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DECISION

Protest ST-01-24 (Wilson re
eligibility)

By email dated September 8, 2024, Abdullah Wilson filed an appeal from a determination of the Election Committee that he was ineligible to run for Vice-President from TA Surface because he is currently working in a MaBSTOA depot. The Election Committee cites the Surface Transportation Rule found in the 2024 Election Rules Article III(B):

SURFACE TRANSPORTATION RULE

Bus Operators shall *vote* for the Vice-President, Executive Board Members, Convention Delegates and Division Officers in the Division in which they work. They may only *run for office* in the Division where their payroll emanates from, although they must work there at the time of nomination. Even if a candidate is working in a Division at time of nominations, that nominee may not pick out of that division before the election; if they do, they will be disqualified. If a member runs for office in a particular division and wins, they must continue working in the division in which they hold office or be automatically removed from the office.

On September 8, the Election Committee issued the following Clarification to the Surface Transportation Rule:

As stated, the Surface Transportation Rule applies to candidates for Vice President. Vice Presidential candidates may only run for office in the Department (either MABSTOA or TA Surface NYCTA) where their payroll emanates from (which is reflected in their pass number- pass numbers starting with an M are MABSTOA), plus, they must be working in the Department they are looking to be a candidate in, plus, they must have picked a job in the Department they are running in for the switchover scheduled for January 2025. This is not a change. The NYCTA Surface Maintenance Department includes one Division. The MABSTOA Department contains two

Divisions. A MABSTOA member (one with an M in their pass number) cannot run for VP in TA Surface and cannot run for VP in MABSTOA unless they are employed in one of the MABSTOA Divisions at the time of nominations. Also, that MABSTOA member must pick into MABSTOA in the next pick (which will be before the election). A TA Surface member cannot run as a VP in MABSTOA and cannot run as a VP in TA Surface unless they are employed in TA Surface at the time of nominations. That TA Surface candidate must also pick into TA Surface in the next pick.

According to the Election Committee, the appeal should be denied. It asserts that “[g]iven that this rule flows out of the genuine interests of the union, is not designed to protect incumbents, and only applies to a small number of potential candidates, it should not be declared unlawful.”

I find that as applied to Mr. Wilson, the Surface Transportation Rule is unlawful. Under LMRDA guidance, a candidate eligibility requirement may not be applied retroactively if it would result in members having no opportunity to satisfy the requirement. Here, the Election Committee counsel argues that “a [MaBSTOA] member who wants to run for office in MaBSTOA needed only pick into MaBSTOA in the Winter 2023 pick, which was only 11 months ago.” The problem with this argument is that such a member would not have known by the time of the Winter 2023 pick that s/he had to make such a choice in order to be able to run now. As recently as 2022, in an election to fill a vacancy for MaBSTOA Division I Executive Board, the rule was:

**TWU Election Committee Supplemental Election Notice No. 10
PETITION SIGNATURES ELIGIBILITY & CANDIDATE OBLIGATION**

1. All signatures must be from MaBSTOA employee working in Division 1
2. Candidate running who is not presently working in the Division, he or she who is running must pick into that division at the next pick or be disqualified from holding office.

As I held in I-1-22, “The second part of the Rule [in effect at the time] states that if a MaBSTOA Division 1 employee is not currently working out of Division 1, she

will have to pick back into Division 1 at the next opportunity. The Election Committee asserts that '[t]his is only logical. Someone working in the Flatbush Depot cannot be the representative of the four depots located in MaBSTOA Division I.' I find that the Rule is not an unreasonable one to achieve the Union's objective to ensure that the members' representatives work out of the same Division as and alongside those they represent." This was the most recent expression of the Surface Transportation Rule. In the last Union-wide elections in 2018 and 2021, the Rule read simply, "Bus Operators shall *vote* for the Vice-President, Executive Board Members, and Division Officers in the Division in which they work. They may only *run for office* in the Division where their payroll emanates from."

The Election Committee has provided no evidence that Mr. Wilson, a member whose payroll emanates from the TA but who is currently working in an OA facility, knew or should have known or could have known that the rules had changed or would change such that he had to pick into a TA depot last winter so that he was working in the same Division or Department where he was being paid if he wanted to run for office in this election cycle. The new Surface Transportation Rule constitutes what is essentially an *ex post facto* rule that should not be enforced. The Election Committee should publish a revised Surface Transportation Rule similar to that in effect in 2022, but making it clear that it applies both to Departments and Divisions. Mr. Wilson would be eligible to run for TA Surface VP with the understanding that he would be required to pick into a TA position at the next opportunity or be removed from office were he to win.

The appeal is granted.

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(B)(9) of the Election Rules and Article XXII of the International Constitution for the appeal to the

International from decisions of Local Unions.



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