

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

APPEAL OF:

TIMOTHY ECKERT, Member  
UAW LOCAL UNION 897  
(Buffalo, New York),  
Appellant,

-vs-

CASE NO. 1503

UAW REGION 9  
(THE UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA),  
Appellee.

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**DECISION**

(Issued September 6, 2005)

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

APPEARANCES: Timothy Eckert on behalf of appellant; James  
E. Patton, Eunice Stokes-Wilson, Scott Adams,  
and Phillip L. Gilliam on behalf of the  
International Union, UAW; Charles  
Gangarossa and Cathy Creighton on behalf of  
Local Union 897, UAW.

We consider Timothy Eckert's claim that the decision to withdraw a grievance protesting his termination for failure to respond to a Five-Day Quit Notice lacked a rational basis.

**FACTS**

Timothy Eckert was an electrician at Ford Motor Company's Buffalo Stamping Plant with a seniority date of April 12, 1999, in a bargaining unit represented by UAW Local 897. A Company timekeeping document dated October 7, 2003, indicates that Eckert began a medical leave on October 6, 2003, and that he was eligible for leave

under the Family and Medical Leave Act (FMLA). The document indicates that Eckert's leave was scheduled to end on October 20, 2003.<sup>1</sup>

On October 31, 2003, Ford Motor Company sent Eckert a letter pursuant to Article VIII, §5(4), of the National Agreement between Ford and the UAW advising him that his conditional sick leave of absence had expired on October 20.<sup>2</sup> The letter informed Eckert that his employment could be terminated if he did not return to work within five working days of the date of the letter.<sup>3</sup> The letter further advised Eckert that if his illness or disability prevented him from reporting for work he should, within the five working days, either report in person to the Company's Medical Section, mail the Company's Medical Certification Form completed by a doctor with a tentative return to work date to the Medical Department, or inform the Company by telephone of his condition.<sup>4</sup> The return receipt for this letter indicates that a notice of attempted delivery was left on November 1 and on November 6.<sup>5</sup> Eckert received the letter and signed the return receipt card on November 7, 2003.<sup>6</sup> Ford Motor Company terminated Eckert effective November 8, 2003, for failure to respond to the Five-Day Quit Notice.<sup>7</sup>

Local Union 897 filed Grievance DS111103 protesting Eckert's termination on November 13, 2003. In support of the grievance, the Union stated that Eckert believed that his doctor had completed the Company's Medical Certificate and returned it to the Company when he went in for surgery on October 6. Following the surgery, Eckert was being cared for at an address other than his own, so he did not receive the first notice of attempted delivery of the Five-Day Quit Notice according to the Local Union. When he did receive the letter on November 7, Eckert was confused because he believed the paperwork had already been sent to the Company. When Eckert contacted the doctor's

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<sup>1</sup> Record, p. 15.

<sup>2</sup> Article VIII, §5 of the National Agreement between Ford and the UAW describes how an employee's seniority with the Company will be broken. Subsection (4) describes loss of seniority for a Failure to Report. The first paragraph of that subsection provides as follows:

"If the employee does not, within five (5) working days (excluding Saturdays, Sundays, and Holidays) after notice to report has been sent to him/her, either report for work or give a satisfactory reason for his/her absence, unless it is not possible for him/her to comply with either of these requirements; and provided at least ten (10) working days have elapsed since his/her last day worked."

<sup>3</sup> The letter states:

"Our records reveal that your Conditional Sick Leave of Absence expired on October 20, 2003. As stated in the instructions with which you were provided at the time you were granted this conditional leave, you were required to contact the Company at the time your leave expired. Your employment record will be automatically terminated with possible loss of seniority if you do not return within 5 working days (excluding Saturdays, Sundays and Holidays) of the date of this letter." (Record, p. 19)

<sup>4</sup> Record, p. 19.

<sup>5</sup> Record, p. 21.

<sup>6</sup> Record, p. 22.

<sup>7</sup> Record, p. 25.

office and learned that the paperwork had not been submitted, he obtained a copy of the Medical Certificate and hand delivered it to the Medical Department on November 11. The fact sheet for Grievance #DS111103 states:

“There were extenuating circumstances which kept T. Eckert from responding to the Five-Day Quit notice, as he was being cared for away from his normal residence. The fact is that as soon as he was aware of the problem (November 7, 2003), T. Eckert acted on it immediately, and within three (3) working days, delivered, personally, all the paperwork that was needed.”<sup>8</sup>

The Medical Certificate that was signed by Eckert's doctor on October 15, 2003, indicates that he would be prevented from working for six to eight weeks as a result of corrective surgery. The Certificate is date-stamped as having been received by the Company at 8:59 a.m. on November 11, 2003.<sup>9</sup>

Eckert's grievance was denied by the Company and appealed to the third stage on December 2, 2003. A third stage grievance agenda for January 20, 2004, indicates that the grievance was put on hold.<sup>10</sup> During the first part of 2004, Eckert wrote several letters to Local 897 President Gangarossa requesting information about his grievance.<sup>11</sup> Eckert also wrote to International President Ron Gettelfinger on May 8, 2004, regarding the progress on his grievance. In his letter to President Gettelfinger, Eckert stated that he requested a medical leave on October 3, 2003, for surgery that was scheduled to take place on October 6 to correct an extended umbilical hernia. He wrote:

“...The medical department attendant had examined the hernia, and caused the generation of a FMLA leave of absence beginning on October 6, 2003. My surgical physician had told me that I would not be able to return to work for six weeks, and that my return to work date is November 17, 2003.”<sup>12</sup>

Eckert pointed out that he had provided the Company with a Medical Certificate justifying the extension of his leave within four days of having received the Five-Day Quit Notice, and he insisted that under the circumstances he was entitled to an extension of his leave under the FMLA as well as the National Agreement.

Eckert stated that when he signed the grievance protesting his discharge on November 11, two Local Committeepersons and the Local Union President assured him

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<sup>8</sup> Record, p. 24.

<sup>9</sup> Record, p. 13.

<sup>10</sup> Record, p. 27.

<sup>11</sup> Record, pp. 28, 41, 48.

<sup>12</sup> Record, p. 43.

that they would protect his rights. When he had not heard from the Local Union after three months, Eckert reported that he called President Gangarossa and received the following responses:

“That he had brought some people back at Christmas time, but never heard from me.  
That Ford refuses to talk to him about my grievance.  
That my grievance is at the ‘three and a half’ stage.  
That he didn’t get the international involved because they’ll consider my grievance ‘to be not worth their time and withdraw it.’  
That he’s having a hard time with Ford because my supervisor didn’t have anything good to say about me. What do I have to say about that?  
That he’s having a hard time with Ford because none of the supervisors had anything good to say about me. What do I have to say about that?  
He questioned the amount of seniority time I had, and said that others had more than I.”<sup>13</sup>

Eckert wrote that at this point he realized that his Local representatives were using him as a bargaining chip to have other terminated employees reinstated. Eckert referred to the steps of the grievance procedure set forth in the National Agreement and reported that he had not been provided with documents to show that any of these steps had been taken.<sup>14</sup>

President Gangarossa, Unit Committeeperson Ron Pilat, and International Representative Scott Adams met with Eckert regarding his grievance on May 21, 2004.<sup>15</sup> During this meeting, Eckert argued that the Company knew that he was going on medical leave in order to have a hernia operation and that the standard leave for that procedure is six weeks. He remarked that under Article VIII, §5(4), of the National Agreement medical leaves will not be cancelled except in unusual situations such as suspected abuse of the medical leave provisions. Furthermore, he pointed out that the Five-Day Quit Notices described in Article VIII, §5(4), are not supposed to be sent when a leave has been issued to cover an employee’s disability for an extended period of time.<sup>16</sup> He argued that once he provided the Company with the Medical Certificate

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<sup>13</sup> Record, p. 44.

<sup>14</sup> Record, p. 46.

<sup>15</sup> Committeeperson Pilat took notes of the meeting, and Eckert produced a transcript of the meeting based on a recording he had made. A portion of the transcript is included in the record. (Record, pp. 49-52, 53-67)

<sup>16</sup> The relevant portion of Article VIII, §5(4) states:

“Such notice will not be sent where a medical leave has been issued to cover an employee’s disability for a specific extended period of time based upon a medical examination by the plant physician or when an employee on conditional medical leave provides medical evidence found acceptable by the plant physician.”

showing that leave should have been granted for an extended period, the notice to report should have been rescinded.

Representative Scott Adams responded to Eckert that the Company claimed that they did not know how much leave Eckert's treatment would require when he went out on October 6. President Gangarossa went on to explain that when an employee goes out on medical leave the Company grants two weeks conditional leave, but that it is up to the employee to provide medical documentation to justify leave beyond the initial two-week period. Gangarossa stated that Eckert's leave had expired on October 20, and the Company waited eleven days after that before sending the Five-Day Quit letter, but Eckert had not responded within the period specified in the agreement.<sup>17</sup>

Eckert then argued that the Local should have demanded that he be granted leave under the FMLA as soon as he was terminated. Eckert referred to the Company's Daily Report of Time (DROT) and argued that the Company's own records showed that he was entitled to leave under the FMLA.<sup>18</sup> Gangarossa responded that the DROT only stated that he was eligible for leave under the Act, not that such leave had been granted. Eckert responded that when he told the Company that he was going out for a hernia operation that constituted notice to the Company that he was applying for leave under the FMLA.<sup>19</sup> Eckert insisted that he did not have to apply for leave under the Act.

Representative Adams then asked Eckert if his pain medication following the surgery may have prevented him from responding to the Five-Day Quit Notice, but Eckert responded that he did not want to get into that. Adams stated:

"On the 7<sup>th</sup> was really the cutoff date if you will. Here's where I'm going with this, if you told me you were on medication and you were not coherent enough to respond to that I guess I could argue that, but you're not telling me that, you're no help. How do I now argue you acknowledge you got it here and you still had time that day and we wouldn't be sitting here today?"<sup>20</sup>

Further on Adams continued:

"...That letter tells you the here's what you need to do. But you didn't do that. So I need you to tell me, and that's where I'm looking for the hole, 11/7, how come, couldn't you pick up the phone and say my doctor didn't send the paperwork—I'm just making up shit, but tell me something--

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<sup>17</sup> Record, p. 57.

<sup>18</sup> Record, p. 59.

<sup>19</sup> Record, p. 61.

<sup>20</sup> Record, p. 66.

evidently I thought you guys had it, I'm here, I'm alive, I'll do whatever I gotta do. Help me out; tell me anything."<sup>21</sup>

Eckert responded:

"When I got the paperwork, my reading of the paper was they needed that 5166. I got the 5166 and brought it in, soon as I could, within 5 days of getting that notice."<sup>22</sup>

Adams answered, "That's not gonna fly."<sup>23</sup> At the conclusion of the meeting, Eckert stated:

"...They fired me unjustly. The purpose for this letter is for suspected abuse. They know a hernia takes six weeks."<sup>24</sup>

On June 7, 2004, President Gangarossa advised Eckert that he and Representative Scott Adams had been unsuccessful at convincing the Company to reinstate him. Gangarossa informed Eckert that the Union had concluded that his grievance could not be won at the Umpire level based on past experience with similar types of appeals. Representative Scott Adams advised the Company that the Union was withdrawing Eckert's grievance on June 8, 2004.<sup>25</sup>

Eckert appealed the withdrawal of his grievance to the International Executive Board (IEB) on June 27, 2004. In response to Eckert's appeal, the Local Union submitted an affidavit that had been prepared by President Gangarossa in response to an unfair labor practice charge filed by Eckert. The affidavit describes the steps taken by the Local on Eckert's grievance. In the affidavit, Gangarossa indicated that he and Representative Scott Adams met with Human Resources Manager Angella Alexander on Eckert's grievance on January 20, 2004, but Management would not move on the grievance, so the Union requested that it be put on hold.<sup>26</sup> Gangarossa stated that the grievance was presented again on March 28, 2004. He declared:

"The Union presented this case with the hope that Management would change their position. The Union argued that the aggrieved should be reinstated based on the aggrieved's medical condition at the time while recuperating. [The] Union argued that the aggrieved did report and

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<sup>21</sup> Record, p. 66.

<sup>22</sup> Record, p. 66.

<sup>23</sup> Record, p. 66.

<sup>24</sup> Record, p. 67.

<sup>25</sup> Record, p. 81.

<sup>26</sup> Record, p. 136.

submitted his paperwork on November 11, 2003, to the medical dept. once he received the letter from the Company. Company stated that the aggrieved's disciplinary record and work ethics (sic) are unsatisfactory. Management refused the Union's request to reinstate the aggrieved. The Union requested once again to place the grievance on hold."<sup>27</sup>

Gangarossa reported that the Union met with Management again on Eckert's grievance on May 6, 2004, but Management insisted that Eckert's work ethic and disciplinary record did not merit his reinstatement.<sup>28</sup> Gangarossa stated that after the May 21 meeting with Eckert, he and International Representative Adams met with Manager Alexander for the last time on Grievance #DS111103. This time, the Union argued that Eckert was on FMLA leave as shown on his DROT. Gangarossa reported:

"Management responded by saying that the code "Y" merely means that the employee was eligible for FMLA if requested. Management stated that the employee did not request for FMLA leave on 10/03/03. The employee notified the medical department that he was scheduled for surgery on October 6, 2003."<sup>29</sup>

In addition to Gangarossa's affidavit, the Local Union provided Disciplinary Action Reports issued to Eckert by Ford Motor Company for the following violations or charges:

3/28/00	Failure to work scheduled OT
5/24/00	Failure to follow instructions
5/24/00	Sleeping on the job
8/29/00	5 <sup>th</sup> absence
4/11/02	Leaving work area w/o permission
6/28/02	AIP occurrence
7/3/03	Away from job/dept./plant w/o permission
7/22/03	Absenteeism
9/9/03	Leaving plant without permission
9/15/03	Absenteeism." <sup>30</sup>

The Local Union argued that it acted diligently in trying to convince Ford Motor Company to reinstate Eckert, but the Company consistently refused based on Eckert's relatively low seniority and disciplinary record. Furthermore, the Union stated that

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<sup>27</sup> Record, p. 137.

<sup>28</sup> Record, p. 138.

<sup>29</sup> Record, p. 139.

<sup>30</sup> Record, pp. 140-144.

Eckert was hostile from the beginning and would not cooperate with the Union representatives who were trying to represent him.<sup>31</sup>

The President's staff determined that a hearing was unnecessary on the appeal. It prepared a report for the IEB on behalf of President Gettelfinger based on information provided by Eckert, Local 897, and UAW Region 9. Staff reported that when Eckert went on medical leave, he was mailed a medical leave package that explained the terms of his conditional medical leave. According to staff's report, this package included the following:

“Medical Certification Form 5166 for hourly employee's request for leave of absence for employee's own health conditions;

Request for federal income tax withholding on disability benefits form;

Copy of Family and Medical Leave Act of 1993 (FMLA) Notice;

Statement of Rights—Disability Benefits Law for the State of New York Workers' Compensation Board;

Notice of application for Hourly Disability Benefits Form to Unicare with instructions.”<sup>32</sup>

Staff remarked that there was no evidence that Eckert had requested leave under the FMLA. In addition, staff reported that there was no record of Eckert having telephoned the Company to report on his condition after he received the Five-Day Quit Notice. Staff concluded, therefore, that Eckert's termination was not in violation of the collective bargaining agreement. It found that the Union had pursued Eckert's grievance through the stages of the grievance procedure, but that it was unable to convince the Company to reinstate Eckert.<sup>33</sup> Staff held that the Union's decision to withdraw Eckert's grievance was not devoid of a rational basis and it denied his appeal.

The IEB adopted staff's report as its decision and notified Eckert on November 4, 2004. Eckert has now appealed to the PRB. We heard the parties in oral argument on June 19, 2005.

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<sup>31</sup> Record, p. 133.

<sup>32</sup> Record, p. 147.

<sup>33</sup> Record, pp. 151-152.

ARGUMENT**A. Timothy A. Eckert:**

The terms of the Family and Medical Leave Act became part of all collective bargaining agreements following the expiration of whatever agreement was in effect on August 5, 1993. I gave the Company sufficient notice, orally, of a legitimate need for medical leave under both the FMLA and the UAW/Ford National Agreement. The notice I provided included such things as the nature of the serious medical condition, date of surgery, and expected duration of leave as six weeks. The FMLA specifically states that an employee need not expressly assert rights under FMLA or even mention FMLA, but may only state that leave is needed.

After filing my appeal, I obtained a copy of Ford Motor Company's "Family and Medical Leave Act of 1993 (FMLA) Notice" through discovery in another Court proceeding. Both the Company and the UAW withheld this incriminating document from me regarding this case. This document is meant to be issued to all employees who take a medical leave of absence. The Company claims that they sent me this form, but they did not. In any event, the form specifically states that the Company will designate eligible leave as FMLA on a preliminary basis, even where the medical certification has not yet been received. It also specifically states that the fact you do not request to have leave counted against your 12-week FMLA entitlement will not cause you to lose any FMLA rights.

I was also entitled to leave under the terms of the National Agreement. Article VIII, §30, of the National Agreement covers medical leaves of absence. It states:

"An employee who is unable to work because of injury or illness, and who furnishes satisfactory evidence thereof, shall be granted an automatic sick leave of absence covering the period of such disability, subject to the provisions of Section 5."

The notice to report to work that was sent to me is the notice that Ford sends when it does not know the reason for the employee's absence. I informed the Company that I required a medical leave for a surgical procedure that normally requires six weeks of leave. The Ford Motor Company Buffalo Stamping Plant Medical Department had processed a similar claim for employee Eddie Davis just a month earlier, and his leave was also six weeks.

There is nothing in the Agreement that allows the Company to cancel a legitimate leave simply because the employee did not respond to a notice. Article VIII, §5(4), states that medical leaves will not be cancelled except in unusual circumstances such as suspected abuse. Never did the Company assert suspected abuse of the medical leave provisions, or that my leave was illegitimate.

When I requested a grievance, I informed the Union that I had submitted the required medical certification to the Company. Approximately five months after my termination, I also notified the Union that the Company was violating my rights under the FMLA. Local President Gangarossa and International Representative Scott Adams each denied that I was entitled to any protection under the FMLA, and they refused to press that claim through the grievance procedure.

The Union has an obligation to protect rights guaranteed by the FMLA, and the Union failed to do that in my case.

**B. International Union, UAW, by James E. Patton:**

Article VIII, §30, requires an employee seeking a medical leave of absence to provide satisfactory evidence of his injury or illness. When an employee requests a medical leave, Ford Motor Company grants a conditional leave for two weeks, and provides the employee with a package of materials explaining how to keep the plant advised about his or her condition for the duration of the leave. The documents provided to the employee include the medical certificate or Form 5166, which must be submitted before the expiration of the conditional leave, as well as a detailed description of the employee's rights under the FMLA. The cover letter accompanying this package gives very specific instructions about the conditional nature of the leave and the requirements for extending it. Ford Motor Company's letter to the employee states:

“Please note that your conditional leave has a “Begin Date,” which should be the date on which you were first disabled from working (or the date on which the Plant was unable to place you with restrictions, if you are on a No Work Available medical leave). Also note that the leave will expire as of the “End Date.” This “End Date” will change on later leave forms to be forwarded to you for approved extensions of this initial leave, if any.”<sup>34</sup>

Timothy Eckert must have received this package of forms, including the explanation of his rights under the FMLA, when he commenced his leave on October 6, 2003, or he would not have had the forms necessary to apply for the Accident and Sickness benefits which he did receive, and he would not have had the Medical Certificate that was completed by his physician and provided to the Company on November 11, 2003. Eckert was on a conditional leave of absence from October 6 to October 20, 2003. During that time, he was required to provide medical certification of his disability in order to extend his leave. He did not provide this information in a timely manner. The Company appropriately issued a Five-Day Quit Notice to Eckert on October 31, 2003, after he failed to report for work at the end of his conditional medical leave. He had until November 8 to provide the Company with a Medical Certificate to justify the extension of his leave. By his own admission, he failed to provide the Medical Certificate to the Company until November 11, 2003. This was too late.

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<sup>34</sup> Record, p. 2.

The FMLA does not alter the operation of Article VIII, §5(4), of the Ford Agreement because the rights provided by the Agreement exceed those created by the FMLA. The notice provided by Ford regarding the employee's rights under the FMLA explains that an employee must complete and return the medical certification for the initial leave or extension within 15 calendar days of the Company's written request. The notice further states:

“...This notice is the Company's written request for this certification. If you fail to return the completed certification within 15 calendar days, the Company may delay commencement of your FMLA leave until the certification is submitted, you may be classified as absent without leave, and you may not have any rights under FMLA for the portion of the absence or leave before you do return a completed certification. In addition, you may lose your rights under FMLA altogether and be subject to termination.”<sup>35</sup>

In addition to the rights created by the FMLA, the UAW/Ford Agreement provides a further check on the Company's power to terminate an employee who is on a legitimate sick leave. If the Medical Certificate is not returned for some reason, or is mishandled by the Company, the Ford Agreement gives the employee another chance to explain the status of his leave in response to the Five-Day Quit notice.

In this case, the record shows that Eckert did receive the Company's notice to report on November 7, 2003, before the expiration of the five day period. Even after the expiration of his conditional leave, Eckert could still have saved his job if he had called the Company on November 7 and explained the status of his condition. This extra opportunity to provide medical certification to support his leave exceeds the requirements of the FMLA. The employee must provide documentation to support his leave whether it is a medical leave granted under Article VIII, §30 of the Ford Agreement or under the terms of the FMLA. An employee cannot simply walk out and inform the Medical Department that he is going to have an operation.

The Union repeatedly challenged Eckert's termination and argued all of the points that he raised, but without success. When Eckert's conditional leave expired, the Company followed the contractual procedure by issuing the Five-Day Quit Notice. There were no documents to justify appellant's failure to provide information on a timely basis. Furthermore, appellant's extensive absentee and disciplinary record made any chance of successfully convincing the Company to reinstate him more difficult. The decision to withdraw the grievance was rational because the Company did not violate the collective bargaining agreement.

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<sup>35</sup> Record, p. 5.

**C. Rebuttal by Timothy Eckert:**

I met the requirements for protection under the Family and Medical Leave Act under applicable case law. I gave Ford proper notice of the need for leave and its approximate duration in accordance with the FMLA. The UAW has been aware from the beginning that I was requesting FMLA leave. If I never produced evidence of my need for leave, the FMLA leave could have been rescinded, but no one has challenged the legitimacy of my leave. The notice to report that I received on November 7 indicated that I had five days to respond. I believed that I was responding in a timely fashion when I delivered my Medical Certificate to the Company on November 11.

**DISCUSSION**

The FMLA provides that eligible employees of covered employers have a right to take up to 12 weeks of job-protected leave in any 12-month period for qualifying events without interference or restraint from their employers.<sup>36</sup> Generally, an employee must inform the employer of his or her need for leave under the FMLA 30 days prior to the day on which the leave is scheduled to begin. In the case of a medical emergency or where the employee does not know when the leave will be required, the notice must be given as soon as practicable.<sup>37</sup> Normally, medical certification will be provided by the employee prior to the commencement of the leave. When this is not possible, however, the employee must provide the requested certification to the employer within the time frame requested by the employer, which must allow at least 15 calendar days after the employer's request.<sup>38</sup>

During oral argument, the International Union explained how Ford Motor Company observes the concurrent obligations of the FMLA and the National Agreement. When an employee of Ford Motor Company who is eligible for leave under the FMLA notifies the Company of the need for medical leave and goes on a medical leave without first submitting a doctor's medical certification, the Company initially designates the leave as FMLA leave. At this point, the Company provides the employee with the package of materials described by the International Union. That package includes a form describing all of the employee's rights under the FMLA and allowing him or her the requisite 15 days to provide medical certification to justify the leave. The employee then has the option of filing for Accident and Sickness Insurance or counting the leave against the 12-week FMLA entitlement.

In this case, appellant was granted a conditional leave until October 20, 2003, to provide medical certification to justify his leave. When he did not do so by October 31, Ford sent him a notice to report to work or explain his absence. At this point, appellant no longer had the protection of the FMLA leave, because he had already exceeded the 15 days allowed to the employee to provide medical certification to the employer. The

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<sup>36</sup> 29 CFR 825.200

<sup>37</sup> 29 CFR 825.302(a)

<sup>38</sup> 29 CFR 825.305(b)

request for medical certification and the consequences of failing to provide it are clearly described in the FMLA Notice Form that Ford routinely includes in the package given to employees who have requested medical leave.

We find no evidence that appellant's rights under the FMLA were violated. It may well be that appellant did not read carefully the FMLA Notice Form provided to him or understand its significance prior to his surgery on October 6, but we cannot credit his claim that it was not included in his medical leave package. It is evident that he received all of the other forms which Ford provides to employees commencing a medical leave. There is nothing to support a conclusion that Ford extracted this notice from the medical leave package intended for Eckert. The notice advises employees of their rights and obligations under the FMLA. Appellant in this case failed to take advantage of the protection provided by that law. There is no merit, therefore, to appellant's claim that the Local Union was negligent in protecting rights guaranteed to him by the FMLA.

As explained by the International Union, the National Agreement actually provides greater protection than the FMLA against a loss of seniority by an employee on medical leave. The notice to report that was issued to appellant pursuant to Article VIII, §5(4), gave him another opportunity to provide medical certification to justify his leave, but appellant did not respond to the notice within the time specified by the collective bargaining agreement. Furthermore, appellant did not provide the Union with any explanation for his failure to respond to the notice that it could use to argue on his behalf. Appellant's claim that he thought he had 5 days to respond after he received the letter on November 7 is unconvincing, because that is not what the notice says. Furthermore, nothing in the FMLA alters the National Agreement with respect to an employee's obligation to respond to notices such as the one sent to Eckert on October 31, 2003.

We are not authorized to disturb the Union's decision to withdraw a grievance absent evidence that the matter was improperly handled because of fraud, discrimination, or collusion with management, or that the disposition was devoid of a rational basis.<sup>39</sup> The record in this case demonstrates that the Local Union presented Eckert's grievance three times in an effort to have him reinstated. Unfortunately, Eckert's supervisors had formed a negative impression of his attitude towards his job. Based on this, his disciplinary record and relatively low seniority, the Company refused to change its position that Eckert's seniority had been broken. In the absence of a violation of the collective bargaining agreement or applicable statute, the Union had no argument it could present to the Umpire to compel Ford to reinstate Eckert. Under the circumstances, Representative Adams' decision to withdraw Eckert's grievance cannot be said to have lacked a rational basis.

The decision of the IEB is affirmed.

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<sup>39</sup> UAW Constitution, Article 33, §4(i).