

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: LUIS DIAZ,)	Protest Decision 2010 ESD 15
)	Issued: August 4, 2010
Protestor.)	OES Case Nos. P-021-073010-FW
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Luis Diaz, member and delegate candidate from Local Union 948, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that Lupe Juarez, Noel Alfaro, Glenn Jaegel, Tony Dillon, Elishwa Toma and Bryan Austin are ineligible to be candidates or to nominate or second nominations in the local union’s delegate and alternate delegate election. The protestor contends that these individuals have lost their eligibility because they, as local union officers and executive board members, have failed to comply with an appellate decision of Joint Council 7.

The protestor was tried and convicted on an internal union charge that he knowingly and willfully converted local union funds to personal use by submitting fraudulent lost wage claims by which he was reimbursed for time lost at work while attending local union executive board meetings. The protestor was removed from his office as local union vice-president, suspended from membership, and ordered to reimburse the local union in the amount of \$403.27 that it claimed was misappropriated. The protestor appealed the decision to Joint Council 7 which, after hearing, reversed the trial decision. The joint council ordered the local union immediately to restore the protestor to his position as local union vice-president and, if the protestor had paid the ordered amount of \$403.27, to reimburse that sum to him. The joint council also vacated the suspension so the protestor did not suffer a break in continuous good standing.

On July 28, the protestor filed charges against the local union executive board with the joint council, asserting that the board has met without notifying him of meetings and has failed to provide the reimbursement ordered by the joint council.

With the instant protest, the protestor asserts that the members of the local union executive board who are candidates in the delegate and alternate delegate election or who nominated or seconded such candidates should be held ineligible to do so because of the executive board’s alleged failure to implement and comply with the joint council’s decision.

Article VI, Section 1 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; (3) be eligible to hold office if elected.”

Diaz, 2010 ESD 15
August 4, 2010

The protestor asserts that the respondents do not satisfy the third criterion of this test because their failure to implement the joint council decision renders them ineligible to hold the position of delegate or alternate delegate if elected. We disagree.

A member will be prohibited from serving as a delegate if that member would also be prohibited from holding office under Section 504 of the LMRDA. *Chilcoat*, E35 (January 26, 1996). Section 504 bars from office persons convicted of or imprisoned for certain specified violent crimes, or any felony involving abuse or misuse of position in a labor union or a labor union's benefit plan.

In addition, a member will lose continuous good standing if he is suspended from membership during the eligibility period. *Giacumbo*, E85 (February 14, 1996), *aff'd*, 96 EAM 110 (March 1, 1996).

The respondents are not barred from office under Section 504 of the LMRDA; more importantly, none has been suspended from membership. Therefore, they have not lost eligibility on those grounds. The protestor's pending charges against the respondents and their alleged failure to implement the joint council decision in the protestor's case do not render respondents ineligible. *Eligibility of Keller & O'Donnell*, 2006 ESD 61 (February 7, 2006).

Accordingly, we DENY this 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. 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:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax: (212) 751-4864

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, 1801 K Street, N.W., Suite 421 L, Washington, D.C. 20006, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
2010 ESD 15

Diaz, 2010 ESD 15
August 4, 2010

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Diaz, 2010 ESD 15
August 4, 2010

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