

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: ELIGIBILITY OF)	Protest Decision 2016 ESD 88
DEZ COX & JEFF)	Issued: January 26, 2016
HAMILTON,)	OES Case No. E-109-011916-ME
)	
GCC Local Union 128N.)	
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Jeff Harpold, member of GCC Local Union 128N and candidate for delegate, 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 Dez Cox is ineligible for nomination as alternate delegate to the IBT convention for alleged failure to establish 24 consecutive months of good standing; the protest further alleged that Jeff Hamilton is not in good standing and therefore is ineligible to nominate or second the nomination of any member.

Election Supervisor representative Dan Walsh investigated this protest.

Findings of Fact and Analysis

Article VI, Section 1(a) of the *Rules* provides that “to be eligible to run for any Convention delegate, alternate delegate or International Officer position, one must: (1) 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; (2) be employed at the craft within the jurisdiction of the Local Union for a period of twenty-four (24) consecutive months prior to the month of nomination; and (3) be eligible to hold office if elected.”

The nominations meeting for GCC Local Union 128N’s delegates and alternate delegates election was held January 10, 2016. Therefore, the 24-month period during which candidates must be in continuous good standing in order to be eligible for nomination ran from January 2014 through December 2015. The protest alleged that Cox is ineligible for alternate delegate because he has not established 24 months of continuous good standing.

DEZ COX – INELIGIBLE

Cox was first employed under the jurisdiction of the local union in April 2014, when he was hired as a pressman for the Columbus Dispatch. At best, this period of employment gives him 21 consecutive months of good standing, assuming he paid dues timely for each month of employment. Even with that assumption, however, Cox falls three months short of the minimum 24 months of continuous good standing necessary to be eligible for nomination. Accordingly, we find Cox INELIGIBLE for nomination.

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JEFF HAMILTON – ELIGIBLE

Hamilton seconded the nomination Cox for alternate delegate; given our holding with respect to Cox, Hamilton's eligibility to second that nomination is moot. However, Hamilton also seconded the nomination of Jamie McElravey for the position of delegate; accordingly, we will examine his eligibility to do so.

Article II, Section 5(h) of the *Rules* provides that a member is eligible to nominate another member for delegate or alternate or second that nomination if the nominating or seconding member has "his/her dues paid through the month prior to the nominations meeting."

GCC 128N is not on the TITAN system used by IBT local unions to record dues receipts. Dues records are maintained at the GCC district, an organization that provides services to several GCC local unions.

The undisputed evidence provided to our investigator is that Hamilton was employed by the Columbus Dispatch under the jurisdiction of GCC 128N until his layoff in 2009 or 2010 (accounts vary, and no documentary proof of the layoff date was provided). While on layoff, Hamilton was apparently assessed monthly "out of work" dues of \$11.42. The first month for which proof was provided to our investigator that the out of work rate was assessed was January 2010. More than a year of monthly assessments in this amount passed before the first payment was recorded against these assessments. Then, in the seven months from April through November 2011, payments ranging from \$19.00 to \$45.00 were credited to Hamilton's record in six of these months, after which no additional payments were credited for another ten months. In October 2012, a single payment of \$50.00 was credited, and then no further payments were credited until December 2014, the same month the dues rate changed from the out of work rate to a dues rate applicable to a working member.

In the meantime, Hamilton was recalled from layoff. By his account, the recall occurred in late 2011 or early 2012. He told our investigator that, upon recall, he signed a dues check-off authorization, among other documents. Later in 2012, he said that Jeff Harpold, the protestor here, told him there was "a problem with his dues," apparently that the check-off authorization he previously signed was lost. Hamilton told our investigator he signed another check-off authorization and thought the matter resolved. However, December 2014, more than two years after returning to work and signing two check-off authorizations, marked the *first* month in which dues were deducted from Hamilton's pay and remitted to the union. The rate at which dues were assessed beginning in that month was the rate charged to working members. In each month that followed that first dues deduction, Hamilton's dues have been deducted and remitted from his pay.

GCC Local Union 128N claims that Hamilton's unpaid arrearage total \$453.86. The bulk of this arrearage is from the period when Hamilton was laid off; the remainder accrued after his return to work (and after he signed a check-off authorization that was lost and a second check-off authorization that apparently was not implemented for more than two years).

GCC's regional dues administrator in Cleveland told our investigator that "ideally when someone is called back to work someone will call and let [her] know." However, the administrator told our investigator she was unsure what the employer does to restart check-off for a member recalled from layoff. She had no record either that Hamilton called the office about his dues or that the local

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union officers were contacted about Hamilton. Moreover, she had no record that any bills for delinquent dues were ever issued to Hamilton.

On these facts, we find that Hamilton returned to work in late 2011 or early 2012, that he signed a check-off authorization upon his recall and a second one some months later, and that each authorization directed the employer to deduct his monthly dues from his earnings and remit them to the union.

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); *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); *Eligibility of Montes*, 2011 ESD 114 (February 16, 2011). This rule operates to protect Hamilton's good standing for each month beginning with the month he was recalled from layoff.

The union's remedy for the dues the employer failed to deduct and remit, if it claims underpayment, is to bill Hamilton. IBT constitution, Article X, Section 5(c). No proof was provided that this was done. Therefore, Hamilton has not lost good standing for any month in which a claimed underpayment occurred.

As for the period commencing with his layoff for which Hamilton was assessed the out of work rate, serious question exists as to whether this rate constitutes "dues" within the meaning of the IBT constitution or the *Rules* so as to affect Hamilton's good standing at the time the nominations meeting was held. We need not resolve this question, however, because Hamilton should have been placed on automatic honorable withdrawal when more than six months passed following his layoff in 2009 or 2010 (IBT constitution, Article XVIII, Section 6(a)¹). Automatic withdrawal would have suspended his obligation to pay dues without impairing his recall rights. The maximum sum of out of work rates that could have accumulated before automatic withdrawal was imposed was \$68.52 (6 months x \$11.42 per month). The payments Hamilton made to the local union against the accumulated out of work rate far exceeded this amount and brought him current while still on layoff.

For these reasons, we find that Hamilton had his dues paid through the month prior to the nominations meeting. He was on check-off from the time he was recalled from layoff, and the employer or the local union, or a combination of both, through neglect or incompetence failed to implement the check-off properly to deduct his dues, and the union, again through neglect or incompetence, failed to exercise its rights under the IBT constitution to bill Hamilton for the dues it claimed were owed. These failings on the part of the employer or the union will not deprive Hamilton of the good standing to nominate or second the nomination of another member. Accordingly, we hold Hamilton ELIGIBLE to second the nomination of Jamie McElravey for the position of delegate, and hold McElravey validly nominated.

¹ "When a member becomes unemployed in the jurisdiction of the Local Union, he shall be issued an honorable withdrawal card upon his request. If no request is made, an honorable withdrawal card must be issued six (6) months after the month in which the member first becomes unemployed, if he is still unemployed at that time."

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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
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