




RECEIVED
AUG 05 2013
By: _____

- Lee Saunders
President
- Laura Reyes
Secretary-Treasurer
- Richard Abelson
Judicial Panel Chairperson
- Judicial Panel Members:
- Kahm Boles
Philadelphia, PA
- Richard Gollin
Jersey City, NJ
- Shelb Hill
Pawnee, MD
- Kelch January
Detroit, MI
- Kalvin Jones
Columbus, OH
- Theodorah McKanna
Los Angeles, CA
- Dayton Nahanelus
Honolulu, HI
- Steve Probia
Itasca, MN
- Jim Tucciarelli
New York, NY

July 31, 2013

Todd Sokolowski Jon Pepe Ray Stoddard


Re: JUDICIAL PANEL CASE NO. 13-36
Sokolowski & Brace v. Pepe & Stoddard

GREETINGS:

Enclosed is my decision in the above-captioned case.

In Solidarity,



Richard Abelson
Judicial Panel Chairperson

RA:spp

- cc: Lee Saunders, President
- Laura Reyes, Secretary-Treasurer
- Jim Howell, Regional Director O&FS
- Tim Birch, AFSD

JUDICIAL PANEL CASE NO. 13-36
Sokolowski & Brace v. Pepe & Stoddard

This matter concerns charges filed by Todd Sokolowski and Kevin Brace, against Jon Pepe and Ray Stoddard. The parties are members of Local 391, Connecticut Prison Employees, affiliated with Connecticut Council 4.

The original charges were filed to the Judicial Panel on or about April 17, 2013. On April 25, 2013, the Judicial Panel assumed original jurisdiction in this matter pursuant to Articles X and XI of the International Constitution.

The case was assigned to Judicial Panel Chairperson Richard Abelson after the parties were given an opportunity to strike names from a list of panel members, pursuant to Article XI, Section 8 of the International Constitution. Following due notice to all interested parties, the trial was scheduled on June 1, 2013. (JP-9) All testimony was given under oath, and a complete transcript of the proceedings was made by a professional court reporter.

THE CHARGES

(See attached)

THE PARTIES

Charging parties Todd Sokolowski and Kevin Brace were present at hearing and represented themselves. Accused parties Jon Pepe and Ray Stoddard were present at hearing and represented themselves.

EVIDENCE IN SUPPORT OF THE CHARGES

At the March 7, 2013, regularly scheduled membership meeting of Local 391, a motion was made to give the retiring president of the local union, Jon Pepe, the 2007 Dodge Nitro which was purchased by the local union and used by President Pepe. The record is uncontroverted that the motion was passed unanimously at the March 7, 2013 membership meeting. Brother Richard Sabonis and Brother Daniel Burke were both present at the March 7, 2013 membership meeting and testified that the discussion surrounding the motion was that the Dodge Nitro was a gift in lieu of a retirement party for Brother Pepe which would cost \$12,000. (TR 22)

The first of the charging parties' charges is against President Pepe, and states that the motion to give Brother Pepe the car violates Article IX, Section 36, of the International Constitution which states, "The funds or property of a subordinate body, whether chartered or not, shall not be divided among the members, but shall remain intact for the use of such subordinate body for its legitimate purposes while such subordinate body exists." The charging parties charge that Brother Pepe willingly accepted the gift and improperly enriched himself at the local's expense.

The charging parties further charge that at the April 4, 2013 membership meeting a motion was made to "reconsider" the motion passed at the March 7, 2013 meeting to gift the Dodge Nitro to President Pepe. Brother Pepe ruled that motion out of order, and Brother Todd Sokolowski (seconded by Brother Kevin

Brace) moved to challenge the ruling of President Pepe not to allow a vote on a motion to "reconsider" the motion regarding the gift of the car. They charge that Brother Pepe ignored the motion to challenge the chair, and that Brother Pepe then abruptly and improperly adjourned the meeting.

The second set of charges is against Local 391 Recording Secretary Ray Stoddard. The charging parties charge that Brother Stoddard made the motion at the membership meeting of March 7, 2013, to gift the Dodge Nitro to Brother Pepe. Further, Brother Stoddard signed over the title of the Dodge Nitro to Brother Pepe on March 13, 2013 and concealed the fact that he had already signed over the car at the March 20, 2013 executive board meeting of Local 391, even though the executive board engaged in an hour-long conversation about the vote on March 7, 2013. The charging parties state that Brother Stoddard, as recording secretary, had no authority to sign the title over to Brother Pepe. Rather, pursuant to Article VI, Section 3, of the Local 391 constitution, that authority rested with the Local 391 secretary treasurer, Brother Sokolowski. The charging parties also charge Brother Stoddard with walking out of the April 4, 2013 membership meeting prior to it being properly adjourned.

EVIDENCE IN REFUTATION OF THE CHARGES

Neither Brother Jon Pepe nor Brother Ray Stoddard testified at hearing. In their statement in refutation of the charges (JP-10), Brother Pepe states that the motion to gift him the local's car at the March 7, 2013 membership meeting was a proper motion. Brother Pepe states that the membership meeting is the ruling

body of the local when it is in session. They also state that Article IX, Section 36, of the International Constitution is not applicable to the present case in that the provision addresses the division of property of the local union when it is seceding from AFSCME, which is not the case in this instance.

Regarding the charges related to the April 4, 2013, membership meeting, Brother Pepe alleges that the motion made by Brother Brace was to "rescind" the motion which gifted the car to Brother Pepe, not a motion to "reconsider." Brother Pepe also denies that the meeting was inappropriately adjourned. He states that the minutes of the meeting indicate that business was conducted after the motion to rescind was made. (CP-3)

Lastly, Brother Pepe states in JP-10 that Local 391 was facing contested elections in May, 2013, and both Brother Sokolowski and Brother Brace were running for office in the local. He alleges that the charges in the present case were being brought for political reasons in order to attempt to influence the local union elections.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is uncontested that a motion to gift retiring president, Jon Pepe, the local's 2007 Dodge Nitro was passed unanimously at the March 7, 2013 membership meeting of Local 391. The discussion surrounding the motion was that the gift of the car was in lieu of a party which would have cost the local union approximately \$12,000.00. The charging parties allege that the motion, although properly made, seconded, and passed by the membership, was

improper on its face. They contend that the motion violated the International Constitution in that it unjustly enriched Brother Pepe and constitutes an improper expenditure of union funds.

The membership present at the meeting had the ability to either pass or defeat the motion. The undersigned is not going to substitute his judgment for the judgment of the Local 391 membership regarding the appropriateness of the gift, or the amount of the gift, to Brother Pepe. The March 7, 2013 motion on its face was proper and did not violate either the International or Local 391 constitution.

The events of the April 4, 2013 membership meeting, however, raise significant questions. The charging parties testified that a motion was made and seconded at the April 4, 2013 meeting to "reconsider" the March 7, 2013 motion to gift the car to Brother Pepe. Pursuant to *Robert's Rules of Order, Newly Revised*, for a session which only lasts for one day (a monthly membership meeting), a motion to reconsider a previously passed motion is only in order on the same day the original vote was taken. If the motion made at the April 4, 2013 membership meeting was a motion to "reconsider" the March 7, 2013 motion, Brother Pepe acted appropriately in ruling the motion out of order.

Interestingly, it is the accused parties who assert that the motion made at the April 4, 2013, membership was not a motion to "reconsider," but a motion to "rescind" the March 8, 2013 motion. Pursuant to *Robert's Rules of Order, Newly Revised*, a motion to rescind the March 8, 2013 motion was absolutely in order at

the April 4, 2013 membership meeting. It should be noted that *Robert's Rules of Order, Newly Revised*, also states that unless appropriate notice is given regarding a motion to rescind a previously passed motion, passage shall require a two-thirds vote. If the motion to rescind had been voted on at the April 4, 2013 membership meeting, passage would have required a two-thirds vote.

Robert's Rules of Order, Newly Revised also states that a motion to rescind cannot apply to something that has been done as a result of the main motion which is impossible to undo. If the car was already gifted to Brother Pepe, and it was impossible for Brother Pepe to reverse that action, then the motion to rescind would not have been in order. No evidence was presented at trial which would indicate that on April 4, 2013, it was impossible for Brother Pepe to reverse the action which gifted him the car, so this provision is not applicable in the present case.

The preponderance of the evidence gives weight to the motion of April 4, 2013 as a motion to rescind and not a motion to reconsider. The minutes of the meeting clearly indicate that the motion was a motion to rescind. (AP-3) Therefore, since the motion at the April 4, 2013 membership meeting was a motion to "rescind" the March 8, 2013 motion, Brother Pepe was out of order in refusing to recognize the April 4, 2013 motion to rescind and was also out of order when he refused to recognize the motion to challenge the chair. Brother Pepe violated *Robert's Rules of Order, Newly Revised*, the Local 391 constitution,

and the International Constitution, when he failed to recognize the motion to rescind the March 7, 2013 motion.

The motion to rescind the March 7, 2013 motion to gift the car to Brother Pepe is to be considered by the membership of Local 391 within 45 days of the date of this decision. Notice should be given to the membership that the motion to rescind the March 7, 2013 motion will be on the meeting agenda, and as such, the standard for passage is a majority vote.

The charge that Brother Pepe abruptly ended the April 4, 2013 membership meeting is dismissed. Pursuant to *Robert's Rules of Order, Newly Revised*, a motion to adjourn a meeting is a privileged motion and may be brought before the body at any time. It is not debatable, and if properly seconded and passed by a majority vote, the meeting is ended even if there is a pending question, and before the pending business is disposed of. Although the charging parties testified that there was no proper motion to adjourn the meeting, the official minutes of the meeting indicate that a proper motion was in fact made and voted on. (CP-3) In any event, Brother Pepe and Brother Stoddard cannot be required to remain present at a membership meeting if they choose to leave.

The charge that Brother Stoddard made an illegal motion regarding the gift of the car to Brother Pepe at the March 7, 2013 membership meeting is dismissed. As discussed above, the motion was not illegal or improper.

Brother Stoddard is found guilty of the charge that he improperly signed title of the 2007 Dodge Nitro over to Brother Pepe as a gift. (CP-7) Brother Stoddard, as recording secretary, was not the "custodian" of the local's property. That responsibility rests with the local's secretary treasurer pursuant to Article VII, Section 4, of the Local 391 constitution. (JP-3) However, no penalty is being assessed, other than a reprimand and a warning not to repeat the offense, because Brother Stoddard was carrying out the motion passed at the March 7, 2013 membership meeting.

DECISION

President Jon Pepe is of guilty violating Article X, Section 2(A) of the International Constitution, Robert's Rules of Order, Newly Revised, and Article VIII, Section 3, of the Local 391 Constitution, when he failed to recognize a proper motion to rescind a previous motion at the April 4, 2013 membership meeting. The motion to rescind the March 8, 2013 motion to gift the 2007 Dodge Nitro to Brother Pepe shall be considered by the membership of Local 391 within 45 days of the date of this decision. The motion to rescind the March 8, 2013 motion is to be noticed to the membership in call of the meeting during which it is to be voted on, and the standard for passage shall be a majority vote. The penalty assessed against Brother Pepe is a formal reprimand and an order not to repeat such offense in the future.

Brother Ray Stoddard is found guilty of violating Article X, Section 2(A) and (J), and Article VII, Sections 3 and 4, when he signed the title of the 2007 Dodge Nitro. The penalty assessed against Brother Stoddard is a formal reprimand and a warning not to repeat the violation in the future.

All other charges are dismissed.

July 31, 2013
Milwaukee, WI

Richard Abelson
Judicial Panel Chairperson
AFSCME, AFL-CIO

Charges against Local 391 President Jon Pepe under the AFSCME Constitution Article X - Judicial Procedure

We the undersigned on behalf of AFSCME Local 391 Membership formally file charges and seek the following:

File Charges against Local 391 President Jon Pepe because of his violation(s) of the following article(s) of the AFSCME Constitution.

Article X Section 2

- **Paragraph 2.** Misappropriation, embezzlement, or improper or illegal use of union funds.
- **Paragraph 3.** Any action by any officer or employee of any council which results in the expenditure by said council of money which is the property of any other without proper written authorization from the body which is the owner of such funds.
- **Paragraph 11.** The solicitation or acceptance of a bribe or the acceptance of any gift of more than nominal value from any employer, member, group of members or employee of the union, or from any person or firm which has or is seeking to establish a business relationship with the Federation or any subordinate body.

Facts:

- Local 391 President Jon Pepe willingly accepted a gift, the Union's 2007 Dodge Nitro worth \$7,000 - \$9,000 which was made by a motion that violated the AFSCME Constitution on March 7th 2013.
- Local 391 Union President Jon Pepe violated Roberts Rules of Order several times at April 4th 2013 Membership Meeting. President Pepe refused to consider a motion made by Todd Sokolowski and seconded by Kevin Brace to "Challenge the Chair" to appeal President Pepe's statement that he would not allow a vote to reconsider the motion made at the March 7th 2013 Membership Meeting giving him illegal possession of the 2007 Dodge Nitro. The Motion to "Challenge the Chair" was made again by Todd Sokolowski and seconded by Kevin Brace, and ignored again by Jon Pepe. Pepe then made a motion to adjourn the meeting which was seconded by Ray

Stoddard, and there were no votes to adjourn the meeting. Jon Pepe and Ray Stoddard walked out, leaving the meeting in chaos.

Article IX Subordinate Bodies

- Section 36. The funds or property of a subordinate body, whether chartered or not, shall not be divided among the members, but shall remain intact for the use of such subordinate body for its legitimate purposes while such subordinate body exists. When any such subordinate body secedes or discontinues its affiliation, all monies, books, collective bargaining agreements and any other memoranda of understanding or other agreements concerning wages, hours, or terms and conditions of employment of members of such subordinate body and other properties shall be transmitted to the International Secretary-Treasurer and assigned to the International Union. If such subordinate body is reorganized within a period of two years following transmission of its assets to the International Secretary-Treasurer, then an amount of funds equal to the value of such assets shall be provided to such reorganized body by the International Union. No property of any subordinate body and no property in the possession, custody or control of any such subordinate body or any of its officers or employees, and no property held in trust, express or implied, which was created or established by any such subordinate body and whose primary purpose is to provide benefits for the members of such subordinate body or their beneficiaries, shall be given, contributed, assigned, donated or result to, or be given to the control of, either directly or indirectly, any seceding, dual or antagonistic labor organization or group or to any subordinate body which is in violation of the International Constitution, but any such property shall remain in the custody or control of the subordinate body as indicated above, regardless of whether a majority of the membership may have seceded or disaffiliated.

Resolution:

- We seek a formal reprimand against President Jon Pepe (Article X, Section 15, Paragraph 1).

- We seek restitution from President Jon Pepe to Local 391 in the amount of \$8,000 for the 2007 Dodge Nitro that he removed from the Local's possession (Article X, Section 15, Paragraph 3).
- We seek restitution from Jon Pepe of \$527.04 to Local 391 the equivalent of one year of dues (Article X, Section 15, Paragraph 2).
- Expulsion from Local 391 Membership (Article X, Section 15, Paragraph 8)

Todd Sokolowski Local 391 Treasurer



April 16, 2013

Kevin Brace Local 391



April 16, 2013

Charges against Local 391 Recording Secretary Ray Stoddard under the AFSCME Constitution Article X - Judicial Procedure

We the undersigned on behalf of AFSCME Local 391 Membership formally file charges and seek the following:

File Charges against Local 391 Recording Secretary Ray Stoddard because of his violation(s) of the following article(s) of the AFSCME Constitution.

Article X Section 2

- **Paragraph 2.** Misappropriation, embezzlement, or improper or illegal use of union funds.
- **Paragraph 3.** Any action by any officer or employee of any council which results in the expenditure by said council of money which is the property of any other without proper written authorization from the body which is the owner of such funds.
- **Paragraph 11.** The solicitation or acceptance of a bribe or the acceptance of any gift of more than nominal value from any employer, member, group of members or employee of the union, or from any person or firm which has or is seeking to establish a business relationship with the Federation or any subordinate body.

Facts:

- Local 391 Recording Secretary Ray Stoddard willingly made a motion that violated the AFSCME Constitution on March 7th 2013 that gave Local 391 Union President Jon Pepe the Union's 2007 Dodge Nitro worth \$7,000 - \$9,000
- Local 391 Recording Secretary Ray Stoddard signed over the title of the Union's 2007 Dodge Nitro to Local 391 President Jon Pepe on March 13th 2013 and willingly concealed this information from the Local 391 Executive Board on March 20th Executive Board Meeting during an hour long conversation about the car vote.
- Recording Secretary Ray Stoddard had no authority to sign the title of the Union's Car over to President John Pepe. That authority lies with Local 391 Treasurer (*see AFSCME Appendix C Constitution for Local Unions Article VII, Section 4 The*

Secretary - Treasurer Shall, Paragraph 6: Act as custodian of all properties of the local union).

- Recording Secretary Ray Stoddard did not faithfully execute his duties as Local 391 Recording Secretary by walking out of the April 4th 2013 Membership Meeting before it had been properly adjourned.

Article IX Subordinate Bodies

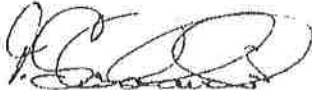
- Section 36. The funds or property of a subordinate body, whether chartered or not, shall not be divided among the members, but shall remain intact for the use of such subordinate body for its legitimate purposes while such subordinate body exists. When any such subordinate body secedes or discontinues its affiliation, all monies, books, collective bargaining agreements and any other memoranda of understanding or other agreements concerning wages, hours, or terms and conditions of employment of members of such subordinate body and other properties shall be transmitted to the International Secretary-Treasurer and assigned to the International Union. If such subordinate body is reorganized within a period of two years following transmission of its assets to the International Secretary-Treasurer, then an amount of funds equal to the value of such assets shall be provided to such reorganized body by the International Union. No property of any subordinate body and no property in the possession, custody or control of any such subordinate body or any of its officers or employees, and no property held in trust, express or implied, which was created or established by any such subordinate body and whose primary purpose is to provide benefits for the members of such subordinate body or their beneficiaries, shall be given, contributed, assigned, donated or result to, or be given to the control of, either directly or indirectly, any seceding, dual or antagonistic labor organization or group or to any subordinate body which is in violation of the International Constitution, but any such property shall remain in the custody or control of the subordinate body as indicated above, regardless of whether a majority of the membership may have seceded or disaffiliated.

Resolution:

- We seek a formal reprimand against Recording Secretary Ray Stoddard (Article X, Section 15, Paragraph 1).
- We seek restitution from Recording Secretary Ray Stoddard to Local 391 of \$527.04 equivalent of one year of dues (Article X, Section 15, Paragraph 2).
- A two year suspension from Local 391 Membership (Article X, Section 15, Paragraph 7)

Todd Sokolowski Local 391 Treasurer

Kevin Brace Local 391



April 16, 2013.

April 16, 2013