

ELECTION APPEALS MASTER

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IN RE: ELIGIBILITY OF  
RUEBEN MORENO,  
MARIO FLORES, and  
ESAU HERNANDEZ,  
Local Union 439.

2015-2016 EAM 12 (KAR)  
DECISION RE 2016 ESD 124

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Protest Decision 2016 ESD 124 (ESD 124), regarding the eligibility of Local Union 439 members Reuben Moreno, Mario Flores, and Esau Hernandez, was issued on February 27, 2016 (OES Case Nos. E-179-021816-FW and E-180-021916-FW). ESD 124 addresses separate pre-election protests filed by Ken Guertin and Dale Wild, both members of Local Union 439. The protest were consolidated for investigation by the Election Supervisor, who found all three subjects of the protests eligible for nomination as delegate or alternate delegate to the IBT convention, and denied the protests.

Mr. Guertin filed an appeal of ESD 124 with respect to Mr. Moreno and Mr. Flores on February 29, 2016. Mr. Wild filed an appeal with respect to Mr. Moreno and Mr. Flores on March 1, 2016. By Notice of Hearing sent to all distributees of ESD 124, a telephonic hearing was scheduled for March 3, 2016. On March 2, 2016, the Election Supervisor submitted a written response to the appeal (OES March 2 Letter).

A telephonic hearing was held on March 3, 2016. The following individuals attended the hearing: Jeffrey J. Ellison, Esq., on behalf of the Election Supervisor (OES); Jo Pressler (OES); Ken Guertin; Dale Wild; Rueben Moreno; Mario Flores; Esau Hernandez; Jamie Gonzalez; and Alex Barra.

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 439’s delegates and alternate delegates election was held February 17, 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.

With respect to Mr. Moreno, a former business agent of Local Union 439, Mr. Guertin's protest alleged Mr. Moreno is ineligible to stand for election because he "was not employed at the craft in Local 439 from January 2015 through June 2015." Mr. Wild's protest alleged that Mr. Moreno is ineligible because "he retired and came out of retirement and obtained employment at Leprino Foods" during the eligibility period. With respect to Mr. Flores, also a former business agent of Local Union 439, Mr. Guertin's protest alleged that Mr. Flores is ineligible because his "last employment at a craft in Local 439 was December of 2014;" Mr. Wild's protest repeated this allegation and also asserted that none of the *Rules*' modifications of eligibility stated in Article VI, Section 2 apply to render Mr. Flores eligible.

To verify the eligibility of each challenged candidate during this period, the Election Supervisor first reviewed TITAN records for dues remitted on their behalf. Each candidate's TITAN record showed that he timely paid dues by check-off authorization or by direct payment to the local union at all times during the eligibility period examined by the Election Supervisor.

On appeal, Mr. Guertin and Mr. Wild challenge the eligibility of Mr. Moreno and Mr. Flores on the ground asserted in their original protests (failure to work at the craft for the entirety of the eligibility period), and, in addition, seek to appeal ESD 124 on the ground that neither Mr. Moreno nor Mr. Flores satisfied the payment of dues requirement..

#### Craft Requirement

With respect to the craft requirement, the Election Supervisor made the following findings:

Both Mr. Moreno and Mr. Flores lost their employment with the local union in December 2014 or January 2015. Both enrolled in the local union's Out of Work Construction List (OOWCL), a referral list for construction employers pursuant to the Teamsters Master Construction Agreement, under which Local Union 439 and other Teamsters local unions in Northern California refer members for employment as the construction employers requisition them. The Election Supervisor found that the dues rate to register for and maintain a place on the OOWCL is \$15 per month, and that both men paid the monthly dues timely.

Mr. Moreno found employment under the jurisdiction of Local Union 439 in June 2015, where he remains employed. In addition to his placement on the OOWCL, Mr. Flores has applied for work at several employers under the jurisdiction of Local Union 439 and has not been hired. In July 2015, he took a position as a driver with Aramark. The Aramark drivers have been organized by Teamsters Local Union 601, which is engaged in negotiation for a first contract; when that contract is concluded and ratified, the drivers will become members of that local union.

The Election Supervisor denied the protests and found Mr. Moreno and Mr. Flores eligible for nomination, noting that Article VI, Section 2(b) of the *Rules* affirms that "[t]he active employment at the craft requirement may be excused by unemployment if, for the period of unemployment, the member was actively seeking and available for employment in the craft and not working outside the craft during such period of unemployment." The Election Supervisor

found that both men's registration on the OOWCL list and timely payment of dues associated with that list satisfied the requirements of Article VI, Section 2(b).

Further and specifically concerning Flores, the Election Supervisor found that Mr. Flores's employment with Aramark did not constitute "working outside the craft," concluding that OES precedents permit temporary or part-time work outside the craft while enrolled on a union referral list or otherwise actively seeking employment under the local union's jurisdiction. Because Flores continued on the OOWCL and filed several applications with employers under Local Union 439's jurisdiction, the Election Supervisor found that Article VI, Section 2(b) excused the work at the craft requirement for him.

I find that Election Supervisor correctly applied the *Rules* and established precedent with respect to the craft requirement, and that his determination is supported by substantial evidence.

### Dues Requirement

The appeals argue that during the period they were unemployed, Mr. Moreno and Mr. Flores either failed to pay "dues" at all or paid the wrong dues rate. Neither this allegation, nor the facts supporting it were set forth in the original protests submitted by Mr. Guertin and Mr. Wild.<sup>1</sup> These allegations therefore could not and were not addressed in ESD 124.

As set forth in ESD 124, on appeal, "absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Supervisor." ESD 124 at 5; *see also Roth*, 11 EAM 53 (July 13, 2011); *Galvan*, 11 EAM 42 (May 10, 2011); *Smith & Leedham Slate*, 06 EAM 78 (December 7, 2006).

The new allegations and evidence submitted on appeal do not present any extraordinary circumstances that would justify consideration by the Elections Appeals Master. In any event, consideration of these new allegations and evidence would not support rejection of the Election Supervisor's determination with respect to the eligibility of Mr. Moreno and Mr. Flores, for substantially the reasons set forth in the OES March 2 Letter.

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<sup>1</sup>Both protests cited Article VI, Section 1(a)(1), but neither protest presented any facts pertaining to payment of dues. The mere citation of this provision of the *Rules* did not provide the Election Supervisor with adequate notice of the specific allegations raised for the first time on appeal.

For the reasons set forth above, and in ESD 124 and the OES March 2 Letter, these appeals are DENIED, and the decision of the Election Supervisor is AFFIRMED.

SO ORDERED.

/s/ \_\_\_\_\_

KATHLEEN A. ROBERTS  
ELECTION APPEALS MASTER

DATED: March 4, 2016