

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: ELIGIBILITY OF)	Protest Decision 2016 ESD 122
MARK DUNFIELD,)	Issued: February 25, 2016
BRADLEY MORRISON,)	OES Case No. E-171-021616-GP
BRUCE FRAKES, and)	
JERRY ARNOLD,)	
)	
Local Union 41.)	
)	

Jon Flinn, a designated “election judge” of Local Union 41, 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 Mark Dunfield, Bradley Morrison, Bruce Frakes, and Jerry Arnold are ineligible for nomination as delegate or alternate delegate to the IBT convention for alleged failure to maintain 24 consecutive months of good standing.

Election Supervisor representative Jeffrey Ellison 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 Local Union 41’s delegates and alternate delegates election was held February 13, 2016. Therefore, the 24-month period during which candidates must be in continuous good standing in order to be eligible for nomination ran from February 2014 through January 2016.

The protest alleged that Dunfield is ineligible to stand for election because his “dues were not received timely for the months of February, March and April 2015 and September, October and November 2015.” The protest further alleged that Morrison is ineligible because dues were not timely received for March 2014; that Frakes is ineligible because dues were not timely received for March 2015; and that Arnold is ineligible because dues were not timely received for January 2014.

To verify the eligibility of each challenged candidate during this period, we reviewed TITAN records for dues remitted on their behalf. Each candidate’s TITAN showed that he paid dues by check-off authorization at all times during the eligibility period we examined. 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

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(July 26, 2010), *appeal withdrawn*, 10 EAM 4 (August 6, 2010). Accordingly, we examined each challenged candidate to determine whether the dues reported late in his dues payment history interrupted his continuous good standing.

Mark Dunfield – Ineligible

Dunfield is employed by Jack Cooper Transport and sustained a work-incurred injury that left him unable to work in early 2015. He had no wages, holiday pay, vacation pay, or sick leave benefits in February or March 2015. He received workers' compensation benefits from Jack Cooper Transport's workers' compensation carrier, but no dues were deducted from those benefits because the check-off authorization Dunfield signed authorized dues deductions from the compensation Jack Cooper Transport paid him, not the benefits he received from a third party. Dunfield did not make cash dues payments to the local union in either of these months. Following his return to work, the employer made multiple deductions of dues to eliminate the dues arrearage that accumulated during his period of disability. However, the IBT constitution makes clear that payment of a dues arrearage after the due date does not restore continuous good standing for the purpose of eligibility for nomination. Article X, Section 5(c). Under these circumstances, Dunfield suffered an interruption in continuous good standing that rendered him INELIGIBLE for nomination, and we so find.

Bradley Morrison – Eligible

In early 2014 when Morrison worked for USF Holland, he was off work for part of February and part of March. Dues were deducted from his pay and timely remitted to the local union for February. However, no dues were deducted in March, even though Morrison returned to work in the latter part of that month. The absence of a dues remittance on behalf of a member who works only part of a month or even a single day in a month is often the result of the decision the employer makes for its own administrative convenience to select one week or one bi-weekly pay period each month from which dues deductions will be made. If a member does not work during the week or pay period the employer has chosen for dues deduction, the employer does not make a deduction for that member in that month, even though the member works or receives paid leave benefits attributable to other days during the same month. Under these circumstances, the employer's failure to deduct dues even though the member has earnings or paid leave benefits in the month to fund his dues obligation will not interrupt his continuous good standing and render him ineligible. Records in the possession of the local union established that Morrison returned to work in March 2014 and worked the fourth and fifth weeks that month, earning sufficient wages from which dues could have been deducted. Accordingly, we find him ELIGIBLE for nomination.

Bruce Frakes – Eligible

Frakes had no dues deducted and remitted to the local union in March 2015. He did not work the first week of that month, when the employer made its dues deductions. However, payroll records he supplied showed that he worked some 120 hours over the balance of the month, earning well more than the minimum amount necessary to fund his dues obligation for that month. The employer's failure to deduct and remit his dues from the earnings he had after the first week of March will not interrupt his continuous good standing. Accordingly, we find him ELIGIBLE for nomination.

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Jerry Arnold – Eligible

Arnold had dues deducted and timely remitted in each month of the 24-month eligibility period, with no interruptions of any kind. The protest alleged that his dues for January 2014 were not timely remitted. We make no finding with respect to January 2014 because that month falls outside the 24-month period we examine to determine a member's eligibility for nomination. Accordingly, we find Arnold ELIGIBLE for nomination.

Accordingly, we GRANT the protest and find Dunfield INELIGIBLE for nomination. We DENY the protest and find Morrison, Frakes, and Arnold ELIGIBLE for nomination.

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
2016 ESD 122

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