

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: TODD MENDEZ,)	Protest Decision 2021 ESD 134
)	Issued: July 22, 2021
Protestor.)	OES Case No. P-157-070121-FW
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Todd Mendez, member of Local Union 683, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2020-2021 IBT International Union Delegate and Officer Election (“Rules”). The protest alleged 1) that his dues had not been recorded properly, potentially affecting his right to vote; and 2) that the local union failed properly to post a notice of delegates elected to the IBT convention.

Election Supervisor representative Michael Miller investigated this protest.

Findings of Fact and Analysis

Protestor Mendez served as secretary-treasurer of the local union through December 2018. He lost a bid for reelection to that position that month; in response, he exercised his contractual right to revert to his former employment with Sysco Food Services commencing January 2019. Once exercising that right, however, he commenced medical leave with Sysco in January 2019 and remained on that leave until returning to work in February 2021, some 2 years later. According to his TITAN record, a cash-dues payment of 2 months’ dues was recorded on March 11, 2019, giving him a “paid through” date of March 2019. However, the TITAN record further disclosed that he contacted the local union in April 2019, requesting a refund of 2 months of dues because of his medical leave, and further requesting that he be granted Honorable Withdrawal status. The local union granted the requests, refunded the dues, placed him on Honorable Withdrawal, and altered his paid through date to January 2019. Under the IBT constitution, Honorable Withdrawal maintains the member’s connection to the local union while excusing the member’s obligation to pay monthly dues. It is available only for the period when the member is not actively working under the local union’s jurisdiction. Mendez’s medical leave with Sysco qualified him for withdrawal because he was not actively working.

Such was the state of affairs until March 2021, when the local union received check-off dues for Mendez from Sysco. The dues remittance was the first notification the local union received that Mendez had returned to work; Mendez did not otherwise contact the local union and report his return to work or deposit his withdrawal card. Having received the dues, the local union attempted to contact Mendez multiple times over the months that followed, seeking to determine his wishes with respect to his withdrawal status, whether he sought to remain a member of the local union and, if so, to obtain a new check-off authorization. According to the local union, Mendez did not respond to multiple contacts from the local union.

In the meantime, the local union posted the dues payment to Mendez’s dues record, but did so retroactive to February 2019, applying checked off dues received in subsequent months to each successive month in 2019. The local union took this action, effectively treating the withdrawal status Mendez requested and obtained in 2019 as if it never occurred. The alternative to the action the local union took was simply to deposit Mendez’s withdrawal card in March 2021, based on the

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fact that his return to work under the local union's jurisdiction made him ineligible for continued withdrawal status, and to apply checked off dues it received from Sysco to the months Mendez worked in 2021.

After the efforts of local union staff to communicate with Mendez proved unsuccessful, an attorney for the local union wrote Mendez on June 15, 2021, enclosing an application for membership and a dues checkoff authorization and advising him of his right under law to elect not to be a member of the union. Mendez signed both documents; they were received by the local union on June 30, 2021. On July 1, 2021, the local union adjusted Mendez's TITAN record to apply dues received in 2021 to the months Mendez worked this year, rather than to months not worked in 2019 while on withdrawal status.

Mendez filed his protest the same date, July 1, 2021. In his protest, Mendez alleged that the local union's failure to deposit his withdrawal card and credit dues remitted to the local union in 2021 to the months he worked this year interfered with his right to vote in union elections. No elections were held in which Local Union 683 members had the right to vote between Mendez's return to work with Sysco in 2021 and the date the protest was filed. Therefore, the local union's treatment of Mendez did not interfere with his voting rights under the IBT constitution or the Rules.

We need not determine whether the local union properly determined that Mendez was required to complete a new application for membership and a new checkoff authorization. We note Mendez's contention that he retained his rights to membership under the IBT constitution by qualifying for withdrawal status and paying dues up through the month in which he requested withdrawal status. Certainly, he and Sysco considered the membership and checkoff authorization he signed upon original hire with Sysco to remain in effect, as Sysco acted in reliance on those documents by deducting dues from his earnings and remitting them to the local union. Further, the local union did not simply refund the dues to Mendez and notify Sysco that the deduction authorization was invalid, actions one presumes it would have taken if it believed it had no right to the funds.

Whether the operative documents to resolve Mendez's membership status were the membership application and checkoff authorization he signed originally or the ones he signed in June 2021, the TITAN record now shows him to be a member in good standing. If he retains such standing through October 2021, he will have the right to vote in the International officer election. On this basis, we deem this aspect of the protest RESOLVED.

In the second aspect of his protest, Mendez alleged that the local union failed to post (or maintain the posting) of a notice at Sysco of the names of the members elected as the local union's delegates and alternate delegate. Local Union 683 conducted its nominations meeting for these positions on February 13, 2021. The number of candidates for each position did not exceed the number to be elected, and the nominated candidates were declared elected at the close of the meeting. The local union posted a notice of the results of the nominations meeting on each worksite bulletin board; it also filed a declaration of posting with OES. The representatives were certified by OES, and the IBT convention was held June 22 through 24, 2021. No provision of the Rules requires that the notice of nominations meeting results remain posted after the convention has concluded.

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Mendez presented no evidence that the notice at Sysco was not posted. Further, he offered no explanation or excuse for waiting more than 4 months after the nominations meeting was held to file his protest.¹ For these reasons, we DENY the second aspect of his protest on the merits and because it was untimely filed.

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. Any party requesting a hearing must comply with the requirements of Article XIII, Section 2(i). All parties are reminded that, absent extraordinary circumstances, no party may rely in any such appeal upon evidence that was not presented to the Office of the Election Supervisor. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Barbara Jones
Election Appeals Master
IBTappealsmaster@bracewell.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, all within the time prescribed above. Service may be accomplished by email, using the “reply all” function on the email by which the party received this decision. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Barbara Jones
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¹ Article XIII, Section 2(b) requires that protests be filed within 2 working days of the date the protestor knew or reasonably should have known of the alleged violation giving rise to the protest.

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