THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW

APPEAL OF:

KATHY OTTO, Member,
LOCAL UNION 1292, UAW
REGION 1C
(Grand Blanc, Michigan),
Appellant

-vs- CASE NO. 1598

LOCAL UNION 1292 EXECUTIVE BOARD, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.
_____/

DECISION
(Issued November 24, 2008)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson, Prof. Janice R. Bellace, Prof. James J. Brudney, Prof. Fred Feinstein, and Prof. Maria L. Ontiveros.

Kathy Otto argues that her charges against Shop Committeeperson Rick Eashoo satisfied the requirements of Article 31, §3, of the International Constitution.

FACTS

Kathy Otto is President of UAW Local Union 1292 which represents employees of General Motors Weld Tool Center in Grand Blanc, Michigan. On June 8, 2007, Otto submitted a charge against Local Shop Committeeperson Rick Eashoo pursuant to Article 31 of the International Constitution accusing him of engaging in conduct unbecoming a Union member. Otto's charge states:

> "Brother Eashoo went to management and Security and in writing attempts to link me to a 'flyer' for which Fernando Moreno was discharged. In his written report, Brother Eashoo accuses Ms. Otto and Bill Phelps of 'creating a hostile work environment' and they 'are trying to tear this place down and get it closed.'

> Brother Eashoo went to Security and management and gave written statements against fellow UAW Local 1292 members. This is conduct unbecoming a member of this Local Union."[1]

Otto stated that she first became aware of Eashoo's actions when she read management's Statement of Unadjusted Grievance dated April 27, 2007, in the Fernando Moreno case. She attached two pages from management's Statement to her charge as Exhibit A.[2] She reported that she subsequently received further evidence regarding Eashoo's statement to management when she received a Security Incident Report on June 6, 2007. She attached the Security Incident Report to her charge as Exhibit B.[3]

Management's Statement of Unadjusted Grievance in the Moreno case indicates that Moreno was discharged based on a report of General Supervisor Mike Brown that he had observed Moreno on March 1, 2007, distributing copies of a flyer titled, "Tooling Terminator Shop Committee: Facts" in the men's restroom at the plant. The flyer criticized members of the Local Union Shop Committee and made various accusations against them.[4] Management made the following comment on the flyer:

> "The effects or damage this type of material can do to any one individual personally, professionally, while at home or work is beyond approach. Three of the GM employees mentioned on the flyer came to management, Monday, March 5, 2007, and provided statements to GM Security and Labor Relations stating they feared for their personal safety as a result of the flyer distribution. (Attachment 13) The posting entitled: 'Tooling Terminator Shop Committee: Facts' not only uses the term 'terminator' in the title but has a picture of a person holding a large caliber automatic weapon."[5]

Rick Eashoo is one of the Shop Committee members mentioned in the flyer. The flyer states:

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[1] Record, p. 190.

[2] Record pp. 156-157.

[3] Record, p. 127.

[4] Record, p. 81.

[5] Record, p. 156.

> "Facts:
>
> Ricky, pimp-ponytailed Eashoo sells pot. Hey Rick, how much is a pound of weed now a days??????? Comes in early, day shift, every day, for what? We know Ricky! You be the judge, is he legal?"[6]

A GM Security Incident Report indicates that Eashoo gave the following statement on March 7, 2007, regarding the flyer:

> "On Wednesday, March 7, 2007, at 10:58 a.m., Rick Eashoo, UAW Shop Committeeman, requested a meeting with the writer, Dawn McCarrick, and Bill Karas, Human Resources Manager. Mr. Eashoo stated he was considering requesting sick leave for industrial stress due to his current work environment. Mr. Eashoo stated he has been unable to sleep due to mental stress. Mr. Eashoo stated he does not 'know who to trust or who to talk to.' Mr. Eashoo stated while clocking out another employee (unknown who) made the comment 'how much for a pound.' Mr. Eashoo stated he did contact a lawyer and is considering contacting local law enforcement regarding the flyer that was placed in the men's restroom (see Incident Report dated 3-1-07). Mr. Eashoo stated he considered the flyer a 'hit list.' Mr. Eashoo stated he was informed Kathy Otto, Local 1292 President, made the comment, 'If you want war, you got war.' He did not hear the comment first hand. Mr. Eashoo stated Ms. Otto and Bill Phelps, hourly employees on medical leave are 'creating a hostile work environment,' they 'are trying to tear this place down and get it closed.' Mr. Eashoo stated he did observe Mr. Phelps in the parking lot on the morning of Tuesday, March 6, 2007 (see Incident Report 3-6-07 SBean). Mr. Eashoo stated he doesn't 'feel safe at work.' Mr. Karas requested a written statement from Mr. Eashoo stating his concerns. Mr. Eashoo has been offered a parking space in the salaried lot near the Administrative building and entrance to the facility through the lobby. Security has increased patrols in the North Employee Parking Lot. Badge access for Mr. Phelps has been suspended."[7]

The statement of Steve Bean dated March 7, 2007, referred to in this Incident Report is attached to it. Bean addressed the following statement to Plant Security:

> "Recent events on the shop floor have made me fear for my personal safety. There are people out there who have made threatening remarks and actions.

[6] Record, p. 81.

[7] Record, p. 127.

> There is one antagonist in particular whom I fear, his name is Bill Phelps. Bill has made every effort to make my life difficult. The language he uses is offensive, and he has threatened my job with comments such as he will see to it that I never get elected again, and he is going to have me 'fucked.' His mannerisms and attitude towards anyone involved in the Union, especially me, is both belligerent and aggressive.
>
> I have received numerous harassing and malicious phone calls at my home. A female has called my wife on several occasions and told her that I have been unfaithful with other employees at this facility. The most recent of these calls was the weekend of March 3, 2007. In fairness, I must be clear that I absolutely have no concrete evidence that Bill did these things, other than people on the floor who tell me off the record that he brags about being involved.
>
> On March 6, 2007, Bill was observed in the parking lot around 5 a.m. in his truck. Bill is currently on sick leave and I personally cannot think of any reason that he would be in the parking lot so early in the morning. I believe his presence there was an attempt to harass myself and/or other members of the Shop Committee.
>
> It is very well known that Bill opposes everything and anything the Committee does. This in and of itself is acceptable and one of the freedoms we hold dear. However, I feel that he is an unstable individual and that it may turn into something more than political dissent.
>
> I am asking for your help in protecting myself and other members of the Shop Committee from him and any others who may wish to cause us harm."[8]

On June 20, 2007, Kathy Otto added the following paragraphs to her charge against Rick Eashoo:

> "The statements given to Security and management by Shop Committeeman Rick Eashoo, 'Ms. Otto and Bill Phelps, hourly employee on medical leave, are 'creating a hostile work environment,' they 'are trying to tear this place down and get it closed,' against me, Kathy Otto, are false, malicious, self-serving, and completely of a political nature. No one in their right mind, whether a member or an officer, would seek to close the place of employment where they earn their paycheck. I would certainly never do anything to jeopardize my job or the jobs of my fellow Union members. I would further say that it would equally hurt me to see members of management lose their employment (something I experienced

[8] Record, p. 128.

> when my home plant and Local 326 was first sold and then closed in 1999). I have also done nothing to create a 'hostile work environment.'
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> The act of Shop Committeeman Rick Eashoo, in and of his own will, to voluntarily go to management and Security and give false statements against a fellow Union member, one who is the elected President of Local 1292, is an activity which is contrary to the very job he was elected to do and is also in contravention of the pledge which members have made to each other in Article 2, §1, of the Constitution of the International Union 'to maintain and protect the interests of workers under the jurisdiction of the UAW.' I therefore request his removal as bargaining representative."[9]

Otto attached to her charge a copy of *Henderson v. Local Union 659, UAW,* 10 PRB 348 (1999), in which the Public Review Board (PRB) held that the charge that a member went to management with information that jeopardized the job of the charging party satisfied Article 31, §3 of the Constitution.

Otto's charge was read at a meeting of the Local 1292 Executive Board on July 20, 2007. The minutes of that meeting report that the Local Executive Board determined that the charge was timely and sufficiently specific to satisfy the requirements of Article 31, §3(a) and (b), of the Constitution. The majority of the Executive Board members determined, however, that the charge was improper under Article 31, §3(c), of the International Constitution in that it failed to describe an act which would constitute a violation of the Constitution or conduct unbecoming a Union member.[10] On July 31, 2007, Recording Secretary Mary Pepperdine advised Otto that the Local Executive Board had considered her charge and voted to deny her request to remove Rick Eashoo from office.[11]

Otto appealed the Local Executive Board's decision to the International Executive Board (IEB) on August 13, 2007. In support of her appeal, Otto argued that her charge against Eashoo specifically described an action which violated the objects of the Union described in Article 2, §1 and §2, of the International Constitution as well as the obligation stated in the Ethical Practices Codes not to vilify other members of the Union or its elected officers. Otto pointed out that in *Henderson, supra,* the PRB upheld the principle that "snitching to management" is conduct unbecoming a member of the Union. Otto also argued that her charge satisfied the requirement of Article 31, §3(e). She wrote:

> "My case is supported by substantial direct evidence, the Security Incident Report, and my corroborating witness is Brother Fernando Moreno, our member for 34 years, who was wrongly accused and discharged by

[9] Record, p. 191.

[10] Record, p. 194.

[11] Record, p. 195.

> management. This Security Incident Report is contained in management's Statement of Unadjusted Grievance in the Fernando Moreno discharge case."[12]

President Gettelfinger's staff determined that a hearing was unnecessary on Otto's appeal and they prepared a report to the IEB on Gettelfinger's behalf based on information provided by Otto and Local Union 1292. The report to the IEB first addressed the Local Executive Board's role in reviewing charges presented pursuant to Article 31 of the Constitution. The report states:

> "The role of the Local Union Executive Board is exactly the same as the IEB. When considering charges, neither should make any determination as to guilt or innocence. Also, no investigation is necessary. Instead, it is the function of the Local Union Executive Board and IEB to determine if the charges as submitted are proper pursuant to Article 31, §3(a), (b), (c), (d), and (e)."[13]

Staff reported that they concurred with the decision of the Local Executive Board that Otto's charges did not satisfy the requirements of Article 31, §3, but for different reasons. Staff agreed with the Local Executive Board that Otto's charges were specific and timely within the meaning of Article 31, §3(a) and (b), of the Constitution, but they disagreed with the conclusion that the charge failed under Article 31, §3(c). Staff held that the charge of snitching to management and thereby causing harm to a member does describe conduct unbecoming a Union member.[14] Staff held, therefore, that Otto's basic charge, that Eashoo went to management and made statements connecting her to the flyer for which Fernando Moreno was discharged, did satisfy the requirements of Article 31, §3(c), of the International Constitution.[15]

Staff went on to consider whether the charge satisfied Article 31, §3(d) and (e), of the Constitution. Staff held that this charge did not involve a question which ought to be addressed by the membership rather than through a trial procedure with the exception of Otto's claim that Eashoo's conduct violated the Ethical Practices Code. Staff noted that under Article 32 of the Constitution, Ethical Practices Complaints are to be presented to the membership.[16] Staff concluded, however, that the charge failed under Article 31, §3(e), of the Constitution. Article 31, §3(e), provides as follows:

> "In all cases, an otherwise proper charge(s) must be supported by substantial direct evidence, as well as the evidence of at least one (1)

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[12] Record, p. 198.

[13] Record, p. 261.

[14] Record, p. 263.

[15] Record, p. 264.

[16] Record, p. 264.

> corroborating witness, which, if not rebutted, would establish all elements of the charge(s)."

Staff reported that Article 31, §3(e), was added to the Constitution in 1998 to prevent a Local Union from having to conduct trials on baseless but artfully drafted charges. Staff remarked that Article 31, §3(e), is to be applied only after it has been determined that the charges under consideration satisfy the criteria set forth in subsections (a) through (d) of Article 31, §3. Staff emphasized the fact that charges are to be reviewed as submitted and that no investigation of the charges by the Local Executive Board is required or proper. They quoted the following Official Interpretation of the Constitution to support this position:

> "(2) Charges Are Not to be Investigated
>
> Article 31 charges are procedurally reviewed by local executive boards to determine if they are proper or improper pursuant to the subsections of Section 3. Charges are to be reviewed, as submitted, based on their specific content. No investigation is required or proper. The addition of Section 3(e) at the 32nd Constitutional Convention requiring substantial direct evidence as well as the evidence of at least one (1) corroborating witness does not change the historical method of review. (Las Vegas, 6/1/02)"[17]

Applying Article 31, §3(e), to Otto's charge, staff held that the Security Incident Report and management's Statement of Unadjusted Grievance offered to corroborate the charge did not provide the kind of substantial direct evidence required by Article 31, §3(e).[18] Staff explained:

> "On the incident report, it is not signed by Eashoo. There is only one page of what appears to be at least two pages. It is not signed by anyone in Security or management. All it does is provide a description of a supposed event that occurred which could have been made by anyone."[19]

Furthermore, staff noted that the report merely describes Eashoo's mental state. They wrote:

> "…There is no indication of any harm to the appellant by management (such as putting her job as President or her job at the plant in jeopardy). To look at this report as an attempt to tie the appellant to a flyer, or that his

[17] Record, p. 265.

[18] Record, p. 266.

[19] Record, p. 266.

> comments were malicious or he had a culpable intent to injure, is a stretch."[20]

Staff also held that management's Statement of Unadjusted Grievance did not provide direct substantial evidence of Otto's charge. Staff reported that Otto had submitted two pages taken from management's statement with her charge. They wrote:

> "…There is nothing to indicate what it is or where it is from other than her allegations. Assuming these are excerpts from management's statement, it shows two other Shop Committeepersons other than Eashoo were also concerned with their health and safety. It also reveals management is relying on many different points of contention to support their position of discipline. There isn't any information in these two pages of management's alleged Statement of Unadjusted Grievance that even mentions the Local Union President or Brother Phelps. Nor does it indicate management relied on the Security Incident Report or reference to the appellant or Phelps."[21]

Based on these observations, staff concluded that it "would be another stretch" to take this document as direct, substantial evidence or corroboration.[22]

Staff found that the action described in Otto's charge was not so much a case of one member snitching on another, but a case of one distraught Shop Chairperson concerned for his health and safety. They wrote:

> "If we were to consider this as snitching on a member, then it would beg questions why the other two Shop Committeepersons would not have been brought up on similar charges by Brothers Moreno and/or Phelps?"[23]

Staff held, therefore, that Otto had not provided sufficient direct evidence of her charge to satisfy Article 31, §3(e), of the Constitution.

Staff also concluded that there was not adequate testimony by at least one corroborating witness to support the charge. With reference to the testimony of Fernando Moreno offered by Otto, staff wrote the following:

> "On the other requirement within subsection (e), that is the evidence of at least one (1) corroborating witness, the appellant's claim of Brother Moreno being her corroborating witness is insufficient. Nothing was provided by Moreno to substantiate this. Surely Moreno, who apparently

[20] Record, p. 266.

[21] Record, p. 267.

[22] Record, p. 267.

[23] Record, p. 268.

> was discharged, would have provided a statement or signed the charges with the appellant if he was a corroborating witness. Consequently, because no evidence exists that Moreno is a corroborating witness, the charges also fail this requirement of the test of (e)."[24]

Staff held that Otto's charges were improper under Article 31, §3(e), of the Constitution and they denied her appeal. The IEB adopted staff's report as its decision in a letter to Kathy Otto dated January 23, 2008. Otto appealed the IEB's decision to the PRB on February 21, 2008.

ARGUMENT

A. Kathy Otto:

When evaluating charges, the reviewing body is supposed to assume that the allegations are true. Instead, the IEB assumed that my evidence was not authentic and that Rick Eashoo was the victim of a threat to his health and safety. The IEB did not conduct an unbiased review of the charge before them but rather evaluated the credibility of the charge itself and characterized everything I said as a "stretch."

The Constitution merely requires that the charging party have at least one corroborating witness. I named my corroborating witness, Fernando Moreno. The Constitution does not require a signed statement from the corroborating witness. Employee Grievance C-955324 is signed by Fernando Moreno. This grievance is not imaginary or illusory; it is very real. Had a trial been ordered, Moreno would have testified. He will indeed give a written statement if requested to do so. Management's Statement of Unadjusted Grievance is a signed document based on an investigation that included the Security Incident Reports. This is direct evidence. This evidence should not have been evaluated and rejected by the IEB. It should have been responded to by Eashoo and evaluated by the Trial Committee. The IEB ruled that the evidence merely established that Eashoo felt unsafe at work. Where is the evidence of that? In a trial he would have had to prove that he sought legal counsel and consulted law enforcement authorities. He would have had to demonstrate how I and Bill Phelps were creating a hostile work environment.

Eashoo's act did place my job as Local President and Grand Blanc WTC employee in jeopardy. His statement that I was trying to get this place closed was in response to my having posted on the bulletin board a notice from the Department of Labor regarding a prohibition against certain persons holding Union office. I was directed specifically by the Department of Labor to post this bulletin. I did not feel this would tear any place down or get it closed because I am not aware of any Union officer who is a convicted felon and therefore ineligible to hold Union office.

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[24] Record, p. 268.

The IEB's report states that management's Statement of Unadjusted Grievance "would beg the question why the other two Shop Committeepersons would not have been brought up on similar charges by Brothers Moreno and/or Phelps." The membership meeting minutes of October 14, 2007, December 9, 2007, and February 10, 2008, show that Phelps did, in fact, take action to address the attacks against him in the Security Incident Reports to General Motors. I do not know why Moreno and Phelps addressed these attacks in different ways than filing charges under Article 31. We all have different ways of handling life's issues.

I charged Rick Eashoo because he mentioned my name. Had I realized that I could, I would have filed charges against all three Shop Committee members who submitted Security Incident Reports against a fellow Union member that resulted in his discharge. Have we fallen this far from the path of true Unionism?

B. International Union, UAW:

In support of her charge against Eashoo, Otto submitted the following documents: 1) an unsigned March 7, 2007, Company Security Incident Report containing statements allegedly recorded by Company Security and allegedly made by Eashoo about appellant; 2) two unsigned pages from a multi-page Company report on Moreno's unadjusted grievance; 3) the February 14, 2007, DOL letter; and 4) a PRB decision on Article 31 that predated the addition of Article 31, §3(e), to the Constitution.

While this appeal was pending, appellant submitted additional documents including materials connected to Moreno's grievance, and several sets of Local Union membership meeting minutes. Even with these additional documents, appellant's charge fails under Article 31, §3(e), of the Constitution in that it does not provide direct evidence of the action described in the charge. The only document evincing any unbecoming conduct by Eashoo against appellant is the unsigned Security Incident Report in which Eashoo is reported to have said that Otto and another Union member were creating a hostile work environment and trying to get this place closed down. An additional fatal flaw in appellant's charge is the lack of a corroborating witness. Appellant claims that Fernando Moreno would corroborate her charge but there is no signed statement in the record indicating that he has personal knowledge of the action described in the charge.

After the 18th Constitutional Convention added the procedures for reviewing charges, a UAW Administrative Letter was issued to all Local Unions on June 7, 1962, explaining that the criteria set forth in Article 30, §3(a), (b), (c), and (d), were for evaluating the sufficiency of the charges and not for the purpose of determining the substance of the charges, or to initiate an investigation of the charges that could result in a pre-trial proceeding. The Administrative Letter states:

> "Nor should an executive board, in reviewing charges, attempt to weigh the evidence to see if there is enough to justify the case going to trial."

When the 32nd Constitutional Convention added §3(e) to Article 31 in 1998, the Convention Delegates were given the following explanation for the amendment:

> "The problem is many of our Locals have been plagued by frivolous appeals. Often these are petty, arise out of personality conflicts, political disagreements, and really have nothing to do with the life and functioning of our Locals. Under the current language, the charging party does not have to provide any proof of his or her allegations. If they meet the four tests, state the exact nature, are timely, allege conduct unbecoming, and are not procedurally for the membership, the Executive Board is forced to send them to trial. The charges may turn out to be frivolous, unsupported by any facts, and based on rumor and hearsay. But currently it takes a trial, involving expense, time, and bad feelings to settle the matter."

The intended meaning of the new subsection was explained as follows:

> "…There must actually be evidence, which, if unrebutted, will support the elements of the charge.
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> That evidence must be direct evidence; hearsay, speculation, and conclusion do not meet this test. It must be evidence which the witness personally knows.
>
> Last, there must be at least one corroborating witness, that is, someone other than the charging member must have direct evidence in support of the charge. …"

In 2001, the PRB issued a decision interpreting Article 31, §3(e). In *Nasello v. Local Union 282, UAW,* 11 PRB 1 (2001), the PRB commented that Article 31, §3(e), required the Local Executive Board to conduct an investigation to determine whether the charging party had direct evidence to support the charge. Appellant Nasello had not provided any supporting documentation with his charge. The PRB's decision states that the Local Union should have contacted Nasello to determine whether he had sufficient evidence to satisfy the requirements of §3(e).

In response to this decision, on April 6, 2001, President Yokich's Administrative Assistant Dottie Jones wrote to the PRB Director David Klein on behalf of the IEB and explained that the PRB's conclusion that Article 31, §3(e), required a Local Executive Board to solicit evidence from the charging party went beyond what was contemplated by the delegates of the 32nd Constitutional Convention when they passed §3(e). The letter explained that the IEB would issue an official interpretation of Article 31, §3(e), to affirm the fact that a charging party's Article 31 charges must be evaluated as submitted and be supported by both substantial direct evidence and at least one corroborating witness without solicitation by the Local Union Executive Board for missing evidentiary support. This led to the official interpretation referred to in the IEB's decision on Otto's appeal being added to the Constitution.

Again, none of the documents that appellant submitted with her charges satisfy the requirement of the submission of substantial direct evidence stated in §3(e). And none of the documents appellant submitted after filing her appeal to the PRB satisfy Article 31, §3(e), even assuming that those documents are properly before the PRB in connection with this appeal. At no time has appellant fulfilled the corroborating witness requirement. The Local Executive Board was not required to assist appellant in trying to cure these fatal deficiencies. The PRB should, therefore, uphold the IEB's decision.

DISCUSSION

Appellant Otto has correctly described the basic role of a Local Executive Board in reviewing charges submitted pursuant to Article 31. The IEB and this Board have repeatedly reaffirmed the principle that the Local Executive Board is to review the actual language of the charge, assume that all of the allegations contained therein are true, and then determine whether the charge should be disqualified under any of the provisions of Article 31, §3(a) through (e), of the International Constitution.[25] In this appeal, the IEB found that Otto's charge satisfied the requirements of Article 31 §3(a) through (d), of the Constitution, but it disqualified her charge based on its evaluation of the evidence she presented to satisfy Article 31, §3(e). It has been the position of this Board in the past that a Local Executive Board reviewing charges submitted pursuant to Article 31 should not evaluate the sufficiency of the evidence to support the charges, but only consider whether the language of the charge itself satisfies the criteria stated in the Constitution. The determination whether the evidence offered in connection with the charge is hearsay or unreliable for some other reason has been considered the sole province of the Trial Committee.[26] The question directly raised by this appeal, then, is whether that rule was changed by the adoption of §3(e) during the 1998 Constitutional Convention.

The International Union's response to Otto's appeal refers to a decision we recently issued in which we assumed that the role of the Local Executive Board reviewing Article 31 charges had not been expanded by §3(e) to include an evaluation of the evidence presented in support of the charges. In *Torres v. UAW Local Union 594 Executive Board,* PRB Case No. 1572, (2007), the IEB sustained a Local Executive Board's disqualification of charges pursuant to §3(e) based on the Board members' conclusion that the evidence presented in support of the charges was hearsay. We found that to be error. Our decision states:

> "It was error, therefore, for the Local Executive Board to disqualify Torres' and Trinklein's charges under Article 31, §3(e), of the Constitution based on the conclusion that their evidence was hearsay. It is not clear from this

[25] *Wartley v. UAW Local Union 849 Executive Board,* 11 PRB 421 (2001); *Kuptz v. Local Union 36, UAW,* 9 PRB 111 (1996); and *Bob and Alma King v. UAW Local Union 600 Executive Board,* PRB Case No. 1464 (2004).

[26] *Toth v. Local Union 723,* 5 PRB 644 (1989); *Kuptz, supra;* and *Wyatt in the matter of Miller v. Local Union 2190,* 10 PRB 163 (1998).

> record what evidence the Local Executive Board regarded as hearsay. In any event, the fact that some evidence might be rejected in a civil court based on questions about its reliability would not necessarily disqualify that evidence from being presented to a Trial Committee. As we have observed, it is up to the Trial Committee to evaluate the evidence presented, and determine its significance, relevance, and reliability."[27]

Our decision in *Torres,* referred back to an earlier decision, *Nasello v. Local Union 282,* cited previously, to explain how §3(e) should be applied. The *Nasello* decision had suggested that the Local Executive Board has an affirmative responsibility to investigate charges to determine if there is corroboration. Subsequently, in response to *Nasello,* the IEB added the official interpretation quoted in staff's report to the IEB. This interpretation makes clear that the Local Executive Board has no affirmative responsibility to elicit corroboration where there is none, but it does not resolve the issue whether the Local Executive Board has a role to play in considering the reliability of the evidence offered to corroborate charges.

Simultaneously with this appeal, we were once again confronted with a question regarding the proper application of Article 31, §3(e). In *Alejandro v. Local Union 2244,* PRB Case No. 1597 (2008), the IEB's interpretation of §3(e) seemed entirely at odds with its application of that subsection to Otto's charges. Here, the IEB rejected corroborating evidence because only selected pages of a document were submitted rather than the entire document. Fernando Moreno could obviously corroborate the fact that he was discharged for distributing the flyer that Eashoo complained about, yet the IEB stated that his potential testimony could not be considered corroboration because he had not submitted a signed affidavit. Even Eashoo's own statement to management was rejected by the IEB because it was not signed by him. Yet, the charges in *Alejandro* were not accompanied by any affidavits or evidence. Had the stringent evidentiary rules that were used to disqualify Otto's charges been applied to the charges against the appellant in *Alejandro*, it appears that those charges should also have been rejected.

We therefore asked the President's staff to clarify its position on this issue. During oral argument conducted on Deniese Alejandro's appeal from the IEB's ruling that the charges against her were proper*,* Administrative Assistant Eunice Stokes-Wilson stated that it was error for staff to evaluate the sufficiency of the evidence in response to appellant Kathy Otto's appeal. We adopted Stokes-Wilson's interpretation of Article 31, §3(e) in *Alejandro,* and held that there is no need for affidavits or other substantial evidence to corroborate charges where it is clear that the charges refer to a real event and that there are corroborating witnesses. We therefore reiterated the position that we had stated in *Torres, supra,* that Article 31, §3(e), has the narrow function of weeding out artfully drafted charges which lack any tangible corroboration in the real world. It is not intended to invest Local Executive Boards with the authority to

[27] PRB Case No. 1572, at 7.

rule on the reliability or sufficiency of the evidence to support the charges. That is still exclusively the role of the Trial Committee.[28]

We recognize that some of the discussion quoted in President Gettelfinger's response to Otto's appeal suggests that the application of Article 31, §3(e), might require an evaluation of the evidence by the Local Executive Board. The discussion referred to contains the following paragraph:

> "That evidence must be direct evidence; hearsay, speculation, and conclusion do not meet this test. It must be evidence which the witness personally knows. Last, there must be at least one corroborating witness, that is, someone other than the charging member must have direct evidence in support of the charge."[29]

This discussion was not incorporated into the Constitutional language, however. It takes place in the context of a general explanation of the need for the Constitutional amendment. On the other hand, staff's attempt to evaluate the evidence submitted by Otto in their report to the IEB drew them to make judgments regarding the motivations of the parties and the likelihood of people taking certain actions that usurped the Trial Committee's function. Staff's comment that it would be a "stretch" to regard Eashoo's report to management as "snitching" or malicious decides the essential question posed by the charge. This is exactly the kind of judgment the reviewing body ought to avoid. Local Executive Boards should avoid commentary on the sufficiency of evidence when reviewing charges under Article 31, §3. Article 31, §3(e), should only be applied in those cases where there is neither supporting evidence nor a corroborating witness.

Evaluating evidence is the task of the Trial Committee. We hold that it was error for the IEB to dismiss the evidence presented in support of Otto's charges as unreliable or insubstantial. This case is, therefore, remanded to the IEB for further review in light of this ruling.

It is so ordered.

[28] PRB Case No. 1597, at 29.

[29] Record, p. 294.