

**OFFICE OF THE ELECTION SUPERVISOR**  
**for the**  
**INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

<b>IN RE: MARK CAPPER,</b>	)	Protest Decision 2006 ESD 295
<b>SAMUEL PACULA, and</b>	)	Issued: June 2, 2006
<b>ANTHONY GENTILE,</b>	)	OES Case Nos. P-06-134-021406-ME,
	)	P-06-114-020106-ME &
<b>Protestors.</b>	)	P-06-113-020106-ME
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Mark Capper, Samuel Bacula and Anthony Gentile, members of Local Union 384 nominated as candidates for delegate or alternate delegate on the Integrity slate, filed separate pre-election protests pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). Each protest alleged that incumbent local union officers who were also candidates for delegate or alternate delegate on the opposing Leadership slate coerced or retaliated against each protestor because of his candidacy, in violation of the *Rules*.

Election Supervisor representatives William Kane and John Pegula investigated this protest.

**Findings of Fact**

At Local Union 384’s nominations meeting held January 22, 2006, candidates were nominated for the local union’s 4 delegate and 3 alternate delegate positions. Nominated for delegate on the Leadership slate were president Robert Keller, secretary-treasurer Matthew Condron, vice president Bobby Gaines, and trustee Chris O’Donnell; nominated for alternate delegate were trustee Brian Mitchell and two other candidates, Ray O’Brien and Gene Lonchar. The Integrity slate was headed by trustee Mark Capper as a delegate candidate. Additional delegate candidates on that slate were Joseph Ibbetson, William Pacula and Ralph Mastrangelo. Anthony Gentile was the Integrity slate’s lone candidate for alternate delegate. In addition to these slates, two independent candidates were nominated for alternate delegate, Kathleen Duffy and Steven Davido.

Immediately prior to the nominations meeting, the members of the Integrity slate and its supporters distributed a 2-page flyer in the local union parking lot. The first page exhorted members to vote for the Integrity slate and included the “[t]op fifteen reasons to vote against Bob Keller and his slate ... (There were too many to stop at ten).” The second page was titled, “Chris O’Donnell treats his wife to dinner with your Union credit card!” (emphasis in original). It included a receipt purportedly from the Hurricane Seafood restaurant in St. Pete Beach, Florida. The receipt listed the items ordered (Hurricane Platter, \$9.95; Seafood Pasta, no sauce, \$12.95; Blackened Grouper and Chef’s Veggies, \$15.95; tax, \$2.72; and tip, \$9.00) for a total charge of \$50.57. The receipt indicated that the bill was charged to a MasterCard; it listed only the last 4 digits of the 16-digit credit card number, and the card’s expiration date of November 2005; the receipt did not include a signature line or O’Donnell’s signature. The campaign flyer commentary read, “They said the sunset was beautiful! The IBT auditor must have missed this one! What else did this auditor miss?” This page of the flyer also disparaged local union secretary-treasurer Condron and promoted the 4 delegate candidates on the Integrity slate. In large print at the bottom of this page were these words: “Bob Keller claims This is a Stolen Union Document.”

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Capper was first elected a trustee of the local union in January 2002; he was hired by the local union as a business agent at about the same time. In his trustee position, Capper has the responsibility under Article X, Section 8 of the IBT constitution and Section 12 of the local union's bylaws to review and approved the financial books and records of the local union on a periodic basis.

In May 2002, Chris O'Donnell, another trustee and business agent of the local union, attended a union conference in Florida. The reimbursement request O'Donnell submitted for the expenses he incurred at the conference included the Hurricane Seafood receipt. Although the local union was obligated to reimburse the expenses O'Donnell incurred for his own lodging and meals, O'Donnell was not entitled to obtain reimbursement for his wife's expenses. However, O'Donnell's reimbursement request apparently failed to exclude his wife's portion of the Hurricane Seafood bill.

Evidence suggests that O'Donnell subsequently was directed to repay the local union the sum of \$21.49. Investigation did not reveal how this figure was calculated.

Capper obtained a copy of the receipt on a date in 2002 that he could not verify. Capper told our investigator that he obtained the receipt directly from the restaurant; he stated he telephoned the restaurant and requested that the receipt be faxed to his home, and the restaurant complied. Capper denied taking the receipt or a copy of it from local union files. Capper was unable to provide any substantiation for his assertion that the receipt was faxed to his home, such as a fax transmission showing the restaurant fax number.

Local union president Keller terminated Capper as a business agent in June 2005. Capper has worked since that time as a pick-up driver for ABF, although he remained an elected trustee and executive board member of the local union. At least since the time of his discharge, Capper and Keller have been political opponents.

According to Capper, Capper brought internal union charges against Keller in or about October 2005 alleging retaliation by Keller arising from a local union election. Thereafter, Joe Ibbetson brought internal union charges against O'Donnell related to the misuse of the union credit card. The restaurant receipt was used to support Ibbetson's charge. At a local union executive board meeting held January 18, 2006 at which Keller and Capper were present, Keller asked Capper if he wished to resign as trustee before charges were filed against him concerning the restaurant receipt. According to Capper, Keller said the receipt was union property and that Capper had stolen it. Capper did not resign. Four days later, Capper and the other members of his slate in the delegate and alternate delegate election distributed the campaign flyers containing the receipt.

On January 24, 2 days after the nominations meeting, Keller sent a letter to Capper on local union letterhead that included the following:

It has come to my attention through a signed affidavit from Brother Joe Ibbetson and your own admission that you are in possession of an official union document. Specifically, a travel receipt with the union's credit card number and expiration date that you acknowledged possession of at the January 18<sup>th</sup> 2006 Executive

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Board Meeting. This is the same receipt that you have copied and handed out at the January 22<sup>nd</sup> General Membership Meeting. You are in violation of the International Brotherhood of Teamsters Constitution Article 19, section 9. I am directing you to return the original document along with all copies to this union immediately along with any other official union documents which you may have in your possession.

Your cavalier attitude in this matter is very disturbing, yet typical of your recent behavior towards the membership and the Teamsters Union as a whole. You have intentionally jeopardized the safety of our member's [sic] assets. As a Trustee of this Local Union your actions are inexcusable and will be dealt with accordingly by my office.

Also on January 24, Keller wrote to each candidate on the Integrity slate as follows:

On January 22, 2006 at the General Membership Meeting, you handed out a copy of an official Union document. You are in violation of the International Brotherhood of Teamsters Constitution Article 19, Section 9. I am directing you to return all copies of this document to the Union Hall immediately along with any other official Union documents or copies, which you may have in your possession.

Article 19, Section 9 of the IBT constitution states the following:

Any member (1) who wrongfully takes or retains any money, books, papers, or any other property belonging to the International Brotherhood of Teamsters, any Joint Council, Local Union, or other subordinate body or (2) who destroys any books, bills, receipts, vouchers, or other property of the International Brotherhood of Teamsters, any Joint Council, Local Union, or other subordinate body, may be tried in the manner provided for the trial of other offenses.

On February 2, 2006, local union secretary-treasurer Condron wrote each of the candidates on the Integrity slate, advising that "[c]harges have been filed against you for violating Teamsters Local 384 By-Laws and violating the International Brotherhood of Teamsters Constitution. You will be notified in writing when you will need to appear for your hearing." The letters did not specify the conduct said to have violated these documents.

On January 31, 2006, Gentile filed the protest that we docketed as OES Case No. P-06-113-020106-ME. He alleged a pattern of attempts by local union officials to coerce him to withdraw his candidacy for alternate delegate on the Integrity slate.

Investigation of Gentile's protest showed that he is a 15-year member of the local union and has been a shop steward at UPS Willow Grove for 3½ years. He told our investigator that, on January 19, 2006, he was contacted by Mark Capper about running on the Integrity slate. Gentile stated he had never met Capper but agreed to attend a breakfast meeting with him and others on Sunday morning, January 22, before the nominations meeting, to discuss potential candidacy. At breakfast on January 22, Gentile agreed to run as alternate delegate. Thereafter, he and the other candidates on the Integrity slate went to the union hall for the nominations

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meeting. Before the meeting started, they and their supporters passed out the 2-page flyer described above. Gentile stated that he distributed 7 or 8 such flyers that morning.

Two days later, Gentile received a call at home between 5:00 and 6:00 p.m. from Brian Mitchell, local union trustee and business agent and an alternate delegate candidate on the Leadership slate. Gentile's caller ID showed that the call was placed from the local union hall. Gentile knew Mitchell as a union official. During the call, which lasted about 5 minutes, Mitchell told Gentile that he "didn't know what [he is] getting into" by running with Capper. Gentile believed Mitchell was calling as a friend who was offering advice. Although Gentile did not know Mitchell well, he had only met Capper a few days earlier and did not know Capper at all. Gentile said the call with Mitchell ended with Gentile requesting a meeting with Mitchell to discuss the matter further.

The face-to-face meeting occurred the next day at UPS Willow Grove. Mitchell repeated to Gentile that he should reconsider running with Capper and informed Gentile that Gentile had done something illegal by passing out the campaign literature the previous Sunday. Mitchell explained that, since the literature contained information about O'Donnell's dinner expense, it violated IBT and Labor Department regulations.

The next day, January 26, Gentile attended a retirement celebration for Rick Loy at the Willow Grove facility. Local president Keller was there as well. Gentile spoke with Keller about the campaign literature issue and asked how the matter could be rectified. According to Gentile, Keller replied that Gentile could start by turning in the literature he still possessed. Gentile did so promptly; he gave Keller the remaining 3 copies of the 2-page flyer he had. Business agent Mitchell was also present when Gentile spoke with Keller. According to Gentile, Mitchell handed Gentile the paperwork that would accomplish his withdrawal as a candidate for alternate delegate.

On Friday, January 27, Gentile told Mitchell he had not yet decided whether he would withdraw as a candidate. The following Monday, January 30, Gentile again met with Mitchell. Mitchell repeated that Gentile did not know what he was getting into by running with Capper. According to Gentile, Mitchell also hinted that there was a chance Gentile could be barred from the union because he distributed the campaign literature.

Gentile discussed these events with Capper, who prepared the protest Gentile faxed to the Election Supervisor dated January 31.

On February 6, Gentile told our investigator that he was withdrawing his candidacy and that he wished to withdraw his protest as well. He explained that the situation was "political stuff" he did not wish to be involved in, and that he was "totally disillusioned" with the "internal squabbling in the local."

Mitchell corroborated much of Gentile's recounting of events. Thus, Mitchell agreed that he telephoned Gentile on January 24 and told him that he was "going down the wrong path" in running with Capper. Mitchell described his contact with Gentile as a "courtesy call," the purpose of which was not to persuade Gentile to drop out of the race but instead to suggest that Gentile not associate with Capper. Mitchell's account of the January 25, 26, 27 and 30 contacts with Gentile matched what Gentile told our investigator, except for one point. Mitchell stated

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that Gentile asked Keller at Willow Grove on January 26 how he could “get out” of the race for alternate delegate. Mitchell stated that neither he, Keller, nor secretary-treasurer Condron, who also was present, knew the correct procedure. Accordingly, Condron contacted the International Union and was advised that Gentile would be required to submit a written withdrawal of his candidacy to Condron. That evening, Mitchell prepared the withdrawal memorandum for Gentile’s potential use and gave it to him on January 27.

Mitchell told our investigator that he saw Gentile at Willow Grove next on Friday, February 3. According to Mitchell, Gentile appeared in “an angry state,” throwing packages around. Gentile explained that he had made the wrong decision submitting an election protest.

Mitchell stated that Gentile submitted his withdrawal of candidacy on February 6, but the memo he submitted was not the one Mitchell had prepared.

Mitchell denied to our investigator that he coerced or intimidated Gentile in any way during their discussions. He claimed that he always made the point of telling Gentile that it was his decision what to do with respect to his candidacy.

William Pacula, delegate candidate on the Integrity slate, filed a protest dated January 31 that we docketed as OES Case No. P-06-114-020106-ME. The protest appeared to have been prepared on the same typewriter or printer as that of Gentile. Its language largely mirrored that of Gentile’s protest.

Pacula is also employed at Willow Grove. He told our investigator that he too was telephoned by Mitchell on January 24 at about 5:45 p.m. Mitchell called Pacula on Pacula’s cell phone. Pacula stated that Mitchell was “pretty negative” during the phone call, telling Pacula that if he did not withdraw from Capper’s ticket, he “would go down with” Capper. According to Pacula, Mitchell said that Keller and Capper had “some personal issues,” and that Pacula would get into trouble if he stayed with Capper.

The next morning, Mitchell spoke with Pacula face-to-face at Willow Grove. Mitchell told Pacula that Capper was “bad news” and repeated that Pacula would go down with Capper if he stuck with him. Pacula replied that he didn’t know “where you guys are coming from.” Pacula told Mitchell that, in June 2005 at a stewards’ dinner, Pacula had expressed dissatisfaction to Keller about the way Keller had handled an issue. The next day, according to what Pacula told Mitchell, Keller contacted Pacula and told Pacula that if he ever got fired, Keller could drag out any procedures to have him reinstated for 6 to 18 months and wondered what Pacula would do for money during that time.

Pacula stated that Mitchell did not give him any paperwork to withdraw his candidacy. Pacula stated that there were no further oral attempts to have him withdraw, and he did not withdraw from the election.

Mitchell told our investigator that he had the two contacts with Pacula that Pacula described. However, Mitchell denied that he intended to coerce or intimidate Pacula. Instead, he stated that his purpose was to inform Pacula of his view of Capper and to tell him of the possibility that charges might be filed regarding the campaign literature.

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Capper filed his protest dated February 6 which we docketed as OES Case No. P-06-134-021406-ME. The protest alleged that the notice of internal union charges Capper received constituted prohibited retaliation under the *Rules*.

The internal union charges against Capper were processed to a hearing before the local union executive board on April 19, 2006. Although he was present when the executive board meeting began, Capper left the meeting when the board began consideration of the charges against him.

The executive board issued a written decision on the charges against Capper on May 17, 2006. The decision found that Capper had violated the IBT constitution and the local union bylaws by obtaining, possessing and refusing to surrender the receipt for O'Donnell's dinner expense. The decision also found that Capper had violated the IBT constitution and local union bylaws by refusing to sign the financial books of the local union for the months of July, August and October 2005. The executive board issued "judgment" against Capper suspending him from local union membership for 12 months, directing him to return all originals and copies of local union records, including receipts, directing him to remove from his website all copies of local union receipts, and directing him to apologize to the executive board and the members of the local union.

The executive board members sitting in judgment of Capper were Condron, Mitchell, O'Donnell, Bobby Gaines, and three others who were not candidates in the delegate and alternate delegate election. As the charging party, Keller did not sign the executive board finding.

Capper appealed the decision to the Joint Council. The appeal is pending. The charges against the remaining members of the Integrity slate have not been processed to hearing, nor have they been dismissed.

### **Analysis**

Article VII, Section 12(g) of the *Rules* provide the following:

Retaliation or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or other person or entity against a Union member, officer or employee for exercising any right guaranteed by this or any other Article of the *Rules* is prohibited.

As we said in *Cooper*, 2005 ESD 8 (September 2, 2005), to establish a violation of this provision, "the evidence must demonstrate that 1) the alleged victim engaged in activity protected by the *Rules*, 2) the charged party took adverse action against the alleged victim, and 3) the protected activity was a motivating factor in the adverse action."

Article VII, Section 12(a), among other places, identifies activity protected by the *Rules*, *viz.*

All Union members retain the right to participate in campaign activities, including the right to run for office, to support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions.

Except in limited circumstances not at issue in this case, the *Rules* protect the content of campaign material from regulation by the local union.

Investigation shows that the protestors easily satisfy each of the elements necessary to establish prohibited retaliation under the *Rules*. Thus, Capper, Pacula and Gentile engaged in protected activity in at least two ways: by becoming candidates for and seeking election as delegates and alternate delegate and by distributing campaign material in support of their candidacies.

On the second element, they were subjected to adverse action in the form of internal union charges and, in Capper's case, adverse judgment by the local union executive board.

Third, there is no doubt on this record that the internal union charges were the direct result of the candidates' protected political activity.

We reject the local union's contention that the copy of the O'Donnell receipt that Capper used in campaign literature the slate members distributed was "union property" that Capper was required to surrender under Article XIX of the IBT constitution. Capper as trustee is an elected overseer of the union's finances. In that role, he is permitted to advise the local union membership that the local union fisc has been wrongfully converted to personal use. Moreover, he is permitted to present proof of the expenditures he claims to be improper.

We further reject the rationale Keller and the executive board advanced that the receipt exposed the local union credit card to misuse. The receipt showed only the last 4 digits of the 16 digit credit card number; further, by the time the receipt was first distributed, the credit card had expired. We can fathom no means by which the information on the receipt could result in its misuse. We note the irony of the executive board's action in asserting the need to protect the credit card from misuse while O'Donnell, the executive board member who actually misused the card, is not punished for it.

By taking the action it took against Capper, the local union executive board members – who not coincidentally are Capper's political opponents and, in O'Donnell's case, the official who committed financial impropriety – violated two separate provisions of the *Rules*. They retaliated against Capper for protected activity, and they engaged in prohibited regulation of the content of campaign material.

By instituting internal union charges against the other slate members of the Integrity slate, the local union committed the same *Rules* violations against these individuals as well.

Accordingly, we GRANT the protests and find that Keller, Condrón, Mitchell, O'Donnell, Gaines, and those who acted with them violated the *Rules*. In particular, we find that Keller retaliated against each member of the Integrity slate for protected activity by proffering charges of internal union misconduct against them. We find that each of the members of the executive board who sat in judgment of Capper retaliated against Capper for protected activity.

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**Remedy**

When the Election Supervisor determines that the *Rules* have been violated, he “may take whatever remedial action is deemed appropriate.” Article XIII, Section 4. In fashioning the appropriate remedy, the Election Supervisor views the nature and seriousness of the violation as well as its potential for interfering with the election process.

We order Robert Keller and the executive board of Local Union 384 to cease and desist from the retaliation we find here. We further order the executive board to rescind the judgment it rendered against Mark Capper on May 17, 2006 and to hold of no force or effect the penalty it imposed against him. We further order the local union executive board to dismiss with prejudice all pending charges against Capper, Ibbetson, Pacula, Gentile and any other person and to refrain from accepting or instituting any internal union charges arising from obtaining, possessing, displaying and/or distributing the O’Donnell receipt in any form. We further order Keller, Condron, Mitchell, O’Donnell, and Gaines, within 2 days of receipt of this decision to sign and post the notice attached to this decision all union bulletin boards under the jurisdiction of the local union and to maintain the posting for a period of 90 days from the date of posting. Each person who we order direct to sign and post the notice must submit an affidavit of compliance to our office within 2 days of completing the remedy.

We further order the local union to reimburse any expenses incurred by Capper, Ibbetson, Pacula, Gentile and any other person against whom internal union charges in responding to the charges. Such reimburseable expenses include, but are not limited to attorneys fees and lost wages. Any such claims shall be submitted to our office within 10 days of receipt of this decision. Upon receipt of such claims, we will order the local union to make reimbursement.

We order no further remedy. In particular, we do not direct that the local union rerun its delegate and alternate delegate election nor do we disqualify any person elected in that election. Although Gentile withdrew from his alternate delegate candidacy, he strenuously asserted to our investigator that he did so because of his distaste for the “internal squabbling” within the local union. The remaining candidates pursued their candidacies through to the tally of ballots.

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



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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 295*

**NOTICE TO ALL MEMBERS OF LOCAL UNION 384 FROM  
PRESIDENT ROBERT KELLER,  
SECRETARY-TREASURER MATTHEW CONDRON,  
VICE PRESIDENT BOBBY GAINES,  
TRUSTEES CHRIS O'DONNELL AND BRIAN MITCHELL**

The Rules for the 2005-2006 IBT International Union Delegate and International Officer Election ("*Rules*") protect the right of each member "to participate in campaign activities, including the right to run for office, to support or oppose any candidate, [and] to aid or campaign for any candidate." The *Rules* further prohibit retaliation or threat of retaliation by the Union against a Union member for exercising any right guaranteed by the *Rules* is prohibited.

The Election Supervisor has found that we, and those who acted with us, retaliated against Mark Capper, Joseph Ibbetson, William Pacula, and Anthony Gentile, candidates for delegate or alternate delegate on the Integrity slate, by bringing internal union charges against them for distributing campaign material that included a restaurant receipt demonstrating that Trustee Chris O'Donnell had misused union funds.

The Election Supervisor will not tolerate such retaliation.

The Election Supervisor has ordered us to cease and desist from retaliating against any member for their exercise of rights protected by the *Rules*. The Election Supervisor has further ordered us to rescind our order of internal union discipline we imposed against Mark Capper and to dismiss the pending charges of internal union misconduct lodged against Joseph Ibbetson, William Pacula and Anthony Gentile. Finally, the Election Supervisor has ordered the local union to reimburse any expense Capper, Ibbetson, Pacula, and Gentile incurred in responding to the improper internal union charges.

The Election Supervisor has ordered Local Union 384 to post this notice on all union bulletin boards under the jurisdiction of the local union and to maintain the posting for 90 consecutive days.

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. 20006, telephone: 888-IBT-2006, fax: 202-454-1501, email: [electionsupervisor@ibtvote.org](mailto:electionsupervisor@ibtvote.org).

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Robert Keller, President

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Chris O'Donnell, Trustee

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Matthew Condron, Secretary-Treasurer

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Brian Mitchell, Trustee

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Bobby Gaines, Vice President

***This is an official notice prepared and approved by Richard W. Mark, Election Supervisor for the International Brotherhood of Teamsters. It must remain posted for 90 calendar days and must not be defaced or covered up.***

**DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):**

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