

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

APPEAL OF:

DAVID SCHOENECKER, Member
LOCAL UNION 551, UAW
(Chicago, Illinois), REGION 4,

Appellant

-vs-

CASE NO. 1713

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

Appellee.

DECISION

(Issued July 20, 2015)

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

APPEARANCES: Thomas Geoghegan and David
Schoenecker on behalf of appellant;
Betsey Engel, Rick Isaacson, Blake
Miller, Angela Wright, Tony Tallarita,
and Allen Wilson on behalf of the
International Union; Scott Houldieson on
behalf of Local Union 551.

We consider whether the lost time claimed by David Schoenecker while he held the office of financial secretary of UAW Local Union 551 was excessive so that his refusal to reimburse the local union for these payments amounted to financial misconduct within the meaning of Article 48, §5, of the UAW Constitution.

FACTS

David Schoenecker works for Ford Motor Company at its Chicago Assembly Plant in a bargaining unit represented by UAW Local Union 551. In 2007, Schoenecker was elected financial secretary of the local and he commenced his term in office in 2008. In 2010, Scott Houldieson became local financial secretary after defeating

Schoenecker in a local union election for the position. On July 20, 2011, financial secretary Houldieson sent Schoenecker a letter stating that he had been overcompensated by the local union during his term of office as financial secretary. Houldieson's letter states:

"In December of 2010, I requested from Labor Relations an update of pay rates for UAW members that had been serving the membership on union business. After a detailed analysis of your lost time checks you have overpayments for 2008 thru 2010. You were compensated for lost time at various base pay rates during these years, all too high. Additionally, you were paid shift premiums that you were not entitled to and you were paid overtime you were not entitled to. These facts have been established and verified by the financial secretary and a trustee. Included is all the documentation used to support these claims."¹

Based on the documents provided, Houldieson claimed that Schoenecker had received overpayments totaling \$9,437.29. He requested Schoenecker to repay this amount to the local union within 30 days.

The local union bylaws provide that the financial secretary shall be paid lost time based on his or her plant classification plus the cost of living allowance.² Schoenecker is classified as paint repair at the Chicago plant.³ In addition, Schoenecker is assigned to a program referred to as the launch team. The launch team is a program designed by Ford Motor Company to reduce the amount of time it takes to launch a new vehicle at the Chicago plant.⁴ Schoenecker did not pay the money requested in Houldieson's letter because he believed that his claims for lost time while he served as financial secretary were justified by the hours he would have been assigned to work as a launch team member.⁵

Schoenecker apparently met with Scott Houldieson and other members of the local executive board in early February 2013 to discuss the dispute over Schoenecker's compensation. Schoenecker described this meeting in an email dated February 15, 2013, addressed to some of those present at the meeting. In this email, Schoenecker complained that he had been denied due process in connection with Houldieson's claim that he owed the local union money. Schoenecker explained his position with respect to the compensation issue as follows:

¹ Record, p. 25.

² Record, p. 13.

³ Record, p. 120.

⁴ Record, p. 82.

⁵ Attorney Sean Morales-Doyle explained Schoenecker's position in a letter dated July 11, 2012, written on Schoenecker's behalf to Region 4 Director Roy McInroy. Record, pp. 48-50.

“I would like to make it very clear, I am the highest seniority operator in the “Paint Repair” classification. I exercised my contractual right of shift preference for all my time at Ford prior to being elected. Data to back this up was in Scott’s possession. I exercised this same contractual right since leaving elected status. Data to back this up is in Scott’s possession. Scott has in his possession data to prove there were members working (within the same classification I hold) the 3rd shift through the complete time span of the plant’s one shift operation. Yet, he states, ‘I (Scott) don’t think you should be entitled to 3rd shift premium.’”⁶

Schoenecker asserted that Houldieson considered himself accuser and judge on the question of the propriety of the payments Schoenecker received as reimbursements for lost time. He argued that the local union ought to have conducted a hearing on Houldieson’s charges in accordance with the procedures set forth in Article 48, §6 of the UAW Constitution. He wrote:

“As of just recently, when asked about my situation, Scott and another E-Board member responded they have turned it over to the International. My question was and still is, how can any member of the E-Board turn their listed Constitutional duties over to the International members to do without following due process? I’m including this reference to our Constitution once again as proof Scott feels and at this point is condoned by the lack of action by the presiding member of the E-Board that his (Scott’s) opinion is the only evidence considered and that he is the sole judge of the situation. Then demanding (in writing) action be taken to correct the situation. Due Process?”⁷

Sergeant-at-arms Jason L. Wachowski responded to Schoenecker that he agreed on the question of due process and he recommended reporting the issue to the membership for a response. Wachowski’s email to Schoenecker states:

“I am in total agreement. There was no ‘determination’ to our impromptu meeting of clarification. Therein, there was no fair hearing even to provoke a determination. This should never have been mentioned to the International. Let’s see what the meeting minutes reveal when read at the general membership meeting on Monday.”⁸

On March 11, 2013, Angela Wright of the UAW Auditing Department commenced an audit of the books and records of UAW Local 551 covering the period January 1, 2008 through December 2012. Auditor Wright investigated the allegations against Schoenecker as part of her audit. She met with Schoenecker on March 13, 2013, and

⁶ Record, p. 51.

⁷ Record, p. 52.

⁸ Record, p. 51.

again on October 9, 2013, to discuss Houldieson's allegations. On December 9, 2013, Wright notified Schoenecker that she had determined he had received excess compensation during his term as financial secretary of Local 551 in the amount of \$7,071.42.⁹ Wright responded to Schoenecker's explanations for the payments he received as follows:

"In meetings with you on March 13, 2013 and October 9, 2013, you were given an opportunity to discuss the findings of the audit. The materials you presented to justify the payments, which included an email from a former Ford supervisor, DROTS with lines drawn to the person with whom you equalized and various correspondences, were reviewed, but the determination remains that the monies you received from the local were not substantiated. The proof that you presented was not consistent with policies of Ford Corporation and therefore renders the payments unauthorized."¹⁰

Wright provided Schoenecker with a restitution agreement and asked him to return it to the UAW Auditing Department with a check for \$7,071.42 prior to December 17, 2013.¹¹

The International Auditing Department presented Local Union 551 with the results of Wright's audit on May 6, 2014. The May 6 audit report provided the following description of the claim against David Schoenecker:

"Local union records presented to the auditors by a former financial secretary indicate that former financial secretary David Schoenecker misappropriated local union funds by overpaying himself from July 20, 2008 through June 24, 2010. Excel sheets provided with this report show the dates and amounts of violations of the equalization policy by Mr. Schoenecker in which he continuously paid himself monies for scheduled times that he was not entitled to receive (see Schedule #4).

The scheduled times for which Mr. Schoenecker were paid were not in accordance with Ford Corporation policies. The total amount of monies owed for unauthorized payments received by David Schoenecker total \$7,071.42. Mr. Schoenecker has been instructed to submit payment to the local in this amount."¹²

The audit report presented to the local in May 2014 included a statement prepared by Region 4 Servicing Representative Tony Tallarita, describing the history of the launch team at the Chicago plant. Tallarita was chairperson of the local 551

⁹ Record, p. 57.

¹⁰ Record, p. 57.

¹¹ Record, p. 58.

¹² Record, p. 69.

bargaining committee in 2005. Tallarita described certain understandings reached by the parties in 2005 regarding the selection of launch team members and their right to work overtime under the local equalization of overtime agreement.¹³ Tallarita described the composition of the launch team as follows:

“...The launch teams typically have been comprised of a salaried launch team manager and supervisors who would oversee hourly workers from each of the various departments of production. These workers were handpicked by management and would temporarily be relieved of their regular production duties to assist in the launching of a new vehicle.”¹⁴

According to Tallarita, bargaining unit members at the Chicago plant regarded the launch team as a great opportunity, but they also resented the way members of the team were selected and compensated. Tallarita wrote:

“...In the eyes of most production workers, being placed on the launch team is the equivalent of winning the lottery. Selected members would get out of the intense daily grind of assembly line work and switch into a free effort work environment. They would often be provided with lavish overtime opportunities, expense accounts, and be allowed to travel for extended periods of time. All of which contributed heavily to the perception that the launch team is an awesome opportunity.”¹⁵

As noted, many members also resented what they perceived as unfairness in the way the program was operated. Tallarita explained:

“For years the hourly workforce had 2 major points of contention with the launch team concept. The first was the biased and unfair selection method. Management unilaterally handpicked whomever they wanted to place in these highly sought after temporary assignments. The second point of contention was the company inappropriately using launch team members to perform overtime work that should have gone to rank and file production workers. If an overtime assignment was not directly related to the launch, the overtime should not be performed by a launch team member! Management had made a habit of assigning non-launch related overtime tasks to launch team members when they knew the launch team members did not meet local contractual eligibility requirements to have performed the tasks and/or the overtime in the first place.”¹⁶

¹³ Record, pp. 82-122

¹⁴ Record, p. 82.

¹⁵ Record, p. 82.

¹⁶ Record, p. 82.

Tallarita reported that production workers on the launch team could earn as much as \$180,000 annually. He stated that this high-income potential “added insult to injury” when production workers found launch team members receiving overtime assignments that they were not contractually entitled to perform. He maintained that the issue created “tremendous animosity” and generated a very high volume of overtime grievances.¹⁷

In order to address these tensions in the workplace, Tallarita reported that the parties negotiated a letter of understanding in 2005 to establish criteria and qualifications for selecting members to participate in the launch team, rather than allowing management to make selections unilaterally.¹⁸ In the context of this discussion, Tallarita reported that the company raised concerns about what would happen if one of the highly trained launch team members were elected to union office. According to Tallarita, the company wanted language in the agreement to make launch team members ineligible for union office. The union was concerned, however, that such language would violate the National Labor Relations Act (“NLRA”).¹⁹ According to Tallarita, the parties eventually agreed to draft launch team criteria that would make pursuit of local union office incompatible with a launch team assignment.²⁰ Tallarita described some of the qualifications for an assignment to the launch team established by the letter agreement and observed that it would not be feasible for an employee to satisfy these qualifications without devoting 100 percent of his or her workday to performing launch team duties.²¹

Tallarita reported that the company was unwilling to adopt contract language limiting the amount of overtime launch team members could work. Nevertheless, he

¹⁷ Record, p. 82.

¹⁸ Record, pp. 83-84

¹⁹ Tallarita’s report states:

“The union believed language preventing a member from running for office would violate the National Labor Relations Act so that point was rejected. The other points had enough merit to consider. Everyone at the bargaining table was aware of the attractive overtime hours available to launch members. The company made it clear that if a launch team member left to take an elected/appointed union office which took them away from daily launch responsibilities, that person should not expect to report to the floor to perform launch related overtime assignments after working their shift as a union representative. The company reiterated that launch team positions are temporary assignments and if someone left the status of performing launch duties day in and day out they would not be entitled to perform launch overtime assignments.” (Record, p. 84)

²⁰ Tallarita’s report explains:

“The parties agreed that action should be taken to morally and ethically discourage anyone from quitting the launch team. It was determined the most prudent and fair way to accomplish this was to create qualifications and/or standards that could not be met by a person who was not available to dedicate all of their working hours to performing launch duties. ...” (Record, p. 84)

²¹ Record, p. 85.

stated that the parties reached an understanding in 2005 designed to address perceived abuses of the equalization of overtime provisions in the local agreement. According to Tallarita, the parties agreed to meet daily to review overtime assignments in order to prevent inappropriate overtime assignments to launch team members.²² Tallarita reported that this process was a huge success and brought an end to the high volume of grievances concerning launch overtime assignments. Tallarita explained that he had provided this bargaining history to the auditor to refute Schoenecker's claim that he was entitled to claim lost time based on his launch team assignment.²³

Tallarita went on to analyze the ten information packets Schoenecker had presented to the auditor to justify his claims for lost time. Tallarita maintained that the information provided by Schoenecker demonstrated that his claims for lost time violated the local overtime agreement and the understandings agreed to by the parties at the Chicago plant regarding the assignment of overtime to launch team members. He identified the following six violations revealed by the packets.

1. Attempted to equalize outside of his classification, outside of his shift, outside of his area or department.
2. Evidence not provided that he was low on the overtime hours and entitled to work.
3. No evidence produced that he was providing the company with total overtime hours paid to him by the union so they could be added to the overtime equalization report.

²² Tallarita described these negotiations as follows:

"After reviewing the evidence of abuses that had taken place in overtime assignments, the lead negotiator for the company openly admitted what had been happening was wrong and he was open to fixing it, but he privately warned the union chairman that he did not think he could convince labor affairs to sign off on putting language about this in the contract. He implied that it wasn't a good career move for him to openly agree to contract language that may be viewed by labor affairs as an infringement of management rights. A compromise was eventually reached as bargaining continued and the parties agreed that the process presented by the union would become a 'local plant practice', which would be implemented immediately upon ratification." (Record, p. 85)

²³ Tallarita stated:

"The purpose of providing so much background information on the launch team is to point out that it is grossly ludicrous for a launch team member to imply that upon accepting a union position which takes them away from performing daily launch related activities, they could maintain an entitlement to equalize overtime with launch team members. The facts support that upon being elected financial secretary, Brother Dave began spending the majority of his workweek at the union hall. His launch team assignment was awarded to a fellow union brother named Andrew Johnson. There is no policy or practice, written or unwritten, that would support Brother Dave being allowed to equalize overtime with a launch team member. (Record, p. 85)

4. No indication that he notified the people involved with overtime scheduling that he wanted to work overtime in the plant.
5. No evidence that he gained approval of the executive board and membership to work at the hall for overtime instead of earning it in the plant.
6. No evidence that he performed any overtime work for the union or the company on the days in question.²⁴

Tallarita maintained that Schoenecker's claims for lost time were not only inconsistent with the applicable local agreements, but he charged that they also violated the expectations of the UAW and the dictates of good conscience.²⁵

On May 16, 2014, International Secretary-Treasurer Dennis Williams forwarded a copy of the audit of Local Union 551 to International President Bob King. Williams advised King that it appeared from the audit that the former financial secretary of Local Union 551, David Schoenecker, had engaged in financial misconduct by claiming excess lost time while he was performing the duties of financial secretary. Williams's memorandum to King provides the following explanation for this charge:

"The equalization claims by Schoenecker were for hours worked by other employees in positions that were not proper for equalization comparison to the position Schoenecker worked."²⁶

Williams reported that Schoenecker disagreed with the findings and had not repaid the local union. On May 19, 2014, President King advised Schoenecker of the results of the audit. King notified Schoenecker that he had a right to request a hearing and that such request should be submitted within 10 days.²⁷ Schoenecker submitted a request for a hearing on May 27, 2014.²⁸ On June 16, 2014, International President Dennis Williams notified Schoenecker that a hearing would be conducted on July 18, 2014, pursuant to

²⁴ Record, pp. 93-94.

²⁵ Tallarita's report states:

"The evidence indicates Schoenecker would leave the union hall after his daily shift ended and when he returned the following day, he combed through overtime records to see if anyone worked daily overtime. If someone did, he found the person with the highest hours and paid himself the same hours. When it comes to the weekend overtime in question, the evidence indicates he did the same exact thing. There is simply no evidence that he followed the contract, the expectations of the UAW, or the dictates of good conscience." (Record, pp. 91-92)

²⁶ Record, p. 125.

²⁷ Record, p. 128.

²⁸ Record, pp. 129, 132-134.

Article 48, §5(c) of the UAW Constitution to review the determination that he received union funds improperly.²⁹

President Williams's Administrative Assistant Allen Wilson conducted the hearing on Schoenecker's appeal. Acting on the president's behalf, hearing officer Wilson prepared a report to the International Executive Board (IEB) explaining President Williams's determination that Schoenecker had engaged in financial misconduct.

Hearing officer Wilson reported Schoenecker's testimony that he did not commit any form of financial misconduct because he was entitled to the overtime payments he claimed. Wilson gave the following summary of Schoenecker's argument regarding his claims for lost time:

"...Appellant makes the argument that because he was selected to work as a product specialist on the Ford launch team, then he was entitled to receive the lost time hours he claimed. Conversely, appellant testified that it was his understanding that because of his special status as a product specialist and the numerous overtime hours that this assignment created, he should be afforded the opportunity to recoup all of the lost time monies that were generated by this work assignment – both inside and outside of his specific in-plant paint repair classification, regardless of shift. ..."³⁰

Schoenecker submitted statements from former plant chairpersons and a Local 551 member to support this argument. One of these is an email sent to Schoenecker by the former plant chairperson Ryan Rettig. Rettig's email challenges Representative Tallarita's assertion that Schoenecker had been removed from the launch team and replaced by Andrew Johnson when he assumed the office of local financial secretary. Rettig stated that management never took the steps that would have been necessary to remove Schoenecker from the team. His email to Schoenecker states:

"When you were elected by the membership to serve as Local 551's financial secretary, you were not removed from launch lead by the company nor did the union initiate any efforts to punish you for being elected. If being elected would have created a conflict of interest or an undue hardship on the company, they could have initiated paperwork asking for you to be removed and turned it in to Labor Relations, who would have to keep documentation. When you were officially elected, the company and the union simply agreed to allow Andrew to fill in while you fulfilled your duty as financial secretary. Punishing someone for being elected by the majority of the membership wasn't my approach, and today, I still don't support that type of behavior! I am also not aware of any language in the local union bylaws, Constitution, National Agreement, or

²⁹ Record, p. 131.

³⁰ Record, pp. 150-151.

local agreement stating people being elected by the majority of the membership should be immediately removed from launch or any other positions. Actually, I am extremely confident the language doesn't exist.

³¹
...

Grant Morton, who held the position of plant chairperson from 2010 to 2013, provided an email affirming that launch team personnel do not equalize overtime with production classifications. Morton stated that under the local agreement the hours worked by a launch team member are not limited to an equivalent number of the hours worked by other members within the same classification. Morton asserted that, as a launch team member for at least 10 years, Schoenecker would have been scheduled to work if any member was working on a launch team project and would therefore be entitled to claim lost time for those hours regardless of the other member's classification. Morton acknowledged that Scott Houldieson disagreed with this position, but he maintained that Houldieson's argument had no contractual support. His email states:

"In 2011, Scott Houldieson told the executive board that there would be a meeting about the disputed pay he claimed Dave had during this time as financial secretary. I looked over the information that Scott had put together and explained the language about self-equalization and Scott refused to believe that language. I told him it was not about belief; it was black and white in the contract. ..."³²

Sergeant-at-arms Jason Wachowski submitted a statement in support of Schoenecker's right to receive the lost time he claimed while he was financial secretary. Wachowski argued that Schoenecker was entitled to the pay he received because of the unique way employees on the launch team were compensated. He wrote:

"If you look at David's gross earnings prior to and immediately after holding office as financial secretary, he actually had less earnings as an officer. David has a very special and unique classification, Paint Launch Lead, that requires him to perform duties of numerous other employees. When Scott went back and tried to compare David's lost time to others, Scott was not in full understanding of what David's roles and responsibilities were. When David had to let others take over his duties while in office, no single person took his place. His duties were divided amongst a handful of other employees. If each employee only took a portion of the workload, then should David only get paid a portion of what he would have earned while performing his regular duties? This is what makes this case unique."³³

³¹ Record, pp. 54-55.

³² Record, p. 138

³³ Record, p. 135.

Wachowski also pointed out that Schoenecker did not make a unilateral decision about what his compensation should be. He noted that the local president had to approve Schoenecker's lost-time vouchers and that the membership approved those vouchers by accepting the financial reports from the previous month. Wachowski asserted that if there were any problem it should have been corrected immediately.³⁴

Veterans Committee member Michael McCullough submitted a statement on Schoenecker's behalf and also appeared with him at the hearing on July 18, 2014.³⁵ McCullough argued that the concept of lost time means that the person should be placed in the same financial position as if he had not lost the time from work. He wrote:

"...Simply put, 'No loss, no gain' sums it up. Looking at David's wages before and after office, he has actually lost money to serve the membership."³⁶

McCullough added that the necessary approvals appear on all of Schoenecker's lost-time vouchers. He argued this should have exonerated Schoenecker from any charge of misconduct.

Hearing officer Wilson responded to these arguments by observing that Schoenecker's right to work overtime while he was in the plant would have been governed by the local overtime agreement. The local overtime agreement provides that overtime will be equalized by classification and shift within each area.³⁷ Wilson included as part of his report a copy of the local agreement governing the assignment of overtime in the plant as well as Tallarita's interpretation of how that agreement ought to have been applied to Schoenecker's claims for lost time as financial secretary.³⁸ Wilson also reprinted in his report a verbatim copy of Representative Tallarita's analysis of the material Schoenecker had submitted in his ten packets explaining the basis for his vouchers.³⁹ Wilson commented that Tallarita's analysis showed illegitimate mingling of classifications and unjust shift premiums claimed for inappropriate shifts.⁴⁰

In his conclusion, Wilson reported that he had reviewed the audit report and the entire case record and could find no valid reason to disagree with the International

³⁴ Record, p. 135.

³⁵ Record, pp. 137 and 142.

³⁶ Record, p. 137.

³⁷ Record, p. 152

³⁸ Record, pp. 152-159.

³⁹ Record, pp. 161-183.

⁴⁰ Record, p. 160.

President's determination that Schoenecker had engaged in financial misconduct.⁴¹ The IEB adopted Hearing Officer Wilson's report as its response to Schoenecker's appeal from the International President's determination that he had received funds improperly. President Dennis Williams provided Schoenecker with a copy of the IEB's decision on August 26, 2014.⁴² Schoenecker appealed the IEB's decision to the Public Review Board on September 24, 2014. We heard the parties in oral argument on June 6, 2015.

ARGUMENT

A. Attorney Thomas H. Geoghegan on behalf of David Schoenecker:

The principal issue presented by this appeal is whether David Schoenecker could claim lost time for the performance of his duties as financial secretary by comparison to the hours worked by other launch team members in the plant. The financial secretary of Local Union 551 is entitled to receive lost time equal to the compensation he would have received from the employer for the period in question. Schoenecker's claims for lost time included the overtime he would have worked as a launch team member while he was performing the duties of financial secretary for the local union. Launch team members have greater opportunities to work overtime in the plant because of the nature of their assignment. The International Union has taken the position that Schoenecker was limited to claiming the lost time he could have worked by equalizing overtime in his classification and shift. There is nothing in the local agreements to support that position. The claims against Schoenecker, therefore, appear to be motivated solely by political animus on the part of Scott Houldieson and Representative Tallarita.

The launch team is a group of people trained to work on a wide range of issues. Their work does not occur in the context of any single classification or unit. Although Schoenecker is classified paint repair, the only significance of that classification is to determine his rate of pay. Schoenecker never equalized overtime within the paint repair classification, because he is assigned to the launch team. He is the paint specialist on the launch team. Whenever launch team members were working on a project, Schoenecker would have been scheduled to work as paint launch leader. He was therefore entitled to lost time for any hours during which the launch team was scheduled to work in the plant. Schoenecker presented statements from two previous plant chairpersons, Grant Morton and Ryan Rettig, affirming this rule. Grant Morton stated that the equalization of overtime provisions in the local agreement does not limit the hours that may be worked by a launch team member. The skills of a launch team leader are unique and he could not be replaced on the team by another employee in order to equalize overtime. These people work whenever they are needed.

⁴¹ Record, p. 184.

⁴² Record, p. 141.

In response to Schoenecker's appeal, the International Union has asserted that Schoenecker was removed from his assignment on the launch team while he held the office of local financial secretary so that he was required to restrict his claims for lost time to the hours worked by the paint repair classification. In his report to the auditor, Representative Tallarita claimed that Andrew Johnson replaced Schoenecker as paint launch leader. There is no language in any applicable agreement requiring launch team members to be removed in order to hold local union office. Furthermore, during his term of office, Schoenecker continued working one day a week at the plant on the launch team. If there was some agreement between the company and the International Union about launch team members being removed while they held local union office, it was never communicated to Schoenecker or to the supervisors with whom he worked. The only source of this rule is Representative Tallarita.

Schoenecker was never removed from the launch team and Andrew Johnson did not replace him as launch team leader. Johnson served as Schoenecker's assistant on the Paint Department launch team. He was Schoenecker's assistant before Schoenecker became financial secretary and he remained in that position while Schoenecker held union office. Johnson continues as Schoenecker's assistant on the launch team today. His classification has never changed. Ryan Rettig, who held the position of plant chairperson from 2007 to 2010, submitted a statement affirming that there is no record of Schoenecker having been removed as launch team leader. Rettig explained that both Ford Motor Company and the union would have required some documentation for such removal to take place. Rettig further observed that Schoenecker's removal from the team would be in conflict with management's goal of avoiding turnover in launch team positions. The International Union has not provided any rebuttal to Rettig's letter.

During the 24 months that Schoenecker held elective office, every payment to him for lost time was approved. The local financial secretary submits and explains all expenses paid by the union during local executive board meetings. The executive board members vote on whether to approve the expenses. At each monthly membership meeting, the report of expenditures approved by the local executive board is read to the membership. All of Schoenecker's claims for lost time were reported to the membership in this fashion. At any point during this period, the president could have called for an investigation into any expenses deemed questionable. None of Schoenecker's claims for lost time were questioned during his term of office. In addition, Schoenecker discussed his compensation with all three trustees. The issue was raised because President Bishop wanted to be comfortable that Schoenecker was accurately recording his time. The trustees found no fault with Schoenecker's lost time vouchers, however; every voucher was approved.

Local Union 551 was in a bad state when Schoenecker assumed office as financial secretary. There were unpaid bills and tax delinquencies. The membership records were not up to date and the software used by the local for its financial records required an upgrade. In addition, there were approximately 1400 members on layoff who needed to get SUB pay. Schoenecker had to spend an unusual amount of time at

the local hall addressing these problems. Scott Houldieson challenged the amount of time Schoenecker was spending performing the duties of financial secretary. Houldieson introduced a motion at a membership meeting asking to have Schoenecker's hours reduced. The membership rejected this motion, thus taking affirmative action to approve Schoenecker's compensation.

There is no dispute that Schoenecker and Houldieson clashed over Schoenecker's compensation while Schoenecker was financial secretary. In light of their disagreements, it was predictable that Houldieson would look for a way to challenge Schoenecker's compensation once Houldieson was elected financial secretary. Schoenecker had also come into conflict with Servicing Representative Tallarita over the 2009 modifications to the National Agreement. This record supports a conclusion that Tallarita developed a *post hoc* rationale to justify Houldieson's charge of financial misconduct against Schoenecker.

The UAW Constitution includes safeguards against the kind of political retribution that motivated Houldieson's claim that Schoenecker made excess claims for lost time. Article 48, §6, provides for a fair hearing to determine the merits of any claim against a member for owing non-dues money. As soon as Houldieson made his demand against Schoenecker for reimbursement, Schoenecker requested that the claim be referred to the local executive board for a hearing, as was his right under Article 48, §6. Had the matter been placed before the local executive board, Houldieson's claims would have been rejected. Everyone knew Schoenecker was on the launch team. When Schoenecker urged the local to conduct a hearing to address Houldieson's accusations, President Carlo Bishop responded that he had no time for such a hearing. Instead, Bishop referred Houldieson's claim to Representative Tony Tallarita.

Schoenecker renewed his request to have his case presented to the local executive board in accordance with the procedures described in Article 48, §6 of the UAW Constitution during his meetings with Auditor Wright. The International Union does not deny that Schoenecker had a Constitutional right to a hearing on Houldieson's charges. The International essentially argues that Schoenecker's right to a hearing was satisfied by Wright's audit. Wright's audit applies a rule devised by Representative Tallarita to accuse Schoenecker of misconduct. Schoenecker never had a hearing on the essential issue raised by his appeal, that is, whether he was entitled to claim lost time based on his launch team assignment. The IEB's decision on Schoenecker's appeal relies entirely on Wright's audit report. That report assumes the truth of Tallarita's theory that Schoenecker had been removed from the launch team when he assumed office as financial secretary. Based on the statements of Tallarita's successors in the position of local plant chairperson, it is evident that Tallarita's theory is wrong.

B. Betsey Engel on behalf of the International Union, UAW:

Local 551's records were not in disarray when Schoenecker assumed office as financial secretary in June 2008. The International Auditing Department had just

completed an audit of the local union's financial records for the period beginning February 1, 2006, and ending December 31, 2007. The audit report dated April 28, 2008, makes no mention of any delinquencies. Blake Miller who conducted the audit stated that he found no notices from the IRS or the State of Illinois, as claimed by Schoenecker. Furthermore, Miller reports that the software in use when Schoenecker assumed office is still in use today. Schoenecker's description of the state of the local union's finances when he assumed office is simply untrue. This is significant, because he used his exaggerated account of the deficiencies in the local union's recordkeeping to justify the amount of overtime he charged to the local union.

Scott Houldieson made two attempts to cut the amount of time Schoenecker was spending at the local union hall during Schoenecker's term of office as financial secretary. Houldieson did not know about the overtime issue until he became financial secretary himself, but he observed that Schoenecker was spending an inordinate amount of time at the hall, which created an unnecessary expense for the local in terms of reimbursements for lost time. Houldieson also tried to convince Schoenecker to come to the hall on Fridays rather than Mondays in order to relieve the local of some of the lost overtime burden, but Schoenecker refused. Schoenecker and Houldieson did argue over Schoenecker's compensation. Houldieson believed that Schoenecker was refusing a reasonable adjustment designed to reduce local union expenditures.

Schoenecker argues that Representative Tallarita somehow prevented him from having a hearing before the local union executive board pursuant to Article 48, §6, as political retribution for his opposition to the concessionary agreement negotiated in 2009. This assertion is baseless because Tallarita as Region 4 International Servicing Representative had no role in putting the 2009 agreement in place. In any event, Schoenecker went on record as being in support of the concessionary agreement. Tallarita had nothing to do with the local union's failure to conduct a hearing pursuant to Article 48, §6.

The UAW Auditing Department was first made aware of the dispute over Schoenecker's claims for lost time in December 2011 when Trustee Dino Salas contacted Auditor Angela Wright asking for an investigation. In order to determine the merits of the claims being raised, the Regional Director contacted President Carlo Bishop and instructed him to initiate an inquiry pursuant to Article 48, §6, of the Constitution. President Bishop failed to follow Director McInroy's instruction, however. When the local came due for its regular audit, the issues related to Schoenecker's compensation remained outstanding. Auditor Wright therefore included a special investigation of the claim against Schoenecker as part of her routine audit.

Wright conducted a thorough investigation of the issue. She interviewed Schoenecker and invited him to submit all the documents that he felt supported his position. Representative Tallarita had provided Wright with a detailed history of the launch team as well as an analysis of the contractual language regarding overtime. That history demonstrated that the parties intended the launch team product specialist position to be held by an employee capable of devoting 100 percent of his workday to

performing launch duties, in order to justify the cost and time of continuous training associated with these positions. When Schoenecker was elected financial secretary of Local Union 551, he no longer met this eligibility requirement. Schoenecker provided documents to Wright during the audit investigation to justify his claims for lost time, but the information provided by Schoenecker was all based on his assignment to the launch team. You cannot be a launch team member and a union officer. Although there is no express prohibition against it in the contract, the eligibility rules Tallarita negotiated in 2005 make the two positions incompatible.

Schoenecker was no longer eligible to hold a position on the launch team when he took on the role as local financial secretary so he was required to follow the contractual eligibility requirements in the local overtime agreement. This meant that he needed to establish his eligibility to work overtime within his classification, paint repair in the pre-delivery area, under the rules of the local overtime equalization agreement. Representative Tallarita provided an explanation of how local officers qualify to be reimbursed for lost overtime opportunities. An elected official may claim lost straight time and/or lost overtime hours when he is contractually eligible and would have worked those hours in the plant but did not do so because he performed approved union business instead. When these criteria are met, the officer may claim the time he lost and be paid for the equivalent number of hours he would have worked had he not been performing union business. Schoenecker was unable to demonstrate that he had attempted to be scheduled for overtime in the plant pursuant to the local overtime agreement. The ten packets of information he provided to Auditor Wright showed claims for work outside of his classification, inappropriate shift premiums for work other than his assigned shift, and hours where no work was performed for the union.

Schoenecker was given several opportunities to respond to the claims against him. After Wright completed her investigation, she sent her findings to the International Secretary-Treasurer, who forwarded a detailed account of the exact nature of the claim to the International President as provided for in Article 48, §5(a), of the Constitution. The President scheduled a hearing on the claim to determine how to proceed. Schoenecker was given notice of that hearing and offered the opportunity to appear with counsel and any witnesses he might chose.

Schoenecker appeared at that hearing without counsel and only one other individual. He presented the written statements of Ryan Rettig and Grant Morton at the hearing, but he did not call any other witnesses to testify. Schoenecker has complained that he was not provided a fair hearing on the claims against him, but when given the opportunity to answer those claims, he failed to respond in a meaningful way.

Schoenecker argues that the charges against him were politically motivated but there is nothing in this record to support that charge. It is well known that Scott Houldieson also opposed the reopening of the collective bargaining agreement in 2009. The two opposed each other in a local union election for financial secretary, but that is not evidence of improper motivation on Houldieson's part. Houldieson's charge of misappropriation was based solely on the local union bylaws and the local collective

bargaining agreement. The International Union found that those documents supported Houldieson's claim that Schoenecker received excess compensation.

The audit conducted by the International Secretary-Treasurer's office established a well-documented and convincing case of financial misconduct. The International President's office properly provided appellant with the opportunity to answer the charge at a hearing conducted pursuant to Article 48, §5, of the UAW Constitution. Based on the facts presented at the hearing and the record in this case, the IEB concluded that a valid claim of financial misconduct was established.

C. Rebuttal on behalf of David Schoenecker by attorney Thomas H. Geoghegan:

In response to Schoenecker's appeal, the International Union argues that there is no evidence in the record of animus against Schoenecker. The International apparently does not regard Houldieson's opposition to Schoenecker in the election for financial secretary and subsequent filing of baseless charges of misappropriation as evidence of animus. In response to Houldieson's charges, the UAW failed to follow the Constitutional procedure of referring the issue to the local executive board. The International has ignored the testimony of two former plant chairpersons regarding the application of the local overtime agreement to launch team leaders in favor of an unsupported theory offered by the International Servicing Representative.

Schoenecker did not make excessive claims for lost time during his term of office as financial secretary. His compensation as financial secretary was half of what he could have been earning in the plant. Schoenecker is a thirty-eight year employee at Ford. Even if Schoenecker had been formally demoted to paint repairman, his seniority and skills would allow him to go to the afternoon shift when it was worked and then go back to the day shift when it was not. As to working outside of his classification, Schoenecker is often working other classifications. For example, during last Christmas, he worked with pipefitters and electricians receiving data on the ovens to get the proper cure on the paint products. There were no other members of the paint repair classification working during this period. Schoenecker was entitled to work because of his special skills. The same concept applies to his claims for overtime. Lost time for overtime is based on the work available to employees capable of performing the work. Even if Schoenecker were not a launch team member, his skills would still give him overtime opportunities far exceeding those of other UAW employees. The auditor did not take Schoenecker's special skills and training into account when calculating the amount of compensation he was entitled to claim while performing his duties as financial secretary.

The parties accusing Schoenecker of financial misconduct had a grudge against him because of his status in the plant. He holds an elite job. They wanted to take him down a peg. He should have been given an opportunity to refute the charge of financial misconduct before any penalty was imposed. The Article 48, §5 hearing conducted by the International Union on July 13, 2014, did not provide that opportunity, because the

union had already made its determination and imposed the penalty for financial misconduct at the time that hearing took place.

DISCUSSION

The parties' presentations during oral argument and their post-hearing briefs have clarified the politics behind this dispute over Schoenecker's compensation. The charge against Schoenecker had no connection to any stance he may have taken with regard to the 2009 amendments to the UAW-Ford National Agreement. The issue at the center of this disagreement is a local one. Houldieson's complaint about the compensation paid to Schoenecker while he was financial secretary of Local 551 reflected a sharp divide among bargaining unit members over the propriety and value of the Project Specialist Program or launch team at the Chicago Assembly Plant.

Houldieson first raised the issue about Schoenecker having accepted lost time for hours worked outside of his classification and shift after Schoenecker left office. Houldieson made a demand to Schoenecker for reimbursement to the local of the amounts that Houldieson identified as inappropriate. Schoenecker disputed Houldieson's claim. We agree with Schoenecker that he was entitled to a hearing on the issue raised by Houldieson. Houldieson's demand, by itself, did not create any obligation on Schoenecker's part or establish that any misconduct had occurred. Houldieson sent copies of his demand to the Regional Director and the local union president, but these officers apparently did not conclude in 2011 that financial misconduct had been established. We learned during oral argument and through the post-hearing briefs that Regional Director McInroy responded to the dispute between Houldieson and Schoenecker by directing the local union president to conduct a hearing pursuant to Article 48, §6, of the UAW Constitution. The local union chose not to follow Director McInroy's advice.

In February 2013, Local 551 came up on Auditor Wright's list for a routine audit. It was at this point that Wright discovered the local union had not followed through on Director McInroy's instructions to President Bishop to resolve the issue of Schoenecker's compensation by conducting a hearing in accordance with Article 48, §6, of the UAW Constitution. We can only speculate about President Bishop's reasons for failing to call for such a hearing after being directed to do so by the Regional Director. A hearing at the local union level conducted in accordance with Article 48, §6, would have been an appropriate Constitutional method to determine the legitimacy of Houldieson's claim against Schoenecker and might have eliminated the need for all of these subsequent proceedings.

When Auditor Wright discovered that the local union had not investigated Houldieson's claim against Schoenecker, she sent an email to Blake Miller of the UAW Auditing Department asking for instructions on how she should proceed with the routine audit of Local Union 551 in light of the outstanding controversy regarding Schoenecker's

compensation.⁴³ In order to assist Auditor Wright, the Regional Director apparently contacted Servicing Representative Tony Tallarita for a written explanation of the local contract provisions governing the assignment of overtime to launch team members. Representative Tallarita responded with the report that is included in Angela Wright's audit.

We have no doubt that auditor Angela Wright was meticulous in her calculation of the alleged unauthorized payments to Schoenecker based on Representative Tallarita's description of the launch team program. We will assume that her figures are accurate. Wright's testimony during oral argument confirmed, however, that she made no independent evaluation of the contractual basis for Tallarita's report. Although the audit of Schoenecker's compensation was prompted by the UAW Auditing Department's schedule of routine audits, Wright testified that this particular audit was not routine. It was a special assignment. By the time Wright was given the assignment to audit Schoenecker's compensation, the determination of financial misconduct had already been made. Wright was sent in to identify the extent of the misappropriation.

Schoenecker used the assignments he would have received as a launch team member to calculate his lost overtime opportunities. Tallarita made the determination that Schoenecker had received excessive reimbursements because he refused to consider launch team overtime as a basis for lost time. We believe Representative Tallarita made this determination in good faith based on his understanding of the bargain he had reached with management in 2005, when he was chairperson of the local bargaining committee. Aspects of that bargain are reflected in a letter of understanding that was included in the local agreement at that time. While Representative Tallarita may not have harbored any personal political animus toward Schoenecker, it is clear from his report that during his term as plant chairperson, he aligned with members who resented the launch team and considered its operation an abuse of the local overtime agreement. His deep disapproval of the launch team and its operation is evident throughout his description of the program in his report to Wright. He did not regard a launch team assignment as the recognition of extensive experience and superior skills, but as something akin to winning the lottery. He described the long hours put in by launch team members as "lavish overtime opportunities" in a "free effort work environment." He distinguished launch team members from "rank and file" members who ought to have been given the opportunity to work the overtime launch team members were performing.⁴⁴ In his report to auditor Wright, Tallarita

⁴³ The email, dated February 15, 2013, is included with Administrative Assistant Isaacson's post-hearing brief as Attachment A. (Record, pp. 240-243) Wright explained her situation as follows:

"The local has now come up on my list as a regular audit. After speaking with President Carlo Bishop and Financial Secretary Scott Houldieson two weeks ago, I discovered that Article 48, Section 6, was never pursued by the local.

I had a meeting with Director Ron McInroy and Servicing Rep. Tony Tallarita on February 11, 2013. The Director wants this matter settled." (Record, p. 242)

⁴⁴ Record, p. 82.

characterized the idea that a union officer could use the launch team's equalization of overtime assignments to claim lost time from the local union as "grossly ludicrous."⁴⁵ Tallarita may have believed in all sincerity that Schoenecker's claims for lost time were improper, but he was not a neutral adjudicator.

Furthermore, after Tallarita was promoted to servicing representative, his successors in the plant chairperson's position at the Chicago plant did not share his view of the launch team. Two former chairpersons wrote letters supporting Schoenecker's method of calculating his lost time.⁴⁶ Following our hearing on Schoenecker's appeal, former plant chairperson Ryan Rettig submitted a declaration in which he described the launch team as a valuable contribution to the operations at the Chicago plant. Rettig reported that he served as plant chairperson from 2006 to 2010.⁴⁷ Rettig stated that Tallarita's letter of understanding was deliberately removed from the local agreement in 2008. Rettig's enthusiasm in favor of the launch team is as passionate as Tallarita's disapproval. He declared:

"That decision to drop that letter of understanding in the local agreements in 2008 was intentional on the part of our bargaining team. I passionately led these discussions. There was no letter of understanding or informal agreement as to eligibility on the launch team. I never presented or signed any letter of understanding restricting CAP's ability to enhance, modify, or review all situations that may have arisen. More importantly the membership never voted on any letter of understanding and the last time I checked THEY ARE STILL THE highest authority. Launch was very fluid and was CRITICAL to the success of CAP! The goal behind negotiations was to work with department heads and salary launch leads to develop a joint selection process that identified union brothers and sisters that had proper skill sets, sufficient seniority and strong presenteeism, to insure CAP had a world class launch. A key point on this topic is the fact that Regional (International) had to approve the local agreement I negotiated before it could be presented to the membership for final ratification. This in fact did occur and was also ratified by the membership. Therefore, if said letter of understanding is not in the local agreement, then some people are simply interjecting opinion, not fact. Baseless claims."⁴⁸

In other words, Tallarita's view of the launch team was not universally shared. Yet, it was the only view upon which the claim of misappropriation rested.

Tallarita disapproved of the way Schoenecker calculated his lost time, because he disapproved of the way the launch team members were permitted to work across

⁴⁵ Record, p. 85.

⁴⁶ Record, pp. 54-56 and 138-139.

⁴⁷ Record, p. 228.

⁴⁸ Record, p. 229.

classifications and shifts without any regard for the overtime equalization procedures in the local agreement. He believed he had put in place a system during the 2005 negotiations to address what he considered justifiable resentment on the part of production workers in the plant. But Tallarita's report also indicates that management was unwilling to put in writing any restrictions on launch team supervisors' right to assign tasks to launch team members. Tallarita was apparently able to work with the launch team supervisors after the 2005 negotiations to address certain issues of concern to some of his members, but the results of his negotiations in 2005 were never reduced to writing. At the same time, according to Schoenecker and two former plant chairpersons, launch team managers continued to assign launch team members to projects outside of their classification and shift as operations demanded.

Tallarita's conclusion that Schoenecker's claims for lost time amounted to misappropriation depended on his view that Schoenecker had relinquished his assignment on the launch team by accepting the position of financial secretary. According to Tallarita, the parties had established selection criteria for launch team members designed to prevent them from seeking local union office, even though the union believed that a provision expressly forbidding launch team members from seeking union office might violate the NLRA. During oral argument, Tallarita testified that the rule preventing launch team members from holding union office may be inferred from the selection criteria adopted in the letter of understanding he had negotiated in 2005. He identified the following two points from the letter of understanding as being incompatible with performing the duties of a local union officer:

"Point 4 states: 'The employee's willingness to participate in extensive training, including training that will require travel to Dearborn for extended periods of time.'

Point 6 states: 'The employee's commitment to remain a Product Specialist until all launch build activities are completed.'⁴⁹

We do not believe these two points are sufficient to establish any rule regarding a local union officer's eligibility to retain his launch team assignment in the plant. Furthermore, there is nothing in this record to support a conclusion that Schoenecker relinquished his launch team assignment when he became financial secretary of Local Union 551. The email prepared by Human Resources Manager Ryan Kantautas to support the claim that Schoenecker had been removed from the launch team during his term of office only confirms that there was no rule requiring such removal. Kantautas describes such simultaneous functions as not being in the interest of either party, but he does not point to any rule that would forbid it.⁵⁰ The union asked us to infer Schoenecker's removal from the assignment codes on his timekeeping record. We found these codes inconclusive. Former plant chairperson Ryan Rettig submitted a

⁴⁹ Record, pp. 84-85.

⁵⁰ Record, p. 282.

statement in support of Schoenecker's appeal to the International Union explaining that Schoenecker could not have been removed from the launch team without some kind of documentation. He renewed this statement in the declaration he submitted following our hearing.⁵¹ As a practical matter, Schoenecker reported to the plant one day a week during his term of office and continued to perform his launch team duties. Schoenecker was never made aware of any claim that he had been removed from the launch team during his term of office as financial secretary. His launch team supervisor apparently did not regard him as having been removed.

Schoenecker was entitled to a fair hearing so he could respond to the charge that he had received union funds improperly before he could be suspended for financial misconduct. He did not receive such a hearing in this case. The local union could have conducted such a hearing pursuant to Article 48, §6. A hearing at the local union level would have been particularly helpful in this case because the Local 551 executive board was most familiar with issues surrounding the launch team at the Chicago plant. When that did not happen, a hearing conducted at the International level pursuant to Article 48, §5(c) might have satisfied Schoenecker's right to due process under the Constitution, but that hearing had to address the original issue in dispute. Unfortunately, by the time Schoenecker's appeal reached that stage of the proceedings, the issue under review was no longer clear.

The status of the matter was complicated by the fact that Schoenecker's initial request for a hearing in response to the audit report was lost. On May 30, 2014, International President Bob King issued a letter to Schoenecker suspending him from participation in the affairs of Local 551 for his failure to respond to the audit report mailed to him on May 19, 2014.⁵² Schoenecker responded to this letter by providing a copy of his certified receipt showing that he had submitted his request for a hearing on May 27, 2014.⁵³ Nevertheless, it appeared from the record that the International President had already determined that Schoenecker had received funds improperly. When Schoenecker's case came before President Williams's hearing officer for review, the hearing officer apparently believed that the underlying dispute had been decided, so the only question remaining was the amount Schoenecker should be required to pay. The hearing officer's report to the IEB treats the accuracy of Auditor Wright's figures as the only subject open to challenge. The President's hearing officer evidently did not realize that Schoenecker had never been provided an opportunity to challenge the rule Auditor Wright had applied to obtain her figures. For that reason, he rejected Schoenecker's arguments as unresponsive to the issue presented. In fact, Schoenecker's submissions, particularly the statements of former plant chairpersons, demonstrated that Tallarita's position on Schoenecker's right to lost time had no contractual foundation.

⁵¹ Record, p. 229.

⁵² Record, p. 128.

⁵³ Record, pp. 132-134.

We find that Schoenecker did not engage in financial misconduct within the meaning of Article 48, §5, of the UAW Constitution by claiming lost time based on the assignments he would have received as a member of the launch team. Throughout his term of office as financial secretary, Schoenecker submitted vouchers for lost time based on his launch team assignment and these vouchers were approved. The local union bylaws state that lost time is limited to the amount a member would have received from his employer for the same period of time for which he is being compensated. There is nothing in the local union bylaws and no contract language or letter of understanding in the record that would have informed Schoenecker or the local union leadership that Schoenecker could not calculate his lost time by identifying the overtime hours he would have been working in the plant on his launch team assignment.

Furthermore, it is apparent that Schoenecker's claims for compensation were scrutinized by the membership during his term of office. Scott Houldieson questioned the amount of time Schoenecker was spending at the local union hall. Houldieson also believed that Schoenecker should have changed the day he worked in the plant in order to minimize the amount of overtime hours for which he was claiming lost time. Testimony during oral argument revealed that Houldieson took appropriate action to raise these issues in the form of a motion to the membership. The membership might have concluded that the overtime claimed by Schoenecker was not a necessary expense of the local union within the meaning of Article 46, §1, of the Constitution, but they did not. The membership rejected Houldieson's motions and approved the overtime hours claimed by Schoenecker. No one questioned Schoenecker's right to claim lost time for hours outside of his classification and shift while he was financial secretary. There was no rule in place that would have given him notice that such claims could be construed as unauthorized.

The decision of the IEB is reversed. International President Bob King's letter of May 30, 2014 declaring Schoenecker ineligible to seek union office or participate in the affairs of Local Union 551 should be withdrawn.

It is so ordered.