Far Rockaway. Rivers did not respond to this letter or remit any payment to the local union.

If the member continues not to be listed on the check-off manifest for a subsequent pay period, the local union generates a follow-up letter to the member, designated a “#89” notice, stating that “you are still off dues check-off.” The local union generated such a follow-up letter to Rivers dated January 7, 2015, stating that “[a]s long as your dues are not checked off, you are obligated to pay your dues directly to Teamsters Local 237 in order to remain a member in good standing.” The letter listed the amount of dues in arrears as of January 7 as \$135.70, the equivalent of five consecutive biweekly periods for which no dues were remitted. It instructed Rivers to “promptly return this letter by February 06, 2015 to the Membership Office ... with a money order made out to Teamsters Local 237 or you will no longer be considered a member in good standing.”

The local union did not know whether the omission of Rivers’ name from the dues manifest was the result of employer mistake or because Rivers was not working. Giving the benefit of the doubt to

Rivers, the deadline of February 6 established in Local Union 237's January 7 letter to Rivers was apparently derived from Article X, Section 5(c) of the IBT constitution, which provides in part the following:

[A] member on dues checkoff whose employer fails to make a proper deduction during any month in which the member has earnings from work performed during the month from which the dues could have been deducted, or has earnings from which the employer normally makes a dues deduction pursuant to the contract or established practice, shall not lose good standing status for that month. In such an event, the Local Union shall notify the member of his employer's failure and payment shall be made by the member with thirty (30) days of said notice in order to retain good standing status.

The local union's January 7 letter was sent by certified mail, return receipt requested, on January 9, 2015 to Rivers' Far Rockaway address. The letter was returned to the local union after February 7, 2015 stamped "Return to Sender. Unclaimed. Unable to Forward." Rivers did not make any dues payments in response to this or the previous letter.

No further communication occurred between Rivers and the local union until Rivers' oral request on June 15, 2015 for a statement of dues owed. He made the request after the workers' compensation case was decided in his favor but before he received payment of past-due workers' compensation benefits. The local union's membership department responded with a letter dated June 15 enclosing an itemized statement, which showed that Rivers owed dues for 16 consecutive biweekly periods (Pay Periods 23 through 26 in 2014, covering the period October 26 through December 20, 2014; and Pay Periods 1 through 12 in 2015, covering the period December 21, 2014 through June 6, 2015). The total amount of dues owed per this statement was \$434.24, representing more than seven months of dues. This letter and statement were sent by certified mail to the Far Rockaway address on June 17, 2015. Investigation did not indicate whether the certified letter was received by Rivers or returned unclaimed.

On June 25, 2015, Rivers received a lump sum payment of workers' compensation benefits from the employer, combined in the same check with payment of wages earned in June 2015. Dues were deducted from the wages earned in the June pay period (Pay Period 13, covering June 7 to 20, 2015). No dues were deducted for the retroactive period.

Investigation showed that Rivers' employer is self-insured for purposes of workers' compensation. However, the employer contracts with a third-party administrator, RMPG, to pay workers' compensation benefits, and the check-off authorization Rivers signed authorizing his employer to deduct dues from earnings does not extend to RMPG. Investigation showed that RMPG does not deduct dues from workers' compensation benefits, as evidenced to Rivers by the lump sum payment of retroactive workers compensation benefits he received June 25, 2015.

Rivers emailed the local union on June 25, 2015 repeating his request for a statement of "the total amount of dues owed by me to satisfy any and all dues owed." The email requested that he be sent a statement of "any and all amounts owed via email or regular mail" at the Far Rockaway address the local union had used for all correspondence referenced in this decision. The local union replied by email the same day, June 25, enclosing the letter and statement it had sent by certified mail on June 17.

Rivers sent a certified letter to the local union dated the next day, June 26, 2015, stating the following:

As you are aware due to an on the job injury, I have been out since October 28, 2014. I have just received my first WCB benefit payment. Today please except [sic] this payment of \$250.00 as partial payment of the \$434.24 total amount due for unpaid dues by my employer, leaving a balance of \$184.24 which will be paid upon my next WCB benefit payment.

Rivers' certified letter to the local union was postmarked June 29, 2015 and enclosed a money order payable to Teamsters Local Union 237 membership department in the amount of \$250.00. The local union posted the dues to Rivers' record on July 7, 2015, resolving the arrearage for Pay Periods 23 through 26 in 2014 and 1 through 5 and part of Pay Period 6 in 2015. Still unpaid were the dues for the balance of Pay Period 6 and all of 7 through 12, totaling \$184.24.

Pay records our investigator received from Rivers showed that the employer deducted and remitted dues from his pay for Pay Periods 13 (June 7 to 20, 2015), 14 (June 21 to July 4, 2015), 15 (July 5 to 18, 2015), 16 (July 19 to August 1, 2015), 17 (August 2 to 15, 2015), and 18 (August 16 to 29, 2015). Rivers also received additional workers' compensation benefit payments on July 20 and August 17, 2015.

Although Rivers told the local union when remitting the \$250.00 money order in June 2015 as partial payment for back dues that he would pay the \$184.24 balance owing when he received his next workers' compensation benefits payment, he did not pay that balance either when he received the July 20 workers' compensation payment or the August 17 one.

Instead, he emailed the local union on September 1, 2015 (the day after this protest was filed) under a subject line of "3rd request for dues payment balance," stating the following, in part:

I have requested amount due and made a payment towards dues owed and made several attempts to obtain the balance owed, since my request. I have not received a updated response from local 237 and have been placed back on payroll and dues have been taken as per payroll. Once again I am requesting any and full amount due.

The local union replied the same day, both by email and mail, with a statement of dues owed totaling \$244.26. This statement included the \$184.24 balance previously billed and remaining unpaid. It also included dues for Pay Period 20 from 2014, previously overlooked by the local union, and dues for Pay Period 17 from 2015, which Rivers' paystub showed had been deducted and remitted by the employer. The statement failed to account for the partial payment of dues for Pay Period 6 in 2015 that Rivers had made when remitting his \$250.00 money order.

The amount Rivers actually owed as of September 1 was \$211.38. A portion of this sum, \$27.14, had not previously been billed to Rivers by the local union. The local union had billed Rivers in June 2015 for the full amount of the dues arrearage. Rivers had expressly acknowledged that figure when he sent his partial payment to Local Union 237, but he has never paid that the remaining sum of \$184.24.

As indicated, Rivers is a candidate for International vice president at large on the Teamsters United slate. Teamsters United submitted a slate of candidates to OES on August 18, 2015, which included Rivers. Teamsters United circulated accreditation petitions and submitted sufficient signatures to gain accreditation status for all candidates on its slate. OES certified all candidates on Teamsters United as accredited candidates by notice issued September 4, 2015. With respect to Rivers, the notice of accreditation indicated that this protest challenged Rivers' eligibility and his entitlement to the benefits of accreditation.

Analysis

It is well-settled that a member on dues check-off retains his good standing even if his dues were remitted late or not at all by the employer, provided he had signed a check-off authorization and had sufficient earnings or paid leave in the month from which dues could have been deducted. IBT Constitution, Article X, Section 5(c); *Dunn*, E9 (October 31, 1995); [*Eligibility of John Gerow, et al.*](#), 2006 ESD 121 (March 2, 2006); [*Eligibility of Thiel*](#), 2010 ESD 16 (July 26, 2010), *appeal withdrawn*, 10 EAM 4 (August 6, 2010).

This rule would operate to protect Rivers' continuous good standing for December 2014 through May 2015, if he had any earnings from the employer in each of the months in question – whether from sick leave benefits, holiday pay, or longevity pay – sufficient to fund the monthly dues obligation in each such month. See [*Eligibility of Rivers*](#), 2011 ESD 64 (January 6, 2011). However, where Rivers had insufficient earnings from the employer in any of these months from which dues could be deducted, he could not rely on the check-off authorization and instead was required to make timely cash payment of dues by the last business day of each month in order to retain his continuous good standing for that month. [*Eligibility of McKay*](#), 2011 ESD 65 (January 8, 2011).

Under this rule, Rivers became ineligible for nomination for International office at the June 2016 IBT convention when he failed to pay his December 2014 dues directly to the local union by December 31, 2014, the last business day of that month, as he had no earnings in that month from which the employer could deduct his dues. Separate bases for holding him ineligible under the same principle were established when he failed to pay his dues directly to the local union by the last business day of each of the five subsequent months, January through May 2015, as he had no earnings in any of those months from which dues could be deducted.

That Rivers successfully pursued a workers' compensation case that awarded him workers' compensation benefits for the period he was off work in an injured status from October 2014 to June 2015 does not revive his eligibility. Workers' compensation benefits, unlike wages, are not a form of compensation for members of Local Union 237 from which dues are deducted. In this way, the situation presented here is distinguished from that in [*Eligibility of Swain*](#), 2011 ESD 98 (February 5, 2011), where a check-off member who was discharged and subsequently reinstated with back pay was held to have retained his eligibility because the back pay award attributed earnings to each of the months in which no dues were paid. In *Swain*, the candidate in question (Walker) had brought unfair labor practice charges against his local union. A "make whole" settlement before the NLRB, required the local union to compensate Walker for any loss in wages and benefits he had suffered on account of the local union's actions that kept him from work he would otherwise have performed, and we therefore treated the payment from the local union as "substitute wages," a form of compensation from which dues are regularly deducted. The local union itself was in a position to implement Walker's checkoff

authorization when it paid out the “make whole” settlement amount. Rivers’ situation, by contrast, was an award of workers’ compensation benefits paid by a third-party administrator, and it represented a form of compensation from which dues are not normally deducted. Accordingly, unlike the member in *Swain*, Rivers could not rely on the combination of his check-off authorization and the retroactive award of compensation to satisfy his dues obligation and retain his continuous good standing.

Even if he could liken himself to the member in *Swain*, however, Rivers forfeited his eligibility to run by failing to pay the full amount of the arrearage within thirty days after the local union notified him of the sum owed. On June 25, 2015, the local union informed Rivers that he owed \$434.24 in back dues. Although he had received an award of workers’ compensation benefits that related to the period of the dues arrearage, Rivers responded to the notice with a partial payment of \$250.00. He did not pay the balance of the arrearage within the thirty days permitted by the IBT constitution; indeed, the balance of the arrearage remains unpaid.

Accordingly, we find Jakwan Rivers INELIGIBLE for nomination to International office at the June 2016 IBT convention because he lacks the continuous good standing required to be eligible for office.

We turn next to the consequences of Rivers’ ineligibility. The protestor alleges that the inclusion of Rivers’ name on Teamsters United accreditation petitions attracted an outsized response from the membership that resulted in all of the slate’s candidates gaining accreditation, a result the protest claims the slate would not have achieved had Rivers’ name not appeared on the petitions. The protestor offered no evidence to support this allegation, and we find none. In rejecting the protestor’s contention in this regard, we note that Rivers was not the lead candidate on the slate. Moreover, the slate produced significantly more signatures (nearly double) than the minimum number required to accredit union-wide candidates.

The protestor further alleges that Rivers, because he is ineligible for office, is not entitled to the benefits the *Rules* grant to accredited candidates. Under Article X, accredited candidates for International office are entitled to access to membership lists under Article VII, Sections 2 and 3, as well as publication of their campaign material in IBT magazines pursuant to Article VII, Section 10.

The *Rules* define “accredited candidate” as “any candidate for International office who has obtained the signatures on petitions of at least two and one-half percent (2.5%) of the relevant membership pool, pursuant to Article X of these *Rules*. Definition 1.

The *Rules* define “candidate” for International office as “any member who is actively seeking nomination or election for any ... International Officer position.” Definition 6.

A candidacy may end for any of several reasons, one being if the candidate is found to be ineligible for office. Because we hold Rivers ineligible for International office, we find that he is neither a candidate nor an accredited candidate for such a position. Accordingly, he is not entitled to any of the benefits that the *Rules* make available to candidates and, specifically, is not entitled to have his literature published in IBT magazines. Were Rivers certified as an accredited candidate for International vice president at large, he would be entitled to one-half page in *Teamster* magazine. To the extent that other members of the Teamsters United slate choose to pool their page allotment (*see Rules* Article VII,

Section 10(a)(2)), the allotment of pages available to that slate will total five and one-half (5½) pages in the October 2015 issue of *Teamster* magazine.¹

For the reasons stated, we hold Rivers INELIGIBLE for International office and INELIGIBLE for the benefits accorded accredited candidates under the *Rules*.

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 Supervisor in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Kathleen A. Roberts
Election Appeals Master
JAMS
620 Eighth Avenue, 34th floor
New York, NY 10018
kroberts@jamsadr.com

Copies of the request for hearing must be served upon the parties, as well as upon the Election Supervisor for the International Brotherhood of Teamsters, 1050 17th Street, N.W., Suite 375, Washington, D.C. 20036, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kathleen A. Roberts
2015 ESD 32

¹ The accreditation period remains open through December 15, 2015. Teamsters United may pursue and obtain accredited candidate status for additional candidates and may add slate members subject to the *Rules*' mutual consent requirement. *Rules*, Article VIII.

DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001
braymond@teamster.org

David J. Hoffa
1701 K Street NW, Ste 350
Washington DC 20036
hoffadav@hotmail.com

Ken Paff
Teamsters for a Democratic Union
P.O. Box 10128
Detroit, MI 48210-0128
ken@tdu.org

Barbara Harvey
1394 E. Jefferson Avenue
Detroit, MI 48207
blmharvey@sbcglobal.net

Teamsters United
315 Flatbush Avenue, #501
Brooklyn, NY 11217
info@teamstersunited.org

Louie Nikolaidis
350 West 31st Street, Suite 40
New York, NY 10001
lnikolaidis@lcnlaw.com

Julian Gonzalez
350 West 31st Street, Suite 40
New York, NY 10001
jgonzalez@lcnlaw.com

David O'Brien Suetholz
515 Park Avenue
Louisville, KY 45202
dave@unionsidelawyers.com

Fred Zuckerman
P.O. Box 9493
Louisville, KY 40209
fredzuckerman@aol.com

Teamsters Local Union 237
216 W. 14th Street
New York, NY 10011
jstokes@local237.org

Ruben Torres
Rodone357@aol.com

Jakwan Rivers
1076 Gipson Street
Far Rockaway, NY 11691
Jakwanr77@gmail.com

Paul Dever
1050 17th St NW
Washington DC 20036
pdever@ibtvote.org

Jeffrey Ellison
214 S. Main Street, Suite 210
Ann Arbor, MI 48104
EllisonEsq@aol.com