

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

IN RE: CLAUDE GRAY,)	Protest Decision 2011 ESD 103
)	Issued: February 8, 2011
Protestor.)	OES Case No. P-097-012411-AT
_____)	

Claude Gray, member, president and delegate candidate from Local Union 391, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that a candidate in the local union delegates and alternate delegates election violated the *Rules* by posting a political message on the guest book page of the local union's website, thereby using union resources to promote his campaign in violation of the *Rules*.

Election Supervisor representative J. Griffin Morgan investigated this protest.

Findings of Fact

Local Union 391 maintains a website at <http://www.teamsterslocal391.org>. Visitors to the website, whether or not members of the local union, may submit comments for posting on the guest book page of the site. When a comment is submitted, an e-mail alert is automatically generated to the website administrator, who must approve the comment before it becomes visible on the website. Once a comment is approved, the administrator can thereafter remove the comment and it will not appear on the website.

On January 8, 2011, Local Union 391 held its nominations meeting for delegates and alternate delegates to the IBT convention. Daniel Taylor was nominated as a candidate for alternate delegate on the Gammon-McGaha Team 391 slate. On January 13, 2001, Taylor submitted a comment for posting to the guest book page. The comment stated:

I just want to say that I am excited to be an alternate on the Vernon Gammon Mike McGaha slate, which is very diverse and determine to get Local 391 reunified under Vernon Gammon and UPSers as well as our VERY IMPORTANT companies that make up Local 391 will have Our varying own Mike McGaha back with the backbone we need to run 391 strong likes it days of R.V. Durham and Leonard Reeder and Jack Cipriani GOD Bless you all!!! Thank you for great CONTRACT once again... Thank you JESUS WHEWWWW!!!!!!!

The comment is not yet visible on the guest book page.

The website administrator is Bobbie Hanner, assistant to Local Union 391 president Claude Gray. Following her return from vacation, she first reviewed comments submitted for posting to the guest book on Sunday, January 23 and found Taylor's comment. She did not know whether postings regarding the delegates election were permitted, so on January 24 she

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asked Gray. Hanner has not yet approved the posting, pending instruction from Gray. Gray filed this protest on January 24, 2011, contending that campaign messages are not permitted on the website because the *Rules* prohibit use of union resources to campaign.

Hanner told our investigator that she has been the website administrator since August 2009. She stated that there are no written guidelines regarding whether to approve or remove a post. She stated that during the time that she has been the website administrator she has not posted approximately 3 to 5 comments; these include comments that reflect negatively on the local union, its contracts, or an officer or business agent of the local union. She stated she also has not posted a comment that appeared to be a sales attempt from a vendor who was not a member of the local union. She stated that when she had questions about whether a posting was appropriate she asked either Gray or the business agent responsible for the subject matter of the posting.

Our investigator reviewed all postings to the guest book that had been approved since the launch of the local union's website. Most fell into three categories: inquiries about obtaining employment or joining a union; congratulations to the local union; or individuals simply signing the guest book. Hanner stated that the local union incurs no expense when an individual posts a message to the guest book.

Analysis

Article VII, Section 12(c) of the *Rules* prohibits use of union funds, facilities, equipment, and the like to campaign. We find that Local Union 391's website and its guest book page constitute a union facility that may not be used to campaign, absent advance written notice to all candidates, which has not been given. We distinguish electronic bulletin boards and chat rooms that exist elsewhere in cyberspace from the local union's guest book, which is actively moderated by an employee of the local union and over which the local union exerts exclusive control. Permitting campaign activity in this space runs counter to the *Rules*' general prohibition on use of union resources to support campaign activity.

Article VII, Section 12(d) does not change this result. That provision states that "[n]o restrictions shall be placed upon candidates' or members' preexisting rights to use ... Union bulletin boards for campaign publicity. Such facilities ... shall be made available to all candidates and members on a non-discriminatory basis." The local union historically has exercised tight control of the content posted, permitting only that material that is consistent with the goals of trade unionism and union-protected employment. Given the limits the union moderator has placed on use of the guest book over its history, we find that members do not have a pre-existing right to use this electronic message board for general postings. Accordingly, the union does not violate the *Rules* by excluding campaign postings from the site.

Accordingly, we GRANT this protest and direct the union not to post Taylor's comment or the campaign comment of any other person to the guest book of its website.

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

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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, NY 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, 1801 K Street, N.W., Suite 421 L, Washington, D.C. 20006, 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
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DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
braymond@teamster.org

David J. Hoffa
Hoffa Hall 2011
1100 Connecticut Avenue, N.W., Ste. 730
Washington, D.C. 20036
hoffadav@hotmail.com

Ken Paff
Teamsters for a Democratic Union
P.O. Box 10128
Detroit, MI 48210-0128
ken@tdu.org

Barbara Harvey
1394 E. Jefferson Avenue
Detroit, MI 48207
blmharvey@sbcglobal.net

Fred Gegare
P.O. Box 9663
Green Bay, WI 54308-9663
kirchmanb@yahoo.com

Scott D. Soldon
Previant Goldberg
1555 North RiverCenter Drive, Ste. 202
P.O. Box 12993
Milwaukee, WI 53212
sds@previant.com

Fred Zuckerman, President
Teamsters Local Union 89
3813 Taylor Blvd.
Louisville, KY 40215
fredzuckerman@aol.com

Robert M. Colone, Esq.
P.O. Box 272
Sellersburg, IN 47172-0272
rmcolone@hotmail.com

Carl Biers
Box 424, 315 Flatbush Avenue
Brooklyn, NY 11217
info@SandyPope2011.org

Julian Gonzalez
Lewis, Clifton & Nikolaidis, P.C.
350 Seventh Avenue, Suite 1800
New York, NY 10001-5013
jgonzalez@lcnlaw.com

Claude Gray, President
Teamsters Local Union 391
P.O. Box 35405
Greensboro, NC 27425
cgray65663@aol.com

Daniel Taylor
705 Robin Lane
Archdale, CA 27263
dtteamster@aol.com

Vernon Gammon, Secretary–Treasurer
Teamsters Local Union 391
3910 Teamsters Place
Colfax, NC 27235
vgammon@teamsterslocal391.org

Mike Webb
1200 Oak Grove Church Road
Wake Forest, NC 27587
d2h2w2@yahoo.com

J. Griffin Morgan
Elliot Pishko Morgan
426 Old Salem Road
Winston-Salem, NC 27101
jgmorgan@epmlaw.com

Maureen Geraghty
426 Old Salem Road
Winston-Salem, NC 27101
mg@geraghtylawfirm.com

Kathryn Naylor
Office of the Election Supervisor
1801 K Street, N.W., Suite 421 L
Washington, D.C. 20006
knaylor@ibtvote.org

Jeffrey Ellison
214 S. Main Street, Ste. 210
Ann Arbor, MI 48104
EllisonEsq@aol.com