

IN RE:

PATRICK DALY AND DENNIS MCCLERNAND

01 - Elec. App. – 030 (KC)

This matter is an appeal from the Election Administrator's (the "EA") decision 2001 EAD 141, issued February 6, 2001. The hearing was requested by Jock P. Rowe, Secretary-Treasurer of Teamsters Local Union 77 Fort Washington, Pennsylvania.

A hearing was held before me on February 14, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. and Lois Tuttle, Esq. for the Election Administrator's Office; Mr. Rowe; Ken Hall, Esq., counsel for Local Union 77; Mr. Patrick Daly, candidate for delegate and a member of Local Union 77; and Mr. Dennis McClernand, also a candidate for delegate and a member of Local Union 77. Additional submissions were received from Mr. Rowe on February 14, 2001.

Daniel Russell, the protestor and a member of Local Union 77, filed two eligibility protests against Mr. Daly and Mr. McClernand eight calendar days and six business days after the January 17, 2001 Local Union 77 nomination meeting. Although he attended the nomination meeting, and knew of the candidates' nomination, Mr. Russell acknowledged that he did not attempt to file his protest with the EA's office before January 25, 2001 and could not provide any reason for his late filing. On this basis, the EA found Mr. Russell's protests to be untimely filed and denied both.

Mr. Rowe appealed this procedural ruling by the EA, citing to eight EA decisions and one appeal decision¹ which he claims were decided on the merits despite a finding of

¹ Mr. Rowe, in his February 14, 2001 submission, cites to an EA case In Re: Manuel Ciccozzi, 2001 EAD 100, 01 Elec. App. 022 as being decided on the merits despite a claim of untimeliness. In reviewing this matter, I find no reference to timeliness in either the EA decision or mine, and in fact, the protest, according to the

untimeliness². He cites to the appeal decision in In Re: Thomas Krajewski, 01 Elec. App. 021 (February 2, 2001), which was decided on the merits despite the protest being filed six business days after the nominations meeting. This case can be distinguished from the present case. There was a substantial factual question below as to whether the protest was timely filed. Therefore, the EA decided to resolve the matter on the merits rather than on the issue of timeliness. I resolved the case on the same basis on appeal.

As to the merits, Mr. Rowe alleges that Mr. Daly, a dues checkoff member of the Pennsylvania Turnpike Commission (the "PTC"), was on voluntary withdrawal for the months of January to April 1999 due to sick leave, did not pay his dues for those months and therefore does not have the twenty four consecutive months of continuous good standing required under the Rules. Mr. Rowe explains that Mr. Daly did not have earnings for those four months, since his sick and disability payments do not come from the payroll fund. Thus Mr. Daly did not have sufficient earnings to cover his dues during his sick leave and thereby caused a break in his continuous good standing. Mr. Daly has categorically denied having signed the withdrawal card, stating he did not know that (a) he was on withdrawal and (b) there was a dues arrearage until the protest investigation.

The EA's investigation found that the signatures on the withdrawal card did not match those exemplars provided by Mr. Daly and therefore found it to be an involuntary withdrawal. Under prevailing case law, a member under involuntary withdrawal does not lose his eligibility as long as there was sufficient earnings from which dues could be deducted. Here, the EA found Mr. Daly had sufficient earnings during the time he was on sick leave from which dues could have been deducted, and found Mr. Daly to be eligible.

EA findings, was filed on Tuesday, January 9, 2001, exactly two business days after the Saturday, January 6, 2001 nomination meeting.

As to Mr. McClermand, also a dues checkoff member of the PTC, the EA found that he too had late payments for the months of August through November 2000. And, like Mr. Daly, Mr. McClermand was on involuntary withdrawal due to a work-related injury. The EA determined that Mr. McClermand had enough earnings during the time he was on sick leave to cover his dues. Therefore, the EA also found Mr. McClermand to be eligible.

Mr. Rowe claims that Mr. McClermand had no earnings for the months in question since the payments made to him were not wages paid out of the PTC payroll account but insurance benefits paid by a third party administrator and therefore can not be deemed to be earnings from which dues could not have been deducted.

Having read the record before me and considered all the argument presented at the hearing, I affirm the EA decision on the procedural basis of untimeliness and accordingly, the eligibility findings of the EA as to Patrick Daly and Dennis McClermand are affirmed.

_____/s/Kenneth Conboy_____
Kenneth Conboy
Election Appeals Master

Dated: February 15, 2001

² As to those EA decisions relied on by Mr. Rowe that were not appealed, I cannot address the merits of those matters now, and am not bound by them.