

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

APPEAL OF:

ALVIN CARTHON, Member
LOCAL UNION 2297, UAW
REGION 5
(Shreveport, Louisiana),

Appellant

-vs-

CASE NO. 1653

UAW INTERNATIONAL PRESIDENT
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued October 19, 2010)

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

Alvin Carthon argues that he did not engage in financial misconduct within the meaning of Article 48, §5(a), of the UAW Constitution so that his failure to make restitution of alleged improper payments did not warrant the imposition of a suspension on his right to seek or hold any union office pursuant to Article 48, §5(c) of the Constitution. Carthon now asserts that the suspension imposed by President Gettelfinger on October 23, 2009, automatically lifted on March 4, 2010, in accordance with Article 48, §5(e), of the Constitution because the International Executive Board (IEB) failed to render a decision in response to his appeal of the suspension within 120 days.

FACTS

UAW International Auditors Larry Fluke and Linda Mitchell conducted an audit of the books and records of Local Union 2297 for the period from January 1, 2007, through February 29, 2008, and presented the results of the audit to the local union on June 12,

2009. In a letter addressed to Local Union President Joey Donald, the auditors described a number of problems in connection with the local union's books and records that were discovered during the audit. In the first place, the letter states that minutes for membership and executive board meetings were missing, so that it was not possible to verify if proper approvals were received for expenditures from the local union's treasury.¹ The auditors made the following statement with regard to the missing meeting minutes:

"Minutes are required for accurate records of the actions and motions approved or not approved by the membership. This local union has spent monies out of the treasury for lost time, travel expenses, furniture and equipment, supplies, etc. in which the auditors cannot determine if they were proper expenditures. The past officers told the auditors that the minutes were at the hall, and the new officers said they were never turned over to them."²

In addition, the auditors reported that several months of checks were missing at the time of the audit because the bank's processing center in New Orleans had been damaged by Hurricane Katrina. For these reasons, the auditors stated that their findings for the period were "qualified."³

The auditors identified a number of irregular practices that Local Union 2297 had engaged in during the period of the audit. Alvin Carthon was president of the local union during a portion of this period and the auditors concluded that he received local union funds improperly as a result of these practices. The auditors reported that the local union used gift cards to purchase office supplies from Walmart and Office Depot. They advised the local that all expenditures should pass through its commercial account in order to maintain a record of each individual expense. The audit report states:

"Gift cards are not to be used to purchase building or office supplies. The local must use the commercial account for all expenditures. During the audit period, the local union purchased gift cards from Walmart and Office Depot. The purchase of the cards was not treated as a transfer of assets or shown on the Cash and Fund Summary. The auditors also recapped the credits to the gift cards through the local union's commercial account and debits against the cards through the purchase receipts. The recap of the cards reveals a shortage totaling \$190.25, as shown on Schedules #2 and #3."⁴

¹ Record, p. 98

² Record, p. 101.

³ Record, p. 98.

⁴ Record, p. 101.

A schedule attached to the audit indicates that two gift cards issued to Alvin Carthon could not be located and that there were no receipts to account for the entire amount of the gift cards. Carthon was therefore charged with having received the balance remaining on the gift cards improperly. The total amount charged to Alvin Carthon for the gift cards was \$132.98.⁵

The auditors reported that the local union paid members' mileage expenses in excess of that authorized by the local union bylaws. The auditors explained that *UAW Administrative Letter*, Volume No. 52, Letter No. 1, dated December 17, 2004, established a mileage reimbursement rate of 28 cents per mile. The *Administrative Letter* permits local unions to increase this rate by an amendment to their bylaws. The *Administrative Letter* states:

"By unanimous vote of the International Executive Board, the UAW has adopted a policy that the UAW-approved mileage reimbursement rate will automatically track the IRS approved rate. This will allow local unions to increase their reimbursement rate—by amendment to their bylaws—to more closely reflect the actual cost of travel.

Under this policy, local union bylaws may establish mileage reimbursement rates at or below the IRS approved rate. Local unions may also provide in their bylaws that their reimbursement rate will track the IRS approved rate (or a specified amount below the IRS rate), in order to avoid the need for ongoing amendments."⁶

The auditors stated that the local used the current IRS approved rate of .405 cents per mile to reimburse its members for mileage expenses, but that they had never adopted an amendment to the bylaws to track the IRS approved rate. Article 12, Section 6 of the local union bylaws provides as follows with respect to travel expenses:

"When authorized by the executive board, general membership, or president, any officer or member of this local on union business pertaining to Section 3 of this Article, shall be allowed coach class transportation to and from the nearest route of their destination, or if by car, the rate that is determined by the local union executive board as the most commonly paid for automobile travel to and from the nearest point of their destination."⁷

The auditors determined that this language did not give the local union authority to track the IRS approved rate for mileage reimbursements. They concluded, therefore, that

⁵ Record, p. 113.

⁶ Record, p. 121.

⁷ Record, p. 181.

mileage reimbursements in excess of 28 cents were overpayments. They reported that Alvin Carthon received mileage overpayments amounting to \$137.81.⁸

Article 12, Section 3 of the local union bylaws authorized the local to pay members who are out of town on union business \$42.00 for daily expenses.⁹ The auditors reported that members received *per diem* expenses in excess of that permitted by the bylaws. The auditors' reports states:

"*Per diem* overpayments were paid to members traveling to conferences, meetings, etc. The officers violated the local's bylaws by paying \$46.00 per overnight stay, instead of complying with the bylaws and paying \$42.00 per overnight stay. The officers are responsible for complying with the local union's bylaws. The members and the amounts they owe the local union are reflected on Schedule #5."¹⁰

Carthon was charged with \$80.00 *per diem* overpayments on Schedule #5.¹¹

The auditors reported that some reimbursements to Carthon for rental car expenses were not in accordance with International Union policy. In other cases there was no receipt for the payment. The audit states:

"International policy on travel expenses is the most economical way of travel. Alvin Carthon twice rented a vehicle in Washington, D. C. for the National CAP Conference and in Detroit, Michigan, for the Special Bargaining Conference. The local union is only responsible for getting the member to the conference and back to the hotel or airport. National CAP Conference was held at the hotel and the Special Bargaining Conference was at Cobo Hall, in both instances a shuttle bus was provided. (See Schedule #10) Alvin Carthon also rented a vehicle to travel to Region 5 Summer School. The rental receipt shows a basic cost of the rental vehicle and additional upgrades. The local is not responsible for the upgrades. Mr. Carthon turned in a receipt and was reimbursed for rental cars totaling \$946.18. There was no receipt attached to the voucher, and the auditors could not locate any receipt. It is against International Union policy as well as the Department of Labor rules to issue a check without proper documentation. (See Document #6)"¹²

⁸ Record, p. 115.

⁹ Record, p. 181.

¹⁰ Record, p. 102.

¹¹ Record, p. 116.

¹² Record, p. 102.

Carthon was charged with receiving \$1,582.81 in connection with expenses claimed for rental vehicles.¹³ Carthon was also charged with receiving payments for which no explanation or receipt could be found. Schedule #7 of the auditors' report lists these payments totaling \$2,476.35 and adds the following note:

"The items listed above were paid without a detailed receipt or proof of purchase for the amount of reimbursement."¹⁴

In addition to these specific charges, the auditors reported that some items of furniture and equipment were missing from the local union. Apparently these items were transferred to Local Union 2297 from Local Union 1532 when that local closed. The auditors' report gives the following description of the situation:

"...Former President Alvin Carthon took the furniture and equipment and stated that most of it was trashed. He donated some to a church and Local 2297 kept filing cabinets. The action taken by Mr. Carthon was not the proper way of handling this donated furniture and equipment. The trustees, under Article 40 of the UAW International Constitution have general supervision of all assets. If furniture and equipment is to be donated or thrown away, there should be membership action and recorded in the local union's minutes. Then the financial secretary should carry the donation of these items and the discarded items on the LM-2. The president simply does not have the authority to make these decisions on his own when it comes to local union assets."¹⁵

The items in question are listed on Schedule #12 of the auditors' report.¹⁶ The auditors also informed the local union officers that their lost time vouchers were insufficiently specific. They noted that International Union policy prohibits the payment of lost time on the basis of general statements such as president's duties.¹⁷ Finally, the auditors directed the local union to amend the local union bylaws to define the compensation paid to local union officers as required by *Administrative Letter*, Volume 50, Letter No. 3, dated May 30, 3002.¹⁸

UAW Secretary-Treasurer Elizabeth Bunn notified President Gettelfinger of the auditors' findings in a memorandum dated July 10, 2009. She described the findings with respect to Carthon as follows:

¹³ Record, p. 118.

¹⁴ Record, p. 119.

¹⁵ Record, p. 103.

¹⁶ Record, p. 135.

¹⁷ Record, p. 103.

¹⁸ Record, p. 105.

“As a result of an audit of Local 2297, it appears that former president, Alvin Carthon, and former recording secretary and current trustee, Belinda Johnson, have engaged in financial misconduct.

Mr. Carthon received payments and reimbursements from the local that he was not entitled to. These include payments of mileage and *per diem* in excess of the local union bylaws, unsubstantiated payments for vehicle rentals and upgrades, reimbursements for various items not supported by receipts and unaccounted for gift cards with remaining balances. The total amount Mr. Carthon owes is \$4,684.95.”¹⁹

On July 14, 2009, President Gettelfinger notified Carthon of the auditors’ findings and requested reimbursement to the local union. Carthon responded to President Gettelfinger on July 21 by requesting a hearing on the claim. Carthon’s letter states:

“Per your letter dated July 14, 2009, I respectfully request a fair and just hearing regarding the above pursuant to UAW Constitution, Article 48.”²⁰

On August 17, 2009, President Gettelfinger notified Carthon that a hearing had been scheduled for September 1, 2009, pursuant to Article 48, §5(b), of the UAW Constitution to consider the allegations of financial misconduct against him. The notice of hearing indicates that Administrative Assistant Eunice Stokes-Wilson would act as hearing officer.²¹

On September 21, 2009, following the hearing, Stokes-Wilson sent a letter to Alvin Carthon asking him to explain payments made to him based on overtime. Stokes-Wilson stated that a question regarding these payments had surfaced during the hearing she conducted on September 1. Stokes-Wilson asked Carthon to respond to her inquiry within ten days. Her letter states:

“Due to the unanswered questions, President Gettelfinger has waived the Constitutional time frame to afford you an opportunity to offer an explanation for the overtime claimed and paid. Please respond within 10 days after receipt of this letter. However, if additional time is needed, please contact my office with your request.”²²

Attorney Alex J. Washington responded to Stokes-Wilson on Carthon’s behalf on October 2, 2009. Washington explained that the overtime hours claimed were for line time when Carthon worked on the dates listed. Washington stated the payments were

¹⁹ Record, p. 18. The amounts charged by the auditor add up to \$4,409.95. The difference is not explained in this record.

²⁰ Record, p. 21.

²¹ Record, p. 24.

²² Record, p. 33.

made in accordance with the local union's bylaws. He added that the overtime hours had not been discussed during the hearing on September 1, 2009, as asserted by Stokes-Wilson, but had been raised for the first time in her letter of September 21, 2009.²³

On October 23, 2009, President Gettelfinger sent a certified letter to Alvin Carthon informing him that he was no longer eligible to seek or hold any union office. Gettelfinger advised Carthon that the suspension was being imposed pursuant to Article 48, §5(c), of the Constitution. Gettelfinger's letter to Carthon includes the report and recommendations made by Administrative Assistant Stokes-Wilson.²⁴

On November 4, 2009, Alvin Carthon and attorney Alex Washington wrote to Administrative Assistant Stokes-Wilson that Carthon wished to appeal President Gettelfinger's decision dated October 23, 2009. The letter states:

"As per your letter dated 10/23/09, please be advised that Alvin Carthon would like to notify you that he would like to appeal your decision because it is clearly wrong. As a result, Mr. Carthon is asking for an extension of time to supplement this letter with a detailed explanation of the reason for his appeal."²⁵

Washington faxed Carthon's reasons in support of his appeal to President Gettelfinger on November 5.²⁶ The letter indicates that the appeal is being submitted pursuant to Article 48, §5(d), and Article 33, §2, of the Constitution.

In his appeal, Carthon pointed out that most of the charges against him were the result of missing records, but he stated that he had no control over the local's books and records once he was no longer president. He explained that when he took office as president of Local Union 2297 in 2005, the former financial secretary quit, leaving all of the local's financial records in a box by the gate. Carthon reported that he contacted the Regional service representative for advice on how to proceed. Carthon stated that Representative David Dunn put him in touch with Glen Geiman, who was the financial secretary at UAW Local Union 2166. Local 2297 hired Geiman as the local's bookkeeper until they could elect a new financial secretary. After Shequita Hayes was elected financial secretary, the local retained Geiman's services as an advisor. Carthon wrote that the local officers carefully followed Geiman's instructions for recording local union expenses and writing checks. He maintained that the local filed all of the appropriate forms and performed all required audits. Carthon asserted that no

²³ Record, p. 36.

²⁴ Record, pp. 37-49.

²⁵ Record, p. 51.

²⁶ Record, p. 52.

problems were identified with the local union's record keeping during the period that he served as president.²⁷

Carthon also responded to the specific items identified by the audit as being improper. With respect to the *per diem* and mileage payments, Carthon explained that Local 2297 is an amalgamated local which grew from two to twelve units in 2005. The union's expanded area of representation made it necessary for members to travel back and forth between Shreveport, Louisiana, and Marshall, Texas. Carthon explained that Bookkeeper Geiman advised the local to raise the *per diem* and mileage it paid to reimburse executive board members for their expenses. Carthon wrote:

"...Bylaw changes in respect to the payment of mileage and *per diem*, as mentioned previously in my testimony at the hearing 9/1/09, that our bookkeeper when asked what do we do to be paid for mileage, he told us to have membership to make a motion to pay the mileage and *per diem* at the higher rate and that would satisfy the issue of traveling back and forth from Shreveport to Marshall, TX twice a week for their monthly unit meetings at the newly organized General Cable Unit. Bro. Gettelfinger, this was not intended to be any financial misconduct, certainly there was no malice intended by anyone in Local 2297 or our bookkeeper, Glen Geiman. We were trying to get our E-Board members and other officers reimbursed. We did what we were instructed and advised to do by our bookkeeper. ..."²⁸

Carthon reported that Geiman testified during the hearing conducted by Stokes-Wilson that he never issued a check without a receipt. Carthon stated that Geiman pointed out during the hearing that there were staple holes in the vouchers that lacked receipts because the attached receipts had been removed.²⁹ One of the payments that the auditors claimed could not be substantiated by a receipt or proof of purchase was a payment for a laptop computer which Carthon sold to the local union. The local also purchased a software maintenance program to go with the computer. Carthon stated that the membership approved purchase of the computer and the Roberts Custom UAW Accounting Software. Carthon commented:

"...The RCS package I believe that it was about \$400.00 per month, which is today \$550.00 a month, which the local is still using that same laptop 4 years later. Certainly, we can see from this continued expense the local must have approved this computer expenditure in one of our local meetings or someone, in particular a trustee or its chairperson, would have questioned the constant monthly expenses and computer purchase. Without a computer, there was no need for the RCS Software. Brother

²⁷ Record, pp. 53-54.

²⁸ Record, pp. 57-58.

²⁹ Record, p. 54.

Gettelfinger, I did this to help our local only. Now, it's being implied that I personally benefited. This was [not] and never was my intention and certainly no malice on my part. I love my local and want the best for us.”³⁰

Carthon went on to argue that he had established during the hearing conducted by Stokes-Wilson that many of the charges against him were incorrect and they should have been adjusted based on the evidence presented. He reported that his attorney offered to pay any legitimate charges against him at the conclusion of the hearing on September 1, 2009, but that Stokes-Wilson did not accept the offer. His letter concludes:

“...Brother Gettelfinger, I respectfully appeal this matter to the IEB, pursuant to UAW Constitution, Article 48, §5, Article 33, §2, and request that my suspension be lifted and validate my restitution and I'll pay it.”³¹

On November 6, 2009, Administrative Assistant Stokes-Wilson sent a letter to Attorney Alex Washington granting his request for an extension to appeal President Gettelfinger's decision to invoke the provisions of Article 48, §5, of the Constitution.³²

On March 3, 2010, Gettelfinger forwarded his October 23, 2009 letter and Carthon's appeal dated November 4, 2009 to the IEB. He advised the IEB that the letter dated October 23, 2009, would become the decision of the full IEB within 10 days if no objection were raised.³³ On March 16, 2010, Gettelfinger sent a copy of his letter dated October 23, 2009, to Carthon and stated that the IEB had adopted that letter as its decision.³⁴ Carthon appealed the IEB's decision to the Public Review Board (PRB) on March 25, 2010.³⁵

On April 16, 2010, Carthon wrote to PRB Director Barbara Klein and asserted that his suspension should have automatically lifted pursuant to Article 48, §5(e), of the International Constitution when the IEB failed to issue a response to his appeal within 120 days. Carthon argued that Administrative Assistant Stokes-Wilson was denying his right to due process by refusing to inform the membership that he was eligible to run for office.³⁶ The President's office referred Carthon's appeal to the PRB on May 4, 2010.³⁷ On May 24, 2010, Attorney Washington once again requested that the Board notify the

³⁰ Record, p. 55.

³¹ Record, p. 61.

³² Record, p. 68.

³³ Record, p. 69.

³⁴ Record, p. 70.

³⁵ Record, p. 71.

³⁶ Record, p. 73.

³⁷ Record, p. 80.

local union and Eunice Stokes-Wilson that Carthon is eligible for all elections.³⁸ Following our initial consideration of this appeal in July 2010, we asked the International Union to respond to Carthon's argument that his suspension should automatically have lifted on March 4, 2010, based on the language of Article 48, §5(e), because the IEB did not adopt President Gettelfinger's report within 120 days after he appealed the suspension.³⁹ Administrative Assistant Stokes-Wilson responded to this inquiry that the International Union waived the Constitutional time limits on November 6, 2009, in order to give Carthon additional time to respond to the claim related to overtime hours.⁴⁰ Attorney Washington responded to Stokes-Wilson's letter that that the time limits stated in the Constitution are not discretionary or subject to waivers.⁴¹

ARGUMENT

A. Alvin Carthon:

President Gettelfinger's decision states that a recital of the allegations against me and an analysis of the testimony given at the hearing are not necessary. Hearing officer Stokes-Wilson declared me guilty without any material facts to support the allegations against me. This is unfair to me and to the local union. I strongly disagree with all of the allegations of financial misconduct.

My attorney requested that Administrative Assistant Stokes-Wilson recuse herself from hearing my appeal because of her hostility towards me stemming from my appeal in PRB Case No. 1603. She ought to have done so because she also mishandled the evidence in that appeal. During the hearing conducted by Stokes-Wilson, my attorney suggested that we go back to the office and amicably resolve this matter by determining what amounts I actually owed to the local. She did not accept this offer. If I owe money to the local, the International Union should submit a bill to my attorney and I will pay it.

B. International Union, UAW:

At the September 1, 2009 hearing, appellant did not produce any membership meeting minutes, amendments to the Local 2297 bylaws, or other documentation to substantiate the payments to him that were found to be improper by the UAW auditors. Appellant's witnesses merely stated that they were not aware of any financial discrepancies during Carthon's tenure as president. The hearing officer on September 1, 2009, found no credible evidence to support Carthon's suggestion that the officers elected in 2007 had destroyed or tampered with local union records or receipts. In his appeal to the PRB, appellant argues that the hearing officer should have recused

³⁸ Record, p. 86.

³⁹ Record, p. 187.

⁴⁰ Record, p. 188.

⁴¹ Record, p. 192.

herself; that he disagrees with the allegations against him; and that he is now willing to pay the amounts due.

None of appellant's arguments provide a basis for reversing the IEB's decision. He has produced no evidence to refute the findings of the UAW auditors regarding the improper payments. He has produced no evidence of bias or other grounds which would have required the hearing officer to recuse herself. Finally, appellant's offer to repay the amount due is not grounds for reversing the IEB's decision. Under Article 48, §5 of the Constitution, the president may terminate an investigation of financial misconduct where the member repays the local prior to the hearing on the charges against him. Carthon chose not to make reimbursement after receiving President Gettelfinger's letter on July 14, 2009. Appellant waited until he was suspended to tender reimbursement. The President's invocation of Article 48, §5, and his decision to suspend Carthon should be upheld.

C. Rebuttal by Alvin Carthon:

I served Local 2297 as its president until June 2007. The audit of the local union's records was not done until 2009, a year and a half later. I am not responsible for records I no longer controlled. The administration elected in 2007 was hostile to me. When I left office I turned everything over to the new president, Joey Donald, as required by the UAW Constitution. Joey Donald issued keys to all chairpersons. Any one of them could have tampered with, misplaced, or even stolen records and other items. We had several break-ins during this period. We provided hearing officer Stokes-Wilson with a copy of a police report concerning a break in during this period.

In her report, Stokes-Wilson wrote that a detailed recital of the facts is unnecessary. You cannot get to the truth of this matter without looking at the facts. During the entire term I served as president of Local Union 2297, our local was audited every six months and findings were reported to the local membership as required by the UAW Constitution and submitted to the International Union by our Local 2297 trustees. These reports to the International Union could be validated. At the end of the hearing on September 1, 2009, my attorney gave Stokes-Wilson copies of witness statements about our local's financial status during my tenure as president of Local 2297. These witnesses included Recording Secretary Brenda Gaston, who had previously served as chairperson of the local trustees. She never found any financial discrepancies during my term as president. Stokes-Wilson's report does not accurately reflect my testimony given at the hearing on September 1 or that of former Recording Secretary Belinda Johnson, Bookkeeper Glen Geiman, Chairman Larry Hall of the Intier Unit, former Chairman Roderick Mahoney of the Meridian Unit, and my attorney Alex Washington. All witnesses specifically addressed questions concerning the local union's financial records during my term as president and stated that there were no discrepancies. Please request the International Union to produce copies of our six month trustee audits during the period when I was president. The file copies were kept with our Local 2297 financial files maintained by the local trustee and bookkeeper, Glen Geiman. We never moved the trustee reports from Geiman's offices over at UAW Local 2166. We did keep

regular minutes when I was president of the local. The fact that the International was able to recover some of the minutes gives credence to Belinda Johnson's testimony that we did keep regular minutes.

The International Union argues that I did not produce any evidence to refute the findings of the UAW auditors and the IEB regarding the improper payments. That is not true. There was plenty of credible testimony, trustees' statements, and evidence to prove my innocence of the alleged misconduct. The hearing officer simply omitted this from her report to the IEB in order to justify recommending a suspension. She has acted personally and unprofessionally. That was why we requested that she be recused. She previously mishandled evidence and facts in connection with my appeal of the fraudulent election in June 2007. She wrote her report to the IEB in that case in the same way, only presenting one side of the story. There was willful intent by this hearing officer and others to defame me and ruin my career as a UAW officer. I respectfully appeal to the Public Review Board to lift my suspension and restore my good standing in the UAW and my local union.

DISCUSSION

The suspension imposed by President Gettelfinger on October 23, 2009, automatically lifted on March 4, 2010, in accordance with the terms of Article 48, §5(e), of the UAW Constitution. That section provides, in pertinent part, as follows:

“Any appealed suspension shall automatically be lifted unless the International Executive Board has rendered its decision within one hundred twenty (120) days of the day the appealing member commences his/her appeal. ...”

Alvin Carthon notified the International Union of his intent to appeal the suspension on November 4, 2009. That notification was sufficient to trigger the 120 day period specified in Article 48, §5(e). Carthon's attorney faxed his argument in support of the appeal the following day. Attorney Washington may have confused the President's staff by requesting an unnecessary extension of time in which to file an appeal, but the language of Article 48, §5(e), is not permissive. The extension granted to Attorney Washington on November 6, 2009, so that Carthon could respond to the new allegations regarding overtime compensation had no effect on the running of the 120 day period defined in Article 48, §5(e).

We did not inform the local union that Carthon's suspension had lifted when he first made his request on April 16, 2010, because we had not yet received a copy of the record on his appeal from the International President's office and we were not aware of the November 4 appeal. Carthon appealed to the PRB on March 25, 2010. The International Union has not explained why the documents and records pertaining to his case were not forwarded to our office immediately upon receipt of the appeal as required by Article 33, §4(f), of the Constitution. Even more inexplicable, however, is the refusal of Carthon's representative to provide our staff with a copy of his

November 4, 2009, appeal after being requested to do so. Upon receipt of Carthon's request to declare his suspension lifted, PRB Director Klein responded to Carthon that she had received a copy of his appeal to the PRB dated March 24, 2010, but that she had not yet received the record in connection with his appeal from the International Union. Klein asked Carthon if he had appealed the suspension prior to March 24, 2010.⁴² On April 26, 2010, Klein clarified her inquiry in response to a telephone call from Carthon's attorney, Alex Washington. Klein explained that she did not know if there was an appeal prior to the one dated March 24, 2010, which would have triggered the 120 day period described in Article 48, §5(e), of the Constitution.⁴³ When Attorney Washington failed to provide a copy of the November 4, 2009, appeal in response to these inquiries, it appeared to us that no appeal had been filed prior to March 24, 2010, and we so informed Carthon and his attorney.⁴⁴ So, Carthon and his representative must bear some of the fault for the union's delay in recognizing that the suspension imposed on October 23, 2009 had lifted. In any event, the fact that Carthon was declared ineligible to run in recent elections at Local Union 2297 because of his suspension would not be grounds to overturn those elections. Furthermore, any claim for monetary damages based on the lost opportunity to participate in those elections would be entirely speculative.

Carthon has now appealed the IEB's decision of March 16, 2010, affirming President Gettelfinger's decision to suspend him. Although the suspension imposed by that decision has been lifted, the issue of Carthon's financial liability and possible lack of good faith remains unresolved. Carthon should arrange to make restitution to the local union in accordance with the auditors' report pending the outcome of his appeal on that issue. The PRB will decide shortly if a hearing is needed to review the question whether the overpayments to Carthon were the result of good faith error as opposed to financial misconduct.

It is so ordered.

⁴² Record, pp. 75-76.

⁴³ Record, p. 77.

⁴⁴ Record, p. 78.