THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW

APPEAL OF:

ALLEN BRADLEY, GLENNA SWINFORD,
FRANKLIN TORRENCE, ROBERT WHITESIDE,
AND DAVID CRISCO,
Appellants

-vs- CASE NO. 1609

LOCAL UNION 3520, UAW
(Cleveland, North Carolina)
REGION 8, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.
_____/

DECISION
(Issued February 23, 2009)

PANEL SITTING: Prof. James J. Brudney, Chairperson, Prof. Janice R. Bellace, Prof. Fred Feinstein, Dean Harry C. Katz, and Prof. Maria L. Ontiveros.

APPEARANCES: Ellis Boal, Ervin Coaxum, Todd Scott, Glenna Swinford, Franklin Torrence, and Robert Whiteside on behalf of appellants; Dave Curson, Georgi-Ann Bargamian, Donny Bevis, and David Bortz on behalf of the International Union, UAW; Roberta Lee Albrecht, Shayne Brown, and George Drexel on behalf of UAW Local Union 3520.

We consider whether appellants' membership in good standing lapsed following their discharge by Freightliner Corporation on April 3, 2007.

FACTS

In 2007, appellants Robert Whiteside, Franklin Torrence, Glenna Swinford, Allen Bradley, and David Crisco were employed by Freightliner Truck Plant in North Carolina in a bargaining unit represented by UAW Local Union 3520. All five appellants were

also members of the Local Bargaining Committee.[1] The contract between Freightliner and the UAW was set to expire on March 31, 2007, and the parties agreed to continue the language of the agreement in force on a day-to-day basis until some outstanding issues could be resolved. Nevertheless, on April 2, 2007, the Bargaining Committee voted to strike and encouraged employees to leave their jobs and join a picket line.[2] Appellants were terminated by Freightliner on April 3, 2007, as a result of the strike. The Company's notice to appellant Whiteside gives the following reason for his termination:

> "You are hereby notified you are being terminated for instigating and/or supporting and/or participating in an unauthorized work stoppage in violation of Article XVII, Section 1 of the collective bargaining agreement in force at the time of your wrongful conduct."[3]

Local 3520 filed Grievance 1559 on behalf of appellants seeking their reinstatement.[4] The grievances were arbitrated on June 16 through June 18, 2008, before five separate arbitrators. The arbitrators denied the grievances of Robert Whiteside, Allen Bradley, and David Crisco. Arbitrator Jerome H. Ross reinstated Glenna Swinford with no back pay in a decision dated October 27, 2008. Arbitrator Peter A. Prosper reinstated Franklin Torrence with a six month suspension on October 23, 2008.

On April 16, 2007, fifty-three members of Local 3520 filed charges against the five appellants for having called the strike without taking into consideration the possible harm to members of the Union who relied on their advice.[5] A trial was conducted on the charges during the week of November 6, 2007.[6] The Trial Committee acquitted appellants based on the testimony of numerous witnesses to the effect that the Bargaining Committee members never indicated that the strike on April 2 had been authorized by the International Union.[7]

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[1] In addition to their positions on the Local Bargaining Committee, appellants held the following positions in the Local Union: Allen Bradley served as the skilled trades representative on the District Committee. Glenna Swinford served on the Executive Board as Trustee; Franklin Torrence served on the Executive Board as a Trustee and also as an alternate on the District Committee. Robert Whiteside was the Unit's Shop Chairperson and the Chairperson of the Bargaining Committee. (Record, p. 135) The arbitration decision issued in response to David Crisco's grievance indicates that he was a Shop Steward.

[2] There is no dispute about the circumstances giving rise to the strike which occurred on April 2 and April 3, 2007. This sequence of events is described in each of the arbitration decisions issued in response to the five appellants' grievances.

[3] Record, p. 68.

[4] Record, pp. 70-71.

[5] Record, pp. 75-76.

[6] The conduct of the trial was delayed because the Local Executive Board initially ruled that the charges did not satisfy the requirements of Article 31, §3(e), of the International Constitution. On August 31, 2007, the IEB overturned the decision of the Local Executive Board and directed the Local to conduct a trial on the charges. (Record, pp. 83-84)

[7] Record, p. 85.

Following their discharge by Freightliner, appellants continued to attend membership meetings and participate in Local Union affairs during 2007. After the trial in November 2007, Allen Bradley submitted an appeal to the membership in December protesting the Local President's refusal to pay the Bargaining Committee members for their participation in negotiations during April 2007 in accordance with the Local Union bylaws.[8] In this appeal, Bradley explained his decision to call the strike on April 2, 2007 as follows:

> "First of all, let me remind you of the reason the International UAW wants to get rid of us. We stood up to them in bargaining and told them we would not take an inferior contract to our membership for ratification. I don't care what anyone on the Bargaining Committee says now, but at that time we stood in solidarity with each other as a whole. The circumstances from April 3, 2007, until now may have changed that, but on April 2, 2007, we stood strong against an injustice that the Company and the International Union was trying to do to our membership. For this we are fighting not only Freightliner but our International Union as well. We are Union officers and can function as such outside the gates of Freightliner."[9]

In a statement submitted in response to this appeal, Financial Secretary Shayne Brown reported that the membership voted to pay the five Bargaining Committee members in December. In addition, it appears from Brown's statement that Whiteside, Torrence and Swinford continued to hold seats on the Local Executive Board.[10]

In January 2008, Local 3520 conducted an election to fill a vacancy in the office of Recording Secretary. Allen Bradley nominated Randy West as a candidate for the Recording Secretary.[11] Financial Secretary Brown reported that she was uncertain whether Bradley was eligible to nominate candidates. Her statement explains:

> "…Roberta and I were also not sure about a nomination that Allen Bradley made, if in fact he could nominate. We consulted the UAW Constitution, and then called the International Office. I spoke to Eunice Stokes, Administrative Assistant. She stated that laid-off or terminated employees

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[8] Record, pp.86-87.

[9] Record, p. 86.

[10] Brown's statement refers to the appellants' participation on the Local Executive Board as follows:

> "…We had a layoff in March last year at Freightliner, and only fifty-three people had notified me to keep their membership active. In fact, at Christmas, it was brought before the membership to help the laid-off members. We did not have sufficient funds to help them all. At the Executive Board meeting in December 2007, the board, including Whiteside, Torrence, and Swinford, all voted to help only the members in good standing, those who thought enough of their membership to notify us. …" (Record, p. 100)

[11] Record, p. 14.

> to be eligible to vote would have to notify the Financial Secretary of their desire to remain in the Union and pay dues if they were working. She also said she would not penalize the nominee because of a questionable member. She advised us to consult our Servicing Rep. Our President, George, spoke with David Bortz and Donny Bevis of Region 8. This action was not to single out the five, but to determine who was able to nominate and vote. This is when the five's membership came into question."[12]

When Glenna Swinford came to vote in the Recording Secretary election, she was instructed to cast a challenged ballot.[13] Election Committee Co-Chairperson Roberta Albrecht gave a statement on January 23, 2008, describing what took place. Albrecht reported:

> "Glenna came in and when asked to put her ballot in [a] challenged envelope she said she felt she was being harassed & refused. I explained to her that the eligibility question came up when I was researching the nominee and nominators. Allen was found to be delinquent in his dues. I told her we (Shayne and I) talked to Eunice Stokes, assistant to Mr. Gettelfinger, and during the course of conversation, Eunice asked if he was employed at FL now. She stated that because he had been terminated more than 6 months ago and not notified the F. S. of his wish to stay a member then he was not a member in good standing.
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> That is when I told Glenna that we looked at all 13 terminated employees to check if they had contacted Shayne. [Eleven] 11 who should have, had not.
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> Glenna stated she would put her ballot in an envelope, but would file charges about it."[14]

Albrecht described similar confrontations with Allen Bradley, Robert Whiteside and Franklin Torrence. According to Albrecht's statement, Bradley told her that the six month rule did not apply to him because he was a Local Union officer and had been at every meeting acting in that capacity. Bradley advised Albrecht that after voting he would go to the Local Union and pay any dues that were owed.[15] Similarly, Franklin Torrence maintained that the six month rule did not apply to him. Albrecht reported:

> "Franklin then stated that he was an Executive Board member and it did not pertain to him.

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[12] Record, p. 100.

[13] Record, p. 10.

[14] Record, p. 10.

[15] Record, p. 11.

> When he was told it was in the Constitution, he asked to be shown. When shown the Constitution, he said it did not apply to him. He marked his ballot and deposited it in the ballot box without first placing it in a challenged envelope."[16]

On February 3, 2008, Whiteside, Bradley, Torrence, and Swinford wrote to Financial Secretary Brown regarding their membership in good standing. Their letter states:

> "We are of the opinion that we satisfied the requirements of Article 16 of the International UAW Constitution when we notified you in person that we wanted to keep our membership in good standing (on October 1, 2007). At that time you instructed us that you knew we attended all Union meetings, signed in at the meetings and answered roll call as officers of the Local. You also made reference to the fact that we have an active grievance and did not have to report to you on a monthly basis. Our participation in Union business should suffice in our obligation of fulfilling this requirement as you also attend all meetings along with us. Numerous laid-off members are willing to give statements that you have in fact kept their membership in good standing with just a phone call from them."[17]

Nevertheless the four appellants submitted a check in the amount of $1,200 to cover any possible dues delinquencies.[18] They asked that the money be refunded if it subsequently turned out that they did not owe it.

Local 3520 President George Drexel sent a letter to Allen Bradley on February 5, 2008, advising him that his membership in good standing had lapsed.[19] Drexel explained that Bradley had been eligible for "out-of-work" credits pursuant to Article 16, §18, of the International Constitution during the first six months following his discharge.[20] Drexel continued:

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[16] Record, p. 12.

[17] Record, p. 14.

[18] Record, p. 89.

[19] Record, pp. 15-16.

[20] The applicable portion of Article 16, §18, provides as follows:

> "A member who has been laid-off, is on leave of absence, or is discharged from regular employment who is covered by check-off provisions under which management notifies the Local Union of members who are on leave of absence, laid-off, rehired, or discharged, shall automatically be considered as entitled to 'out-of-work' credits, unless s/he has received benefits in lieu of work equivalent to forty (40) hours' pay as provided in the second paragraph of this Section. Any member in order to be entitled to 'out-of-work' credits shall report her/his layoff, leave of absence, or discharge, in person or otherwise, to the Financial Secretary of her/his Local Union within one month of the date such action became effective. …"

> "The record reflects that during the last ten (10) days of that six (6) month period, you did not certify in writing to the Local Union Financial Secretary in person or by registered or certified letter that you wished to continue good standing membership without the payment of dues, therefore the Local Union records have automatically been noted to reflect that an honorable withdrawal transfer card has been issued to you as required by Section 19." [21]

Financial Secretary Brown sent Bradley a letter on February 15, 2008, asserting that his membership had lapsed because he owed dues for April 2007 and December 2007.[22]

Bradley responded to Drexel on behalf of all five appellants on February 8, 2008. Bradley asserted that he spoke personally with Financial Secretary Brown on October 6, 2007, to find out if he needed to certify in writing his desire to continue his membership in good standing and that Brown had told him it would not be necessary.[23] Bradley

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[21] Article 16, §19, states as follows:

> "Any member who is entitled to 'out-of-work' credits under §18 of this Article and who does not secure an honorable withdrawal transfer card, shall be presumed to continue to be entitled to 'out-of-work' credits and thus remains in continuous good standing without the necessity of paying dues for the first six (6) months of such layoff or leave unless the member has had employment during this period which would necessitate her/his paying dues under the first paragraph of §18 of this Article or taking an honorable withdrawal transfer card under Article 17, §2. Unless any such member shall, during the last ten (10) days of such six (6) month period, certify in writing to the Local Union Financial Secretary in person or by registered or certified letter, that s/he continues to be eligible for good standing membership without payment of dues pursuant to §18 of this Article and Article 17, §2, the member shall automatically be noted on the Local Union's records as having been issued an honorable withdrawal transfer card at the conclusion of said six (6) month period. If a member does certify as provided herein during the last ten (10) days of the six (6) month period, s/he shall continue to be eligible of 'out-of-work' credits for each additional month if during the last ten (10) days of such month s/he similarly certifies. Such a member shall automatically be noted on the Local Union's records as having been issued an honorable withdrawal transfer card on the first day of such a month in which the member fails to certify as provided herein."

[22] Record, p. 21.

[23] Bradley's letter to Drexel describes this conversation as follows:

> "Moreover, I personally talked to Shayne Brown on several occasions one of which was October 6, 2007, to find out if we needed to certify in writing or by certified mail at which time she stated, 'No, I know you want to keep your membership in good standing and that won't be necessary.' She also told me that she was taking phone calls from people to keep their membership in good standing. I am not trying to single Shayne out or say that she did anything wrong. On the contrary, I believe she did an excellent job keeping membership numbers up by allowing the members easy tools to remain members in good standing. The methods used by the Financial Secretary of a Local to allow members to remain in good standing satisfy the requirements of Article 16 of the International Constitution. (See attached PRB ruling #1512 on this exact issue.)" (Record, pp. 17-18)

pointed out that if appellants' membership had lapsed in October 2007, they would not have been subject to stand trial on charges against them in November 2007. Bradley further argued that it has not been the practice at Local 3520 to require terminated employees with active grievances to certify their intent to remain members in good standing. In any event, Bradley stated that if any dues were owed, they were paid before any question was made about his good standing and before any honorable withdrawal card was issued pursuant to Article 16, §19. Finally, Bradley pointed out that under Article 40, §9, of the Constitution, it is the duty of the Financial Secretary to notify members of any indebtedness to the Local.[24]

Financial Secretary Brown reported that when Bradley gave her the check for $1,200 on February 4, she did not know whether to accept it.[25] Brown denied that Bradley had spoken with her personally in October 2007 about continuing his membership in good standing. She stated:

> "…Bradley did not speak to me on October 1 because I was not in the office. That was a down week, and I only came in the office one day (October 3), on my own time, to check the mail and pay the bills. Bradley stated that on October 6 he spoke with me, and that is not true as that was a Saturday and I was not in the office, nor have I ever spoken to him from my home. The next week of October, I had a vacation week as that

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[24] Bradley's letter states:

> "…If there was truly an issue with our membership in good standing why weren't we notified in October, a month before the trial in which you failed to remove us from membership and office? We never received any correspondence from Shayne in reference to dues owed. On February 4, 2008, Shayne could not tell me the amount, if any, we owed. She stated that she believed it was one month (for the pay the membership approved in December). We paid $300.00 each to eliminate any confusion to cover any back dues and possible late fees, even though we are unemployed and have no income. We received a receipt and the check was presented for payment on my account on February 05, 2008. We didn't owe any dues, but due to the fact that you are so diligently looking for a means to take our membership away from us; once we heard there may be some issue, we paid this money. …" (Record, p. 18)

[25] Brown gave the following description of her encounter with Bradley on February 4:

> "…I told him I did not know about accepting the check or how to record it. He said three or four times, 'Just take the check and give me a receipt.' At that time, our President, George, was at a Cap conference in Washington, D. C. John Stewart was in the back room of the office working with the Building Committee, and heard that I was being harassed. Although Bradley never raised his voice, or used any rude language, he was pressuring me to do something I wasn't sure of. John called George in Washington. George called me on the office phone, with Bradley standing right here. George told me to take the check, but to inform Bradley that it would not make him a member in good standing. That issue would have to be determined. I told Bradley this. I did give him a receipt and deposit the money, which is always my procedure. …" (Record, p. 101)

> included my birthday. I was not in the office but one day, and that was on the 9th when I came in to see what had to be taken care of."[26]

Brown went on to report that Bradley called her before the February membership meeting and informed her that he would be at the meeting and that his name had better be on the membership list.[27]

The minutes of the Local 3520 membership meeting that took place on March 15, 2008, reflect that Chad Barron asked that Allen Bradley, Glenna Swinford, Robert Whiteside, Franklin Torrence, and David Crisco be allowed into the meeting to present their appeal from the Local Union's decision that their membership in good standing has lapsed. A motion to add the appeal to the agenda was defeated by a vote of 32 to 67.[28] On March 20, 2008, attorney Ellis Boal entered his appearance on behalf of Robert Whiteside, Allen Bradley, Glenna Swinford, Franklin Torrence and David Crisco.

Boal submitted a statement accompanied by several attachments in support of the five appellants' argument that their membership in good standing had not lapsed. Boal noted that no one had questioned appellants' membership in good standing during November 2007 while the trial was taking place on the charges against them. He reported:

> "Financial Secretary Shayne Brown testified appellants attended meetings and were members of the Local. In response to a standard question appellants asked of all witnesses she added that in her opinion appellants should not lose their membership because of actions during the strike. Some other witnesses answered the same as Brown, and some answered the opposite. Either way, no one objected to the premise of the question

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[26] Record, pp. 100-101.

[27] Brown went on to describe what happened at the February membership meeting as follows:

> "I said he would not be on it. George called Bradley and told him the membership list was private property of the Union, and he was no longer a member. Until the Five's membership was squared away, they could not attend the meetings. When they came to the meeting, they were late and business was being conducted. I sent word that they were not members, and could not join the meeting. They did not leave promptly. They created a disturbance with a few supporters. George and I left the stage and went to where they were in the back. At that time, the police had been called. I did not speak directly to anyone. George spoke with the police. Bradley had a recorder, held it up, and made a loud statement that the fired Bargaining Committee members were being taken out of the meeting. As if on cue, the meeting erupted with clapping and cheers. At the March membership meeting, Chad Barron made an appeal for the Five to come in and speak about their status as members. The membership denied the appeal." (Record, pp. 101-102)

[28] Record, p. 32.

> or to the answers – that appellants did have good standing at the time of the trial in November."[29]

Boal observed that even the International Union assumed that the appellants were members in good standing pending resolution of their grievances. He referred to a letter written by International Representative General Holiefield in response to appellants' request that Boal be allowed to represent them in their arbitrations. On February 15, 2008, Holiefield wrote:

> "I know this is a difficult time for all of you. Rest assured that you are indeed an 'interest' to us. You are UAW members and this case will most assuredly be arbitrated with the very highest degree of professionalism and expertise. As Union representatives, I am sure you understood Mike was speaking the truth when he told you that the International Union, UAW, is indeed the actual 'client' and not the five of you independently."[30]

Boal asserted that the Local had never established the date on which the appellants' membership was supposed to have lapsed. He pointed out that no honorable withdrawal cards establishing such a date had ever been issued.[31] Boal noted that President Drexel's letter to Bradley of February 5, 2008, did not cite a date on which his membership was supposed to have lapsed, but only referred generally to the requirement in Article 16 that the member certify that he or she is still eligible for "out-of-work" credits, because he or she had not found other employment.[32] Boal observed that it is not the practice at this Local Union to require discharged members with active grievances to certify their eligibility for "out-of-work" credits pursuant to Article 16, §19. He wrote:

> "The wording of this section is confusing as noted below. Accordingly, contrary to Article 16, §19, the Local's practice for fired members was to accept the mere pendency of an active grievance as satisfactory certification. Without need for any action by them, such members remained in good standing with the privilege to attend meetings. Members Ervin Coaxum, Johnny Allen, and Otis Tabor – all fired earlier than appellants – are examples. Coaxum letter of February 18."[33]

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[29] Record, p. 46.

[30] Record, p. 20.

[31] Record, p. 48.

[32] Record, p. 53.

[33] In a letter addressed to Mr. Boal, Ervin Coaxum wrote:

> "My name is Ervin Coaxum. I am a terminated Freightliner employee with an active grievance and a member of UAW Local 3520. I was terminated August 2006. I did not certify my intent to remain a member in good standing with Local 3520 as required by the UAW International Constitution because I was told I did not have to as long as I have an

Furthermore, Boal noted that the Public Review Board (PRB) previously ruled that the language of Article 16, §19, is so confusing that members are entitled to rely on instructions from their Local Union Financial Secretary regarding their obligations under this section, even if that advice is at odds with the Constitution. Boal quoted the following language from *Karras v. Local Union 653, UAW,* PRB Case No. 1512 (2005), as support for this position:

> "Making sense of the provisions in the International Constitution that deal with members' dues obligations is a daunting task to say the least, and this is particularly so in the case of discharged members. The extremely dense prose of Article 16, §§18 and 19, is followed by further complications in regard to the issuance of Honorable Withdrawal Transfer Cards in Article 17. Article 17 refers back to Article 16 and also to Article 47. Article 47 indicates that the Local Union may provide for the forfeiture of membership for non-payment of dues without the necessity of filing charges and conducting a trial, but this suggests that forfeiture of membership does not automatically result from a delinquency. We question whether a set of consistent rules regarding the obligations of discharged members can actually be gleaned from these provisions, but in any event, it is clear that an understanding of these provisions cannot be imputed to individual members. Discharged members have an absolute right to rely on the instructions given to them by their Local Financial Secretary in regard to their dues obligations, and they cannot be held to have broken membership in good standing if they follow such instructions, even where such instructions are inconsistent with some portion of Article 16 and the related provisions of the Constitution."[34]

Boal also referred to an Interpretation of Article 45, §1, of the Constitution which states that fired Committeepersons with active grievances remain members.[35]

> active grievance. I don't remember who told me this because it has been so long ago. I never received a notice from the Local Union about my membership status or any issues with it. I also know several others that were terminated also that say they did not receive notification either. I am writing this statement to help you understand that as far as anyone can ascertain only the five terminated officers of Local 3520 received notices that their membership in good standing is in question. I have attended membership meetings and participated in all aspects of our Local Union business unopposed. (Record, p. 26)

[34] Record, pp. 55-56.

[35] The Interpretation states:

> "(1) Eligibility for Committeeperson as Affected by Unlawful Discharge
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> Where a Committeeperson is discharged by management and his/her grievance is pending, s/he remains a member of his/her Local and unit and, if otherwise eligible, may run for re-election or other office in such unit or Local or for Convention Delegate. And where pending the outcome of her/his grievance s/he finds temporary employment elsewhere her/his membership in her/his original Local is not affected and s/he need not transfer to the Local having jurisdiction over her/his new workplace. The new Local should issue to her/him a work permit. (Detroit, 1/22/46, Pages 177-178.)"

Boal explained that Financial Secretary Brown's claim in her letter dated February 15, 2008, that the appellants had failed to pay dues in April and December 2007 was mistaken. He wrote:

> "Using Bradley as an example, the Company paid him $975.60 for the one day he worked on the Freightliner payroll in April (April 2) from which it deducted $48.78 in dues. Per Article 16, §2, and Article 23 of the contract, this was dues for April, which the Company remitted to the Local by April 15. See also Bradley's check stub, which shows a YTD total (four months, January – April) of $195.12 for UAW dues deductions.
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> In December 2007, as a result of a membership vote on a separate appeal by Bradley for himself and the other appellants, the Local paid back pay for their bargaining work in April. Because they should have received it then, the dues remitted by Freightliner in April covered this back pay."[36]

Boal observed that even if Financial Secretary Brown had been correct about the delinquency, she did not explain her failure to notify appellants of the problem back in April 2007 as required by Article 40, §9. Finally, Boal observed that in the case of Whiteside, Bradley, Swinford, and Torrence, even if the dues were in arrears, their membership should have been reinstated in February 2008 when they paid their dues in accordance with Interpretation 1 to Article 16, §9.[37] Appellant David Crisco's situation was different because he had found employment elsewhere. With respect to Crisco, Boal wrote:

> "…Similarly, we question whether Crisco owes full dues or any dues for pay he received in his non-union interim employment, given that the UAW is unable to represent him there. Anti-Union employees who refuse to join the UAW are charged service fees for representation the UAW affords them. Just so, members whom the UAW cannot represent should not have to pay dues, or should at least have service fees deducted from the

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[36] Record, p. 49.

[37] The Interpretations states:

> "(1) Good Standing not subject to vote in the Local Union
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> Any member suspended by reason of having become in arrears in her/his dues is automatically placed in good standing upon complying with the requirements of this Section of the Constitution and the applicable provisions of the Local Union's bylaws. Her/His readmission to good standing is not subject to vote in the Local Union. (Louisville, 3/17/47, Pages 141-143.)"

> full amount of the dues. But see *Bryant v. Local 2116,* PRB Case 1293 (2/12/01), p. 4."[38]

Boal requested that the five appellants be reinstated to good standing without the necessity of paying reinstatement fees and that Bradley's $1,200 be returned with interest. In the alternative, if it were determined that any dues were owed, Boal requested that a portion of the $1,200 be applied to any arrearage and reinstatement fees, including Crisco's, and that the remainder be returned to Bradley with interest. Finally, Boal requested that the Local notify the Iredell County police that they will no longer press the trespass complaint against Bradley.[39]

On May 20, 2008, Boal requested the IEB to refer the appeal on behalf of Whiteside, Bradley, Swinford, Torrence, and Crisco directly to the Public Review Board (PRB) because the documents submitted by the Local Union demonstrated that the decision to declare the appellants' membership lapsed actually originated with Eunice Stokes-Wilson who was acting on behalf of President Gettelfinger. Boal wrote:

> "Being that she is a Presidential agent, and with evidence now from three Local officials that she directed the Local in the appealed actions, appellants now request the recusal of President Gettelfinger."[40]

Boal's request to appeal directly to the PRB was denied in a letter from Administrative Assistant Dave Curson dated May 27, 2008.[41]

President Gettelfinger's staff determined that a hearing was unnecessary on the appeal and they prepared a report to the IEB on the President's behalf based on information provided by the appellants, their counsel, and Local Union 3520. Staff reported that the issue of appellants' good standing arose when the Election Committee Co-Chairperson Roberta Albrecht and Financial Secretary Shayne Brown sought an interpretation from the International President's office regarding the eligibility of Allen Bradley to nominate a candidate for the office of Recording Secretary. Staff reported that Administrative Assistant Stokes-Wilson gave Albrecht and Brown a general description of a member's obligation either to pay dues on their earnings or to certify to the Local Financial Secretary that he or she is entitled to "out-of-work" credits. According to staff's report, Stokes-Wilson directed the Local to contact their Regional Representatives about specific application of the rules. Their report states:

> "Following the President's office advice, President Drexel spoke with International Representative Bortz and Director Don Bevis who provided

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[38] Record, p. 57.

[39] Record, p. 58.

[40] Record, p. 130.

[41] Record, p. 133.

> instructions not to single out appellant Bradley or the other appellants, but to apply the membership provisions of the Constitution equally to all members."[42]

Staff reported that the Local Union's records reflected that Bradley, Swinford, and Whiteside last paid dues in March 2007, and Torrence last paid dues in April 2007.[43] Staff described the Local Union's decision with respect to the appellants as follows:

> "Pursuant to Article 16, §§18 and 19, the Local Union determined that the appellants' membership had lapsed as follows: appellants Bradley, Swinford, and Whiteside at the end of September 2007, and appellant Torrence at the end of October 2007. The election list provided for the Election Committee for use in the vacancy election identified the appellants as ineligible to vote."[44]

In their discussion of these events, staff maintained that Bradley, Swinford and Whiteside were entitled to "out-of-work" credits until the end of September 2007, and Torrence was entitled to "out-of-work" credits until the end of October 2007.[45] At the end of their entitlement period, each of the appellants was required to certify that he or she continued to be eligible for "out-of-work" credits pursuant to Article 16, §19, of the Constitution. Staff stated that when a member fails to certify under that provision, the member is automatically noted on the Local Union's records as having been issued an honorable withdrawal card. Staff remarked that it is not necessary for the Local to physically issue such cards in order for the lapse of membership to take effect.[46]

Staff maintained that this Local Union has consistently applied the membership certification process. They referred to a notice, signed by appellant Robert Whiteside that was published on the Local Union's website following a large layoff, advising members of the need to certify for "out-of-work" credits after six months.[47] Staff reported that the Financial Secretary updated the Local membership list on a monthly basis, removing the names of those members who failed to certify as required by Article 16,

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[42] Record, pp. 137-138.

[43] Staff's report to the IEB does not refer to appellant David Crisco. When Ellis Boal filed the appeal on behalf of the five appellants on March 20, 2008, there was a question whether David Crisco had authorized Boal to appeal on his behalf. When President Gettelfinger responded to the appeal to the PRB on October 15, 2008, he agreed that Crisco's name should be included as an appellant. (Record, p. 326)

[44] Record, p. 140.

[45] Record, p. 169.

[46] Record, pp. 169-170.

[47] The notice states, in pertinent part:

> "After the first six months, if you are still on layoff, you will have to send a certified letter to the UAW Local 1350 or present in writing to the Financial Secretary on a monthly basis that you want to stay a Union member in good standing." (Record, p. 170)

§19, although they acknowledged that the Financial Secretary accepted certification by letter, email, and occasionally over the telephone.[48] Staff denied that there was any established practice of allowing members with open grievances to continue their membership in good standing without certifying.[49] In any event, staff maintained that isolated incidents where members were allowed to attend meetings without having certified for "out-of-work" credits would not establish a practice. According to staff, the practice at Local Union 3520 was to remove members from the list when their membership in good standing lapsed for failure to certify.[50]

Staff provided some history of the appellants' involvement in the affairs of Local Union 3520 following their discharge in April 2007. Staff noted that some members of the Local sought an interpretation regarding the appellants' eligibility to continue serving as Bargaining Committee members, particularly in light of the fact that the Company refused to meet with them. Staff reported:

> "…It was interpreted that the Local Union bylaws did not require a forfeiture of their Bargaining Committee positions because they were discharged, therefore they could maintain their elected positions on the Bargaining Committee. Thereafter, the appellants aggressively maintained their elected positions and participated in Local Union affairs, even after their membership had lapsed."[51]

Staff gave the following explanation for the Local Union's failure to raise the issue of certification during this period:

> "…The Local leadership was aware that to challenge the appellants' interpretation of their membership status would only insure another internal fight. Not until the occasion arose to preserve a democratic election, as presented below, was the Local Union prompted to seek a

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[48] Record, p. 171.

[49] Staff responded to Ervin Coaxum's statement regarding this practice as follows:

> "The Local Union recalls the incident in which former member Coaxum was allowed to attend a membership meeting. His name was properly struck from the membership list because he had not certified his membership as Constitutionally required. Local Union Guide Ronnie Adcock was the officer checking members into the meeting in question. He allowed Coaxum to attend and later explained to Financial Secretary Brown that Coaxum had a grievance in the procedure, therefore he could attend. Brown determined that Adcock's explanation was in error and did not add Coaxum's name back on to the membership list. There is no record of any further participation in any other Local Union activity by Ervin Coaxum." (Record, p. 171)

[50] Record, p. 171.

[51] Record, p. 171-172.

> proper interpretation and then made the proper applications of the Constitution, regardless of the consequences."[52]

Staff noted that Financial Secretary Brown denied ever having told appellants that they did not have to certify their eligibility for "out-of-work" credits. Their report states:

> "The facts reflect that on Monday, October 1, 2007, the plant was down and Financial Secretary Brown was not at work. She only came to the office one day that week, October 3rd. October 6, 2007, was a Saturday. Brown did not go to the office that day and has never spoken to appellant Bradley from her home."[53]

Based on these circumstances, staff rejected as not credible Bradley's assertion that Financial Secretary Brown told him that it would not be necessary for him to make any certification to the Local because she knew he wanted to keep his membership in good standing.[54]

Staff acknowledged the argument of appellants' counsel that they were singled out by the Local and that the letter sent to them by President Drexel on February 5, 2008, was not sent to any other member who failed to certify in accordance with Article 16, §§18 and 19, of the Constitution. They responded as follows:

> "Counsel establishes that the letter was not sent to other members that severed membership, insinuating the Local applied the Constitution to appellants and not to other members in similar situations. The letter was sent only to appellants (and David Crisco) because they were the only members that were removed from the membership list that were officers of the Local Union and were still participating in the affairs of the Local Union. No one told any of them because of their status as Board members or officers that they were exonerated from the relevant membership provisions of Article 16 except themselves, who forced their wrongful interpretation on the Local as they tried to do to the Election Committee in the vacancy election.
>
> President Drexel's letter of February 5, 2008 (Exhibit G) was proper, accurate, and Constitutionally sound."[55]

Staff ruled that it was proper for the Local to bar appellants from the membership meeting in February 2007 because their membership had lapsed. When appellants

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[52] Record, p. 172.

[53] Record, p. 173.

[54] Record, p. 173.

[55] Record, p. 175.

were denied access to the membership meeting, according to staff, their recourse under the Constitution was to appeal to the IEB from the ruling of the Local Union President and Financial Secretary that their membership in good standing had lapsed. Staff denied that the Local Union had anything to do with Bradley's arrest for trespass.

Staff also responded to attorney Boal's argument that an Interpretation to Article 45, §1, of the Constitution supported appellants' claim that discharge does not affect the good standing of a Committeeperson with a pending grievance. Staff pointed out that the Interpretation in question addressed the Committeeperson's right to retain his membership and run for office in his original unit, even though he may have found work in another unit. Staff asserted that the Interpretation had nothing to do with a member's obligation to certify for "out-of-work" credits pursuant to Article 16, §19, of the Constitution.[56] Staff pointed out that when the Interpretation to Article 45, §1, was added to the Constitution in 1946, there was no provision for "out-of-work" credits for discharged employees.[57]

Staff concluded that as officers of the Local Union the appellants were charged with responsibility for knowing their obligations as members under the UAW Constitution. Staff asserted that appellant Whiteside demonstrated that he did understand the certification process when he published his notice to the membership describing the process following the layoffs in 2003. Staff responded to attorney Boal's comments about the obscurity of the provision as follows:

> "…Even though Counsel claims the Constitutional language is so confusing and hard to understand, fifty-three regular members understood the process and have certified as required. The same basic language has been in the Constitution for more than sixty-five years, has been applied by Local after Local with thousands of members following the language and properly certifying. Bearing all of this in mind, only a handful of appeals are recorded concerning the certification process. The appellants provided no language that they relied on to establish their interpretation that their membership was preserved because they were officers of the Local or because they attended meetings. If the appellants did not understand the language or its application, as officers of the Local Union they should have sought assistance through the International Union."[58]

While staff expressed agreement with the principle stated in *Karras, supra,* that members should be able to rely on advice given to them by the Local Financial Secretary with respect to their obligations under Article 16, they reiterated the

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[56] Record, p. 177.

[57] Staff referred to the PRB's discussion in *Stevens v. Local Union 595, UAW,* 2 PRB 493 (1976), for an explanation of the history of adding discharged members to those entitled to "out-of-work" credits. (Record, pp. 179-180)

[58] Record, p. 181.

conclusion that Bradley's claim of being misinformed by Financial Secretary Brown in this point lacked credibility. Staff's report contains the following comment on the events at Local 3520:

> "We do not understand why the appellants failed to properly certify their membership. It appears that they did want to continue participating in Local Union affairs and the certification process is so easy to complete. We do believe that the appellants clearly knew and understood the requirements set forth in Article 16, §19, because of appellant Whiteside's guide posted on the website and its reference to the Shop Committee for any questions. Would he jeopardize his political allies by sending members to them with questions they could not answer? We can only believe that the appellants' failure to properly certify was another display of their blatant and continuous disregard and disrespect of the UAW's laws and policies, as demonstrated in this case by their defiance of the Election Committee and the UAW election rules pertaining to voting challenged ballots and their absolute disregard of the Local Union's advice that they had been removed from the membership list and could not attend the February 16, 2008 membership meeting. They forced their way in, disrupted the meeting to a point the police had to be called, and then had to be escorted from the meeting place."[59]

Staff directed the Local Union to determine the amount of dues owed by the appellants and to deduct that from the $1,200 paid by appellant Bradley, and to refund the remainder of the money to Bradley. Staff ruled that appellants' membership had lapsed and could not be reinstated unless and until they were reinstated to employment within the bargaining unit as a result of their arbitrations with Freightliner.[60]

The IEB adopted staff's report as its decision on June 17, 2008. Appellant's attorney Ellis Boal filed an appeal to the PRB on July 17, 2008. We heard the parties in oral argument on January 24, 2009.

ARGUMENT

A. Ellis Boal on behalf of Robert Whiteside, et al:

This appeal concerns an employee's right to membership in a Local Union. A person's right to participate in the affairs of the Local Union is the most fundamental issue that can arise under the UAW Constitution. Furthermore, the conflict which led to appellant's discharge raises issues of particular importance to the UAW as an institution and these issues should not be ignored. Appellants' conflict with Local 3520 arose out of the generational shift noted by this Board in *Henderson v. UAW National General*

[59] Record, p. 182.

[60] Record, p. 183.

Motors Department, PRB Case No. 1568, (2007). The incumbent administration at Local 3520 is part of the new generation of Union leaders who stress cooperation with management in the resolution of disputes. Appellants' views represent the more activist approach of the older generation of Union members. The membership should have the right to decide which style of leadership it wants in its Union officers. It makes this decision through democratic elections. The International Union should not be permitted to silence views it regards as dissident by an unfair application of Union rules.

The IEB's decision on this appeal begins with a declaration that no hearing was necessary. This is a troubling determination in light of the credibility determinations made by the IEB. The IEB appears to have resolved these credibility issues on the basis of evidence that was not shared with the appellants prior to the decision. For example, there are two accounts of the telephone call that was made to Administrative Assistant Eunice Stokes-Wilson to determine Allen Bradley's eligibility to nominate a candidate for Recording Secretary. The IEB quotes Financial Secretary Brown's account that Stokes-Wilson stated she should consult the Local Servicing Representative. Election Committee Co-Chair Albrecht described the advice differently in her statement dated January 23, 2008. Albrecht reported that they called Stokes-Wilson to ask about the effect of Bradley's alleged dues delinquency. Stokes-Wilson did not answer this question but instead raised the issue of his not having certified that he intended to remain a member in good standing and declared that Bradley was not a member in good standing. Contrary to both Brown's and Albrecht's statements, the IEB reported that Stokes-Wilson gave only "generic" advice about Article 16, §19. There is no statement of Eunice Stokes-Wilson in the record. The IEB's conclusion is apparently based on a private conversation.

As to the certification requirement, appellants relied on the months-long acquiescence of the Financial Secretary and the membership in their active participation in Union business, the lax and technically non-compliant method by which 53 laid-off members were permitted to certify, and the explicit statements by the Financial Secretary that appellants need not certify as long as they were signing in at meetings every month, and as long as they had grievances pending. Under your decision in *Karras, supra*, appellants were entitled to rely on the Financial Secretary's assurances in this regard.

In her statement of March 31, 2008, which the Local refused to provide to appellants prior to the IEB hearing, Financial Secretary Brown denied having told Allen Bradley that he did not need to certify. The IEB credited Brown's assertion despite the inherent contradictions in her statement. Brown states that she was in the office only on one day during the week of October 1, and that day was Wednesday, October 3. This statement is untrue. The Executive Board meeting minutes for Friday, October 5, 2007, indicated that Brown was in attendance. Executive Board meetings take place at the Local Union office. Furthermore, Brown gave Bradley a receipt for a laptop and printer that he returned to the office on October 5. Brown claimed that she never spoke with Bradley from her home. That statement is simply untrue. Bradley called Brown at

home on numerous occasions to ask her questions about outstanding issues that she had the answers to as Financial Secretary.

The IEB's decision placed a lot of emphasis on the website posting over Whiteside's name regarding the requirements for laid-off members to maintain their good standing, without giving Whiteside a chance to explain the context of this statement. It should be noted that the website posting is directed solely to laid-off members and does not address the certification requirements of discharged officers with grievances pending. In any event, the statement only contains one sentence referring to certification. Even that sentence is incomplete, in that it fails to mention the requirement that laid-off members report income from other sources to the Financial Secretary. Furthermore, it directs members to consult the wrong officials with any questions about the application of Article 16, §19. The Local Union's Financial Secretary is the officer responsible for applying the rules stated in Article 16, §19. All of this only underscores how opaque this particular section of the Constitution is as this Board has already observed. This Board stated emphatically in *Karras,* that a member is entitled to rely on the advice of the Financial Secretary, even wrong advice, as regards compliance with the complicated requirements of Article 16, §19.

The PRB should conduct a hearing to resolve the factual issues raised by this appeal. The PRB should conduct this hearing rather than referring the matter back to the IEB for an investigation by the President's staff, because it is the findings of the President's staff that appellants are challenging. It is clear that Financial Secretary Brown never contemplated the theory about appellants' membership having lapsed in September or October 2007 until Stokes-Wilson explained it to her in January 2008. Brown clearly believed that appellants were still members in good standing during the trial in November 2007. Contrary to incorrect assertions made in the IEB's report, the appellants' names did appear on the membership list when they came to vote on January 23, 2008. The only reason given for requiring them to vote a challenged ballot was an unidentified conversation with Eunice Stokes.

The evidence also supports a conclusion that Brown regularly accepted less than the strict compliance with the requirements of Article 16, §19. She said so herself in her statement of March 31, 2008. In that statement she acknowledged that she accepted letters, emails, and even telephone calls although the Constitutional provision calls for a personal appearance at the Local or certified mail. Furthermore, the Local consistently followed the Interpretation to Article 45, Section 1, that the membership status of a discharged Committeeperson continues as long as he has a grievance pending. The statement of Todd Scott attests to the fact that Otis Tabor, a Union Steward who had been discharged by Freightliner, was reinstated to good standing based on the Interpretation to Article 45, Section 1.[61] Member Ervin Coaxum also testified that he was allowed to remain a member in good standing without certifying because he had a grievance pending. The Local Union cannot claim it had ever strictly enforced the certification requirements of Article 16, §19, until appellants' case came up.

[61] Record, p. 281.

Finally, appellants not only relied on what Financial Secretary Brown told them, but also on the actions of the Local Union officers. As we pointed out in our appeal to the IEB, during the trial of appellants in November 2007 not one person questioned the premise underlying the action, namely that appellants were members in good standing at the time of the trial. As has been reported, appellants actively participated in the Local Union's affairs up until the meeting in February 2008. Attempting to explain why the Local waited until February to challenge the appellants' standing, the IEB wrote that the Local leadership feared that a challenge to their membership in good standing would cause another internal fight. This is a rewrite of history. There is nothing in the record to show that President Drexel or Financial Secretary Brown was concerned about raising this issue. Even if they were, that would not have excused their inaction. The question of someone's right to be a member is such a basic one that it is the responsibility of the Local leadership to raise issues about a member's good standing as soon as they arise.

Appellants ask you to reinstate them to good standing retroactively and without the necessity of paying a reinstatement fee so that they can participate in the Local Union's upcoming election of officers and committeepersons. It has been established that none of the appellants were ever delinquent in the payment of their dues, therefore under this Board's decision in *Weissman v. Local Union 122,* 1 PRB 336 (1964), all of them are entitled to membership in continuous good standing even though the discharges of three of the appellants have now been sustained. Bob Weissman worked for Chrysler Corporation and he was also the Local Union's Recording Secretary. He was fired in 1959. The Union grieved his discharge, but the Umpire sustained it. Nevertheless, Weissman continued to pay dues. In 1961, he was elected Local Union President and served for two years. After he was defeated for re-election, the Local Financial Secretary issued him an honorable withdrawal card, even though his dues were paid. He appealed the decision to the Local, the IEB, and ultimately the PRB. You held that the requirement in Article 6, §2(a), that an applicant for membership in the Union must be an "actual worker in and around the workplace" applied only to people applying for membership, not to those seeking to maintain it. You held that discharge had no spontaneous effect on the members' good standing. You ordered that Weissman's membership in good standing should be restored. We have submitted an affidavit from Mr. Weissman in which he reports that he went on to serve four additional terms as Local Union President and a term as Vice President up until 1984, 25 years after his discharge.[62] In accordance with that precedent, the three appellants' discharge from Freightliner is no bar to their re-election to the Local Bargaining Committee.

B. International Union, UAW:

Appellants challenge Local Union 3520's ability to manage its membership list and, in particular, to apply Article 16, §§18 and 19. Appellants want to dictate the terms

[62] Record, p. 397

of their membership without regard to the UAW Constitution. They now declare that they can remain UAW members as long as they like. This statement is untrue and reveals a continuance of their efforts to circumvent the Local Union and its authority.

It is not true that this Local Union did not regularly apply the provisions of Article 16, §19 to laid-off and discharged members. Financial Secretary Brown's statement affirms that she regularly removed laid-off or terminated members who did not contact her to keep their membership active.[63] Brown performed this task on a monthly basis so the Local Union officers would know who was entitled to attend meetings and make motions. It is true that Brown did not purge appellants' names from the membership list prior to the February 2008 membership meeting. They claimed they were entitled to remain members and she thought they might be right. She did not want to initiate a confrontation with appellants unless it was absolutely necessary. The PRB must understand that these confrontations were not minor fights. Appellants frequently became loud and boisterous at membership meetings. Nevertheless, when it came time to put together an accurate list of members in good standing for the Local Election Committee, and a question was raised about appellants' good standing because of the money they received in December, Brown had to resolve the issue of their membership status. Although the dues for the April compensation is no longer an issue, Brown's investigation revealed that the appellants had not certified each month beginning in October 2007 that they were entitled to out of work credits, so that their membership in good standing had lapsed.

As a general rule, the Financial Secretary of a Local Union does not regularly send letters to individuals whose membership has lapsed pursuant to Article 16, §19, to inform them of that fact. The application of this rule is not a big issue with the general membership. People who become permanently separated from their employment within a UAW bargaining unit generally have no interest in attending Local Union meetings, paying dues, or participating in Local elections. The Local sent letters to appellants in February because they had challenged the Election Committee's requirement that they vote challenged ballots. Furthermore, there may have been occasional instances, such as the case of Ervin Coaxum, where an individual was permitted to attend a meeting after failing to certify, but you cannot let lack of enforcement on one occasion change the law.

Appellants rely on this Board's ruling in *Karras* to support their argument that they did not have to certify pursuant to Article 16, §19. In *Karras,* the PRB did not overrule the finding of the Election Committee that appellant's membership in good standing had lapsed because of his failure to pay dues for two months. The decision simply stated that the finding was not compelled by the language of Article 16, §19. Appellant's reliance on *Weissman* to support their claim that they should be allowed to continue their membership indefinitely is also without merit. In the first place, the 1964 *Weissman* case predates the addition of language to the UAW Constitution requiring

[63] Record, p. 101.

discharged employees to certify their membership ten days before the expiration of six months following the discharge in the same manner as laid-off employees. In any event, the holding in *Weissman* was based on the finding that the appellant's dues obligation had been met, so that there was no break in his membership. Similarly, the Interpretation to Article 45, §1, relied on by appellants does not address the certification requirement. That interpretation addressed the Committeepersons continuing eligibility to represent members of the unit; it assumes the obligations of membership in the Local Union are being met.

Appellants' membership in good standing lapsed in October 2007 when they failed to certify during the last ten days of the month that they were entitled to an exemption from the payment of dues. As a general rule, a member who has become delinquent in dues payments must reinstate his or her membership in accordance with Article 16, §§8 and 9, of the Constitution in order to regain good standing, although such reinstatement does not prevent an interruption in continuous good standing for the purpose of determining eligibility to run for office. On the other hand, when an honorable withdrawal card is issued to a laid-off or discharged member, that individual must become re-employed in the bargaining unit and apply for membership once again to restore his or her good standing. Appellants have argued that they never received any honorable withdrawal card. There is no physical card; that is old language. The issuance of the honorable withdrawal card is an automatic event triggered by the particular circumstances. As for the reinstated appellants' eligibility to run for Bargaining Committee, that will have to be addressed by the Local Union's Election Committee, if the issue arises. Whiteside and Bradley are no longer in the bargaining unit and are therefore ineligible to apply for membership in the Local Union. As for Crisco, appellants' counsel admitted in the appeal to the IEB that Crisco had "found other employment and was out of touch with the Union." The Local Union did not receive any timely dues or certification from Crisco. He became delinquent when he failed to report the earnings which he had in his new employment.

Appellants were well aware of the Local Union's regular practice of updating its membership list because of the massive layoffs within this bargaining unit during recent years. That is why Whiteside published the newsletter on the Local's website informing the members about certification requirements. Furthermore, no Local 3520 Freightliner employee, discharged or laid-off, has been allowed to retain membership after failing to properly certify. The appellants are not being treated differently from others. Instead, appellants seek special status because of their former Bargaining Committee positions. There is no Constitutional basis for their claim that they are exempt from the dues obligation which every member shares.

The reason why the IEB did not conduct a hearing on this appeal was that there was no tangible evidence to support appellants' claims that Financial Secretary Brown told them that they did not have to certify pursuant to Article 16, §19. The appellants' allegation that they relied on incorrect instructions from the Financial Secretary is the only argument of substance they offered to support their claim to continued good standing. The other Constitutional theories they suggest are simply wrong. Yet, there

is not one piece of evidence in the record to corroborate the statements they attribute to Financial Secretary Brown and she denies having made them. She even presented a sworn affidavit denying them in the United States District Court. The IEB currently faces an enormous set of tasks and it cannot conduct a hearing in every case. As a general rule, we do not conduct hearings on "he said, she said" arguments. Once again, these people had established a pattern of believing that the rules for other members did not apply to them. The IEB did not consider that their arguments required further investigation.

C. Rebuttal by Ellis Boal on behalf of appellants:

The International Union has made no response to our assertion that the IEB made improper credibility determinations based on evidence and testimony that was not shared with appellants or entered into the record. Furthermore, the International has not addressed our complaint that the President's staff member who investigated the appeal for the IEB was biased because it was her decision that was being challenged. The President raised for the first time before the PRB the claim that Crisco owes dues on his interim employment. Crisco argued in his appeal to the IEB that he should not owe dues to the UAW on this income because the UAW could not represent him in his dealings with this employer. The International Union's argument on this point should not be considered now.

The International Union points out that the *Weissman* decision was issued before the certification language of Article 16, §19, was extended to discharged members. That misses the point of *Weissman.* The decision held that a discharge has no spontaneous effect on the relationship between the Local Union and the member. The same reasoning would apply to an adverse arbitration decision, provided the member continued to pay dues. In this case, the appellants' dues assessment is $0 for each month subsequent to April 2007 and they are therefore current in their dues. Therefore, the adverse arbitration rulings on three of the appellants have no relevance to the issues raised by this appeal.

These appellants were not placing themselves above the Union's rules. They genuinely believed in the legality of the strike in April 2007. The Local had voted to authorize a strike. They had even printed a t-shirt for members with a picture of a rattlesnake over the motto, "Will strike if provoked." Appellants were vigorously participating in the Local Union's affairs following their discharge until this theory was raised about "out-of-work" credits in February 2008. Active interest and involvement such as appellants' is to be encouraged in the labor movement, rather than looking for nitpicking reasons to exclude people. In any event, the Financial Secretary knew of the appellants' active involvement and so it was her duty to inform them of any requirements to maintain their good standing. The complexity of the certification requirements described in Article 16, §19, places this burden on the Financial Secretary. As this Board ruled in *Karras,* knowledge of these provisions cannot be imputed to members.

DISCUSSION

In the *Karras* decision, *supra,* we held that the provisions of the International Constitution describing the dues obligations of discharged and laid-off members are so complex that such members have an absolute right to rely on instructions given to them by their Local Financial Secretary with regard to such obligations, even if such instructions later turn out to be in conflict with some portion of Article 16. We reaffirm that holding here. There was no suggestion in *Karras,* however, that a discharged member may ignore the requirements of Article 16 altogether. In fact, in *Karras* we upheld the ruling of the Local Election Committee that Nick Karras was ineligible to run for Shop Committee Chairperson in 2004 because he failed to pay dues or certify that he was entitled to "out-of-work" credits in November and December 2003. We found that Karras' failure to make such payments could not be attributed to any advice given to him by the Financial Secretary, but rather was based on his belief that he had overpaid his dues in previous months.[64]

It is instructive to review the facts in *Karras* to understand the nature of a discharged member's obligations under Article 16 and the extent to which such member may rely on representations regarding those obligations made by Local Union officers. Karras, who held the position of Local Shop Committee Chairperson, had been discharged by General Motors on May 20, 2002. He was reinstated January 5, 2004. In November 2002, the sixth month following his discharge, Karras began sending a monthly letter to the Local Union certifying that he continued to be entitled to "out-of-work" credits as defined in Article 16, §18, because he had not found employment elsewhere. When Karras found work in March 2003, he contacted the Local Union President to find out what his dues obligation would be based on the income he was receiving. The President did not know and told him to wait before submitting any dues. We held that Karras was entitled to rely on this instruction from the President, so that his membership did not lapse in March and April 2003 even though he did not pay dues on the income he received during those months.[65] It should be understood that the "out-of-work" credits described in Article 16, §19, are credits toward the dues obligation. Karras never questioned his obligation to either pay dues or else certify that he continued to be eligible for membership in good standing without the payment of dues.

In this case, appellants claim that they relied on Financial Secretary Brown's assurance that they did not have to certify for "out-of-work" credits in order to maintain their good standing in the Local Union. In a letter to Brown dated February 3, 2008, Allen Bradley asserted that he notified her on October 1, 2007, that appellants wanted to keep their membership in good standing and she instructed them that they did not have to report on a monthly basis as long as they had active grievances and attended membership meetings. Brown denies having given appellants any such assurances. In

[64] PRB Case No. 1512, at 13.

[65] PRB Case No. 1512, at 12.

her statement, Brown reports that she does not remember any of the appellants asking her about keeping their membership active.

We are troubled by the IEB's failure to conduct a hearing on this appeal so that explicit testimony could have been obtained about what the parties actually said to one another on this subject. This was a high profile dispute involving the discharge of Local Union officers and it focused public attention on the UAW's appellate processes. The failure to provide an opportunity for appellants to make their case and defend their positions in person is especially unfortunate given the political dimensions of appellants' relations to other Local Union members after the unsuccessful strike.

We believe the record demonstrates that the International Union took pains to be even-handed and to avoid taking sides between the two factions at this Local Union. At the same time, we do not believe the Local Union Financial Secretary's involvement in the events that led to the lapse in appellants' membership is entirely above reproach. In this regard, the fact that the IEB's decision rests in important respects on credibility determinations makes the failure to hold a hearing difficult to understand. The Union's contention that the IEB does not conduct hearings on "he said, she said" controversies is not adequately responsive. There is conflicting testimony between key witnesses about what occurred on a factual matter that bears on the application of Article 16, §19, in this case. The IEB is supposed to conduct hearings in such settings, as the body charged under the Constitution with responsibility for investigating unresolved issues of material fact. Furthermore, this case presents more than a simple dispute over the facts. It involves fundamental questions concerning the reciprocal rights and obligations of a Local Union member and the Local Union as an organization.

Notwithstanding these serious reservations, we do not believe it is necessary to conduct an independent investigation as requested by appellants' counsel, because the issues can be resolved without relying on the IEB's credibility determinations. There is probably some truth in both the appellants' and Financial Secretary Brown's conflicting accounts. Appellants' status as Union members and Bargaining Committee members was a subject of concern at Local 3520 throughout the final months of 2007, so it is likely that appellants and the Financial Secretary had some conversations about their membership status. In the course of such conversations, she may well have indicated that she knew that they wanted to continue their membership. Nevertheless, the way this controversy unfolded supports Brown's assertion that she never gave appellants any specific instructions about the certification requirements set forth in Article 16, §19, of the Constitution.

We find it significant that appellants failed to create any memorandum of their communications with Brown. All of the statements in the record were prepared months after the events giving rise to this appeal and there is no concrete evidence contemporaneous with the period prior to October 2007 to corroborate any of them. In a matter of such significance, it would be expected that appellants would have confirmed Brown's instructions to them in a letter. In addition, it is evident that Brown was not thinking about the requirements of Article 16, §19, with respect to appellants

during this period. During the same period, the Local Union sought an interpretation from the International Union concerning appellants' ability to continue on the Bargaining Committee after management refused to meet with them on Company property. The International held that the Local Union bylaws did not require appellants to forfeit their positions.[66] Obviously, if the officers in the incumbent administration which wanted to replace appellants on the Bargaining Committee had been cognizant of the certification requirement, they would have raised that issue when they sought the interpretation from the International Union. It was not until the Local Election Co-Chair raised the question about whether appellants owed dues on the money they received from the Local Union in December 2007 that anyone even thought about the certification requirement.[67]

In any event, appellants cannot credibly claim that they did not fully understand the Constitutional procedure for certifying their continued eligibility for "out of work" credits after six months. Appellants knew that they were not paying dues. The record demonstrates that they knew unemployed members had to take some action to maintain their good standing. Robert Whiteside had described the certification procedure for laid off employees in his website posting following the layoffs in March 2003. There is no reason to doubt that the other four appellants who also held positions as Local Union officers or stewards knew this procedure essentially as well as Whiteside.[68]

Accordingly, there was no reason for appellants to have asked Financial Secretary Brown about the certification procedure, because there was no ambiguity about its requirements in these circumstances. In the case of four of the appellants, all they had to do was to inform the Financial Secretary that they were not receiving income from any other source. David Crisco, on the other hand, was required to report the income that he received from his other employment to the Financial Secretary so that his dues obligation could be determined.[69] Had he done this, he would have been

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[66] Record, p. 171.

[67] The IEB initially claimed that three of the appellants owed dues for the compensation they received in April 2007. (Record, p. 175-176) Appellant's Counsel has presented persuasive evidence that dues were deducted for the month of April from the paychecks of Bradley, Swinford and Whiteside at the end of March, so that there was no actual dues delinquency. During oral argument, the International Union agreed that the issue here is certification rather than failure to pay dues on the money received in December for the work performed in April. With the exception of David Crisco, the certification requirement for appellants commenced in October 2007.

[68] We understood attorney Boal to acknowledge during oral argument that the other four appellants were aware of the certification requirement. Independent of any such acknowledgement, we rely on appellants' status as experienced Union officers and on the circumstances discussed herein to conclude that appellants were quite familiar with the requirement.

[69] Counsel for appellants has argued that Crisco should not have been required to pay dues on the money he earned outside the jurisdiction of the UAW because the Union could not represent him at his new place of employment. Such an argument might be used to defend a civil action to collect the dues, but it is clearly not the rule under the UAW Constitution. Under Article 16, §18, of the UAW Constitution, a discharged member is required to report to the Financial Secretary any other employment he or she may obtain while discharged. Crisco became delinquent in the payment of dues, therefore, as soon as he failed to report his other employment to the Financial Secretary.

entitled to rely on what the Financial Secretary told him was required. In short, appellants were not free to ignore their dues obligations entirely based solely on a casual remark by the Financial Secretary about what she believed were their intentions, even assuming that Brown made the statement attributed to her by Bradley in his letter of February 3, 2008.

Furthermore, there is ample evidence in this record that the appellants' failure to certify in accordance with Article 16, §19, was not the result of reliance on anything Financial Secretary Brown said to them, but rather was based on their mistaken belief that the certification requirement did not apply to Local Union officers. When they were asked to put their ballots in a challenged envelope during the election for Recording Secretary in January 2008, not one of the appellants referred to assurances by Financial Secretary Brown that their membership in good standing would be continued despite their failure to pay dues or certify eligibility for out-of-work credits. According to Election Committee member Roberta Albrecht, Allen Bradley stated that the six month rule did not pertain to him because he was an officer.[70] Similarly, Franklin Torrence insisted that the certification requirement did not apply to Executive Board members.[71] Appellants' belief that discharged officers are not obligated to pay Union dues was clearly incorrect, but it cannot be attributed to a specific instruction given to them by Financial Secretary Brown.

The source of appellants' misunderstanding regarding their dues obligations was apparently the Interpretation of Article 45, §1, cited in their argument, which held that a committeeperson's eligibility for office is not affected by discharge. That Interpretation has nothing to do with the member's dues obligation. It speaks to the eligibility of a discharged committeeperson to run for re-election. The section assumes the committeeperson is fulfilling the basic obligations of a Local Union member with regard to the payment of dues. If the Interpretation were about a member's dues obligations it would be associated with Article 16 instead of Article 45. Appellants' reading of this Interpretation is simply incorrect.

Appellants have argued that even if Financial Secretary Brown did not give explicit instructions to them regarding the application of Article 16, §19, her behavior amounted to an assertion that their membership in good standing remained intact following their discharge by Freightliner. Administrative Assistant Curson acknowledged during oral argument, that Brown did not challenge appellants' right to attend membership meetings prior to February 2008. Curson attributed Brown's silence to her belief at the time that appellants' theories about officers being exempt from the dues obligation may well have been right and her desire not to start an argument. Not only did Brown acquiesce in appellants' continued participation in the Local Union's affairs, she specifically affirmed that they were members in good standing during the trial which took place in November 2007. Appellants' counsel argues that the Union's conduct of

[70] Record, p. 11.

[71] Record, p. 12.

the trial in November is entirely inconsistent with its claim that their memberships lapsed in October 2007.

We do not think that there can be any question that the members of Local 3520 believed the appellants were members in good standing during the trial. Of course, most of those involved in the trial process would have had no reason to believe that appellants were not taking every measure to protect their status as members. The trial process was initiated while the appellants were still members in good standing. Appellants' failure to certify had nothing to do with the assumptions underlying the trial. The two processes are entirely unrelated.

A trial procedure initiated by charges filed pursuant to Article 31 of the Constitution is designed to determine whether a member has committed some act which would justify his expulsion from membership. The loss of membership pursuant to Article 31 is a punitive measure. Article 16, §19, was written to cover the typical situation of a worker who gets laid off or fired so that dues are no longer being forwarded automatically to the Local Union. The Constitution gives such members a grace period of six months so that they do not have to pay dues while they still have some expectation of being reinstated or rehired. When that period expires, if the former employee is still interested in continuing his membership, he has to let the Union know. The lapse of membership at the end of sixth months is not the equivalent of expulsion from the Union. It is basically a housekeeping provision to assist the Local in maintaining an accurate list of active members. The issuance of the honorable withdrawal card, as the very name suggests, does not indicate any failure or misconduct on the part of the former member. In most cases, the record of having been issued an honorable withdrawal card is a completely routine business as people move on to other jobs.

In the atypical situation where the member wishes to retain his membership in order to run for office, Article 16, §19, puts the onus on the member to keep the Financial Secretary advised of his intentions. The Financial Secretary is not required to track down all members who have been separated from their employment after the expiration of the six month period to remind them of their obligation to certify. It is the member's obligation to keep his membership active. The member's obligation in this respect is easy to understand and satisfy; the member simply has to let the Financial Secretary know at the end of each month that he or she wishes to continue as a member. Once that obligation is met, the member is entitled to rely on any instructions the Financial Secretary gives regarding the payment of Union dues.

We understand appellants' position that they should not have had to notify Financial Secretary Brown that they wanted to remain members because she already knew that. Furthermore, it was Financial Secretary Brown's business to know what the Constitution required in regard to a member's dues obligation. Determining members' dues obligations and maintaining an accurate list of active members is the primary obligation of a Local Union Financial Secretary. Brown ought to have questioned appellants' theory that they were allowed to continue their membership without the

payment of dues. Whether through intimidation, indecision, or ignorance, she failed to do her job when she did not immediately raise the issue of "out-of-work" credits upon the expiration of the six month period.

The fact is, however, that Financial Secretary Brown did not question appellants' assertion that they were not required to pay dues and she did not know that they were required to certify for "out-of-work" credits until January 2008. Her ignorance on this point is not the kind of instruction upon which a member is entitled to rely, and especially not members like appellants who were thoroughly familiar with the certification requirements for employees who are no longer having their Union dues automatically deducted from their paychecks. The most appellants can argue here is that she ought to have known, and knowing, ought to have warned them that their exemption from the payment of dues was about to expire. Courtesy might have demanded such a warning, but the Constitution places the burden on the member to inform the Financial Secretary of any employment outside the jurisdiction of the UAW or of his or her continued eligibility for "out-of-work" credits.

It is also probable that some members of the Local Union administration were glad to take advantage of appellants' carelessness and declare their memberships lapsed. That fact does not insulate appellants from their obligations as members of the organization. There has been no showing of an unfair application of Union rules or a consistent practice of allowing members to continue in good standing without meeting the certification requirements of Article 16, §19. The case of Otis Tabor arose after October 2007, so appellants cannot claim to have been relying on it. Ervin Coaxum simply reported that the Local does not regularly notify members that their membership has lapsed at the end of the six month grace period. That does not mean that the member remains in good standing, however. The Constitution does not require any special notification to the member prior to the issuance of an honorable withdrawal card in accordance with Article 16, §19, of the International Constitution.

One of the basic obligations of Union membership is the payment of dues. Given their situation, appellants should have been extra careful and diligent to perform this duty. Had appellants paid their dues or certified their right to an exemption from dues, it does appear that they could have continued their membership in the Local Union. When appellants failed to certify their entitlement to "out-of-work" credits in October 2007, their membership lapsed automatically.

The appeal is denied.