

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

APPEAL OF:

RONALD NAFUS, MEMBER
LOCAL UNION 686, UAW
(Lockport, New York),
Appellant,

-vs-

CASE NO. 1531

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

DECISION

(Issued April 12, 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., Prof. Maria L. Ontiveros, and Prof. Paul C.
Weiler.

Ron Nafus argues that International Representative Louis Stagner's decision not to pursue a grievance protesting his termination by Sherwood Harsco Corporation was influenced by discrimination or lacking a rational basis.

FACTS

Ron Nafus worked at Sherwood Harsco Company with a seniority date of December 8, 1995. Nafus was terminated on September 23, 2003, following an altercation with his Supervisor, Kathy Burt. A grievance protesting the termination was submitted to arbitration. On April 22, 2004, Arbitrator Dennis J. Campagna reinstated Nafus, but placed the following conditions on his reinstatement:

“Third, as a condition of the Grievant's reinstatement and continued employment, the Grievant is directed to contact the Employee Assistance Program representatives and enroll/participate in an anger management treatment program and complete any follow-up programs and/or treatments that are deemed necessary by the counselors. In addition, the Grievant shall sign the necessary releases

solely as a means to permit the Company to monitor the Grievant's compliance with the mandates in this paragraph.

Fourth, the Grievant is hereby forewarned that any future proven [footnote omitted] conduct of the nature giving rise to his termination shall be cause for his termination."¹

On September 8, 2004, Nafus was suspended once again following an altercation with Supervisor Burt. In a letter to Nafus on September 13, 2004, Human Resources Manager Cynthia Pisani explained the suspension as follows:

"On Wednesday, September 8, 2004, you were initially suspended from work without pay as a result of your unnecessary, unprovoked, and unacceptable display of anger, threatening actions, and insubordinate behavior toward Supervisor Kathy Burt. Your accusatory, loud, red-faced verbal assault was the latest of a number of incidents where your behavior indicates that your ability to control your anger does not fit with continued employment."²

In addition, Pisani stated that the Company had not been able to determine whether Nafus had participated in anger management counseling in compliance with the conditions of his reinstatement. Pisani advised Nafus that his suspension had been converted to a termination.

UAW Local Union 686 filed Grievance W-188-04 protesting Nafus' termination on September 16, 2004. In a statement in support of the grievance, Nafus described his encounter with Kathy Burt on September 8 as follows:

"I mentioned to her the fact that my paycheck was ... 8 hrs short and would appreciate it if this did not happen again. It cost me 30 minutes of my time to straighten the problem out. She said I was threatening her. She also said that I was causing a delay with production. I said if you feel threatened call the sheriff. I walked away from her and she walked away also. I continued to do my work."³

Nafus stated that he was summoned to Supervisor Darrell Blumrick's office concerning this encounter twenty minutes later where he met Supervisor Burt again. He described his meeting with Burt in Blumrick's office as follows:

¹ Record, pp. 13-14.

² Record, p. 15.

³ Record, p. 17.

“...I went to the office and she proceeded to say to me that she had Darrell there as a witness to this conversation. She said I threatened her and I again said if you feel threatened call the sheriff. She told me to shut up and that this is how it is going to be. When I speak, you listen otherwise you are insubordinate. She started reprimanding me on the insubordination. I told her that I speak loud and I will speak when I want to. She mentioned that she was going to suspend. I said do it then, rather than to be harassed any more.”⁴

Nafus reported that he had met with EAP Counselor John Anderson several times, but that on the last visit, he was informed that Anderson was no longer at that office and he was not assigned to another Counselor.⁵ The Company denied Nafus’ grievance following a third step grievance meeting on November 23, 2004.

Meanwhile, on November 19, 2004, Manager Pisani wrote to International Representative Louis Stagner that she had contacted EAP Consultant Carol Gettings to determine whether Nafus had complied with the conditions of his reinstatement, and that Gettings was unable to confirm or deny Nafus’ enrollment in an anger management program. Stagner wrote to Nafus on January 4 and requested evidence that Nafus had attended anger management counseling. Stagner wrote:

“If you have records to show your compliance with the arbitrator’s decision on enrollment in [an] anger management treatment program, please forward them to me as soon as possible. Also please provide a copy of any release signed by yourself, again to show compliance with the arbitrator’s decision. A statement with much more detail and specifics on your encounter with Ms. Burt is also needed. As you are aware, insubordination is a terminable offense and the statement you first provided does nothing to refute the company’s allegation.”⁶

Nafus responded to Stagner that he was never out of control during his encounter with Burt on September 8. He said he spoke in a loud voice as he usually does in order to be heard on the plant floor. He stated that the Company’s characterization of him as red-faced may have been accurate since it was summer and

⁴ Record, p. 17.

⁵ Record, p. 18.

⁶ Record, pp. 21-22.

his “naturally reddish complexion” may have been sunburned.⁷ In response to Stagner’s inquiry about the anger management counseling, Nafus stated as follows:

“As for the anger management, I met with EAP representative (John Anderson). At our third meeting, he stated that only one further meeting was necessary. When I arrived for that meeting, I was told that John Anderson was no longer at that office. Please note that Sherwood’s own letter to the folks at the EAP directed them to contact the company if I did NOT comply. Clearly, unless they had been contacted (which to my knowledge hasn’t happened) they should have assumed my compliance.”⁸

On January 7, 2005, Stagner wrote to Nafus that he still needed a signed release form so that he could confirm Nafus’ compliance with the requirement that he attend anger management counseling.⁹ On January 21, Stagner wrote to Nafus as follows:

“Your telephone messages and subsequent telephone conversations with me and other representatives of Local 686, UAW, lend credence to your lack of compliance with Arbitrator Campagna’s decision.”¹⁰

On January 28, 2005, Stagner advised Nafus that he was withdrawing his grievance.¹¹

Nafus appealed Stagner’s decision not to pursue his grievance to the International Executive Board (IEB) on February 18, 2005. In a subsequent letter, Nafus explained that he was a *Beck* objector, and he suggested that the Union did not pursue his grievance aggressively because of this.¹²

In response to an inquiry from the President’s office regarding Nafus’ appeal, Representative Stagner reported that Nafus had refused to sign a release that would permit the Company to determine whether he had complied with the requirement that he attend anger management counseling. He stated further:

⁷ Record, p. 23.

⁸ Record, p. 23.

⁹ Record p. 24.

¹⁰ Record, p. 25.

¹¹ Record, p.26.

¹² Nafus worked in a bargaining unit represented by UAW Local 686, but he was not a member of the Local Union. He had exercised his rights under *Communications Workers v. Beck*, 487 US 735 (1988), not to join the Union. In lieu of union dues, he paid a reduced fee for representation, which excluded payments for the union's political and non-collective bargaining expenditures. (Record, p. 29)

“In an attempt to explain the release was not for his medical record, but a method to show compliance only, Mr. Nafus became even more belligerent and stated that no one, not Lou Stagner, not Frank Andrews, not the UAW and not Arbitrator Campagna will tell him what he has to sign.

Phone calls to the EAP by the Union were met with the standard, ‘We cannot confirm or deny’ response.”¹³

Stagner stated that Nafus’ decision to be a *Beck* objector had not influenced the representation he received on this grievance, or on the one involving his previous termination. Stagner maintained that the two supervisors’ testimony against Nafus in addition to his refusal to sign a release form regarding his anger management counseling created too great a burden for the Local Union to overcome in an arbitration process.¹⁴

The President’s staff determined that a hearing was unnecessary on Nafus’ appeal and they prepared a report on the President’s behalf for the IEB based on the written record. Staff acknowledged Nafus’ claim that he was not angry during his encounter with Burt, but that he spoke loudly to be heard in the noisy plant environment and was red-faced because of sunburn. Nevertheless, staff found no reason why Burt would have misrepresented the encounter. Staff observed that by all accounts, Nafus initiated the angry conversation with Burt about his paycheck. In addition, staff reported that while his appeal was pending, Nafus called the President’s office several times expressing anger, making threatening remarks and being verbally abusive to staff members.¹⁵ Staff remarked:

“...The appellant’s inability to be civil and discuss his appeal case rationally speaks volumes for his demeanor. Based on the aforementioned, we do not find the appellant’s version of the facts persuasive.”¹⁶

Staff concluded that Stagner’s decision not to pursue Nafus’ grievance was not influenced by discrimination or lacking a rational basis, and they denied the appeal. The IEB adopted the staff’s report as its decision and notified Nafus on September 14, 2005. Nafus has now appealed the IEB’s decision.

¹³ Record, p. 32.

¹⁴ Record, p. 34.

¹⁵ Record, p. 47.

¹⁶ Record, p. 47.

ARGUMENT**A. Ronald Nafus:**

The Union claims that I have been hostile, but I am certain that I have not. I have only voiced valid frustrations and concerns. I have questioned the corruption in this organization. The Union claims that it protects workers, but I see clearly that it only collects dues and feels no need to account for the money which it spends on gun clubs and golf resorts. I have asserted my rights as a *Beck* objector, and as a result I have been unjustly treated.

For five years prior to the unionization of the Sherwood plant, I worked without having to pay union dues. These dues are now compulsory. Yet, the union has not brought any substantial improvement to this workplace and has proven ineffective in grievance representation. During contract negotiations, they even bargained away the workers' right to strike. Meanwhile thirty percent of the dues collected from Sherwood's employees are paid into a strike fund. Strike fund money has been used to support the Black Lake Golf Course in Onaway, Michigan, which seems a blatant misuse of funds. With no public oversight or auditing, the Local is free to waste the hard-earned dues money paid to it by members. There is no basis in fact for the amount of dues set by the Local. They have no clearly articulated accounting procedures to determine the true cost of union activities applicable to *Beck* objectors.

I met with the EAP representative, John Anderson, three times. When I arrived for our fourth meeting, I was told that he no longer worked there. The release that I refused to sign was a general medical release form. It contained no limitation to the anger management sessions that I attended at my own expense. I will not allow a full release of my private medical information to the Company or the Union. I have stated that I would be willing to take a lie detector test, but I doubt that Kathy Burt would be willing to do the same.

B. International Union, UAW:

The record clearly demonstrates that appellant did not comply with the directive of Arbitrator Campagna that he complete an anger management program and sign the necessary releases to assure compliance. Appellant did not complete the anger management treatment program. He states that he met with an EAP Representative three times. It cannot be determined from the record whether these meetings constituted an anger management program as contemplated by the arbitration decision. In any event, appellant has acknowledged that he did not complete the program by attending the fourth session.

The Union made a sound assessment of appellant's credibility based on his own behavior during the appeal process and the lack of any motivation for the Supervisor to lie about the incident on September 8, 2004. Appellant clearly violated the conditions of his reinstatement. Therefore, the decision to withdraw his grievance was rational.

C. Rebuttal by Ronald Nafus:

When the Union was being organized, I exercised my right as an American to express the view that the Union would not likely provide higher wages or better conditions as they promised. At that time, I was openly harassed by coworkers and verbally intimidated by organizing representatives. When I exercised my right to become a *Beck* objector, a Human Resources Representative at Sherwood, Doug Patterson, said to me that the Union wanted him to fire me. I went up to Buffalo on my own time and reported that statement to the National Labor Relations Board.

It seems unreal to me that the Union could not pursue a more aggressive defense against the Company's spurious claims. I hope and expect that the Public Review Board will see the failures and corruption that have influenced the handling of my grievance and consider appropriate compensation to me.

DISCUSSION

Nafus' arguments to this Board focus primarily on his status as a *Beck* objector, and his dissatisfaction with the manner in which the Union uses, and accounts for its use, of union dues. He asks us to infer that his public expression of these positions affected the handling of his grievance in some way. There is no evidence that this was so, however.

Not only did the Union succeed in having Nafus reinstated the first time that he was terminated for losing his temper with Supervisor Burt, but the Union promptly grieved his second termination and pursued the grievance to the third step. When the Local could not convince Management to reinstate Nafus, it referred the grievance to the fourth step of the procedure. At this point, Representative Stagner of UAW Region 9 attempted to prepare a case in support of Nafus' reinstatement, but Nafus would not cooperate. The terms of Nafus' reinstatement on April 22, 2004, specifically required him to sign any releases necessary to allow Management to confirm his completion of an anger management program. Nafus' refusal to sign such a release not only violated the terms of his reinstatement, it also deprived Representative Stagner of the means to build a case to present to the arbitrator in favor of a second reinstatement.

Furthermore, it would not have been sufficient to achieve Nafus' reinstatement for the Union to establish that he received anger management counseling. Nafus would also have had to demonstrate that he had learned to control his temper in his encounters with his supervisors, and the evidence does not support such a conclusion. By his own account, Nafus informed Supervisor Burt that he did not intend to curb his expression in any way. In addition, Nafus apparently continued to vent his anger at the Union representatives handling his grievance while the case was being investigated. This behavior would reasonably raise doubts about Nafus' ability to present his case to an arbitrator as a witness. Under these circumstances, Representative Stagner's decision not to arbitrate Nafus' grievance was reasonable.

The decision of the IEB is affirmed.