

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

APPEAL OF:

GARY HUTCHINSON, Member  
UAW LOCAL UNION 952  
(Tulsa, Oklahoma), REGION 5,

Appellant

-vs-

CASE NO. 1728

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

Appellee.

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**DECISION**

(Issued November 2, 2015)

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

APPEARANCES: Gary Hutchinson on behalf of appellant;  
Rick Isaacson, Allen Wilson and  
Wendell Helms on behalf of the  
International Union; David Barker and  
Cody White on behalf of Local Union  
952.

Gary Hutchinson argues that a sufficient number of errors occurred during Local Union 952's triennial election of officers to warrant rerunning the entire election.

**FACTS**

The UAW Aerospace Local Union 952 in Tulsa, Oklahoma, held its triennial election of officers and bargaining committee members on April 22 and April 23, 2014. Gary Hutchinson was a candidate for president and Kaye Brewer was a candidate for vice president in the election. Charlie Allen, John Duncan, and Brendan O'Shea were among sixteen candidates running for five seats on the local union bargaining

committee.<sup>1</sup> Election Committee Chairperson Cody White posted the following results from the April election:

President

Gary Hutchinson	218	
David Barker	546	(Elected)

Vice President

Kaye Brewer	328	
David Brewer	438	(Elected)

Bargaining Committee

Kevin D. Radford	70	
Charlie Allen	302	(Runoff)
Scott Callis	147	
Jim Cowen	230	
John Duncan	377	(Elected)
Chad Grigsby	63	
Brendan O'Shea	210	
Gary W. Wilhite	296	(Runoff)
Bobby Douglas	240	(Runoff)
Chuck Smith	80	
Phil Wishart	138	
Terry Harwood	351	(Elected)
Jerry G. Smith	38	
Tim Bushyhead	368	(Elected)
Phillip Hunter	288	(Runoff)
Carla Holmes	162 <sup>2</sup>	

Chairperson White reported that the election committee counted 711 ballots cast by active members and 34 ballots cast by retirees.<sup>3</sup>

On April 24, 2014, Kaye Brewer requested a recount of the ballots in the election of executive officers and bargaining committeepersons. In support of this request, Brewer stated that the total number of votes reported was inconsistent with the total number of ballots cast in the election.<sup>4</sup> Charlie Allen also requested a recount of the

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<sup>1</sup> Record, p. 24.

<sup>2</sup> Record, p. 33.

<sup>3</sup> Record, p. 33.

<sup>4</sup> Record, p. 34.

ballots cast in the triennial election.<sup>5</sup> The ballots from the April election were recounted on April 29, 2014. Tally sheets from the recount reported the following results in the race for president and vice president:

President

Hutchinson	216	
Barker	526	(Elected)
Blank	14	

Vice President

K. Brewer	281	
D. Brewer	469	(Elected)
Blank	6 <sup>6</sup>	

The recount produced the following results for bargaining committee:

Bargaining Committee

Radford	105	
Allen	296	(Runoff)
Callis	168	
Cowen	233	(Runoff)
Duncan	374	(Elected)
Grigsby	60	
O'Shea	232	
Willhite	284	(Runoff)
Douglas	252	(Runoff)
C. Smith	75	
Wishart	131	
Harwood	339	(Runoff)
J. Smith	40	
Bushyhead	364	(Elected)
Hunter	298	(Runoff)
Holmes	161	
Blank	2 <sup>7</sup>	

Chairperson White reported the following reconciliation of the ballots following the recount:

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<sup>5</sup> Record, p. 35.

<sup>6</sup> Record, p. 36.

<sup>7</sup> Record, p. 37.

Total spoiled ballots	11
Total active signed in	710
Total retired signed in	35
Total tab count	766
Total signed in	745 <sup>8</sup>

On April 30, 2014, Chairperson White announced the following winners in the presidential, vice presidential, and bargaining committee:

President

David Barker – Elected

Vice President

David Brewer – Elected

Bargaining Committee

John Duncan – Elected

Tim Bushyhead – Elected

Runoff between: vote for (3)

Charlie Allen

Jim Cowen

Gary W. Willhite

Bobby Douglas

Terry Harwood

Phillip Hunter<sup>9</sup>

The runoff election for Bargaining Committee produced the following results:

Bargaining Committee

Charlie Allen	211	
Jim Cowen	203	
Gary W. Willhite	268	(Elected)
Bobby Douglas	155	
Terry Harwood	275	(Elected)
Phillip Hunter	248	(Elected)

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<sup>8</sup> Record, p. 38.

<sup>9</sup> Record, p. 39.

Blank Ballots	18
Spoiled Ballots	3 <sup>10</sup>

The posted runoff results described the following reconciliation of the ballots:

Total sign in	479
Total tab count	479
Active ballots	476
Retiree ballots	13 <sup>11</sup>

Vice President Kaye Brewer filed a protest to the entire 2014 triennial election on May 14, 2014. Brewer pointed out that both the initial results and the recount reported a total number of votes cast that was greater than the number of members who signed in to vote. She complained that the election committee followed extremely loose practices throughout the election process. She stated that unused ballots and empty ballot boxes were left unattended after the polls closed. Kaye Brewer also complained about one candidate's use of Facebook during the campaign. She wrote:

"John Duncan utilized social media such as Facebook that are part of UAW Local 952's for his own political personal expressions which are a violation of election rules and without proper authorization."<sup>12</sup>

Kaye Brewer further stated that challengers interfered with the election process and that John Duncan should not have been permitted to be a challenger in the runoff election. She provided the following description of Duncan's activities:

"John Duncan (of which was a candidate of the same election), became a challenger for the runoff on May 7, 2014. This is a violation of election rules, and a violation per Section 10(g) pg. 205 of the Constitution. Instead of just observing, John Duncan was conversing with election committee members while the election was still going on. John Duncan also bought the election committee breakfast."<sup>13</sup>

Presidential candidate Gary Hutchinson also filed a protest to the election. Hutchinson pointed to the fact that the number of votes cast was greater than the number of people who signed in. He wrote:

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<sup>10</sup> Record, p. 49.

<sup>11</sup> Record, p. 49.

<sup>12</sup> Record, p. 40.

<sup>13</sup> Record, p. 41.

“First problem we had with this election is the ballots are not adding up. There were 745 people who signed in and there was a total of 767 ballots accounted for after they tallied them up. I am attaching a copy of the tally sheets which will show how none of the ballot counts add up.”<sup>14</sup>

Hutchinson also questioned the right of retirees to vote for local union president because the president has official bargaining responsibilities at Local Union 952. His protest states:

“...So, the retirees should not have voted on the bargaining committee or the president or vice president at minimum and allowing them to do so could be considered fraudulent voting. If the retirees from Douglas were allowed [that] would definitely be fraudulent votes because they were never part of 952 and the person who allowed it should be disqualified per Article 49.”<sup>15</sup>

Bargaining committee candidate Brendan O’Shea also filed an election protest. O’Shea stated that he was only one vote short of eligibility for the runoff election in the race for bargaining committee member. O’Shea argued that there were no safeguards in place to ensure that the recount of the ballots in the bargaining committee race was accurate. He maintained that the election should be rerun because one vote could have altered the outcome of the race.<sup>16</sup> Charles Allen also protested the bargaining committee election results and requested that the entire election be rerun because the accuracy of the reported results was in doubt.<sup>17</sup>

The local executive board read the four election protests at a meeting on May 14, 2014. The minutes of the executive board meeting report that Terry Ellison introduced a motion recommending that the entire triennial election be rerun. The motion was seconded and it carried unanimously. The minutes state:

“A recommendation was made by Terry Ellison and second by Susan Foltz to ask for the membership to vote to run a whole new triennial election based on the standards in the *Guide for Local Union Election Committees* booklet, “Chapter 15” stating that charges of fraud or other misconduct has made the whole election void. All present were in agreement with the recommendation. Six for and zero opposed. Recommendation carried.”<sup>18</sup>

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<sup>14</sup> Record, p. 42.

<sup>15</sup> Record, p. 43.

<sup>16</sup> Record, p. 50.

<sup>17</sup> Record, p. 51.

<sup>18</sup> Record, pp. 52-53.

The executive board meeting minutes report that the executive board also voted to recommend that the membership elect a new election committee and rent a ballot machine if the membership orders a new election.

The local executive board's recommendations were considered by the membership at three shift meetings on May 15 and May 16, 2014. The minutes of the third shift membership meeting held at 7:42 a.m. on May 15, 2014, report the following discussion of the election protests:

"Vice President Kaye Brewer asked if there were any questions for Cody White, election chairperson, regarding the elections.

Mike Roach asked if John Duncan bought breakfast for the election committee.

Cody White replied yes.

Mike Roach asked Cody White if he had confidence in the election outcome.

Cody White replied yes.

Debbie Cradik asked why the people that were hanging around the union hall weren't run off by the election board. Why was this allowed by the election board?

Ian asked why there was a discrepancy in the tally of votes.

Cody White replied: no experience and lack of sleep.

Ian asked, you couldn't compare ballots per tabs?

Cody White replied, didn't know how to tally them.

Question was asked why the ballots were left without being sealed.

Cody White replied, Kim Shoup Office Administrator had to instruct us on how to keep the integrity of the ballots. System failed.

Question was asked why the results were posted and then pulled.

Vice President Kay Brewer replied the posting was pulled because of a request for a recount.

Question was asked why were the numbers posted prior to official numbers reported.

All numbers posted on the UAW website were provided by the chairperson of the election board.”<sup>19</sup>

Following this discussion, the minutes of the third shift meeting report that the membership voted to rerun the entire election with 12 votes in favor of the motion and 3 opposed. The third shift also voted to elect a new election committee, to reopen nominations for the triennial election, and to rent a ballot machine.<sup>20</sup>

The minutes of the first shift meeting conducted at 4:19 p.m. on May 15, 2014, report that John Duncan appeared at this meeting and there was a discussion of the fact that Duncan acted as a challenger in the runoff election after he was elected to the bargaining committee. The minutes indicate that Duncan argued this was appropriate because he was no longer a candidate.<sup>21</sup> There was also a discussion about whether Duncan’s name should remain on the ballot for chairperson of the bargaining committee. Ultimately, Vice President Kaye Brewer asked for a show of hands for having a new election. The minutes report that there were 18 votes in favor of the motion and 31 opposed, so the motion did not carry.<sup>22</sup>

The minutes of the second shift meeting held at 12:46 a.m. on May 16, 2014, report that the members present voted in favor of the recommendation to rerun the entire triennial election, to elect a new election committee, to reopen the nominations process, and to buy a ballot machine. These minutes also report the total votes for all shifts on the motion. The second shift meeting minutes state:

“A motion was on 3<sup>rd</sup> shift to have a whole new election per the recommendation of the executive board. 32 for and 9 opposed. Motion carried. Motion carried all three shifts, a total of 62 for and 43 opposed.”<sup>23</sup>

On June 16, 2014, Local 952 Recording Secretary Carla Holmwa sent a letter to International President Dennis Williams requesting an order for a new triennial election in accordance with the motion adopted by the membership. Recording Secretary Holmes provided the president with copies of the four election protests. She also forwarded all the election materials as well as statements from members and a brief from the local union president, David Barker, in support of her request. Local 952 President David Barker wrote that he supported the membership’s decision to rerun the election because the election committee did not adopt a process to ensure an accurate vote count. He reported that various circumstances created the impression that the election results were deliberately misstated. His letter states:

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<sup>19</sup> Record, pp. 54-55.

<sup>20</sup> Record, p. 55.

<sup>21</sup> Record, p. 57.

<sup>22</sup> Record, p. 59.

<sup>23</sup> Record, p. 62.

“The election committee used two voter lists. They did not verify each other’s ballot count. During the counting process, one committee member read names without verification from another committee member. While we do not have absolute proof of any tampering by any election committee member, there is overwhelming circumstantial evidence to show there was tampering. The observers were allowed to roam the voting area and were allowed to dictate how the committee conducted the election. One observer left and was replaced by another observer a few hours later without informing the chairman of the election committee he was being replaced. This created doubt.

While it is possible that not all the election results would change, there is overwhelming evidence that the election was tainted. The errors and opportunities for bias and abuses were too widespread. Therefore, you cannot discount any particular race in this election process. Our organization fights against all social and economic injustices and would not want a member to be subjected to an injustice or inequity within our own organization because of a perceived election tampering.”<sup>24</sup>

Charles Allen submitted a statement in support of the members’ request to rerun the triennial election. Allen described a discussion he had with election committee chairperson Cody White. Allen listed the points raised in his election protest and reported White’s responses to them. Allen’s statement summarizes this discussion as follows:

“Ballot count and sign in sheet do not balance

(Answer) We were tired and did not make sure we had everyone sign in and we were using two sign in sheets.

Unused ballots and ballot box were left unattended after the close of polls.

(Answer) We were not paying attention and left them unattended.

The election committee did not have a system of double-checking each other’s vote tallies in place at the time of the vote count.

(Answer) No, we did not have a system to double-check the ballot count.

Recount numbers were dramatically different in many races.

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<sup>24</sup> Record, p. 90.

(Answer) Yes they were, I don't know how they could have been so much different.

There were no safeguards put in place to double-check ballot counts by individual election committee members.

(Answer) No, we did not double-check each other.

There was no sample ballot displayed.

(Answer) No, we did not have one posted.

Challengers were allowed to roam around during election and ballot count.

(Answer) Yes, they did not stay in a designated place.

Challengers were allowed to interact with the election committee outside of the allowed rules for challengers.

(Answer) Yes, they were telling us what we should be doing and how we should be doing it.

A candidate for bargaining committee was allowed to be a challenger for the runoff election.

(Answer) Yes, for the runoff of the same election."<sup>25</sup>

Financial Secretary Susan A. Foltz also submitted a statement in support of the local union's request for a new election. Foltz reported that she acted as a challenger for Vice President Kaye Brewer. Foltz described a number of irregularities she witnessed during the tabulation of the ballots. She reported that one of the challengers, John Roup, got involved in the counting of the ballots and began to instruct the election committee members on how they should proceed. Foltz wrote:

"At some time during the recount I pulled Chair Cody White aside and told him that I felt it was his job to tell the challengers to stay in their assigned seats and not dictate to the election board how to do the recount."<sup>26</sup>

Foltz concluded her statement with the following comment:

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<sup>25</sup> Record, p. 63.

<sup>26</sup> Record, p. 76.

“With almost 34 years as an active UAW 952 member and 12 years as an officer I have never seen an election like this one, that was run so shoddy and so out of control.”<sup>27</sup>

On June 24, 2014, John Duncan submitted a statement to the International President’s office opposing the membership’s request for a new election. Duncan asserted that the protesters’ complaints were vague and unsupported by the testimony of witnesses or documentation. He challenged the protesters’ characterization of the election committee’s conduct as loose practices, saying they had never identified any specific loose practice. He questioned their assertion that there were unused ballots and empty ballot boxes left unattended. Duncan made the following comment about this charge:

“...When (date and time) did this alleged offense occur? How long were the unused ballots left unattended beside the empty ballot box, a few minutes while the election committee was moving their work, full ballot box, supplies, tally sheets etc. to a conference room? Were any unused ballots missing?”<sup>28</sup>

Duncan denied that he used the local union’s official website to campaign, and he maintained that there was nothing improper about his use of a chat room with personal friends to discuss the election. Duncan also denied that there was anything improper about his acting as a challenger in the runoff election after he was elected to the bargaining committee.<sup>29</sup> He maintained there was no basis for the protesters’ accusation that he was roaming around the polling site giving instructions to the election committee.<sup>30</sup>

With respect to the confusion regarding the vote tallies, Duncan agreed that the membership deserved an explanation for the discrepancies. He wrote:

“The election committee needs to finish its work and provide to the local membership an explanation of this. The committee used sign in sheets as well as member voter eligibility lists. The voter eligibility lists were highlighted thru each member’s name as they voted. Each ballot also had a removable slip at the bottom for the member’s signature as well as the member’s last four digits of their Social Security number. One of two things could have caused this difference in signed in members and ballots

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<sup>27</sup> Record, p. 78.

<sup>28</sup> Record, p. 80.

<sup>29</sup> Record, p. 83.

<sup>30</sup> Record, pp. 83-86.

cast. Either members forgot to sign in or extra ballots were improperly cast. The membership deserves an answer to this question.”<sup>31</sup>

Duncan maintained, however, that these problems did not warrant rerunning the election. He stated:

“...At this point, I do not believe a new election is warranted. Possibly a recount would be warranted with an explanation of why the number of voters who signed in doesn't match the number of cast ballots. Elections are expensive. My local has already spent thousands on this election up to this point. I don't know the exact total spent, but it is my understanding a typical triennial election runs around \$10,000.00 for our local. The membership also voted to rent a ballot machine, but I heard someone say up to \$10,000.00 for this expense alone. Brothers and Sisters, are we really going to have upwards of \$30,000.00 in this election by the time it is over or more pending further protests and appeals?? I pray this Board will intervene here and calm heads prevail. ...”<sup>32</sup>

The record contains an email sent by election committee chairperson Cody White to Local Union 952 recommending that the entire 2014 triennial election be rerun. White's email states:

“I, Cody White, chairman of the 2014 triennial elections would like to challenge the entire election because I believe my fellow brother Tony Mathis had too much favoritism toward certain candidates. It makes me second guess everything he did with David Brewer and John Duncan winning their races that placed Tony into a committeeman position. I'm afraid he wanted this position so much that he would do anything to get it. I don't believe in coincidences. I believe this was planned from the beginning.”<sup>33</sup>

Acting on behalf of President Dennis Williams, Administrative Assistant Allen Wilson scheduled a hearing for October 2, 2014, to investigate the circumstances that influenced the membership of Local Union 952 to order a new election. The record indicates that all of the protesters as well as John Duncan and the members of Local 952 were given notice of this meeting.<sup>34</sup> As a result of the October hearing, Wilson concluded that all of the ballots cast in the election should be recounted.<sup>35</sup> On October 22, 2014, Wilson provided the parties with rules for the recount describing the limitations

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<sup>31</sup> Record, p. 81.

<sup>32</sup> Record, p. 88.

<sup>33</sup> Record, p. 100.

<sup>34</sup> Record, pp. 103-104.

<sup>35</sup> Record, p. 106.

on the activities of challengers during this process and the appropriate method for counting and reconciling the ballots.<sup>36</sup> The recount of the ballots produced the following results:

President

Gary Hutchinson	219
David Barker	530
Blank	13
Void	0

Vice President

Kaye Brewer	318
David Brewer	438
Blank	6
Void	1

Recording Secretary

Missie Najera	327
Craig Halverson	389
Blank	47
Void	0

Trustees

Terry Ellison	544
Jeff Peterson	502
Michael Maxey	480
Valarie Martin	399
Blank	373
Void	0

Sgt. at Arms

Joshua D. Sparks	306
Edgar Thomas	63
Phillip Dixon	254
Nate Mullins	96

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<sup>36</sup> Record, pp. 107-109.

Guide

Rodney A. Carmona	545
Kebiu Holt	158

Bargaining Committee

Kevin D. Radford	107
Charlie Allen	294
Scott Callis	172
Jim Cowen	232
John Duncan	380
Chad Grigsby	65
Brendan O'Shea	249
Gary W. Willhite	295
Bobby Douglas	235
Chuck Smith	97
Phil Wishart	140
Terry Harwood	338
Jerry G. Smith	43
Tim Bushyhead	363
Phillip Hunter	286
Carla Holmes	161
Blank	170
Void	3 <sup>37</sup>

A summary of the recount on October 30, signed by the election committee members and one challenger, certified that 763 ballots were counted, one ballot was declared void, for a total of 764 ballots cast in the election.<sup>38</sup>

Administrative Assistant Wilson prepared a report to the IEB describing his investigation of the triennial election at Local 952. In this report, Wilson provided the following explanation for his decision to recount all of the ballots:

“During the investigatory hearing it was determined by the hearing officer that because of the inconsistent testimony from the election committee members and the discrepancy in the vote counts between the initial election, runoff election, and in the recount tabulation, an additional recount of the election ballots under the supervision of the UAW International Union was warranted. On October 30, 2014, at Local Union

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<sup>37</sup> Record, pp. 110-113.

<sup>38</sup> Record, p. 113.

952, the UAW International Union and Region 5 conducted a recount of the ballots in the presence of challengers. ...”<sup>39</sup>

Wilson reproduced the results of the October 30 recount in his report to the IEB. Wilson commented that although the recount produced different results from the original vote tally, the differences in the contests for executive officers were not large enough to have changed the outcome of those races. Wilson determined, therefore, that the inconsistent results did not warrant rerunning the election of executive officers at Local Union 952. His report states:

“...First off, although we unanimously agree that the recounted votes tallied for Local Union 952’s executive offices were glaringly inconsistent relative to the initial vote count, the discrepancy was not outcome determinative and, thus, could not, and did not affect the results of the election for same offices. As such, further commentary and/or reference to Local Union 952’s election results for their executive offices bears no further mention. ...”<sup>40</sup>

Wilson reported that the discrepancies discovered by the recount in the race for bargaining committee did alter the results. In his report to the IEB, Wilson held that the results of the recount changed the margins of victory for candidates John Duncan and Tim Bushyhead and established that these two candidates should have been included in the runoff election for bargaining committee.<sup>41</sup> Wilson instructed the local union to conduct a new runoff election for positions on the bargaining committee within 30 days.<sup>42</sup>

The record indicates that Administrative Assistant Wilson’s report was circulated among the members of the IEB in accordance with the procedure described in Article 33, §3(d) of the Constitution on January 12, 2015.<sup>43</sup> On January 22, 2015, President Williams forwarded a copy of Wilson’s report to John Duncan and advised him that the

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<sup>39</sup> Record, p. 139.

<sup>40</sup> Record, pp. 140-141.

<sup>41</sup> Record, p. 142.

<sup>42</sup> Record, p. 144.

<sup>43</sup> Article 33, §3(d) describes the process by which an investigative report prepared on behalf of the International President is adopted by the IEB as its decision. It states, in pertinent part, as follows:

*“Review by the full International Executive Board. Both where the appeal has been decided by the Nine (9) Member Committee of the International Executive Board and where it has been decided by the International President, copies of the decision shall be sent to all members of the International Executive Board. The decision shall become the decision of the full International Executive Board unless, within ten (10) days, one or more members of the International Executive Board raises an objection to the decision, in which case the appeal shall be referred for decision to the International Executive Board at its next regular meeting. The International President shall promptly notify all parties concerned of the decision of the International Executive Board. ...”*

IEB had adopted the report as its decision on his appeal. A copy of President Williams's letter with the IEB report was also sent to the Local 952 Recording Secretary Craig Halverson and Election Committee Chairperson Cody White.<sup>44</sup> It does not appear from the record that any of the original protesters were provided with a copy of the IEB's decision.

On January 27, 2015, Administrative Assistant Wilson sent Local 952 President David Barker a revision to the report of his investigation of the election protests at Local Union 952. In his letter to President Barker, Wilson restated the results of the recount supervised by the International Union, but he indicated that the original report to the IEB did not properly apply the rule for determining which candidate among multiple candidates received the majority of the votes. Wilson provided the following formula to determine the winners of such contests:

"All votes received by all candidates for office will be totaled. (In this instance there are 16 candidates running for bargaining steward, and all votes received by all candidates will be totaled.) This total will then be divided by the number of candidates to be elected. This figure will then be divided by two (2) giving the figure, plus one (1), which is to be considered the majority point. Candidates receiving more votes than this majority figure will be declared elected."<sup>45</sup>

Wilson reported that according to this formula any candidate in the bargaining committee race who received 345 votes should be declared elected by majority vote and would not have to participate in a runoff election. Applying this formula to the recount results, Wilson declared that Duncan with 380 votes and Bushyhead with 363 were elected and therefore not required to participate in the rerun of the runoff election. Wilson directed that the local should rerun the runoff for the other three bargaining committee seats. His letter states:

"Therefore, the candidate(s) receiving the majority point of 345 votes are declared elected. Based upon the forgoing UAW International Union and Region 5 supervised recount and the applicable Majority Vote rule, the corrected candidates who are declared elected are Duncan (380 votes cast) and Bushyhead (363 votes cast.) The local union is instructed to hold a new election exclusively for the bargaining committee positions. The construct of this election shall be in conformity with its bylaws governing bargaining committee elections: Article X, Section 2, Subsection F. The date(s), time, and location for this new election shall

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<sup>44</sup> Record, p. 115.

<sup>45</sup> Record, p. 146.

be determined by the local union membership within 30 days from receipt of this directive. Be it so ordered.”<sup>46</sup>

On March 18, 2015, Gary Hutchinson filed an appeal from the IEB’s decision to accept Administrative Assistant Wilson’s report as its decision.<sup>47</sup> Hutchinson’s appeal was referred to the Public Review Board (PRB) on April 29, 2015. We heard the parties in oral argument on September 26, 2015.

## ARGUMENT

### **A. Gary Hutchinson**

I am protesting this election because it was not conducted properly. The election committee was new and inexperienced and they made numerous mistakes. Candidates were permitted to come in and out of the polling place while the election was underway. The count of the ballots never added up. There were 20 more ballots in the vote tally than voters who signed in to vote. The hearing officer from the International Union who investigated my appeal acknowledged that there were serious problems with the conduct of the election. The errors went beyond the 20-ballot discrepancy. The ballots boxes were not secured and the members had serious concerns about the integrity of the process. A number of members complained about candidate John Duncan’s involvement in the balloting and tabulation process. As a result of these concerns, the membership requested that the entire election be rerun.

In her election protest, Vice President Kaye Brewer reported that there was a ballot box left unattended in a room outside of the polling place. When Election Committee Chairperson Cody White retrieved this box, he said there were marked ballots in it. I believe the ballot boxes were switched and this second ballot box contained pre-marked ballots, which determined the outcome of the election. That is why the ballot count did not match the sign-in sheet. Kaye Brewer was a witness to these events. She provided statements to the IEB in support of her election protest, but she eventually lost faith in the process and that is why she is not here today. Nevertheless, the election committee members agreed that there was something wrong about the ballot count. When we met with International Representative Jarvis, he agreed serious improprieties could have occurred because the election committee members all took naps and only one or two people were monitoring the election at a time.

The reported results of the election showed that John Duncan received the highest number of votes for bargaining committee member. Subsequently, our local lost a bargaining committee member because the Triumph plant left the unit. When the members were asked to vote which committee member should be removed, John

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<sup>46</sup> Record, p. 146.

<sup>47</sup> Record, pp. 147-149.

Duncan was voted out by a landslide. This result demonstrates that Duncan did not really have the support of the membership and suggests that the election results were manipulated in some way. Furthermore, Duncan's involvement in the electoral process on election day was inappropriate. He was not supposed to be in the hall on that day except to vote. Yet, he was there throughout the day and even bought the election committee breakfast. Members of the election committee were on John Duncan's Facebook page posting comments about the election results before the voting was complete. This discouraged people from participating in the election.

The election committee members did not enforce the rules, because they did not know the rules. They permitted retired members to vote for positions with bargaining responsibilities. I am pretty certain that retirees from Douglas were allowed to vote in our election, even though they have never been part of Local Union 952. I did not have a challenger at the polls because I had nominated Tanethia Johnson to be on the election committee and I thought she would be present during the polling. She was elected as an alternate and Chairperson Cody informed her that she would be part of the committee supervising the process on election day. I trusted that Johnson would see that things were done properly. However, on the night before the election, Johnson was told not to report to the hall because she was not going to be part of the election committee.

The IEB did not give sufficient weight to the members' concerns about the triennial election. The members ordered the entire election to be rerun, but the IEB only ordered a rerun of the runoff election for bargaining committee. There was never a protest to that election. The concerns of the membership have not been addressed. By the time this appeal reached the PRB stage, the other protesters had lost faith in the appellate process. Members feared that pursuit of these complaints could result in retaliation. I am here today because I firmly believe that Local 952 deserves to have a properly conducted election.

**B. Administrative Assistant Rick Isaacson on behalf of the International Union, UAW:**

The International Union investigated the specific issues raised by Hutchinson in his election protest. The investigator addressed Hutchinson's concerns about the discrepancies in the reported election results by ordering a recount of the ballots cast in the entire election. The only other significant allegation in Hutchinson's original protest is his claim that retirees were allowed to vote for candidates with bargaining and grievance handling responsibilities. Hutchinson's theory that retirees are ineligible to vote for president and vice president because Article 40 describes these officers as members of all committees is incorrect. Although a retiree might not be eligible to run for the office of president or vice president because of the potential for bargaining responsibilities inherent in these offices, Article 6, §19 of the UAW Constitution recognizes a retiree's right to vote in all elections except for elections conducted pursuant to Article 19, §3, Article 45, §2, and Article 50, §§1 and 5. Article 40 does not affect this right. Retirees were not permitted to vote for bargaining committee members

during the election on Local 952. Retirees were issued a separate ballot that did not include the bargaining committee race. If Hutchinson had other objections to any potential voter's eligibility, such as the employee's home unit, it was his responsibility to raise the issue or appoint a challenger to do so.

The International Union's investigator also looked into Kaye Brewer's complaint about the unattended ballot box, but he could not find any corroboration for this report. Speculation about this unattended ballot box and the possibility that it was switched or stuffed with pre-marked ballots was all based on second hand reports. Election Committee Chairperson Cody White acknowledged that there was a second ballot box and that it was left unattended for a period of time, but he stated it only contained election materials set aside for preservation. White denied that the second box contained marked ballots.

Article 38, §12 of the UAW Constitution provides that when the membership orders a new election, the International President must conduct an investigation to determine if the circumstances warrant that step. The *UAW Guide to Local Union Election Committees* provides in Chapter 15, at page 75:

"No new election for an executive office should be conducted in a local union until a complete report of the circumstances leading the membership to order a new election, as well as the official minutes of the membership meeting where the members took that action, are submitted to and approved by the International President."

The PRB's notice of hearing asks us to consider the significance of the membership's approval of the local executive board's recommendation to rerun the election. The President's investigator gave evidentiary value to the membership's determination in considering whether a new election was warranted. Nevertheless, the presumptions applicable to local union elections are not altered or skewed by the membership's request to rerun an election. Local Union elections are presumed to be valid. The results of an election will not be disturbed in the absence of clear and convincing evidence of misconduct that could have affected the outcome. Furthermore, a candidate is required to raise any objections to the electoral process when they can be corrected. A candidate may not observe an improper election practice, fail to protest it, and then assert it as a basis for setting aside an election if the results prove unfavorable to him. *Hite v. Local Union 663*, 4 PRB 356, at 359. As a candidate for president, if Hutchinson observed blank ballots or the ballot box unattended, or any suspicious behavior with respect to the ballots, he or his challengers should have raised these issues during the election.

The IEB's investigator closely examined the conduct of the entire election in response to the local union's request for an order to rerun it. His investigation revealed that the membership's action was based primarily on the errors in the election committee's report of the election results, specifically, that there were 20 more votes reported than members signed in to vote. The investigator addressed that problem by

ordering a recount of all the ballots. Once that recount provided an accurate tally of the ballots, the IEB ordered a rerun of the races in which errors could have affected the outcome. Hutchinson has not demonstrated by clear and convincing evidence that fraud or errors affected the outcome of the races that were not rerun by the IEB. There was no need to order a rerun of the other local union elections because there was no evidence that the results of the membership's vote were inaccurate or affected by any improper practice.

### **C. Rebuttal by Gary Hutchinson:**

Candidates did raise the issue about the unattended ballot box with the election committee immediately after it was discovered. Election Committee Chairperson Cody White went and retrieved the box. In a subsequent meeting with the International Representative, White stated that the unattended ballot box had marked ballots in it. He has now changed his story on this point. Kaye Brewer was present when these events occurred and she could confirm that White originally said the box had marked ballots in it.

Everyone who reviewed this process agreed that it was flawed. I wish I could have persuaded the other witnesses to appear at this hearing today, but the members were discouraged by the International Union's response to their concerns. The local union needs to find a better way to do this. That is why I pursued this appeal.

### DISCUSSION

We agree with the International Union's position that the membership's order to rerun an election does not alter the presumption of validity applicable to local union elections; the results of an election will not be overturned in the absence of clear and convincing evidence of improprieties that could have affected the outcome of the race. Nevertheless, when members of a local union with first-hand experience of the events reject the results of an election, that rejection itself constitutes evidence of a problem requiring further investigation. The *Guide for Local Union Election Committees* explains that a local union is required to seek an order from the International President before rerunning an election as a safeguard against a small group of members adopting a motion that contradicts the will of the majority as expressed at the ballot box.<sup>48</sup> The investigation called for by Article 38, §12, is designed to determine whether there is a legitimate basis for the membership's perception that the election results were tainted

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<sup>48</sup> The *Guide* states at page 74:

"In some cases a minority of the membership of a local union may be in a position to overrule the will of the majority in passing judgment upon the report of the election committee. A situation may arise when a group of officers is elected by the votes of a thousand or more yet when the election committee reports to the membership, a group of 50 or 75 might constitute the majority of that membership meeting and reject the election committee's report on some very minor, technical, or insubstantial grounds, thus frustrating the will of the majority. Accordingly, certain safeguards must be taken to protect the democratic decision of the majority against minority action."

by some impropriety. Therefore, while the same presumptions apply to an investigation in response to a local union's request for a new election, the investigation has a somewhat different focus than the review initiated by a particular candidate's objection to results that the membership has accepted.

It was clear from the record we received in connection with this appeal that the membership's rejection of the election committee's report was not the result of a powerful minority seeking to overturn the preference expressed by a majority of members at the polls. The election protesters, the successful candidate for local union president, the election committee chairperson, and a majority of the members present at three shift meetings perceived that some impropriety beyond poor counting occurred during the Local 952's triennial election. In a statement supporting the membership's request, the local union president affirmed that widespread errors and abuses undermined the members' confidence in the election results. When presented with these testimonials, the IEB's investigator had an affirmative responsibility to discover the basis for the membership's lack of confidence in the election results. Only then could the investigator move on to consider whether the alleged improper conduct could have affected the outcome of any particular race.

The International Union's presentation during oral argument demonstrated that Administrative Assistant Allen Wilson did a thorough job of investigating the bases for Hutchinson's election protest as well as Kaye Brewer's allegations about the ballot box and John Duncan's interference with the election committee. However, Wilson's report to the IEB contained in this record does not reflect such an investigation. His report declares that the races for executive offices at Local 952 required no further mention once it was determined that the ballot discrepancies were smaller than the margins of victory.<sup>49</sup> This conclusion did not adequately respond to the concerns expressed by the members of Local 952 in connection with their triennial election.

In preparation for our hearing, we asked the International Union to consider the status of the various participants in this appeal in the context of the procedures described in Article 38, §12, because the report adopted by the IEB does not appear to recognize the protesters as interested parties. The IEB's decision names John Duncan as the appellant and treats his letter opposing the membership's decision to rerun the election as the appeal. The IEB's description of the parties to this appeal does not accurately capture the full extent of the process initiated when the local union membership rejects the results of an election. The local union, acting on behalf of the membership, was the original appellant in this case, because the membership believed the entire election process was tainted. Treating Duncan as the appellant created the impression that the IEB was responding primarily to his concerns and not giving adequate weight to the protesters' complaints and the membership's vote to order a new election based on those complaints. Indeed, by the time the IEB decision was

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<sup>49</sup> Record, p. 141.

issued, the original protesters to the election appeared to have been dropped from the process; they were not listed as recipients of the report adopted by the IEB.

Furthermore, although the text of Administrative Assistant Wilson's report to the IEB suggested that he was granting the membership's request for a new election, at least with respect to the bargaining committee race, in fact, his report only ordered a rerun of the runoff election.<sup>50</sup> Even that narrow remedy was subsequently altered to exempt candidate Duncan from participating in the runoff. As a practical matter, therefore, the IEB granted Duncan's appeal and denied the membership's request for a new election. It is unfortunate if Kaye Brewer was discouraged from pursuing her appeal beyond the IEB step by the perception that her voice was not being heard. The International Union should take care to include all parties to an appeal in any notices or communications regarding substantive issues.

Our initial impression from the record prepared in connection with this appeal was that the election protesters believed candidate John Duncan exercised too much control over the electoral process. The protesters reported that candidate Duncan was on site during the election and that he bought the election committee members breakfast. It was highly irregular for Duncan to be allowed to act as a challenger in an election where he also participated as a candidate. Yet, it appeared the election committee was unable to prevent this or to restrict Duncan's access to the polling area while the election was underway. The local union representatives acknowledged during oral argument that the spouse of an election committee member posted comments about the election results on John Duncan's internet chat room before the official results of the election were reported. These kinds of improprieties could have chilled or discouraged participation in the election and thus affected the outcome in ways that would not be reflected in the ballot counts. A post on a social media site declaring that any particular election was all but decided could well have discouraged members from making the effort to go to the polls. Moreover, these are not the kinds of improprieties that candidates could foresee and address in advance.

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<sup>50</sup> The IEB's decision states:

"It is in this vein that we believe it to be unnecessary to address the voluminous set of reasons that the appellant outlined in his instant appeal in an effort to support his claim that a new election should not be ordered. Contrarily, we are compelled to align our conclusion, in part, with that of the local union membership, i.e., a new election for bargaining committee positions should be held. We have determined that the UAW International Union's ballot recount undoubtedly established that the local union election committee, in this instant case, mishandled the tallying of the votes for the general election. This tabulation error was clearly outcome determinative and did, in fact, affect the outcome of the race for the local union bargaining committee. In such cases, the appropriate remedy is to rerun the election. We are particularly inclined to affirm that remedy in this case because it was the will of the local union membership, which has the greatest interest in addressing errors in its own electoral processes, who ordered a new election. Similarly, we have concluded that the results of Local Union 952's general triennial election do not accurately portray the sentiments of its electorate." (Record, p. 143)

One of Hutchinson's primary arguments in support of his appeal to the PRB concerned the ballot box that was left unattended. During oral argument, Election Committee Chairperson White acknowledged that the election committee left a ballot box unattended while the election was in progress, although he denied that there were marked ballots in the box. The International Union reported that Administrative Assistant Wilson investigated the protesters' allegations with regard to this ballot box but he could find nothing to support their suspicions that it had been switched or used to alter the outcome of the election in any way. We agree with the International's conclusion that it is highly unlikely something so outrageous as switching ballot boxes could have occurred without any corroborating evidence. Members of the election committee examined the ballots and International Representative Helms recounted them. If a box with pre-marked ballots was substituted for a genuine container of marked ballots, the ballots themselves would be evidence of the switch. No one mentioned anything irregular, or suspiciously regular, about the appearance of the ballots that were counted.

But a local union does not need to establish fraud of that magnitude in order to justify rerunning an election. When unusually inadequate election procedures cast doubt on the validity of the election results, Article 38 anticipates rerunning the entire election as a remedy. The *Guide for Local Union Election Committees* states that a well-substantiated showing of extremely loose practices in conducting an election may be grounds to invalidate the results of an entire election and order a new one.<sup>51</sup> We generally defer to the membership's acceptance of election results unless a protester can identify clear violations that could have affected the outcome of any particular contest. Where such violations are discovered, only the affected contest is rerun. On the other hand, when insufficient care is taken in the conduct of an election, it may not be possible to say that any of the contests were unaffected by the improprieties. Where the membership rejects the results of an election, the International Union should evaluate the entire electoral process that produced those results. No candidate has a vested right in tainted election results, even if that candidate was innocent of any impropriety. When a sufficient level of disarray in the electoral process is established, margins of victory are no longer the primary consideration.

Election Committee Chairperson Cody White testified during oral argument that the tabulation of the ballots in the 2014 triennial election commenced immediately after the polls closed. White described a situation where people were attempting to count ballots after being awake for 22 hours. He attributed the tabulation errors to fatigue on the part of election committee members. We do not know what practical considerations may have influenced the election committee's decision to adopt this grueling schedule, but the arrangement described by Chairperson White was not a sensible plan. Nothing in the Constitution or the *Guide* requires an election to be conducted in this fashion. The ballot box can be secured after the votes are cast so the election committee members can take a break and get some rest before beginning to count the ballots. It

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<sup>51</sup> *Guide for Local Union Election Committees*, p. 74.

might have been preferable to use the alternate election committee members and establish shifts so that reasonable hours could be maintained.

We learned during oral argument that International Representative Wendell Helms supervised the recount of the ballots on October 30, 2014. Helms reported that the bylaws of Local Union 952 require the local union to elect a new election committee for every election. As a result of this requirement, none of the election committee members had any experience in the process of conducting local union elections. Chairperson White reported that the election committee members were given a copy of the *Guide for Local Union Election Committees* to read, but they did not receive any specific training. Representative Helms reported that during the recount, the election committee members failed to focus on the task of tabulating the ballots, but continued talking on their mobile phones, going out for food, and taking naps. According to Helms, the supervised recount took fifteen hours as a result of the election committee's lack of attention to the process. Chairperson White acknowledged that the election committee members did not fully understand their responsibilities. We are persuaded that the election committee's failings were the result of inexperience and lack of training, rather than any design or motive to influence the outcome of the election. Nevertheless, in light of Representative Helms's description of the election committee's incompetence and the election committee chairperson's acknowledgment of those deficiencies, we do not believe an order to rerun the entire election would have been an excessive remedy under Article 38 and our standards of review applicable to election appeals.

In the course of the recount, Helms reported that he discovered a serious error in the election committee's original tabulation of the ballots in the bargaining committee race. Voters had been instructed to vote for up to five out of the sixteen candidates for bargaining committee member. Helms explained that the election committee improperly disqualified any ballot where the member voted for fewer than five candidates. We asked the International Union why the entire bargaining committee election was not rerun after this error was confirmed in the context of an election that had already been rejected by the local union membership. The remedy recommended by the IEB's report seemed unnecessarily limited under these circumstances. The decision to declare John Duncan elected based on some numeric formula seemed particularly unreasonable because his conduct prompted several of the protesters' complaints. Administrative Assistant Isaacson acknowledged during the hearing that the entire bargaining committee race ought to have been rerun. The instruction to limit the rerun to a runoff among only three of the bargaining committee candidates was based on a misunderstanding; it was not the International President's intent to limit the remedy in this fashion.

We cannot provide any meaningful correction of this error at this point. None of the candidates in the bargaining committee race protested the instruction at the time it was issued. Circumstances at the local have now been altered so that the same race for bargaining committee could not be rerun. The composition of the bargaining committee has been changed and the membership voted to remove Duncan from the bargaining committee. Perhaps this is why none of the candidates for bargaining

committee saw the need to pursue this appeal. In essence, the membership has already expressed its will with respect to the future composition of the bargaining committee.

The only issue before us now is Hutchinson's appeal of the IEB's refusal to order a rerun of the contests for executive offices. The successful candidate for president, David Barker, and the election committee chairperson, Cody White, filed statements supporting the membership's request for a new election in these races. During the hearing, we asked Barker and White to explain what prompted them to support this request.

President Barker and Chairperson White testified that there was a lot of bad feeling among the local union's members regarding the election results. President Barker stated that there were many rumors circulating about possible misconduct and speculation about why it took the election committee so long to count the ballots. Barker stated that he did not regard John Duncan's chat room as a significant problem and that no one thought anything about Duncan's offer to buy the election committee members breakfast. On the other hand, Barker stated that he was concerned about bias on the part of election committee member Tony Mathis who stood to gain if Duncan and vice presidential candidate David Brewer were elected. Chairperson White had also mentioned this problem in an email submitted along with the Local Union's request for a new election. President Barker could not identify any particular inappropriate action taken by Mathis, but he stated he wanted to eliminate any doubt about the legitimacy of the election results. We understood based on this testimony that the President and Election Committee Chairperson recommended rerunning all the elections out of an abundance of caution to avoid any appearance of impropriety.

We do not believe the membership's bad feeling about the process is a sufficient basis to order the local union to rerun its elections for executive officers at this point. Despite all of the problems, there does not seem to be any question that the winners of the presidential and vice presidential contests at Local Union 952 were the membership's choice to fill these offices. Running a new election for president now would be a costly effort of no practical value. Appellant Hutchinson does not actually maintain that Parker would not have been the successful candidate if proper election procedures had been followed. He is asserting that the membership of Local Union 952 is entitled to an election conducted in accordance with the rules established in the UAW Constitution and the *Guide for Local Union Election Committees*. On this point, Hutchinson is certainly correct.

The lack of training and experience that affected Local 952's triennial election in 2014 are not matters that can be corrected by means of a simple order. The problems identified by Hutchinson would not be addressed by an order directing the local to rerun the executive races in the 2014 election. That request is, therefore, denied.

Nevertheless, the situation at Local 952 warrants attention and a remedy. It appears that a partial remedy has already been administered. International

Representative Helms reported that this local has been instructed to amend its bylaws to provide terms of office for election committee members so they can gain some experience and training. We recommend that the new election committee members set up meetings and review sessions to familiarize themselves with the UAW's rules for conducting local union elections. The new election committee should seek the advice of their International Servicing Representative to ensure that the local has a workable schedule for any future elections. As preparations are commenced for this local union's next triennial elections, we urge the International Union to take a proactive approach toward bringing this local union up to the standards generally observed in UAW local union elections.