

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: ELIGIBILITY OF)	Protest Decision 2021 ESD 50
BARRY RICE)	Issued: February 2, 2021
-and-)	OES Case No. E-065-012821-FW
SII MAIAVA,)	
)	
Local Union 996.)	
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Ryan Yoshida, member and principal officer of Local Union 996, 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 that Barry Rice and Sii Maiava are ineligible for nomination in Local Union 996’s delegates and alternate delegates election.

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 996’s delegates and alternate delegates election occurred on January 27, 2021. Therefore, the 24-month period during which candidates must be in continuous good standing to be eligible for nomination ran from January 2019 through December 2020.

Rice and Maiava paid their dues to Local Union 996 by check-off authorization, by which both authorized their employer to deduct – or check off – dues from the compensation they earned and to remit those dues to the local union. Under the check-off rule, a member on check-off retains his/her good standing even if dues were remitted late or not at all by the employer, provided the member 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of John Gerow, et al.*, 2006 ESD 121 (March 2, 2006); *Eligibility of Thiel*, 2010 ESD 16 (July 26, 2010), *appeal withdrawn*, 10 EAM 4 (August 6, 2010); *Eligibility of Montes*, 2011 ESD 114 (February 16, 2011).

With these rules establishing the decisional framework, we turn now to the cases before us.

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RICE - INELIGIBLE

For the first five months of the eligibility period, from January through May 2019, Rice timely paid his dues to the local union by dues deduction. However, he sustained a work-related injury which caused him to be out of work for more than a year. He received workers' compensation benefits from the third-party administrator of his employer. While on workers' compensation, Rice had no compensation from his employer – in the form of wages, vacation pay, holiday pay, etc. – from which dues could be deducted. Accordingly, his obligation in order to maintain good standing was to make timely direct payment of dues to the local union each month so that the union received the payment no later than the last business day of the month. Rice did not do so, nor did he request to be placed on Honorable Withdrawal.

When he returned to work in approximately June 2020, more than a year after last working, Rice resumed paying dues by deduction from his earnings. In addition, he contacted the local union to determine the amount of his arrearage. When he learned the amount, he paid it in full, bringing him current on his dues and placing him in good standing. However, the IBT constitution states that “[p]ayment of such dues after their due date shall not restore good standing status for such month or months in computing the continuous good standing status” required for nomination for office. Article X, Section 5(c).

For the foregoing reasons, we find Rice INELIGIBLE for nomination and GRANT this aspect of the protest.

MAIAVA – INELIGIBLE

Maiava was in continuous good standing for the first seventeen months of the eligibility period. However, in May 2020, at a time when her dues were paid in full for that month, she took leave from her employer, returning to work in July 2020. In June 2020, she had no compensation from which dues could be deducted, nor did she make direct payment of dues to the local union. After her return to work, a deduction equal to double her monthly dues was made from her July 2020 earnings, returning her to good standing. However, as noted above, payment of June 2020 dues after their due date did not restore her good standing for June, and she suffered an interruption in the continuous good standing necessary to be eligible for nomination.

For these reasons, we find Maiava INELIGIBLE for nomination and GRANT this aspect of the protest.

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:

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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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