

**THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW**

APPEAL OF:

JAMES LESCOE,
Appellant

-vs-

CASE NO. 1487

UAW LOCAL UNION 900
(Wayne, Michigan)
REGION 1A
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued May 12, 2005)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson,
Prof. Benjamin Aaron, Prof. James J. Brudney,
Prof. James E. Jones, Jr., Prof. Maria L.
Ontiveros, and Prof. Paul Weiler.

APPEARANCES: James Lescoe and Barbara Harvey on behalf
of appellants; Dave Curson and Eunice
Stokes-Wilson on behalf of the International
Union, UAW; Bill Johnson, Judge Kennard,
Scott Lyons, Brian K. Quantz, Anderson
Robinson, Jr., William Sickon and Jeff
Washington on behalf of UAW Local 900.

We consider here James Lescoe's claim that officials of UAW Local 900 colluded with Ford Motor Company to cause his discharge in order to prevent his meaningful participation in the rerun of an election for District Committeeperson in Department 40, Group 12, as well as his assertion that the Local's handling of a grievance protesting the discharge lacked a rational basis.

FACTS

James Lescoe works at Ford Motor Company's Wayne Assembly Plant in Michigan with a seniority date of March 19, 1976. In 2002, Lescoe worked in the Paint Shop, which is designated Department 40. On February 20, 2002, Lescoe accepted nomination for the office of District Committeeperson in Department 40, Group 12, in

elections conducted by UAW Local 900 on March 6 and 7, 2002. Lescoe's name did not appear on the ballot in the District Committeeperson election, however, because the Election Committee concluded that he was ineligible to run in Group 12 based on a redistricting agreement that placed him in Group 11.

Lescoe protested the 2002 election and appealed the Union's denial of his protest to the Public Review Board (PRB). On August 28, 2003, we ordered a rerun of the District Committeeperson election based on our conclusion that the redistricting agreement that removed Lescoe individually from his historic placement in Group 12 deprived him of his right to run for office in free and fair elections as guaranteed by the UAW's Ethical Practices Codes.¹ We gave the following direction to Local 900:

"The decision of the International Executive Board is reversed and the appeal is remanded to Local 900. The Local is directed to rerun the election for District Committeeperson in Group 12. The only eligible candidates are James Lescoe and Bill Sickon. The election shall be rerun within 45 days of the Local Union's receipt of this decision. It is so ordered."²

On September 11, 2003, Presidential Administrative Assistant Eunice Stokes-Wilson wrote to the PRB and requested a waiver of the requirement that the election in Group 12 should be rerun within 45 days. Stokes-Wilson stated:

"First, the redistricting agreement must be changed by Chairman Bill Johnson. After districts 11 and 12 have been changed, at least 30 days must pass before the election can be held. The plant is on a two-week shutdown making it impossible for Chairman Johnson to change the districts. Operations will resume on September 22, 2003."³

Stokes-Wilson further informed the PRB that there were likely to be additional shutdowns of the plant in the coming months due to economic conditions and that this might cause the cancellation of an election scheduled to take place in the plant. She suggested, therefore, that the election be held on Sunday, November 9, during the general membership meeting.

We responded to Stokes-Wilson's letter on September 23, 2003, with an Order Granting Postponement. Although we found that the International Union had shown good cause for postponing the election, we were unwilling to grant the Union's request

¹ *Lescoe v. Local Union 900, UAW*, PRB Case No. 1430, (August 28, 2003).

² PRB Case No. 1430, at p. 10.

³ Record, p. 26.

that the election be conducted at a membership meeting rather than in the plant, as is the normal practice. We ordered that the rerun election should be conducted in the plant as close to November 9, 2003, as possible.⁴

While arrangements were being made for the rerun of the Committeeperson election, an incident occurred in the Paint Shop, Department 40, which ultimately resulted in Lescoe's discharge by Ford Motor Company. On September 5, 2003, Ford discharged D. Kimberlin from his position as a polisher in Department 40 for allegedly having caused an unauthorized work stoppage. The Disciplinary Action Report issued by Ford to Kimberlin on September 5 states as follows:

"On 9/2/03, Mr. Kimberlin told other employees they did not have to work 12 hours, and did cause 11 employees from the Paint Dept. to walk off the job. This action is substantiated through statements and an investigation. Employees were required to work 12 hours per p. 163 of the Local Agreement, & Appendix H, Part A, Paragraph 7 of the Master Agreement."⁵

Appendix H of the 1999 Agreement between the UAW and Ford Motor Company is a memorandum of understanding concerning voluntary overtime.⁶

The record contains statements dated September 3, 2003, given by eleven employees from the Paint Shop who did not complete the twelve hour shift scheduled by the Company on September 2. Chris Little, John McLaughlin and Ron Mullins stated that they left after ten hours because they did not get the message that the Company was requiring employees to stay for twelve hours.⁷ Lachell Orr, Jeff Reese, and Jim Greenfield stated that they were aware that the Company was requiring employees in the Paint Department to work twelve hours, but that they left because they had other obligations.⁸ Orr stated that he had to be at school in the morning. Reese and Greenfield both explained that they had to leave to take care of their children. Mike McCuster, Mike Painter, and Tina Badreau admitted that they knew the twelve hour shift

⁴ Record, pp. 44-45.

⁵ Record, p. 25.

⁶ Paragraph 7 of Appendix H states as follows:

"Emergencies:

The provisions of the Memorandum of Understanding that limit or restrict the right of the Company to require employees to work daily overtime or Saturdays or Sundays shall be suspended in any plant whose operations are interrupted by emergency situations, such as single breakdowns of four hours or more, government mandated work, power shortages, strike, fire, tornado, flood or acts of God, for a period of time necessary to overcome such emergencies."

⁷ Record, pp. 14, 15 and 17.

⁸ Record, pp. 18, 20 and 23.

was mandatory, but stated that they left because they believed they should be able to.⁹ For instance, in response to the question, “Why did you leave your job?” Mike Painter stated:

“Because my 10 hour shift was up. You can’t work me past 10 hours unless I volunteer.”¹⁰

Painter stated that no one told him it was permissible to leave. He wrote:

“I made my own decision to leave. I learned that info—that you can’t be worked past 10 hours—through my 29 years at the Company.”¹¹

Of the eleven employees, only Rodney Stewart stated that anyone told him that he could leave. Stewart wrote:

“Vito told us that he thought we could leave at 10 hrs, but it would be nice to stay 12 hours.”¹²

Kimberlin stated that he volunteered to work twelve hours, but that he was sent home after ten and one half hours. He denied having told anyone that they could leave after ten hours.¹³

Plant Chairperson Bill Johnson reported this incident to the membership at a meeting on September 14, 2003. The minutes of that meeting indicate that Johnson gave the following report:

“Thirteen (13) people walked out in paint, due to the 7 hour breakdown so the Company was able to suspend appendix H. One (1) person has been terminated and at least four (4) more may be terminated as well.”¹⁴

On September 22, the Company terminated the following employees for having caused the work stoppage: E. Bolden, M. Painter, and M. Rodgers.¹⁵ E. Bolden had given the following statement on September 22, 2003, regarding the incident in the Paint Shop:

⁹ Record, pp. 16, 19 and 22.

¹⁰ Record, p. 19.

¹¹ Record, p. 19.

¹² Record, p. 21.

¹³ Record, p. 24.

¹⁴ Record, p. 28.

¹⁵ Record, pp. 36, 37 and 38.

“On 9/2/03, Lescoe was all over the Paint shop, talking to people. Greenfield was with him. There were people listening to them, who didn’t know any better. Yes, I heard Lescoe & Greenfield tell other employees to leave the job; that they did not have to work 12 hours, only 10 hours. Lescoe & Greenfield said he knew more about the contract than other people or the union. Lescoe said this; Greenfield was backing him up, saying Lescoe would be the next committeeman. They were talking all night long; there were no cars in the paint shop.”¹⁶

A second statement signed by E. Bolden also charged Lescoe with having caused the work stoppage. Bolden stated:

“Lescoe is [the] one who was causing it. Was talking about 45 days, he beat the union in court.”¹⁷

On the other hand, a statement signed by J. Greenfield denies that Lescoe had any involvement in the work stoppage. Greenfield wrote:

“On 9/2/03, I did not leave until the job was covered. I then left after 10 hours. Mr. Lescoe & I did have a conversation, but it was personal. At about before lunch. We did not discuss the situation regarding the 12 hours. The Paint Shop was down for 6 hours, but people mostly stayed on their jobs. Some people walked around to breakrooms etc. I did not tell anyone else that they should leave. I made it very clear up front I could not stay that night (see prior statement).

I have no idea why another employee would accuse me of this. All I can guess is people get scared when they lose their job & want their job back.”¹⁸

The Company issued a reprimand and warning plus two weeks disciplinary leave for participating in an unauthorized work stoppage to T. Badreau, J. McLaughlin, C. Little, R. Mullins, M. McCuster, J. Reese, L. Orr, T. Thornburg and R. Steward in connection with the incident on September 2.¹⁹

¹⁶ Record, p. 33.

¹⁷ Record, p. 35.

¹⁸ Record, p. 34.

¹⁹ Record, pp. 39, 40, 41, 42 and 43.

On October 2, 2003, during one of the weeks that the plant was shut down, Ford Motor Company Labor Relations sent Lescoe a notice to report to the plant. Lescoe did report to Labor Relations as instructed on October 7, 2003, and met with Labor Relations Representative Rick Young. According to Lescoe, Young told him that he was being terminated based on an investigation into the incident on September 2.²⁰ J. Greenfield was also discharged during the first week of October.²¹

Local 900 grieved the six discharges. The grievances filed on behalf of E. Bolden, M. Painter, and M. Rodgers were settled on October 13 based on the terms of a one year probationary reinstatement agreement. Chairperson Johnson made the following report to the membership regarding the grievances at a meeting on October 12:

“We had 6 members discharged from the paint department. Three (3) were from night shift. (The company is standing tall and we are in talks.) Three (3) others came back on Monday.”²²

On October 13, 2003, Lescoe wrote to the Public Review Board charging that the Local had engaged in collusion with Ford Motor Company to have him and one of his supporters terminated in order to prevent a fair election.²³ On October 29, Lescoe again wrote to the PRB stating that he had just been informed that election notices had been posted in the plant for the rerun election scheduled for November 10 and 11. Lescoe wrote:

“...This is a week and half away. There has been no campaign time and I am not allowed into the plant. How does this look to the members on the plant floor—a candidate for election who is terminated? Do you think I would jeopardize the time it took to proceed through the appeal stages to you, the Board members, in reaching a just decision, to have a rerun election in this manner? And, as of today, to be without work for nearly four weeks.”²⁴

Lescoe argued that a rerun election under these circumstances was unjust and he requested a hearing before the Public Review Board. On November 12, 2003, PRB staff advised Lescoe that a hearing would be inappropriate because his appeal had

²⁰ Record, p. 64.

²¹ Record, p. 48.

²² Record, p. 63.

²³ Record, pp. 65-66.

²⁴ Record, p. 68.

already been decided. Staff informed Lescoe that his new concerns would have to be dealt with in a separate appeal.²⁵

Meanwhile, arrangements for the rerun of the Committeeperson election in the Paint Shop were reported to the Local 900 Executive Board at a meeting on October 12, 2003, under “Unfinished Business,” as follows:

- “1. Wayne Assembly Plant election—The Public Review Board said the dates had to be changed. November 10, 2003, is the date for the upcoming election.
2. One (1) candidate discharged.
3. The election must be held at WAP plant.
4. Letter received waiving the 45-day time limit.
5. An absence ballot will be available for the person discharged. A registered letter will be sent to him indicating when he can vote at the Local, since he can’t go in the Plant. Members from the Election Committee will be present.
6. Brian Quantz will call downtown for further clarification.”²⁶

On November 5, 2003, Local 900 President Jeff Washington sent Lescoe a certified letter along with a copy of the election notice for the November 10 election. Washington wrote:

“I have made arrangements with Labor Relations at Wayne Assembly for you to be escorted into the plant to vote. Please call the Local before Monday, November 10th, 2003 (the election date) and let us know what time you will be at the Local, so we can make arrangements for someone from the Election Committee to meet you here and take you over to the plant to vote.”²⁷

Local 900 conducted the rerun election on November 10 and 11, 2003 with the following results:

“Bill Sickon	112	(elected)
James Lescoe	37”	²⁸

²⁵ Record, p. 77.

²⁶ Record, p. 62.

²⁷ Record, p. 72.

²⁸ Record, p. 76.

According to the report that was eventually prepared by the International President's staff on Lescoe's appeal, Lescoe did not contact the Election Committee or the Local Union, and did not vote in the November 10 election.²⁹

Local 900 settled Lescoe's grievance at the second stage based on the following disposition by the Company:

"Employee to be reinstated December 22, 2003, on a 12 month waiver. Employee will be assigned to work available in the Final Area. Eligible to bid on Paint Shop opening after 12-22-04."³⁰

On December 11, 2003, Labor Relations Representative Young directed Lescoe to report to the plant on December 22 to review the terms of his settlement agreement and process his reinstatement.³¹

Lescoe filed a protest to the November 10 election with the Local 900 Recording Secretary on December 10. Lescoe's protest was read at a special meeting of the Local 900 Executive Board on December 23, 2003. The minutes of that meeting indicate that a motion to receive and file the protest was supported and carried.³²

Lescoe appealed the settlement of his grievance to the Local Union membership on January 2, 2004. Lescoe's appeal was presented to the membership under "New Business" at a meeting on January 11, 2004. The minutes of that meeting indicate that a motion to receive and file Lescoe's appeal was supported and carried.³³ The Local Union sent Lescoe a certified letter describing the membership's action on his appeal on January 27, 2004. The letter states that Lescoe's appeal died for lack of support because he was not present to explain his problem.³⁴

Lescoe appealed the Local Union's action on his election protest and his grievance appeal to the International Executive Board (IEB) on January 11, 2004. In support of his grievance appeal, Lescoe insisted that he had nothing to do with the work stoppage in the Paint Department. He said that he signed the reinstatement agreement under duress. He wrote:

"I appeal the conditions in which I was forced to come back to work, dated December 22, 2003, signed under duress.

²⁹ Record, p. 115.

³⁰ Record, p. 86.

³¹ Record, p. 85.

³² Record, p. 90.

³³ Record, p. 93.

³⁴ Record, p. 96.

Among these include the loss of pay, loss of perfect attendance, a 12 month probation period, and a 12 month waiver stating that after 28 years in the Paint Shop at Wayne Assembly, I am being forced to work available in the Chassis department with loss of my classification, preferred job and pay.”³⁵

Lescoe pointed out that the three employees who actually had walked off the job served only two weeks off and were returned to the Paint Department.

In support of his protest to the rerun election, Lescoe argued that his unjust termination prevented a fair and democratic rerun election in November. He wrote:

“...It prevented my campaign opportunities along with my supporters to the members on the plant floor because of the termination. It prevented my challenger from voting and overseeing the election and tallies because of his termination. It allowed the Local Green Slate officers—officials to be at the door entrance and window of the voting site. I deny any involvement in the alleged unauthorized work stoppage over events on September 2. I am innocent. I allege this matter was not properly handled between the union and the company, and was not of any rational basis. I did not have a fair union representation because of my being a personal, political opponent.”³⁶

Administrative Assistant Richard H. Bobo responded to Lescoe’s appeal on February 9, 2004. Bobo informed Lescoe that the International Union could find no fault with the Local Union’s handling of his grievance. Bobo wrote:

“Brother Lescoe, you read the agreement, acknowledged that you understood the meaning of the agreement and you signed the agreement on December 22, 2003. The fact that you signed the agreement tends to negate any argument that you were not involved in an unauthorized work stoppage on September 2, 2003.”³⁷

Lescoe appealed Bobo’s ruling on March 6, 2004, and his appeal was presented to the International Executive Board (IEB).

³⁵ Record, p. 94

³⁶ Record, p. 95.

³⁷ Record, p. 104.

The President's staff decided that a hearing was unnecessary on the two appeals and prepared reports for the IEB on behalf of the International President based on information provided by the appellant and the Local Union. In its report on Lescoe's election protest, staff noted that it was error for the Local Union President to receive and file Lescoe's appeal to the membership because he was not present at the January 11 membership meeting. Nevertheless, staff concluded that Lescoe had not overcome the presumption that the results of the election are valid. Staff wrote:

"We agree that the appellant's termination came at an unfortunate time, but the allegation that his termination made the election less than fair and democratic must be dismissed. The appellant has offered no evidence to substantiate his claim, nor has any evidence of such surfaced in the record."³⁸

Staff noted that Lescoe's challenger, Dan Kimberlin, had also been terminated at the time of the election, but it pointed out that there was nothing to prevent Lescoe from designating someone other than Kimberlin to act as his challenger. Similarly, staff held that Lescoe's failure to comply with the Local Union's instructions caused his non-participation in the election, rather than any actions on the part of the officials of Local 900. Staff wrote:

"The Local Union officers and officials cannot be held accountable for appellant's inaction any more than they can be held accountable for his ill-timed termination by the Company."³⁹

In response to Lescoe's grievance appeal, staff remarked that work stoppages in auto plants have historically been considered a most serious offence and that discharge for participation in such activity has been upheld by the Umpire in the Ford system many times.⁴⁰ Staff reported that the Company had produced a signed statement from a fellow employee that appellant participated in the walk-out by giving employees advice contrary to the instructions of their supervisor. Staff also found that the penalty assessed against Lescoe was not excessive in comparison to the penalties imposed on the other participants in the walk-out. Staff wrote:

"The Local Union could not find that the penalty assessed the Appellant was discriminatory as compared to the other participants in the walk-out. In the Company's investigation, they determined that the Appellant's role was key to the walk-out and that it may not have occurred if, in fact, the

³⁸ Record, p. 117.

³⁹ Record, p. 117.

⁴⁰ Record, p. 149.

Appellant would not have participated. Lacking hard evidence to the contrary, the Union could not supplant its judgment for the Company's."⁴¹

Staff denied Lescoe's appeals and the IEB adopted its reports. The IEB's decision on Lescoe's election protest was mailed to him on June 22, 2004, and the decision regarding the grievance settlement was mailed on September 10, 2004. Lescoe addressed both issues in his appeal to the PRB dated July 16, 2004. We heard the parties in oral argument on April 9, 2005.

ARGUMENT

A. James Lescoe, by his attorney, Barbara Harvey:

James Lescoe was the Committeeperson for his unit, Zone C of the Paint Shop, for twelve years. When Lescoe ran for the position of District Committeeperson in 1999, Local Union officials orchestrated his defeat by assigning twenty-six newly hired employees to his District just prior to the Committeeperson election. These employees had been instructed during orientation to vote for candidates on the Green Slate. Lescoe protested that election and appealed the denial of his protest to the PRB, but the Board denied his appeal.⁴²

Local Union officials have continued their strategy to neutralize Lescoe as a political threat to the incumbent Committeeperson in his District. In 2002, the Local redistricted Lescoe individually from his assigned group in order to prevent him from running for Committeeperson in the District. Lescoe protested this election and appealed the denial of his protest to the PRB. This time the PRB directed Local 900 to rerun the election based on its conclusion that Lescoe had been denied the right to participate in a free, fair and honest election as guaranteed by the UAW Ethical Practices Codes.⁴³

The officers of Local Union 900 have methodically sought to undermine this Board's Order. After being directed to rerun the election for District Committeeperson in Group 12, they involved the Ford Motor Company and caused it to discharge Lescoe just prior to the election. Although the evidence of collusion between Local 900 and Ford Motor Company is circumstantial, the circumstances strongly support the inference that Lescoe's discharge was related to his election activity. The Local Union has once again deprived Lescoe of a fair and honest election in his District.

The alleged walkout in the Paint Shop that led to Lescoe's discharge occurred on September 2, 2003. Lescoe did not leave early on that night, and was not originally

⁴¹ Record, p. 150.

⁴² *Lescoe v. Local Union 900, UAW*, PRB Case No. 1296, (November 29, 2000).

⁴³ PRB Case No. 1430, cited previously.

disciplined. One month later, Lescoe was discharged based on the uncorroborated allegation of one employee claiming that Lescoe was the instigator of the walkout. At the time, Lescoe was preparing to run for Committeeperson in the Paint Shop. The claim is incredible, therefore, that he would have advised other employees to leave, and then not have left himself. Furthermore, while thirteen people did leave early on September 2 and were disciplined, only Lescoe and his supporter Kimberlin were not returned to the Paint Shop, and that was not until months later. At this point, economic necessity forced Lescoe to accept the terms of his reinstatement. Lescoe's acceptance of its terms was in no way an acknowledgment of any involvement on his part in the work stoppage, and he made that clear at the time that he signed the reinstatement agreement.

Lescoe had no Union representation at the meeting with Labor Relations when he was fired. The Company's case against Lescoe was extremely weak. None of the employees interviewed on September 3 immediately following the walkout implicated Lescoe in any way. The only statements connecting Lescoe with the walkout are the two that were given by E. Bolden on September 22. There is no interview of Bolden on September 3 as there is with the other employees. The inference can be drawn that Bolden was pressured to give this statement against Lescoe in order to cause Lescoe's discharge prior to the election.

Lescoe also filed unfair labor practice charges against Ford Motor Company and Local 900. The National Labor Relations Board (NLRB) issued a Consolidated Complaint against both the Employer and the Union on February 10, 2004. A settlement agreement has now been reached by the parties on the NLRB's Complaint against the Ford Motor Company concerning Lescoe's discharge, but the settlement proposed by the NLRB in response to Lescoe's charge against the Union concerning its role in preventing him from participating in the rerun election is unacceptable. The NLRB has proposed that the Union post an abstract notice that does not mention Lescoe by name and makes no reference to his charge against the Union or the NLRB's Complaint. The notice proposed by the NLRB does not guarantee members the right to engage in political activity without threats of discharge. Such a notice will have no effect.

While this appeal was pending, Local 900 conducted another election in Lescoe's District. The election took place in February 2005, months prior to the time specified in the Local Union's bylaws. In anticipation of the February election, the Local redistricted Lescoe's unit of ten employees out of the Paint Shop, which is a small department of about fifty-six employees, into the Chassis Department, a large Department of several hundred employees. As a result of this move, the Local informed Lescoe that he was no longer eligible to run for District Committeeperson against Bill Sickon. The only purpose and effect of redistricting employees in Zone C to the Chassis Department was to neutralize Lescoe as a political threat to the incumbent Committeeperson once again. The work performed by Zone C employees is not chassis work, but sanding, which is Paint Shop work, and it has been performed in the Paint Shop for all of the twenty-nine years that Lescoe has been employed there.

Lescoe is therefore appealing to this Board for a meaningful remedy to stop the recurring problems he has encountered in attempting to exercise his Constitutional right to run for office in his District. Lescoe has protested the 2005 election, and his appeal concerning that election is being processed. No remedy now exists for the violations that tainted the 2002 election. Furthermore, the events that have taken place since the PRB's Order to rerun that election have poisoned the atmosphere in the plant against Lescoe. People are afraid to be seen talking with him. Members fear they will be watched when voting and retaliated against if they vote for Lescoe. We are asking the Board to assume jurisdiction over Lescoe's protest and appeal of the 2005 election, and to order a rerun of that election with PRB supervision.

B. International Union, UAW:

The Local Union has always denied any involvement in the events leading up to Lescoe's discharge. That is why it refused to enter into any settlement agreement with the NLRB that would require it to post a notice specifically naming Lescoe or acknowledging any wrongdoing in connection with his discharge or the arrangements for the rerun election. The Company agreed to Lescoe's terms in settling the NLRB's Complaint regarding the discharge because it regarded the matter as a nuisance claim.

The Union never agreed with the Company that the penalty assessed against Lescoe and its proposed reinstatement agreement were fair. Lescoe's high seniority was considered in the settlement of his discharge grievance. Nevertheless, the Company did have employee statements supporting its position that Lescoe encouraged employees to leave early on September 2, 2003. When the Company offered to reinstate Lescoe, the Union had to consider the possibility that his discharge might be sustained by an arbitrator. For this reason, the Union allowed Lescoe himself to make the decision whether to accept the Company's offer of settlement or to process the grievance to the next level of the grievance procedure. Lescoe made the decision to accept the Company's settlement of the grievance.

The Company imposed discipline based on the employee's degree of guilt and disciplinary record. In the eyes of the Company, those who left work because they believed that they were contractually entitled to receive the least severe penalties. Next were those the Company believed knew they were required to stay, but left anyway. Finally, the severest penalties were dispensed to those who the Company believed had encouraged others to participate in the work stoppage. The grievances on behalf of these employees were the most difficult to settle and consequently took the most time to resolve. It is not unusual where employees have been charged with organizing an unauthorized work stoppage for the employees to be placed in a different department to minimize the likelihood of further incidents or sabotage.

It is true that Lescoe had been discharged prior to the Local Union's conduct of the election ordered by this Board, and that he remained out of the plant on the date of the election. However, in scheduling the election, the Local was bound by the Board's

order. There was never any guarantee that Lescoe's grievance was going to be won and his job reinstated. Grievances of this nature can take up to a year to resolve. The election could not be postponed indefinitely because of the possibility of Lescoe's return to work at some point in the future. Furthermore, no one, including the Public Review Board, asked that the election be postponed because the grievance was not settled. No other members of the District have complained that the election was conducted while Lescoe was discharged.

The timing of Lescoe's discharge approximately one month before the election ordered by the PRB is unfortunate, but the circumstance did not create an unfair election. While Lescoe was not present on the shop floor in the weeks leading up to the election, he was not prevented from campaigning in other ways. Moreover, the record shows that he was fully informed of the details of the election and was specifically advised to contact the Local so that he could make arrangements to vote.

Redistricting was not an issue in the rerun election, but redistricting often has political implications. The redistricting completed prior to the 2005 election was done to make districts more even in terms of population. It was not aimed at Lescoe. Lescoe is not regarded as a political threat to the incumbent Committeeperson. He is not particularly vocal in Local affairs or active in Local Union politics. There is no reason for the Board to order a new election or to become involved with the 2005 election.

C. James Lescoe's rebuttal by his attorney Barbara Harvey:

The issues surrounding the discipline assessed against Lescoe by the Company have been addressed in the settlement of the NLRB Complaint. There remains, however, compelling circumstantial evidence of collusion between Ford Motor Company and Local 900. Lescoe and his political ally, Kimberlin, received the most severe punishment for the work stoppage, although neither of them left the plant early on that date. There is no evidence in the record showing that Ford Motor Company actually viewed Lescoe as an instigator of the walkout. The Local Union's claim that the Company regarded Lescoe as an instigator is based solely on the statement of E. Bolden. There is no statement from Bolden in the record around the time of the walkout; he was not fired until September 22. We do not even know why he was fired.

The Local Union has effectively ignored this Board's Order of August 28, 2003, to rerun the District Committeeperson election in the Paint Shop. Lescoe wrote to the PRB on October 13 and October 29 about his unjust termination and argued that it would be unfair to rerun the election while he was discharged. He asked that the PRB schedule a hearing to review the matter. On November 12, 2003, PRB Director David Klein advised Lescoe that a hearing would be inappropriate at that time, and that his concerns would have to be dealt with in separate appeals.

Lescoe has pursued his separate appeals to this Board, but there is now no remedy for the Local's actions that deprived him of the opportunity to participate in the rerun election. The circumstances presented in this case warrant accelerated treatment

of Lescoe's appeal regarding the 2005 District Committeeperson election. The PRB should direct that election to be rerun with Lescoe as a candidate against Bill Sickon. There is no other remedy available to address this Local Union's defiance of the PRB's previous order.

DISCUSSION

We cannot conclude from these facts that the officers of Local 900 colluded with Ford Motor Company to have Lescoe discharged. It is extremely improbable that Ford Motor Company and Local 900 officials would have set up the unauthorized walkout on September 2, 2003, simply in order to create a justification for discharging Lescoe. Similarly, the charge that Ford management took advantage of that event to stage Lescoe's discharge as a favor to the incumbent officers of Local 900 would require us to suppose that the Company became involved in an extraordinary way to fix the results of this Committeeperson election. There is no evidence of a motive on the part of Ford Motor Company to control the outcome of this political contest. There is no indication that members of Ford management were aware of Lescoe or his political aspirations when he was discharged on October 6, 2003. The coincidence of the discharge and the election is not sufficient circumstantial evidence to sustain a charge of such unlikely behavior on the part of Ford Motor Company management. Rather, the preponderance of the evidence supports the conclusion that Ford discharged Lescoe because it credited Bolden's charge that he was the instigator of the walkout.

We do find, however, that the Local's handling of Lescoe's discharge grievance was inadequate. The Local Union officials were aware, even if the Company was not, that Lescoe would have been unlikely to have encouraged an unauthorized walkout while campaigning for the position of Committeeperson, if he did not intend to walk out himself. The Company produced only meager evidence of Lescoe's culpability for the unauthorized walkout on September 2, 2003. The fact that none of the employees interviewed on September 3 implicated Lescoe argued forcefully in his favor. Finally, the circumstances that prompted Bolden to accuse Lescoe have never been explained, and the Local does not appear to have investigated Bolden's motives. While it is unlikely that Ford Motor Company manufactured Bolden's accusation simply to eliminate Lescoe as a candidate for District Committeeperson, circumstances suggest that Bolden may have been acting on behalf of Green Slate supporters or on behalf of the Local Union in retaliation for Lescoe's previous challenge to the election. At the very least, Lescoe had the right to expect his representative to interview his accuser to test the veracity of his statement.

Lescoe has now obtained a settlement from Ford Motor Company on the issues raised by his grievance, so that aspect of the case is no longer before us. The Union's handling of the grievance is relevant only in that it kept Lescoe out of the plant while the rerun of the election was being conducted. We are far from satisfied with the Local Union's response to our order in PRB Case 1430. The Local Union's claim that this Board would have objected to a postponement of the election until after Lescoe was reinstated is disingenuous. Lescoe and Sickon were the only candidates in the election

we ordered. No fair contest could be arranged between these two candidates with Lescoe discharged and therefore ineligible to serve as a representative. By conducting the election under these circumstances, Local 900 made a mockery of the electoral process and effectively circumvented our direction to conduct a fair election between Lescoe and Sickon for District Committeeperson in Group 12.

Unfortunately, there is no remedy in this setting for the Local Union's unfair treatment of Lescoe in connection with our order in PRB Case No. 1430 that the District Committeeperson election be rerun. There is no point in rerunning that election now; the Districts have been changed and new elections have been conducted. The remedy requested by appellant cannot be granted. There is nothing in the Constitution that authorizes this Board to supervise Local Union elections or accelerate appeals in separate cases as requested by Lescoe.

Our role within the International Union's Constitutional scheme is primarily one of appellate review. We are empowered by Article 33 of the Constitution to consider appeals from the IEB concerning actions or decisions made by local unions, but our role in considering such appeals is limited to the question whether there has been a violation of the Constitution or the Ethical Practices Codes. In considering appeals regarding arrangements made by local unions for elections, our responsibility is not to ensure that the best procedures have been adopted by the Local officials involved, but only that the procedures adopted were consistent with the requirements of the Constitution.⁴⁴ Furthermore, a member challenging decisions made by a local union in regard to election procedures is required to follow the steps outlined in Article 33 of the Constitution before his or her appeal can be considered by this Board. These steps are designed to give all the parties involved an opportunity to have their arguments considered in an orderly way.

After he was informed of his discharge on October 7, 2003, Lescoe wrote to Ford Motor Company, the International Union and the Public Review Board describing what had happened, but there is nothing in the record to show that he made any attempt to bring his complaints regarding the arrangements for the rerun Committeeperson election in Group 12 before the membership of Local 900. The Local Executive Board was informed on October 12 that the election was going forward with one candidate discharged, but there is no mention of the arrangements for the election in the membership meeting minutes of that date. It was up to Lescoe to bring this issue to the membership's attention, so that the membership could act prior to the election taking place. Ultimately, it is up to the members to determine whether the Local Union's arrangements for an election protect their right to choose their leaders in fair and honest elections.⁴⁵

⁴⁴ *Vicola et al. v. International Union and Patrick v. Local Union 653, UAW*, 4 PRB 108 (1984), at 113.

⁴⁵ *Englund v. Local Union 699, UAW*, 5 PRB 142 (1986), at 145.

We do not believe that it would have been a futile exercise for Lescoe to have petitioned the membership for a postponement of the election until he was back in the plant. A candidate seeking to represent members of a district or group must have some faith in his constituency. Had Lescoe gathered his supporters and presented the details of his situation to the members, and requested that the election in Group 12 be postponed until after his reinstatement had been obtained, it is by no means certain that his appeal would necessarily have been unsuccessful. The influence of the local leadership may be strong, but members will nevertheless respond to situations they regard as patently unfair. Lescoe submitted a protest to the election to the Local Recording Secretary on December 10, 2003, which was received and filed by the Local Executive Board, but he never insisted that the protest be presented to the membership nor did he appear at a membership meeting to explain reasons for his protest. The members might also have rejected the results of the election if Lescoe had appeared before them at a membership meeting and spoken to those present about what had occurred. In any event, Lescoe's reluctance to pursue his appeals at the appropriate level, as required by the Constitution, has deprived us of any basis to act on his complaints.

The appeal is dismissed.