

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

APPEAL OF:

CHARLES COLLINS, ET AL., Members,
LOCAL UNION 600, UAW
(Dearborn, Michigan),
Appellants

-vs-

CASE NO. 1607

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

DECISION

(Issued November 25, 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.

Appellants argue that an agreement to allow truck drivers to retain their higher wage rate after transferring into the general utility classification discriminated against them.

FACTS

Appellants work in the general utility classification at Ford Motor Company's World Headquarters Vehicle Service Center ("WHQ-VSC"). They are part of the Transportation Unit of UAW Local Union 600. In 2003, the Unit also included commercial and industrial truck drivers working out of Ford Motor Company's Lincoln Park Truck Repair Garage. In August 2003, Ford entered into an agreement with an outside trucking firm, TNT Logistics ("TNT"), under which TNT agreed to manage and supervise Ford's commercial truck drivers at the Lincoln Park facility. The drivers remained Ford employees under this agreement and received their pay and benefits from Ford at the rate established in the collective bargaining agreement.¹

Bill Ruber was Chairperson of the Transportation Unit during this period. In an affidavit given in response to this appeal, Ruber stated that drivers in the Unit were

¹ Record, p. 18.

concerned that Ford intended to discontinue its trucking operations and eliminate their jobs. The Transportation Unit also includes workers in the general utility classification. In 2004, Rebecca Chiles and Joseph O'Connor transferred from the "Driver-Truck-Semitrailer" classification to the general utility classification. At the time, the wage rate in the truck driver classification was \$27.015. The wage rate in the general utility classification was \$25.695. Chiles and O'Connor agreed to accept the lower rate. In regard to this transfer, Ruber's affidavit states:

"There was, however, a general concern among all drivers about the long-term financial viability of keeping the trucking operations in house. Ford had assigned the management of its commercial trucking operations to TNT in order to reduce costs. We were also aware that General Motors was in the process of outsourcing trucking operations in order to save money. Although Chiles and O'Connor took a modest pay cut when [they] transferred to the WHQ-VSC, the jobs they accepted were more secure."²

In 2006, Ford Motor Company decided to consolidate the operations of the Lincoln Park Truck Repair Garage with those of the WHQ-VSC. At this time, ten positions in the general utility classification at WHQ-VSC became available. Chairperson Ruber negotiated an agreement with Rouge Site Labor Relations Manager Bob Michalowicz to offer these ten positions to truck drivers in the Transportation Unit. At this point, the wage rate for drivers was \$27.555, and the wage rate for the general utility classification was \$26.21. The agreement stipulated that the drivers would continue to receive the wage rate for drivers.³

In accordance with this agreement, on June 26, 2006, Michalowicz submitted a request to John Wright, Ford's Manager of Arbitration and Wage Administration, to "red circle" truck drivers' wage rates. Michalowicz explained the situation as follows:

"In conjunction with the recent separation package offering at the Rouge site and the consolidation of operations of the Lincoln Park Repair Garage with those of the World Headquarters Vehicle Service Garage, approximately 10 non-skilled positions of "Utility General" will become available at WHQ/VSC. We've reached agreement with Jerry Sullivan, President of Local 600, to offer these positions, along with 5 open production unit positions at the Dearborn Engine Plant, to the truck drivers within the Transportation Unit. This transition will better align the existing workforce with the projected business needs.

The base hourly wage rate of the available positions is approximately \$1.35 lower than that of the "Driver-Truck-Semitrailer" classification (\$27.555). To encourage these drivers to voluntarily transfer to the open

² Record, p. 65.

³ Record, p. 18.

positions, we request your approval to continue the drivers' rate of pay at their current rate until August 1, 2008. This date represents the expiration of the agreement between Ford and TNT Logistics, the firm currently under contract to manage the commercial trucking business. As of August 1, 2008, the former drivers' hourly wage rate will revert to the current rate in effect for the classification they hold at the time."⁴

At the same time, Chairperson Ruber and Ford Labor Relations Representative Karen Morris issued a letter to truck drivers in the Transportation Unit advising them of the opportunity to transfer to jobs in the general utility classification.⁵ In November 2006, three more positions opened up in the general utility classification, and these were also offered to drivers at the drivers' rate of pay.⁶

On November 21, 2006, Charles Collins submitted Grievance TU-026-A on behalf of employees in the general utility classification of the Transportation Unit charging management with a wage parity violation.⁷ The grievance states:

"The aggrieved personnel (SEE LIST) are protesting the issue that the Company has allowed employees of the driver group classification from the Industrial Dept. (8480) and commercial Truck Dept. (8460) the opportunity to be placed in open positions at the Vehicle Service Center location (3840) on various job assignments and be given the classification utility general and having been awarded the right to retain their driver pay scale. The aggrieved personnel view this as a direct violation of their contractual rights."⁸

Management responded to Grievance TU-026-A on March 6, 2007, as follows:

"SETTLED AND CLOSED. This grievance is settled and closed without prejudice or precedence to the issues involved. The Labor Relations Manager, Manager of Arbitration and Wage Administration, in cooperative effort with the Local President and the Unit Chairperson, are authorized to negotiate and implement certain deviations from local and master agreement language. The agreement to allow drivers to temporarily retain their pay scale is one such deviation the parties are authorized to negotiate and implement. As such, no wage parity violation of the agreement exists. In the instant case, no loss was suffered by any

⁴ Record, p. 2.

⁵ Record, pp. 3-4.

⁶ Record, pp. 6-8.

⁷ A list attached to the grievance is signed by 19 members. The list also indicates the employees' seniority dates. (Record, pp. 10-11)

⁸ Record, p. 9.

employee in the Utility General classification. Therefore, no compensation to the aggrieved parties is warranted.”⁹

Grievance TU-026-A was appealed to the third stage where it was withdrawn by International Representative Al Wilson following a Review Board meeting on December 13, 2007. Wilson notified Charles Collins of his decision to withdraw the grievance on January 7, 2008.

Collins appealed Wilson’s decision to the International Union on February 2, 2008. In support of his appeal, Collins argued that the agreement negotiated on behalf of the drivers constituted discrimination against the other members of the general utility classification. He reported that the past practice for the last 35 years in the Transportation Unit was that workers transferring from a higher paying classification to a lower paying one had to take a pay cut. He maintained that the agreement introduced a two-tier wage scale into the unit in violation of the collective bargaining agreement. He pointed out that many of the employees receiving the higher rate had less seniority than the appellants.¹⁰ Finally, Collins argued that if an agreement had been made to pay some employees in the department a different rate, then all of the workers should have been informed about the agreement and given the right to approve or disapprove it.¹¹

Chairperson Ruber responded to Collins’ appeal in a letter to Representative Wilson. Ruber stated that the Local Union’s goal was to protect the drivers’ wages. He stated that they never imagined their actions would be regarded as discriminatory.¹² Region 1A Director Rory Gamble reported to President Gettelfinger on the appeal in a memorandum on March 13, 2008. Gamble explained that Representative Wilson withdrew appellants’ grievance because the truck drivers from the Lincoln Park Repair Garage had a right to maintain the rate negotiated for them under the existing contract with TNT Logistics. Gamble asserted that President Sullivan and Chairperson Ruber had every right to negotiate the continuance of the truck drivers’ wage rate with Ford Motor Company.¹³

Acting on behalf of President Gettelfinger, Administrative Assistant Bahati Jaha conducted a hearing on Collins’ appeal on behalf of the general utility employees on April 18, 2008. Jaha prepared a report to the International Executive Board (IEB) based upon information provided by the Local Union and testimony given at the hearing.

Jaha reported that Recording Secretary Al Murlone confirmed that the past practice at the Rouge site had been for employees transferring into a lower paying

⁹ Record, p. 15.

¹⁰ Record, p. 24.

¹¹ Record, p. 25.

¹² Record, p. 27.

¹³ Record, pp. 29-32.

classification to take a pay cut. According to Jaha's report, Representative Wilson explained that the Rouge site Competitive Operating Agreement gave the Local Union latitude to negotiate terms for consolidating the operations of the Lincoln Park Garage and the WHQ-VSC without disturbing contractual obligations under the TNT Logistics Agreement.¹⁴

Jaha reported that Collins testified at the hearing that he was not aware of the agreement between the Local Union and management to "red circle" the truck drivers' wages. Collins argued that the Union had disenfranchised the membership by negotiating this agreement without membership approval.¹⁵ According to Jaha, Representative Wilson responded that the Local Union did not need permission from the membership to negotiate an agreement to protect the drivers' hourly wage rate as established under the TNT Logistics Agreement.¹⁶ Jaha concluded that Representative Wilson's decision to withdraw Grievance TU-026-A was not devoid of a rational basis. He wrote:

"...The Union has no duty to take every grievance to arbitration just because the appellant feels he is right and the Union is wrong. There was no evidence that discrimination, fraud, or collusion with management improperly motivated the resolution of the grievance."¹⁷

The IEB adopted Jaha's report as its decision on May 14, 2008. Charles Collins appealed the IEB's decision to the Public Review Board (PRB) on June 11, 2008.

ARGUMENT

A. Charles Collins, on behalf of appellants:

In 2004, Chairperson Ruber was encouraging all of the drivers to transfer into jobs at other locations. Appellants Rebecca Chiles and Joseph O'Connor were truck drivers who transferred into the general utility classification at WHQ-VSC. Appellant Earl Roger Calhoun was a truck driver who transferred to the cleaner classification of the Lincoln Park garage. When the Lincoln Park garage closed, Calhoun transferred to WHQ-VSC. Each of these employees took a pay cut when transferring from the truck driver classification to a lower paying classification.

Subsequently, Russell Babut, Steve Brousseau, William Smith, John Kashetsky, and Bruce Kile transferred to the WHQ-VSC into the same jobs being performed by appellants. They were allowed to keep their truck driver wage rate. There was no reason why Chiles, O'Connor, and Calhoun should not have received the same

¹⁴ Record, pp. 45-46.

¹⁵ Record, p. 46.

¹⁶ Record, p. 46.

¹⁷ Record, pp. 47-48.

treatment. All of the drivers who transferred out of truck operations did so because of Bill Ruber's strong encouragement. Joseph O'Connor filed Grievance CC235776 protesting the unfair treatment.

In addition, the utility workers who were already assigned to WHQ-VSC, Collins, Herbert, Ear, Ott, Carter, and Henderson, are being subjected to a two-tier wage system, before it was put into place under the next National Agreement. There is no justification for a different wage scale to exist with higher seniority employees being paid less to do the same job.

B. International Union, UAW:

It is well-settled that the Union is entitled to a wide range of reasonableness in negotiating on behalf of the employees it represents. See *Air Line Pilots v. O'Neill*, 499 U.S. 65, 78 (1991). It is not improper for the Union to negotiate an agreement that prefers one class of workers over another so long as the decision to do so is made in good faith based on what the Union perceives to be in the interest of the entire bargaining unit. *Wood v. General Teamsters Local 406*, 603 F. Supp. 992, 996-97 (W. D. Mich. 1985); *Shamblin v. General Motors Corp.*, 743 F.2d 436, 438-39 (6th Cir. 1984). Because it is the Union's duty to act in the best interest of the entire bargaining unit, circumstances may require it to sacrifice the interests of smaller groups for the benefit of the collective body. *Panter v. American Synthetic Rubber Corp.*, 686 F. Supp. 1210, 1219 (W. D. Kent. 1984).

The 2006 agreement designed to protect the wages of the truck drivers until the contract with TNT expired was entirely reasonable. There was a real possibility in 2006 that the transfer agreement would be the last opportunity for the drivers to find another job within the Transportation Unit. Yet, the contract with TNT was not going to expire until August 1, 2008, so the drivers had an expectation that their current wage rate would continue until that date. Given the likelihood that the trucking operations would be phased out, drivers who wanted to stay in the Transportation Unit and enjoy some job security had little choice but to transfer to WHQ-VSC. At the same time, the transfer of the ten drivers to WHQ-VSC allowed Ford Motor Company to eliminate ten positions and save money. Under the circumstances, it made sense for the Union to negotiate an agreement to protect the drivers' wages. It was only fair for the drivers to get back a small portion of the savings achieved by the Company.

There was nothing arbitrary or discriminatory about the agreement negotiated in 2006. Appellants make much of the fact that drivers who transferred to WHQ-VSC in 2004 were not allowed to retain their former wage rate. The circumstances were different in 2004, however. The 2004 group made an informed and voluntary decision to leave their higher paying jobs in order to obtain more secure positions. In essence, they chose long-term job security over higher wages in the short term. The drivers who transferred in 2006 faced a different situation. They had little choice but to transfer and were effectively forced into the lower paying positions.

In retrospect, it appears that the 2006 transferees came out ahead of those who transferred in 2004. But the fact that the 2004 group turns out to have made the wrong choice by playing it safe does not mean that the Union acted unfairly. The Union had no expectation that it would be able to negotiate more favorable terms for transfers into WHQ-VSC in the future than those that were applied in 2004. There is no evidence that the Union deliberately misled people or otherwise acted in bad faith. The Union obtained the best deal it could for workers in both 2004 and 2006. It should not be subject to criticism for having negotiated a better deal at a later date. To do so would discourage Union representatives from bargaining for the best agreement in every situation.

Appellants' argument that all employees in the general utility classification should be paid the higher rate has no contractual basis. The majority of these employees never worked as drivers. The fact that appellants may not have been notified of the terms of the 2006 transfer agreement is of no significance. The agreement did not change any of the terms and conditions of employment applicable to those who were at WHQ-VSC prior to the 2006 transfer. There is no Constitutional basis for requiring notification to the membership under these circumstances.

The 2006 agreement permitting drivers to transfer to WHQ-VSC and retain their prior wage rate was both rational and fair.

C. Rebuttal by J. O'Connor and R. Chiles, on behalf of appellants:

The 2006 agreement violated our seniority rights, yet the International Union makes no reference to our higher seniority. Less senior employees should not be doing the same job for more pay.

The International Union claims that the drivers were forced to transfer to WHQ-VSC in 2006 while the drivers who transferred in 2004 did so voluntarily. That is not the case. Ford Motor Company continues its trucking operations to this day. Chairperson Ruber and Ford Labor Relations made it clear to us in 2004 that it was best to get out of trucking. The only difference in 2006 was that the drivers were allowed to retain their driver wage rate.

We are only asking to be treated equally to our co-workers.

DISCUSSION

Under the Competitive Operating Agreement, the Local Union was authorized to negotiate terms for consolidating operations of the Lincoln Park Garage and the WHQ-VSC. The agreement negotiated in 2006 that protected the truck drivers' wages until August 1, 2008, was well within the "wide range of reasonableness" allowed to labor organizations in the negotiation of contracts recognized by the Supreme Court in *Air Line Pilots v. O'Neill*, 499 U.S. 65 (1991) and other federal cases cited by the International Union. The fact that the Union was able to obtain better terms for truck

drivers transferring into the general utility classification in 2006 than those which applied to transferees in 2004 is not the basis for any claim. Appellants have not identified any violation of their rights under the applicable collective bargaining agreements so there was nothing that could have been obtained for them through the grievance procedure. Under the circumstances, Representative Al Wilson's decision to withdraw their grievance seeking wage parity with the former truck drivers did not lack a rational basis.

The decision of the IEB is affirmed.