

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: MIKE WEBB,)	Protest Decision 2006 ESD 155
)	Issued: March 24, 2006
Protestor.)	OES Case No. P-06-065-011706-AT
_____)	

Mike Webb, a member and independent candidate for delegate of Local Union 391, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). He requested that we investigate reports of *Rules* infractions said to have occurred at the local union’s nominations meeting; he implied in his letter that the *Rules* infraction involved intimidation.

On March 7, 2006, the Election Supervisor issued Protest Decision 2006 ESD 135 which found that Local Union 391 staff member Randy Conrad told retirees present at the meeting that they could not give advice to the Members First slate during the nominations meeting. However, based on interviews with David Manolis, who nominated all the Members First candidates for delegate, the Election Supervisor determined that Conrad’s statements to retirees had not interfered with the nominations process; accordingly, the protest was denied.

Webb appealed. TDU joined the appeal by counsel and asserted, for the first time, that Conrad’s statements to the retirees either intimidated them or injected sufficient confusion among the supporters of the Members First slate so as to cause Manolis to nominate only 7 candidates for delegate rather than the 8 candidates he had sought to nominate. In particular, TDU alleged that retiree Tommy Burke was in the act of telling Manolis that he was one delegate short of a full slate when Conrad interfered and told Burke that he could not give advice; the result, TDU asserted, was that Manolis was prevented from correcting his error. Manolis was not himself a party to the appeal and did not participate in the telephonic hearing.

Based on TDU’s representations at the hearing, the Election Appeals Master remanded the case for further investigation in order to resolve factual ambiguities and the new issues not previously raised.

Findings of Fact

The protest was filed by Mike Webb, an independent candidate for delegate, who did not attend the January 14, 2006 nomination meeting. The written protest states merely that “[n]umerous sources have informed me of events that occurred at the nomination of Local Union 391 Teamster Convention delegates ...” The protest suggested that those unspecified events may have constituted “intimidation.” The written protest did not identify the alleged perpetrator of the alleged intimidation, nor were the purported victim(s) named. When contacted by telephone, Webb refused to identify his sources or any witnesses to the alleged *Rules* violation; however, he did name Randy Conrad, an employee of Local Union 391, as the alleged *Rules* violator.

Conrad is an organizer on the staff of Local 391. Dave Manolis, the head of the Members First Slate, provided a list of witnesses to Conrad’s conduct. The allegation was that Conrad, who took photos during the nominations process, told retirees Frank Bryant and Tommy Burke that they were guests of the local union and could not give advice to members who were making nominations and seconds. Bryant and Burke were sitting with supporters of the Members First Slate. It was also

alleged that Conrad was taking pictures for the purpose of intimidating and harassing individuals who supported the Members First slate.

Local Union 391 is allotted eight delegates and eight alternate delegates for the IBT convention. Two slates (composed of candidates for delegate and alternate delegate), one independent candidate for delegate and one independent candidate for alternate were nominated. The Members First slate was a partial slate (seven candidates for delegate and five for alternate delegate) composed of members who are not officers of and not supported by the officers and business agents of the local union. Cipriani's Team 391 slate was a full slate of candidates composed of members, officers and business agents and was supported by the officers and business agents of the local union. The independent candidates were Mike Webb for delegate and Bill Williams for alternate.

The nominations meeting was chaired from the podium by Maralin Falik of Election Services Corporation. She was assisted by Wayne Luchtenberg of Election Services Corporation, who was in the audience and handed each nominee a candidate information sheet as soon as the nominee was nominated. Election Supervisor representative J. Griffin Morgan attended the meeting and sat in the back center of the hall so he could observe the meeting.

The union hall is large. It had multiple sections of seats, with approximately 4 rows of 5 seats each in a section and aisles separating the sections. Four floor microphones were available to members who wished to speak. The microphones were located at the front and rear of the aisles that separated the middle sections from those on the far right and far left. The nominations meeting was tape-recorded. The recording was preserved and transcribed by administrative assistant Stormy Fields.

Cipriani's Team 391 slate made its nominations from the mike that was located in the front of the hall, on the left side when viewed from the podium. The Members First slate made its nominations from the mike located in the back of the hall, on the right side when viewed from the podium.

During the nominations meeting, two individuals were taking photos. Lacy Bond took pictures with a digital camera. Randy Conrad took pictures with a disposable camera. Conrad and Lacy have regularly taken pictures at Local 391 functions. Their pictures are used in the Local's newsletter - *Voice of Teamsters Local 391*. Conrad's pictures have also appeared in a smaller newsletter for Roadway drivers - *Dock-It 391*.

Both photographers walked around the hall during the meeting taking photos. A review of the photos shows that Lacy Bond took more shots of the members and supporters of Cipriani's Team 391 slate while Conrad took more of the Members First slate and its supporters. Bond could take his pictures from a distance because of the sophistication of his camera. Conrad was required to get close to his subjects because he was using a disposable camera. The pictures being taken were of activity during the nominations meeting.

The nominations meeting commenced shortly after 10 a.m. After being introduced by Cipriani, Falik commenced the meeting by explaining the *Rules* and the process. She then opened

the floor for nominations for delegate. The nominations for delegate took place in the following order:

Nominated by:	Seconded by:	Candidate	Accepted
Written nomination by Avery Costin and Herman Alston	Written second by George Golde and Ray Doggeth	Mike Webb	Written Acceptance
Jack Cipriani	Claude Gray	Clinton Graham	In Person Acceptance
Jerry Hoots	John Yeattes	Eddie Lloyd	In Person Acceptance, later withdrew at candidates' meeting
Nathaniel Wright	John Vaughn	Jackie Horton	In Person Acceptance, later withdrew at candidates' meeting
Jack Cipriani	Claude Gray	Duke Blue	In Person Acceptance
Jack Cipriani	Claude Gray	Al Jones	In Person Acceptance
Jack Cipriani	Claude Gray	Paris Ware	In Person Acceptance
Jack Cipriani	Claude Gray	Steve Bishop	In Person Acceptance
Jack Cipriani	Claude Gray	Vernon Gammon	In Person Acceptance
Jack Cipriani	Claude Gray	Donny Brown	In Person Acceptance
Jack Cipriani	Claude Gray	Rachel Baisden	In Person Acceptance
Nathaniel Wright	Clevon Mack	Will Combs	Declined nomination
David Manolis	Lee White	Kevin Wright	No Written Acceptance and not present at meeting – Nomination withdrawn “for now”
David Manolis	Tyler Buckner	Brian Ferguson	Written Acceptance
David Manolis	Lee White	Tyler Buckner	In Person Acceptance
David Manolis	Lee White	Murphy Jones	In Person Acceptance
David Manolis	Tyler Buckner	Okie Ramey	Written Acceptance
David Manolis	Tyler Buckner	Lee White	In Person Acceptance
David Manolis	Lee White	Emmett Ramsey	Written Acceptance
David Manolis	Tyler Buckner	Bill Armstrong	Written Acceptance handed up to Chair by Manolis
David Manolis	Lee White	Jon Harley	Written Acceptance submitted by Manolis, but rejected by the Chair because the acceptance was for the alternate delegate position. Nomination withdrawn by Manolis
David Manolis	Tyler Buckner	Mike Evans	In Person Acceptance

After Mike Evans was nominated, the chair called 3 times for additional nominations and, hearing none, closed nominations for delegate. At the conclusion of the delegate nominations process, 4 independent candidates had been nominated and three (Webb, Lloyd and Horton) had accepted. Cipriani had nominated 8 candidates, all of whom had accepted in person. Manolis had

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nominated ten candidates. Two of them, Wright and Harley, were not present and did not have proper acceptances for the delegate position. Manolis withdrew their nominations. That left 8 candidates (Ferguson, Buckner, Jones, Ramey, White, Ramsey, Armstrong, and Evans) that Manolis nominated. Of these, 4 accepted the nominations in person; for the other 4, written acceptances were presented to the chair.

Falik then opened the floor for the nomination of alternate delegates, which took place in the following order:

Nominated by:	Seconded by:	Candidate	Accepted
Dennis Phillips and Bill Armstrong	Gary Daniel and Thomas Lacerda	Bill Williams	Written Acceptance
Jack Cipriani	Steve Bishop	Tony Scott	In Person Acceptance
Jack Cipriani	Steve Bishop	Joseph Garner	In Person Acceptance
Jack Cipriani	Steve Bishop	Lou Casper	In Person Acceptance
Jack Cipriani	Steve Bishop	Davey Grubbs	In Person Acceptance
Jack Cipriani	Steve Bishop	Johnny Gentry	In Person Acceptance
Jack Cipriani	Steve Bishop	Chuck Suber	In Person Acceptance
Jack Cipriani	Steve Bishop	Wayne Gibbs	In Person Acceptance
Jack Cipriani	Steve Bishop	George Phillips	In Person Acceptance
Tyler Buckner	Lee White	Jon Harley	Written Acceptance
Tyler Buckner	Lee White	Dennis Phillips	Written Acceptance
Tyler Buckner	Lee White	James St. Peter	In Person Acceptance
Tyler Buckner	Lee White	Chris Wrench	In Person Acceptance
Tyler Buckner	Lee White	Bill Armstrong	Chair states it does not have an acceptance letter from Bill Armstrong and Buckner withdraws the nomination.

Further nominations were called for 3 times and, hearing none, the nominations were closed for the position of alternate delegate.

The first report of an incident involving Conrad came from James St. Peter at the candidates' meeting that followed the nominations meeting. St. Peter reported to Falik and Morgan that Conrad had been intimidating the Members First slate by taking pictures and by telling the retirees that they could not speak and that they would be thrown out of the meeting if they gave advice. St. Peter said he almost came to the floor mike to complain but did not. He did not allege at the candidates' meeting that Conrad's action interfered with his ability to be nominated as a delegate rather than an alternate. He was advised that his remedy for Conrad's conduct was to file a protest. Manolis was also advised that if a protest was filed the allegation of intimidation would be investigated.

The following individuals were interviewed by telephone in the two weeks following the nominations meeting. Robert Jones, a Local 391 member, who was standing on the back right side of the hall, heard Conrad say something like: "You are a guest here and you cannot say anything to

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anybody.” Jones reports that Conrad then said something about a protest and walked across the hall to Cipriani.

Chris Wrench, a Members First candidate for alternate, was sitting to the left of retirees Bryant and Burke. He heard Conrad ask them if they were giving advice and threaten to file a protest. Wrench said he overlooked Conrad’s behavior, but said it made going to a local meeting less appealing if the local’s staff was going to talk like that.

Mike Evans, a Members First candidate for delegate, saw Conrad taking pictures. He heard Conrad say to Tommy Burke something similar to: “Are you instructing him? You are only here because we allow guests to be here. You cannot instruct him.”

Pete George, a retiree sitting directly behind Bryant and Burke, heard Conrad say, “Are you giving advice? You are a guest here. You cannot give instructions during the meeting.” He saw Burke stand up and tell Conrad to get out of his face. Conrad then went across the hall and spoke with Cipriani.

Bryant reported that he was not intimidated by Conrad but that Conrad did ask him if he was giving advice and told him that he was only a guest. He also saw Burke stand up and tell Conrad to get out of his face. Conrad then went across the hall and spoke with Cipriani.

Murphy Jones, a Members First candidate for delegate, reported that Conrad instructed the retired members sitting around him not to talk and not to give advice.

Tommy Burke is a retired member of Local 391 and he says that he helped put together the Members First slate. He was interviewed in January and again in person at the ballot count on March 17. Burke says that initially they had a slate of eight delegates and eight alternates. At 10:00 p.m. the night before the nominations meeting, Burke called Roger Bishop, who was going to be a candidate for alternate, and Bishop told him he had changed his mind and was not going to be a candidate. Burke says that before the nominations meeting started the next morning, he and Manolis realized that they were short three more candidates because Alton Young had not arrived; Young was supposed to attend to accept his own nomination and to bring the written acceptances of Kevin Wright and Bill Head for delegate.

Burke says that they thought the nominations meeting would follow after the general membership meeting, and they were hoping Young would show up by the time he was needed. However, the nominations meeting was conducted before the general business meeting and began shortly after 10:00 a.m., the time listed on the nominations meeting notice that had been posted and mailed to members three weeks earlier. Burke said that they let Cipriani make his nominations first, still hoping that Young would show up. Burke further stated that Manolis nominated Kevin Wright first, knowing that there was no acceptance and hoping that Young would show up with his acceptance before nominations closed. Burke stated that “we were four candidates short” for delegate and that anybody would know that in that situation candidates should be moved up from alternate delegate so as to nominate eight delegates and four alternate delegates.

Burke recalled that during the meeting Conrad spoke first to Bryant and asked him: “Are you giving advice? Burke is not positive but thinks Bryant said no. Burke was later speaking with Manolis when Conrad jumped into the conversation: “Are you giving advice? Are you giving

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advice?” Burke said he was not and Conrad responded: “You are here as a guest.” Conrad kept taking his picture, and Burke says that he calmly stood up and told Conrad to: “Get out of my face”. Burke recalled that Conrad responded by asking: “Are you threatening me?” To which Burke says he replied: “No, but you need to get out of my face.” Burke stated that he stood up because Conrad was staring him down with a dirty look, harassing them, and taking photos in an intimidating manner. Burke says after he had his confrontation with Conrad, Conrad left the area where the retirees and Members First slate members were sitting. Conrad did not return for the balance of the meeting, although Burke said he thought Conrad walked down the length of the aisle and past where the mike was located one time.

Burke was not able to state at what point in the meeting Conrad interrupted his conversation with Manolis. Burke was only able to recall that when Conrad interrupted Manolis and him, the two of them were trying to figure out what to do. Burke stated that Mike Evans, initially slotted as an alternate delegate candidate, was present at the meeting and had agreed to run as a delegate. Burke says that James St. Peter had not entered the conversation at that time. Burke stated that later St. Peter said to him: “Have David [Manolis] nominate me as a delegate.” Burke said he nodded his head to St. Peter. Burke says he then tried to get Manolis’ attention when Manolis was at the microphone. Burke says Manolis did not come over to talk with him. Burke says he did not walk over to Manolis and did not tell St. Peter he had not conveyed the message.

Although not a candidate because he was declared ineligible, Manolis is an organizer of the Members First slate. Manolis saw Conrad say something to Bryant; he was not sure what was said but thought it was, “Are you advising him?” He then heard Burke tell Conrad to: “Get out of my face” and “Get that camera out of my face.” He recalled that Conrad responded by asking: “Are you threatening me?” Manolis said the conversation between Burke and Conrad took place in low voices and while he was at the mike making nominations of delegates, not when he was sitting talking with Burke. Manolis reported that he saw James St. Peter walk up toward the mike and then turn around and sit back down without speaking. Manolis recalls that St. Peter approached the mike during the nomination of delegates and prior to St. Peter accepting his own nomination.

In January, when he was interviewed, Manolis stated that he would not have filed the protest. It was his view that Conrad was acting like a jerk but that there was no harm and thus no foul. Manolis, who did most of the nominating for the Members First slate, stated that he was not impeded in getting his candidates nominated.

When he was interviewed again on March 19, Manolis repeated that he still believed that he had nominated 8 candidates. In his words: “I really thought I had 8 when I left the hall that day” and “I honestly thought I had 8.” When the order of nominations outlined above was recited to him, he acknowledged that he thought that those were his 8 candidates and that Evans was number 8. Manolis stated that he recognized that, lacking written acceptances because of Young’s absence, he needed to find candidates for delegate to fill his slate. The Members First Slate originally planned to nominate Armstrong and Evans for alternate delegate, and Manolis came to the meeting holding Armstrong’s written acceptance for alternate delegate nomination. Manolis stated that he decided to move Armstrong and Evans up from the planned alternate delegate positions to the delegate positions in order to nominate 8 delegate candidates. In addition, Manolis stated that he knew St. Peter and Wrench were present and could have been nominated for delegate. In making the decision to nominate Evans for delegate instead of St. Peter or Wrench, Manolis stated that he knew

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Evans, having worked with him before, and was comfortable moving him from alternate delegate to delegate.

Manolis said it got a little confusing and he was a little flustered while at the mike. Manolis stated that he was still looking for Young to come through the door with the acceptances and that it was Young's failure to appear with his and the other two acceptances that caused him the most confusion. Conrad's statements to Burke were a distraction to Manolis but paled in comparison to his distraction over Young's failure to appear with the written acceptances.

Tyler Buckner reported that Conrad told the retired members that: "You are not allowed to give advice to anyone; you are just a guest." Buckner thinks that Conrad's comments caused harm to the Members First slate. Buckner states that they might have moved one of their alternate candidates to delegate, but they were not able to do so because of the confusion caused by Conrad. Buckner states that George Foster was sitting next to him and that when asked by James St. Peter who Conrad was, Foster responded that Conrad was an organizer.

St. Peter was interviewed on March 19. St. Peter was sitting next to Mike Evans and in front of Tommy Burke. St. Peter was aware that one of the candidates had not showed up for the meeting and that written acceptances were missing for others. He said that he and Mike Evans were talking between themselves and that they realized they could be moved up to the delegate position. St. Peter said Evans wanted to be moved up to a delegate position more than he did. At some point in the meeting, St. Peter said he told Burke to "do with me what you did with Mike Evans." St. Peter also stated that he did not think he was going to be needed to be a delegate.

St. Peter recalled that he was sitting in the aisle in front of Burke and that, when Conrad was speaking with Burke, Conrad was right next to St. Peter. "Our knees were almost touching." St. Peter recalls the conversation as follows: Conrad: "Are you talking? Are you talking? Are you giving advice? You are here as a guest. I will have you thrown out" Burke (standing up): "You better get out of my face." Conrad: "Are you threatening me?" Burke: "No, just get out of my face." St. Peter reported that this conversation upset him and he went to the mike to report it to the chair of the meeting. He says he went to the mike and stood about three feet away. Tyler Buckner said to him: "What are you doing?" St. Peter reports that he responded: "I am going to put a stop to this. I am going to tell her." He then pointed to Falik at the podium. St. Peter states that when he pointed to Falik, Conrad walked away and did not return. Because Conrad walked away, St. Peter said he did not say anything to the chair of the meeting. St. Peter reported that he did ask while near the mike, "Who is this guy?" and that he was told he was an organizer for the local union.

St. Peter reported that he had only been to two union meetings in his life and Conrad's behavior was very upsetting. St. Peter recalled that the conversation between Conrad and Burke took place after he had been nominated as an alternate delegate. St. Peter stated that he had been up to the mike and had accepted his nomination. He then sat down. After he sat down, Conrad started speaking to Burke.

George Foster is a member of the local union. Foster was sitting next to Buckner. Foster observed Conrad taking pictures "like he always does". Foster stated that he was paying attention to the nominations and the chair at the podium. He says that he did not hear Conrad speak to anyone, just saw him taking pictures. Foster reports that another member asked him who Conrad

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was; he responded that he is a member and organizer. Foster says Buckner told the same member: "Do not pay him any attention, keep your mind on what we are doing."

Ron Gregory is a Local Union 391 member. He was sitting right in front of the Members First group. He reported that he saw Conrad taking pictures but did not see him talking to anyone. He said there were no raised voices and nothing drew his attention to the group immediately behind him.

Clay Tucker is minister and honorary member of the local union. He was sitting near the back approximately three to four rows in front of the mike that was being used. Tucker was in the far right middle section in a seat that bordered the aisle the mike was in. Tucker reported that Conrad sat in front of him during part of the meeting. Tucker only saw Conrad speak with the other person taking pictures. Tucker did not see Conrad speak with anyone else. Nothing occurred during the nominations meeting that drew Tucker's attention. He did not hear raised voices or observe any sort of altercation.

Lacy Bond was taking pictures during the nominations meeting. He reports that Conrad was closer to the people whose pictures he was taking because of the difference in the cameras they were using. He did hear Conrad tell another person: "You don't need to be telling these guys how to run an election." That person responded: "I will do damn well as I please." Bond heard Conrad say: "You are retired. You are a guest." Bond also observed that some guy jumped up in Conrad's face, but he did not know what caused the guy to jump up. He saw Conrad go over to speak with Cipriani.

Cipriani does not recall what Conrad spoke to him about during the nominations meeting. Cipriani states that at some time on the day of the nominations meeting, Conrad asked him if retirees could give advice to members. He does not know if that conversation happened during the meeting or at some other time. The reason he states he is not able to recall is because the issue of retiree involvement had been raised earlier. Bryant had been assisting members in getting Leedham petitions signed. As a result, there had been a discussion about what Bryant could and could not do regarding the petitions. Cipriani reports that he did not instruct Conrad to speak to retirees or to bother members making nominations. Cipriani said he saw Conrad and Bond taking pictures but that he did not see Conrad speaking with Burke or Bryant.

Falik, who chaired the meeting from the podium, did not see a dispute or altercation during the meeting. She saw that pictures were being taken. The first she learned of the allegation of misconduct during the meeting was at the candidates' meeting.

Luchtenberg was Falik's assistant during the meeting. As members were nominated, he gave them candidate information sheets. He was close to the Members First slate when its candidates were being nominated. He did not see any disturbance or notice raised voices. The first he learned of the allegation of misconduct during the meeting was at the candidates' meeting.

Conrad was initially interviewed in person at his office at Local Union 391. Conrad denied speaking to the retired members during the nominations meeting. He stated that prior to the nominations meeting he was asked whether retirees were allowed to attend the meeting. He asked Falik, who was going to chair the meeting, whether retirees could attend. Falik asked Election Supervisor representative Morgan, who was present to observe the meeting, and was told that there

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were no rules on the issue and that the local should follow its normal custom regarding retirees.¹ Based on past practice, retirees were allowed to attend.

Conrad stated his only conversation with a retiree was to tell Frank Bryant prior to the meeting that it was okay for him to be in the meeting. Conrad specifically denied that he spoke with retiree Tommy Burke or that he told Frank Bryant or Tommy Burke: "You cannot assist the members during the nomination meeting." Conrad repeatedly stated that he did not speak with retirees or members supporting the Members First slate at any time after the nomination meeting started.

Several days later, Conrad was interviewed a second time by phone. Conrad was told that six witnesses reported that he had confronted retirees Bryant and Burke during the nomination, asking them if they were giving advice and telling them that they were guests of the local and could not advise the members. Conrad was also told that all witnesses agreed that after speaking with Bryant and Burke, he crossed the union hall and spoke with Cipriani. After hearing what the other witnesses said, Conrad still maintained that all his conversations with Bryant were before the meeting started.

Conrad agreed with the witnesses that after speaking with Bryant he crossed the room and spoke with Cipriani. However, Conrad maintained that his conversation with Cipriani, after speaking with Bryant, was before the nominations meeting started.

Conrad agreed with the other witnesses that at the time he spoke with Cipriani, Cipriani was on the floor of the hall by a floor mike and not on the podium. He also agreed that Cipriani opened the meeting, introduced Falik and turned the meeting over to Falik to chair the nominations. Conrad acknowledged that Cipriani then left the podium. After nominations were opened, Cipriani began making nominations from the floor mike. Conrad admitted that it was while Cipriani was at the floor mike that Conrad crossed the floor and spoke with him. Conrad then stated that he might have been confused about when he spoke with Bryant and that it might have been during the nominations meeting after all.

Conrad still denied that he said anything to Bryant other than it was okay for him to be in the meeting. Conrad denied that he questioned any retiree about giving advice and denied that he told retirees that they were guests and could not advise members during the nomination process. Conrad admitted that one of the retirees, Tommy Burke, jumped up in his face, but denied saying anything to Burke that would cause him to react.

At the candidates' meeting, Falik announced that she had found Bill Armstrong's acceptance as an alternate delegate. Cipriani opposed allowing Armstrong's nomination as an alternate because his nomination had been withdrawn by the nominator. Cipriani also objected because he recalled that Armstrong had been nominated as a candidate for delegate. Cipriani's recollection was correct. The transcript of the nominations meeting shows that Armstrong was first nominated by Manolis during the portion of the meeting devoted to delegate nominations. Thus:

Manolis: I'd like to nominate Bill Armstrong.

¹ Retirees are normally allowed to attend the membership meetings at Local Union 391 and were allowed to attend this meeting. There were retirees at the nominations meeting supporting both slates.

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- Falik: Is there a second?
- Buckner: I'm Tyler Buckner, I'll second.
- Falik: Is the candidate here?
- Manolis: No, ma'am. I have a letter.
- Falik: Can you bring it up, please?

Manolis then delivered the written acceptance for Armstrong to the podium. When he handed up the Armstrong acceptance, he also handed up the acceptance for Jon Harley, the next candidate he intended to nominate for delegate. The Harley acceptance prompted the following from Falik:

- Falik: Thank you. Just one second. We're just checking. Okay, what is this [referring to the Harley acceptance]?
- Manolis: It's for the next one.
- Falik: For the next one? Are you doing the nominating?

Manolis then returned to his microphone at the rear of the hall and nominated Harley. After the nomination was seconded, Falik ruled the Harley nomination out of order because the written acceptance Manolis handed up for him indicated that he was accepting a nomination for alternate delegate, not for delegate: "Wait a minute, wait a minute. On here [referring to the written acceptance], he's accepting for alternate, not for delegate. So, I don't have an acceptance from him." At this ruling, Manolis withdrew the Harley nomination, "Pull him," and substituted Evans as his eighth delegate candidate.

Subsequently, during the alternate delegate nominations, Buckner nominated Armstrong again, but this time for alternate. Falik denied that she had a written acceptance for Armstrong. At this, Buckner said, "We'll withdraw it then. I thought you had a letter. Sorry." The acceptance letter to which Buckner referred was the one Manolis handed up during the delegate nominations.

When Falik found the written acceptance for Armstrong at the candidates' meeting and observed that he had accepted nomination as alternate delegate, Morgan intervened and ruled that the nomination for the alternate position had been withdrawn only because the chair announced that Armstrong had not submitted a written acceptance. As a written acceptance for alternate delegate indeed had been presented, Armstrong's nomination for alternate delegate was allowed. However, Armstrong's nomination for delegate was voided at the candidates' meeting for two reasons: his acceptance was only for the alternate delegate position, and he could not be nominated for both delegate and alternate delegate.

Manolis had erred in nominating Armstrong and submitting his written acceptance to the chair as a delegate candidate. The chair of the meeting had erred in allowing his nomination for delegate without a proper acceptance. Following the revelation that Armstrong had submitted an acceptance for alternate and not delegate, Armstrong was considered a nominated candidate for the

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alternate delegate position. This reduced the number of Members First slate candidates for delegate from eight to seven. It increased the number of Members First slate candidates for alternate delegate from four to five.

Manolis and Buckner, the two members who had nominated Armstrong for delegate and alternate delegate, respectively, were present at the candidates' meeting. When the issue of Armstrong's nomination was resolved with his nomination being accepted for alternate delegate and disallowed for delegate, neither Manolis, Buckner, nor anyone else objected. No one said that the Members First slate was deprived of an eighth delegate candidate because Armstrong's acceptance was not accepted for that position. Likewise, no one requested that the nominations meeting be reconvened to allow nomination of an eighth candidate for delegate on the Members First slate.

No protest was filed concerning Armstrong's nomination.

The next day, Sunday, January 15, the Members First slate completed and submitted its slate declaration form with Bill Armstrong as an alternate delegate. The local posted the nominations meeting results listing Bill Armstrong as an alternate delegate.

The ballots were counted on March 17 with the following results:

Delegates		Alternate Delegates	
Donny Brown	1,426	Tony Scott	1,419
Steve Bishop, Jr.	1,426	Johnny Gentry	1,419
Rachel Baisden	1,420	George Phillips	1,410
Clinton Graham	1,411	Joseph L. Garner, Jr.	1,409
Al Jones	1,404	Wayne Gibbs	1,400
Duke Blue	1,400	Chuck Surber	1,393
Paris Ware	1,398	Lou Casper	1,386
Vernon Gammon	1,386	Davey Grubbs	1,382
Mike Evans	546	Bill Armstrong	557
Lee White	541	Jon Harley	543
Tyler U. Buckner	535	James St. Peter	542
Brian L. Ferguson	535	Dennis Phillips	542
Murphy L. Jones	534	Chris Wench	541
Okie Ramey	533	Bill Williams	142
Emmet Ramsay	529		
Mike Webb	144		

Analysis

On remand, the Election Appeals Master requested that the investigation focus on what was said and the timing of the events, in order to help resolve the issue of whether Conrad's statements to Burke interfered with the Members First slate's nomination of an eighth delegate candidate. There is general consistency among eleven witnesses regarding the conversation that took place between Conrad and Burke.

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There is great inconsistency among the key witnesses regarding when the conversation took place. Burke reports that Conrad interrupted him when he was speaking with Manolis as they were trying to figure out what to do about being four candidates short. Burke reports that it was later that St. Peter talked to him about being a delegate, and he then tried to get Manolis' attention while Manolis was at the mike. Manolis reports that the conversation between Burke and Conrad did not take place while he was talking to Burke, but rather while he was at the mike nominating candidates. St. Peter reports the Burke-Conrad encounter took place after the nomination for delegates was closed and after he was nominated for and accepted the alternate delegate position.

Regardless of the timing of the conversation, we conclude that the Conrad's activities did not interfere with Manolis nominating eight candidates for delegate. We base this finding on 1) Manolis's own statements; 2) the record showing that Manolis actually nominated eight candidates for delegate; and 3) the record showing Manolis's actions in response to Young's failure to appear at the meeting with written acceptances. Manolis recognized that his slate was lacking delegate candidates because of Young's failure to appear at the meeting. To remedy this problem, Manolis nominated members for delegate that he had intended to nominate for alternate delegate. In doing so, Manolis nominated 8 candidates for delegate, Armstrong among them. With respect to Armstrong, the Members First Slate apparently planned to nominate him for alternate delegate and came to the nomination meeting with Armstrong's written acceptance for alternate delegate slot. Manolis possessed Armstrong's written acceptance and should have noted that it was valid only for alternate delegate before nominating Armstrong for delegate. After nominations were closed and Armstrong was nominated a second time for alternate delegate, the content of Armstrong's acceptance became an issue in the candidates' meeting. At that meeting, Armstrong was removed as a candidate for delegate for failure to have a written acceptance and was properly placed as an alternate delegate candidate.

Accordingly, we DENY this protest. We find that Conrad did not interfere with the nomination of Members First candidates for delegate. We find that Manolis inadvertently erred in nominating Armstrong for delegate when he did not possess a valid acceptance from Armstrong for that position. We find that Manolis knew he had candidates for alternate delegate present in the hall whom he could have nominated for delegate instead, and that he did so in what he regarded as a successful attempt to fill his slate's complement of delegate candidates. We find, finally, that any confusion that may have occurred was the result of Young's failure to appear and Manolis' failure to read the Armstrong acceptance.

Although we do not find that Conrad violated the *Rules* with respect to his activity at the local union's nominations meeting, we conclude nonetheless that he failed to fulfill his obligation under the *Rules* to cooperate with our investigator. Article XIII, Section 2(g) warns that "[f]ailure to cooperate with the Election Supervisor or the Election Appeals Master (including making false statements to the Election Supervisor or Election Appeals Master) may result in referral of the matter to the Government for appropriate action under law (including the Consent Order), or such other remedy as the Election Supervisor or the Election Appeals Master deems appropriate." Despite repeated opportunity to acknowledge to our investigator the actions he took and statements he made at the nominations meeting, Conrad instead expressly denied that he asked retirees if they were giving advice and further denied telling retirees they were guests of the local union and could not participate even to the extent of speaking with members who were present. Conrad's refusal to acknowledge his activity caused us to expend additional investigative resources to question all witnesses with personal knowledge of the incident, investigation that candid responses would have

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obviated. Conrad did not relent even when confronted by the evidence of 11 witnesses, one of whom he supplied. The *Rules* require candor that Conrad failed to exhibit. Accordingly, we find that he violated Article XIII, Section 2(g).

Although we have authority under the *Rules* to refer Conrad to the Government “for appropriate action under law,” we find that the interests the *Rules* promote will be served by a notice posting. We order Conrad to sign and post the notice attached to this decision on all union bulletin boards at worksites under the jurisdiction of Local Union 391. Such posting must be accomplished within seven (7) days of the date of this decision. We further order that this notice remain posted for a period of thirty (30) consecutive days following its posting. We will permit Conrad to enlist the assistance of stewards in making this posting only to the following extent: he may mail or email the signed notice to stewards with the foregoing posting requirements. We direct the local union to supply Conrad with mailing labels and/or email addresses for the stewards. Beyond this assistance, the local union may not supply clerical, photocopying, or office supply assistance, and Conrad shall not use any union-paid time in complying with this remedy. Within two (2) days of completing this posting, Conrad shall file with us an affidavit of compliance.

A decision of the Election Supervisor takes immediate effect unless stayed. *Lopez*, 96 EAM 73 (February 13, 1996).

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, New York 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, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20007-5135, 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
2006 ESD 155

NOTICE TO ALL MEMBERS OF LOCAL UNION 391 FROM RANDY CONRAD, ORGANIZER

The Election Supervisor has found that I violated the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”) by failing to acknowledge the actions I took and statements I made during the nominations meeting for Local Union 391’s delegate and alternate delegate election. The *Rules* require that all witnesses cooperate with the Election Supervisor in the investigation of protests, and I did not do so.

The Election Supervisor has ordered me to sign and post this notice on all union bulletin boards under the jurisdiction of Local Union 391.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity which violates the *Rules* should be filed with Richard W. Mark, Election Supervisor, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20007-5135, telephone: 888-IBT-2006, fax: 202-454-1501, email: electionsupervisor@ibtvote.org.

Randy Conrad
Organizer, IBT Local Union 391

This notice has been approved by Election Supervisor Richard W. Mark and must remain posted for thirty (30) consecutive days.

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