

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

APPEAL OF:

KELLY PALMER,
Appellant

-vs-

CASE NO. 1559

LOCAL UNION 668, UAW,
REGION 1D
(Saginaw, Michigan)
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued April 16, 2007)

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.

Kelly Palmer argues that the Union's handling of his grievances charging GM Management with violations of Paragraphs (71) and (85) of the UAW-GM National Agreement lacked a rational basis.

FACTS

Kelly Palmer works in the Maintenance Department of the Grey Iron Foundry at General Motors' Saginaw Metal Casting Operations (SMCO). He has a seniority date of May 2, 1994. In 2004, Palmer was assigned to the Casting Development Center (CDVC) and held the position of Technicians Liaison. The CDVC was an experimental facility operating with a team concept under the guidance of a Steering Committee made up of members from GM Management and Representatives of UAW Local 668.¹ The CDVC closed in February 2006.²

¹ Record, pp. 18-46.

² Record, p. 115

The CDVC had a flextime policy under which employees could earn time off for personal business by working beyond their assigned shifts. Under the policy, employees could accumulate up to sixteen flextime hours.³ The policy states that flextime hours will be accumulated on a straight time basis. The purpose of the policy is defined as follows:

“To accommodate employees during special occasions (medical appointments, parent teacher conferences, personal business, etc.) and to minimize or eliminate unnecessary absentees, the CDVC Focus Team has initiated a flextime policy for its skilled trades and development technicians.”⁴

At a meeting on March 10, 2004, several of the CDVC development technicians complained that Management was asking them to work extra hours in return for flextime hours rather than for overtime pay. They argued that if Management demanded that an employee work beyond his or her shift the Company should pay overtime. Other employees stated that the flextime program was a greater benefit to the employees than to Management. They expressed concern that if they attempted to change the program they might lose it. It was reported that there was no money in the budget for overtime.⁵ The employees voted to ask Management to award flextime hours at a rate of time and one-half when employees are asked to complete a job for which they would normally be paid overtime.⁶

Notes from a meeting of the technicians held on April 14, 2004, report that the flextime policy issues were presented to the focus team, but that the focus team did not want to make any changes. It was reported that the next step would be to present the issue to the Steering Committee. Kelly Palmer reported that Local 668 Shop Chairperson Ron Brogan wanted to get involved because some of the flextime issues were contractual.⁷

On April 27, 2004, Local 668 Committeeperson Ron Sika filed Grievance No. C965975 on behalf of Kelly Palmer charging Management with violations of Paragraph (71) and Paragraph (85) of the National Agreement.⁸ The grievance demands that

³ Record, pp. 21-22.

⁴ Record, p. 21.

⁵ Record, p. 55.

⁶ Record, p.56.

⁷ Record, p. 62.

⁸ Paragraph (71) of the 2003 UAW-GM national Agreement provides as follows:

“Extra work in periods of part-time operation, and overtime, should be equalized among the employees in the group engaged in similar work, as far as practicable. Information concerning equalization of hours status will be openly displayed in the department in

employees be paid and charged for all hours worked.⁹ After he filed Palmer's grievance, Committeeperson Sika circulated surveys among the CDVC employees concerning the flextime issue. There are two surveys in the record. One of the surveys states:

"We would like no change to the flextime policy."¹⁰

This survey is signed by 33 people.¹¹ The other survey states:

"We would like the flextime policy changed. All overtime worked will be paid per the National Agreement. All overtime hours will be charged per the National Agreement."¹²

This survey is signed by two people.¹³

Kelly Palmer filed a second grievance, Grievance No. C966242, charging Management with violating Paragraphs (71) and (85) of the National Agreement on June 18, 2004.¹⁴ Management responded to Grievances C965975 and C966242 on August 2, 2004, as follows:

"Above noted paragraphs have not been violated. We follow the CDVC flextime policy at this facility."¹⁵

On August 4, 2004, Local 668 informed Palmer that his grievances had been withdrawn.

such a manner that the employees involved may check their standing. This provision shall not interfere with any mutually satisfactory local practice now in effect."

Paragraph (85) of the UAW-GM National Agreement describes when hourly employees will receive pay at a rate of Time and One-Half. It provides as follows:

- (a) For time worked in excess of eight hours in any continuous twenty-four hours, beginning with the starting time of the employee's shift, except if such time is worked on a Sunday or holiday when double time will be paid as provided below.
- (b) For time worked in excess of forty hours in the employee's working week, less all time for which daily, Saturday, Sunday or holiday overtime has been earned.
- (c) For time worked on any shift which starts on a Saturday.

⁹ Record, p. 64.

¹⁰ Record, p. 69.

¹¹ Record, pp. 69-70.

¹² Record, p. 71.

¹³ Record, p. 71.

¹⁴ Record, p. 64.

¹⁵ Record, p. 65.

Palmer appealed the decision to withdraw Grievances C965975 and C966242 to the membership of Local Union 668. In support of his appeal, Palmer argued that the Advanced Material Development Center (AMDC) Memorandum of Understanding should not be used to deviate from the pay structure, overtime pay and equalization rights established in the UAW-GM National Agreement.¹⁶ On September 24, 2004, the Local 668 Recording Secretary advised Palmer that his appeal had been forwarded to the Shop Committee for further investigation and recommendations.¹⁷

Shop Committee Chairperson Ron Brogan gave a report to the Local 668 Executive Board regarding Palmer's appeal on June 23, 2005. Brogan explained that he had not reported earlier because he thought that the matter had been resolved at a CDVC Steering Committee meeting held on August 23, 2004. Brogan explained:

"...Kelly was the team liaison at the time and was present at the meeting. The decision was to leave the flex policy as is. That decision was based on a couple of factors. First of all, the flex policy had been in existence for many years. Second, a survey was taken of the UAW members at CDVC to get their response to changing the policy, and 33 wanted it to remain unchanged and 2 said they would like to change it."¹⁸

Brogan reported that Palmer had applied to work for the CDVC and had accepted the terms of the Memorandum of Understanding applicable to that facility. He stated that Palmer had worked under the flextime policy for two years. Brogan asked the Local Executive Board to support the decision of the Shop Committee to withdraw Palmer's grievances.¹⁹

The Local 668 Executive Board adopted a motion to deny Palmer's appeal at a meeting on June 23, 2005.²⁰ Palmer was informed of the Local Executive Board's decision on June 24, 2005. He appealed to the Local 668 membership on July 26. Palmer appeared at a membership meeting on September 25, 2005, to speak in support of his appeal. The minutes of the September membership meeting indicate that Palmer complained about the way the flextime rules were imposed without input from the CDVC team members.²¹ Chairperson Brogan responded that the people of CDVC had an opportunity to have their voices heard when they signed the survey he had circulated regarding the flextime policy. The minutes describe Palmer's response as follows:

¹⁶ Record, p. 80.

¹⁷ Record, p. 83.

¹⁸ Record, p. 91.

¹⁹ Record, p. 92.

²⁰ Record, p. 93.

²¹ Record, p. 106.

“Kelly responded that he felt the survey wording was deceitful and that the flex policy was there in place to meet the needs of the employees NOT the company by allowing them to cover work by flexing employees’ time instead of paying overtime.”²²

The minutes report that Chairperson Brogan stated it was common knowledge that employees at CDVC have few overtime opportunities. He reported that employees are asked to flex all hours over eight and they are paid overtime only when this is not possible. Brogan asserted that the flextime policy was not new and that he had no intention of conducting another survey.²³ A motion to deny Palmer’s appeal passed by a vote of 47 to 2.²⁴

Local 668 advised Palmer of the membership’s decision on September 26, 2005. Palmer had attempted to appeal the decision to withdraw his grievances to the International Executive Board (IEB) on August 31, 2005. Palmer renewed his request to appeal to the IEB on November 23, 2005.

Toffie Abbasse and Jack Campbell conducted a hearing on Palmer’s appeal on August 7, 2006, acting as hearing officers on behalf of International President Ron Gettelfinger. The hearing officers prepared a report to the IEB based on testimony presented at the hearing. Abbasse and Campbell reported that in January 2004, GM notified the members of the CDVC that, as a result of severe budget cuts, no further overtime would be allowed except in extreme cases. The Company further stated that employees could work overtime hours voluntarily in return for flextime in accordance with the CDVC flextime policy.²⁵

According to the hearing officers, Palmer argued that the CDVC flextime policy did not allow the Company to use flextime to avoid paying overtime in accordance with the National Agreement. Palmer maintained that if Management needed to change the flextime policy rules, it should have included the hourly workers in the decision-making process as outlined in the CDVC Memorandum of Understanding.²⁶ Palmer acknowledged the results of the survey circulated by the Local Union among the CDVC workers, but he commented that this was an inappropriate method to resolve the issue. The hearing officers’ report states:

²² Record, p. 106.

²³ Record, p. 107.

²⁴ Record, p. 107.

²⁵ Record, p. 119.

²⁶ Record, p. 120.

“Appellant stated that he felt that this is an inappropriate method to resolve an issue such as this. If our rights under the National Agreement are subjected to a popular vote by our peer group, what issue will be up for grabs next?”²⁷

The report indicates that Palmer explained that he was not seeking money, but the protection of rights under the National Agreement. Palmer admitted during the hearing that he did not work beyond his shift for flextime hours, but received overtime in accordance with Paragraph (85) of the National Agreement whenever he worked beyond his shift. The hearing officers concluded from this that Palmer had no personal interest in the issue. They reported that no employee from the CDVC group had filed a grievance alleging a violation of Paragraph (85) of the National Agreement.²⁸ In any event, the hearing officers concluded that the issue was now moot because the CDVC Program had been eliminated and the Company had advised Chairperson Brogan that all Local 668 members would in the future be paid overtime wages in accordance with the provisions of the GM-UAW National Agreement.²⁹

The hearing officers denied Palmer’s appeal. The IEB adopted the report of the hearing officers on October 13, 2006. Palmer has now appealed the IEB’s decision to the Public Review Board (PRB).

ARGUMENT

A. Kelly Palmer:

The Memorandum of Understanding applicable to the CDVC encouraged employees to become actively involved in the operation of the workplace. Over a period of three years, I watched as Management systematically broke down the Memorandum and frustrated many of the attempts of hourly people to perform as described. Our collective voice was silenced. In working through this issue, I have been frustrated because I have felt my voice has been wrongfully silenced and access to due process has been denied to me.

I firmly believe in the democratic principles that govern this Union. In this situation, however, the hourly workers at CDVC were given two choices—all or nothing. I have submitted copies of the minutes of meetings of the CDVC hourly work group. I conducted these meetings as part of my duties as UAW liaison. These minutes show that the group tried to work on this issue as they were supposed to do under the Memorandum of Understanding. Instead, the Union followed the results of a survey which oversimplified the issues involved. I believe in democracy and stood up for it. This was not democracy, but “tyranny of the majority.” I cannot imagine such a vote

²⁷ Record, p. 121.

²⁸ Record, p. 124.

²⁹ Record, p. 124.

being conducted over the amount of Union dues paid to the UAW or how the money should be spent.

Prior to January 2004, the CDVC experienced slow periods and tight budgets, but we worked through them. If there was a need to change the flextime policy, then a new policy should have been written and bargained over. There is a unifying way of addressing problems and a divisive way. If we can do better, we should.

B. International Union, UAW:

In January 2004, CDVC Manager Barry Priem informed the Union that as a result of budgetary constraints, he could no longer authorize employees to work overtime except in emergencies. At that point, GM gave the Union two options. It could either agree to continue the existing flextime policy with the understanding that any extra hours worked voluntarily would be compensated with flextime, or end the flextime policy and pay workers daily overtime in those rare instances when it was authorized.

After reviewing the Company's offer, the Union surveyed the workers at the CDVC. Of the 35 employees who expressed a preference, 33 indicated that they wanted the flextime policy to continue despite the fact that overtime work would no longer be made available with any regularity. Only two workers wanted to abandon the flextime policy. The Union therefore informed the Company that the CDVC workers wanted the policy to remain the same. The Company's use of the flextime policy was consistent with its terms. Palmer's grievances protesting the Company's use of the flextime policy in this manner were, therefore, withdrawn.

Palmer argues that GM is using the flextime policy to circumvent Paragraph (85) of the National Agreement. The facts of this case do not support that claim. Appellant has provided no evidence that there has been a dramatic increase in the use of flextime since January 2004. He has not shown that work previously offered as overtime has been converted to flextime.

Even if this were the case, the Local Union's decision to tolerate the practice would be entirely appropriate. It is apparent to anyone with even a passing knowledge of the automobile industry that GM has been experiencing serious financial difficulties over the last few years. It is in the interests of all GM workers to cooperate with the Company in its efforts to reduce costs. This is particularly true where the cost to the employees is so slight. The most that the Union could have gained by adopting appellant's position was a small amount of overtime for CDVC workers. Moreover, the use of flextime benefits the employees by giving them more control over their working hours. In these circumstances, it would have been irrational for the Union to do anything other than what it did.

C. Rebuttal by Kelly Palmer:

The flextime policy as it was being applied by the Company had divided the shop into two groups. One group would work over for flextime during the week in order to be able to get out early on Friday. The other group did not want to surrender overtime rights. They were concerned that if this practice were established, Management would never return to paying overtime. After several months of working on this issue, I asked that the grievances be written. There was no discussion of the use of flextime to cover overtime until after I refused to withdraw my grievances. The survey conducted by the Local Union did not occur until nearly six months after the January 2004 announcement.

The International Union maintains that the flextime policy was not changed, and had been in place for many years. The flextime policy was never applied in this way before January 2004. Management had never before solicited employees to stay over and work overtime in return for flextime hours. How could the policy remain the same, yet its utilization change so dramatically? Overtime pay was established to enforce a forty hour work week as a response to sweat shop abuses. If the overtime deterrent is eliminated, what incentive is there for the Company to minimize the hours required through working smartly and efficiently?

DISCUSSION

Although Palmer raised his concerns in the form of two grievances, his original disagreement was with the decision-making process used to address Management's use of flextime in lieu of overtime at the CDVC. We can find no fault with the process applied in this case, however. The Local Union surveyed the CDVC employees about the issue that Palmer had raised. The CDVC employees approved of the flextime policy by a large margin and indicated that they wanted to retain it. Palmer complains that the employees were only given two options, but that was because there were only two options available under the applicable agreements. The CDVC could either retain its flextime policy or return to the provisions of the National Agreement. The Union had no contractual basis for demanding that Management bargain over proposals to amend the flextime policy in place at the CDVC.

In his appeal to this Board, Palmer has suggested that Management could use flextime to undermine the standards of the forty hour work week and the eight hour day. Palmer's concerns about a return to the sweat shop are in the present setting hypothetical; the facts in this case do not support his position. President Gettelfinger observed in his response to Palmer's appeal that the use of flextime did not increase dramatically after January 2004, when the Company announced that it could no longer authorize overtime. In other words, there is no evidence that Management began to require employees to work extra hours after January 2004, because the disincentive of having to pay overtime was removed. Furthermore, there was nothing inherently inappropriate about Management's use of the flextime policy to reduce its overtime costs. Palmer's assertion that the flextime policy was meant only for employees' benefit is simply wrong. Such programs are designed for the mutual benefit of employers and

employees. If a flextime program were abused, the particular situation could be addressed through the grievance procedure, but there is no evidence of abuse in this case.

Palmer admitted during the hearing conducted on his appeal to the IEB that Management had never required him to work overtime in return for flextime hours. No other member of the CDVC workforce came forward to complain about Management's use of the flextime policy at the CDVC, nor did any employee claim to have been denied overtime opportunities as a result of a failure to equalize overtime hours in accordance with Paragraph (71) of the National Agreement. Under these circumstances, Chairperson Brogan's decision to withdraw Palmer's two grievances did not lack a rational basis. No violation of the National Agreement had occurred, so there was no remedy that could be obtained through the grievance procedure.

The decision of the IEB is affirmed.