

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

APPEAL OF:

JOHN ILGENFRITZ,

Appellant

-vs-

CASE NO. 1630

LOCAL UNION 2250, UAW  
(Wentzville, Missouri)  
REGION 5  
(THE UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA),

Appellee.

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**DECISION**

(Issued September 14, 2009)

PANEL SITTING: Prof. James J. Brudney, Chairperson,  
Prof. Janice R. Bellace, Prof. Fred  
Feinstein, Prof. Maria L. Ontiveros, and  
Prof. Calvin William Sharpe.

John Ilgenfritz argues that Committeeperson Dan Maguire's settlement of his disciplinary grievances without back pay lacked a rational basis.

**FACTS**

John Ilgenfritz works at the General Motors Stamping Plant in Wentzville, Missouri, in a bargaining unit represented by UAW Local 2250. He has a seniority date of April 15, 1985.<sup>1</sup> On July 24, 2007, GM issued Ilgenfritz a disciplinary leave of the balance of his shift plus two weeks. The Company charged that a letter from the Kidwell-Barber Funeral Home submitted by Ilgenfritz to excuse his absence on July 20 and July 21, 2007, turned out to be a forgery.<sup>2</sup>

Ilgenfritz was interviewed by Labor Relations Representative Kenneth Wakefield on July 24, 2007, pursuant to Paragraph (76a) of the GM-UAW National Agreement.

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<sup>1</sup> Record, p. 35.

<sup>2</sup> Record, p. 3.

Notes from the disciplinary interview indicate that Ilgenfritz refused to answer Wakefield's questions because he claimed he did not have sufficient Union representation despite the presence of alternate Shop Committeeperson Steve Williams. The following dialogue is reported:

"KW: On what date did you receive this statement?

Jl: Without a Union representative, I have no comment.

KW: John, are you refusing to allow the alternate Shop District Steve Williams to represent you in this (76a) interview concerning the statement you submitted for your absence on July 20 & 21, 2007, is this correct?

Jl: Without a Union representative in here, I have no comment.

KW: John, you do understand I have no choice but to proceed with the (76a) interview process based on the information management currently has?

Jl: Without a Union representative, I have no comment."<sup>3</sup>

Committeeperson Williams' notes indicate that Ilgenfritz later told him the reason he did not want to talk during the interview was that he had not been put on notice for any violation. He stated that he was "blindsided" when he was confronted with a disciplinary interview. Ilgenfritz told Williams that he was excused for the days in question and had not requested to be paid for them.<sup>4</sup> Williams reported that he called Ilgenfritz on July 26, 2007, and left a message for him to come in and sign a grievance. Grievance No. 999804 was filed on July 27, 2007, protesting the disciplinary leave.<sup>5</sup>

On August 23, 2007, GM issued Ilgenfritz a balance of shift plus two weeks disciplinary leave based on the following charge:

"For your act of misconduct when you were seen entering the Body Shop entrance at 13:39 & exiting at 13:54 on 8-23-07, therefore abusing the emergency relief agreement by not using the Trim restrooms as previously instructed."<sup>6</sup>

Local 2250 filed Grievance No. 779183 protesting the discipline on August 23, 2007.<sup>7</sup> A statement prepared by District 9 Committeeperson Dan Maguire reports that Grievance

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<sup>3</sup> Record, p. 4.

<sup>4</sup> Record, p. 6.

<sup>5</sup> Record, p. 7.

<sup>6</sup> Record, p. 9.

<sup>7</sup> Record, p. 10.

No. 779183 was settled based on the Company's agreement to reduce the penalty to a balance of shift plus one day. Three other grievances filed in connection with the discipline were also withdrawn as a result of the settlement.<sup>8</sup>

On September 6, 2007, GM issued Ilgenfritz a balance of shift plus thirty days disciplinary leave based on the following charge:

"For your actions when on the shift of 9-6-2007, you reported late to your operation at 6:01 a.m. causing a loss in production. This was witnessed by J. Bean, R. Murphy, and Sonya Crites."<sup>9</sup>

Local 2250 filed Grievance No. 998143 protesting the discipline.<sup>10</sup> A Paragraph (76a) interview was conducted on September 6 by Labor Relations Representative Wakefield. During that interview, Ilgenfritz stated that he got to his job at 6:00 a.m. and was ready to work, but that several other positions were empty. Ilgenfritz argued that there was no loss of production on his job, because the job in front of him had already been completed by the night shift. Ilgenfritz stated that he did pull the cord at 6:07 a.m. to clean up a substance that had spilled on the floor.<sup>11</sup> According to notes of the interview, Committeeperson Williams argued that management's application of the shop rule in this instance was unreasonable and contrary to common sense.<sup>12</sup>

On July 23, 2008, Committeeperson Dan Maguire settled Grievance No. 998143, based on management's agreement to clear Ilgenfritz's record in regard to the discipline assessed in Grievance Nos. 779183, 999804, and 998143. The settlement states:

"Reference Grievance #s 779183, 999804, 998143

Due to this brother's history of repeat offenses throughout his time as a member, though cleared, management continually refused to settle or even discuss his cases, let alone settle for monetary reimbursement.

Therefore, in the interest of good faith and to protect this Union brother from possible discharge, I have settled these grievances as 'clean record w/no pay.'<sup>13</sup>

Ilgenfritz appealed the settlement of his grievances to the Local Union membership on September 9, 2008. The membership considered Ilgenfritz's appeal at a meeting on October 15, 2008. A motion to accept the appeal failed by a vote of 2 to

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<sup>8</sup> Record, p. 11.

<sup>9</sup> Record, p. 17.

<sup>10</sup> Record, p. 21.

<sup>11</sup> Record, p. 18.

<sup>12</sup> Record, p. 20.

<sup>13</sup> Record, p. 22.

170.<sup>14</sup> Local 2250 Recording Secretary Matt Zimmermann advised Ilgenfritz of the membership's decision on October 16, 2008, and Ilgenfritz appealed to the International Executive Board (IEB) on November 3, 2008.

In response to an inquiry from the President's staff regarding his appeal, Ilgenfritz reported that he learned about the settlement of his grievances on September 5, 2008, when he went to the Labor Department to check on his record. Ilgenfritz stated that when he questioned Committeeperson Maguire about the settlement on September 8, Maguire said that he had a chance to settle the grievances without pay so he accepted it. Maguire told Ilgenfritz that he was concerned that discharge was the next step in the procedure and he settled the grievances so that there would be no chance of Ilgenfritz being fired.<sup>15</sup> Ilgenfritz challenged Maguire's rationale for settling the grievances without back pay. He wrote:

"... I do not think that this makes sense as it had been approximately a year before these grievances were settled. Dan Maguire should have gotten at least a percentage of the monies owed for these three grievances involved. We are talking about balance and eight weeks total. The amount of lost time involved was over \$11,000. Also Dan Maguire should have come to me with his intentions of settling this. He also should have notified me of the settlement. His actions were reckless and show his inability [to] handle this correctly."<sup>16</sup>

Ilgenfritz argued that he should have received all of the wages he lost as a result of the three disciplinary layoffs, because the discipline was unwarranted on all three occasions.

President Gettelfinger's staff determined that a hearing was unnecessary on Ilgenfritz's appeal. Acting on behalf of the President, staff prepared a report to the IEB based on information provided by the appellant and Local Union 2250. In their report to the IEB, staff reviewed the standard of fair representation articulated in a UAW Administrative Letter issued on August 12, 2008. Staff observed that in accordance with the general principles outlined in that letter, a Union member has no absolute right to insist that a grievance be pursued through any particular step of the procedure. Under the UAW's standard, the Union may withdraw a grievance consistent with its duty of fair representation, as long as there is some reasonable basis for its action.<sup>17</sup> Staff

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<sup>14</sup> Record, p. 26.

<sup>15</sup> Record, p. 31.

<sup>16</sup> Record, p. 31.

<sup>17</sup> Staff's report to the IEB quotes the following language from *UAW Administrative Letter*, Volume No. 54, Letter No. 4, dated August 12, 2008:

"No individual member has an absolute right to insist that a grievance be pursued through any particular step of the procedure. Any grievance is the property of the Union and can be settled or withdrawn without the consent of the grievant. The Union may screen

found that Committeeperson Maguire had stated a legitimate reason for his decision to settle Ilgenfritz's grievances without back pay.

Staff reported that information received from the Local Union revealed that Ilgenfritz had been disciplined thirty times during the period from July 1997 through September 2007.<sup>18</sup> When Ilgenfritz received the thirty day suspension on September 6, 2007, the next step in the progressive disciplinary procedure would have been discharge. In a note explaining his decision to settle the grievances, Maguire reported management was adamant about not paying a monetary settlement, so that the only alternative to the settlement would have been to appeal the grievance to the next step. Staff reported that Maguire was concerned that if Ilgenfritz's record were not cleared, he would have been discharged before his grievances ever reached a higher step in the grievance procedure.<sup>19</sup> Staff concluded that these circumstances provided a reasonable basis for Maguire's decision to settle Ilgenfritz's grievances.<sup>20</sup> Furthermore, they found no evidence that the settlement was motivated by fraud, discrimination, or collusion with management. Staff held that Maguire had met his fair representation responsibilities, and they denied Ilgenfritz's appeal.<sup>21</sup>

The IEB adopted staff's report as its decision on January 27, 2009. Ilgenfritz has now appealed the IEB's decision to the Public Review Board (PRB).

## ARGUMENT

### **A. John D. Ilgenfritz:**

As indicated in my response to the inquiry sent on behalf of the IEB, I was never notified that my grievances had been settled. In fact, on August 23, 2008, I went to Dan Maguire and asked him about my grievances. He told me that he had not forgotten me, but that he had not had any luck in settling my grievances. He told me at that time that my grievances would be settled with pay for the hours lost. I did not learn about the settlement of my grievances until I went to the Labor Department to check on my record on September 5, 2008. Committeeperson Maguire lied to me when he told me that he was still trying to settle my grievances for back pay in August.

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grievances and press only those it concludes should be pursued based on benefit to the unit as a whole, as well as time, expense, and other considerations.

Stated differently, the Union may fail to initiate or process and may settle or withdraw a grievance for any valid reason as long as there is a legitimate reason and the Union has some basis for its action. Mere whim or no reason at all may lead to the conclusion that the Union official did not exercise proper judgment."

<sup>18</sup> Record, pp. 36-39, 49.

<sup>19</sup> Record, p. 53.

<sup>20</sup> Record, p. 52.

<sup>21</sup> Record, p. 54.

A thorough investigation of my disciplinary record and the grievance settlements provides a clear picture of what is going on here. The incident on September 6, 2007, provides a good example. I was working on the door line installing driver's door glass. At the end of every shift, I worked my job ahead; that is, I always installed glass on doors of the next two jobs even though they were not in my work station yet. I did this to keep the job out of the hole for the second shift operator. The second shift operator did the same for me so that when I reported to work at 6:00 a.m., I was ahead of schedule. When I got to work on September 6, 2007, the supervisor pulled the line stop cord because she said I was not ready with my gloves on. I pulled the cord to start the line up and told her it was not necessary to stop the line, because my next three jobs were already done. For this, I was put on notice and sent to Labor.

My Union representative was aware of this situation. He knew that I had not clocked in late. He was also aware that there were others who did clock in after 6:00 a.m. These people were not disciplined. My point is that I have been run up to Labor and disciplined unjustly time after time. I have been intimidated, harassed and stalked by management. I find it hard to believe that Committeeperson Maguire thought it would be difficult to show that management had no cause for discipline and had exceeded their authority. The unjust cause case was a no-brainer.

In each of the thirty prior disciplines assessed against me, it was determined that management was wrong and I had my record cleared and received full back pay. If the IEB had investigated my case more carefully, they would have seen that I have been subjected to unjust discipline.

#### **B. International Union, UAW:**

Ilgenfritz argues that he should have received at least a percentage of the back pay owed to him. He contends that the third suspension issued to him was completely unjustified because he was at his station at starting time and did not delay production. He also notes that other employees who were late to the line were not disciplined. Nevertheless, a review of Ilgenfritz's disciplinary record shows that the Union had good reason to worry about future suspensions. For whatever reason, Ilgenfritz had a lengthy disciplinary history with many suspensions. While the majority had been overturned, the Union was right to worry that he was on thin ice so that a single slip up or mistake could have jeopardized his job.

The settlement negotiated by the Union provided a substantial benefit to Ilgenfritz. The Union had already been successful in reducing the second suspension from two weeks to one day. The issues posed by the other two suspensions were intensely factual and that made it difficult to predict how the case would be resolved if submitted to arbitration. Under the circumstances, it was rational for the Union to opt for a settlement that cleared Ilgenfritz's record instead of pursuing one or all of his grievances to arbitration.

It appears from Ilgenfritz's account that the Union could have been more forthright in explaining its resolution of the grievances to him. This does not change the basic rationale for settlement, however. Ilgenfritz does not claim that he relied to his detriment on Maguire's statement in August that he was still trying to obtain a monetary settlement. Furthermore, it is clear from the record that the Local Union was not acting out of any illegitimate motive in its handling of Ilgenfritz's grievances. The Local has represented Ilgenfritz on numerous occasions and has achieved some very good settlements on his behalf. Ilgenfritz has not asserted that the Union and management were colluding with respect to his grievances. Indeed, the Local's long history of successfully representing Ilgenfritz would undermine any such claim.

### **C. Rebuttal by John D. Ilgenfritz:**

The letter from the International Union states that I submitted documents to support bereavement leave. That is not true. I was absent from work on July 20 and 21, 2007. Upon returning to work on Monday, I was asked if I had anything to explain my absence. I did submit a note stating that I had been to a funeral on Friday and Saturday. My boss stated that I would be excused and asked me if I wanted to use some of my vacation hours and be paid for my two days off. I said that I would prefer to take the days unpaid and be coded excused, because I had a clean attendance record. My boss stated that I was coded excused. At no time did I fill out paperwork for bereavement pay. At no time did I receive bereavement pay.

I was issued a balance of shift plus two weeks in connection with my absence on July 20 and 21, 2007, even though I had a clean attendance record up to this point. This was out of the line of progressive discipline. I know that many excuses are rejected as not acceptable, but this is unusually severe punishment for a rejected note.

Committeeperson Maguire submitted my disciplinary record to explain his decision to settle my grievance. I believe it is discriminatory to bring in these past incidents to try to cast me as a troublemaker. If Maguire was so concerned about my best interests and a possible discharge, why did he wait an entire year before settling my grievances? I was up for termination at the next step on September 6, 2007.

The International Union states that Maguire settled a lengthy suspension for a one day suspension. I never received any money for any of the grievances that I am arguing about.

### **DISCUSSION**

In his appeal to this Board, Ilgenfritz does not deny that he submitted a forged letter to excuse his absence on July 20 and 21, 2007. Instead, he argues that he had a clean record at the time so that the discipline issued was inappropriate. Ilgenfritz's disciplinary record reflects a troubled relationship between this employee and his immediate supervisors. There are numerous citations for refusing work assignments and leaving the plant without permission. The record also reveals that the Union successfully protested discipline assessed against Ilgenfritz based on these citations

and in some cases obtained back pay. Ilgenfritz's record was clean on July 24, 2007, only because of the effective representation he had received from his Local representatives. Furthermore, Ilgenfritz's uncooperative behavior during his Paragraph (76a) interview following his citation for forgery made it difficult for the Union to present any argument on his behalf.

While the Union might argue that the employer should not consider Ilgenfritz's prior citations in imposing discipline, it was not discrimination for Committeeperson Maguire to take Ilgenfritz's disciplinary record into account when considering whether to risk pursuing his grievances to the Umpire in the hope of obtaining an award of back pay. Indeed, it might have been reckless for Maguire to have ignored evidence that Ilgenfritz's supervisors were dissatisfied with his behavior. The thirty-day suspension issued to Ilgenfritz on September 6, 2007, for reporting one minute late to his operation does seem unreasonable as Committeeperson Steven Williams argued during Ilgenfritz's Paragraph (76a) interview, but management's rigid application of the contract in this instance also justified Committeeperson Maguire's fear that Ilgenfritz was being set up for discharge. Under the circumstances, it was rational for Committeeperson Maguire to take advantage of the opportunity to restore Ilgenfritz's clean slate on July 23, 2008, in order to preserve his job.

We cannot determine from this record why Maguire did not immediately communicate his decision to Ilgenfritz, but as the International Union has observed, the lapse did no harm. Our role in reviewing appeals regarding the handling of grievances is limited to claims that the Union representatives involved in processing the grievances were influenced by fraud, discrimination, or collusion with management or that their disposition or handling of the matter was devoid of any rational basis.<sup>22</sup> The settlement achieved by Committeeperson Maguire that cleared Ilgenfritz's record of the disciplinary actions assessed against him in 2007 was rational based on this record. There is no evidence of hostility or discrimination on the part of the Union representatives. On the contrary, the record attests to their energetic pursuit and competent resolution of grievances filed on behalf of this member.

The decision of the IEB is affirmed.

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<sup>22</sup> UAW International Constitution, Article 33, §4(i).