

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: SAMUEL BUCALO,) Protest Decision 2021 ESD 136
) Issued: August 10, 2021
Protestor.) OES Case Nos. P-140-051221-ME,
) P-149-060821-ME & P-158-070321-ME

Samuel Bucalo, member of Local Union 100, filed a series of pre-election protests pursuant to Article XIII, Section 2(b) of the Rules for the 2020-2021 IBT International Union Delegate and Officer Election (“Rules”). The first protest, filed May 12, 2021, in Case No. P-140-051221-ME, alleged that Local Union 100 violated the Rules by refusing to accept his dues, potentially rendering him ineligible to vote in the International officers election. Bucalo filed new protests raising the same issue on June 8 and July 3, 2021, in Case Nos. P-149-060821-ME and P-158-070321-ME, respectively, alleging that the local union refused to accept his payment of dues for those months as well. On August 3, 2021, Bucalo filed with the Office of Election Supervisor evidence concerning the local union’s refusal to accept another dues payment he made. Rather than docket the August 3 submission as another protest, we accepted it as evidence of a continuing course of conduct between Bucalo and the local union.

Election Supervisor representative Dan Walsh investigated these protests. We consolidated them for decision.

Findings of Fact

Protestor Bucalo is a former officer of Local Union 100 who was employed on a full-time basis by the local union while serving in that capacity. He was first elected in 2010. He took leave from full-time employment with UPS to accept the local union job, and he subsequently severed his employment rights with and took a pension from that employer.

His last term of office expired December 31, 2016, following a defeat in the local union officers election held that fall. With his tenure as a full-time officer and employee of the local union ended, Bucalo immediately sought employment under the local union’s jurisdiction by registering on the union’s movie referral list, which functions to supply Teamsters for movie productions occurring in greater Cincinnati. Since leaving union office, Bucalo has worked at least four set decoration transportation jobs of short duration for movies filming under Local Union 100’s jurisdiction in Cincinnati or its environs. He is currently employed on such a job. He has also filed several NLRB charges against the local union alleging that he was not referred to movie transportation jobs for which he was qualified and possessed requisite seniority. Bucalo told our investigator that one such charge resulted in a substantial back pay award to him from the local union.

The local union regards Bucalo as a “retiree” and codes him as such in the TITAN dues payment system when he is not actively employed. Retirees are placed on honorable withdrawal status.¹ That status suspends a member’s obligation to pay dues; it also renders the member not in

¹ The TITAN code for “Retired” is 70; for “Honorable Withdrawal” it is 03. Bucalo’s record when he is working shows a 04 code, for “Dues Cash Payer.” When a given movie job he is working ends, the local

August 10, 2021

good standing, which makes the member ineligible to participate in union meetings, to vote in elections of union officers and on contract ratifications, to stand as a candidate for union office, and to enjoy related privileges of union membership.

Bucalo disputes the “retiree” designation and the consequent placement on honorable withdrawal status. At no point has Bucalo requested a withdrawal card. To the contrary, he points to his enrollment on the local union’s movie referral list and his acceptance of such work when offered as proof that he is not retired and should not be on withdrawal. Further, Bucalo has made repeated attempts to pay dues to the local union over the past four and a half years. Many such payments have been accepted by the local union and then refunded to Bucalo.²

Despite Bucalo’s actions demonstrating his effort to obtain employment and acceptance of such work when it is offered, the local union has on its initiative at various points since Bucalo left union office placed him on honorable withdrawal, attempting to hold him on withdrawal for each calendar month in which he is not actively employed under the local union’s jurisdiction. As Bucalo has sought only movie transportation work since leaving union office, he has worked sporadically. Accordingly, his dues payment history showed episodic active work followed by periods of honorable withdrawal status. The dues payment history also showed refunds of dues the local union contended were overpayments, with notations that the refund checks were uncashed.

Bucalo did not work for most of 2020 because movie production in Cincinnati largely ceased. His first work under the local union’s jurisdiction in more than a year commenced in April 2021.

As of April 2021, prior to the date he commenced his current movie job, Bucalo’s dues payment history showed a credit to his account of \$212, which the local union had refunded to him by check, a check Bucalo never cashed. When Bucalo became reemployed that month, he attempted to pay \$300 in dues, representing three months’ dues at a rate he calculated of \$100 per month.³ This payment assumed he would be employed on the movie project for a minimum of 3 months.

The local union initially agreed with Bucalo’s calculation of the dues rate. It did not accept his \$300 payment, however. Rather, it applied the \$212 credit it had unsuccessfully attempted to refund to Bucalo previously to his April and May dues, leaving \$12 as a credit or overage toward

union changes his TITAN code to 70, and dates that entry in his record as “WDC RETRD,” for Withdrawal Card – Retired.

² For example, monthly dues Bucalo paid in January, February, March, and April 2017 – the first 4 months after his term of local union office ended – were refunded to him by the local union on May 3, 2017, and his paid-through date was adjusted from May 2017 back to December 2016, the last month he served as local union secretary-treasurer. On the same date the dues refund was entered into the TITAN system, the local union placed Bucalo on honorable withdrawal status. Following that date, Bucalo and the local union commenced a years-long back-and-forth over payment of his dues, with Bucalo paying dues, the local union accepting them and then issuing refund checks, and Bucalo returning the refund checks marked “void” or simply not cashing them.

³ Monthly dues rates for employment such as that Bucalo held are calculated per the IBT constitution at 2.5 times the regular hourly rate, plus any assessment added to the sum by local union resolution.

August 10, 2021

his June dues. The local union informed Bucalo by letter on May 6, 2021 that, if he remained employed in June, he would owe \$88 to pay his June dues in full.⁴

On May 25, 2021, Bucalo remitted a check to the local union in the amount of \$570, the equivalent of 6 months' dues at the \$95 rate, a sum far in excess of what the local union stated was owed for June. In a letter that accompanied the check, Bucalo stated that he learned he could expect his job to last into August. He stated further that he was paying his dues for all months commencing June 2021 and continuing through November 2021, explaining that "even if I become laid off in August, as a laid-off or unemployed member under Article XVIII sec 6(a) [of the IBT constitution,] I can continue to pay my dues for up to six months to remain in good standing. At this time, I want to remain in good standing so that I may vote in the 2021 IBT Officer Elections."

The local union returned Bucalo's check, marked "void," by letter of June 2, 2021, telling him it would accept dues from him only month by month. The local union further told him it would not accept dues from him for any month in which he was not actively working because, in those months, the local union deemed him "retired," warranting honorable withdrawal status.

This back-and-forth repeated as a set piece in June and July, each time Bucalo remitting a check for several hundred dollars, and the local union responding by marking the check "void" and returning it. As a result, Bucalo's dues currently are paid through May 2021, with a \$22 overage toward June dues. Although Bucalo has remitted payment for additional months, the local union has refused to accept any payment larger than the amount necessary to bring him current in his dues obligation. In particular, the local union has made clear that it will not accept a payment larger than the current month's dues obligation and issue a refund for what it regards as an excess sum, given the history of Bucalo's refusal to accept refunds of dues amounts the local union considers to be overpayments. Nor is the local union willing to hold the overpayments as a credit toward future dues obligations. The duration of movie industry jobs in Cincinnati is typically both short and unpredictable, and the local union consequently refuses to accept dues it will have to hold as a credit for an undetermined period of time.

As this decision issues, Bucalo remains employed on the movie project he commenced in April 2021. Whether the job will continue beyond August 2021 and, if it does not, whether Bucalo will find other movie work in September or October is not known.

Analysis

This anomalous dispute between Bucalo and Local Union 100 – where the member has persistently attempted to pay monthly dues and the union equally persistently has attempted to thwart that payment – implicates the eligibility of members to vote in the International officers election. Under Article V, Section 1(a) of the Rules, "[e]ach person who is otherwise a member in good standing and whose dues are paid through the month prior to the month in which ballots are counted" is eligible to vote.

⁴ When the local union learned that Bucalo's hourly wage was less than it initially believed, it recalculated Bucalo's monthly dues rate to \$95, leaving him with a \$22 credit toward June dues, and adjusting the amount he owed for that month to \$73.

A member on honorable withdrawal status is ineligible to vote for two related reasons. First, the status itself renders the member not in good standing and bars him/her from eligibility to vote. *See* Definition 4 (“ballot-qualified member” is an active member in good standing carrying a TITAN status code signifying that membership. TITAN codes 03 (honorable withdrawal) and 70 (retired) are excluded from the list of ballot-eligible TITAN codes).

Second, *the effect of* honorable withdrawal status is to excuse a member’s obligation to pay dues. As such, a member on honorable withdrawal generally has not paid dues “through the month prior to the month in which ballots are counted,” Rules, Article V, Section 1(a),” and is ineligible to vote as a result of not being current on his/her dues obligation.

Honorable withdrawal is reserved for members in good standing who become unemployed. Such a member is placed in that status either voluntarily or involuntarily. Thus –

When a member become 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.

IBT constitution, Article XVIII, Section 6(a).

This provision illustrates the breadth of circumstances under which withdrawal status may result. Some members who are laid off may opt for withdrawal status immediately, unwilling or unable to pay monthly union dues while out of work. Employees who terminate employment in anticipation of permanent retirement have no compelling reason to continue to pay dues. Others who lose employment but seek to continue working opt to pay dues even while not working, recognizing that withdrawal status cuts off other rights under the IBT constitution. For this last category of members, the local union may not permissibly place them on withdrawal status on the union’s initiative unless they remain unemployed six months “after the month in which the member first becomes unemployed, if he is still unemployed at that time.”

Bucalo argues that this constitutional provision is the only one applicable to his situation. He has never requested a withdrawal card. Given this fact, he argues that the local may permissibly place him on honorable withdrawal only six months after the month in which he last worked under the local union’s jurisdiction. Applied to his current situation, if one were to assume that the last date Bucalo worked in 2021 was in the month of August, the local union would be permitted (indeed, would be required) to place him on honorable withdrawal six months after that month – in February 2022 – if he did not work in the intervening period and remained unemployed in February 2022. As such, because he could not permissibly be placed on withdrawal status for six months after the month he last worked, Bucalo argues that he should be permitted to prepay monthly dues for up to six months in advance, which is permitted by the constitution and local union practice. He attempted to do so in May, again in June and July. Had the local union accepted his dues (and assuming no other conduct that could affect his status), he would have secured payment of dues, and membership in good standing, through October 2021. That is the eligibility date for voting in the International officer election.

The local union maintains to the contrary that Bucalo must be placed on withdrawal status in each month he is not actively working under the local union's jurisdiction. It bases this argument on the contention that Bucalo is "retired" when not actively working, and the Article XVIII, Section 6(b) of IBT constitution requires that status for retirees. Thus –

A withdrawal card shall be issued to any member, including a Local Union officer, who has retired, except that a member who continues to work at the craft, including employment with the International Union, or any affiliate, shall be required to retain active membership.

Application of this provision in this matter turns on the definition of the phrase "who has retired." "Retired" and "retirement" are not defined in the constitution. The local union contends that Bucalo's receipt of his UPS pension, which he began taking in or about 2011, is definitive proof of retirement that dictates withdrawal status for each month where he is not actively working.

For several reasons, the local union is incorrect, and its treatment of Bucalo as retired under Article XVIII, Section 6(b) of the IBT constitution violates the Rules because it impairs his ability to vote in the International officers election.

First, the local union improperly equates "retired" with "receiving a pension." As we noted in *Kelly*, 2020 ESD 13 (August 25, 2020), "[t]he two are distinct." In *Kelly*, the local union contended, similar to the situation here, that it could not accept dues from the former local union officer who was unemployed following a failed re-election bid, was receiving a pension, but was seeking and available for work under the local union's jurisdiction. The local union there argued that Kelly's receipt of the pension required the local union to treat him as on honorable withdrawal immediately after leaving office, and he could not be put in active status unless he became actively employed. Under the local union's argument, retired status was not negated by the member's effort to seek and be available for work. We rejected that argument, writing that, "[w]hile retirees who are eligible for pensions receive them, it does not follow that pension recipients are retired within the meaning of the rule. Indeed, Kelly has been receiving his pension for the past seven years, all but the last several months of which he worked on full-time salary as principal officer of Local Union 952." For the same reason as cited in *Kelly*, the local union here erred in concluding that Bucalo's receipt of his UPS pension rendered him "retired" whenever he was not actively employed. As we will explain later in this decision, much more would be necessary to conclude that Bucalo has retired.

Second, the local union's reliance on receipt of a pension as proof of retirement is contrary to the plain meaning of term "retired," which is a person's status after leaving the workforce permanently.⁵ The evidence that Bucalo has not retired is overwhelming. Thus, he began receiving his UPS pension shortly after assuming full-time work as the local union's secretary-

⁵ Independent Administrator Lacey, in *Bedell & Musso*, 91 Elec.App. 37 (January 15, 1991), construed "retired" in a previous version of Article XVIII, Section 6(b). He defined "retired in the true sense of the word [as] not working at their trade, or not actively seeking such employment." *Id.*, p. 13. Judge Lacey's definition is consistent with the commonly understood definition: "having left one's job and ceased working," "having withdrawn from or no longer being occupied with one's work or profession," "having stopped working permanently."

August 10, 2021

treasurer in 2011. No contention was raised then that he was “retired;” indeed, he was actively working. Similarly, upon leaving office at the end of 2016, Bucalo immediately registered for work on the local union’s movie referral list, and he thereafter repeatedly accepted such work when it was offered. These actions demonstrated that he had not left the workforce permanently, even though he was for brief periods unemployed.

Third, the local union’s interpretation is contrary to the intent of the constitutional provision, as its drafting history bears out. The 1986 version of Article XVIII, Section 6(b) read as follows:

[a] member, including a Local Union officer, who is receiving pension benefits from any pension plan shall be considered to have retired. A retired Local Union officer shall not be eligible to hold any office or position he occupies by virtue thereof, as of the effective date of his retirement.

This version was situated within the honorable withdrawal section of Article XVIII of the IBT constitution, as is the current version. The 1986 version defined “retired” as equivalent with “receiving pension benefits from any pension plan.” Under this definition – had it remained in effect – Bucalo would have been considered retired as of the date he commenced receiving his UPS pension in or around 2011, even though he was actively working on a full-time basis as Local Union 100’s secretary-treasurer. It would also have required him to give up his union position because the constitution declared that a retired member was ineligible to serve in such a position.

This same circumstance confronted Teamster leaders a generation earlier, who were justifiably concerned that taking a pension would force them from office. The IBT responded by changing Section 6(b) to avoid that result. The circumstance came to the fore when the U.S. Congress adopted the Tax Reform Act of 1986, which mandated, effective January 1, 1989, that employees begin receiving pension benefits no later than age 70½. That requirement, had it been implemented while the IBT constitutional provision just quoted was in effect, would have forced sitting union officers that age or older to relinquish the offices they occupied because the receipt of the pension would have rendered them “retired,” making them ineligible for such offices. The General Executive Board averted that result by suspending Section 6(b) with two resolutions, one in October 1988, the other in April 1989. While the provision was suspended, members aged 70½ began receiving their pensions as required by law, but such receipt did not render them “retired” under the IBT constitution and force them to relinquish their offices. The provision underwent a wholesale redrafting at the 1991 IBT convention, where the present language emerged and was adopted. The significant change between the 1986 and 1991 versions for our purposes was that, with the latter, a member receiving pension benefits from any pension plan was no longer considered, by that circumstance alone, to have retired. *Bedell & Musso, id.*

Local Union 100’s position here reflects an outcome that would have happened under the 1986 version of Section 6(b) that no longer is in effect. The local union argues that “a member ... who is receiving pension benefits from any pension plan shall be considered to have retired.” It takes that stance to contend that, unless Bucalo is actively working under the craft, his continued receipt of pension benefits means he is “retired,” which means further that he must be placed on honorable withdrawal. The intent of the present version of Section 6(b), as illuminated by the text

August 10, 2021

it was changed from, shows the error of the local union's reasoning. "Retired" status cannot be determined by pension receipt alone.

The most common evidence of retirement is the member's statement – "I'm retired" – coupled with his/her leaving employment and not seeking further work. Bucalo has not done any of these things. To the contrary, his actions evince an intention to continue working – registering on the movie referral list, taking such work when it is offered, litigating when the work is wrongfully withheld, and paying his union dues. All of these actions demonstrate that Bucalo is not retired within the meaning of Article XVIII, Section 6(b) of the IBT constitution.

Given that he is not retired, Bucalo's circumstance as it relates to honorable withdrawal is governed solely by reference to Section 6(a) of the article. Under that provision, while he is unemployed, he is entitled to withdrawal status upon his request. If he does not request such status (and it is undisputed that he has never made such a request), he must be permitted to continue to pay his monthly dues until "six months after the month in which the member first becomes unemployed, if he is still unemployed at that time," at which point the local union must issue a withdrawal card.

For these reasons, we GRANT the protest. Local Union 100 is prohibited from carrying or treating Bucalo as on withdrawal status or issuing him a withdrawal card unless 1) he requests that status, 2) he is retired, as defined in this decision, or 3) he is unemployed continuously to the sixth month after the month in which he first became unemployed and is still unemployed at that time. Bucalo, while employed, is permitted to pay his monthly dues in advance up to but not including six months into the future. If Bucalo becomes unemployed, he is permitted to pay his monthly dues in advance up to but not including the month that is six months from the month he last worked under the local union's jurisdiction.⁶

We retain jurisdiction until November 30, 2021, to resolve disputes arising from this decision.

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

⁶ Our previous decisions in *Bucalo, 2020 ESD 20* (September 18, 2020), *Bucalo, 2021 ESD 39* (January 7, 2021), and *Bucalo, 2021 ESD 115* (May 13, 2021), concerned Local Union 100's decision to bar Bucalo from monthly membership meetings because he was on honorable withdrawal status and was not a member in good standing. The meetings in those cases occurred at times when Bucalo had been unemployed for at least six consecutive months and therefore was on mandatory withdrawal status by virtue of Article XVIII, Section 6(a) of the IBT constitution.

Bucalo, 2021 ESD 136

August 10, 2021

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
2021 ESD 136

Bucalo, 2021 ESD 136
August 10, 2021

DISTRIBUTION LIST (BY EMAIL UNLESS NOTED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
braymond@teamster.org

Edward Gleason
egleason@gleasonlawdc.com

Patrick Szymanski
szymanski@me.com

Will Bloom
wbloom@dsgchicago.com

Tom Geoghegan
tgeoghegan@dsgchicago.com

Rob Colone
rmcolone@hotmail.com

Barbara Harvey
blmharvey@sbcglobal.net

Fred Zuckerman
fredzuckerman@aol.com

Ken Paff
Teamsters for a Democratic Union
ken@tdu.org

Scott Jenkins
scott@oz2021.com

Samuel Bucalo
Sammo1245@aol.com

Teamsters Local Union 100
sarahm@teamsterslocal100.com

Dan Walsh
dwalsh@ibtvote.org

Jeffrey Ellison
EllisonEsq@gmail.com