

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

IN RE: CHIP ROTH,)	Protest Decision 2011 ESD 296
)	Issued: July 4, 2011
Protestor.)	OES Case No. P-277-061511-AT
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Chip Roth, member and business agent of 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 Local Union 391 president Claude Gray and three members of the local union’s executive board terminated the employment of organizer JoCarolyn Wilkins in retaliation for her campaign activity during the delegates election.

Election Supervisor representative J. Griffin Morgan investigated this protest.

Findings of Fact

JoCarolyn Wilkins is employed by the Guilford County school system and is a member of Local Union 391. Pursuant to an agreement between the school system and the local union, Wilkins has worked as a project organizer for the local union, which has reimbursed the school system the cost of her wages and benefits. This arrangement is renewed every six months, effective January 1 and July 1. The cost of Wilkins’ wages and benefits is \$26,577.11 for six months, or \$53,154.22 per year. Under this arrangement, Wilkins worked continuously for Local Union 391 from November 1, 2006 through June 30, 2011¹. Local Union 391’s executive board voted on June 13, 2011 not to renew its contract with the Guilford County schools for the next six months. Accordingly, Wilkins will return to her job with the Guilford County schools.

The motion not to renew the contract with Guilford County schools for Wilkins’ services was made by local union president Claude Gray. Including Gray, the local union executive board is comprised of seven members. Four, including Gray, were members of the Gray/Bishop Experienced Team slate that lost the delegates election and will likely run on the same slate in the upcoming fall 2011 officer/business agent election. These four board members voted in favor of Gray’s motion to not renew the contract for Wilkins’ services, with Gray casting the tie-breaking vote. The other three members were on the Gammon-McGaha Team 391 slate that won the delegates election and will likely run on the same slate in the upcoming fall 2011 officer/business agent election. These three members voted against Gray’s motion.

Wilkins was a winning candidate for alternate delegate on the Gammon-McGaha Team 391 slate. She received the second highest number of votes in that election. Secretary-Treasurer Vernon Gammon stated that she would likely be a candidate for trustee on his slate in the fall 2011 officer/business agent election.

¹ From November 2006 through June 2007, the IBT paid \$9,000.00 to Local Union 391 to assist with the payment of Wilkins’ wages and benefits. The local union paid the full salary thereafter.

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Two other winning candidates on the Gammon-McGaha Team 391 slate were local union employees. The first-ranked winning candidate for delegate, Rachel Wells, works for Local Union 391 as an organizer. Steve Jones, the third-ranked winning candidate for delegate, is Local Union 391's organizing director. Both Wells and Jones are senior to Wilkins in their local union employment. Both Wells and Jones have continued in their union employment.

On January 7, 2011, the executive board voted to hire Al Jones as an assistant business agent for UPS in Greensboro, High Point and Winston-Salem, NC. The business agent previously assigned to those three facilities, protestor Chip Roth, was transferred to work with public sector employees. During the same executive board meeting, Gray stated that he may need to lay off organizers Rachel Wells and JoCarolyn Wilkins to pay for the new business agent.²

Protestor Roth charged that the decision not to renew Wilkins' contract was the release of the guillotine that had been hanging over Wilkins' head since Gray threatened to lay off organizers Wilkins and Wells during the January 7, 2011 executive board meeting. Roth alleged that Gray threatened to terminate Wilkins on January 7 because she opposed Gray and his slate in the pending delegates election and that Gray has now carried out his threatened retaliation after Wilkins campaigned vigorously to defeat Gray's slate.

Following the January 7 executive board meeting, Local Union 391 has stabilized financially. It had a net income after expenses of: \$57,968.88 in January; \$4,193.23 in February; \$45,633.75 in March; \$40,194.61 in April; and a net loss of \$33,629.02 in May. The local union retired the line of credit obtained to repair the tornado damage to the local union hall.

At the May 13, 2011 executive board meeting, Gray requested approval to hire Keith McCorkle as an assistant business agent representing mostly UPS members in eastern North Carolina along with some freight and industrial workers. Gammon requested and obtained an agreement that McCorkle's hiring would be reviewed in three months and that McCorkle's continued employment was conditioned on the local union continuing to do well financially. After obtaining this agreement, Gammon moved to approve Gray's request to hire McCorkle. The motion was seconded and approved unanimously.

Prior to hiring McCorkle, two business agents, Bob Brown and local union vice president Steve Bishop, serviced the members in eastern North Carolina. Brown represented 796 members at 25 worksites; Bishop, 1,328 members at 17 locations. On his hiring, McCorkle became responsible for 457 members in 15 locations. This reduced Brown's responsibility to 701 members in 15 locations and Bishop's to 966 members in 12 locations.

² The changes in job assignments of the local union's business agents and organizers is described in *Gammon*, 2011 ESD 100 (denying protest alleging that political retaliation motivated the change in job assignments or the potential lay off of Wilkins and Wells). There, we found Local Union 391 executive board members associated with the Gammon-McGaha slate told Wilkins and Wells of the layoff discussion in January, and circulated that information among the membership. We found that Gray did not make any layoff threat to Wilkins or Wells, whether connected to the delegate election or otherwise. *Id.* at 13-14.

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Both before and after McCorkle's hiring, the other private sector business agents had the following responsibilities: Al Jones, 1,425 UPS members at 3 locations; George Phillips, 511 members at 10 locations; Tony Scott, 497 members at 7 locations; secretary-treasurer Vernon Gammon, 625 members at 2 locations; and Wayne Gibbs, 686 members at 8 locations.

Local Union 391 has 2,163 public sector employees, of which 1,392 are school employees in six different counties and 771 are police officers for four municipalities or counties. In January 2011, protestor Roth was reassigned from UPS representation to representing public sector employees. Also assigned to representing public sector employees were organizers Wells and Wilkins and organizing director Steve Jones. In *Gammon, supra*, we found that Jones was primarily responsible for organizing, but that principal responsibilities of Wells and Wilkins were to service the local union's public sector members. Jones also assists in representing public sector employees, mostly police officers³.

Gray, Bishop and Garner stated that they voted not to renew Wilkins' contract because they believed that with Roth's transfer to the public sector it was not necessary to have four local union employees (Roth, Wilkins, Wells and Jones) representing 2,100 employees. The timing of the decision not to renew her contract was connected to the July 1 renewal date of the local union's arrangement with Guilford County schools. They stated the decision not to renew the contract was not related to Wilkins' candidacy for alternate delegate or her campaign activity during that election. Further, they stated that the hiring decisions in January and May and the June decision to terminate Wilkins' employment were motivated by a desire to provide better representation to the local union's membership and to balance the workloads of business agents and organizers, especially between UPS members and public service members.

Protestor Roth is not on the executive board but believes that the decision not to renew Wilkins' contract was motivated by Wilkins' opposition to Gray's slate in the delegates election. Roth offered no additional evidence to connect the June employment decision to Wilkin's electoral activity. However, Roth directed our investigator's attention to a letter Gray recently sent to the IBT's General Secretary-Treasurer asking whether public school employees were eligible to hold local union office; Roth argued that this letter was evidence of Gray's animus toward Wilkins.

Executive board member Rick Armstrong voted against the motion to terminate Wilkins' contract. He stated that it did not make financial sense to hire McCorkle at \$100,000 per year and terminate Wilkins at \$56,000 per year. He stated that during the board meeting Gray was complaining that Wilkins was not doing a good job. Armstrong stated that he opposed basing a termination on incompetence because there was no documentation in Wilkins' personnel file to support incompetence. Armstrong stated that the local union had done well financially in recent months and did not believe that finances were a legitimate reason to terminate Wilkins. Armstrong concluded that the hiring of McCorkle was made to strengthen the Gray/Bishop slate in the upcoming officer/business agent election and that the termination of Wilkins was motivated by a desire to weaken the opposition slate.

³ In North Carolina, public sector employees may not bargain collectively and have no grievance or arbitration process. Thus, organizers and business agents representing public sector employees are not responsible for bargaining contracts or handling grievances.

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Secretary-treasurer Gammon stated that the decision not to renew the contract for Wilkins went back to the original protest that we denied in *Gammon*, when Gray stated his intention to terminate organizers Wilkins and Wells and then changed his mind during the executive board meeting. Gammon stated that Gray delayed the decision not to renew Wilkins' contract until June because the local union does not hold membership meetings in June, July or August. Gammon stated he wrote to and received confirmation from the IBT's General Secretary-Treasurer that public school employees, who do not work in the summer, would be eligible to vote in the October 2011 officer/business agent election. Gammon stated that Gray then wrote to the IBT's General Secretary-Treasurer asking whether public school employees were eligible to hold local union office. Gammon believes that Gray's letter demonstrated his animus toward Wilkins. Gammon stated that he believed Gray wrote the letter hoping that Wilkins would be held ineligible for the officer/business agent election. Gammon said he feared that Wells and executive assistant Stormy Fields would be fired by Gray prior to the upcoming officer election in retaliation for their support for Gammon and his slate in opposition to Gray and the Gray/Bishop slate.

In addition, Gammon stated that during the delegates election, Wilkins was vocal in her opposition to Gray and his leadership ability. Gammon says that Wilkins actively exercised her free speech rights to inform local union members of her opposition to Gray and his slate in the delegates election.

In support of his position that Wilkins' contract non-renewal was retaliatory, Gammon cited two recent Election Supervisor decisions, *Lytle*, 2011 ESD 282 (June 23, 2011), *aff'd*, 11 EAM 51 (June 30, 2011) (finding discharge of business agent was prohibited retaliation for business agent's candidacy in the delegates election), and *Bales*, 2011 ESD 286 (finding that internal union charges against a member who exercised free speech campaign rights violated our *Rules*).

In *Lytle*, the local union principal officer confiscated a business agent's computer one working day after the business agent declared his candidacy for delegate in opposition to the principal officer. The principal officer then terminated the business agent the day ballots were counted in the delegates election. Based on the specific facts of that case, including the statements made by the principal officer and the timing of the confiscation and termination, we found the conduct was prohibited retaliation for the business agent's exercise of his political rights under the *Rules*.

In *Bales*, we found that a member has free speech rights under the *Rules* and the LMRDA, even if the speech makes false statements or is libelous, and that internal union discipline may not permissibly be used to address or punish those statements.

Analysis

Roth's protest alleged that the decision not to renew the contract for Wilkins' services constituted retaliation for exercising his right to be a candidate for delegate in the upcoming delegates election, in violation of Article VII, Section 12, subsections (a) and (g) of the *Rules*.

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The *Rules*' prohibition is clear. Article VII, Section 12(a) describes activity protected by the Rules as follows:

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.

Article VII, Section 12(g) states that:

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.

To establish a violation of this section, "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." *Bundrant*, 2005 ESD 19 at 10 (October 25, 2005), *aff'd*, 05 EAM 4 (November 15, 2005) (quoting *Cooper*, 2005 ESD 8 (September 2, 2005)). The Election Supervisor will not find retaliation if he concludes that the union officer or entity would have taken the same action even in the absence of the protestor's protected conduct. *Gilmartin*, P32 (January 5, 1996), *aff'd*, 95 EAM 75. See *Leal*, P51 (October 3, 1995), *aff'd*, 95 EAM 30; *Wsol*, P95 (September 20, 1995), *aff'd*, 95 EAM 17.

Wilkins satisfies the first element of the retaliation claim because she actively engaged in activity protected by the *Rules* by opposing the Gray/Bishop Experienced Team and by running as a candidate for alternate delegate on the Gammon-McGaha Team 391 slate in the local union delegate election.

Wilkins satisfies the second element of the retaliation claim because the Local Union 391 executive board voted to terminate her job as an organizer for the union. *Williams*, 2001 EAD 152 (February 8, 2001); *Thornsberry*, 2001 EAD 172 (February 16, 2001); and *Bundrant*, 2005 ESD 19 (October 25, 2005), *aff'd*, 05 EAM 4 (November 15, 2005). As a result, Wilkins has been returned to employment with the Guilford County Schools.

On the critical third element of the retaliation analysis, however, the protestor has not demonstrated that protected activity was a motivating factor in the decision not to renew Wilkins' contract. There is no question that the executive board divided on political lines in the vote not to renew the contract, with Gray and his slate members having one more vote than Gammon and his slate members. Such a vote raises the issue of whether the decision not to retain Wilkins as a local union organizer was politically motivated and based on Wilkins' candidacy and campaigning in the delegate election. However, the individuals who voted with the majority articulated a legitimate reason for the decision, which was to rebalance the work assignments of business agents and organizers. The protestor has not provided sufficient evidence to meet his burden of showing that the articulated reason was pretextual. Nor has he

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established that Wilkins' contract would not have been renewed in the absence of her protected activity.

The protestor and his witnesses have not offered any evidence regarding specific comments or speech of Wilkins that motivated Gray's retaliation. There was no evidence that Wilkins campaign activity during the delegate election differed from others on the Gammon-McGaha Team 391 slate that would have motivated Gray to single her out for retaliation. Wells and Steven Jones, aligned with Wilkins on the Gammon-McGaha Team 391 slate, won election as delegates and they have continued in their Local Union 391 paid positions. Further, in contrast to *Lytle*, the timing of the decision not to renew Wilkins' contract was closely linked to the end of the current six month contract and, by comparison, is relatively distant in time from the delegates election.

For these reasons, we find insufficient evidence to demonstrate that the decision made by the majority of the executive board constituted retaliation prohibited by the *Rules*.

Accordingly, we DENY the protest.

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, 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
2011 ESD 296

Roth, 2011 ESD 296

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