

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: ELIGIBILITY OF)	Protest Decision 2016 ESD 108
WALTER BURKS,)	Issued: February 11, 2016
)	OES Case No. E-122-012516-NE
Local Union 317.)	
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Mark May, member and principal officer of Local Union 317, 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 Walter Burks is ineligible for nomination as 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 317’s delegates and alternate delegates election was held January 23, 2016. Therefore, the 24-month period during which candidates must be in continuous good standing in order to be eligible for nomination ran from January 2014 through December 2015. The protest alleged that Burks is ineligible for delegate because of a break in the 24-month continuous good standing requirement.

To verify Burks’s eligibility during this period, we reviewed TITAN records for dues remitted on his behalf. Burks’s TITAN shows that he was a check-off dues payer with UPS. He had surgery in July 2014 and was off work continuously until November 2014. Dues were deducted from compensation he received in July, which paid him through August 2014. However, he had no compensation from which dues could be deducted in August, September, or October, 2014. Commencing in December 2014 and continuing through March 2015, twice the monthly dues amount was deducted from Burks’s pay, which retired the arrearage that had accumulated during the period he was recuperating from his surgery. Our investigator asked Burks for evidence that, during the months he was off work, he had income from his employer, whether as vacation pay, sick pay, or holiday pay. Burks produced nothing to indicate that he had income during this span from which employer could have deducted dues. Moreover, there is no record in Burks’s dues history that he paid cash dues to the local union during the months he was off work.

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 (July 26, 2010), *appeal withdrawn*, 10 EAM 4 (August 6, 2010). However, where the member lacks earnings or paid leave, it is his obligation to tender dues directly to the local union in order to retain good standing.

A member who pays dues after the due date, as Burks did here through the double deductions that occurred in December 2014 and January, February and March 2015, does not restore good standing status to be eligible for office. IBT constitution, Article X, Section 5(c).

The failure to tender cash dues during the period of unemployment Burks experienced while convalescing from surgery caused an interruption in his 24 months of continuous good standing. Accordingly, we find Burks INELIGIBLE to stand for alternate delegate in Local Union 317's delegates and alternate delegates election.

Before the date of Local Union 317's nominations meeting, Burks made a written request that OES verify his eligibility for nomination. OES reviewed his TITAN and sent him written verification that he was eligible for nomination. That verification was wrong. Burks indeed is ineligible for nomination, as the foregoing discussion explains.

Given this result, Burks requests that Local Union 317 be required to hold a second nominations meeting at which another member may be nominated to fill the position on the slate that Burks sought to fill. We decline this request. We regret the error of advising Burks that he was eligible for nomination when he was not. However, the eligibility requirement of 24 months continuous good standing has long been part of the IBT Constitution and has been incorporated into the *Rules* since the 1991 International Officer Election and Burks knew or should have known that requirement. Burks did know that he was out of work for some four months during the 24-month period without paying cash dues or having earnings or leave pay from which dues could be deducted. Under these circumstances, we will not require the local union to hold another nominations meeting to allow an alternative nominee when Burks had actual knowledge of the facts clearly establishing ineligibility.

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,

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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 108

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