

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

APPEAL OF:

ROBERT THOMAS FRANCIS,  
Appellant

-vs-

CASE NO. 1645

LOCAL UNION 239, UAW  
(Baltimore, Maryland)  
REGION 8, UAW  
(THE UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA),  
Appellee.

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**DECISION**

(Issued October 1, 2010)

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

APPEARANCES: Robert Thomas Francis on behalf of  
appellant; Eunice Stokes-Wilson, Bob  
Kinkade, James L. King, and Maneesh  
Sharma on behalf of the International  
Union, UAW; Fred Swanner, Stewart  
Silva, and John Kimble, Jr. on behalf of  
UAW Local Union 239.

Robert Thomas Francis argues that he incurred a loss of credited service toward his pension benefit and other monetary damages as a result of his reliance on a Voluntary Layoff Option described in documents distributed to employees of the GM Baltimore Assembly Plant when it closed. He maintains that he is entitled to be compensated for his loss because any modification of the UAW-GM National Agreement ought to have been reduced to writing and approved by the National Parties in accordance with Article 19, §1, of the International Constitution.

## FACTS

Robert Francis worked at General Motors Baltimore Assembly Plant in a bargaining unit represented by UAW Local Union 239. He had a seniority date of February 3, 1977.<sup>1</sup> On November 16, 2004, GM announced that the Baltimore Assembly Plant was scheduled to close in 2005.<sup>2</sup> The plant closed on May 13, 2005.<sup>3</sup> According to Francis, when the plant closed he was assigned to the JOBS Bank and then elected to take a voluntary layoff in accordance with an agreement referred to as the Voluntary Layoff Procedure (“VLP”) negotiated between UAW Local 239 and management at the Baltimore Assembly Plant.<sup>4</sup>

The Voluntary Layoff Procedure is described in a series of handouts distributed by management in anticipation of the plant closure. In an email dated November 23, 2004, Personnel Director Joya L. Shepard stated that the union and management had developed a list of questions and answers about the plant closing and each hourly employee would receive a copy of the list. One of the categories of questions addressed by the list came under the heading “Job Bank/Unemployment/Layoff.” Question and answer number 10 under this heading state as follows:

“Do employees accrue seniority on layoff or does this occur only when receiving GM paychecks?

Credited service (GM Corporate) continues to accrue while on layoff.”<sup>5</sup>

Another handout is titled, “Procedure for Employees Selecting Layoff.” The introductory paragraph of this handout refers to employees who elect to take the voluntary 100 percent Supplemental Unemployment Benefit layoff option. The following points are stated as administrative guidelines applicable to this option:

“Employees must remain on layoff for a minimum of six (6) months.

Employees with more than ten years of credited service can remain on layoff for up to 24 months without affecting credited service or health care benefits.”<sup>6</sup>

A memorandum from Labor Relations Manager Jerome Jones addressed to employees considering voluntary layoff states:

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<sup>1</sup> Record, p. 23.

<sup>2</sup> Record, p. 1.

<sup>3</sup> Record, p. 125.

<sup>4</sup> Record, p. 70.

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

<sup>6</sup> Record, p. 11.

“If you have more than ten (10) years of service you will be able to remain on layoff for 24 months without impacting credited service, assuming you worked at least 1700 hours during the 2004 calendar year.”<sup>7</sup>

A document dated November 24, 2004, titled, “Benefits Notes Local 239” contains the following paragraph:

“CREDITED SERVICE WHILE ON LAYOFF”

40 Hours of credited service (towards pension) is awarded for each weekly SUBenefit paid.”<sup>8</sup>

Francis elected a voluntary layoff from the JOBS Bank which commenced on May 31, 2005. He returned to active status as a JOBS Bank employee on December 9, 2005. On January 9, 2006, Francis returned to layoff status and continued on layoff until July 23, 2007. After that, he remained in the JOBS Bank until it was closed on January 7, 2008. After the JOBS Bank closed, he was placed on protected status until September 2008, when he accepted transfer to General Motors Service Parts Operation in Chicago, Illinois.<sup>9</sup>

In 2007, Francis discovered that he had not received credited service under GM’s Hourly Rate Employees Pension Plan for the entire period of his layoff. Francis wrote to the GM Benefits and Service Center on June 25, 2007, in an effort to correct this problem. His letter states that employees at the Baltimore Assembly Plant were offered several special programs when the plant closed. His letter continues:

“One of those programs included a special layoff program. This layoff program included, but not limited to, a full SUB payment and no requirement to file for unemployment in my state, full credited corporate service, 6 month layoff periods and so on. After discussions with the union representatives regarding this problem, it seems my layoff has been miscoded and doesn’t include the special provisions under the terms of the Baltimore plant closing layoff program.”<sup>10</sup>

The GM Benefits and Service Center responded to Francis’s inquiry on August 6, 2007. The letter states:

“With respect to the submission of your Request for Additional Credited Service Form, it has been determined that as of 08/06/2007, your credited service remains unchanged at 29.1 years.

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<sup>7</sup> Record, p. 12.

<sup>8</sup> Record, p. 14.

<sup>9</sup> Record, p. 155.

<sup>10</sup> Record, p. 23.

Unfortunately, we were unable to obtain any official documentation of the aforementioned 'special programs' offered to employees who were laid off from the Baltimore Assembly Plant due to the plant's closing. However, it has been confirmed that you have in fact received the full year of credited service in 2005, which includes service while on layoff.

If you still feel you are entitled to additional credited service, please provide official documentation to substantiate your claims, so that we may make any necessary adjustments to your credited service records."<sup>11</sup>

Francis continued to pursue his claim for credited service for the period of his layoff in 2006 and the beginning of 2007. In addition, Local 239 Shop Chairperson Garry Warble wrote to the GM Benefits and Service Center on Francis's behalf on October 25, 2007. Warble's letter states:

"The problem appears to be when Mr. Francis was on VOLUNTARY LAYOFF status on and off between 2005 and 2007. The agreement between GM Corporation and the UAW was that no employee would lose any seniority or benefits while being on Voluntary Layoff. This agreement was made by GM Manager Labor Relations Jerome Jones. Enclosed is a copy of the plant posting for any employee opting for the Voluntary Layoff. Any questions concerning this posting, please contact Assistant Jobs Bank Administrator Bill Bartenfelder at 410-631-3061. I hope this letter clears up any misunderstandings."<sup>12</sup>

Warble attached to his letter a copy of Manager Jones's memorandum addressed to employees considering layoff. On November 7, 2007, the GM Benefits and Service Center notified Francis that his credited service as of that date remained unchanged at 30.1 years.<sup>13</sup> The "Credited Service Audit Worksheet" attached to this letter shows 0.1 year credited service for the period from January 9, 2006 through December 31, 2006. The worksheet describes Francis's status during this period as "Leave of Absence – Layoff to End of Year."<sup>14</sup>

On November 12, 2007, Chairperson Warble faxed information regarding Francis's claim for credited service to the Local 239 Benefits Representative Jimmy Streets. Warble explained Francis's problem on his fax cover sheet as follows:

"Jimmy, Mr. Robert Francis applied for additional credited service and was denied as of October 2007. Bob was credited for 0.1 for the year 2006 and was credited with 0 credits for 2007 through August 6, 2007. Bob's

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<sup>11</sup> Record, p. 24.

<sup>12</sup> Record, p. 28.

<sup>13</sup> Record, p. 32.

<sup>14</sup> Record, p. 33.

S/S # is XXX-XX-XXXX and his reference # is W0109934-28JUN07. Jim, it appeared that since Bob Francis took the Layoff, he has been denied his credited service from the Truck Plant. What is the next step in clearing up Mr. Francis's correct credited service?"<sup>15</sup>

Robert Francis also sent a fax to Benefits Representative Streets on March 6, 2008, and included copies of the documents that were distributed to employees of the Baltimore Assembly Plant stating that they could remain on layoff for up to 24 months without affecting their credited service.<sup>16</sup>

On March 18, 2008, Francis sent an email to Chairperson Warble describing a response he had received from the GM Benefits Center regarding his claim for credited service. The email states:

"I just had a phone conversation with the GM Benefit Center today and **finally** found out the official results of my inquiry on loss of credited service. They told me that the **Voluntary Layoff Program** negotiated by Local 239 and Baltimore's management **is not a valid agreement** since it was not approved by the National Parties (GM and UAW International). **All conditions** under this local agreement, and any other, are instead subject to the National Contract, since pre-approval and final approval was not given by the National Parties to authorize this program. Therefore, GM Benefits Center is relying on the National Contract to implement any terms they need to with any non-approved program negotiated by Local 239 and Baltimore's management."<sup>17</sup>

Francis stated that if Warble had any documentation that the voluntary layoff program was approved by the National Parties, he should forward it to the GM Benefits Center. If, in fact, the program had not received such approval, Francis asked Warble to file a grievance to restore the money and seniority he lost as a result. Francis wrote:

"...As you have mentioned before that benefits are not grievable, this is not now a benefits issue, but a violation of the National Contract where a local contract attempted to supersede the National Contract without approval. Your quick response to this time sensitive issue would be greatly appreciated."<sup>18</sup>

Warble responded to this request on April 3, 2008, as follows:

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<sup>15</sup> Record, p. 34.

<sup>16</sup> Record, p. 51.

<sup>17</sup> Record, p. 55.

<sup>18</sup> Record, p. 55.

“Bob, concerning your credited service, after conferring with the UAW Regional Servicing Representative about your benefits issue, you have the right to the appeal process under Article 33 of the Constitution of the UAW International Union. The 1<sup>st</sup> step of this appeal is to send a letter to the Recording Secretary of UAW Local Union #239, Ms. Jessica Labitue, and requesting a meeting with the Workplace Council and voice your concerns.”<sup>19</sup>

In accordance with this instruction, Francis filed a written appeal with Recording Secretary Labitue on April 21, 2008. Francis stated that he was seeking to recover the damages he incurred as a result of the loss of his credited service. He stated that he was also seeking to discover any official documents in the union’s possession regarding the Voluntary Layoff Program that was offered to employees of the Baltimore Truck Plant in 2005. In an opening statement in support of his appeal, Francis wrote:

“In taking the VLP, one of my concerns was specifically my credited service time. As a GM employee with 28 years of service at the time of the plant’s closing in 2005, I would have absolutely never agreed to, nor would I have taken this program without receiving full credited service. After being assured by all local parties that this was the case, specific language was drawn up and included to address the specific issue of credited service and that there would be no impact for up to 24 months of layoff at one time. Based on these documents provided by GM’s Baltimore Assembly management, and UAW Local 239, I proceeded to apply and take the VLP with the terms I was provided with.”<sup>20</sup>

Francis stated that the loss of his credited service reduced all of his future retirement benefits. He also asserted that the issue prevented him from accepting the 2008 GM Special Attrition Program, because in order to do so he would have had to sign a release of all claims against GM and that would have prevented him from seeking compensation from GM for the loss of his credited service.<sup>21</sup> Francis submitted an estimate of the income he lost which included the SAP bonus equal to \$62,500. Francis estimated his total loss was equal to \$150,090.40. He stated that he was seeking that amount plus reasonable interest.<sup>22</sup>

Francis explained that he had no notice that the Voluntary Layoff Program described in handouts distributed by the company and the local union was not a legitimate option with approval of the National Parties. His appeal states:

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<sup>19</sup> Record, p. 60.

<sup>20</sup> Record, p. 76.

<sup>21</sup> Record, p. 76.

<sup>22</sup> Record, pp. 86-88.

“I was assigned to the JOBS Bank after a negotiated agreement between UAW Local 239 and Baltimore’s GM Assembly management on approximately May 31, 2005, and then to the VLP option after agreeing to its negotiated, detailed procedures and guidelines (see attachments B & C) that I was provided with. I stayed in the VLP for six months until December 9, 2005. At no time during this layoff was I ever told, or provided with documents by anyone that indicated that my credited service was in jeopardy. On the above date, I returned to the Baltimore JOBS Bank as an active employee reporting to its location at 2400 Broening Highway, Baltimore MD. After being told that one of the requirements of the VLP was a 30 day waiting period, I went back out on the program on approximately January 9, 2006. At this time, I was again never notified in any way of any VLP program changes or new requirements other than those given to me. I stayed in this second layoff, renewing it every six months until I returned to the Baltimore JOBS Bank in July 23, 2007. At no time during this layoff was I ever told or provided with any documents by anyone that indicated that my credited service was being impacted. This second layoff lasted for approximately 18 months.”<sup>23</sup>

In support of his claim for damages, Francis argued that the failure of Local Union 239 to get a written memorandum of the Voluntary Layoff Program and to obtain the necessary approvals of that memorandum violated Article 19, §1, of the International Constitution.<sup>24</sup> In addition, Francis pointed out that Article 19, §3, requires the local parties to submit any proposed contract or supplement to the Regional Director for his approval.<sup>25</sup> Francis explained that his efforts to have his credited service corrected revealed that no documents concerning the Voluntary Layoff Program existed. Francis stated his position as follows:

“...It does not matter to me if this omission was by mistake, error, or deliberate action. The results are still the same in causing an injured party, me, as the direct consequence of not having any official documentation as required in the UAW Constitution and the GM-UAW

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<sup>23</sup> Record, p. 70.

<sup>24</sup> Article 19, §1 of the UAW Constitution provides, in pertinent part, as follows:

“...Whenever a local union or a unit of an amalgamated local union becomes a party to an agreement on wages, hours, or working conditions, it shall cause such agreement to be reduced to writing and properly signed by the authorized representatives of all the parties to the agreement.”

<sup>25</sup> The relevant language of Article 19, §3, states:

“...Should the proposed contract or supplement be approved by a majority vote of the local union or unit members so participating, it shall be referred to the Regional Director for her/his recommendation to the International Executive Board for its approval or rejection. In case the Regional Board member recommends approval, the contract becomes operative until the final action is taken by the International Executive Board.”

National Contract as referenced above and provided and submitted to GMBC or myself. UAW Local 239 is charged with refusal or failure to act in enforcing and/or following the UAW Constitution, Article 37, §7.”<sup>26</sup>

Francis asserted that Local Shop Chairperson Warble and Local 239 Benefits Representative Streets had a fiduciary responsibility to the members of Local Union 239 to ensure that the Constitution was followed with respect to local agreements affecting wages and benefits.<sup>27</sup>

On April 28, 2008, Representative Streets filed an appeal on Francis’s behalf with Darrell Shepard of the UAW General Motors Department protesting the calculation of his credited service. Streets reported that the employees were told by management that they could stay on layoff for up to 24 months without affecting their credited service. Streets’s letter states:

“He took the ‘voluntary layoff’ on May 31, 2005, returned December 5, 2005, then went back on layoff status January 9, 2006, returning July 23, 2007. Management failed to inform Mr. Francis when he returned that he had to stay in the JOBS Bank for at least 170 or have 170 compensated hours to be able to use his 1530 ‘bank hours’ which would have given him a full year of credited service. The Labor Relations Manager plus the Personnel Director at the GMVM Baltimore plant implied that they could come back into the JOBS Bank after a minimum layoff of six months and then take the ‘voluntary layoff’ again and this would not have an impact on credited service or health care benefits.”<sup>28</sup>

Streets stated that Francis was given the wrong information by management which caused him to lose 0.9 year of his credited service for 2006.

Shop Chairperson Garry Warble also filed an appeal for Francis seeking to have his credited service for 2006 restored. The appeal was addressed to Mr. Bruce Smith of North America Labor Relations WFG. Warble wrote:

“The reason for this communication is that one of our members, Robert Francis, XXX-XX-XXXX, has lost accredited service for the year of 2006. The reason is because GM Benefits refuses to acknowledge that there was any type of special agreement concerning voluntary layoff between

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<sup>26</sup> Record p. 48. Article 37, §7, of the UAW Constitution states as follows:

“No local union or other subordinate body, and no officer, agent, representative or member thereof, shall have the power or authority to represent, act for, commit or bind the International Union in any matter except upon express authority having been granted therefore in writing by the International Executive Board or the International President.”

<sup>27</sup> Record, p. 84.

<sup>28</sup> Record, pp. 98-99.

GM and the UAW. I beg to differ after personally attending meetings with GM Vice President Joseph Spielman, Sondra Huddlestone (Jennie Spring office representative), Jim Shroat – AD out of Solidarity House, Donnie Douglas, International Servicing Representative, and Rick McKiddy, Representative out of Dick Shoemaker’s office.”<sup>29</sup>

Warble asked Smith to intervene and have Francis’s credited service for 2006 restored. Warble explained that this had to be done immediately because the window for accepting the 2008 SAP packages and signing the necessary releases was set to close on May 22, 2008. Warble informed Smith that if Francis’s credited service could not be restored, he would file a grievance because the union felt that management acted in bad faith with respect to the plant closing agreements.<sup>30</sup>

Chairperson Warble informed Francis of the steps he had taken in a letter dated May 2, 2008. In that letter, Warble suggested that this might make Francis’s appeal to the membership unnecessary. He noted that the local executive board would not take any action until they received an answer from the GM National Benefits Center.<sup>31</sup>

Francis wrote to Recording Secretary Labitue on May 6, 2008, and stated that he intended to appear on May 18, 2008, to pursue his appeal in accordance with the steps outlined in Article 33 of the Constitution. Francis disagreed with Chairperson Warble’s conclusion that the appeal to the GM National Benefits Center precluded action on his appeal to the membership. He explained that his complaint was not based solely on a decision of the GM Benefits Center. He pointed out that his appeal concerned the failure of the union representatives involved in the Baltimore plant closing to have their agreements reduced to writing and approved by the National Parties. He charged that this violation of the UAW Constitution resulted in damages to him that went beyond the loss of credited service for 2006.

Chairperson Warble filed Policy Grievance C948892 on May 14, 2008, charging management with providing misleading information to employees of the Baltimore plant when it closed in 2005. The grievance states:

“Union charges MGMT with a willful violation of acting in bad faith, whereas during the GM Baltimore plant closing in 2005, Labor Relations Superintendent Jerome Jones did post & distribute misleading information concerning voluntary layoff with no loss of credited service. Robert Francis, XXX-XX-XXXX did opt for the voluntary layoff and now in 2008 did lose his credited service for 2006. The union demands that GM management honor what they posted in 2005 and make Robert Francis or

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<sup>29</sup> Record, p. 102.

<sup>30</sup> Record, p. 102.

<sup>31</sup> Record, pp. 104-105.

any other affected member whole in all aspects of credited service, including all lost expenses associated with this grievance at once.”<sup>32</sup>

Francis’s summary of the monetary damages he incurred as a result of the loss of his credited service is attached to the policy grievance. On May 22, 2008, the union amended its statement of the grievance to include a specific claim for the \$62,500 signing bonus which Francis lost because he could not sign the necessary release forms without abandoning his claim for credited service for 2006. Management responded to Policy Grievance C948892 that the issues raised were inappropriate for the grievance procedures. Management’s answer states:

“It is management’s position that the charges contained in the instant policy grievance are inappropriate for the grievance procedure and therefore denied. All disputes pertaining to credited service fall outside the purview of the grievance procedure. If Mr. Francis disputes the calculation of his credited service, his proper recourse is to follow the appeal procedure contained in the Pension Plan Supplemental Agreement between GM and the UAW. Accordingly, the instant grievance and demands contained therein are denied.”<sup>33</sup>

Meanwhile, Francis’s appeal was presented to the Local 239 Executive Board at a meeting on May 18, 2008. Chairperson Warble advised the executive board that the union could not do anything about Francis’s complaint until they received an answer to his appeal to the GM Benefits Center. Francis appealed the local executive board’s decision not to address the merits of his appeal to the International Executive Board (IEB) on June 10, 2008. In his appeal to the IEB, Francis charged that his union representatives violated their duty of fair representation when they failed to have agreements made in connection with the closure of the Baltimore plant put in writing, approved, and signed. Francis stated that he had received conflicting information from Chairperson Warble and Representative Streets regarding the status of his appeal to the General Motors Benefit Center, but in any event he stated that he had filed several appeals with the General Motors Benefits Center and all had been rejected based on the lack of officially signed documents describing the Voluntary Layoff Program offered during the closing of the Baltimore Assembly Plant.<sup>34</sup>

Acting on behalf of President Gettelfinger, Bob Kinkade and John Rucker conducted a hearing on Francis’s appeal on March 18, 2009. Robert Francis presented a written brief in support of his appeal at this hearing.<sup>35</sup> Francis stated that despite the promises made to employees when the Baltimore Assembly Plant closed, no valid contract was written regarding the Voluntary Layoff Procedure. Francis asserted that

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<sup>32</sup> Record, p. 111.

<sup>33</sup> Record, p. 129.

<sup>34</sup> Record, pp. 132-141.

<sup>35</sup> Record, pp. 153-162.

the local union's expectation that GM would honor an unauthorized, non-binding, and invalid understanding was unrealistic. Without a valid, enforceable contract, Francis pointed out that any grievance or appeal to the GMBC would be fruitless. Francis argued that the local union representatives should be responsible for the losses he suffered as a result of their misrepresentation of the Voluntary Layoff Procedure.

Hearing officers Kinkade and Rucker prepared a report to the IEB based on Francis's written statement and testimony given at the hearing on his appeal. The hearing officers observed that the crux of Francis's appeal was that the Baltimore Plant closing agreement violated Article 19, §1 and §3, of the UAW Constitution because it was not approved by the International Union. The hearing officers responded that Document No. 13 of the 2003 UAW-GM National Agreement authorized the National JOBS Committee use of the special programs identified in Appendix K or other attrition programs to deal with plant closings. Document No 13 states:

“Should it be necessary to close a plant constituting a bargaining unit consistent with our past practice, the Corporation will attempt to redeploy employees to other locations and, if necessary, utilize the “Special Programs” identified in Appendix K of the GM-UAW National Agreement or other incentivized attrition programs as agreed to by the National JOBS Committee.”<sup>36</sup>

The hearing officers reported that a Special Attrition Plan for the Baltimore Assembly Plant was signed by the National Parties on April 15, 2005. The Special Attrition Plan contains three retirement options and one option to accept a six month pre-retirement leave. The hearing officers reported that the entire plan was presented to the membership of the Baltimore Plant on April 28, 2005, by representatives of the UAW-GM Department.<sup>37</sup>

The hearing officers reported that they found no evidence of any Constitutional violations or violations of the UAW-GM National Agreement. Their report states:

“The International Union followed proper procedures; a contract was negotiated and taken to the membership for ratification. Plant closings were a part of that contract. Said contract was ratified by the membership, and when it became time for the plant to begin closing, the UAW and General Motors agreed upon how the Special Attrition Plan for Baltimore would work, and it was rolled out (presented) to the GMVM Baltimore Assembly members.”<sup>38</sup>

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<sup>36</sup> Record, p. 179.

<sup>37</sup> Record, pp. 180-181.

<sup>38</sup> Record, p. 182.

The hearing officers found no basis for Francis's claim for damages, and they denied his appeal. The IEB adopted the hearing officers' report as its decision in a letter dated December 21, 2009. Francis appealed the IEB's decision to the Public Review Board (PRB) on January 7, 2010.

We initially considered Francis's appeal on April 30, 2010, and scheduled it for oral argument. A Notice of Hearing was sent to the parties on May 11, 2010. On May 18, Francis forwarded to the PRB a copy of a letter from the GM Benefits and Services Center dated April 22, 2010, which indicated that Francis had received an overpayment of \$12.15 during the first part of 2010 as a result of an error in calculating his monthly benefit. This letter also indicates that Francis's credited service had been adjusted to 33.0 years.<sup>39</sup> Francis asked the PRB to request the IEB to produce any documents related to the recalculation of his credited service. He stated that he retired on January 1, 2010 with 32.1 years of credited service. He commented:

"I have not received any official documentation from GM or the UAW regarding this unexpected change to 33.0 years of credited service. Without any officially approved National Party documents, the possibility that this change would be again reversed after this case is finalized is possible."<sup>40</sup>

## ARGUMENT

### **A. Robert Thomas Francis:**

When the Baltimore Plant closed in 2005, I was not yet eligible to participate in the Special Attrition Plan being offered at that time. However, I was close to retirement eligibility. I had 28 years of service with GM. I was very concerned, therefore, about the effect that any of the available options would have on my credited service. During the meetings conducted to describe the terms of the closing agreements, I specifically asked about how the voluntary layoff option would affect credited service.

There are numerous documents in the record describing the Voluntary Layoff Procedure. The handouts given to the active employees prior to the closing of the Baltimore Assembly Plant clearly stated that 40 hours of credited service towards a pension benefit would be awarded for each weekly SUB benefit paid. I was paid SUB benefits the entire time that I was on layoff during 2005, 2006, and 2007. During the hearing on my appeal, Hearing Officer Bob Kinkade asked if there were any signed locally negotiated agreements applicable to the Baltimore Plant's closing. Shop Chairperson Garry Warble told the hearing officers that he had contacted the former personnel director for the plant, Joya L. Shepard, and she informed him that the agreement to provide the Voluntary Layoff Procedure was never signed. As a result, the

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<sup>39</sup> Record, p. 246.

<sup>40</sup> Record, p. 244.

GM Benefits and Service Center ruled that this locally negotiated agreement was unenforceable.

The report of the IEB suggests that I claimed that the National Parties had not approved the closing of the Baltimore plant. I have never made any such claim. The accurate statement is that the International Union and Local 239 did not present the Baltimore Assembly Plant's separate, locally negotiated agreement to the National Parties for their approval and signatures. The International Union and the local failed to follow the specific Constitutional and UAW-GM Agreement procedures in order to achieve a legally enforceable local agreement. This case is not about whether the International approved the Baltimore Plant closing, the ratification of the National Agreement, or even the way the Special Attrition Plan was rolled out by the UAW-GM Department. This case is about the negligence of the local and International representatives in failing to have our local agreements approved and the damages I incurred as a result of that negligence.

By the time that I filed my appeal with Local Union 239 in May 2008, the GM Benefits Center reported that I had 30.6 years of credited service and would be eligible for a benefit of \$2,307.24 per month upon retirement. Based on my seniority date of February 3, 1977, I should actually have been credited with 31.5 years of service and been entitled to a monthly pension benefit of \$2,374.97 per month. In addition, I wanted to take advantage of the 2008 Special Attrition Program (SAP) retirement bonus of \$62,500. I could not take advantage of the SAP in 2008, however, because in order to do so I would have had to sign a release discharging GM from any claims related to my employment. If I had done that, I could not thereafter pursue the 0.9 year credited service that I was due. Instead, I accepted a transfer to Chicago, and continued in active status until I could retire with my full pension benefit.

In addition, the documents distributed to employees at the time of the plant closing stated that employees electing the Voluntary Layoff Procedure (VLP) would receive 95 percent of their pay from the SUB Fund. The pay I received from the SUB was closer to 65 percent of my regular wage. My statement of damages includes the difference between what we were promised and what I was paid during the years 2005, 2006 and 2007.

President Gettelfinger's letter in response to my appeal asserts that the company was free, with the union's consent, to offer options to employees of the Baltimore Assembly Plant in addition to those provided in the National Agreement. This is clearly wrong. Article 19, §1, as well as previous PRB decisions, provide that unwritten agreements are not enforceable. In *Strohmeier and Spain and Lilak and Germ v. UAW General Motors Department*, PRB Case Nos. 1434 and 1439 (2003), the PRB ruled that an unsigned agreement could not alter the National Agreement and that such an agreement would be of no force or effect.<sup>41</sup> The GM Benefits Center has already

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<sup>41</sup> PRB Case Nos. 1434 and 1439, at p. 20.

determined that the documents describing the voluntary layoff option and its effect on credited service were not official agreements and therefore, had no force or effect. Despite this ruling, the International Union claims that this was a legitimate option offered in addition to the JOBS Bank Program.

President Gettelfinger suggests that if the voluntary layoff option was improper, I should have known that and raised the issue in 2005. The International Union's assumption that I should have known the documents given to me in 2005 would be declared unofficial in 2007 is perplexing. I could not possibly have foreseen this issue arising two years in the future. The International Union is also wrong to assert that this is strictly a benefits appeal. This appeal is the direct result of losses I incurred because of the union's distribution of *ad hoc* or unofficial documents during the 2005 Baltimore Assembly Plant closing. The International Union asserts that I am charged with knowledge of my own contract. It is impossible to be charged with knowledge of a contract that was never reduced to writing or submitted by the local union to the National Parties for approval.

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

Appellant's claim for damages is based on his theory that the Voluntary Layoff Option modified or superseded the National Agreement and therefore should have been reduced to writing and approved by the National Parties. He states that his acceptance of the unapproved Voluntary Layoff Option caused him to lose credited service. Appellant's claim that the layoff option modified the National Agreement is incorrect. The Voluntary Layoff Option described in the handouts given to employees of the Baltimore Assembly Plant did not modify the National Agreement or the UAW-GM Supplemental Agreement covering employee pensions. We understand that the GM Benefits and Service Center initially informed Francis that the Voluntary Layoff Procedure was an unauthorized and therefore unenforceable option. General Motors contracted out administration of the GM Benefits and Center to Fidelity Investments. The union has raised numerous complaints about answers provided to employees by this vendor. The representation made to Francis was simply not an accurate description of the situation.

This Voluntary Layoff Option allowed employees to take a layoff instead of being assigned to the JOBS Bank. Employees who accepted this voluntary layoff received a weekly benefit from the SUB Fund equal to 95 percent of their take home pay. The development and implementation of this program was within the authority of the Joint Committee established pursuant to Appendix K of the UAW-GM National Agreement to administer the JOBS Program. Appendix K establishes a maximum cost to the corporation for maintaining the JOBS Program. One of the responsibilities of the National JOBS Committee is to monitor financial charges against the JOBS Bank expense for the year in order to avoid reaching the maximum liability cap. The program to pay a full SUB benefit to employees opting for a voluntary layoff reduced charges against the maximum funding liability for the JOBS Program by 30 percent per employee, even without any offset for unemployment compensation because the State

of Maryland did not regard the voluntary layoff as unemployment. The program also provided a benefit to the employee, because an employee accepting voluntary layoff was relieved of the obligation to report to the JOBS Bank on a daily basis. The payment from the SUB Fund was slightly less than that paid to employees in the JOBS Bank, but the employee avoided the time and expense involved in commuting to work. Francis, who had a long commute to the plant, actually came out ahead financially. The National JOBS Committee is always looking for ways to employ the SUB Fund to avoid reaching the maximum funding liability for the JOBS Program.

Although the Joint JOBS Committee had full authority to put this program in place, it would never have happened without some kind of documentation. Any program connected to a plant closing would have been reduced to writing and submitted to the UAW-GM Department for approval. Richard Shoemaker was Regional Director of the UAW General Motors Department during this period and he closely monitored programs of this type. Unfortunately, we have been unable to locate the official documents prepared by the JOBS Bank Committee describing the Voluntary Layoff Procedure. Members of President Gettelfinger's staff contacted the UAW-General Motors Department while this appeal was pending to try to locate the approved description of the Voluntary Layoff Procedure. No official documents describing the program could be located. The service representative for this local was no longer employed by the UAW at the time.

The document in the record describing the Voluntary Layoff Procedure under the heading "Benefits Notes Local 239: 11/24/2004," was not produced by the International Union or Local Union 239. We do not know who put this document together. Nevertheless, Francis received SUB benefits while he was on layoff strictly in accordance with the Voluntary Layoff Procedure described in this handout. The handout states that the employee will receive 95 percent of take home pay; that would amount to about 65 percent of the employee's gross wage. Francis's calculations in his statement of damages are based on 95 percent of his gross wage rather than his take home pay.

Francis's loss of credited service was also not the result of his reliance on any of these handouts. He did not lose his credited service because he elected to use the Voluntary Layoff Procedure. He lost his credited service because he returned to active status at the end of 2005 in order to receive holiday pay for the Christmas holiday. He then returned to layoff in early 2006. Under the UAW-GM Supplemental Pension Plan, members on layoff may receive full credited service for the period of layoff if they are active for 170 hours in the year that they are laid off. Francis did not have 170 active hours in 2006 when he returned to layoff on January 9, 2006, so he did not receive a year of credited service for that year. As an employee who had ten or more years of service at the time of his layoff, Francis would have received a full year of credited service for 2006 if he had remained active for 170 hours in 2006 prior to voluntarily returning to layoff status. Appellant's injury was due to his own misunderstanding of the workings of the Pension Plan. Nothing in the handouts distributed in connection with the plant closure stated that an employee could return to active status and then resume

the voluntary layoff. The way the program was described in the handouts is consistent with the operation of the UAW-GM Supplemental Pension Plan Agreement. There were approximately 700 members in the unit and about 160 took the layoff option. Only Francis came back for the Christmas bonus. Everyone else understood the rules. If Francis had any concern about his credited service he should have checked with the GM Pension Benefit and Service Center before returning to active status at the end of 2005.

In any event, Thomas could have taken the SAP in 2008. Even though he claimed he was short 0.9 year of credited service, he still had 30 years. He could have retired. Basically, the 0.9 year he lost would have translated into a reduction of \$48.65 per month at the time of his retirement. Based on his life expectancy, the value of his entire pension benefit would have been reduced by a total of \$9,535.40. The argument that the 0.9 year of credited service was more important than participating in the SAP Program is just not reasonable. In addition, if Francis had retired on January 1, 2008, he would not have received any relocation money for moving to Chicago and he would have been receiving a monthly pension benefit for all of 2008 and 2009 instead of the benefits and pay he has received as an active employee. The two additional years of service he earned in 2008 and 2009 increased his basic pension benefit by more than \$100.00 per month.

Finally, even though the SAP release form required Francis to waive any claims against GM, the UAW-GM Department can always address an error in the calculation of an employee's pension benefit. In this case, the International Union was successful in negotiating a restoration of the 0.9 year of credited service that Francis claimed he was due for 2006, so there has been no loss of pension benefits.

**C. Rebuttal by Robert Thomas Francis:**

I could not take advantage of the SAP bonus in 2008, because I could not be certain that any of the information I was receiving from the GM Pension and Benefits Center was correct. The documents that I had relied on were declared unofficial and invalid. No other explanation was given for the rulings issued by the Benefits Center. When I originally inquired about my credited service, it was 1.7 year less than it should have been. That was changed to .9 without any explanation. The letter I received on November 7, 2007, states that my credited service remains unchanged at 30.1 years. Just a week before that, I received a letter stating that my credited service remained unchanged at 29.1 years. There was no way I could be certain that the calculation would not be changed in the future. There was no official program I could point to in order to challenge these rulings. For this reason, I was unwilling to sign the release forms necessary to participate in the SAP program in 2008. I did not know that the UAW-GM Department could pursue my claim for credited service even after I signed the release form. I did not know that they were in fact doing so even after I received the letter dated April 22, 2010, restoring my credited service.

I did not consider the actuarial value of the 0.9 year of credited service in comparison to the SAP bonus in 2008. I just knew that I had lost a portion of my credited service and that would alter my pension benefit throughout my retirement, so it was important to pursue my rights. Although I did earn pay and benefits in 2008 and 2009, I would rather have retired in 2008 and remained at home with my family instead of spending two additional years working in Chicago.

### DISCUSSION

The responses that Francis received from the GM Benefits and Service Center beginning with the letter of August 6, 2007, suggested that the Voluntary Layoff Option was an unofficial, unauthorized, special program. This suggestion was unfortunate and untrue. Administrative Assistant Stokes-Wilson explained during the hearing we conducted on Francis's appeal that the Voluntary Layoff Procedure was never intended to alter the way credited service was calculated under the UAW-GM Supplemental Pension Plan Agreement. As Stokes-Wilson explained, the program was designed by the National JOBS Committee pursuant to authority granted by Appendix K of the National Agreement. It was not a modification of the National Agreement or the UAW-GM Supplemental Pension Plan Agreement, but simply an arrangement that was consistent with those agreements designed to deal with the massive layoff that would result from the closure of the Baltimore Plant. Nevertheless, Stokes-Wilson acknowledged that any such program would have been reduced to writing and submitted to the Regional Director for approval. Stokes-Wilson maintained that there probably was an official document describing the Voluntary Layoff Option that was submitted to and approved by Director Shoemaker, but that this document has been lost.

At the same time, the documents that Francis relied on when making his decision to accept the Voluntary Layoff Option contain some errors and omissions. The most glaring omission is the failure of any of these bulletins to advise employees accepting a voluntary layoff that they should not return to active service. Manager Jerome Jones's posting indicated that an employee with more than ten years of credited service who worked at least 1700 hours during the 2004 calendar year could remain on layoff for 24 months with no loss of credited service. That turned out not to be an accurate description of the way the UAW-GM Supplemental Pension Plan works. The rules for calculating credited service are described in Article III of the Pension Plan Agreement. An employee is required to work 1700 hours in any calendar year in order to receive a full year of credited service.<sup>42</sup> The Plan does not explicitly state that an employee with 10 years of seniority can remain on layoff for 24 months without affecting his credited

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<sup>42</sup> The rules for calculating credited service are described in Article 11 of the Pension Plan Agreement. Article III, §1(a)(1), provides, in pertinent part, as follows:

"...Any calendar year in which the employee has 1700 or more compensated hours shall be counted a full calendar year. Where the employee's total hours compensated during a calendar year are less than 1700 hours, a proportionate credit shall be given to the nearest 1/10 of a year."

service. It describes circumstances in which an employee with 10 years of seniority can use up to a maximum of 1700 “bank hours” towards his year of credited service if his layoff continues into a second year. The reference to 24 months of layoff was apparently someone’s attempt to paraphrase the complex language of Article III of the Pension Plan without reference to the “bank hours” used in the Plan’s method of determining credited service. This paraphrase fails to mention the fact that returning to active service alters the employee’s entitlement to use “bank hours.”

Francis’s appeal to the IEB was based on his belief that the Voluntary Layoff Option had not been approved by the National Parties. He argued that this omission violated Article 19, §§1 and 3, of the UAW Constitution, and that he suffered economic losses as a direct result of this violation. Alternatively, Francis maintained that if the Voluntary Layoff Option was approved by the National Parties, then he was entitled to have his credited service restored and receive compensation as outlined in the handouts he received. Francis has been seeking evidence of the International Union’s involvement in creating the Voluntary Layoff Option from the time he first learned that he had not received credited service for the period of his layoff in 2006 and 2007. Francis was still pursuing this line of inquiry in his appeal to this Board. In April 2010, Francis submitted a series of motions to the PRB seeking a further investigation into the involvement of International Representatives in negotiating the options presented to employees when the Baltimore Plant closed.<sup>43</sup> He pointed to the fact that representatives of the National Parties were on the scene assisting the local parties in developing these programs for employees of the Baltimore Plant. He argued that this participation by the International Union in making arrangements for the plant closure justified the employees’ assumption that all options would be properly reduced to writing and signed in accordance with the requirements of the Constitution and the National Agreement. In one of his motions, he wrote:

“...These records, documents and/or agreements would show that the UAW Local 239 in conjunction with or assisted by the National Parties jointly developed these options. Yet, the case record clearly states that GM Co./Corporation denied them by declaring them unofficial after being sent copies from both myself and Shop Chairman Garry Warble. ...”<sup>44</sup>

We remain perplexed by the IEB’s failure to explain the National Parties’ involvement in developing the Voluntary Layoff Option and the reason why no documents could be found to establish that the program had been submitted to the Regional Director for approval. The IEB’s decision reports the roll out of the Special Attrition Plan dated April 15, 2005, which was signed by the National Parties, but its report does not even mention the Voluntary Layoff Procedure described in the handouts that are part of this record. When he filed his appeal to the PRB, Francis still believed that his loss of credited service resulted from the parties’ failure to obtain approval of the

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<sup>43</sup> Record, pp. 227-236.

<sup>44</sup> Record, p. 235.

Voluntary Layoff Procedure. That belief was understandable based on the communications that Francis had received from the GM Pension Benefits and Service Center. Shop Chairperson Warble also shared this belief. The Company's argument that Francis was required to complete 170 compensated hours after returning to the JOBS Bank in 2006 was not clearly articulated until 2008 in response to the grievance filed by Benefits Representative Streets. The IEB's decision does not address Francis's primary argument that the 170 hour requirement is not mentioned in the documents describing the Voluntary Layoff Procedure.

During our hearing, Stokes-Wilson argued that Francis's loss of credited service resulted from his misunderstanding of the contract rather than his acceptance of the Voluntary Layoff Procedure. She maintained that he should have inquired about the effect of his returning to the JOBS Bank in order to collect holiday pay at the end of 2005. Francis did inquire, however. He participated in the small work groups conducted in anticipation of the closure of the Baltimore Plant. He has maintained throughout this appeal that he was especially concerned about the effect a voluntary layoff would have on his credited service because he was approaching retirement eligibility. When Francis returned to the JOBS Bank in 2005, he quite legitimately believed that any question about the effect of his continuing layoff on his credited service had been asked and answered in the handouts distributed to employees prior to the plant closing. Those documents do suggest that Francis could be laid off for up to 24 months without affecting his credited service. We find that Francis's reliance on those documents was justified. We must now consider whether Francis is entitled to any compensation as a result of his reliance on those documents.

There are three elements to the damages claimed by Francis in this appeal. He claims the difference between the weekly SUB benefit he expected to receive after he agreed to be laid off from the Baltimore Assembly Plant and the weekly benefit he actually received while he was laid off. When Francis commenced his appeal, he was also seeking 0.9 year of credited service under the UAW-GM Supplemental Pension Plan. Finally, Francis argued that he lost the \$62,500 bonus he would have received if he had retired in 2008 under the Special Attrition Plan being offered by GM at that time. Francis maintained that he could not sign the releases required by the SAP agreement until he resolved the dispute regarding his credited service.

The perceived discrepancy in weekly SUB benefits due to employees who accepted the Voluntary Layoff Option was resolved during the hearing we conducted on Francis's appeal. Testimony presented at the hearing established that Francis received income from the SUB Fund during the period from 2005 through 2008 that was consistent with the Voluntary Layoff Procedure and with the information distributed to the employees in connection with that option. The handout titled, "Benefit Notes Local 239" clearly stated that the SUB Benefit would be 95 percent of after-tax pay, not of gross pay. The International Union has now negotiated a restoration of Francis's 0.9 year of credited service, so this element of Francis's claim for damages has also been resolved. There remains only Francis's claim for the lost opportunity to participate in the SAP program in 2008.

Although the 0.9 year of credited service that Francis had lost at this point was worth considerably less than the retirement incentive payment from an actuarial standpoint, we do not regard his reluctance to sign the 2008 Special Attrition Release Form as unreasonable. Francis could not be certain of the actuarial value of his missing credited service. At this point, the GM Benefits and Service Center had provided misleading and inconsistent responses to Francis's inquiries about his credited service suggesting that there was something irregular about the Voluntary Layoff Procedure itself. Francis was legitimately concerned that his entire pension benefit might be adversely affected by the lengthy layoff he agreed to from May 2005 through July 2007, if the Voluntary Layoff Procedure were found to be invalid. It was understandable that he did not want to release GM from any liability regarding his pension until this dispute was resolved.

Nevertheless, we do not see that Francis has been harmed economically as a result of that decision. In fact, the situation ultimately worked to his advantage. The loss of one opportunity opened the door to a more profitable one. Francis was able to transfer to Chicago where he continued to earn his full wage as well as additional credited service. As a result of his additional years of compensated employment, Francis now enjoys a greater pension benefit than he would have received if he had retired in 2008. On the whole, the union handled Francis's dispute with the Pension Benefits and Service Center over his credited service very well. Chairperson Warble vigorously pursued a restoration of Francis's credited service by every means available at the local level. The International Union was eventually successful in having the service restored. We find, therefore, that Francis is not entitled to any further remedy.