

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

APPEAL OF:

MICHAEL PAPPAS, Member,
LOCAL UNION 600, UAW
(Dearborn, Michigan),
Appellant

-vs-

CASE NO. 1602

REGION 1A, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued October 28, 2008)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson,
Prof. Janice R. Bellace, Prof. James J.
Brudney, Prof. Fred Feinstein, and Dean Harry
C. Katz.

Michael Pappas argues that International Representative Allen Wilson's decision to withdraw a grievance protesting his termination for violating the terms of his reinstatement waiver lacked a rational basis.

FACTS

Michael Pappas worked at the Ford Motor Company's Brownstown Parts Redistribution Center in a bargaining unit represented by UAW Local Union 600. He had a seniority date of April 2, 2001. On October 18, 2006, Pappas was suspended pending further investigation for failure to respond to a notice to report to work issued pursuant to Article VIII, §5(4), of the UAW-Ford National Agreement.¹ Local 600 filed Grievance B06338 protesting the suspension.

¹ Article VIII, §5 of the UAW-Ford National Agreement describes when an employee's seniority shall be broken. Paragraph 4 of Article VIII, §5 provides, in pertinent part, as follows:

“(Failure to Report)

If the employee does not, within five (5) working days (excluding Saturdays, Sundays and Holidays) after notice to report has been sent to him/her, either report for work or give a satisfactory reason for his/her absence, unless it is not possible for him/her to comply

The Union's investigation revealed that Pappas had been admitted to Henry Ford Wyandotte Hospital on October 19, 2006, and that he submitted a Form 5166 to explain his absence. The Company sent Pappas the notice to report to work on October 26, 2006, requesting him to update his paperwork within five working days. By this time, however, Pappas had been returned to the Oakland County Jail where he had been on a work release program prior to being hospitalized on October 18. As a result, Pappas was unable to respond to the notice.² The record shows that Pappas was reinstated on March 29, 2007, under the terms of a general reinstatement waiver. Paragraph (D) of the waiver provides as follows:

"I shall be regarded for disciplinary purposes, as being on probation for a period of 12 months beginning on March 29, 2007, and understand that I will not have access to the grievance procedure to protest the reasonableness of any penalty, including discharge, I may receive during this period for an infraction of Company rules or misconduct; however, I am not prohibited from processing a grievance bearing on the question of guilt or innocence if I believe I am innocent of the charge."³

On August 6, 2007, Pappas was suspended pending further investigation for leaving the plant without permission in violation of the Company's Rules of Conduct. Local 600 filed Grievance B07233 protesting the discipline on August 8, 2007. The grievance states:

"The aggrieved maintains that he left because he had a medical emergency and needed to get his medication (a list of these medications will be furnished upon request). The aggrieved was unable to contact his supervisor because the aggrieved does not have a Nextel. The aggrieved also states that he was more than 4 hours into his shift and was within his rights to take his lunch period. The aggrieved also states that since his reinstatement in March he had never been informed by supervision of a specific lunch period. The pictures from the security cameras used in the improper investigation are inconclusive and therefore deemed inadmissible as evidence to substantiate the improper charges made by the Company."⁴

The Company responded to Grievance B07233 on October 16, 2007. The Company reported that Pappas was seen by Manager Paul Antioch leaving the plant at approximately 10:12 a.m. on August 6, 2007.⁵ The Company's security cameras

with either of these requirements; and provided at least ten (10) working days have elapsed since his/her last day worked."

² Record, p. 5.

³ Record, p. 6.

⁴ Record, p. 7.

⁵ Record, p. 11.

identified Pappas' Ford Fusion returning to the plant at 11:21 a.m. The Company's records showed that Pappas' badge access was registered both at 5:54 a.m. when he first reported to work on August 6, and again at 11:19 a.m. when he returned to work on the same day. The Company stated that the scheduled lunch break for skilled trades is from 11:00 a.m. until 11:30 a.m. The Company further pointed out that Pappas did not seek out any member of management to report a medical emergency or go to the Medical Department to seek treatment.⁶

The Company noted that Pappas was still on probation under the terms of his reinstatement waiver dated March 29, 2007. Furthermore, the Company asserted that Pappas knew that leaving the plant without permission was a violation of the Company's Rules of Conduct. The Company's Statement of Position contains the following explanation:

"When the aggrieved was reinstated on March 29, 2007, he was also required to read and initial each page of the Brownstown Rules of Conduct. The Rules of Conduct clearly states that 'Leaving the plant or job without permission is prohibited and could lead to disciplinary action.' Mr. Pappas was in receipt of the fact that he could be terminated for leaving the plant without permission.

Mr. Pappas was fully aware of his scheduled lunch period from 11:00 a.m. until 11:30 a.m. His peers took their lunch during this period, as well as Mr. Pappas. He was clearly advised of this by his supervisor Bill Cardenas upon his return on March 29, 2007."⁷

The Company maintained that Pappas had clearly violated the Company's Rules of Conduct so that his termination was justified by the terms of his reinstatement waiver.

Pappas' grievance was appealed to the third stage where it was withdrawn by International Representative Allen Wilson. Wilson advised Pappas of his decision to withdraw the grievance on November 8, 2007. Wilson informed Pappas that the Company was unwilling to reduce the penalty. He explained to Pappas that he did not believe the record provided a basis upon which an arbitrator could grant all or even part of the relief requested in the grievance.⁸ Pappas appealed the decision to withdraw his grievance to the International Executive Board (IEB) on November 27, 2007.⁹

Acting on behalf of President Gettelfinger, Administrative Assistant Bahati Jaha conducted a hearing on Pappas' appeal on February 22, 2008. Jaha prepared a report to the IEB on the appeal based on testimony taken at the hearing. According to Jaha's

⁶ Record, p. 12.

⁷ Record, p. 13.

⁸ Record, p. 16.

⁹ Record, p. 18.

report, Pappas testified that he forgot to take his heart medication on the morning of August 6, 2007, so he decided to go home at lunch to take his medication. Pappas maintained that his supervisor had never informed him of a specific time period for lunch. He admitted that he took 55 minutes for lunch on August 6, which was more than the normal 30 minute lunch break. Pappas insisted that he never should have been terminated in 2006 over the five-day quit notice and, therefore, should not have been on probation.¹⁰

Jaha reported that Servicing Representative Dave Russell testified that Pappas stated during the investigation of his grievance that he went home at lunch to take his medication and that he took a nap before returning to work.¹¹ Representative Wilson testified that Pappas did not tell his supervisor that he forgot to take his medication or that he needed to go home. Wilson stated that Pappas had been counseled on the Company's policies including the standard lunch periods when he was reinstated on March 29, 2007. Wilson reported that he tried very hard to convince the Company to reinstate Pappas, but when the Company refused he had no basis to appeal the grievance to arbitration.¹²

Jaha commented that the only question presented by Pappas' appeal is whether he violated the terms of his reinstatement waiver. Jaha noted that Pappas presented testimony of two witnesses concerning prior disciplinary actions taken by the Company to support his claim that he had been singled out and harassed. Jaha concluded, however, that Pappas had violated his reinstatement waiver. Jaha wrote:

"The record demonstrates that the appellant and management may have had an unfriendly working relationship. From comments made at the evidentiary hearing, the appellant appears to be confrontational and argumentative in the workplace. The appellant was on a twelve-month conditional reinstatement waiver, which means that if he violates his waiver, the penalty of discharge can be assessed. The appellant made the decision to go home for lunch to take his medication and left the plant without permission. Consequently, he violated his reinstatement waiver."¹³

Accordingly, Jaha determined that Representative Wilson's decision to withdraw Pappas' grievance did have a rational basis and he denied the appeal.

The IEB adopted Jaha's report as its decision on March 18, 2008. Pappas has now appealed the IEB's decision to the Public Review Board (PRB).

¹⁰ Record, p. 33.

¹¹ Record, p. 34.

¹² Record, p. 35.

¹³ Record, p. 42.

ARGUMENT

A. Michael Pappas:

The Company violated the Family and Medical Leave Act ("FMLA") in 2006 when they terminated me for failing to provide a medical certificate to justify my leave. I had provided a medical certificate to justify my leave when I was hospitalized on October 18, 2006. The Company knew the circumstances. The Union did nothing to protest the Company's violation of the FMLA and then I was coerced into signing the reinstatement waiver on March 29, 2007.

My Local Union representatives told me that the Company had a target on me. They could not have created a more intimidating or hostile environment. I want to emphasize the lack of representation that I received from the Local as well as the Region. The Union failed to force the Company to follow its own rules and the collective bargaining agreement. If the Union had done its job, there never would have been a reinstatement waiver and I would not have lost my job.

I would also like to add that every grievance has merit. To say that a grievance lacks merit is sheer stupidity. The UAW has no idea what an arbitrator might do.

B. International Union, UAW:

Appellant has never contested that he left the plant without notice to or permission from the Company. He also admitted at the IEB hearing that he was twenty-five minutes late returning from lunch. The Brownstown Rules of Conduct state that leaving the plant without permission and overstaying lunch period are grounds for discipline. Under the terms of the reinstatement waiver, if appellant violated Company rules, the Company could assess the penalty of discharge and the Union could not contest the reasonableness of that penalty through the grievance procedure. Representative Wilson could not contest the penalty assessed by the Company and therefore was left with no effective argument. He reasonably concluded that there was nothing to be gained by pursuing the grievance beyond the third stage.

The appellant has provided no new evidence in his appeal to the PRB. Contrary to his assertion, the Union has no duty to take every grievance to arbitration. There is no evidence in the record that Wilson's decision not to submit his grievance to arbitration was irrational or improperly motivated. Therefore, Pappas' appeal must be denied.

C. Rebuttal, by Michael Pappas:

I do not like to call anyone a liar, but there are a lot of misstatements in the IEB's report. I do not know where this Dave Russell came up with me taking a nap. I went home and took my medication and had a bowl of oatmeal. In fact, everyone in the building takes one hour for lunch. You do not need permission to leave the plant.

Everyone I work with goes to lunch at 10:00 a.m. My supervisor never stated to me that lunch was from 11:00 to 11:30 when I was reinstated on March 29, 2006. That is a lie.

Management has reported several conflicting times when I was supposed to have left and returned to the plant. There is only one time it can be. Mike Ross lied about the time, as did Paul Antioch. The Union believes these liars over the statement of a member.

There are numerous witnesses who can attest that I have been harassed by management over the last four years and that the Union has done nothing to protest it. I believe this is partly the result of racial prejudice on the part of my Union representatives. This Union sold me down the river. I want to prove their lies and manipulation.

DISCUSSION

Representative Wilson's determination that he could gain no relief for Pappas by pursuing his grievance beyond the third step was clearly rational. The Brownstown Rules of Conduct state unequivocally that leaving the plant without permission and overstaying lunch period are prohibited and can lead to disciplinary action.¹⁴ Pappas does not deny that he left the plant without permission and overstayed his lunch period. He was working under the terms of a twelve month reinstatement waiver which precluded him from challenging the reasonableness of any penalty. There was nothing for the Union to argue on his behalf under these circumstances.

In his appeal to us, Pappas argues that his discharge in 2006 violated the FMLA, because the Company knew why he was unable to report for work. He argues that the Union could have successfully challenged his discharge under the FMLA so that he never should have been placed on probation. Pappas's argument about his 2006 discharge, raised for the first time before the PRB in 2008, is not timely. In any event, the argument has no merit because incarceration is not a qualifying event entitling an employee to leave under the Act.¹⁵ Furthermore, incarceration is not generally

¹⁴ Record, p. 2.

¹⁵ The Family and Medical Leave Act of 1993 provides that eligible employees of covered employers have a right to take up to twelve weeks of job-protected leave in any twelve month period for qualifying events without interference or restraint from their employers. Title I, Section 102 of the Act defines entitlement to leave as follows:

"(1) ENTITLEMENT TO LEAVE.--Subject to section 103, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

- (A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
- (B) Because of the placement of a son or daughter with the employee for adoption or foster care.
- (C) In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.

considered a satisfactory reason for failure to report to work within the meaning of Article VIII, §5(4), of the UAW-Ford National Agreement.¹⁶ Pappas was fortunate that the Union managed to negotiate his reinstatement in 2006, because the Company could have insisted that his seniority had been broken when he failed to report to work while he was in the Oakland County Jail.

We are not authorized to overturn the Union's decision to withdraw a grievance unless we find that it was influenced by impermissible factors such as fraud, discrimination or collusion with management, or that it was devoid of any rational basis.¹⁷ There is no evidence of improper motivation on the part of the Union representatives who handled Pappas' grievance. The Union cannot be faulted because Pappas failed to abide by the terms of his reinstatement waiver.

The decision of the IEB is affirmed.

(D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee."

¹⁶ *Johnson V. National Chrysler Department, UAW*, 10 PRB 28 (1998).

¹⁷ International Constitution, Article 33, §4(i).