

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

APPEAL OF:

TERRANCE LOMBARD, Member
LOCAL UNION 174, UAW
(Romulus, Michigan),
Appellant,

-vs-

CASE NO. 1525

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

DECISION

(Issued November 15, 2006)

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

APPEARANCES: Ellis Boal, Terrance Lombard, Toby Lombard,
and Ronald Reosti on behalf of appellant;
Eunice Stokes-Wilson, Frank D. Woods, Jr.,
and Bill Karges on behalf of the International
Union, UAW.

Terrance Lombard claims that he is entitled to be compensated by the International Union, UAW, for losses resulting from his discharge on August 18, 2003.

FACTS

Terrance Lombard worked for Chrome Craft Corporation in Highland Park, Michigan, in a bargaining unit represented by UAW Local Union 174. He had a seniority date of May 26, 1998. He was suspended for fighting on August 11, 2003, following an altercation on August 8 involving several employees and supervisors. The suspension was converted to a discharge on August 18, 2003.¹

¹ Record, p. 1.

UAW Local 174 filed a grievance protesting Lombard's termination on August 20, 2003. The grievance asserted that the incident on August 8 was caused by the behavior of a member of management, Foreman Mike Owens. The grievance charged that Foreman Owens was out of control and it stated that he should be discharged before he killed someone. The grievance further charged that the Company had conducted an unfair investigation and demanded that Lombard be returned to work and compensated for any losses resulting from his discharge.²

Lombard's grievance was referred to mediation and mediators Ed Phillips and James Stathem recommended that the Company convert Lombard's termination to a layoff and pay him \$1,000 in return for a release of all claims.³ Lombard refused this offer of settlement. On February 24, 2004, International Representative Frank Woods advised Lombard that the Union did not intend to pursue arbitration of his grievance. Woods explained to Lombard that the Union's decision was based on the nature of the incident in which he had been involved and the rise of violence in the workplace.⁴ On April 20, 2004, Representative Woods informed Chrome Craft General Manager John Cueny that Lombard's grievance was being withdrawn and closed by the Union.⁵

Meanwhile, Lombard appealed Woods' decision not to arbitrate his grievance to the International Executive Board (IEB) on March 19, 2004. In support of his appeal, Lombard argued that he was falsely accused of fighting and intimidating a supervisor and that the Union had not put forth an adequate effort to save his job. He stated that he had not been notified of the mediation of his grievance and that the Union did not present his statement or the statements of his witnesses to the mediators. Lombard reported that the Union had obtained the reinstatement of another employee at Chrome Craft who was discharged for workplace violence. According to Lombard, after his discharge the Company produced a number of disciplinary reports that were allegedly issued to him for workplace violence. Lombard stated that he had never seen or signed these reports.⁶

UAW Region 1A Director Jimmy Settles responded to Lombard's appeal in a memorandum addressed to International President Ron Gettelfinger on April 6, 2004. Settles provided Gettelfinger with a copy of the settlement recommended by the mediators. He argued that this was the best resolution that could be obtained for Lombard. He explained that arbitration of appeals from discharges resulting from workplace violence were unlikely to succeed. Settles stated that every avenue to regain Lombard's employment had been pursued. He reported that Representative Woods

² Record, p. 2.

³ Record, pp. 6-7.

⁴ Record, p. 8.

⁵ Record, p. 14.

⁶ Record, p. 9.

had investigated the possibility of having Lombard enroll in an anger management course, but that Lombard had refused. Settles concluded that Lombard's grievance was handled without prejudice and in a timely and professional manner.⁷

On July 22, 2004, Toffie Abbasse and Jack Campbell conducted a hearing on behalf of President Gettelfinger in response to Lombard's appeal to the IEB. The hearing officers prepared a report to the IEB based on testimony presented at the hearing. The hearing officers observed that Lombard had acknowledged that he is not a quiet person and that he had argued with Supervisor Owens. Nevertheless, according to the hearing officers' report, Lombard testified that he never punched Owens and that Owens had argued with and threatened just about everybody at Chrome Craft.⁸ In addition, the hearing officers reported that Lombard testified that Owens had had three altercations with other employees after Lombard was discharged and that Owens himself had now been terminated for fighting.⁹ Chief Steward Cary Stewart confirmed that Owens had been involved in subsequent altercations. Stewart also commented on the statement given by Supervisor Black concerning the incident on August 8. The hearing officers' report states:

"Chief Steward Stewart testified that the Company's position was that the Appellant attacked Foreman Owens and was choking him and this was witnessed by Supervisor Black. However, Supervisor Black told (Troy) (sic) Lombard that he 'was ordered to say that Terrance attacked Owens.'"¹⁰

The hearing officers reported that International Representative Woods testified that he told the Local Union Shop Committee to interview people in the plant and get the facts. Woods stated that the people he talked to gave different stories about what happened. According to the hearing officers, Representative Woods explained that the procedure at this Local Union is to have a mediation hearing before a case is submitted to arbitration. Woods reported that he gave the mediators the Union's version of the events that led to Lombard's discharge and that the Company representatives gave their version. Woods stated that the mediators upheld the Company's position.¹¹ Woods told the hearing officers that on the basis of the conflicting statements from employees and management representatives regarding the case, it was agreed that the Union would not prevail before the arbitrator.¹²

⁷ Record, p. 13.

⁸ Record, p. 18.

⁹ Record, p. 19.

¹⁰ Record, p. 20.

¹¹ Record, p. 21.

¹² Record, p. 21.

The hearing officers held that the evidence had not been properly presented to the mediators. They noted that management had presented conflicting accounts of the incident. They concluded that the Local Union had not adequately investigated Lombard's grievance in order to make a rational decision about its proper disposition. The hearing officers granted Lombard's appeal, and the IEB adopted their report as its decision. Lombard was sent a copy of the IEB's decision on January 3, 2005.¹³

On January 25, 2005, Representative Woods sent a request to Plant Manager John Cueny asking him to reinstate Lombard's grievance.¹⁴ On February 7, 2005, Human Resources Manager William Murray responded to Woods that Chrome Craft Corporation had no obligation to reinstate grievances under the collective bargaining agreement between the parties. Murray stated that the record supported the Company's decision to terminate Lombard, and he denied Woods' request to reinstate the grievance.¹⁵ Woods advised Lombard of the Company's decision on February 14, 2005.¹⁶

On March 9, 2005, Lombard wrote to President Gettelfinger's Administrative Assistant Eunice Stokes-Wilson and asked that the Union assume responsibility for the losses he suffered as a result of his wrongful discharge.¹⁷ Lombard renewed his request in a letter to President Gettelfinger on April 27.¹⁸ Gettelfinger responded to Lombard on May 20, 2005, as follows:

"This will acknowledge receipt of your request to appeal to the Public Review Board (PRB) postmarked April 28, 2005. The International Executive Board granted your appeal and the Company refused to reinstate your grievance. Absent a [reinstatement] agreement the Union is without power to force the Company to reinstate the grievance. Accordingly, there is [no] further remedy available.

That notwithstanding, your request will be sent to the PRB as you have requested."¹⁹

At this point, Lombard filed a lawsuit against Chrome Craft Corporation, the International Union, and UAW Local 174 in the United States District Court, seeking damages resulting from his discharge.

¹³ Record, p. 24.

¹⁴ Record, p. 26.

¹⁵ Record, p. 28.

¹⁶ Record, p. 30.

¹⁷ Record, p. 31.

¹⁸ Record, p. 32.

¹⁹ Record, p. 33.

On September 1, 2005, the International Union forwarded a copy of Lombard's claim for damages to the PRB, and the case was docketed as an appeal on September 14, 2005.²⁰ After the case was docketed, the International Union requested three extensions of time to respond to Lombard's claim.²¹ The International Union filed its third request on October 28, 2005, asking that the time limits be extended until November 15, 2005.²² The PRB granted this request, but stated that it would be the last extension granted.²³ On November 15, Lombard requested that the Union be held in default for failing to respond to his appeal within the established time limits.²⁴

On November 16, 2005, President Gettelfinger sent a letter to the PRB explaining the Union's position in response to Lombard's claim for damages. Gettelfinger reported that when his staff requested information about Lombard's appeal in 2004, the Region provided only a small packet of information including Lombard's disciplinary report of August 8, 2003, a copy of his grievance, the settlement recommended by the mediators and a brief description of why the grievance had been withdrawn.²⁵ Gettelfinger asserted that the IEB's conclusion that Lombard's grievance had not been properly presented was based on an inadequate record, but that the Region's complete file on Lombard's appeal, as well as documents discovered in connection with Lombard's lawsuit, demonstrated that Representative Woods' decision to withdraw Lombard's grievance was, in fact, rational. Gettelfinger reasoned that Lombard had incurred no damages as a result of the Union's handling of his grievance, because he would have been unlikely to have obtained any damages from the employer even if his case had been submitted to arbitration.²⁶

President Gettelfinger's letter referred to five exhibits made up of several hundred pages including witness statements obtained through discovery conducted in connection with Lombard's lawsuit, Lombard's complete disciplinary record, his entire personnel file at Chrome Craft, and the transcript of a deposition. Gettelfinger requested that these exhibits be included in the record. PRB staff returned these exhibits to the International Union on December 2, 2005, because they had not been submitted in accordance with the Board's Rules of Procedure regarding additional evidence. PRB Director Barbara Klein asked the International to separate the new material from the material that was presented to the hearing officers on July 22, 2004. Klein further requested that the International Union identify the new documents and

²⁰ Record, pp. 35

²¹ The PRB's Rules of Procedure require that the International respond to appeals within 15 days following its receipt of the Notification of Pending Appeal; however, extensions are liberally granted.

²² Record, p. 43.

²³ Record, p. 44.

²⁴ Record, p. 45.

²⁵ Record, p. 50.

²⁶ Record, p. 53

explain when and how they were obtained, and why they were not presented at the earlier hearing.²⁷

The International Union responded to Klein's request by asking that Lombard's appeal be remanded so that the IEB could conduct an evidentiary hearing based on the new information. Lombard objected to the remand. We considered the procedural issues raised by the Union's request on January 21, 2006. We concluded that a remand would only cause further delay of Lombard's appeal and we directed the International Union to make a proper submission of any new, relevant material in a manner consistent with the PRB's Rules of Procedure.²⁸ On February 3, 2006, the International Union submitted five exhibits to support the position stated by President Gettelfinger in his letter of November 16, 2005.²⁹ Lombard has objected to the International Union's exhibits and requested that they be stricken from the record.³⁰ We heard the parties in oral argument on October 21, 2006.

ARGUMENT

A. Terrance Lombard, by his attorney, Ellis Boal:

The Board has not yet ruled on Lombard's request that the Union be defaulted for its failure to respond to Lombard's appeal by the established deadline of November 15, 2005, and we ask it now to consider his objection to the Union's answer. In *Dietrich v. Local Union 1313, UAW*, 1 PRB 773, (1972), this Board stated unequivocally that it would not accept untimely answers from the Union. The decision states:

"Henceforth, however, we shall insist upon strict compliance with the fifteen-day limitations period of Rule 3. Unless a request for an extension of time is submitted by the Union, we shall, with respect to appeals filed after the date of this decision, expect to receive written responses from the International Union to the appeals submitted within fifteen days of its receipt of our Notification of Pending Appeal. Its unexcused failure to comply will subject it to default, provision for which shall be made by amendment to our Rules of Procedure. ..."³¹

²⁷ Record, p. 62.

²⁸ Record, p. 68-69.

²⁹ Record, pp. 72-158.

³⁰ Record, pp. 160-164.

³¹ 1 PRB 773, at 775.

Members have received no notice that *Dietrich* has been reconsidered. Members believe it is still the law of the Union. The UAW has not even asked that it be reconsidered. The *Dietrich* rule should be enforced against the UAW today. Lombard and the Union should play with the cards they were dealt. Please reconsider and default the Union.

In its response to Lombard's appeal, the International President's staff submitted new evidence in an attempt to undermine the decision of the IEB, even though the Region and Representative Woods did not appeal that decision within the time limits specified by the Constitution. This new evidence should be rejected. The IEB's decision that Lombard's grievance ought to have been submitted to arbitration is no longer at issue. The President's staff should not be permitted to challenge the IEB's conclusion that the Union failed to provide Lombard with adequate representation at this stage of the proceedings. Under the appellate framework described in Article 33, §3(d), the IEB, rather than the President, is authorized to decide appeals. Nothing in the Constitution allows the President to challenge a decision of the IEB.

Even if the President were permitted to challenge the merits of the IEB's decision, they have offered no explanation for why these materials were not presented to the IEB, other than to say that Woods failed to produce them. If these documents were going to be presented, they should have been presented and evaluated during the IEB hearing. At this point, the documents are no longer reliable. The witness statements have been supplemented and reordered since the President filed his answer to Lombard's appeal. In addition, the International Union has submitted Lombard's entire disciplinary record, when the only items relevant to the IEB's decision were the two warnings for fighting and/or threatening. Lombard did not sign either of these documents and he denies being warned. Lombard's deposition also has no relevance to the issues before this Board. There is no claim that Lombard's deposition contradicts anything he said before the hearing officers for the IEB.

Woods' inexperience with UAW's Constitutional appellate procedures should not excuse his failure to develop an adequate record to justify his actions with respect to Lombard's grievance. Furthermore, after Woods made the decision not to arbitrate Lombard's grievance, he nevertheless should have kept the grievance open pending Lombard's appeal to the IEB. Had he done so, the Union could still have requested that the case be submitted to arbitration based on the IEB's decision, for there is no time limit in the contract on requests for arbitration. Instead, Woods withdrew and closed Lombard's grievance on April 20, 2004, thus depriving Lombard of this possible remedy to the mishandling of his case.

The inadequacy of the Union's representation has already been determined. The PRB's only task now is to quantify the damages. This Board has previously held that the Union can be held accountable for damages resulting from its wrongdoing. In *Appeal of Albert Dawkins*, 2 PRB 296 (1975), the Board made the following observation:

“This case comes to us in the context of a local union having authorized an expenditure of its funds and the International Union having disapproved that expenditure on the ground that it was not a ‘necessary’ expense. It is not, of course, the position of the International Union that a local union may not reimburse one of its members whom it has wronged for the damages which he has sustained. Indeed this authority is central to the system of internal remedies provided under the UAW Constitution and it is upon this authority that the entire system of internal remedies is based. ...”³²

This Board affirmed the availability of damages to redress the mishandling of grievances by Local Union representatives in *Morris v. Local Union 1853, UAW*, 9 PRB 225 (1999). In the *Morris* decision, this Board not only awarded the appellant the sum of \$250,000 for back pay and certain attorney’s fees and expenses, but it also provided him with an offer of employment in lieu front pay.³³ This Board’s award in the *Morris* case provides a guide for determining damages in this case. Lombard asks the PRB to assess the amount of back pay, front pay and damages for mental anguish to be paid by the Union as a result of its failure to properly challenge his wrongful discharge by Chrome Craft Corporation. He would not object to a remand to the IEB for the sole purpose of making such an assessment.

The Union’s answer to Lombard’s claim for damages is that there was never any certainty of success even if the Lombard’s grievance had been submitted to an arbitrator, and that an award of back pay was unlikely in any event. This argument should be rejected. Suppose the PRB were to review the entire record and decide in the end that Lombard’s chances of winning the arbitration were 90 percent. Would it then be appropriate to give him only 90 percent of his damages? No. Doubts should be resolved against the wrongdoer. In this case, that is Frank Woods and the UAW Department for which he works.

B. International Union, UAW, by Presidential Administrative Assistant Eunice Stokes-Wilson:

Immediately following the incident between Terrance Lombard and Foreman Micheal Owens, Local Committeeperson Antwine Riggs interviewed Owens and Supervisor Roosevelt Black. Black told Riggs that he had seen Lombard grab Owens. Black subsequently submitted a written statement that he had seen Lombard grab Owens by the throat. Committeeperson Riggs also interviewed employees who were in the area at the time of the incident, and several of these witnesses stated that Lombard had not touched Owens. After the grievance was filed, Chief Steward Cary Stewart

³² 2 PRB 296, at 301.

³³ The Board’s Order dated December 4, 2000, is found at 9 PRB 244.

conducted additional interviews of employees in the area and received conflicting versions of the incident; some said Lombard had grabbed Owens and some said he had not. Lombard's brother, Toby Lombard, gathered written statements from witnesses asserting that there had been no physical contact between Terrance Lombard and Supervisor Owens.

The Company refused to settle the grievance based on the claims of its witnesses and the grievance was referred to the third step where it was assigned to International Representative Frank Woods. Woods' initial investigation of Lombard's grievance was hampered by the Company's refusal to cooperate with him. He asked the Company for copies of the witness statements that supported its charge that Lombard had threatened and grabbed Owens, and also for information regarding Lombard's disciplinary history. The Company refused to provide this information to the Union. Prior to the mediation, however, Supervisor Black telephoned Woods and told him that Lombard had in fact threatened and grabbed Owens. When Lombard's grievance was presented to the mediators, the Company introduced the statements of its witnesses including that of Supervisor Black. Woods also discovered for the first time at the mediation hearing that Lombard had an extensive disciplinary history, including two past reports for fighting and threatening.

After Lombard rejected the settlement proposed by the mediators, Woods made one more effort to convince the Company to reinstate him. Woods spoke with Plant Manager John Cueny and Human Resources Manager Bill Murray. They continued to refuse to reinstate Lombard. Woods directed Chief Steward Cary Stewart to go back one more time and interview the witnesses to the event. Stewart reported back to Woods that some of the employees who had given statements no longer wanted to be involved. Woods reviewed the facts with several of his Union colleagues, including Local 174 President Bruno Duchane, International Representative Rudy Roberts, and Assistant Region 1A Director, Al Suemnick. All agreed that workplace violence allegations are difficult to win at arbitration. In addition, Woods learned that an arbitrator had previously sustained the discharge of a Chrome Craft employee for threatening another employee even though no physical contact was involved. Finally, Representative Woods and Supervisor Black were well acquainted. Woods had trained Black when they both worked in production at the Company. Woods respected Black and felt that he would make a credible witness. Based on all of these factors, Woods concluded that Lombard's grievance could not be successfully arbitrated.

There can be no question that Woods failed to convey effectively to the IEB's hearing officers the rational and common sense basis for his actions regarding Lombard's grievance. Woods had never had an appeal filed concerning his representation before, and had no prior experience with the IEB or its hearing officers. The report filed by Toffie Abbasse and Jack Campbell indicates that Lombard produced statements by Kelvin Smith, Marcellus Washington, Dan Wroblewski, and appellant's brother, Toby Lombard, affirming that there was no physical contact between Terrance Lombard and Supervisor Owens, while Woods merely stated that there was conflicting testimony. The impression was created that the Union had not considered the

statements given by Lombard's witnesses. Woods also did not contradict Lombard's testimony that he had not previously been disciplined for violent behavior. Woods failed to provide the hearing officers with the basic documentation regarding his handling of Lombard's grievance, namely, the witness statements and the grievant's disciplinary record. It is not hard to see, therefore, why Woods was unable to convince the hearing officers that he had followed the best practices in his review of Lombard's case.

It is clear now, however, that there were sound reasons for Woods' decision not to arbitrate Lombard's grievance. Even with the testimony of Lombard's witnesses, the Union had a very weak case. Cases involving workplace violence are very difficult to win before an arbitrator. In this case, the witnesses may have disagreed about the extent of the violence that occurred on August 8, 2003, but there is no question that Lombard inserted himself into a situation that did not concern him and engaged in an angry confrontation with a member of management. There was a prior arbitration decision sustaining discharge by this employer for a similar violent confrontation where there was no allegation of physical contact. Furthermore, Lombard did have an extensive disciplinary record including two suspensions for threatening a supervisor. It is extremely unlikely that an arbitrator would have reinstated Lombard based on these facts.

The hearing on Lombard's appeal was conducted on behalf of the International President pursuant to the authority granted to him in Article 33, §3(d), of the International Constitution. The report of the hearing officers constituted a disposition of the appeal by the International President. The applicable paragraph states as follows:

"Disposition By the International President. The International President may, in his discretion, decide an appeal rather than submitting it to an Appeals Committee. In such a case, the International President may designate a representative to conduct any investigation or hearing deemed necessary, in accordance with the procedures of this Subsection. The International President shall base her/his decision on the files and records of the case, and such briefs as may be submitted. In any appeal involving the handling or disposition of a grievance against an employer, the decision of the International President shall be submitted to the Nine (9) Member Committee of the International Executive Board."

A decision of the International President made pursuant to this subsection becomes the decision of the full International Executive Board ten days after it is submitted to the Nine Member Committee unless one or more of the members of the Board raises an objection to it. The grant of an appeal by the International President would generally receive special scrutiny by the Director of the Region before the ten day period elapsed. That apparently did not happen in this case, however, because there were a number of problems with the report of the hearing officers that should have raised questions.

The hearing officers relied heavily on the statements presented by Lombard's witnesses, but they ought to have asked more questions about these statements. Unfortunately, Committeeperson Antwine Riggs, who conducted the investigation of Lombard's grievance at the Local Union level, was getting married on the day of Lombard's hearing and was not present to respond to Lombard's testimony about these statements and the statements that were submitted on behalf of the Company. Had Riggs been present, he could have made the hearing officers aware that the Union had considered the statements of Lombard's witnesses in its evaluation of his case. Riggs certainly would have responded to Lombard's claim that he had no prior disciplinary reports for violent behavior. In any event, the hearing officers should have conducted an independent inquiry into Lombard's disciplinary record. Despite these omissions from the hearing officers' investigation, their report was never questioned by the Regional Director; we do not know why. The report subsequently became the decision of the IEB in accordance with the procedures described in the Constitution.

Lombard's grievance was, therefore, referred back to the Region as directed by the IEB. When the employer refused to reinstate the grievance, however, the Union's only option was to use economic means such as a strike to protest Lombard's discharge or else commence a lawsuit for damages. At this point, the Union had to evaluate the likelihood that any of these methods would succeed in obtaining Lombard's reinstatement or a superior settlement of his grievance. The fact is that the Union had no bargaining chips to use against this employer on Lombard's behalf. The Company had no fear of litigation because Lombard's case was weak. At this point, the International President determined that no further remedy could be obtained for Lombard. In making this determination, the President acted pursuant to the authority granted to him in Article 13, §2, of the Constitution to direct the workings of the Union between sessions of the IEB.³⁴

C. Terrance Lombard, by his attorney Ellis Boal:

The process followed by the Union in this case was constitutionally defective. The International President cannot overturn a decision of the IEB. When the Company refused to reinstate Lombard's grievance or negotiate with the Union over his wrongful discharge, the President should have notified the IEB of the problem. Instead, the President's staff attempted to convince Lombard that it had no further obligation to him. After his claim for damages was referred to the PRB, the President's staff made a series of decisions regarding Lombard's appeal. There is no evidence that the President or his staff reported any of their actions to the IEB.

³⁴ Article 13, §2 of the UAW Constitution provides as follows:

"Between sessions of the International Executive Board, the International President shall execute the instructions of the International Executive Board and have full authority to direct the working of this organization within the provisions of this Constitution and shall report her/his acts to the regular quarterly meeting of the International Executive Board."

Furthermore, the merits of Lombard's case were not as weak as the Union now asserts. Foreman Owens was subsequently fired because of his inappropriate behavior in the plant. This circumstance not only supported Lombard's claim that it was Owens who had initiated the violent confrontation that led to his discharge, it also made it unlikely that Owens would have been available to testify on the Company's behalf if the case had been taken to arbitration. The Company's other main witness, Supervisor Roosevelt Black, is entirely unconvincing. He has given three different versions of what occurred on August 8, 2003, and during a deposition conducted in connection with Lombard's lawsuit confessed that his view of the altercation was obstructed so that he did not really see what happened. Furthermore, it is untrue that Lombard's witnesses were not willing to testify. We have affidavits from those witnesses affirming that they will stand behind their statements.

With respect to Lombard's disciplinary record, most of the items cited by the International Union were minor violations that occurred too long ago to be considered. The recent report charging Lombard with threatening behavior was issued to Lombard after his Supervisor hit him in the genitals. The Supervisor even admitted having assaulted Lombard in this fashion in response to a grievance. An arbitrator would very likely have considered this a mitigating circumstance. In any event, Lombard should not have to demonstrate that he would have won his case before an arbitrator with absolute certainty. The IEB concluded that there was sufficient merit to his case to take it to arbitration. He was denied the opportunity to make his case before the arbitrator by Representative Woods' mishandling of the matter. He now faces a more difficult case in Court because of various procedural defenses available to the Company.

We are asking this Board to uphold the IEB's decision on Lombard's appeal and award him damages in accordance with the guidelines established in *Morris v. Local Union 1853, supra*.

DISCUSSION

This case did not come before us in the usual way as an appeal from a decision of the IEB. Indeed, Lombard had no reason to appeal the decision of the IEB that his grievance was not properly investigated. The International President's staff referred Lombard's claim for damages to us after the Union's effort to reinstate Lombard's grievance was unsuccessful. In response to Lombard's claim, President Gettelfinger argued that the IEB's decision of January 3, 2005, had been based on an incomplete record which gave the President's hearing officers the mistaken impression that Representative Woods had not conducted an adequate investigation of Lombard's grievance. Gettelfinger maintained that an evaluation of the entire record had established that the decision to withdraw Lombard's grievance prior to arbitration was sound, because the case could not have been won before an arbitrator. In support of this position, Gettelfinger has offered to supplement the record with the documents that he claims were not available to the hearing officers who reported to the IEB on Lombard's appeal.

We have reviewed the material submitted by the President. We observe that it is no longer possible to determine precisely which of these documents were available to the hearing officers in July 2004 and which were obtained subsequently through discovery. We do not find it necessary to make such a determination, however, because the International Union has not identified any discovery made after Lombard's grievance was withdrawn that would have altered significantly the Union's prospects of successfully arbitrating his discharge grievance. The statements of witnesses submitted by the International in February 2006 do not add anything substantial to what the hearing officers reported to the IEB in July 2004. All of the witnesses to the incident agreed that at around 9:15 pm on August 8, 2003, there was a mechanical failure on the line that created a dangerous situation so that the line had to be shut down. Employee Clarence Byrd reported that employee Clarence Barrett tried to alert everyone that a bar was about to crash down without a cart underneath it. Byrd stated that Barrett tried to get a cart in place, but it was too late.³⁵ Supervisor Roosevelt Black reported that he was having lunch in the Supervisor's office when Barrett started kicking and beating at the door. Black stated that by the time he got to the door, Barrett had already started beating on the main office door.³⁶ The witnesses agree that Foreman Mike Owens came out of the main office and began to argue with Barrett. At this point Lombard got involved and started to argue with Owens. The hearing officers' report indicates that Black initially told the Union that there were no blows thrown.³⁷ Subsequently, however, Black sent an email to Plant Manager John Cueny in which he stated that Lombard had grabbed Owens by the throat and threatened him.³⁸ The Local Union Steward testified at the hearing in July 2004 that Black told Toby Lombard he had been ordered by the Company to say that Terrance Lombard grabbed Owens by the throat. Several other employees gave statements indicating that there was just a lot of heated discussion and that Owens was the instigator of most of it. After describing the crash on the line, Clarence Byrd reported:

“Soon after that, Mike Owens came out and started to point fingers and place blame on people, when it was clear to me that this was a mechanical failure.”³⁹

Employees Dan Wroblewski and Marcellus Washington also gave statements indicating that Lombard and Owens were arguing face to face, but that no punches were thrown.⁴⁰ Toby Lombard reported that Mike Owens initiated the angry confrontation. He wrote that he had never seen a supervisor behave so wildly.⁴¹

³⁵ Record, p. 84.

³⁶ Record, p. 74

³⁷ Record, p. 22.

³⁸ Record, p. 74.

³⁹ Record, p. 84

⁴⁰ Record, pp. 91, 93-95.

⁴¹ Record, p. 92.

The report of the hearing officers also indicates that they were aware of the two disciplinary reports that had been issued to Lombard for violation of the shop rule against fighting and threatening. The Union has now obtained Lombard's complete disciplinary record, as well as the supporting documents, but this information does not add significantly to what was known in 2004. Most of the reports issued to Lombard occurred in 2000 and 2001 and involved poor work habits rather than violent behavior. Indeed, Lombard's disciplinary history shows that he responded positively to the discipline issued in 2000 by correcting his habitual absenteeism.⁴² The most significant item in Lombard's disciplinary history is the report for threatening a supervisor issued to him on June 10, 2003. The grievance written in response to that report confirms that the supervisor admitted hitting Lombard in the genitals.⁴³

We find no basis among the materials submitted by the International Union in February 2006 for rejecting the findings of the President's hearing officers that Representative Woods did not properly present Lombard's case to the mediators at the fourth step of the grievance procedure. In his appeal to the IEB, Lombard complained that Representative Woods had not obtained his statement or those of his witnesses prior to the mediation of his case. Woods did not deny this at the hearing in July 2004; he merely stated that he gave the mediator the Union's version of the altercation. Furthermore, Woods does not claim that he raised any questions about the disciplinary

⁴² President Gettelfinger provided the following summary of Lombard's disciplinary record:

1/22/00:	Written warning for refusal to perform work
2/04/00:	Written warning for repeated tardiness
2/11/00:	Written warning and counseling for tardiness
6/03/00:	Written warning for insubordination ("fuck you")
6/08/00:	Written warning for repeated tardiness
6/13/00:	Written warning for habitual absenteeism
6/17/00:	Written warning for habitual absenteeism
7/19/00:	Written warning for habitual absenteeism
7/22/00:	Discharge for habitual absenteeism (reinstated through Union intervention)
7/26/00:	Written warning for violating lunch/break time
12/19/00:	Written warning for wasting time
7/19/01:	Written warning for violating break/lunch time (sleeping in truck—rescinded)
7/20/01:	Suspension for fighting/threatening (telling supervisor to get out of his face or he would 'knock his ass to the floor' —reduced through Union intervention to written warning.)
7/21/01	Written warning for producing excessive rejects
3/11/02:	Written warning for altering/changing Company tools/machines (damaged plating racks, line down 1 hour)
11/14/02:	Written warning for disregard of safety (repeated refusal to wear safety glasses)
6/10/03:	Written warning for fighting/threatening (approaching supervisor—not Owens—in threatening manner and refusing to return to work) (Record, p. 48)

⁴³ Record, p. 120

reports introduced by the Company at the mediation, although Lombard had questioned their authenticity. Woods apparently gave inordinate weight to comments made by Supervisor Black during a private telephone conversation prior to the mediation of Lombard's case, although Black had given inconsistent statements about the incident to other people. The IEB has broad discretion in its review of the handling of grievances; it is not limited to deciding whether the decision of the Union representative lacked a rational basis. Representative Woods had a duty to Lombard to present his case to the mediators in the most favorable light and aggressively to seek his reinstatement. The hearing officers concluded that Woods had not done that sufficiently.

Contrary to appellant's assertions, however, the hearing officers did not direct the Union to submit Lombard's grievance to arbitration; their report reaches no conclusion on the question whether the grievance should have been arbitrated. Rather, the hearing officers directed Representative Woods to go back and conduct a proper investigation in order to make a rational disposition of Lombard's grievance. Such an order was well within the discretion of the IEB, even if it might ultimately be determined that the case could not be successfully arbitrated.

At this point the Union either had to try to negotiate a better resolution of Lombard's grievance or else it had to investigate further. Such an investigation in turn would determine either that there was ample support for the Union's decision not to arbitrate the grievance, or that the grievance warranted being taken to arbitration. In order to commence this process, the Union requested that the grievance be reinstated. Although the collective bargaining agreement between Local Union 174 and Chrome Craft Corporation did not include any provision requiring the employer to reinstate a grievance, a local union can often convince an employer to take a second look at a situation in order to maintain its good bargaining relationship with the Union. In this case, however, Chrome Craft's management was apparently unmoved by any desire to foster good relations with the Union. Furthermore, the description of this incident and prior altercations involving Foreman Owens, as well as other verbally and physically abusive interactions between employees and supervisors at Chrome Craft revealed a very poor human resources climate. The absence of a reinstatement agreement and the poor bargaining relationship between the Union and this employer forced the International Union to pursue further investigation of Lombard's case.

It would certainly have been a better practice for Woods to have kept Lombard's grievance open until he had exhausted his appeals regarding its disposition, so that the option of arbitration remained open. However, the decision to arbitrate had not been made when the grievance was referred back to the Region. The likelihood of success would still have been evaluated before arbitration of the grievance was requested. As Administrative Assistant Stokes-Wilson explained during oral argument, the President's staff undertook a review of the entire record at this point and concluded that the case could not have been arbitrated successfully. President Gettelfinger's letter to this Board on November 16, 2005, identified a number of factors that supported this conclusion. The case involved violence against a supervisor, and the Company did have at least one witness willing to testify that Lombard had struck Owens. Members of the staff

knew from experience that workplace violence allegations are generally difficult to challenge through arbitration. In addition, the mediators who reviewed Lombard's case recommended that it be settled rather than arbitrated. At some point in these proceedings, the Union learned that there was an umpire decision involving this employer upholding a discharge for a violent confrontation even where there had been no physical contact. Furthermore, although there may have been mitigating circumstances, Lombard had previously been disciplined for aggressive behavior. It was also likely that an arbitrator would take Lombard's entire disciplinary record into account, and the number of disciplinary reports he had received during his employment at Chrome Craft would have worked against him. In other words, the President's subsequent review of the record affirmed that even if Woods had conducted an adequate investigation, he still would have reached the conclusion that no further relief for Lombard could be obtained from this employer through the grievance process.

The explanation provided for the Union's decision in President Gettelfinger's letter of November 16, 2005, is certainly more clearly articulated than anything Woods had previously stated. That does not mean, however, that the President's analysis amounted to a decision to overrule the IEB. The Union had already taken the first step toward compliance with the IEB's decision when it tried to reopen negotiations with Chrome Craft Corporation. When no further relief could be obtained through negotiations with this employer, the President conducted his own investigation in order to determine what steps should follow. The International Constitution did not require the President to return to the IEB and obtain its approval before making decisions on how to proceed in Lombard's case once further negotiations with the employer failed. As the International has argued, the power to make such decisions is inherent in the authority conferred on the President by Article 13, §2, of the Constitution. Lombard protests that there is no evidence to show that the President reported his actions to the IEB as required by this section, but such reports would have been made by the staff to the Region in the ordinary course of business. We will assume under the circumstances of this case that an administrative body works the way it should when there is no evidence to the contrary.

Unfortunately, however, the President's staff failed to communicate adequately with Lombard about the status of his appeal. Representative Woods informed Lombard that the Company had refused to reinstate his grievance on February 14, 2005, but he did not explain to Lombard where this left the matter procedurally. At this point, based on the IEB's decision, Lombard had a right to assume that the Union was still pursuing the matter. The President's staff waited until May 20, 2005, before making any response to Lombard's inquiries about his grievance against Chrome Craft, and the response given at that point was equivocal. Lombard was informed that he had exhausted his internal union remedies but that his appeal would be referred to the next level in the appellate procedure. Another four months were allowed to elapse before the promised referral was made. The Union further delayed the appeal by requesting extensions of time to respond, and even then it missed the deadline by a day.

Appellant maintains that that the Union should have been defaulted on November 15, 2005, in accordance with our declaration in the *Dietrich* opinion that time limits would henceforth be applied strictly. We do not regard the Union having missed its deadline by a single day as the kind of unexcused failure to comply with our Rules of Procedure addressed in *Dietrich*. Nevertheless, the appellant's request for default focuses on a critical question before us in this appeal, which is how his claim for damages fits within the appellate procedures described in Article 33 of the International Constitution. What was the status of Lombard's case when it was referred to us in September 2005? Was he already entitled to some form of compensation from the Union for monetary losses resulting from his discharge by Chrome Craft Corporation?

Lombard has argued that the IEB's decision of January 3, 2005, conceded the Union's fault in the handling of his grievance so that no further inquiry ought to have been conducted into its merits. He maintains that the only question before us in September 2005 was the measure of damages. We cannot accept that position. We reject as a matter of policy the conclusion that a decision by the IEB in favor of an appellant necessarily amounts to a finding that the Union has failed in its duty to represent that appellant and so should be held liable for damages. The IEB must be able to demand a better investigation from the representatives whose decisions it reviews without incurring financial liability on the part of the International Union. Such a decision by the IEB is simply a step in the review process and not a determination on the ultimate question whether the Union has met its duty of fair representation to the member involved.

Nevertheless, a union member who appeals a decision made with respect to a grievance is entitled to a more transparent process than was provided to Lombard. It appears that the staff members who initially responded to Lombard's inquiries may not have understood exactly how Lombard's case and his claim for damages fit into the appellate structure set forth in the Constitution, but this was not a reason to keep Lombard in the dark. He ought to have been advised of the limited options available to the Union once the Company refused to negotiate further regarding his discharge. He ought to have been informed that the President was pursuing further investigation into the merits of his entire case in order to determine how to proceed, and he ought to have been given an opportunity to comment on the entire record. Lombard was entitled to receive prompt and straightforward responses to his inquiries regarding the status of his case.

In this case, however, the Union's failure to communicate more effectively with Lombard about its process did not cause the monetary damages Lombard sustained as a result of his alleged wrongful discharge by Chrome Craft Corporation. Furthermore, the record demonstrates that the appellate process described in the UAW Constitution functioned as it should when viewed in its entirety. Although the International Representative's initial handling of Lombard's grievance was flawed, the IEB insisted upon a thorough investigation and evaluation of Lombard's chances of gaining reinstatement through arbitration, and that investigation was ultimately completed by the President's staff. The Union has provided a convincing rationale for its conclusion that

no further relief could have been obtained for Lombard from this employer based on an evaluation of the bargaining climate at this location and the entire record developed in connection with Lombard's grievance and appeal. Lombard has not demonstrated that the Union's conclusion was irrational or improperly motivated and so he has not established that he is entitled to be compensated by the Union for his loss.

Appellant's claim for damages is denied.