

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

APPEAL OF:

RANDALL W. PEARSON,
Appellant

-vs-

CASE NO. 1534

LOCAL UNION 140, UAW
(Warren, Michigan)
REGION 1
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

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

Retired Local 140 member Randall Pearson asserts that he was improperly disqualified from running for Local Union President.

FACTS

Randall Pearson worked at DaimlerChrysler's Warren Truck Plant in a bargaining unit represented by UAW Local Union 140. He retired in May 2000. On April 10, 2005, Pearson accepted nomination to run for the office of Local Union President in general elections scheduled for May 10, 2005. On April 13, Election Committee Chairperson Charlie Wilson advised Pearson that he was ineligible to run for the office of Local Union President based on the Interpretations section of the UAW Constitution.¹

Pearson protested Wilson's ruling in a letter dated April 18. He stated that there is no language in the UAW Constitution or the UAW DaimlerChrysler Agreement which prevents retired members from serving as Local Union President. He pointed out that the DaimlerChrysler Agreement gives the President the right to designate a

¹ Record, p. 18.

representative to investigate grievances at the third step if necessary.² Wilson responded to Pearson's protest on April 20. He stated that his ruling was based on an Interpretation of Article 6, §19, on page 172 of the 2002 Constitution, which states as follows:

“Retired members are ineligible to run for any local union position which carries responsibility for grievances or bargaining required by the Collective Bargaining Agreement(s) and/or local union bylaws. (Las Vegas, 6/1/02).”³

Pearson appealed Wilson's ruling to the Local Union membership on April 20, 2005. In support of his appeal, Pearson pointed out that the language of Article 6, §19, of the Constitution regarding the rights of retired members had not been changed for forty years and that it remained the same in the Constitution adopted in Las Vegas in 2002. He cited a number of examples of retired members who had been elected to the position of Local Union President under this language. Pearson insisted that the only way that the right of retirees to run for Local Union President could be changed was through an amendment to the Constitution.⁴ Chairperson Wilson responded to Pearson's appeal on May 6, 2005. He wrote:

“You are correct. Article 6, §19 of the International Union's Constitution has not changed; however, the interpretation section changed in June of 2002. This issue has been subjected to Public Review Board scrutiny; therefore, we affirm our ruling that you are ineligible to accept nomination for the office of President.”⁵

Pearson's appeal was presented to the membership of Local 140 at a meeting on May 15, 2005. The minutes of that meeting report that Pearson argued that the Constitution can only be amended by a majority vote of the delegates at a regular or special Convention in accordance with Article 3, and that this had not been done with respect to the language of Article 6, §19. Pearson pointed out that the Interpretation relied on by the Election Committee was adopted on June 1, 2002, two days prior to the opening of the 2002 Convention.⁶ Local President Moriarity responded to Pearson's appeal by pointing out the International Executive Board (IEB) ruled in 1999 that two retired members were ineligible to run for Local Union President and that this ruling was approved by the Public Review Board (PRB). The minutes indicate that Moriarity explained the ruling as follows:

² Record, p. 19.

³ Record, p. 21.

⁴ Record, p. 20.

⁵ Record, p. 23.

⁶ Record, pp. 25-26.

“...President[s] of local unions are lead negotiators, collective bargaining and 3rd step grievance handling, sits in on health and safety committee, outsourcing and job bank. The President is heavily involved in bargaining and grievances procedures of their local unions. ...”⁷

Member Williams then observed that the International Union’s Interpretation could not be resolved by the membership and he moved to deny Pearson’s appeal on that basis. The minutes indicate that the motion carried and the appeal was denied.⁸

Pearson appealed the membership’s action to the IEB on June 6, 2005. In his appeal, he asked that the May 10 Presidential election at Local 140 be rerun with all nominated candidates on the ballot. Once again, Pearson pointed out that retired members had served as local union Presidents under the language of Article 6, §19. He noted that P. Griffin was elected President of UAW Local Union 889 while he was retired and served as a national negotiator from Sub-Council 7 in the 1985 UAW/Chrysler national negotiations. He stated that the duties of the President of Local 140 would not require him to violate any of the restrictions on retirees stated in Article 6, §19.⁹ On June 13, 2005, Pearson added to his appeal a claim that the Local Union’s refusal to allow him to run for the office of President violated the guarantee that Union rules and laws will be fairly and uniformly applied, stated in Paragraph 3 of the Democratic Practices section of the Ethical Practices Codes.¹⁰

President Gettelfinger’s staff determined that a hearing was unnecessary on Pearson’s appeal and they prepared a report for the IEB on the President’s behalf based on the correspondence in the record. Staff observed that the President of Local Union 140 is actively engaged in the administration of the collective bargaining agreement so that two-thirds of his salary is paid by DaimlerChrysler.¹¹ Staff stated that the IEB has repeatedly ruled that retirees cannot run for or hold offices that involve collective bargaining responsibilities. Staff acknowledged Pearson’s argument that other retirees had been elected President at other local unions under the language of Article 6, §19, but they remarked that those cases were not currently before the IEB. Staff stated that even though the President is authorized to designate a representative to handle certain collective bargaining matters, Article XXI of the Local 140 Bylaws requires the President of Local Union 140 to be involved in bargaining with the employer, and a retired member is therefore ineligible to serve in the position.¹²

⁷ Record, p. 26.

⁸ Record, p. 27.

⁹ Record, pp. 32-33.

¹⁰ Record, p. 34.

¹¹ Record, p. 46.

¹² Record, p. 46.

Staff addressed Pearson's argument that the Article 6, §19, of the Constitution was being applied improperly, and that the Interpretation added in 2002 had not been adopted by the Convention in accordance with Article 3 of the Constitution. They quoted the Public Review Board's discussion of a similar claim in *King, et al. v. UAW Local 600 Executive Board*, PRB Case No. 1499 (2005). In that case, we pointed out that the policy forbidding retired members from holding offices that involve collective bargaining duties had been firmly articulated by the International Union even before the 33rd Constitutional Convention added the Interpretation to Article 6, §19, stating the rule unequivocally.¹³ The *King* decision cites *Hawkins v. Local Union 7, UAW*, PRB Case No. 1283 (2000), and *Bennett v. Local Union 1853*, PRB Case No. 1429 (2003), two cases that arose before the Interpretation was added to the Constitution in which we considered the issue and upheld the position of the International Union that retired members are not eligible to hold positions that involve bargaining or grievance handling responsibilities. Staff concluded these prior decisions disposed of the issue raised by Pearson and they denied his appeal.¹⁴ Staff's report was adopted by the IEB which notified Pearson of its decision on October 5, 2005. He has now appealed to the PRB.

ARGUMENT

A. Randall Pearson:

Election Committee Chairperson C. Wilson ruled that I was ineligible to run for Local Union President based on an interpretation to Article 6, §19, of the UAW Constitution. As I pointed out in my appeal to the membership, Article 6, §19, has remained unchanged for forty years and many retired members have served as local union Presidents during that time.

In 1999, H. Hawkins retired as Assistant Director of the UAW DaimlerChrysler Department. He then attempted to run for President of Local Union 7. He was denied his right to seek that office because of political differences that arose in Region 1 concerning who would be the candidate for Regional Director in 1998. The International added the Interpretation to the Constitution because of this situation with Hawkins, but it did not amend the Constitution. An interpretation cannot change the long-standing application of a Constitutional provision. Only a majority vote of the delegates to the Convention can change the Constitution. Former President Stephen Yokich did not have the authority to alter the application of Article 6, §19, by means of an interpretation.

The IEB's statement that the application of Article 6, §19, at other local unions does not affect my appeal shows a total disregard for the requirement of the UAW

¹³ PRB Case No. 1499, at 9.

¹⁴ Record, p. 47.

Ethical Practices Codes that Union laws be fairly and uniformly applied. As a democratic Union, we all function under the same Constitution.

There is nothing in the DaimlerChrysler Agreement that would prevent a retiree from serving as President of Local Union 140. The Agreement gives the President the right to designate a representative to handle grievances at the 3rd step. The IEB's reference to the Local Union's bylaws is an attempt to shift attention from the requirements of Article 6, §19. The Local Union does not have the authority to increase eligibility requirements for candidates for executive office.

From 1959 until 1999, retirees were permitted to run for Local Union President under the language of Article 6, §19. Retiree P. Griffin was elected President of his Local in 1985 and served on the national bargaining team for the UAW Chrysler Department. President Yokich changed the interpretation to the Constitution without presenting any amendments pursuant to Article 3. The rulings relied on by the IEB all came after 1999. Retirees were always allowed to run for Local Union President before that. I have reviewed the proceedings for the 33rd Constitutional Convention and Special Convention and I did not find anything presented to the delegates regarding a change in the application of Article 6, §19.

The framers of the UAW Constitution gave retirees the right to be elected to the Executive Board of the Local Union with a full voice and vote. The 1998 version of the Constitution stated on page 204 that eligibility for executive office is not contingent on working in the workplace. After comparing the 1998 Constitution with the 2002 Constitution, I have found that a number of long-standing interpretations have been deleted or changed without a majority vote by the delegates to the Convention. President Yokich and the IEB have made substantial amendments to the Constitution without the approval of the delegates to the Convention. The International President and the IEB could just as easily have eliminated Article 32 in its entirety in this fashion. This action should not be upheld.

It was error for the PRB to uphold President Yokich's interpretation of Article 6, §19, of the Constitution in *Hawkins v. Local Union 7, supra*. In *J. D. Taylor In the Matter of Paul Russell v. Local Union 25*, 5 PRB 680 (1989), the appellant sought to change the historic application of a Constitutional Interpretation, and the PRB stated that it had no authority to overturn official Interpretations of the Constitution. The decision states:

"...But we have no authority under the Constitution to pass upon its official Interpretations; only the Constitutional Convention can do that. The Union has operated since 1959 under this set of rules. Under these rules, members in good standing and retirees from defunct units of amalgamated local unions are disenfranchised. The wisdom of allowing only the Constitutional Convention to alter these policies is apparent. If the Union wishes to change the policy under which it has operated for 30 years, it is for the highest

governing body of the Union, its Constitutional Convention, to make that decision.”¹⁵

In the *Hawkins* case, the PRB erred in upholding President Yokich’s alteration of the long-standing application of Article 6, §19. Under the Board’s ruling in *Taylor*, only the Constitutional Convention had the authority to do that.

The IEB has not responded to my charge that my disqualification violated the Ethical Practices Codes. I look forward to a response on this matter. I am requesting that the PRB order Local 140 to conduct another election for the office of President with all candidates who accepted nomination on the ballot. I am further requesting that the UAW be required to reprint its Constitution with all the original language and Interpretations included until such time as the Constitution is properly amended in accordance with Article 3.

B. International Union, UAW:

As a retiree, appellant was ineligible to run for the office of Local 140 President. As recently noted by the PRB in *King, et al. v. UAW Local 600 Executive Board*, supra, the International Union’s policy forbidding retirees from holding offices that involve collective bargaining duties was firmly articulated by the International Union even before the 33rd Constitutional Convention added the Interpretation to Article 6, §19, to state the rule unequivocally. This Board upheld the International Union’s policy in *Hawkins v. Local Union 7, UAW*, supra.

As a former Local 140 President, Pearson is certainly aware that a large percentage of the President’s time is devoted to administering the collective bargaining agreement. Moreover, any attempt by the President to delegate away these responsibilities would violate Article XXI of the Local Union bylaws, which specifically requires that the President represent the Local at all contract negotiations.

Appellant makes a belated Ethical Practices Complaint without following the procedure outlined in the International Constitution. He has not perfected a complaint of an Ethical Practices Code violation.

C. Rebuttal by Randall Pearson:

The International Union has not responded to my position that the application of Article 6, §19, cannot be changed without an amendment to the Constitution adopted pursuant to Article 3. The Interpretations printed in the booklet of the 2002 Constitution were not presented to the delegates. They were adopted on June 1, 2002, before the Constitutional Convention opened.

¹⁵ 5 PRB 680, at 691.

My Ethical Practices Complaint was clearly before the IEB. I could not get Local approval of it because the membership did not meet in the months of July, August and September. I have perfected an Ethical Practices Complaint under Article 32, §5(c), of the Constitution.

DISCUSSION

We have denied appellant's request for oral argument because there are no disputed issues of fact and we have dealt with the Constitutional issues raised by his appeal in previous decisions. As noted by the IEB, we addressed Pearson's primary argument, that Article 6, §19, of the International Constitution confers a right on retired members to run for and hold executive offices, in *Hawkins v. Local Union 7, UAW*, supra. The appellant in that case raised the same points that Pearson has raised in support of his present appeal. He argued that retired members had been allowed to hold such executive offices in the past, and that the ruling denied them rights guaranteed by the Ethical Practices Codes. In that case we upheld President Yokich's ruling that retired members should not be permitted to hold offices that are inextricably involved in the bargaining process, even though they may have been permitted to do so in the past. Furthermore, we ruled that the Local President's ability to delegate some of his bargaining duties did not insulate him from the bargaining process. We stated that for the Local President to refrain from performing all the requirements of his office would seem to amount to a dereliction of duty.¹⁶

Pearson has not cited any instances where a retired member has been allowed to run for executive offices that involve bargaining responsibilities since the International Union adopted the rule applied to Hawkins in 1999. Pearson may disagree with the rule, but the International Union has consistently followed it since the *Hawkins* case was decided. Therefore, even if Pearson had perfected an Ethical Practices Complaint, he has failed to establish that union rules were not being uniformly and fairly applied.

Pearson now argues that the *Hawkins* case was incorrectly decided because President Yokich's rule changed a long-standing application of a Constitutional provision. We do not accept Person's view that the Union is bound to follow past interpretations of the Constitution in the absence of a formal amendment to the Constitution adopted pursuant to Article 3. The application and interpretation of Constitutional provisions must change with changing times and circumstances. The International Union explained its reason for having adopted the rule excluding retirees from holding important local union executive positions in *King, et al. v. Local Union 600 Executive Board*, supra. In response to King's challenge to the rule, the International Union argued:

“...This is a good rule. Retired members are not as accountable to the current Union membership as active

¹⁶ PRB Case No. 1283, at 6.

ones. They may be less accessible. They may also be more prone to represent the interests of other retired members instead of current members. All of these factors may diminish the ability of the Union to react to the changing nature of the work place. They may also expose the Union to legal liability. ...”¹⁷

As we noted in the *King* decision, the 33rd Constitutional Convention has now added the Interpretation to Article 6, §19, and Article 45, §1, to state the rule regarding retirees’ eligibility unequivocally. Pearson’s complaint about the way the Interpretation to Article 6, §19, was adopted would have to be addressed to the Constitutional Convention. As Pearson himself observed, this Board has no authority to review or overturn official Interpretations of the Constitution.

The decision of the IEB is affirmed.

¹⁷ PRB Case 1499, at 9