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October 29, 2015

DECISION

Protest I-07-12 (Germain)
Eligibility

By email dated October 23, 2015, Gary Germain appealed the Elections Committee October 21, 2015 determination that he was not eligible to run for office because he did not have 12 months of continuous good standing. He was removed from service by the NYCT on April 12, 2015 until June 21, 2015 due to a dispute over asbestos license recertification and involuntarily carried on "Personal Business Leave" by the employer. That dispute is the subject of a grievance; of disciplinary action by the employer and of an active PERB case against both the employer and the Union. He did not pay dues while he was held out. The Protester contends that, because automatic dues checkoff was in place with the employer, his good standing at Local 100 continued during the course of my temporary removal from service. He asserts that that is also consistent with past practice at Local 100. The Protester cites the TWU Constitution Article XIII(3):

Membership dues are due and payable on the first working day in each calendar month. Any member who fails to pay his/her dues for a particular month on or before the fifteenth day of each month shall be in bad standing. Any member to whom dues check off is available and who signs and delivers to the Local Financial Secretary Treasurer, or other authorized person, a check off authorization shall be considered in good standing regardless of when in a particular month the employer deducts his/her dues for such month or when the employer pays his/her dues over to the union. Where for any reason the dues of a member who pays his/her dues by checkoff authorization are not checked off by the employer for any month or months, said member shall remain in good standing until thirty days after the mailing to him/her by registered mail of a notice informing him/her of his/her indebtedness. Failure to pay within said thirty days period shall cause said member to become in bad standing.

The provision cited by the Protester only applies to a member “to whom dues check off is available.” I find that under the circumstances here, checkoff was not available to Mr. Germain while he was in an inactive work status because there were no wages from which dues could have been deducted. Had he been on inactive status because of being sick, injured or laid off, he could have asked for exoneration under Article XVII(4). Being in suspended status, however, it was his responsibility to cash pay his dues in order to maintain good standing. This he failed to do.

There was no obligation for the Union to notify Mr. Germain that his dues were not checked off or that he was in bad standing. The 30-day notice provision in Article XIII(3) applies only to cases where the employer fails to send to the Union the dues of a member to whom checkoff is available and who has authorized it. It is designed to protect the member from mistakes/misdeeds of the employer. It is not meant to deal with a situation where nothing is checked off because there is no income to check it off from because the member is, for example, sick, laid off, suspended or on strike.

The appeal is denied.

In accordance with the International Constitution and the Election Rules, any interested party unsatisfied with this determination may appeal to the Transport Workers Union of America Committee on Appeals. Any appeal shall be in writing and shall be filed in accordance with the procedure set forth in Article IV(6)(I)(1) of the Election Rules and Articles XV and XXII of the International Constitution for the appeal to the International from decisions of Local Unions.

/s/ Barbara C. Deinhardt

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By email:
Gary Germain
Joe Campbell
Vincent O’Hara
Arthur Schwartz, Esq.
Elections Committee