

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

APPEAL OF:

DAVID JAKSTAS,

Appellant

-vs-

CASE NO. 1722

UAW LOCAL UNION 848 EXECUTIVE BOARD
(Grand Prairie, Texas)
REGION 5
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued July 21, 2015)

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

We consider David Jakstas's argument that the grievance committee chairperson at Local Union 848 should be prohibited from working overtime in the plant.

FACTS

David Jakstas is a member of UAW Local Union 848. He works at the Triumph plant in Grand Prairie, Texas. On July 25, 2014, Jakstas submitted an appeal to the Local 848 executive board challenging acting president Chase Buie's determination that grievance committee chairperson Fernando Argumaniz was contractually allowed to work overtime in the plant. Jakstas's letter to the executive board concludes:

"I am now requesting an E-Board ruling on the above matter concerning Mr. Argumaniz or any other chairman of the plant grievance committee working overtime, be it pre, post, or Sat and or Sun. Is this practice acceptable to our local E-Board members?"¹

¹ Record, p. 19.

The executive board considered Jakstas's letter at a meeting on August 13, 2014. The minutes of the executive board meeting indicate that the board members concluded that the Local 848 bylaws permit a chairperson of the plant grievance committee to work overtime. The minutes of the executive board meeting state:

"Letter from David Jakstas requesting a ruling from the E-Board as to whether or not they find it acceptable for chairpersons of the plant grievance committees to work pre-shift, post-shift, Saturday, or Sunday overtime. The E-Board interpreted the Local 848 bylaws to indicate that chairpersons of plant grievance committees are allowed to work pre-shift, Saturday, or Sunday overtime per our Local 848 bylaws."²

Local 848 Recording Secretary Kimberly Thomas advised Jakstas of the local executive board's position on August 15, 2014. She advised Jakstas that the local executive board based its decision on Article XXV, Section 6, of the local union bylaws.³ That section provides as follows:

"Article XXV Standing Rules Finances

Section 6 The chairpersons of the shop committees shall be expected to be at the union hall five (5) days a week from the end of the day shift to 5:30 p.m., unless his duties require his attendance to another place."⁴

On August 17, 2014, the membership voted to accept the local executive board's recommendations.⁵

Jakstas appealed the membership's action to the International Executive Board (IEB) on August 18, 2014. In support of his appeal, Jakstas argued that the chairperson of the grievance committee is supposed to be representing the membership at all times. Jakstas maintained that the chairperson could not represent the membership while he is performing bargaining unit work. Jakstas stated that the chairperson's position has historically been a full-time position. He asserted that grievance committee chairpersons at Local 848 have never performed bargaining unit work except in unusual circumstances or emergencies.⁶

² Record, p. 20.

³ Record, p. 22.

⁴ Record, p. 15.

⁵ Record, p. 32.

⁶ Record, p. 25.

Jakstas reported that prior to being elected grievance committee chairperson, Argumaniz was being compensated at the rate for labor grade 2. Article IV, Section 8.a of the 2010 collective bargaining agreement provides that the chairperson of the plant grievance committee will be compensated at labor grade 1. Article VI, Section 6 of the collective bargaining agreement provides that when two or more types of overtime or premium compensation are applicable to the same hours of work, the higher rate of compensation will be paid. Accordingly, Jakstas explained, Argumaniz's premium rate is now being calculated based on the chairperson's compensation grade. Jakstas argued that this is improper, because Argumaniz is not performing the work of the chairperson when he is working in the plant. He wrote:

"CPGC [Chairperson of the Grievance Committee] will be paid up to 40 hours at the maximum rate of labor grade 1. As leadman in Mr. Argumaniz's home unit, he was being paid labor grade 2. So, is his OT rate figured at leadman rate of LG2 or at CPGC as LG1? Per Article VI, Section 6 of our contract, there is not to be any pyramiding or duplicating of premium compensation and only the higher rate of compensation will be paid. If this Article VI, Section 6 is being followed then our GPGC is being paid chairman's pay for doing CBU work during periods of pre, post, and Sat and/or Sun OT and he is actually physically doing said CBU work. Does this even begin to sound legally, morally, and ethically acceptable or correct? This is and sounds very, very wrong and unacceptable: CPGC being paid to do CBU work in Marshall facility."⁷

Jakstas complained that Argumaniz often could not be reached at the local union hall during the local union's hours of operation, because he was working in the plant. Jakstas asserted that Argumaniz was not performing the duties of the grievance committee chairperson, but was using the position for his own personal gain.⁸

In addition, Jakstas complained that Argumaniz working overtime in the plant disrupted the equalization of overtime hours among bargaining unit employees. He reported that Article VI, Section 7.a (1) of the collective bargaining agreement provides that the company will make an equal distribution of overtime among the available qualified employees in any unit who are regularly employed on such work. Jakstas argued that Argumaniz should not be considered for any overtime work because he is not regularly employed on any bargaining unit work in the plant. Jakstas wrote:

⁷ Record, p. 25.

⁸ Record, p. 26.

“...CPGC person is not in CBU, let alone, ‘regularly employed on such work.’ CPGC is regularly supposed to be employed on union work for all members in the local. ...”⁹

In addition, Jakstas charged that Argumaniz’s employment in his former home unit was displacing a bargaining unit employee. He argued:

“...CPGC is to be paid LG 1; leadman in Driveamatic. Mr. Argumaniz’s home unit and job family was a LG 2. Sooo is the present CPGC being paid to do CBU work in Driveamatic as a LG1 or 2, i.e. the present Chairman working down and doing actual & physically CBU work displacing another laid-off Brother or Sister while being paid CPGC pay? Thereby, are we allowing our Local 848 CPGC Chairman – Our Grievance Committee Chairman not only doing CBU work; he is actually physically displacing a Brother or Sister while doing CBU work while presently being Local 848 Union Chairman over (what?????)”¹⁰

Jakstas suggested that the chairperson of the grievance committee might be considered on an offsite assignment in accordance with Article VI, Section 7.e (11) of the collective bargaining agreement, and therefore charged with the overtime he would have worked if he were still actively in the unit. Jakstas wrote:

“Is not the CPGC technically ‘on an offsite assignment?’ Is not the Local Union 848 his new assignment ever since he was voted into another assignment? Maybe a stretch. But is it not true? He is no longer in a CBU. He is a union limbo unit that floats around. Being a union officer, he has no actual place he can call home, except the local union hall of UAW 848. Just a thought.”¹¹

Jakstas commented that Local 848 is facing enough challenges without the membership wondering if the plant grievance committee chairperson is working for the membership or the company. Jakstas reported that Argumaniz was asked at the last membership meeting why he was working in the plant during regular hours, let alone overtime, and he responded that he was training his replacement. Jakstas insisted that Argumaniz should understand that he is no longer the leadman in his old unit and that training employees is no longer his responsibility. Jakstas maintained that Argumaniz should be required to devote his attention to the job of being chairperson of the grievance committee.¹²

⁹ Record, p. 28.

¹⁰ Record, p. 28.

¹¹ Record, p. 29.

¹² Record, pp. 34-35.

Recording Secretary Thomas responded to an inquiry from International President Dennis Williams's office regarding Jakstas's appeal on October 23, 2014. Thomas informed President Williams that Argumaniz's normal plant work shift is 7:00 a.m. to 3:30 p.m. Monday through Friday. She reported that Argumaniz is normally at the local union hall during the week until 4:30 p.m., unless he has a previously scheduled meeting elsewhere. In addition, Thomas reported that the chairperson of the plant grievance committee at Local 848 is on call 24 hours a day, seven days a week for all shifts.¹³

Acting on behalf of President Williams, Administrative Assistant Jim Gallagher and International Representative Wendell Helms conducted a hearing on Jakstas's appeal on November 20, 2014. Hearing officers Gallagher and Helms prepared a report to the IEB on Jakstas's appeal based on documents in the record and testimony given at the hearing. The hearing officers stated that there is no language in the local union bylaws or the collective bargaining agreement that expressly prohibits the chairperson of the grievance committee from working overtime in the plant. They reported that upon questioning, both Jakstas and representatives of the local union confirmed this at the hearing. Their report states:

"Is there specific language in either the local union bylaws or the collective bargaining agreement that prohibits the plant grievance committee chairperson from working overtime in the plant? When asked this question at the hearing, each party, the appellant and the local union, answered, 'No.' After our review of the same documents, we've come to the same conclusion. Absent any specific language to the contrary, we simply cannot exclude the plant grievance committee chairperson from working overtime in the plant. Our moral and ethical opinion must be set aside for it is specific language in the bylaws or collective bargaining agreement that must be the determining factor and rule the day in the decision."¹⁴

The hearing officers pointed out that the UAW Constitution provides local union members with the means to address the kinds of issues raised by Jakstas. Their decision states:

"If the membership feels the overtime being worked by the plant grievance committee chairperson is negatively affecting his ability to perform the duties of the chairperson position, Article 45, Section 3 of the UAW International Constitution certainly gives them an avenue in which to address their concerns. Similarly, if the plant grievance committee chairperson is receiving overtime opportunities improperly, the grievance procedure in the collective bargaining agreement can be used by any

¹³ Record, p. 50.

¹⁴ Record, pp. 63-64.

workers who feel the overtime procedure has been administered improperly.”¹⁵

The hearing officers concluded that the membership would have to amend the local union bylaws, or the parties would have to change the collective bargaining agreement, if they wished to exclude the chairperson from working overtime in the plant.

The hearing officers denied Jakstas’s appeal and the IEB adopted their report as its decision. President Williams provided Jakstas with a copy of the IEB’s decision on February 9, 2015.¹⁶ Jakstas appealed the IEB’s decision to the Public Review Board (PRB) on February 14, 2015.

On April 27, 2015, Local 848 President James Ducker sent a letter to the PRB clarifying provisions of the 2010 collective bargaining agreement with respect to the grievance committee chairperson’s right to work overtime in the plant. President Ducker explained that committeepersons and stewards continue as active employees following their election. The local union president and financial secretary are on union leave during their terms of office, but the chairperson of the grievance committee retains his regular assignment in the plant, although he may be excused for union business for up to forty hours per week. President Ducker’s letter states:

“To clarify, the president and financial secretary are on paid leave of absences per the 2010 collective bargaining agreement with no contractual claim to overtime. The chairman, however, has three (3) stated claims to overtime: Article IV, Section 4d; Article IV, Section 8a; and Article VI, Section 7a(1). The chairman is considered an active employee of the company, similar to committeemen and stewards. The chairman is not on leave of absence, as are the president and financial secretary.”¹⁷

Ducker further declared that Argumaniz’s overtime assignments did not deprive other employees of overtime opportunities in violation of the overtime equalization agreement. Ducker pointed out that Jakstas is not in Argumaniz’s overtime equalization group so he has no contractual basis for challenging Argumaniz’s overtime assignments. He wrote:

“The chairman’s role can require him to work pre- or post-shift or weekends from a representation requirement. The company can require Mr. Argumaniz to work overtime pre- or post-shift or weekend overtime in his unit and is within the contractual language. There has been no claim or grievance of displacement of overtime from any employee within Mr.

¹⁵ Record, p. 64.

¹⁶ Record, p. 55.

¹⁷ Record, p. 110.

Argumaniz's unit or job family (7260). David Jakstas is in job family 7441 and has no such claim to overtime in Mr. Argumaniz's unit or job family."¹⁸

ARGUMENT

A. David Jakstas:

The hearing officers overlooked specific language in the collective bargaining agreement addressing when the chairperson of the grievance committee is permitted to work overtime in the plant. I have attached Article IV, Section 4.d from our current collective bargaining agreement. It states:

"The chairman of the plant grievance committee will be scheduled to work during periods of overtime provided that seven hundred (700) employees work in accordance with Article IV, Section 8.a, or that one hundred fifty (150) employees work and that work is scheduled in the chairman's classification."¹⁹

Since our local union now has less than 500 members, the chairman should not be allowed to exceed 40 hours per week.

B. International Union, UAW:

Jakstas has asserted that it is ethically and morally incorrect for the chairperson of the grievance committee to work overtime in the plant. However, he has not cited any provisions of the local union bylaws, the collective bargaining agreement, or the UAW Constitution that have been violated by the practice.

Article XI of the local union bylaws describes the duties of the grievance committee chairperson. It does not specify any amount of time that must be devoted to completing those duties. Article XXV, Section 6 of the bylaws states that the chairperson will be expected to be at the union hall five days a week, unless his duties require his attendance somewhere else, but there is no prohibition against working in the plant during periods when he is not working at the local union hall.

Similarly, Article VI, Section 7 of the collective bargaining agreement describes the equalization of overtime rules. Nothing in that section precludes the company from offering overtime opportunities to the chairperson of the grievance committee. In fact, Article IV, Section 8.a of the collective bargaining agreement anticipates that the chairperson will occasionally work overtime in the plant.

¹⁸ Record, p. 109.

¹⁹ Record, p. 75

If Jakstas had been disadvantaged in some way by the assignment of overtime to Argumaniz, his remedy was to file a grievance. If Jakstas's primary complaint is that the chairperson is not representing the membership properly, his recourse is to appeal to the membership for a recall pursuant to Article 45, Section 3, of the UAW Constitution.

Jakstas has not demonstrated that Argumaniz has committed any impropriety by working overtime in the plant. Therefore, the decision of the IEB should be affirmed.

C. Rebuttal by David Jakstas:

The International Union wants to put morality and ethics aside and rule only on the documents. Let that be to a certain extent. The issue is still not as clear as President Williams's letter suggests. I brought this issue up with acting president Buie on one or two occasions, but he did not want to take a stand on the issue. He wanted to refer it to the local executive board for a ruling. The local executive board considered the question whether the chairperson of the plant grievance committee should be allowed to perform bargaining unit work in the plant. They interpreted Article XXV, Section 6, to allow the chairperson to work in the plant on Saturdays and Sundays and before and after his hours in the local union hall. Despite this interpretation, Argumaniz continues to perform bargaining unit work during straight time, only not as often. Speaking about the ethics and morality of Argumaniz's actions, I refer you to my appeal to the IEB.

Besides the ethical and moral issues raised by the situation, our local union history does not support the local executive board's interpretation of Article XXV, Section 6 of our local union bylaws. No grievance committee chairperson has ever worked in excess of 40 hours per week doing bargaining unit work. As I previously indicated, I do not care how much money the chairperson makes as long as he is doing the work of the plant grievance committee chairperson.

President Williams suggests that I ought to have filed a grievance regarding this issue. What grievable issue is presented by the situation? International representatives have advised me on several occasions that one union member cannot file a grievance against another union member. That is why I presented this issue to the Local 848 executive board and then to the IEB. This was the only avenue open to me. I believe Williams's argument about filing a grievance is just an attempt to muddy the waters.

Similarly, I have never stated that I wanted to initiate a recall petition. I expected, hoped and prayed that the local executive board would stop the moral, ethical, and contractual violation. Why would I initiate a procedure to stop the company from paying a union member? That is the company's problem and not a union matter. This too, is an attempt to muddy the waters.

The report adopted by the IEB indicates that the membership would need to amend the bylaws or collective bargaining agreement to prohibit the chairperson from

doing bargaining unit work in the plant. That is so not true I am surprised this statement was included in the report. The bylaws state that the chairperson is to be at the union hall five days a week until 5:30 p.m. The collective bargaining agreement specifically describes when the grievance committee chairperson may work beyond 40 hours in any week. Reading these documents together, it is clear that the chairperson is supposed to be doing grievance committee work at the union hall 40 hours per week. The chairperson can only work in excess of 40 hours when 700 employees are scheduled for overtime. We have not had 700 employees working at the Triumph plant since Argumaniz was elected, much less working overtime. I believe this language provides more than enough basis for a favorable ruling on my appeal to the PRB.

I am asking the PRB to rule that the bylaws and collective bargaining agreement at Local 848 do not allow the chairperson of the grievance committee to be paid the overtime rate for doing bargaining unit work.

DISCUSSION

The collective bargaining agreement at the Triumph plant does not address the issue raised by Jakstas about the propriety of the chairperson physically performing bargaining unit work. The contract sections cited by Jakstas define the chairperson's compensation when he is not working in the plant because he is performing representational duties for the membership. Following our initial review of Jakstas's appeal, we requested clarification of Article IV, Section 4.d of the 2010 collective bargaining agreement at the Triumph plant. Specifically, we asked the International Union to explain the significance of the reference to 700 employees being scheduled to work overtime. Administrative Assistant Gallagher responded to our inquiry on May 26, 2015. He explained that this provision of the collective bargaining agreement describes when the chairperson of the grievance committee will be compensated based on overtime worked by employees in the plant, even though the chairperson did not physically perform the overtime work because he was performing the functions of his office. According to Gallagher, there is no language or practice that has ever prevented the chairperson from physically working overtime when those opportunities become available in accordance with the applicable overtime equalization agreements.²⁰

The only document applicable to Jakstas's argument is the local union bylaw defining the chairperson's hours at the local union hall. Jakstas used the appropriate constitutional procedure to raise this issue by filing an appeal to the local executive board in accordance with the procedures described in Article 33 of the UAW Constitution. The local executive board interpreted the bylaw as permitting the chairperson to work overtime in the plant before and after his scheduled hours at the local union hall. The local union membership approved the executive board's ruling. The membership has the final authority to resolve disputes regarding the meaning and application of its bylaws. In order to overturn the membership's ruling, Jakstas would

²⁰ Record, pp. 123-124.

need to establish that the interpretation violated some principle embraced in the UAW Constitution or the Ethical Practices Codes.

This claim is, in fact, the essence of Jakstas's appeal to this Board. He believes that it is simply wrong for a grievance committee chairperson to perform any work in the plant. His arguments suggest that the principle behind his complaint should be obvious, but we cannot see what moral or ethical rule Argumaniz violates by working in the plant when he is not scheduled to work at the local union hall. It is normal for a committeeperson to perform bargaining unit work. The compensation arrangement at the Triumph plant is actually rather unusual in that the company continues to pay the chairperson of the bargaining committee while he is at the local union hall. In many locations, a member elected as bargaining committee chairperson continues his or her regular schedule in the workplace after being elected. Such representatives receive reimbursement for lost time from their local union when they are performing representational duties. Jakstas's assertion that an elected bargaining representative ceases to be a member of the bargaining unit is mistaken. He has not identified anything in the collective bargaining agreement or the local union bylaws that would prohibit the grievance committee chairperson from physically performing overtime work in the plant. He has not identified any moral or ethical principle that would require such a prohibition.

The decision of the IEB is affirmed.