

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: ELIGIBILITY OF)	
KABIR ASSKARYAR,)	Protest Decision 2006 ESD 53
Local 639)	Issued: January 25, 2006
_____)	

Kabir Asskaryar, a member of Local 693, filed an eligibility protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). He alleged that, contrary to the Election Supervisor’s determination, he is eligible for election as delegate to the 2006 IBT Convention under the *Rules*.

Election Supervisor representative Steven R. Newmark investigated this protest.

Findings of Fact:

TITAN records show that Asskaryar was on dues check-off through the September 2005 dues payment, then was on withdrawal status for the month of October before returning to active status with a check-off dues payment in December 2005.

Asskaryar was on workers’ compensation for October 2005 and as a result did not have sufficient earnings to fund his dues obligation via check-off for that month. Asskaryar claims that he attempted to pay his dues in cash, but that his check was never cashed. Asskaryar has not produced any written receipts for delivery of the dues. Asskaryar has submitted a photocopy of the front of the check that he submitted to the local, but has admitted that the check was never deposited.

The local union contends that Asskaryar was placed on withdrawal status effective October 20 and that he deposited his withdrawal card effective December 2. The local asserts that a member may be placed on withdrawal status only upon request of that member, that such request must be made either in person or in writing and be accompanied by a payment of 50 cents, the amount permitted by IBT Constitution, Article XVIII, Section 6(d). Asskaryar’s TITAN record shows withdrawal status and payment of 50 cents on October 20. The local union also produced a computer-generated document it said was a receipt for the payment of 50 cents. The local union was unable, however, to establish how the request for withdrawal status was allegedly made. Thus, it did not produce a writing from Asskaryar; further, its staff member responsible for processing withdrawal requests had no recollection of such a request from Asskaryar.

Asskaryar asserts that he never requested to be placed on withdrawal and had no knowledge, prior to our initial determination of his eligibility to run for delegate, that his TITAN record showed a break in continuous good standing due to withdrawal for the months of October and November 2005. Asskaryar further asserts that he was aware of the continuous good standing requirement and took affirmative steps to preserve his eligibility to run for delegate and for local union office. Thus, he states that, even though he was on workers’ compensation, he attended the monthly meeting of the local union on October 27. While there, he states that he tendered to business representative Billy Lyndell a check as

payment for his October dues. In addition, he gave Lyndell a self-addressed stamped envelope to use to return a receipt for the dues payment. Member Charlie Rose witnessed Asskaryar tender the dues check and the return envelope to Lyndell. Shop steward Terry Whiteley observed Asskaryar speaking with Lyndell at the union meeting held October 27 but did not note what Asskaryar said or gave to Lyndell, if anything.

Asskaryar states that, some time later, the envelope arrived in his mail. His wife placed the envelope's contents in the family financial records. On January 24, Asskaryar searched those records in connection with a request for information regarding this protest and found the original check, uncashed, that he states he had given to Lyndell on October 27. Asskaryar states that the local union apparently sent the check back to him rather than cash it, but he has no explanation for why this was done.

Lyndell acknowledged to our investigator receiving the check from Asskaryar but could not recall the circumstances. However, he states that he checked with the local union's TITAN operator on October 28, who said that Asskaryar was current in his dues payments. Based on that information, Lyndell mailed Asskaryar's check back to him.

Asskaryar returned from workers' compensation leave in November 2005. He provided proof to our investigator of sufficient earnings in November to fund his dues obligation for that month via check-off.

Analysis

Article VI, Section 1 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; [and] (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."

A member on withdrawal status generally loses continuous good standing if the withdrawal occurs within the 24-month eligibility period. *Wuorinen*, E7 (October 6, 1995). However, if the member returns from withdrawal status in the month immediately following the month when withdrawal status commenced and the member either timely pays dues for each month in cash or has sufficient earnings in each month from which the dues could be deducted, the withdrawal status will not render the member ineligible. IBT Constitution, Article IV, Section 4(a)(1).

Here, we find that Asskaryar had insufficient earnings in October 2005 to fund his dues obligation via check-off for that month. We further find that he timely tendered a check for full payment of his October dues to a representative of the local union on October 27 and that, unknown to him, the check was subsequently returned to him uncashed. We further find that, although Asskaryar's TITAN record shows him on withdrawal status commencing October 20 and continuing until December 2, he did not request that status, had no knowledge of it during the time period it was said to be in effect, and his payment of dues and his return

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to work in November were inconsistent with such status. Finally, we find that Asskaryar had sufficient earnings in November to fund his dues obligation for that month.

Based on these findings, we hold that Asskaryar did not suffer a break in his continuous good standing during October or November 2005. Accordingly, we find him ELIGIBLE to run for delegate to the 2006 IBT Convention.

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:

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, as well as upon the Election Supervisor for the International Brotherhood of Teamsters, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20007-5135, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
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