

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

APPEAL OF:

ROBERT LUEDECKING, Member
LOCAL UNION 602, UAW
(Lansing, Michigan)

Appellant

-vs-

CASE NO. 1740

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

Appellee.

DECISION

(Issued May 16, 2016)

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

APPEARANCES: Robert Luedeking and Douglas S.
Bishop on behalf of appellant; Rick
Isaacson, Allen Wilson, Mark Strolle, and
Stuart Shoup on behalf of the
International Union.

Robert Luedeking argues that charges he filed against his former committeeperson Patrick Cox in connection with a post on Facebook were properly referred to a trial committee convened in accordance with Article 31 of the Constitution.

FACTS

Robert Luedeking is a member of UAW Local Union 602 in Lansing, Michigan. On March 12, 2015, Luedeking filed two charges pursuant to Article 31 of the UAW Constitution against Local 602 Committeeperson Patrick Cox. Luedeking's first charge asserts that Committeeperson Cox engaged in conduct unbecoming a union member by failing to provide Luedeking with a copy of his grievance after being requested to do so. The charge states:

"I, Robert Luedecking, wish to file Article 31 charges against my former union committee representative Patrick Cox for misrepresentation and for actions unbecoming of a union officer. Back in May of 2014, Patrick Cox was my UAW Local 602 elected District 7 committee representative on the 3rd shift at General Motors Lansing Delta Township location/site. I was under his representation when I was disciplined with time off for which I felt was unfair and unjust. Patrick Cox, as my union representative, wrote me a grievance (No. C1162760) for unfair and unjust DLO of a balance and 3 days off work. Many times I asked Patrick Cox for a copy of my grievance which he never gave me until I had to put a call in with my new committee representative and then a call with my district zone. Finally, I received a copy of my grievance (No. C116760) in February of this year (2015). I feel my rights were violated for Patrick Cox not providing me with a copy of my grievance when I asked."¹

Luedecking's second charge asserts that a comment Cox posted on Facebook violated the UAW Constitution and his contractual rights as a dues paying member of Local Union 602. The charge states:

"Furthermore, on Wednesday, March 4th 2015, Patrick Cox posted a derogatory comment about me on the social media networking site "Facebook" under the privately created page of roughly 1,600 co-workers of mine on the "GM Workers of Delta Township" Facebook page (see attached). In his comments, Patrick Cox, against my confidentiality, made personal claims about me having a possible mental disorder and put it on a public website consisting of over 1,600 of my co-workers to see. I strongly feel that Patrick Cox has violated my UAW Constitutional and contractual rights. I have had to use the EAP (Employee Assistance Program) to discuss with them my issues with being nervous and stressed to come to work and perform my duties, not knowing what my co-workers are now thinking and saying about me."²

Luedecking attached to his charges a copy of a comment he posted on Facebook on March 3. Luedecking's post states:

"People don't seem happy with this union lately. Well, not long ago, I witnessed a group leader telling a committee "man" that the only thing important was numbers off the end of the line. That GMS was not important; 50-year-old workers should be able to do the jobs just as fast as 20-year-old workers. Well, I expected the committee "man" to handle the situation a little differently than just walking away. That right there is a pretty good reason to be a little disgruntled with the union here at LDT. I

¹ Record, p. 1.

² Record, p. 1.

do think there is hope though. Hopefully, and soon, this committee “man” will start doing his job, or better yet, resign.”³

Cox responded to this post. He stated that it was obviously referring to him. Cox asserted that Luedecking’s account of the incident with the group leader was not accurate or complete. He reported that he met with the group leader and his supervisor for 20 minutes to discuss the incident. Cox’s post states:

“...Also the part that you didn’t see was him and I sitting down with his boss and having it explained to him the importance of GMS and quality over numbers. You know, since all of our jobs hinge on quality built vehicles. In my view, his boss explained it pretty well. And he also reiterated my concern that the GL stop thinking he is the be all, end all, of your area and that he needs to rely more on the expertise of his TLs. What their conversation was after I left, I couldn’t tell you. But I was satisfied after our 20 minute conversation. How would you have liked me to handle it differently? What would you have done differently? Also, if I’m not mistaken, I believe I told you that I was involving the Shift Leader to straighten him out.”⁴

Shortly after posting this response to Leudecking, Cox posted the following comment:

“On a more serious note, the nature of my job dictates that I try to find the root cause of the behavior shown. I came up with this article after doing a search on your behavioral tendencies and I feel compelled to offer the services of EAP. She can help with many things, including providing you with a list of competent mental health providers that are covered by our union negotiated health care. Anyway, give it a read and let me know. Even though I’m no longer your committeeman, I will be more than happy to set up an appointment for you with EAP. Of course you can set it up yourself if privacy is a concern to you. I can only wish you the best of luck with whatever form of treatment you decide on.”⁵

Cox attached to this post a definition of “antisocial personality disorder” from the Mayo Clinic website, which states as follows:

“Antisocial personality disorder is a type of chronic mental condition in which a person’s ways of thinking, perceiving situations and relating to others are dysfunctional – and destructive. People with antisocial personality disorder typically have no regard for right and wrong and often disregard the rights, wishes and feelings of others.

³ Record, p. 2.

⁴ Record, p. 2.

⁵ Record, p. 3.

Those with antisocial personality disorder tend to antagonize, manipulate or treat others either harshly or with callous indifference. They may often violate the law, landing in frequent trouble, yet they show no guilt or remorse. They may lie, behave violently or impulsively, and have problems with drug and alcohol use. These characteristics typically make people with antisocial personality disorder unable to fulfill responsibilities related to family, work, or school.”⁶

The Local 602 executive board reviewed Luedeking’s charges at a meeting on April 12, 2015. The executive board members rejected the first charge based on their conclusion that it was insufficiently specific to determine whether it was timely. The executive board determined that the second charge was timely and proper.⁷ On April 16, 2015, the Local 602 recording secretary sent notices to Luedeking and Cox describing the local executive board’s decision on Luedeking’s charges.⁸ On May 12, 2015, the recording secretary advised Luedeking and Cox that a trial committee would be selected at the general membership meeting scheduled for May 17, 2015.⁹ Minutes of the Local 602 general membership meeting of May 17, 2015 show that nine trial committee members were selected in accordance with the procedure described in Article 31, §7 of the UAW Constitution.¹⁰

The trial committee issued a verdict on June 12, 2015. The committee found Patrick Cox guilty of conduct unbecoming a union member. The trial committee recommended a reprimand subject to the following stipulations:

- “a) Public apology at next union meeting.
- b) Verifiable community service at Greater Lansing Food Bank. Minimum 12 hours over 60 days.

Failure to comply with these recommendations will result in removal from office.”¹¹

The trial committee’s verdict was presented to the Local 602 membership at a meeting on June 14, 2015. The minutes of that meeting report that the membership voted to approve the verdict and penalty recommended by the trial committee.¹² Recording

⁶ Record, p. 4.

⁷ Record, p. 5.

⁸ Record, pp. 6-7.

⁹ Record, pp. 8-9.

¹⁰ Record, p. 11.

¹¹ Record, p. 29.

¹² Record, p. 31.

Secretary Doug Fox notified Patrick Cox of the membership's decision to approve the verdict of the Trial Committee in a letter dated June 25, 2015.¹³

Cox appealed the membership's decision to the International Executive Board (IEB) on July 7, 2015. In support of his appeal, Cox argued that the charges against him should have been rejected by the local recording secretary because they were not signed.¹⁴ Cox reported that Local 602 President Bill Reed informed the membership that Regional Representative Mel Coleman stated it was acceptable for the charge to go forward even though it was not signed. Cox asked how Representative Coleman could override the clear requirement of Article 31, §1 of the UAW Constitution.¹⁵

One of the members of the trial committee submitted a statement describing the controversy over the fact that Luedecking did not sign his charges against Cox. David Menninga reported that after hearing arguments from counsel for Luedecking and Cox, the trial committee members withdrew to another room to discuss whether to continue with the trial in light of the fact that the charges were not signed. One of the committee members suggested that the charge did not need to be signed because Luedecking presented them in person so that his identity was established. The trial committee members requested verification of this from the International Union.¹⁶ Later that day, Local 602 President Bill Reed addressed the trial committee on the issue of the unsigned charges. According to Menninga, President Reed informed the members of the trial committee that it was not up to them to decide this issue. Reed claimed that once the local executive board approved the charges the UAW Constitution required the trial to go forward.¹⁷ Menninga commented that this was completely contrary to what the trial committee members were told when they were selected at the meeting on April 12, 2015. Menninga wrote:

“At the meeting, when charges were read publicly, it was pointed out by Pat’s counsel that there was no signature and moved to dismiss because of that. Bill Reed said then, that the e-board’s decision to pass it on would leave the jury to decide if charges should be dropped for that reason.

So, we wasted approximately 3-4 hours waiting for information that we were eventually informed by Bill Reed wasn’t even necessary to us to

¹³ Record, p. 33.

¹⁴ Record, p. 34.

¹⁵ Article 31, §1 states, in pertinent part, as follows:

“A charge by a member or members in good standing that a member or members have violated this Constitution or engaged in conduct unbecoming a member of the Union must be specifically set forth in writing and signed by the member or members making the charges. ...”

¹⁶ Record, pp. 24-25.

¹⁷ Record, p. 27.

begin with. Even though earlier he said that it was. And so we proceeded making our recommendations as directed. End of story.”¹⁸

In his appeal to the IEB, Cox referred to the five criteria that should have been applied by the local executive board when reviewing Luedecking’s charges. Cox argued that Leudecking’s charges should have been rejected under Article 31, §3(c) because the action described in the charge did not amount to conduct unbecoming a member of the Union. Cox made the following argument for disqualifying the charges under Article 31, §3(c):

“I was charged with failing to provide a copy of a grievance to the accuser and also posting a derogatory comment on the social network site Facebook, thus breaking confidentiality requirements. First, I have provided the accuser with a copy of his grievance twice. Second, for me to have broken any rules of confidentiality, the accuser and I would have had to [have] been involved in a prior conversation during a committee call discussing his mental state. This conversation nor the committee call [n]ever took place. Therefore, no breach of confidentiality could occur. Although I stated an opinion on Facebook, this is just what it is, an opinion from one person to another on a social media site that is not affiliated with the UAW or General Motors.”¹⁹

In addition, Cox argued that the charges should have been rejected under Article 31, §3(e) because there was no corroborating witness or evidence.²⁰

Cox pointed out that there were no minutes or notes reflecting the local executive board’s deliberations before determining that Leudecking’s charges satisfied the requirements of Article 31, §3. He reported that when his counsel requested minutes of the local executive board meeting, he was given a piece of paper with four lines typed on it.²¹ Cox described the efforts of his counsel, Mark Slade, to have Luedecking’s charges dismissed because they were unsigned. Cox reported that President Reed told the membership that the trial committee could reject the charges based on the fact that they were unsigned. He then told the trial committee that they could not reject the charges on this basis. Cox’s appeal states:

“...You’ll notice in the enclosed letter from David Menninga (a jury member on my trial) that during the jury’s deliberation, President Reed contradicted his own statement and told the jury that they must go forward and could not throw it out based on the lack of signature or lack of

¹⁸ Record, p. 28.

¹⁹ Record, p. 34.

²⁰ Record, p. 34.

²¹ Record, p. 35.

witnesses. He also admitted to not knowing the trial process. President Reed also stated to multiple people including myself that he could not be a part of any of the trial proceedings, yet he stated to the jury that he would be available for any questions from them.”²²

Cox stated that local chairperson Todd Trout was encouraging people to attend the meeting following the trial in order to vote in favor of the trial committee’s verdict. Cox stated this suggested Trout already knew the trial committee’s verdict. Cox further reported that President Reed discussed his trial and the trial committee’s verdict before the trial committee reported its decision to the membership. Cox wrote:

“...During that union meeting, which just happened to have one of the largest turnouts I’ve ever seen with a large number of appointed, Doc 46ers, and many retirees that I’ve never seen at a meeting, President Reed decided to openly discuss my trial and verdict before the jury foreman could even read the verdict. This seemed highly improper to many of us in the meeting. It seemed as if he was trying to sway the vote against me before the verdict was even read.”²³

Cox asked President Williams to overturn the trial committee’s verdict.

President Bill Reed responded to Cox’s appeal on July 29, 2015. In response to Cox’s argument about Luedecking’s failure to sign his charges, Reed reported that he consulted with the Local 602 International Servicing Representative Melvin Coleman who advised that the charges were submitted in good faith and could be accepted.²⁴ Reed denied that he told the trial committee that they could make the decision to dismiss the charges because they were unsigned. Reed also denied that he discussed the trial on Luedecking’s charges and the trial committee’s verdict at the membership meeting on June 14, 2015, before the trial committee announced its verdict. In response to Cox’s arguments regarding the propriety of Luedecking’s charges under Article 31, §3, Reed argued that this aspect of Cox’s appeal was untimely. Reed pointed out that Cox was notified of the executive board’s decision on April 18, 2015, and he did not submit his appeal to the IEB until July 7, 2015.²⁵

President Williams’s staff determined that a hearing was unnecessary on Cox’s appeal. Williams’s staff prepared a report to the IEB on the appeal based on information provided by the parties and documents in the record. The report states that the local executive board could have rejected Luedecking’s charges based on the fact

²² Record, p. 35.

²³ Record, pp. 35-36.

²⁴ Record, p. 38.

²⁵ Record, pp. 39-40.

that they were not signed as required by Article 31, §1 of the Constitution. Staff commented:

“Clearly, the signature is missing in this case. Without a signature, the charges could have been found improper by the local union executive board.”²⁶

The report further states that Luedecking’s second charge should have been rejected in accordance with Article 31, §3(c) of the Constitution because the act described does not amount to a violation of the Constitution or conduct unbecoming a member of the Union. In support of this conclusion, staff referred to language from *Clapp in the matter of Tomczak v. Local Union 699*, PRB Case No. 737, 5 PRB 119 (1986), holding that Article 31 was not intended to address petty differences between union members.²⁷ Staff’s report states:

“The second area of concern is whether the act sustains the charge of conduct unbecoming a member of the union. Clearly, this case does not rise to the principle established in the often cited Public Review Board Case No. 737. Absent from this charge is demonstration that the appellant acted with a culpable intent to injure the recognized interests of the union or its members or a disregard of such interests so flagrant as to be willful or wanton.”²⁸

Staff observed that the requirement of corroborating evidence stated in Article 31, §3(e) of the Constitution was not an issue because the basis of the allegations was captured on Facebook. In support of this position, staff referred to the PRB’s ruling in *Otto v. Local Union 1292 Executive Board*, PRB Case No. 1598, 13 PRB 877 (2008), that Article 31, §3(e) only applies to charges which have no corroboration in the real world. Staff noted that the “likes” posted on the Facebook page amounted to corroboration of the posts.²⁹

Staff reported that the private Facebook page on which Cox posted his comments was established by employees of GM’s Lansing Delta Township plant independently from the company or the local union. They observed that the website itself provides an adequate mechanism for raising complaints about material posted on the site. Staff’s report states:

“The charging party could have clicked on a down arrowhead located at the upper right of the comment he found objectionable. A dialogue box

²⁶ Record, p. 57.

²⁷ Record, p. 59-60.

²⁸ Record, p. 62.

²⁹ Record, p. 60.

would appear and he could have clicked on, "*Report to Admin.*" This allows the offended party to report the comment and have it removed. If the Admin refuses to remove the post, they can report the comment directly to Facebook as a violation of the Terms of Service. Thus, there was another remedy available to the charging party if their goal was to remove the comments."³⁰

In any event, staff found that the remedy recommended by the trial committee exceeded its authority under Article 31, §10. That section states as follows:

"The trial committee, upon completion of the hearing on the evidence and arguments shall go into closed session to determine the verdict and penalty. A two-thirds (2/3) vote shall be required to find the accused guilty. In case the accused is found guilty, the trial committee may:

- (a) By a majority vote, reprimand the accused; or
- (b) It may, by a two-thirds (2/3) vote, suspend or remove the accused from office or suspend or expel her/him from membership in the International Union.

The trial committee may not apply more than one (1) of the above two (2) penalties against the accused."

Staff's report states:

In the instant case, the trial committee exceeded its authority granted them under the Constitution of the International Union. The stipulations of a 'public apology at the next union meeting' and 'verifiable community service at the Greater Lansing Food Bank, minimum 12 hours over 60 days' exceed the language in Article 31, §10(a).³¹

In conclusion, staff observed that Luedecking's charges should never have resulted in a trial. Staff pointed out that if Cox had appealed the local executive board's ruling that Luedecking's second charge was proper directly to the IEB as provided for in Article 31, §3, no trial on this matter would have taken place. Based on these conclusions, staff found that the trial conducted on Luedecking's charges violated Cox's right to due process as established by Article 31, §3 of the UAW Constitution. Staff ordered the verdict and the penalty imposed by the trial committee to be reversed.³²

The IEB adopted the report prepared by President Williams's staff as its decision. President Williams provided a copy of the IEB's decision to Patrick Cox on September

³⁰ Record, p. 61.

³¹ Record, p. 61.

³² Record, p. 62.

18, 2015.³³ Robert Luedecking appealed the IEB's decision to the Public Review Board (PRB) on October 10, 2015. Luedecking reported that he had not received a copy of the IEB's decision with respect to his charges, but that Patrick Cox had posted a copy of the decision on Facebook.³⁴ We heard the parties in oral argument on April 9, 2016.

ARGUMENT

A. Douglas S. Bishop on behalf of Robert Luedecking:

The dispute between Patrick Cox and Robert Leudecking on Facebook was not the expression of petty differences. Patrick Cox was Leudecking's committeeperson. As a committeeperson, he took an oath of office that should have restrained him from revealing confidential medical information about Leudecking's mental state. The Health Insurance Portability and Accountability Act (HIPAA) prohibits such breaches of confidence. Cox's post in regard to Leudecking was not harmless. The post raised a serious question about Leudecking's mental stability and suggested that he was prone to violent behavior. It exposed him to extreme embarrassment and stress in the workplace. Leudecking felt that after Cox's post was circulated on Facebook, his co-workers naturally became concerned that he might be the next person to create a violent or threatening situation at work.

The PRB's Notice of Hearing mentions the need for guidelines about posts on social media websites that have the potential to invade a member's privacy. Although Local Union 602 monitors its official website, there is considerably more activity on the privately owned "GM Workers of Delta Township" Facebook page. You must be a member of UAW Local 602 to join the Delta Township Facebook page, but participants are not removed when they retire or leave the local. The official local union site has approximately 1,000 followers in contrast to the 2,006 followers of the GM Workers of Delta Township Facebook page. The local union removes extraneous chatter from the official site, but there is no similar supervision over the unofficial site. This is the site most members turn to for news about local union activities. There are four site administrators who will review complaints about material posted on the site. Two of the administrators, Brett Brown and Brian Worlock, are elected committeepersons, but there are no set limitations on what may be posted. This is where campaign literature is posted. In terms of content, it is like the wild west. Any material can be posted on the site and circulated among its participants. Removal of the offending post by an administrator would not have been a sufficient remedy to address the harm to Leudecking's reputation from Cox's Facebook post. Charges and a trial conducted in accordance with Article 31 of the Constitution was the only effective remedy available to Leudecking to correct the impression created by the post.

³³ Record, p. 47.

³⁴ Record, pp. 64-65.

Patrick Cox's appeal to the IEB was untimely in every respect except for his objection to the penalty imposed by the UAW Local 602 trial committee. Cox did not exercise his right to appeal the determination of the local executive board that the charges Leudecking filed satisfied the five tests set out in Article 31, §3. His subsequent attempt to appeal the propriety of the charges was untimely. Therefore, the trial conducted by Local 602 did not violate any of Cox's rights under the UAW Constitution.

The fact that Leudecking's charge was not signed is of no significance. Leudecking presented his charge in person, which was the equivalent of a signature. The recording secretary accepted the charge in good faith and did not ask Leudecking to sign it. Subsequently, Local 602 President Bill Reed made several telephone calls to Solidarity House to determine if the local could proceed to trial on the charge even though it was not signed. Solidarity House responded that the charge was still valid because Patrick Cox did not object to it within the Constitutional time limits. The local chairperson Todd Trout also called his contacts and they assured him that the charge was valid. During the trial, the trial committee took a recess to consider whether they could rule on the unsigned charge. President Reed assured them that this was not an issue because of the calls he made to Detroit. Reed informed the trial committee that Detroit gave them the green light to hold this trial. The local trial committee considered the absence of the signature and rejected the argument that this was disqualifying. This issue is no longer subject to appeal. An appeal of a local executive board's determination that charges are proper for a trial must be limited to the question whether the charges are proper or improper under items authorized by Article 31, §3(a), (b), (c), (d) or (e) of the Constitution. There is no provision for an appeal based on a claim that the charge was not signed by the charging party.

The reason we are here is to address the harm done to Leudecking. We are not certain about the scope of the trial committee's authority to impose a penalty. There is no established past practice at this local union with respect to trial committee verdicts. There has only been one other trial, and that was about financial misconduct. We are now asking the PRB to declare that Leudecking's charge satisfied the criteria set out in Article 31, §3 of the International Constitution and so was properly before the trial committee. We ask the PRB to affirm the trial committee's verdicts to the extent that it was authorized by the Constitution.

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

There was no violation of HIPAA regulations in this case, so we are not prepared to respond to that claim. Cox did not release any of Leudecking's personal medical records on Facebook. The item he posted was general information downloaded from the Mayo Clinic website. It has no personal connection to Leudecking.

Cox's appeal of the trial committee's verdict was timely, even though he did not protest the local executive board's conclusion that the charge against him satisfied the

requirements of Article 31, §3 of the Constitution. The Constitutional time limits run from the date the trial committee issues its verdict and not the date the charges were approved. The precedent is well established that the IEB and the PRB may review the propriety of charges under Article 31, §3 of the Constitution in the context of an appeal of a trial committee's verdict, even where the appellant did not appeal the local executive board's finding that the charges were proper. In *Comley v. Noble*, PRB Case No. 124, 1 PRB 347 (1965), the PRB stated that it was unnecessary to consider whether evidence supported the trial committee's verdict because the underlying charge was not a proper subject for a trial. Citing this precedent, in *Salazar v. Local Union 148, UAW*, PRB Case No. 1023, 8 PRB 141 (1994), the PRB held that the failure of the accused to appeal the propriety of the charges against him did not foreclose either the IEB or the PRB from reviewing an appeal on the question whether the charges should have been approved in the first place.

Leudecking's charge should have been rejected by the local executive board because it was not signed. The UAW Constitution explicitly states in Article 31, §1, that a charge must be in writing and signed by the charging party. There is no exception to this rule. The testimony of Local 602 officers that someone from Solidarity House or Detroit informed them that they could proceed despite the lack of a signature does not override this requirement. We do not know what the reference to Detroit means in this context. No one on the International President's staff received such an inquiry from the officers of Local Union 602. If they had, we would have instructed the local union not to proceed to trial on the unsigned charge. The lack of a signature on the charge invalidates the trial committee's verdict. It is a fatal defect.

We have never adopted any specific definition of conduct unbecoming a union member. Perhaps we do need to flesh this out a little more as a guide to local union trial committees. However, it would be difficult to set any hard and fast rules for evaluating speech. You cannot really grasp the sense of a disembodied statement taken out of its context in a series of internet posts and responses. The facetious or sarcastic tone of an interchange of Facebook may not be apparent. For this reason, the trial committee's determination has significant weight in evaluating whether speech posted on Facebook fits the definition of conduct unbecoming a union member. In this case, however, the IEB found that the charge approved by the local executive board was improper under Article 31, 3(c) of the Constitution based on the PRB's declaration in *Tomczak v. Local Union 699, UAW*, PRB Case No. 737, 5 PRB 119 (1986), that Article 31 was not intended to address personal disagreements and confrontations. In his appeal, Luedecking argues that Cox had knowledge of some medical condition which he exposed on Facebook in violation of a duty of confidentiality. A breach of confidentiality might well constitute conduct unbecoming a union member. The importance of confidentiality is a big issue covered during the training of grievance handlers. The record does not support the charge of a violation of confidentiality, however. Luedecking does not explain how Cox gained any information about his medical condition. Cox's comment does not in fact reveal anything specifically about Luedecking. His remark was the kind of confrontational talk described in *Tomczak*, that is an inappropriate subject for charges.

The Facebook page where Cox posted his comments is not a UAW administered site, so the union has no authority to limit what is posted there. The union would have some responsibility to review posts made by local union officers and committeepersons about union matters. The determination of impropriety would have to be made on a case by case basis. We do not believe Cox was speaking in his role as committeeperson in this case, however. We believe that he posted as an individual in the context of a personal disagreement. We also took into account the fact that Leudecking initiated the exchange that prompted Cox's reaction.

The audience for the exchange between Cox and Leudecking was not the entire group of 2,006 participants on GM Workers of Delta Township Facebook page. The post would not appear in every member's newsfeed. Its circulation depends on how many people "like" it. In this sense, Leudecking's statement was more like a comment overheard in a bar. We do not believe this kind of speech should be the basis for a charge of conduct unbecoming a union member.

Dennis Williams's staff is in the process of drafting guidelines for union representatives applicable to posts on social media websites. We are mainly concerned with posts by International representatives. In that case, the matter is fairly straightforward. The legal department can formulate rules that will be distributed to employees of the International Union. Similarly, we can develop a series of guidelines for local unions to address what kind of material is appropriate for an official local union website. We expect to have a proposed set of rules for International Union representatives in approximately six months.

The task of developing and promulgating rules for posts by members on websites associated with local unions is more complicated. Members now use these sites for political campaigning. Any attempt to restrict political speech must also take into account the guarantee of free expression contained in the Ethical Practices Codes. Any attempt to limit the use of sites for the purpose of campaigning will raise issues about equal access to the membership. These are all issues that must be taken into account when formulating rules for the use of the internet by local union members. Furthermore, the development of a set of guidelines does not guarantee that members will be aware of those guidelines or will follow them. Members may ignore the guidelines. We have not considered an enforcement mechanism, but we do not want to encourage a lot of charges over internet posts. In our experience, charges of this nature simply generate counter-charges and do not lead to the resolution of any underlying issues. As in the case with insults and arguments distributed during local union political campaigns, we believe the best response for a member who is disturbed by the content of a post is for that member to post his or her own response.

C. Rebuttal by Douglas S. Bishop on behalf of Robert Luedecking

The International Union mentions the fact that Leudecking initiated the Facebook exchange that prompted the post he is complaining about. Leudecking had been

attempting to obtain a copy of a grievance over a disciplinary issue from Committeeperson Cox. Leudecking eventually had to get his zone representative to obtain a copy of his grievance from Cox. Cox had responded to Leudecking's request by saying, "You'll get it when you get it." It was Committeeperson Cox who suggested that Luedecking should take his complaint to Facebook if he was dissatisfied with the representation he received. Leudecking's Facebook post was a general comment about issues of concern in the plant that did not mention anyone by name. Cox jumped in and identified himself before attacking Leudecking for raising a legitimate issue.

Once again, Leudecking is pursuing this appeal to address the harm he experienced as a result of wrongful conduct on the part of his committeeperson. The Facebook exchange between Leudecking and Cox had a significant impact on his working conditions. All we have in the record are the posts that occurred during one hour. Actually, this argument continued on even after the trial and everyone was talking about it. Cox went so far as to post a mug shot of Leudecking. The interchange left the impression that Leudecking had suffered some kind of mental breakdown that Cox became aware of in the course of his duties as a committeeperson. Leudecking felt as if the people around him believed that he could snap at any minute and be involved in the next violent workplace incident. The record supports a conclusion that Patrick Cox acted with the intent to injure Leudecking.

The IEB stated that the trial committee's verdict exceeded their authority under Article 31, §10 of the Constitution. We believe the verdict is authorized by Article 31, §10(a) of the Constitution, which states that the trial committee may vote to reprimand the accused. That is essentially what the trial committee did. They agreed to an apology with community service.

DISCUSSION

We have jurisdiction to address the merits of Leudecking's argument about the propriety of his charges. His failure to sign the charge was not a fatal defect. He presented his charge in person, which fulfilled the purpose of the requirement. There was no question that the charge, composed on his computer with his name typed at the bottom and printed, was being presented by Mr. Luedecking and that the person who was hand delivering the charge was Mr. Luedecking. The local union raised no question concerning the identity of the person presenting the charge. The recording secretary ought to have instructed Luedecking to sign it, but we do not think that omission should be disqualifying. At the same time, Patrick Cox's challenge to the sufficiency of the charges under Article 31 was not untimely. We have consistently ruled that failure of an accused to appeal the propriety of charges does not foreclose either the IEB or the PRB from reviewing an appeal on the question whether the charges should have been approved in the first place.

The IEB correctly determined that Article 31, §3(e) has no application to a charge regarding a statement circulated on Facebook. The statement itself is corroboration of the charge.

As Administrative Assistant Isaacson observed during oral argument, the IEB and the PRB have historically discouraged the use of charges to deal with personal disputes. Members do not need to be unnaturally guarded in their interpersonal disagreements in order to avoid facing charges of conduct unbecoming a union member. We expressed this view in *Herbert v. Local Union 731*, PRB Case 340, 2 PRB 270 (1975), as follows:

“...Often in the heat of argument comments are made which would have been better unsaid. It is important for the conduct of common human social relations that the propensity which we all have for bombast, exaggeration, general unkindness and lack of consideration be recognized for what it is – a personal human failing. ...”³⁵

Based on this language in *Herbert*, we concluded in *Tomczak, supra*, that a threat blurted out in the heat of an argument would not form a basis for a charge of conduct unbecoming a union member. We asked the parties in this case to consider the circumstances that distinguish Leudecking’s charge from the one reviewed in *Tomczak*, specifically, the fact that Cox’s comment was published by a committee person purporting to act in his official capacity on a social media website viewed by a wide audience of local union members.

The union regulates speech in local union publications more closely than it does personal statements and newsletters. The UAW Ethical Practices Codes provides broad protections for the right of UAW members to express their views both individually and through their elected representatives on matters of concern to the community. This freedom of expression is limited only by a prohibition on speech which vilifies other members or undermines the union as an institution. Articles printed in official local union newspapers, on the other hand, must be approved prior to publication. Article 29, §6, of the UAW Constitution requires local unions to put in place some system of editorial control over what appears in local publications.³⁶ A member has no right to have his views appear in the local union’s newspaper. Columns which regularly appear in such publications are subject to the editorial policies adopted by the local, which are required to be applied uniformly.³⁷ The emergence of electronic media and its virtual replacement of traditional print media has created a kind of hybrid publication that is not

³⁵ 2 PRB 270, at 272.

³⁶ Article 29, §6 of the 2014 UAW Constitution provides as follows:

“Local publications shall conform with the policies of the International Union and all local union editors and/or editorial committees shall be responsible to the officers and executive board of the local union who shall have authority to effectuate such conformity. Where a unit of an amalgamated local union has a publication, such initial responsibility shall be to the unit officers, but the amalgamated local union officers and executive board shall still have the ultimate authority of effectuating such conformity.

³⁷ *Thielen v Local Union 72*, Case No. 1479, 12 PRB 529 (2004), at 525.

covered by any of the UAW's established rules for communications.³⁸ A website such as the "GM Workers of Delta Township" Facebook page, established specifically for communications among local union members, has many characteristics in common with a local union newspaper. Yet, there is no basis in the UAW Constitution or Ethical Practices Codes for regulating the content of articles and comments posted on such privately owned and administered social media websites.

We recently confronted the problem posed by these hybrid publications in the context of an election appeal. In *Donovan, et al. v. Local Union 2000, UAW*, PRB Case No. 1721, (2015), appellants argued that an appointed local union representative used the website Twitter to intimidate a presidential candidate to such a degree that the democratic process was undermined. We noted that the publication of physical threats of violence against a candidate designed to discourage opposition to an incumbent would be sufficiently repugnant to democratic principles as to require a new election. Our review of the offending comments, however, established that no such threats were uttered. The Twitter posts in question involved a bitter family quarrel that clearly predated the election and had little to do with the election. We expressed concern, however, about the viciousness of the attack on the appellant. In preparation for our hearing on that appeal, we asked the International President's staff if they had established any guidelines about what is appropriate for local union representatives to publish on private media websites. During oral argument, the International explained that it restricts the publication of election material on official union websites in order to avoid complaints about unequal access to the membership, but that it regards election campaigning on private sites as political speech entitled to the broad protections afforded by the Ethical Practices Codes.³⁹ The International maintained that members have adequate recourse under the Constitution to address abusive behavior on social media websites. Our decision reports the following response from the International Union's representative:

"...Members do have recourse under the Constitution to address abusive behavior on social media sites. Article 32 gives a member the right to challenge speech that amounts to vilification. Article 45 could be used to address conduct by an elected committeeperson that is inconsistent with his or her duties to the membership. ..."⁴⁰

The International Union did not mention Article 31 during the *Donovan* hearing as among a member's means of recourse against abusive behavior on the internet. We do

³⁸ This trend is reflected in an amendment to Article 29 of the UAW Constitution during the 36th Constitutional Convention addressing the union's decision to publish "Solidarity" electronically in the future. Article 29, §4 of the 2014 Constitution provides that after the July-August issue, members will have electronic access to "Solidarity" unless a specific request is made to receive a printed copy by United States mail.

³⁹ PRB Case No. 1721, at 13.

⁴⁰ PRB Case No. 1721, at 13-14.

not know if this omission was intentional, but we see no reason why this Constitutional tool should not have been available to Leudecking as well.

The Constitution vests primary responsibility in the local union executive board for reviewing the sufficiency of charges submitted pursuant to Article 31. The local executive board's duty in this respect is straightforward. It is to assume that the allegations made in the charges are true and to apply the tests of Article 31, §3.⁴¹ In this case, the local executive board determined that none of those disqualifying criteria applied to Leudecking's charge. We find nothing in this record that would warrant overriding the local executive board's authority to make this determination.

As the International Union acknowledged during oral argument, the term "conduct unbecoming a union member" is not defined. It is for local union members to identify what conduct they consider inappropriate for union members. There are some exceptions to the local executive board's authority in making this determination. We have established a firm rule that local union officers should not be required to answer to charges based on actions taken in the performance of their official responsibilities, absent allegations that the officer acted with malice or improper motivations.⁴² That exception does not disqualify Leudecking's charge against Cox, however. Although Cox declared in his Facebook post that he was speaking in his capacity as a committeeperson, that is not so. We do not need to consider how the rule protecting a local union officer from charges based on his or her official actions would apply if a committeeperson breached a member's right to privacy regarding a health concern on a privately administered social media website. There was no violation of HIPAA regulations in this case. Testimony during oral argument confirmed that Leudecking had never consulted Cox about any medical issues. Cox was not genuinely concerned about Leudecking's mental state; his post was a parody of concern. He was using psychological jargon downloaded from the internet to insult another union member. Cox's post was a personal attack, unconnected to his official responsibilities as a committeeperson.

The IEB held that the local executive board should have rejected the charge based on our rule that Article 31 is not designed to resolve petty differences between union members, citing our decision in *Tomczak, supra*. During our hearing on this appeal, the International Union compared Cox's comment with an argument overheard by members in a public venue such as a bar. They argued that simple, spontaneous speech of this nature should not form the basis for a charge of conduct unbecoming a union member. We do not believe the exchange between Cox and Leudecking fits this description. Although not an official action, Cox published his comment using the cloak of his authority as a committeeperson. His remarks were not uttered in the heat of an

⁴¹ *James Kuptz v. Local Union 36*, UAW, PRB Case 1116, 9 PRB 111 (1996); *Bob and Alma King v. UAW Local 600 Executive Board*, PRB Case 1464, 12 PRB 392, 397 (2004)

⁴² *Comley v. Noble*, PRB Case 124, 1 PRB 347 (1965); *Parker in the matter of Zappa v. UAW Local Union 1248 Executive Board*, PRB Case No. 1473, 12 PRB 461 (2004).

argument, but involved a calculated strategy to embarrass Leudecking. Given the current state of anxiety about violence in the workplace, Leudecking was understandably alarmed by the circulation of printed material among his co-workers suggesting that he suffered from a condition that could lead to violent and unpredictable behavior.

We should clarify our position with respect to charges based on inappropriate comments uttered in the heat of an argument. We affirm the notion that a local executive board ought to disqualify charges that arise out of momentary lapses in judgment because they do not describe conduct unbecoming a union member. A Facebook post does not qualify for that treatment, however. In some ways, posts on the internet have even more durability and circulation than print media because they can be continually reposted and shared. Furthermore, these are not spontaneous utterances; a person posting comments on a social media site has the opportunity to stop and reflect on the wisdom circulating the material in question. While we also share the International Union's concern to avoid igniting a series of charges and countercharges over postings on the internet, clear guidelines for use of sites such as the GM Workers of Delta Township Facebook page would be the best deterrent to such abuse.

Under the present circumstances, a trial committee duly elected by the membership in accordance with the procedures described in Article 31, §7, of the UAW Constitution was the appropriate body to express the membership's consensus about what should be permissible on the Facebook page established for the members to use. As the International Union correctly observed during oral argument, an objective, uninvolved reader cannot really grasp the sense of a Facebook retort removed from the context of the exchange that prompted it. Sarcasm is a prevalent tone on the internet. If Cox's post had occurred in the context of a facetious exchange, the trial committee might well have concluded it lacked the substance of unbecoming conduct. Instead, Cox's post was prompted by Leudecking's earnest expression of concern regarding working conditions in the plant. The trial committee knew how the comment was received in the plant. According to Leudecking, some members took it very seriously. The way Cox framed the comment created the impression that Leudecking had consulted him about some mental disturbance. Leudecking testified during oral argument that some co-workers believed he had suffered some kind of a breakdown. It was up to the trial committee, familiar with local plant conditions and culture, to determine whether Cox's aggressive response to Leudecking amounted to a petty dispute or constituted a violation of shared expectations of decorum in the public discussion of local affairs.

The trial committee's remedy exceeded its authority, however. The trial committee is limited to applying one of the two penalties described in Article 31, §10(a) of the Constitution. There is no provision for forced speech such as a public apology. Suspension from office would have required approval by a two-thirds vote and testimony during the hearing confirmed that the penalty was not approved by a two-thirds vote. In any event, the penalty adopted by the trial committee was a reprimand.

There was no Constitutional authority for the trial committee to adopt additional stipulations to the reprimand. The stipulations adopted by the trial committee are therefore of no effect.

This case highlights the need for guidelines about the use of the Internet by union representatives as well as local union members posting on sites that are associated with their local. The “GM Workers of Delta Township” Facebook page was apparently viewed by a large number of Local 602 members in regard to workplace issues. At least some of those responsible for its administration were elected officials. Under these circumstances, UAW Local Union 602 has a responsibility to monitor the content of the site to some extent in order to prevent associating the local union with the publication of offensive or unprofessional content. Freedom of speech must be preserved, but there should be notice given to the participants on websites such as Facebook about content that should be avoided. In particular, members should be warned against publishing any material that is libelous, discriminatory, harassing, or invasive of individual members’ legitimate privacy interests, or that might otherwise be deemed improper or unprotected under law. At the hearing on this case, the International Union advised the PRB that it is drafting guidelines sensitive to these different interests that would be applicable in distinct ways to International Union representatives, local union officials, and union members. We urge the International Union to complete its drafting process and issue these guidelines as soon as practicable.

The IEB’s determination that Leudecking’s charge about Cox’s Facebook post should have been disqualified under Article 31, §3(c) for failure to sustain a charge of conduct unbecoming a union member is reversed. The reprimand ordered by the trial committee was the appropriate penalty, and that penalty is affirmed as modified in this decision.