

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: DAVID VARELA and)	Protest Decision 2015 ESD 55
CARLOS RIOS,)	Issued: November 24, 2015
Protestors.)	OES Case No. P-056-100115-SO
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David Varela and Carlos Rios, members of Local Union 767, 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 Local Union 767 improperly refused to accept cash dues payments in order to render them ineligible to run for delegate or alternate delegate, in violation of the *Rules*.

Election Supervisor representative Dolores Hall investigated this protest.

Findings of Fact and Analysis

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.

Local Union 767 will hold its nominations meeting for the delegates and alternate delegates election on January 9, 2016. The 24-month eligibility period for measuring continuous good standing for this contest is January 2014 through December 2015.

Varela is a UPS employee on dues check-off. He went on workers’ compensation in January 2014. Payroll records show that UPS withheld dues from his pay for the week of December 29, 2013 through January 4, 2014. While on workers’ compensation leave, Varela received vacation pay from UPS for the period February 23 to March 22, 2014; although the check-off authorization directed UPS to withhold dues from his vacation pay, UPS did not. Varela returned to work with UPS on April 15, 2014 and has been employed on a full-time basis since that date. Varela has direct deposit on his paychecks and told our investigator he could not determine from the amount of the deposits whether dues were withheld from his pay. In June 2015, he said he was informed that he was on withdrawal status and had been for several months. Varela said he had never been informed that he was placed on withdrawal. When he learned of his withdrawal status, Varela went to the Local Union 767 hall to pay his back dues. He said he gave the bookkeeper, Angie Hightower, a check for \$740.00 for the back dues, and she gave him a receipt. Varela told our investigator that he monitored his personal checking account and noticed that his dues check was not presented for payment, so he returned to the local union hall in August 2015 to ask why the check was still outstanding. Varela said Hightower told him that Michael Lohman, local union president, had instructed her not to deposit Varela’s dues check. When Varela asked Lohman about his check, Lohman told him that he had placed Varela on

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withdrawal status in early 2014 “to save you some money.” Varela told our investigator that Lohman knew Varela planned to run for delegate and put him on withdrawal status in an attempt to make him ineligible.

Rios is also employed by UPS and is on dues check-off. He underwent a medical procedure in January 2014 and was on workers’ compensation until his return to work in May 2014. Rios told our investigator that no dues were withheld from his pay until November 2014. He said when he learned in August 2015 the amount of his dues arrearage, he went to the local union hall with a cashier’s check for \$850.50 in full payment of back dues. He said he gave it to Hightower, who gave him a receipt in return. Subsequently, however, Lohman refused to accept the check. Rios said he never received notice from the local union that dues were not being remitted to the union by the employer. As with Varela, Rios asserted that Lohman was aware he planned to run for delegate and refused the dues check in an effort to affect his eligibility to run. Unlike Varela, however, Rios had no earnings from UPS employment in February, March or April 2014 from which dues could be withheld, and he did not pay cash dues timely during those months in order to maintain his eligibility.

Lohman informed our investigator that Local Union 767 has a practice of placing members on honorable withdrawal who are in dues arrearage approaching 90 days’ duration. Members on withdrawal status are excused from paying dues during the period of withdrawal. Members who fall in arrearage longer than 90 days and who are not on honorable withdrawal must pay the dues arrearage and a re-initiation fee in order to rejoin the union, according to Lohman. As Texas is a right-to-work state, Lohman stated that the local union experienced a higher retention rate among members out of work for more than 90 days by placing them on honorable withdrawal; through this procedure, Lohman stated that members returning to work can end their withdrawal and renew active membership without suffering a dues arrearage or a re-initiation fee.

Local Union 767’s practice of placing member on automatic honorable withdrawal is inconsistent with the IBT constitution, which requires that a member be placed on honorable withdrawal “six (6) months after the month in which the member first become unemployed, if he is still unemployed at that time.” Moreover, the constitution states that “[a] member is not considered to be unemployed if the member is on sick leave, Family Medical Leave, or *worker’s compensation* and retains reemployment rights with an employer party to a collective bargaining agreement.” Constitution, Article XVIII, Section 6(a) (emphasis supplied). By constitutional standards, Local Union 767 was not authorized to issue a withdrawal card to either Varela or Rios. Both were not considered “unemployed” within the meaning of the constitutional provision, as each was out of work on workers’ compensation, a basis excluded from the definition of “unemployed.” Further, both were out of work less than six months, the minimum period qualifying for issuance of a withdrawal card under the constitution.

Complicating matters, Local Union 767 staff told our investigator that the local union does not issue a physical withdrawal card to members placed on automatic honorable withdrawal or otherwise notify them that they have been placed in such status. Accordingly, neither Varela nor Rios received any notification from the local union that their status had changed when the local union placed them on withdrawal.

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In analyzing these facts, we start with the firmly established principle 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). Both Varela and Rios were on check-off and were entitled to rely on their check-off authorizations directing the employer to remit dues from their pay in a timely manner.

As the IBT Constitution makes plain, the check-off rule for eligibility is accorded to any member on check-off “whose employer fails to make a proper deduction *during any month* in which the member has earnings ...” (emphasis supplied). Applying this provision, we look to whether the member had net earnings on any day during the month sufficient to fund his total monthly dues obligation. This examination has led us to find a member eligible where his only earnings for a given month was from holiday pay on a single day. *Eligibility of Hicks*, 2005 ESD 30 (December 5, 2005).

Local Union 767 employs a *weekly* dues deduction and remittance system at UPS whereby one-quarter of the monthly dues obligation is deducted from the weekly paycheck. The use of this system does not alter the basic rule that a member on check-off who had sufficient pay on any day in the month to fund his monthly dues obligation may rely on that check-off to retain his eligibility. *Eligibility of Rivers*, 2011 ESD 64 (January 6, 2011). Accordingly, we examine whether Varela and Rios as check-off members had sufficient earnings *in each month* to fund their dues.

For Varela, he had earnings from which dues could be deducted in January 2014 (wages), February 2014 (vacation pay), March 2014 (vacation pay), and in every month thereafter beginning with his April 2014 return to work (wages).

For Rios, in contrast, he had earnings from which dues could be deducted in January 2014 (wages) but then had no earnings from which dues could be deducted in February, March, or April 2014 before he returned to work in May 2014. Rios was not entitled to rely on his check-off authorization to retain his continuous good standing in these three months because he had no earnings that would fund his dues obligation. Accordingly, he was obliged to make cash payments of dues directly to the local union no later than the last business day of each such month in order to maintain his continuous good standing for the month. He did not do so and therefore suffered a break in continuous good standing in those months. For the January 2016 nominations meeting, this break in continuous good standing renders Rios INELIGIBLE for nomination, and we so hold.

With respect to the local union’s refusal to process Varela’s payment of back dues in July 2015, this refusal does not affect his eligibility to stand for delegate or alternate delegate. Because we find that Local Union 767 was without authority to place Varela on automatic honorable withdrawal without notice to him, we further find that it was without authority to refuse his payment of dues arrearage. In similar cases, we have found a local union’s failure or refusal to accept dues a member tendered does not interrupt his continuous good standing. *Eligibility of Asskaryar*, 2006 ESD 53 (January 25, 2006); *Eligibility of Moore*, 2011 ESD 129 (February 21, 2011), *aff’d*, 11 EAM 23 (March 2, 2011). For the foregoing reasons, we find that Varela maintained continuous good standing

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for the period January 2014 through October 2015. Provided he maintains continuous good standing for November and December 2015, he will be ELIGIBLE to stand for nomination as delegate or alternate delegate at Local Union 767's nominations meeting for that purpose to be held in January 2016.

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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