

ELECTION APPEALS MASTER

IN RE:

PAUL GARCIA

Protestor.

06 Elec. App. 038 (KC)

ORDER

This matter is an appeal from the Election Supervisor's decision 2006 ESD 193 issued April 20, 2006.

A continued hearing was held before me on May 11, 2006. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. on behalf of the Election Supervisor, Michael D. Four, Esq. of Schwartz, Steinsapir, Dohrman & Sommers, LLP, Election Supervisor representative, Steve Moore, an Election Committee member and Shop Steward, Doug Brown, Vice President of GCC/IBT Union 404M, Paul Garcia, President of GCC/IBT Local Union 404M, the protester in this matter.

This is a simple, straightforward case turning on a single factual issue that has been raised before me: whether when Brown went to Continental Color Craft and delivered campaign material for posting to Moore, he did so while he was on his lunch break. If Brown had indeed been on his lunch break (on his own time and not union time), all parties to this proceeding agree that he would not have been in violation of Article VII, Section (12)(a) and Article XI Section (1)(b)(7) of the Election Rules. The problem for Brown is that when asked by the Election Supervisor's investigator whether he was on lunch break when he visited Continental Color Craft, he told the investigator that he is quite busy, works long hours and does not take lunch or breaks. Case closed.

On appeal however, he concedes having told the investigator precisely what the investigator reported but asserts that he was being sarcastic. Why sarcasm would have been called for in such circumstances is unclear. The Election Supervisor's Appeals Chief draws a not implausible connection between the attempted retraction of an honest and unguarded admission and the after-the-fact

realization, upon reading the Election Supervisor's decision, that campaign activity on union time violates the Rules.

At the hearing, Brown presented a number of documents, none of which help Brown's defense. Phone records showed that he had made two telephone calls on the date in question to Moore during a period which he, Brown, asserts, is the conventional lunch hour in his local. Brown stated that he had intended to have lunch with Moore. Moore participated in the Hearing and conceded when pressed, however, that he had no recollection of lunch being discussed. More decisively, Brown said during the Hearing, and presented calendar entries to support him, that his schedule was and is extraordinary frenetic, and showed working hours on a typical day well beyond those formally required of him. This of course precisely corroborates what the investigator reported Brown told him, that Brown "is a busy union representative who works long hours and cannot and does not take lunch or breaks." Election Supervisor's preliminary submission dated May 4, 2006 at 1.

The Election Supervisor's decision is, accordingly, affirmed.

SO ORDERED:



Kenneth Conboy
Election Appeals Master

Dated: May 12, 2006