

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

APPEAL OF:

MICHAEL THIEL, Member  
LOCAL UNION 1264, UAW  
(Sterling Heights, Michigan),

Appellant

-vs-

CASE NO. 1682

REGION 1, UAW  
(THE UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA),

Appellee.

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**DECISION**

(Issued February 19, 2013)

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

Michael Thiel argues that International Representative Jeffrey Elgert's decision to withdraw his grievance claiming retaliation and discrimination lacked a rational basis.

**FACTS**

Michael Thiel is an electrician at Chrysler Corporation's Sterling Stamping Plant in a bargaining unit represented by UAW Local Union 1264. He has a seniority date of May 8, 1995.<sup>1</sup> Thiel's employment history shows that he had a medical restriction of no flexion or extension of the neck effective October 20, 2009, with an end date of November 30, 2009.<sup>2</sup> At some point prior to November 30, 2009, Thiel brought a chair into the plant to rest his neck during breaks. In a subsequent grievance, the Local Union described the chair as a high back plastic folding chair.<sup>3</sup>

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<sup>1</sup> Record, p. 85.

<sup>2</sup> Record, p. 88.

<sup>3</sup> Record, p. 62.

On November 25, 2009, Thiel's supervisor, Robert McGoff, sent the following email to the Union's Health and Safety Representative, Ken Gross:

"Mike Thiel DCID 911702 has a plastic white chair chained to his tool box. I asked him to remove the chair and he said Medical okayed him to have this for his neck. I talked to Linda on 11-24-09 and she check[ed] the file and his doctor requested he have an ergo chair to support his neck during break times. Mike does have A00 Neck, No Flexion/Extension. Linda checked with our doctor and found out that Safety Department okayed this chair?

Do you have any idea if you okayed him to have this chair in the plant?"<sup>4</sup>

Representative Gross responded that he did not know about the chair but he would take a look at it.<sup>5</sup> On November 27, 2009, Gross sent the following email to McGoff regarding Thiel's chair:

"Bob,

Per our conversation today I have no knowledge of Safety approving an ergo chair to be used on the plant floor.

Please provide Safety with specs of the chair.

Until the approval process is done we cannot allow any type of chair on the plant floor that has not been approved by the Safety Department."<sup>6</sup>

On November 28, Supervisor McGoff wrote to Representative Gross that he informed Thiel the plant manager does not want personal chairs on the floor. According to McGoff, Thiel responded that he had a right under the Americans with Disabilities Act (ADA) to have this chair. Thiel claimed that the Company Medical Department told him he could use this chair. McGoff reported that the second shift steward, John Wittig, said they should go to the Medical Department on Monday to talk about the chair and determine what the Company would accept.<sup>7</sup> On November 29, Ken Gross sent an email to McGoff describing his encounter with Thiel regarding the chair. His email states:

"Today at 3:18 I went to look at the chair that was in question (pic provided).

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

<sup>5</sup> Record, p. 3.

<sup>6</sup> Record, p. 5.

<sup>7</sup> Record, p. 6.

I asked John Wittig to show me where the chair was located.

As soon as I got to the area, Mike Thiel was walking up and I asked him if this was the chair that everyone is talking about.

He started to become agitated and started telling me that his right under ADA was being violated. (He also had several pieces of paper he was trying to hand to me.) I asked him what his disability was. He stated it's between him and his doctor and the Company Dr. Cohen.

I told him from a safety standpoint I could not allow a beach style chair on the floor. Mike then told me the Company would have to provide it to him and became very loud asking everyone in the area be a witness to him not being allowed this chair and that I was in trouble for what I had said to him.

I told him I would turn this matter over to Walt Bartels.

I called down Bob McGoff to let him know that I did look at the chair and was unable to approve something like that being on the plant floor.

Mike produced several 'Ergo' chair flyers and gave them to John Wittig.

He also stated that Justin Wickers already approved the chair.

Bob McGoff and Jim Lerminez also feel they are unable to work Mr. Thiel within his restrictions.

I will also ask our Ergo analyst to get involved to determine if there is currently an approved chair. We will need to meet with Walt Bartels on this issue in the AM."<sup>8</sup>

Walt Bartels sent the following response to Representative Gross:

"Ken:

Thank you. See you in the morning. This is neither a safety issue or a labor issue – it is a medical issue. We will follow the doctor's direction within the applicable law.

The ergonomist does not need to be involved at this point."<sup>9</sup>

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<sup>8</sup> Record, p. 7.

<sup>9</sup> Record, p. 8.

At 7:23 a.m. on Monday, November 30, 2009, Dr. Rosalinda Cohen sent the following email to Robert McGoff and Kenard Gross:

“If I recall correctly, there was some discussion about this when Mr. Thiel came back to work. I remember sharing with Safety (though I don’t recall if it was Justin or Ken) that his need was a chair with a head and neck rest/support. I was informed that he could have an ergo chair.”<sup>10</sup>

On November 30, 2009, Michael Thiel sent a letter to UAW Local Union 1264 and Sterling Stamping Labor and Chrysler Diversity, with a copy to Region 1 Director Joseph Peters describing his encounters with the Company and the Union over his chair. Thiel reported that he had received approval for his chair from Medical. He wrote:

“...I took in a medical restriction along with a request for a chair from my neurologist to Medical. This was the doctor’s first day. She was unsure of procedures and asked the nurse for direction. The Dr. stated that ‘this should not be a problem’ then she sent me to Safety to have it approved. Justin was there and stated ‘Kenny is not here, can I help.’ Justin said, ‘this would not be a problem if it was OK with Medical.’ *I have been using this chair close to a month now. I have not had a problem with any supervisor until now.*”<sup>11</sup>

Thiel described his encounter with Representative Gross and Steward Wittig as follows:

“On Sunday, November 29<sup>th</sup> at 3:15 p.m., Kenny Gross (Union Safety man) was at my toolbox. Upon arriving, the first thing he stated was ‘I am not approving that chair!’ We had another conversation that Justin was not supposed to approve the chair. He works in Human Resources. Kenny Gross asked what was my disability. I stated, ‘You are not a doctor. You are not qualified to evaluate if I need a chair for a disability. You need to talk to the doctor.’ Kenny then yelled, ‘I don’t think you have a disability. You just want this chair!’ I turned to the Chrysler employees in the area and stated, ‘Did you hear that? Kenny says I don’t have a disability. This is our union safety man!’ Kenny Gross then shouted, ‘You are an asshole. Go ahead and talk to your friends.’

John Wittig, second shift steward, appeared at this time. I handed Mr. Gross several chairs that were designed for back and cervical problems. I asked him to choose one that met his specifications. Mr. Gross refused to take them and said put them in writing. I handed the chair suggestions to

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<sup>10</sup> Record, p. 9.

<sup>11</sup> Record, p. 10.

John Wittig and asked him to find out if any of these specialty chairs would meet requirements. Ken Gross made fun of the chairs.”<sup>12</sup>

Thiel concluded by saying that he believed Ken Gross had violated his rights as an employee and as a disabled person under the ADA. He asked the Union to take immediate action to address these violations.<sup>13</sup>

On December 4, 2009, Chrysler placed Thiel on a medical leave of absence claiming that there was no work available within his medical restrictions.<sup>14</sup> Thiel’s employment history shows the following medical restrictions effective November 30, 2009:

“A01 Neck, flexion/extension less than 33% of shift  
C05 Shoulder, reach above left <33% of shift  
C03 Shoulder, reach above right <33% of shift”<sup>15</sup>

The record contains pages from a statement Thiel addressed to Steward Wittig regarding a meeting that took place the day that Thiel was placed on medical leave. Thiel reported that the Company’s Human Resource Supervisor George Rockwell told him that he was being sent home due to his restrictions and that the disability representative wanted him to apply for Sickness and Accident benefits.<sup>16</sup> Thiel responded that he felt this would be dishonest because his restrictions did not prevent him from working.<sup>17</sup> Thiel charged that the Company had manipulated his restrictions in order to get rid of him and his chair. He wrote:

“I believe that management assigning me to sit in the Union office for the last week was to find a means for the Company to remove the chair and me. Manipulating restrictions, stating performance issues, talk about moving me to another shift. Subjecting me to standards of conduct discipline.”<sup>18</sup>

After he was laid off, Thiel applied for unemployment benefits with the Michigan Unemployment Insurance Agency (UIA). In response to an inquiry from the UIA regarding the reason for his leave of absence, Thiel wrote:

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<sup>12</sup> Record, p. 10.

<sup>13</sup> Record, p. 11.

<sup>14</sup> Record, p. 28.

<sup>15</sup> Record, p. 88.

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

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

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

“My employer sent me home one day and said I could not work until I had no restrictions. I have been working with these restrictions since I hired. I was hired with these restrictions. This is not a new injury. It happened in 1989. I was hired by the Company in 1995.”<sup>19</sup>

When asked if he was offered other work by the Company prior to being laid off, Thiel responded:

“I can do anything in the plant. The last job I was performing I was sitting at a computer.

My only restriction is I cannot look up for more than 10 minutes straight to due to my neck will start hurting. I have a medical chair that sits next to me folded up and I use it at breaks and lunch to rest my neck. This was never a problem until I got a new supervisor. He did not want me to have the chair and he was the one who took me off work with no return to work date. As far as I know, I am never going back. I want to work there. I have been there since 1995 and I have time invested there. I chose not to take the buyout because I want to keep working. This has been all very upsetting to me. I have filed multiple grievances against the Company because of the way I have been treated.”<sup>20</sup>

Thiel reported that he is now working for a different automotive company. A UIA form describes a telephone conversation with a representative of Chrysler regarding Thiel’s status. The form reports:

“Called Chrysler. Spoke with JoAnn Hatfield (employer rep.)

His last day of work was 12/4/09. All the information I have is that he is a Code 52, which means totally disabled. He can return when he can provide medical documentation that he can return to work with no medical restrictions.”<sup>21</sup>

The UIA determined that Thiel was entitled to benefits. Its Notice of Determination states:

“Chrysler placed you on a leave of absence on 12/4/09 because of your medical restrictions. This is considered involuntary because you did not request a leave and you have been working with your restrictions with no problems all along. You are eligible for benefits beginning 12/6/09.

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<sup>19</sup> Record, p. 25.

<sup>20</sup> Record, pp. 25-26.

<sup>21</sup> Record, p. 27.

It is found that you are on an involuntary leave of absence. You are eligible for benefits under MES Act, Sec. 48, for the period shown."<sup>22</sup>

Chrysler protested the UIA determination and it was affirmed on March 22, 2010. The Notice of Redetermination states:

"Chrysler Corp timely protested the determination issued 2/8/10 allowing benefits beginning week ending 12/12/09. The employer contends that you had restrictions that they were unable to accommodate, so you were placed off work. The 2/8/10 determination is affirmed as you were meeting the ability requirements of the MES Act, but the employer had no work within the restrictions."<sup>23</sup>

On February 8, 2010, Thiel wrote to Regional Director Peters complaining that his local union committeeperson was refusing to address his complaint of discrimination based on his disability. Thiel wrote:

"I have sent a letter to you in December of 2009. I made a complaint that I have been removed from Sterling Stamping under discriminatory and retaliatory actions motivated by my area manager, Bob McGoff. I have not received any help from our committeeman, [Kamran] Razzak. I called him previously and he stated that my steward is taking care of my issues. John Wittig, my steward, has told me he has gone as far as he could; the rest is up to the committeeman. John has done a wonderful job!

I called [Kamran] Razzak again on 02-05-2010 and he stated, 'You are supposed to be out on disability. Everything is between you and up front!' This statement was after I informed Mr. Razzak that the State of Michigan is granting me unemployment because they do not believe Sterling Stamping's statement that I am completely disabled. Especially since I am building machines for the automotive companies since I have been dismissed!

I believe that Mr. Razzak does not have any [intention of] helping me with this dismissal. I believe he chooses not to do anything in a retaliatory manner for complaints that I have made to you and [corporate] diversity about him in the past."<sup>24</sup>

On February 10, 2010, Director Peters referred Thiel's letter to International Representative Jeff Elgert for an investigation. On February 18, Local 1264 filed Grievance 2010-006 for Thiel charging management with discrimination and retaliation

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<sup>22</sup> Record, p. 28.

<sup>23</sup> Record, p. 36.

<sup>24</sup> Record, p. 22.

against Thiel because of his medical condition.<sup>25</sup> On February 21, Local 1264 filed Grievance 2010-026 protesting management's decision to place Thiel on medical leave. The grievance states:

"The Union protests that the action of placing Mr. Thiel on Code 52 (S&A) is a direct form of harassment against Mr. Thiel for his immediate noncompliance when asked to remove a high back plastic folding chair from the plant. Mr. Thiel had brought the chair in to use during his break and lunch periods to help relax his neck muscles. When not in use, the chair was folded and placed next to his box in a neat and orderly fashion. The Union also accuses management of changing, altering, or misleading someone to do the same to his medical restrictions, which they then used to contend that there was no work for him within his classification with those restrictions. Mr. Lerminez and Mr. McGoff both stated in Labor Relations the day he was sent out that neither one of them had any issues with the work performance of Mr. Thiel and Mr. Thiel never complained to the Union that he was being worked outside of his restrictions. The Union sees the actions of management as retaliatory as well as discriminatory against the grievant."<sup>26</sup>

On May 18, 2010, Chrysler sent a notice to Thiel that the reason for his leave of absence had been established for a certain period, but that it was not currently justified. The notice instructs Thiel to report to the Plant Employment Office on or before May 25, 2010, or else provide satisfactory evidence of the reason for his absence.<sup>27</sup> A "Timeline" prepared by Thiel indicates that when he reported to the Plant Employment Office, they asked him to sign a complete release of medical information.<sup>28</sup> On May 28, 2010, Thiel submitted the following statement in response to this request:

"The letter received on 5-25-2010 states that my time off since 12-4-2010 has not been justified, when Sterling Stamping sent me out as disabled for this period of time. I was very upset and angry upon arriving at Sterling Stamping on 5-25-2010 and I was notified that Medical wanted me to sign a release of my medical information so I could be better accommodated.

I would like to state that I have worked at Sterling Stamping since 1995 and I am aware of all electrical positions at the plant. The pressroom area positions suit me the best. I have the seniority, ability, and education for this position. I have never turned down a job in these positions and even have a letter of merit from a Chrysler supervisor. In fact, I have recently worked in these positions with my current restrictions for Robert

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<sup>25</sup> Record, p. 31.

<sup>26</sup> Record, pp. 32-33.

<sup>27</sup> Record, p. 38.

<sup>28</sup> Record, p. 39.

Buchanan, Tim Edwards (on Bob McGoff's shift), John Woods and Mustafa. It seems that I am not able to work this area only for Bob McGoff.

Doctor Morson has supplied my restrictions in detail many times in the past. I will not sign a complete release of medical records. However, if you have some very specific job-related questions, I may sign a release for these questions. Please mail me your questions and I will evaluate them."<sup>29</sup>

Three months later, on September 8, 2010, Chrysler Human Resource Supervisor C. Donelko wrote to Thiel that the Company had secured a chair in response to his request for accommodation under the ADA. Donelko instructed Thiel to report to the Employment office for work on September 15, 2010.<sup>30</sup>

Management responded to Thiel's two grievances at the second step of the grievance procedure on September 16, 2010. In response to Grievance 2010-026, protesting the decision to place Thiel on medical leave, management stated:

"Mr. Thiel was asked to remove the plastic folding chair for his safety as it was deemed unsafe for the shop floor. A more substantial chair has now been provided and placed in a safe area to accommodate his restrictions."<sup>31</sup>

Management asserted that Thiel was appropriately placed on Sickness and Accident because he refused to cooperate with the Medical Department in finding open positions that he could perform within his restrictions. Management claimed that Thiel prolonged his medical leave by refusing to sign a medical release form. Management's second step answer states:

"Mr. Thiel refused to cooperate with the Medical Department in releasing the necessary medical documentation to support his condition and restrictions from his physician thus prolonging his time out of the plant on S&A. Mr. Thiel refused to allow the plant physician to even speak with his physician to gain a better understanding of his condition and his restrictions in order to assist the plant in finding suitable work for him."<sup>32</sup>

Management gave a similar answer to Grievance 2010-006 charging discrimination and retaliation. The second step answer states:

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<sup>29</sup> Record, p. 41.

<sup>30</sup> Record, p. 60.

<sup>31</sup> Record, p. 62.

<sup>32</sup> Record, p. 63.

“Neither discrimination nor retaliation was found on the part of management against Mr. Thiel due to his medical condition. Mr. Thiel was not reinstated (until September 13, 2010) due to his uncooperative stance to provide a release of information from his doctor to plant medical so that suitable accommodations for his restrictions could be made.”<sup>33</sup>

Thiel’s two grievances were referred to the third step on September 20, 2010.<sup>34</sup> Grievance 2010-006 was denied at a third step meeting on January 27, 2011.<sup>35</sup> On June 1, 2011, Representative Elgert advised Thiel that Grievance 2010-006 had been withdrawn.<sup>36</sup> A Grievance Information form prepared in connection with Grievance 2010-006 describes the following resolution:

“Resolved. Grievant back to work w/accommodations. Investigation was completed.”<sup>37</sup>

Thiel appealed the withdrawal of Grievance 2010-006 to the International Executive Board (IEB) on June 13, 2011. In support of his appeal, Thiel complained that no UAW representative had ever interviewed him or Steward John Wittig regarding the events that led to his being placed on medical leave in December 2009. He asserted that Supervisor Bob McGoff was responsible for escalating the dispute over his chair and that Representative Ken Gross acted improperly. He argued that Gross should have been removed from his position as a result of his behavior. Thiel complained that Committeeperson Razzak’s handling of his grievances amounted to retaliation in that he held the grievances for nearly a year and then passed them on without consultation, missing pages, and no additional information. Thiel reported that International Representative Jeff Elgert ordered him to file a claim for sickness and accident benefits knowing that he was working for another company. He observed that filing such a claim would have been a violation of Chrysler’s policies and perhaps illegal.<sup>38</sup>

Thiel also complained about the accommodation that Chrysler claimed to have provided. He stated that the chair provided to him had no cervical support. He reported that it took months before he was able to bring an appropriate chair with cervical support into the plant. Furthermore, Thiel reported that when he tried to use his chair on Memorial Day, he found that the office where it was kept was locked. Thiel argued

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<sup>33</sup> Record, p. 64.

<sup>34</sup> Record, p. 65.

<sup>35</sup> Record, p. 91.

<sup>36</sup> Record, p. 94.

<sup>37</sup> Record, p. 93.

<sup>38</sup> Record, pp. 96-98.

that he was entitled to protection under the ADA, but that the UAW had actively assisted Chrysler's discrimination against him as a result of his disability.<sup>39</sup>

Representative Elgert responded to Thiel's appeal on August 8, 2011, in a memorandum addressed to International President Bob King. Elgert observed that Thiel had introduced a number of issues into his appeal that were unconnected to Grievance 2010-006. He reported that the relief requested by Grievance 2010-006 had occurred prior to its withdrawal. He said the grievance had demanded that the Company reinstate Thiel and stop all discriminatory and retaliatory practices. He reported that Chrysler Corporate Diversity had completed an investigation of Thiel's complaint and found no evidence of discrimination or retaliation. Thiel was reinstated and provided with a proper chair in a safe location. Elgert informed President King that there was still an open grievance addressing Thiel's monetary losses. He wrote:

"There is a grievance currently in the system (GR. #2010-026) with the adjustment requested as 'all monies lost plus 5% shift premium' resulting from the same issues."<sup>40</sup>

Acting on behalf of President King, Bob Kinkade and John Rucker conducted a hearing on Thiel's appeal on December 6, 2011. Hearing officers Kinkade and Rucker prepared a report to the IEB on the appeal based on information provided by the parties and testimony given at the hearing. The hearing officers reported that member Gary Whyte submitted a written statement in support of Thiel's appeal and testified about the confrontation between Thiel and Safety Representative Ken Gross in November 2009.<sup>41</sup> According to Whyte's statement, Gross behaved in a threatening manner toward Thiel. He reported that he told Gross to back off.<sup>42</sup> The hearing officers reported that Whyte said Gross's behavior was the worst representation he had seen during his sixteen years as a steward.<sup>43</sup>

The hearing officers also reviewed Representative Elgert's memorandum to President King. They reported that Elgert testified that many of the issues raised by Thiel during the hearing had occurred after Grievance 2010-006 was withdrawn. In response to Thiel's complaint about Representative Gross's behavior, Elgert referred to a response he had submitted to the National Labor Relations Board (NLRB) on September 20, 2010, regarding an unfair labor practice charge that Thiel had filed complaining about Gross's behavior, among other things.<sup>44</sup> In response to Thiel's charge, Gross wrote that he had worked with Thiel for years and did not know that he

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<sup>39</sup> Record, pp. 97-98.

<sup>40</sup> Record, p. 105.

<sup>41</sup> Record, p. 116.

<sup>42</sup> Record, p. 107.

<sup>43</sup> Record, p. 116.

<sup>44</sup> Record, pp. 118-119.

had a disability. He denied having told Thiel that he did not have a disability.<sup>45</sup> In response to Thiel's complaint about Gross's behavior, Elgert wrote to the NLRB:

"On November 29, 2009, Ken Gross did not meet with Mike Thiel about his medical condition; he went out on the floor to inspect the safety aspects of Mike Thiel's chair, per request of management, (Document 1).

Ken Gross inspected the chair and told Mike the chair was not safe for the factory floor and should not be allowed (Document 2).

At this time, Mike Thiel became upset and argumentative asking for everyone in the area to hear the conversation, and he made threats of a lawsuit to Ken Gross. Ken Gross then reported his opinion about Mike Thiel's chair to plant management and it was management's decision to remove the chair.

On December 14<sup>th</sup>, UAW Region 1 received Mike Thiel's letter (Document 3), complaining about Mr. Ken Gross. Region 1 Director Joseph Peters instructed me to respond. I called Local Union President Bob Stuglin to discuss all the allegations involving Mr. Mike Thiel. After investigation, I recommended that he counsel Mr. Gross about the way he interacts with membership."<sup>46</sup>

The hearing officers included this response in their report.<sup>47</sup>

In response to Thiel's complaint about Committeeperson Razzak's handling of his grievance, Elgert argued that the case record demonstrates that the grievance was processed without delay and that there was plenty of communication about the issues. Elgert closed by stating that he withdrew the grievance because there was nothing to be gained by proceeding to arbitration on it.<sup>48</sup>

The hearing officers observed that Grievance 2010-026, addressing Thiel's monetary claims was still open. They concluded that Representative Elgert's decision to withdraw Grievance 2010-006 was proper. They found no evidence that discrimination, fraud, or collusion with management motivated the decision.<sup>49</sup> The hearing officers denied Thiel's appeal and the IEB adopted their report as its decision on June 26, 2012. Thiel has now appealed the IEB's decision to the Public Review Board (PRB).

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<sup>45</sup> Record, p. 13.

<sup>46</sup> Record, p. 66.

<sup>47</sup> Record, p. 118.

<sup>48</sup> Record, p. 120.

<sup>49</sup> Record, p. 121.

## ARGUMENT

### **A. Michael Thiel:**

Chrysler removed me from my position based on the false claim that I could not perform the job. This has happened twice and in both cases I have been reinstated. Chrysler has discriminated against me because of my disability in violation of the ADA. My complaint against Chrysler over this discrimination is currently in the mediation process at the request of Chrysler's attorneys.

My complaint is not only against Chrysler, however. I also have issues with the way the UAW handled my grievances. All of the contractual time limits applicable to the grievance process were violated and I was not kept informed about actions taken with respect to my grievances. I was not even informed about the existence of one of the grievances until six months after it was filed.

The IEB reports that UAW Health and Safety Representative Ken Gross went out to examine my chair at the request of management! My chair was a high back chair designed to provide cervical support. The Company's Dr. Cohen and Safety Representative Justin Wicker had approved this chair. Ken Gross claimed the chair was unsafe. I have about 60 photographs of camping style chairs in the plant, some with DVD players and computers. Representative Gross had to walk by these to single out my chair. He also refused to look at the photographs I supplied of ergonomic chairs. I asked him if I could replace the chair he was opposed to with a true ergonomic chair. He made fun of the ergonomic chairs.

Representative Gross threatened me and accused me of not having any disability. He stated that I never told him I had a disability. I am not required to tell Representative Gross about my disability. Who does he think he is? I was sent out of the plant on December 4, 2009, and not called back until September 15, 2010. I believe this was just days before the NLRB was about to file a charge against the Company and the UAW. When I was called back, I was given an old office chair to use during breaks.

Representative Elgert withdrew my grievance because I was back to work and Chrysler's Corporate Diversity office had investigated my complaint and found no discrimination. The Chrysler Diversity office is not a jointly managed operation; it is strictly a management department. At the time my grievance was withdrawn, the Diversity office was being investigated by the EEOC based on my complaint. Our own UAW representative took the word of a management department being investigated by the EEOC over the word of a UAW worker with a disability.

Representative Elgert stated that my disability was accommodated when the Company provided me with an ergonomic chair. The Company did NOT provide me with an ergonomic chair. An old office chair without cervical support was supplied. It was not until months later that I was allowed to PURCHASE my own chair. My request for a three-wheeled bicycle to carry tools has never been accommodated.

I received a letter on March 2, 2010 from Representative Elgert ordering me to apply for sickness and accident benefits. When I read this letter, I realized that he had not been listening to me at all about the situation at the Sterling Stamping plant. I was working for another company at this time. It would have been a violation of our contract for me to submit a claim for sickness and accident coverage. Also, no one is required to collect sickness and accident benefits.

The conclusion to the IEB's report states that I was sent home on December 4, 2009, because there was no work available within my restrictions. I returned to work ten months later to the exact same job I held on December 4, 2009, after the EEOC commenced a lawsuit against the Company. The IEB's decision states that there is no evidence of collusion between the Company and the UAW. I disagree with the IEB, but in any event I believe there needs to be a cultural change at the Sterling Stamping plant. I hope you agree. That is why I filed this appeal.

**B. International Union, UAW:**

Thiel has raised a number of concerns regarding his employment at the Sterling Stamping plant, but this appeal concerns the Union's decision to withdraw Grievance No. 2010-006. The Union withdrew the grievance because the Company had returned Thiel to a job within his restrictions and conducted an investigation into his claims of discrimination and retaliation. International Representative Elgert determined that nothing further could be achieved by pursuing this particular grievance. The Union is still fighting to make Thiel whole by pursuing Grievance 2010-026.

It appears that personality issues among the people involved in Thiel's request for a chair to accommodate his disability made resolution of the issue more difficult than it normally would have been. It is also apparent, however, that the Union representatives investigated Thiel's complaint, understood the facts, and resolved the issue in Thiel's favor. Under the circumstances, the Union's decision to withdraw the grievance was proper and not devoid of a rational basis.

**C. Rebuttal by Michael Thiel:**

My complaint against the UAW's handling of my grievances is twofold. In the first place, my Local Union representatives failed to provide representation to me when I was wrongfully removed from my job in 2009. I did not have restrictions that prevented me from working in 2009. My only restriction was no work directly overhead for more than ten minutes. I was removed from the plant for having requested an accommodation under the Americans with Disabilities Act (ADA). This is documented in the official record prepared by the PRB in connection with this appeal. Chrysler constantly fabricated, changed and manipulated my restrictions to keep me out of the plant. I was on involuntary leave from December 4, 2009 until September 17, 2010. I did not receive adequate representation from the Local Union in challenging this wrongful layoff.

The second part of my complaint is that UAW officials colluded with Chrysler management to discriminate against me for having requested an accommodation under the ADA. My Local Union Committeeperson Kamran Razzak refused to file a grievance charging the Company with discrimination and retaliation. Razzak filed a grievance only after being instructed to do so by the Region. He filed the grievance, but he did not tell me about it. This was Grievance No. 2010-006. Razzak did not conduct any investigation of the claims made in Grievance No. 2010-006. The grievance was moved to the fourth step on January 27, 2011, without any investigation. On May 8, 2011, I was informed that Grievance No. 2010-006 had been withdrawn based on the Company's agreement to stop harassing and discriminating against me.

Region 1 Representative Jeff Elgert claimed that an investigation by the Chrysler Corporate Diversity division showed no evidence of discrimination. The Union did not conduct any independent investigation into my complaint. Representative Elgert was aware that Chrysler was being investigated by the EEOC. He knew that I had filed a complaint with the EEOC charging Chrysler with a violation of the ADA. How could he expect an unbiased decision from Chrysler Corporate Diversity? Representative Elgert should have engaged in a formal investigation and meeting with John Wittig and me to evaluate my disabilities and the discrimination I had experienced. I have now been informed that there is a Civil Rights Committee in our plant to investigate complaints such as mine. I was never informed about this at the time.

In his letter of September 7, 2012, President Bob King states that Grievance 2010-006 was withdrawn after I was returned to work within my restrictions. The Union did not prevail in having me returned to work. I filed a charge with the NLRB and that is why I was reinstated. NLRB Attorney Scott Preston was about to send my complaint to his superior to commence an action against Chrysler. I was returned to work a week prior to this formal escalation of the NLRB proceedings. Attorney Preston told me that reinstatement is a common ploy to avoid NLRB litigation. He also stated it would be difficult to pursue UAW officials when they say they just made mistakes. I dropped my charges against the UAW officials based on Preston's recommendation.

My Grievance 2010-026 has not been addressed since September 16, 2010. Grievance 2010-026 is almost three years old now, violating every reasonable and ethical time line in dealing with claims of discrimination. In his response to my appeal, President King asserts that this grievance will make me whole. This claim is outrageous! The Union is not fighting to make me whole in Grievance 2010-026. The Union's handling of Grievance 2010-006 demonstrates that they thought being returned to work was sufficient restitution for two and half years of wrongful layoff resulting from unlawful discrimination. Finally, the Union claims that my entire ordeal was the result of personality issues. This claim is appalling. This is not a personality issue! It is outright discrimination by Chrysler Corporation and UAW officials.

The damages that I incurred as a result of the Union's failure to represent me include loss of income during the period of my layoff. I filed discrimination charges against Chrysler. This is well known to the UAW. My only regret is that I did not file

charges against the UAW. During the lengthy litigation process, the UAW did not take any action on either of my grievances. My complaint against Chrysler ultimately went to mediation. I cannot say much about the mediation because I do not want to violate the confidentiality agreement involved in the final resolution, but the result was obviously a compromise. I was not compensated for my entire loss of income. I wish I could be made whole! That is not possible. In addition to expenses and loss of income, I have been robbed of time with my wife and children and still have health issues brought on by the stress of pursuing this litigation.

If the UAW had provided the representation I was entitled to as a union member, I would have avoided attorneys' fees and court costs. I was eventually hospitalized as a result of the stress and anxiety resulting from my wrongful layoff. In 2009, I had infant twins. My wife and I were naturally worried about their health care and our finances during this period. My wife eventually needed medication for stress as well. I was removed from my job because of a chair that was approved as an accommodation for my disability. My layoff was the result of collusion between my supervisor and the union safety man Ken Gross.

I have not wanted to file an action against the UAW. My father was a UAW Committeeperson at the GM Tech Center. My grandfather lost his job at Chrysler campaigning for retirement benefits. My grandmother raised eight children working production for Chrysler. I always thought the UAW would protect me from serious violations of the law, especially discrimination. I no longer believe that my union dues are being used to uphold our contract and fight discrimination. I strongly believe that the UAW officials involved in mishandling my grievances should be held accountable for their actions. My family and I have gone through considerable hardships being forced out of Chrysler due to a lawful request for an ADA accommodation. I also believe that UAW Representative Ken Gross should be relieved of his position.

### DISCUSSION

Michael Thiel raised a legitimate complaint about the Local Health and Safety Representative's handling of his request for an accommodation under the ADA in 2009. Thiel had presented a medical restriction from his doctor along with a request to bring a chair into the plant to use as support for his neck during breaks. He presented this request to the Company's Medical Department and received approval for the chair from a person with apparent authority to grant it. Representative Gross should have been more receptive to Thiel's explanation for having the chair on the plant floor and less concerned with Supervisor McGoff's objection to it. Furthermore, there is substantial support in this record for Thiel's charge that the Company was guilty of discrimination and retaliation. It appears that the Company acted improperly when they put Thiel on an involuntary medical leave in 2009, because his restrictions did not prevent him from doing his job at the Sterling Stamping Plant.

The improper medical leave is not part of this appeal. The Union filed Grievance 2010-026 protesting the improper medical leave and the issues presented in that

grievance were ultimately referred to mediation. We have no record of those proceedings before us. We understand Thiel's argument that the Union's processing of Grievance 2010-026 was inadequate and that he was forced to seek relief from the NLRB. We understand his position that he obtained his reinstatement through filing charges with the NLRB, rather than through any efforts expended by the Union. This circumstance did not alter the remedy available to Thiel from the Union's processing of Grievance 2010-026. The grievance procedure is not designed to punish an employer for contract violations or the violation of federal statutes, but to restore the parties to the position they held prior to the violation.<sup>50</sup> As we noted in a recent decision, a grievant is not entitled to more than a make whole remedy simply because he obtained through his own efforts most of what could have been accomplished in the grievance procedure.<sup>51</sup> By the time we reviewed this appeal, Thiel had been reinstated and reports having accepted settlement of his monetary claims against the Company. Thiel's reinstatement and his acceptance of the mediator's recommendation with regard to compensation must now be regarded as the final resolution of his claims arising from the improper medical layoff in 2009.

The appeal now before us arises from Thiel's assertion that the Union did not take adequate steps to address the Company's discrimination against him as a result of his disability and the Company's retaliation against him for asserting his rights under the ADA. Thiel wants this Board to hold the Union accountable for failing to pursue his claims with sufficient vigor. He also asks that some kind of penalty be imposed on those he regards as having contributed to the hardships and losses he endured as a result of his wrongful layoff. These losses include not only expenses for attorney's fees and other expenses he incurred in pursuit of his rights, but also intangible losses such as time with his family and peace of mind. Thiel argues that Representative Gross and committeeperson Kamran Razzak ought to be removed from their positions.<sup>52</sup>

We do not find that Thiel is entitled to any further remedy based on Representative Gross's response to his request for an accommodation. While some of Gross's comments about Thiel's chair and the nature of his disability may have been inappropriate, it also appears that Thiel's angry reaction to Gross contributed to the confrontational situation. Local Representatives may not always possess the skill and detachment necessary to address situations such as Thiel's angry reaction to Gross's questions about his chair. We have observed in the past that inappropriate language occurring in the heat of an argument will not sustain a charge of conduct unbecoming a

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<sup>50</sup> *Nester et al. v. UAW National Heavy Trucks and Engines Department*, PRB Case 1641 (2010), at p. 11.

<sup>51</sup> *Schillinger v. UAW Technical, Office, Professional Department*, PRB Case No. 1663 (2012), at pp. 22-23.

<sup>52</sup> Thiel raised several complaints against his committeeperson Kamran Razzak for his reluctance to pursue a grievance for Thiel immediately following his layoff in 2009, as well as for a number of other issues unrelated to this appeal.

union member within the meaning of Article 31, §3, of the International Constitution.<sup>53</sup> Nothing in the Constitution would require the Union to remove Gross from his office because of this altercation.

The kind of remedy Thiel seeks with this appeal is not within our power to grant. The grievance procedure is not designed to compensate employees for the sort of intangible losses and distress that Thiel has described in his appeal here. Our role in reviewing decisions made by Union representatives with respect to grievances is limited to allegations 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 any rational basis.<sup>54</sup> After Thiel complained to the Region about his local committeeperson's failure to file grievances over the Company's violation of the ADA, the appropriate grievances were filed and were processed in a timely manner. Representative Gross was counseled about his inappropriate behavior in the argument over the chair. Representative Elgert withdrew Grievance No. 2010-006 once Thiel had been reinstated to a job within his restrictions and his claims of discrimination and retaliation had been investigated. Representative Elgert's conclusion that nothing further could be obtained for Thiel through the grievance procedure was rational based on this record.

The decision of the IEB is affirmed.

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<sup>53</sup> See *Clapp, In the Matter of Tomczak v. Local Union 699*, 5 PRB 119 (1986), and *Russell v. UAW Local Union 1292 Executive Board*, PRB Case No. 1629 (2009).

<sup>54</sup> UAW Constitution, Article 33, §4(i).