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

APPEAL OF:

MARK COLLINS, Member
LOCAL UNION 659, UAW
REGION 1C
(Flint, Michigan),

Appellant

-vs- CASE NO. 1664

UAW GENERAL MOTORS DEPARTMENT
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.
/

**DECISION**
(Issued April 3, 2012)

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

Mark Collins argues that the Union mishandled his placement pursuant to Appendix A of the GM-UAW National Agreement and that he is entitled to be placed at GM's plant in Parma, Ohio, and paid a relocation allowance for each of the moves he has made beginning with his transfer to GM's Mansfield plant in 2001.

## FACTS

Mark Collins is a diemaker at the General Motors Flint Metal Center. He was originally hired by General Motors on January 5, 1998, at its plant in Parma, Ohio.[1] On April 21, 1998, Collins submitted an application for area hire requesting placement at GM's plant in Mansfield, Ohio.[2] On February 2, 2001, the Parma Personnel Manager Lynn Cehlar notified Collins's supervisor that Collins was being transferred to Mansfield. Cehlar's note states:

[1] Record, p. 76.

[2] Record, p. 49.

> "Tim,
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> Please tell Mark Collins that he is to report to Mansfield on Monday, 2/5/01. He is to report to hourly employment at 7:00 a.m. Also remind him to turn in all his keys and company property before leaving the plant. He will also have to turn in his plant badge to security."[3]

Collins transferred to Mansfield on February 5, 2001. In his appeal to the PRB, Collins reported that in February 2001, his supervisor told him to turn in his keys and badge because he was starting at GMC-Mansfield the following Monday.[4] After that, according to Collins, he and his committeeperson met with Manager Cehlar to discuss the terms of his transfer. Collins describes the meeting as follows:

> "Thereafter, that same day, then Union Committeeman Andy Kason and I had a meeting with Cehlar. During that meeting, Cehlar told me that if I did not take relocation pay that I would maintain my seniority at GMC-Parma and that if I got laid off from GMC-Mansfield, I could go back to GMC-Parma with my GMC-Parma seniority date. I told her that was what I wanted because of my newer seniority date. I never received anything in writing from Cehlar or anyone else from GMC or the Union in relation to my foregoing relocation pay in exchange for maintaining my seniority at GMC-Parma. However, I was never paid any relocation money when I transferred to GMC-Mansfield. I recall that Kason told me after the meeting with Cehlar that he could not believe I did not take the money because it was around $6,000. Kason never expressed to me during that conversation that he was concerned that I would not be able to return to GMC-Parma."[5]

On May 16, 2009, the UAW and GM entered into a Memorandum of Understanding which eliminated the Job Security (JOBS) Program that had been established pursuant to Appendix K of the 2007 National Agreement. The 2009 Memorandum states:

> "The provision of Appendix K of the 2007 GM-UAW National Agreement – Memorandum of Understanding Job Security (JOBS) Program, as well as any provisions of related Letters of Understanding that limit or proscribe the Corporations' right to lay off employees are hereby suspended for the duration of this Memorandum.

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[3] Record, p. 51.

[4] Record, p. 142.

[5] Record, p. 142.

> Employees on Protected Status, including those on 85%, were placed on layoff effective Monday, February 2, 2009."[6]

In August 2009, GM announced it would be closing the Mansfield plant.[7]

In anticipation of the Mansfield plant closing, Collins contacted the National Employee Placement Center (NEPC) in July 2009 and tried to submit an application to return to Parma, but the system would not accept the application. In his appeal to the PRB, Collins reported that he contacted the GM official at the NEPC, Harry Fischer, and explained why he believed he should have recall rights at the Parma plant. According to Collins, Fisher informed Collins that he could not locate the paperwork that had been completed in connection with Collins's transfer to Mansfield.[8] Collins also contacted the UAW Representative at the NEPC, Randy Lentz. He described his communications with Lentz as follows:

> "In addition, and prior to hearing back from Fischer, in or around October 2009, I contacted then NEPC official Randy Lentz. Lentz was an International Union representative at the NEPC at the time. I explained my situation to him and he said he would check into it. Then, also around October 2009, Lentz called me back and told me that I had recall rights at GMC Parma. I told him that since I kept my seniority from GMC Parma, then the contract had been violated when, after I got plant closing status from GMC-Mansfield, GMC-Parma recalled about 10 diemakers from permanent layoff who had less seniority than me. Lentz said he would check on that issue and get back to me."[9]

Following Lentz's advice, Collins contacted the Local 1005 Chairperson Gary White at Parma. Chairperson White got back to Collins around November 18, 2009, and told him that he did not have to file a grievance because the NEPC had already approved his transfer from Mansfield to Parma.[10]

The record contains an email dated November 18, 2009, from Shawn Davis addressed to various people, describing the NEPC's decision on Mark Collins's application to return to Parma. It states:

> "The Mark Collins situation has been resolved by the National Parties and Parma is expecting him to report to work on 11/30/09 in line with his recall rights. This is not a Paragraph 96 transfer. Mark originally transferred to

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[6] Record, p. 52.

[7] Record, p. 155.

[8] Record, p. 142.

[9] Record, p. 142.

[10] Record, p. 142.

> Mansfield from Parma and has recall rights to Parma per the National Parties at NEPC (Harry Fischer)."[11]

On December 12, 2009, Local 1005 member Daniel Lapp wrote to Vice President Cal Rapson on behalf of 32 diemakers complaining about Collins's transfer from Mansfield to Parma. Lapp stated that Collins showed up at Parma on November 30, 2009, and was assigned to the die room with full seniority. Lapp asked how Collins could have any seniority at Parma after he had accepted a transfer to Mansfield eight years ago. Lapp asserted that this move was allowed solely because Collins was a friend of Local 1005 Committeeperson Gary White. Lapp reported that he had filed three group grievances protesting the move, but that he expected them to be withdrawn by Committeeperson White. Lapp's letter asks for an investigation into the situation.[12]

On February 7, 2010, the Local 1005 diemakers sent a letter to International President Ron Gettelfinger asking him to address the violation of their seniority rights caused by the Mark Collins's transfer to Parma. The diemakers' letter described the situation as follows:

> "This employee left Parma while active in 2001. He had 3 years seniority at the time. Local officials are maintaining he had return to former community rights because of a glitch where he received no relocation money. We pointed out that under the 1999 agreement you had to change your residence in order to receive money. Many of us have experienced the same situation, yet we don't have any return rights. Now the local leadership, along with PD and Labor Relations, are simply saying they don't know how he got here. They were told by their bosses that he had return rights and they didn't bother to question it. They are implicating Randy Lentz on the union side and Anita Johnson on the management side, both from Nation Hire." [13]

The diemakers went on to report that Parma already had too many diemakers so that several of them were assigned to machine repair in order to avoid being laid off.[14] On April 13, 2010, Daniel Lapp filed a charge with the National Labor Relations Board (NLRB) against Local Union 1005 for refusing to process his grievances.[15]

On April 16, 2010, Anita R. Johnson of General Motors issued the following statement regarding Mark Collins's status:

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[11] Record, p. 56.

[12] Record, p. 58.

[13] Record, p. 59.

[14] Record, pp. 59-60.

[15] Record, p. 62.

> "It has come to our attention that the Parma Stamping Chairman and Personnel Manager were both provided incorrect information from the National Parties concerning Mr. Mark Collins's employment status as it relates to recall to Parma. The local parties were previously informed that he was eligible for recall to the Parma site. Upon further investigation as requested by the Local Chairman and Personnel, it has been determined that he was in fact not eligible for recall. Please take the necessary action to return Mr. Collins to his previous location, Mansfield Stamping.
>
> Further, Mr. Collins's application for transfer under the 2009 Paragraph 96 from Mansfield to Marion should be considered valid. Had Mr. Collins not been transferred to the Parma Stamping location in error, he would have retained his eligibility rights for consideration to Marion."[16]

On April 23, 2010, UAW Local 1005 filed four grievances for Collins at the Parma location protesting GM's decision that he should return to Mansfield. These grievances are identified as Grievance Nos. C1144628, C1144627, C1144631, and C1144630. The grievances charge that management's handling of Collins's situation violated Paragraphs (5), (5a), (6a), (8) and Appendix A of the 2007 National Agreement.[17]

On May 24, 2010, Local 549 filed three grievances on Collins's behalf at GM's Mansfield plant. Grievance No. C1117526 charged that management discriminated against Collins in 2001 when it transferred him to Mansfield without the customary paperwork and relocation allowance. Grievance No. C1117527 asserted that Collins's move to Parma and return to Mansfield with no paperwork and no relocation allowance violated Appendix A of the National Agreement. Finally, Grievance B18243 charged that management misinformed Collins about his right to a relocation allowance when he transferred to Mansfield in 2001.[18] On June 3, 2010, Local 549 Chairperson Ron Willis submitted a statement describing the Union's position with respect to Collins's grievances. Willis wrote:

> "…The grievant was illegally transferred to Mansfield with no paperwork or money. The grievant was also eligible for $2,820 for a move made in February 2001 and he still retained his Return to Former Community Rights, so the grievant should not have been forced back to Mansfield from a legal move to Parma. The grievant is also owed money for the other moves as well."[19]

Willis gave the following description of what Collins was told when he transferred from Parma to Mansfield in 2001:

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[16] Record, p. 63.

[17] Record, pp. 66-67.

[18] Record, p. 75.

[19] Record, p. 70.

> "The grievant was told by management supervisor in employment Lynn Cehlar he was eligible for $6,000 for his transfer but that if he took the money the grievant would lose his Return to Former Community Rights. With this information, the grievant decided not to take any money for his move to Mansfield. This information, however, was not true according to the 1999 National Agreement. Transferees that go to another plant under the basic package may sell their Return to Former Community Rights for $6,000 upon receiving an offer, this is stated on page 176 of the 1999 agreement. It is stated that a transferee may sell his right to return to a Former Community for $6,000 upon receiving an offer after submitting a Return to Former Community Application and then the employee terminates seniority and stays at the receiving plant and is no longer eligible for consideration to return to a Former Community. …"[20]

Willis argued that Collins should have received the Basic Relocation Allowance described in Paragraph (96a)(2)(b) of the 1999 National Agreement when he moved to Mansfield, which was $2,820. Willis asserted that Collins would not have forfeited his right to return to his former community as a result of taking this allowance.[21] Willis maintained that Collins was entitled to apply to return to his former community after the Mansfield plant was scheduled to close.

Willis described the events that took place in 2010 as follows:

> "The grievant applied for a Return to Former Community and communicated with Randy Lentz of the International Union. Lentz communicated with UAW Local 1005 that the grievant's move back to Parma Local 1005 was a proper move due to Parma's having hired diemakers in August of 2009 from permanent layoff. International Rep. Lentz went further when he sent a voice mail, which has been documented, to the grievant that the grievant was entitled to at least the

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[20] Appendix A, Section VII, Paragraph D of the 1999 UAW/GM Agreement provides as follows:

> "VII SENIORITY RETURN TO FORMER COMMUNITY (Formerly Document No. 14)
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> The following methods and procedures detail the circumstances under which eligible employees who apply will be offered the opportunity to return to their former community.
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> D. At the time of receiving an offer to return to a plant in a former community, employees who have filed a Return to Former Community Application may elect to receive a payment of $6,000 to remain at their current plant. As a result of receiving this payment, the employees will terminate seniority and return rights at all other GM facilities and therefore no longer be eligible for Return to Former Community consideration."

[21] Paragraph (96a)(2)(b) contains a table showing the basic relocation amounts allowed based on mileage. It further states:

> "The employee who accepts the Basic Relocation Option will be eligible to apply for return to former community or an Extended Area Hire application in accordance with the Memorandum of Understanding Employee Placement (Section V – Return to Former Community and Section II – Extended Area Hire) after working at the plant of relocation for a period of six (6) months or upon indefinite layoff from the plant of relocation."

> Basic Relocation Package which was $4800. The grievant moved to Parma Local 1005 November 30, 2009, but received no money for the move. The grievant was sent back to Mansfield from Parma which was his last legal move. The grievant was returned to Mansfield by management alone on April 26, 2010. There was no International Union signatures on the papers (see attached Doc signed by Anita R. Jones) sending the grievant back to Mansfield."[22]

Willis reported that when Collins was sent back to Mansfield, GM Personnel Director Shawn Davis stated that Collins was being transferred back to Mansfield because he signed a document terminating his Parma seniority in exchange for money when he transferred to Mansfield in 2001. Willis asserted that Collins had never signed any such document and that no such document had ever been produced by management. Furthermore, according to Willis, Director Davis admitted that the Mansfield records showed that Collins had never received any money for his move there.

Willis concluded that Collins was illegally forced to return to Mansfield in April 2010 and that he should be moved back to Parma immediately. In addition, he requested that Collins be paid all the relocation allowances to which he was entitled for the moves back and forth between Parma and Mansfield. He explained:

> "…This includes the money for the first move in February of 2001 and the move back to Parma in November 2009 and the April 2010 move to Mansfield and then finally a move back to Parma. Two of these moves were unnecessary but the grievant should be compensated for them as management made them a condition of employment."[23]

Management responded to Willis's statement on June 8, 2010. Management reported that after Collins transferred back to Parma, the Director of the NEPC notified the Parma Personnel Department that the National Parties erred when they stated that Collins had recall rights in the Parma plant. Accordingly, Collins was returned to Mansfield on April 26, 2010. Management observed that Collins was subsequently offered a Paragraph (96) transfer to the Flint Metal Center. Collins accepted the offer and was scheduled to transfer to Flint on June 28, 2010. [24]

Management asserted that the letter offering Collins the opportunity to transfer to Mansfield in 2001 clearly notified him that acceptance of such offer would require him to quit his job at Parma. Management's statement continues:

> "…It was only when such letter was retrieved from his NEPC file in the ILM Record Retention location in Iron Mountain, Michigan, that the National

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[22] Record, p. 72.

[23] Record, p. 73.

[24] Record, p. 76.

> Parties realized that his 2009 transfer from Mansfield to Parma was in error and needed to be reversed. It should also be noted that even though the notification letter dated 4/16/10 which directs the grievant's return to Mansfield plant is only signed by the Director of the NEPC, both Union Chairpersons at Parma and Mansfield indicated to the undersigned that they had been notified by their International Union Representatives that the grievant was transferred to Parma in error in 2009 and needed to be returned to Mansfield. …"[25]

Management concluded by saying that Collins was not entitled to any relocation benefits because he did not apply for relocation benefits in 2001. Management maintained that Collins was not entitled to relocation benefits for his erroneous transfer to Parma and return to Mansfield in 2009.[26] Collins's grievances at Local Union 549 were consolidated as Appeal Case AB-16. Appeal Case AB-16 was appealed to the Umpire on August 4, 2010.[27]

On the same day, the grievances that Collins had filed at Parma, Grievance Nos. C1144627, C1144628, C1144630, C1144631, and C1144451 were consolidated as Appeal Case AB-20.[28] An Appeal Committee Meeting was conducted on Appeal Case AB-20 on August 18, 2010. At that meeting, management agreed to provide the Union with a copy of the letter referred to in its response to Appeal Case AB-16, the letter that was allegedly obtained from the ILM Record Retention location in Iron Mountain, Michigan, informing Collins that he had to quit his job at Parma in order to accept the position in Mansfield.[29] Appeal Case AB-20 was then referred to the fourth step of the grievance procedure.

The Union's statement in support of Appeal Case AB-20 asserted that management violated Collins's contractual rights when it returned him to Mansfield after he had established seniority at Parma pursuant to Paragraph (57) of the National Agreement by working there for 148 days.[30] The Union pointed out that Collins never signed an agreement to terminate his seniority at Parma and that he was informed by management that his seniority there would not be terminated. The Union maintained such a move was an option under Appendix A. The statement gives the following explanation of this position:

> "Collins was hired as a diemaker and was employee at Parma from January 5, 1998, until February 5, 2001. Collins was offered and

[25] Record, pp. 76-77.

[26] Record, p. 77.

[27] Record, p. 80.

[28] Record, p. 79.

[29] Record, p. 81.

[30] Record, p. 84.

> accepted an extended area hire move in accordance with Appendix A of the 1999 National Agreement. Collins was never paid any basic relocation monies. Management (Lynn Cehlar) told Collins he would not terminate his recall rights, nor did Collins sign any relocation seniority termination agreement. (See Exhibit 3A) which is included in the employee placement acceptance packages. Appendix A 1999/2007 National Agreement (See Exhibit 5A) clearly states when extended area hire move is made, there are 2 vehicles used when determining what happens to employee's seniority rights. When a person is active and volunteers for a move, h/she must terminate all seniority at the previous location, or the National Parties can agree to special provisions, including offering jobs to active or protected employees, either option can be used.
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> February 5, 2001, extended area hire move was made without a signed termination package of seniority recall rights and no basic relocation allowances were paid, therefore, the move was made in conjunction with the second vehicle outlined in Appendix A. Management cannot substantiate any documents to support that Collins severed seniority at Parma when going to Mansfield in 2001."[31]

The Union stated further that Collins had been transferred three times without receiving any relocation benefits because of management's negligence in documenting the terms of his move to Mansfield. The Union submitted the following summary of the relocation allowances due to Collins:

> "C114451 Appendix A Relocation Allowance
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> In conjunction with Mark Collins's statement of events and Grievance Cases C1144627, C1144630, and C1144631, on February 5, 2001, Collins was entitled to the basic relocation mileage allowance of $2800.00 for the move from Parma to Mansfield.
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> On November 30, 2009, Collins's basic relocation allowance (2007 NA) of $4,800.00 was first denied by Labor Relations, and then later determined that it was to be paid. Personnel Director Shawn Davis confirmed that it was going to be paid, and then later informed the Union that the payment was put on hold.
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> On April 26, 2010, Collins was returned to Mansfield. He qualified once again for the basic package of $4,800.00."[32]

[31] Record, p. 84-85.

[32] Record, p. 87.

In its response to Appeal Case AB-20, management observed that Collins was an active employee at the time of his offer to transfer to Mansfield. The Area Hire provisions of Appendix A state that active employees who volunteer and are placed in accordance with the Area Hire Placement Procedures must terminate seniority at their current location. Management insisted that Collins had received an offer letter in connection with his transfer to Mansfield in 2001 that clearly notified him that acceptance of such an offer would result in his being considered a quit at the Parma location.[33] Management gave the following response to the Union's claim for relocation allowances for Collins:

> "Management further maintains that the grievant is not entitled to any relocation benefits under Paragraph 96 of the 1999 National Agreement since he did not apply for the relocation money within six months of the effective date of his transfer as stipulated in Paragraph 96 of the 1999 and the current National Agreement. Management maintains that the grievant is not entitled to any relocation benefits related to his 2009 transfer to Parma or 2010 return to Mansfield since the 2009 transfer was in error and subsequently reversed in 2010 to return the grievant to his previous location of Mansfield."[34]

The four grievances consolidated as Appeal Case AB-20 were referred to the Umpire on April 11, 2011.[35]

International Representative Brian Rivet settled the grievances that were consolidated as Appeal Case AB-16 based on management's agreement to pay Collins the basic relocation allowance of $2,820 for his move to Mansfield in 2001. The grievance disposition states:

> "The parties have agreed to resolve the case on the grounds that, without establishing a precedent for any other case, the grievant will be paid an amount equal to the Option 2 Basic Relocation (to which he was entitled under the provisions of the 1999 National Agreement) for his 2001 relocation from MFD Parma to MFD Mansfield. This settlement is not intended to impact any Paragraph 96 transfer that the grievant pursued in 2009."[36]

Collins appealed the settlement of Appeal Case AB-16 to the IEB on January 11, 2011. In support of his appeal, Collins argued that regardless of management's recent determination that his placement at Parma was a mistake, he was placed at the Parma plant on November 30, 2009, and worked there for 146 days. Therefore, Collins

[33] Record, p. 87.

[34] Record, p. 88.

[35] Record, p. 109.

[36] Record, p. 91.

maintained that he established a seniority date at Parma of November 30, 2009, and could not be removed after that. In addition, Collins asserted that he had been discriminated against by being moved back and forth from Mansfield to Parma with no paperwork and no money. Collins stated that he never signed a letter severing his seniority at Parma and that management had never produced any such letter.

Collins provided further arguments in support of his appeal in response to an inquiry from President's King's staff. Collins stated that he was an active employee at the Parma plant in 2001 when he was notified that he was being transferred to Mansfield in accordance with his application for placement there. He observed, however, that Parma did not hire a diemaker to replace him so that there must have been too many diemakers at Parma in 2001.[37] Collins went on to describe the conversations he had with various people that led to his transfer to Parma in 2009. Collins reported that after he returned to Parma he learned that a group grievance had been filed protesting the move. He described the situation at Parma as follows:

> "…I started work in Parma on November 30, 2009. Shortly thereafter, I heard that there was a group grievance and from what I was told an improper one at that, written by second shift Committeeman Bruno Razov saying my move was improper. I was never contacted by Mr. Razov and no one ever talked to me about the move. I was in Parma a total of 147 days and then forced back to Mansfield shortly after charges were filed with the NLRB against the Local Union. From the time I got back to Parma there were drop letters against me and the Local Union Chairman Ken Jellen and Committeeman Gary White for my being in Parma. The charges filed with the NLRB were filed by Dan Lapp on April 15, 2010. On April 16, 2010, I was called by Randy Lentz and Chairman Ken Jellen and they informed me that management claimed they had in their possession a letter or signed document which they stated I had signed giving up my rights to return to my former community. Because of this 'signed document' they had made a decision that was now going to be reversed. Since I had signed off my rights I was not entitled to return to former community move to Parma. This letter was quoted to the Union during the grievance meetings in Mansfield and was never produced and later denied. I asked to see a copy of this letter and have never seen it yet. …"[38]

Collins described the relief he was seeking as follows:

> "Since I was forced back to Mansfield and I had not gotten paid for the first trip to Parma, I felt that I was owed both those moves and then the move back to Mansfield. If I move myself, I am entitled to $4800 per move, but if they forced me, I felt it should have been enhanced moves and they

[37] Record, p. 102.

[38] Record, p. 103.

> should have paid $30,000 for two moves and the $2,800 for the first move in 2001. I have not filed for the $30,000 for the move to Flint at this time because the paper I would have had to sign gives up all my rights on these grievances for that money. I am entitled to that as well."[39]

Collins stated that he did not believe that his grievances were handled properly because the Union allowed him to be sent back to Mansfield even though management never produced the letter they claimed he had signed agreeing to sever his seniority rights at Parma. Collins asserted that employees being moved from plant to plant have a right to assume that the appropriate paperwork has been completed and that it is part of the Union's job to see that this is done. Collins concluded:

> "…I believe that if the Union had done their job properly I would still be in Parma. Yet, at this moment, diemakers with less seniority than I [have] are there working in Parma and I am separated from my family in another state. This I believe is the Union's fault. What do I believe they should do? I should be moved back to Parma and made whole for all losses. The enhanced moves as well. The National Agreement states in Paragraph 57 once I clocked in at Parma, I had seniority. I was denied my seniority by my Union not defending my right to the job in the first place. They at Parma were in a hiring mode and the agreement under Appendix A states people from closed plants will be given the opportunity to be hired prior to the hiring [of] people with lesser seniority. The most important thing a Union can give its members is their seniority and I was denied mine in this case."[40]

On March 3, 2011, in response to Collins's appeal, Representative Brian Rivet of the UAW-GM Umpire Department wrote a memorandum to President Bob King explaining his decision to settle Appeal Case AB-16. He stated that the decision to return Collins to Mansfield did not violate Appendix A. He quoted the provision of Appendix A to the 1999 GM/UAW National Agreement which provides that active employees who volunteer to be placed must terminate seniority at their current location.[41] Rivet noted that Grievance No. B18243 charged management with a violation of Paragraph 96 of the National Agreement and demanded the $2,820.00 Basic Relocation Allowance. Rivet wrote:

> "…I informed M. Collins of his grievance settlement in person. M. Collins was not happy and asked why I didn't get him more money. I went on to

[39] Record, p. 103.

[40] Record, pp. 104-105.

[41] Record, p. 107.

> explain to him that [was] what was demanded on the face of the grievance, and that's all he was entitled to. …"[42]

President King's staff determined that a hearing was unnecessary on Collins's appeal. Acting on behalf of President King, Administrative Assistant Charlotte Rossi prepared a report to the IEB based on information provided by Collins, UAW Local Union 1005, and the UAW-GM National Department.[43] Rossi reported Collins's description of his conversation with Supervisor Cehlar in 2001 prior to his transfer to Parma, but she pointed out that Appendix A to the National Agreement states very clearly that an active employee who volunteers to be placed in accordance with the Area Hire Procedures must terminate seniority at his current location.[44] In addition, Rossi pointed out that under the 1999 National Agreement, there were two conditions on an employee's entitlement to the relocation allowance described in Paragraph (96a). The employee must have changed his permanent residence and he must make application for the allowance within six months after his relocation. Rossi noted that there was no indication that Collins had satisfied either of these conditions in 2001.[45]

Rossi acknowledged Collins's argument that he had established seniority at Parma in 2009 pursuant to Paragraph 57 of the National Agreement. She pointed out that an investigation by the National Parties revealed that Collins had been placed at Parma incorrectly. She observed that if Collins had not been removed from Parma once the error was discovered, his placement would have violated the seniority rights of numerous other UAW members. Rossi described the situation as follows:

> "Both the union and management at all levels were in communication and agreement in all the moves made, even the one that was in error, due to the numerous members on layoff, protected status (which the Job Bank was being dissolved due to the government loan during this time) and active members being given the opportunity to relocate to UAW-GM facilities all around the country, an error was made and corrected pursuant to the collective bargaining agreement which is controlling."[46]

Rossi reported that Representative Rivet settled the grievances that were combined as Appeal Case AB-16, because he found no violation of the provisions of the National Agreement cited in the grievances. She noted that appellant had received the Option 2 Basic Relocation Allowance for his move in 2001 and that he has now been placed at the Flint Metal Center as a skilled trades diemaker. Rossi observed that rules regarding the placement of GM employees described in Appendix A to the National Agreement are complex and difficult to administer under ordinary circumstances. She

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[42] Record, p. 108.

[43] Record, pp. 117-140.

[44] Record, p. 134.

[45] Record, p. 135.

[46] Record, pp. 138-139.

noted that Collins's transfers between Parma and Mansfield in 2009 occurred during a period of particular difficulty caused by the elimination of the JOBS bank.[47] Rossi determined that Representative Rivet fulfilled his duty to represent Collins in the settlement of Appeal Case AB-16. She found no evidence of discrimination, fraud, or collusion with management.[48] Rossi denied Collins's appeal and her report was adopted by the IEB as its decision on June 29, 2011. Collins appealed the IEB's decision on Appeal Case AB-16 to the Public Review Board (PRB) on July 20, 2011.

In his appeal to the IEB regarding the Union's handling of his placement pursuant to Appendix A, Mark Collins complained that the four grievances he filed at Parma had never been addressed.[49] Collins suggested that the Union had lost track of these grievances.[50] In her report to the IEB on Collins' appeal, Administrative Assistant Rossi stated that the grievances that were consolidated as Appeal Case AB-20 were still in the grievance procedure.[51] We initially considered Collins's appeal on October 13, 2011. We decided to defer a decision on the IEB's decision with respect to Appeal Case AB-16 until the grievances that had been consolidated as Appeal Case AB-20 were resolved. On October 17, 2011, Collins submitted an appeal to the IEB challenging a decision by the UAW-GM Department to withdraw Appeal Case AB-20.[52]

Administrative Assistant Rossi prepared a report to the IEB on the decision to withdraw Appeal Case AB-20.[53] In response to Collins's grievances, management referred to a letter that had been retrieved from Collins's NEPC file in the ILM Record Retention location in Iron Mountain, Michigan. According to management, this letter informed Collins when he moved to Mansfield in 2001 that he had to terminate his employment at Parma in order to accept the position at Mansfield. The minutes of the Appeal Committee meeting on August 18, 2010, report that the Union requested a copy of this letter but that no such letter had ever been produced. The minutes state:

> "…Management claims to have documentation that Collins signed a letter whereby Collins signed in 2000 terminating his seniority when he left Parma in 2001. This document has not been produced by management. It is just a statement with[out] validity which they are justifying Collins's return to Mansfield."[54]

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[47] Record, p. 139.

[48] Record, p. 140.

[49] Record, p. 98.

[50] Record, p. 104.

[51] Record, p. 128.

[52] Record, p. 165.

[53] Record, pp. 172-202.

[54] Record, p. 85.

Collins referred to management's failure to produce this letter in his appeal to the IEB on November 24, 2010. He wrote:

> "…I was lied to by management and was told they went to Iron Mountain and had a paper where I signed off my recall rights to Parma. They have never produced this paper and never will be able to because I never signed one. …"[55]

Rossi's report to the IEB on Appeal Case AB-20 reproduces the letter that was sent to Collins by GM when he transferred from Parma to Mansfield in 2001.[56] The letter in Rossi's report on Appeal Case AB-20 is a form letter sent to Collins pursuant to his application for area hire informing him of openings in Mansfield. Collins did not sign the letter, but it does inform him that he must terminate his seniority at Parma in order to accept the position at Mansfield. It states:

> "This location has openings and you are being made a permanent job offer under the provisions of the UAW-GM National Agreement and you will be released from your present location. In accordance with this Special Agreement, you must QUIT your present location upon being hired at the new location."[57]

In her report to the IEB on Collins's appeal of Appeal Case AB-20, Rossi acknowledged that Collins was given a lot of incorrect and conflicting information about his seniority rights under the UAW-GM National Agreement and Appendix A. She pointed out, however, that there was no evidence of any special agreement to allow Collins to retain his seniority at Parma after he transferred to Mansfield. Rossi noted that the confusion over Collins's entitlement to a relocation allowance did not really affect the decisions made with respect to his placement. She wrote:

> "There is no documentation provided in the record that shows that the National Parties mutually agree to special provisions concerning the appellant's rights to retain recall rights to the Parma facility under Appendix A, only that the appellant accepted the voluntary placement from Parma to Mansfield which he requested in April 21, 1998, which by contractual language required the termination of seniority at the Parma facility whether or not he chose to receive the Basic Relocation Allowance (which was received in the settlement of Appeal Case #AB-16 by International Representative Rivet).[58]

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[55] Record, p. 90

[56] Record, p. 199.

[57] Record, p. 199.

[58] Record, p. 201.

Rossi concluded that Representative Brian Rivet fulfilled his duty to represent Collins in his handling of the transfers between Parma and Mansfield.[59] The IEB adopted Rossi's report as its decision on January 30, 2012.[60]

## ARGUMENT

### A. Mark Collins:

I had a conference call with International Representatives Brian Rivet and Bill King during December 2010. During that call, I told Rivet that I wanted to get back to GMC Parma. Rivet said that was not going to happen. Rivet told me that I never had recall rights to GMC-Parma based on the language of the National Agreement. I responded that I had established seniority at Parma under the National Agreement by working there for 147 days. Appendix A states that an employee who voluntarily transfers to another plant terminates his seniority at the old plant. However, Appendix A also states that the National Parties can agree to modifications of this rule. Also, the language in Appendix A describing the resolution of complaints states that where an employee is entitled to an adjustment, he will be permitted to bump a less senior employee at the plant where the problem occurred. I believe I should be permitted to bump a less senior employee at GMC-Parma under this language.

When I was talking to Representative Rivet, he asked me if I had accepted the relocation allowance for my move to Flint, Michigan. I told him I had not. I had sent an email to Bill King earlier asking if I could accept the relocation allowance for the move to Flint and still pursue my grievances regarding the relocation allowances that I was entitled to for prior moves. He never got back with me. I spoke with Representative Rivet again on December 17, 2010. He told me that he had amended the grievance disposition so that I could take the $30,000 relocation money and it would not affect the grievances I had pending from GMC-Parma. I asked Rivet to email the amended agreement. Rivet said that he had to have his secretary type it up, but I never received an amended disposition. I have provided a copy of the original disposition as exhibit 6A.

### B. International Union, UAW:

Under the settlement of Appeal Case AB-16, Collins received the Option 2 Basic Relocation Allowance that he should have been entitled to under the 1999 National Agreement when he first moved to Mansfield. This settlement does not affect any of Collins's Paragraph 96 transfer rights. It is this settlement that Collins is appealing. On or around June 28, 2010, Collins transferred to Flint.

Representative Rivet's decision to settle Appeal Case AB-16 was not devoid of a rational basis. There was no basis for asserting a claim of discrimination in connection

[59] Record, p. 202.

[60] Record, p. 171.

with Collins's move to Mansfield in 2001. He had voluntarily applied for the transfer. Collins's move back to Parma in 2009 violated the National Agreement. When the violation was discovered, it was corrected by moving Collins back to Mansfield. While it is understandable that the repeated movement was disruptive to appellant, leaving him in Parma in violation of the National Agreement would have harmed many other workers' seniority rights.

Collins was given the wrong information by management in 2001 regarding his entitlement to a relocation allowance. The settlement of Appeal Case AB-16 resolved this issue by providing the relocation allowance Collins would have received if he had applied in 2001. The settlement obtained this allowance even though it seems that Collins was not actually entitled to it. To receive the allowance, employees were required to change their permanent address and make an application for the allowance within six months. It does not appear that Collins actually did change his residence in 2001. Therefore the grievance settlement got for him at least what he was entitled to, if not more than that.

Collins cannot now argue that he should be allowed to remain in Parma violating the seniority rights of many other UAW members, because he was misinformed by the GM's Human Resources Representative in 2001, particularly when the information he was given was in direct conflict with the express terms of the National Agreement. It was entirely rational for Representative Rivet to conclude that settling the grievance by obtaining for appellant the money he would have applied for had he not been misinformed was the best outcome obtainable under the circumstances.

Collins argues that he established seniority at Parma pursuant to Paragraph 57 of the National Agreement. We do not believe that this Paragraph is meant to apply to employees who were improperly placed at a facility under the National Agreement. Again, it was entirely rational for Representative Rivet to conclude that protecting the seniority rights of many members was more important than pursuing a grievance asserting an argument of doubtful validity.

**C. Rebuttal by Mark Collins:**

I went to Mansfield from Parma in 2001. I was rehired at Parma in 2009 and worked there 147 days. Then I was illegally removed and sent back to Mansfield. I was moved three times with no money. They eventually got me the basic allowance for my move to Mansfield in 2001, but nothing for my move back to Parma and then back to Mansfield again. I have a voice mail from International Representative Randy Lentz telling me I would receive $4,800 for the second move. The move back to Mansfield was not initiated by me, so I should be entitled to the enhanced relocation allowance of $30,000 for that move.

The International Union argues that my placement at Parma would violate the seniority rights of many workers, but in fact, I would only displace the lowest seniority person. There is no language in the National Agreement that covers the way I was

moved back to Mansfield in 2009, but I can show them language on page 168 of the National Agreement that says I should displace the lowest seniority employee at Parma if there were no openings when I was sent there. What language of the National Agreement justified my forced move back to Mansfield?

## DISCUSSION

It appears that Mark Collins was given incorrect information about the application of Appendix A to his situation when he made his decision to move to Mansfield in 2001. There is no provision in Appendix A that would have allowed Collins to retain his seniority at Parma by foregoing a relocation allowance after accepting a voluntary transfer to Mansfield. The management representative who informed Collins that he could retain the right to return to his former community apparently confused the provisions applicable to involuntary transfers with those governing voluntary applications for placement in accordance with the area hire provisions stated in Appendix A. Although Collins never signed any document relinquishing his seniority at Parma, his move to Mansfield effectively terminated his seniority in the Parma plant. Management gave Collins the correct information about the effect of his voluntary transfer to Mansfield in the form letter sent to him at the time.

While it is understandable that Collins relied on what he was apparently told by his committeeperson and management's representative, the fact that he received incorrect information did not give him the right to carry his seniority back to the Parma plant. The local parties cannot make agreements altering the seniority arrangements established pursuant to the UAW-GM National Agreement. Those arrangements affect GM's employees nationwide and can only be altered by the National Parties.[61] The fact that Appendix A allows the National Parties to negotiate deviations from the normal order of employee placement in particular situations has no application to Collins, because there was no such special agreement negotiated by the National Parties with respect to Collins's transfer to Mansfield in 2001.

The relief that Collins initially sought was his return to Parma with his full GM seniority. The record shows that the local unions at both locations, Parma and Mansfield, filed multiple grievances for him explaining many arguments in favor of Collins's placement at Parma, but the Union could not obtain this relief for Collins because his placement there would have violated the seniority rights of the employees at Parma. The Union also sought relocation allowances for all of Collins's moves between Parma and Mansfield. As the International Union has observed, however, Collins's right to relocation expenses for his initial move from Parma to Mansfield was questionable, because he did not apply within the time limit, and also because he did not change his place of residence in order to take the job at Mansfield. Nevertheless, Representative Rivet obtained for Collins the basic relocation allowance for his 2001 move from Parma to Mansfield in settlement of Appeal Case AB-16. This was the full

[61] *Strohmeyer and Spain; Lilak and Germ v. UAW General Motors Department,* PRB Case Nos. 1434 and 1439, 12 PRB 197 (2003), and *Sasaki v. Local Union 1853,* PRB Case No. 1524, 13 PRB 202 (2005).

extent of the monetary loss Collins incurred as a result of the misinformation he apparently received in 2001.

We understand Collins's frustration with the process of correcting the parties' original error in allowing him to return to Parma in 2009. There is no doubt that the confusion about Collins's placement in 2009 and 2010 was stressful to him, but we also believe the parties were acting in good faith throughout this process to ensure that the National Agreement was applied properly and that Collins was correctly assigned. As noted by Administrative Assistant Charlotte Rossi in her report to the IEB, the provisions of the UAW-GM National Agreement describing employee placement are extremely complex and difficult to administer. Occasional errors are to be expected. When those errors occur, the Union can only use its best efforts to correct them.

Our role in reviewing appeals concerning the handling of grievances is limited to claims that the matter was improperly handled because of fraud, discrimination, or collusion with management, or that the disposition or handling of the matter was devoid of a rational basis.[62] Although Collins apparently received incorrect information from his committeeperson in 2001, because the committeeperson did not understand all of the elements of Appendix A, it is clear that the information was offered in good faith. When the error was discovered, Representative Rivet obtained a settlement for Collins that compensated him for the actual monetary loss he incurred as a result of the incorrect information he received in 2001. As Rivet explained to Collins, that was all he would have been entitled to under the contract. Rivet's decision to withdraw the remaining grievances was clearly rational. He withdrew them because their demands for relief were contrary to the requirements of Appendix A to the National Agreement.

Collins's argument about the $30,000 he should have received in connection with his involuntary move to Flint is not connected to the issues raised in Appeal Case AB-16 and AB-20. Collins's decision not to apply for a relocation allowance in connection with his move to Flint was not the result of the incorrect information he received in 2001. Collins apparently failed to apply for the $30,000 relocation, because he thought it would adversely affect the settlement of his open grievances. In December 2010, Representative Rivet informed Collins that his acceptance of the $30,000 relocation money would not affect the grievances he had pending at GMC Parma. The fact that Collins did not trust Rivet's information is not the basis for any further relief.

The decision of the IEB is affirmed.

[62] International Constitution, Article 33, §4(i).