

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

APPEAL OF:

MALANA HUBBARD, Member
UAW LOCAL UNION 892, UAW
REGION 1A
(Saline, Michigan),

Appellant

-vs-

CASE NO. 1750

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

Appellee.

DECISION

(Issued February 27, 2017)

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

APPEARANCES: Malana Hubbard and Harvey I. Wax on
behalf of appellant; Rick Isaacson, Jeff
Sodko, and Mark Strolle on behalf of
the International Union.

The International Union charges that Malana Hubbard engaged in financial misconduct by accepting compensation for her employment as the president of Amalgamated Local Union 892 in excess of that authorized by the local union bylaws.

FACTS

Malana Hubbard took office as president of UAW Amalgamated Local Union 892 in July 2012.¹ Local Union 892 represents bargaining unit employees at a plant located in Saline, Michigan. Prior to June 1, 2012, the Saline plant was one of the units operated by Ford Motor Company as part of Automotive Components Holdings (ACH).

¹ Record, p. 128.

Faurecia Interior Systems, Inc. acquired the plant on June 1, 2012.² The compensation due to the president of Amalgamated Local Union 892 is defined in Article 31, Section 5 of the local union bylaws, updated 8/24/2012, as follows:

“Section 5. The president shall be compensated for full time employment, at the rate equal to that of the highest classification he/she represents for a minimum of forty (40) hours per week, including number one (#1) shift premium, bonus payments, profit sharing, less any compensation received, for the same hours worked from the company. And an equal share of overtime as allotted to the full time appointed officers, not to exceed the UAW-Faurecia contractual, forced overtime provision and all other economics gains and benefits covered under the UAW-Faurecia Collective Bargaining Agreement. (4/28/12)”³

UAW International Auditor Manuel M. Romero, Jr., conducted an audit of the local’s books and records covering the period from July 1 through September 30, 2012.⁴ On November 1, 2012, Romero met with the executive officers of Local 892 to discuss his findings and to make recommendations. The final recommendation recorded in Romero’s Exit Meeting Notes for November 1, 2012 is: “Suspend all overtime allocations until clarification from Region.”⁵

Assistant Director Blake Miller presented a full copy of the auditor’s report to President Hubbard on November 5, 2012. Although the auditor’s notes do not identify any specific problem with the wages paid to local union officers, it makes the following recommendation with respect to compensation paid to local union officers:

“The local union officers are instructed to pay particular attention to UAW Administrative Letter, Volume 50, Letter #3, dated May 30, 2002, regarding specific local union bylaws language concerning all forms of compensation paid by the local union. The officers must see to it that the local’s current bylaws meet mandates as stipulated in this Administrative Letter or take the necessary steps to amend the bylaws as to comply.”⁶

On October 28, 2014, Regional Director Rory Gamble sent a letter to President Hubbard advising her that the Region 1A International Servicing Representative Edward P. Honsinger Region had received telephone calls from members concerned about local union expenditures including her compensation. Gamble reminded Hubbard of the requirement in the UAW Administrative Letter dated May 30, 2002, Volume No. 50,

² Record, pp. 5, 147, and 184.

³ Record, p. 24.

⁴ Record, pp. 30-46.

⁵ Record, pp. 27-29.

⁶ Record, p. 37.

Letter No 3, that the local can pay members only that which is specifically listed in the local union bylaws.⁷ President Hubbard prepared a letter dated November 7, 2014, explaining her method of computing the president's compensation. The letter states:

"My interpretation of this bylaw is that the president cannot get paid less than forty hours (40 hrs) a week but is not limited to forty (40 hrs). Therefore, any hours worked over forty will be compensated. Including all other provisions provided in Article 31, Section 5."⁸

On February 5, 2015, the UAW Auditing Department sent President Hubbard an audit of Local 892's books and records for the period from January 1 through September 30, 2014.⁹ According to the audit report, the local union president and acting president were paid overtime hours without any documented proof of entitlement. Referring to the language in the local union bylaw defining the president's right to an equal share of overtime as allotted to full-time appointed officers, the auditor explained that documentation of overtime worked by appointed officers, and the formula used to calculate the president's equal share could not be secured. As a result of this deficiency, the auditor concluded that an accurate wage study could not be finalized.¹⁰

Region 1A Director Rory Gamble wrote to Hubbard on February 20, 2015. Gamble referred to a schedule of undocumented overtime payments attached to the February 5 audit and asked Hubbard to explain the basis for the payments listed. Gamble's letter states:

"Attached to the audit as "Schedule 3," is a list of undocumented payments paid to Local officers between October 2012 and September 2014. This document indicates that you were paid 1382 such hours. Acting President Willie R. Hall was paid 45 such hours.

The local's failure to explain the basis of these undocumented payments is a serious matter. I hereby direct the local, within ten (10) days of the date of this letter, to provide the documents and any other information needed by the Accounting Department to verify that the overtime payments made to you and Brother Hall were permitted by Art. 31, Section 5 of the Local's bylaws. If you fail to do so, I intend to refer this matter to the International's Secretary-Treasurer with a recommendation that he initiate administratorship proceedings pursuant to Art. 12, Sec. 3, of the International Constitution."¹¹

⁷ Record, p. 54.

⁸ Record, p. 55.

⁹ Record, pp. 65-73.

¹⁰ Record, p. 70.

¹¹ Record, p. 74.

President Hubbard responded to Director Gamble on February 27, 2015. Hubbard stated that after assuming the office of president, she consulted with several servicing representatives, the Assistant Director, and even the Director himself about how the president should be compensated. Hubbard asserted that she was always told to continue calculating her compensation based on the hours she worked. Hubbard reported that when she first assumed office, International Servicing Representative John Moore instructed her to keep track of any hours during which she was performing her duties as local union president because she was entitled to be compensated for them. Hubbard wrote:

“When first coming into this office, I was directed by John Moore, Servicing Rep., that ‘if you answer the phone, you are on the clock and that you can be president from anywhere.’ So the hours I was working fluctuated, but did not reflect overtime hours allotted to appointed officers. The financial secretary also requested direction from the Region on how the president should be compensated. She was also directed to pay the president hours worked. Upon Vice President Willie Hall inquiring to Servicing Rep John Moore about the compensation, he was informed ‘to not mess with the president’s pay because the president did not receive any ‘bennys’ from the plant and could cause the local to owe her money.’ The president should not suffer while in office. Brother Hall also asked past president and the chair of the bylaws committee Jim Peterson and was told she was getting compensated properly.”¹²

Hubbard stated she did not understand why her compensation for hours in excess of forty hours per week was now being questioned by the auditor.

Director Gamble responded to Hubbard on March 23, 2015. Gamble stated that Hubbard’s calculation of her salary was inconsistent with the local union bylaws. He wrote:

“In your letter of February 27, 2015, you stated that the local has paid you overtime based on actual hours worked. While you assert that current and former representatives of the local and Region 1A advised you that this approach was permissible, you acknowledge that the applicable bylaw section states that the local president will receive ‘an equal share of overtime as allotted to the full-time appointed officers.’ You concede that your overtime compensation ‘did not reflect the overtime hours allotted to appointed officers.’ Indeed, it appears that there have been no full-time appointed officers in the plant since December 2012. The individuals identified in your letter are elected representatives who spend a small portion of their time serving as members of the local’s Health and Safety

¹² Record, p. 75.

Committee. They are allotted no overtime as a result of their service on the Committee.”¹³

Gamble maintained that because the Saline plant has no full-time appointed officers, Hubbard was only entitled to forty hours of pay per week, regardless of the number of hours she worked. He directed her to cease making any overtime payments to the president and vice president.¹⁴

On April 13, 2015, Assistant Director Blake Miller of the UAW Auditing Department provided Hubbard with an earnings history report including the overtime hours recorded during the February 5, 2015 audit. Miller reported that he had been informed there were no appointed officers working overtime at the Saline plant during Hubbard’s presidency. As a result of this circumstance, Miller took the position that Hubbard was not entitled under the local union bylaws to compensation for any hours in excess of 40 hours per week. Miller provided Hubbard with a schedule of the undocumented hours.¹⁵ Miller requested repayment of the excess compensation by April 22, 2015. His letter states:

“In light of this information, it is determined that you were not entitled to any hours of compensation beyond the minimum 40 hours called for in the bylaw provision. You are therefore required to repay all monies received for these excess hours identified in the Audit Report. I provided you with a listing and calculation reflecting that the amount to be repaid is \$40,630.80 based on having been paid 1,382 hours at \$29.40 per hour. A copy of this is also enclosed.”¹⁶

Miller pointed out that Hubbard could still challenge the validity of the auditor’s findings after making the required repayment. Hubbard appealed the auditor’s findings and his demand for repayment in a letter addressed to International President Dennis Williams on April 20, 2015.¹⁷

On May 1, 2015, International Secretary-Treasurer Gary Casteel informed President Dennis Williams of the results of the audit of Local Union 892. Casteel reported that it appeared President Malana Hubbard had engaged in financial misconduct by submitting vouchers and receiving payments in excess of 40 hours per week in violation of the local union bylaw defining the president’s compensation.¹⁸ President Williams notified Hubbard of the auditor’s findings and advised her that she

¹³ Record, p. 82.

¹⁴ Record, p. 82.

¹⁵ Record, pp. 86-88.

¹⁶ Record, p. 84.

¹⁷ Record, p. 89.

¹⁸ Record, p. 91.

had a right to a hearing to investigate the claims pursuant to Article 48 of the International Constitution.¹⁹

On May 4, 2015, Attorney Harvey I. Wax submitted a letter to Assistant Director Blake Miller of the UAW Auditing Department challenging his determination that Hubbard had received funds improperly. Wax pointed out that Hubbard had requested advice from the Region about the compensation due to the local union president and that she had relied on that advice in submitting her vouchers. His letter states:

“Shortly after assuming the local presidency in July 2012, and learning that some local members had questioned the way her predecessor had been compensated for overtime, Ms. Hubbard, who was engaged in her first experience in union office, asked Assistant Regional Director Al Przydzial for advice about the overtime/bylaw interpretation question and was directed to ‘continue doing what you are doing’ unless and until she heard otherwise from him. She never heard otherwise from Mr. Przydzial. Several months later, she made a similar request of Regional Servicing Representative John Moore and received the same answer as she had from Mr. Przydzial. Mr. Moore advised that she was entitled to be paid for hours worked over 40, because, ‘if you answer the phone you are on the clock and that you can be the president from anywhere.’ (Attachment C.)”²⁰

Wax reported that these Regional Representatives never put their advice in writing. In October 2014, Auditor Romero told Hubbard that he needed something in writing from the Region confirming her entitlement to overtime compensation. Following Romero’s advice, Hubbard and Vice President Willie Hall met with Regional Director Rory Gamble to obtain clarification of the overtime issue. According to Wax, Director Gamble advised Hubbard to obtain authorization of her compensation from International Servicing Representative Rod Heard. Wax’s letter states:

“...Mr. Gamble asked her to take the issue to International Servicing Representative Rod Heard and ask him for written approval of the way in which her overtime had been paid to date. At the end of that meeting, Ms. Hubbard asked the Regional Director how she should fill in her weekly overtime report going forward and Mr. Gamble responded that she should continue doing it the way she had been doing it. He volunteered that he didn’t understand why an audit was being conducted. Ignoring Ms. Hubbard’s request, Mr. Heard never issued the written approval. Nor did he ever advise her that he disapproved of her being paid overtime.”²¹

¹⁹ Record, p. 92.

²⁰ Record, pp. 95-95.

²¹ Record, p. 96.

According to Wax, it was not until March 23, 2015, that Director Gamble took the position Hubbard was not entitled to payments in excess of forty hours per week and that she should cease making such payments to herself. Wax reported that Hubbard implemented Gamble's directive immediately. Wax's letter states:

"It is significant for you to note that Mr. Gamble's letter of March 23, 2015, was the very first and only notice that Ms. Hubbard ever received from the Region, or from any other UAW authority, during her nearly 3 years as local president that the bylaws had been interpreted to deny her a right to pay for overtime. Prior to reading that letter, Ms. Hubbard had continually relied upon the assurances of Region 1A representatives, including the Regional Director, that she should continue submitting vouchers for, and drawing overtime pay, in the same manner as she had always done. For that reason, you can understand why she was shocked and dismayed to receive your demand for repayment of nearly 3 years of overtime pay for work that she had in fact performed. That is why she sought the advice of counsel."²²

Wax asserted that Hubbard had a legal right to rely on the direction from the Regional Director that she was entitled to be compensated for overtime. Wax argued that the position recently adopted by the Region could not be applied retroactively as the basis for a demand for payment. He added:

"In addition, of great significance to Ms. Hubbard is the fact that during her tenure as Local 892 president she received none of the numerous benefits to which she was entitled under Article 31, Section 5A of the local's bylaws and the Faurecia Interiors Systems – Local 892 collective bargaining agreement. Your letter of April 13 and the audit which gave rise to it completely ignore this obvious compensation deficiency."²³

On May 5, 2015, Malana Hubbard requested a hearing on the issues raised by the auditor's demand for payment.²⁴

President Dennis Williams's Administrative Assistant Allen Wilson conducted a hearing on May 19, 2015, in accordance with the provisions of Article 48, §5(b) of the Constitution, to investigate the charge that Hubbard had engaged in financial misconduct. Wilson prepared a letter describing the results of his investigation. Wilson reported that the auditor questioned Hubbard's entitlement to hours in excess of forty per week under the local union bylaw, because the bylaws did not explicitly authorize such payments. Wilson's reported that the auditor testified that the local union must follow its bylaws and respect the membership's determination on how officers should be

²² Record, p. 97.

²³ Record, p. 98.

²⁴ Record, p. 99.

compensated. According to Wilson, the auditor emphasized the advice from the May 30, 2002 Administrative Letter that was provided to the local union's officers with the 2012 audit:

"Remember: If the local union bylaws do not list it, the local union should not pay for it."²⁵

Wilson reviewed the correspondence submitted by the parties in connection with the controversy surrounding the president's compensation. He acknowledged Hubbard's claim that she received confirmation from the Regional Servicing Representative John Moore as well as Assistant Director Al Przydzial and Director Rory Gamble that her method of determining the president's compensation was correct.²⁶ Wilson concluded, however, that none of these people knew how she was calculating her compensation, or they would not have given her that advice. His report states:

"The weight of the evidence here indicates that, when – in response to the 2012 audit – you sought guidance from Region 1A regarding the permissibility of the local's pay practices, you were advised to 'keep doing what you are doing.' You contend that at the time that it offered this advice, the Region was fully aware that you were paying overtime based on hours worked rather than the overtime allotted to full-time appointed officers. For their part, each of the Region's witnesses testified that, to the extent that you were told to continue the existing practice, it was with the understanding that you were acting consistent with the bylaws. The Region insists that it was unaware of the underlying facts.

Based on the testimony of its witnesses, and the record as a whole, I agree. It is difficult to believe that multiple representatives of the International Union would, knowingly, advise you to disregard one of the most basic tenets of local union governance; namely adhering to the express language of its bylaws. Such advice would be directly contrary to the Administrative Letter discussed above."²⁷

In any event, Wilson maintained that it did not matter what the representatives said to Hubbard because the requirements of the bylaw are unambiguous. Wilson's report on the hearing addressed Hubbard's argument about the advice she received as follows:

"But even if I were to credit your testimony over that of the Region's witnesses, I would reach the same conclusion. The applicable bylaw could not be more clear: the local president is to be paid 'an equal share

²⁵ Record, p. 106.

²⁶ Record, p. 123.

²⁷ Record, p. 125.

of overtime as allotted to full-time appointed officers.’ You concede that you ignored this rule, claiming that you did so based on advice from the Region and your own understanding of the local’s past practice. However, neither practice nor errant advice from a representative of the International Union can justify a departure from the local’s bylaws, particularly where—as here—they are clear and unambiguous.”²⁸

President Williams invoked the provisions of Article 48, §5(c) based on Administrative Assistant Wilson’s investigative report.²⁹ President Williams adopted Wilson’s report in a letter sent to Hubbard by certified mail on June 9, 2015. President Williams’s letter to Hubbard states:

“Upon receipt of this letter by you, the local union, UAW Region 1A, and others copied here, you are no longer eligible to hold or seek any position, elected or appointed within this union. This penalty will remain in effect until this office has been advised that you have made full restitution to the local and affirmative action has been taken by the International Executive Board to lift your suspended status.”³⁰

Hubbard appealed President Williams’s determination that she had received funds improperly within the meaning of Article 48, §5 of the International Constitution to the International Executive Board (IEB) on July 6, 2015. In support of Hubbard’s appeal, Attorney Wax reported that Hubbard immediately sought clarification of her right to overtime payments under the local union’s bylaw following the exit meeting on November 1, 2012. Wax wrote:

“...Mr. Romero advised Ms. Hubbard, because he wasn’t clear as to the meaning of the Local 892 bylaw pertaining to the right of the local’s president to receive pay for hours worked in excess of 40 in a week, that she should seek clarification from Region 1A as to her overtime entitlement and pass that clarification on to him before she could again claim or receive overtime pay, assuming it was warranted by the clarification she received from the Region.”³¹

²⁸ Record, p. 125.

²⁹ Article 48, §5(c) provides as follows:

“The International President shall decide the case based on the files and record, briefs which may have been submitted and the recommendation of the hearing officer/s. If the International President decides that there is convincing evidence of improper receipt or expenditure or other financial misconduct, s/he may order reimbursement and, in her/his discretion, may summarily suspend the member from any office s/he may hold or the right to seek any Union office. Said member shall be promptly notified.”

³⁰ Record, p. 125.

³¹ Record, p. 128.

Wax stated that Hubbard spoke with Regional Servicing Representative John Moore and made him aware of the language in the bylaw and her practice of claiming pay for hours worked over 40 in a week and asked if that was in conformity with the bylaw. Moore affirmed the advice Hubbard previously received from Assistant Director Al Przydzial that such payments were proper. Wax further reported that Local 892 financial secretary Royale Thompson was present during this meeting and heard Representative Moore make this statement to Hubbard.³² Wax pointed out that evidence in the record supports Hubbard's testimony that she repeatedly sought guidance from Region 1A officials about her entitlement to compensation for hours in excess of forty per week. Wax described Hubbard's efforts to obtain something in writing affirming Representative Moore's interpretation of the bylaw. Wax asserted that prior to March 23, 2015, no one from the Region volunteered an interpretation of the bylaw contrary to Hubbard's. Nevertheless, on April 13, 2015, Hubbard received a demand for repayment of \$40,630.80 based on the interpretation of the bylaw adopted for the first time on March 23, 2015.³³

Wax argued that the report adopted by President Dennis Williams in response to Hubbard's appeal incorrectly concluded that the Regional Representatives who advised Hubbard about the compensation issue did not know or understand what the bylaw stated. He pointed out that this conclusion is unsupported by the record and the testimony given at the hearing. Wax pointed out that neither Al Przydzial, Darryl Goodwin, nor Rory Gamble appeared at the hearing conducted on Hubbard's appeal. Regional Servicing Representative John Moore appeared at the hearing and admitted that he told Ms. Hubbard to keep paying herself for the hours she worked, but Moore claimed he thought such payments were in conformity with the local union's bylaws. Ms. Hubbard testified that Representative Moore was well aware of the bylaw language when he gave this advice. Wax wrote:

"The only truth that can be gleaned from the direct witness testimony presented at the hearing is that every Region officer, whom Ms. Hubbard asked for approval of her right to overtime pay, gave his approval of that right with full knowledge of the language of the applicable bylaw. She continued to act on that collective and consistent advice for over 2 and ½ years until Mr. Gamble, after taking 4 months to address the Auditor's November 2014 request for something in writing 'from the Region' to verify the meaning of the bylaw, issued his March 23, 2015 clarification letter. As soon as Ms. Hubbard received that letter, she heeded the Regional Directive and ceased submitting overtime pay requests."³⁴

³² Record, pp. 128-129.

³³ Record, pp. 129-130.

³⁴ Record, pp. 134-135.

Wax referred to President Williams's assertion that the bylaw in question was unambiguous and pointed out that this ignored the documented uncertainty about the meaning of the bylaw that carried on for years. Wax argued that the Regional Director's failure to respond to requests for clarification of the bylaw demonstrated that he did not understand it. Wax described the exchange of emails and correspondence regarding the compensation issue and remarked:

"The International President's determination that the bylaw, from the date of its adoption in 2012, clearly forbade the overtime pay to which Ms. Hubbard claims entitlement, is contrary to the great weight and implication of the evidence presented at the investigatory hearing and is inconsistent with the fact that Regional Director Gamble needed 5 months to make up his mind as to the meaning of the bylaw. The International President's 24-page letter fails to even mention or explain away this obvious inconsistency."³⁵

Wax further argued that Malana Hubbard's interpretation of the bylaw was justified by its text. The first sentence provides what the minimum salary of the president will be, that is, forty hours per week. The use of the word minimum to describe this base salary justified Hubbard's conclusion that she was entitled to accept pay in excess of forty hours when she did in fact work more than forty hours. Wax observed that the second sentence of the bylaw is introduced as being in addition to the hourly compensation authorized in the first sentence. He argued, therefore, that this second sentence is not a limitation on the president's right to an hourly wage, but something entirely different. Namely, in the event there are full-time appointed officers working overtime, she would be entitled to claim such overtime as allotted to them under the UAW-Faurecia Collective Bargaining Agreement.³⁶

In any event, Wax insisted that however the bylaw is interpreted, the charge of misappropriation is inappropriate. He pointed out that misappropriation suggests an intentional criminal act. He wrote:

"It is clear that there is not a scintilla of evidence that Malana Hubbard knew that claiming or receiving overtime pay was wrong or contrary to the local bylaw or that she intended to appropriate funds to which she was not entitled. It is equally clear that her union did not afford her procedural protections provided by Article 31 in cases where a UAW member is charged with misappropriation of union funds. For those reasons alone, the labeling of Ms. Hubbard by the International President as one who has committed a criminal offense was improper and unjustified. Unless that

³⁵ Record, p. 138.

³⁶ Record, p. 139.

label is removed by the Board of Trustees, she will be forced to live under its stigma for the rest of her life.”³⁷

Wax requested the IEB to conduct a fair hearing on Hubbard’s appeal and reject and set aside the decision and findings of the International President.

President Dennis Williams’s staff conducted a hearing on Hubbard’s appeal on January 6, 2016, and prepared a report to the IEB on behalf of the President. The report summarized the conflict giving rise to the appeal as follows:

“At the heart of Hubbard’s appeal is her assertion that – after providing the local’s bylaws and disclosing that she was being paid overtime based on the number of hours worked rather than those allotted to appointed officers – various representatives of Region 1A advised her to ‘keep doing what you are doing.’ The Region maintains that Hubbard did not, in fact, disclose the underlying facts. It further insists that, to the extent that it condoned the local’s overtime pay practices, it did so with the understanding that they were consistent with its bylaws. When it learned that was not the case, the Region demanded that Hubbard cease making the payments.”³⁸

Staff wrote that Regional Director Rory Gamble became increasingly concerned about Hubbard’s compensation in October 2014 based on complaints he received from members. Gamble therefore wrote the letter reminding Hubbard that all forms of compensation must be authorized by the bylaws. Staff interpreted Hubbard’s November 7 response to Gamble as a declaration that she would continue paying herself in accordance with her own interpretation of the bylaws. The report states:

“Hubbard responded on November 7, 2014, stating unequivocally that she intended to continue paying overtime for hours worked. She rejected the Regional Director’s guidance, and informed him that – as president of the local – it was her prerogative to interpret the local bylaws. Based on her reading of Article 31, Section 5, she would continue requesting overtime pay for all hours worked.”³⁹

Staff acknowledged Hubbard’s explanation that she wrote this letter at the suggestion of Auditor Manny Romero in order to obtain a definitive interpretation of Article 31, Section 5. In a footnote, staff made the following comment with respect to this explanation:

“...Romero maintains that he did not assist Hubbard in preparing a letter; rather, he simply advised her to seek direction from the International

³⁷ Record, p. 140.

³⁸ Record, p. 179.

³⁹ Record, p. 180.

President's office. Romero's account seems more likely. But even if appellant's testimony were credited, it does not support her position. Her letter does not ask the Region for an interpretation of the bylaws, but states that she was empowered to interpret them herself, had done so, and intended to apply them consistent with her view until they were changed."⁴⁰

Staff rejected the basis for Hubbard's interpretation of the bylaw offered by Attorney Wax, that the phrase "minimum of forty hours" implicitly authorized compensation of hours in excess of forty. Staff wrote:

"The appellant asserts that the reference to a 'minimum' of forty hours in the first sentence of Section 5 permits payment for all hours worked. That interpretation cannot be squared with the remainder of the provision. Despite the fact that it lists various forms of compensation to which the president is entitled, the first sentence makes no mention of overtime. Moreover, if the first sentence authorized payment for all overtime hours the president deemed necessary to work, the second sentence of Section 5 is meaningless. We conclude instead that the second sentence of this provision was intended to restrict the amount of overtime made available to the president."⁴¹

Staff rejected Hubbard's testimony that she provided the Region with a copy of the bylaws and explained what she was doing. Staff cited the arguments made by Administrative Assistant Allen Wilson in his report to President Williams that it was improbable the Regional Representatives would have given Hubbard advice so at odds with the union's policy.⁴²

Finally, staff held that regardless of what Hubbard was told by the Region, she is still guilty of financial misconduct because the bylaw regarding the compensation of officers is unambiguous. Staff affirmed President Dennis Williams's decision dated June 9, 2015. The IEB adopted staff's report as its decision. President Williams provided Malana Hubbard with a copy of the IEB's decision on February 12, 2016. Hubbard appealed the IEB's decision to the Public Review Board (PRB) on March 11, 2016. We heard the parties in oral argument on January 21, 2017.

⁴⁰ Record, p. 180, n. 24.

⁴¹ Record, pp. 186-187.

⁴² Record, p. 181.

ARGUMENT

A. Attorney Harvey I. Wax on behalf of Malana Hubbard:

Malana Hubbard assumed the office of president of Amalgamated Local Union 892 in July 2012. This was her first experience as a union officer and she was unfamiliar with the local union's pay practices. For the first two years of her presidency, Hubbard accepted compensation for forty hours per week plus straight time pay for the hours she worked in excess of forty. Throughout this period, she relied on assurances from Regional servicing representatives that her method of calculating her compensation was correct.

On April 13, 2015, Hubbard received notice from Assistant Director Blake Miller of the UAW Auditing Department that she had received over \$40,000 in compensation she was not entitled to during the previous two and half years. At a hearing on May 9, 2015, Hubbard presented largely unrefuted evidence establishing that she had worked all of the hours she reported and was legally entitled to every penny she received as compensation. The International President's hearing officer Allen Wilson ignored or rejected Hubbard's evidence. Wilson's report to President Williams was based on a seriously biased, distorted, and selective citation of facts. Wilson found Hubbard guilty of financial misconduct and a misappropriation of union funds, both of which are generally considered serious offenses. President Williams issued a decision based on Wilson's report on June 9, 2015. On February 12, 2016, the IEB denied Hubbard's appeal from President Williams's decision.

There is clear evidence in the record in the form of correspondence and emails that Hubbard repeatedly sought advice from the Region about the compensation issue. The IEB suggests that Hubbard may have deceived the Region about the language of the local union bylaw or the method she used to calculate her compensation. That finding is not accurate and is not supported by any credible evidence. Hubbard testified during the hearing on May 9, 2015, without refutation, that she gave a copy of the bylaw to Director Gamble at their October 2014 meeting and that he read it at the time. It is significant to this appeal that Gamble did not appear at either hearing on this issue. He has never denied Hubbard's testimony or the fact that he was aware of the language of the bylaw. Regional Representative John Moore was also well aware of the language of the bylaw. He confirmed Hubbard's interpretation of it and told her to continue to claim the overtime. Unless the IEB had access to information outside of that presented in the record at the two hearings, it would be impossible for it to conclude that the Region was unaware of the bylaw or the method Hubbard used to calculate her compensation.

In response to Hubbard's and Auditor Romero's ongoing requests to the Region for a written interpretation of the local union's bylaw, Director Gamble met with Hubbard on February 20, 2015, to discuss her, as yet unanswered, letter of November 7, 2014. Gamble did not offer a different interpretation of the bylaw at that time. Hubbard wrote to Gamble on March 23, 2015, reminding him that he had promised to provide a written

interpretation. When she did not hear from Director Gamble, Hubbard wrote directly to President Dennis Williams hoping to have the issue resolved prior to the upcoming local union election. Hubbard wrote:

“It is imperative that I get clarification of this local union bylaw Article 31, Section 5, since I am being accused of many falsehoods. I asked the same [calculation] request to my Region 1A Servicing Rep in July 2012. I took the servicing rep’s direction and now over two and half years later, my actions have come under fire along with my character. I sincerely hope this is not political since the triennial elections for this local are in May.”⁴³

Hubbard reported that Auditor Romero was also frustrated at the Region’s failure to provide any clear interpretation of the bylaw to resolve the compensation issue.

Hubbard had a right to rely on the advice she received from the Region regarding her compensation. The Regional representatives she spoke with approved her interpretation of the bylaw. In response to Hubbard’s appeal, the International Union claims that the Representatives who advised Hubbard were unaware that there were no longer any appointed representatives at Faurecia after December 12, 2012. They charge Hubbard with failing to disclose this information or misrepresenting the situation. Hubbard’s compensation was never based on overtime allocated to appointed representatives. All of the people whose advice she sought knew this. In response to a direct question, Hubbard mentioned that there were two appointed representatives working in the plant, but this had nothing to do with her compensation. She never claimed that she was entitled to pay based on overtime allotted to these representatives. The International Union’s focus on the hours worked by Monica Bass is a distraction. Monica Bass never worked at the Saline plant while Hubbard was president.

The IEB’s primary rationale for denying Hubbard’s appeal was its conclusion that her testimony and evidence lacked credibility. Significantly, the IEB based its credibility determination on evidence of additional misconduct described in a letter Administrative Assistant Mark Stolle sent to Hubbard on December 8, 2015. During a hearing conducted by Stolle on January 6, 2016, Hubbard responded to and explained each of the questions presented in Stolle’s letter. Hubbard proved convincingly that all of the questioned accounting entries were justified and correct. The IEB does not say anything to refute that conclusion, nor does its decision suggest that she had not given a full explanation for any of the matters discussed on June 6, 2016. Nevertheless, in response to Hubbard’s appeal to the PRB, the International Union continues to cite the questions raised in Stolle’s letter to support its conclusion that Hubbard is not a credible person.

⁴³ Record, p. 83.

The International Union argues that Hubbard had no right to rely on advice from servicing representatives about the application of the local union's bylaw, because its meaning is unambiguous. The fact that the president's staff can invent an interpretation of the bylaw now to fit their theory of misappropriation is irrelevant. In fact, Malana Hubbard's reading of the bylaw was logical and justified. The bylaw identifies forty hours as the minimum compensation due to the president. It does not exclude pay for hours worked in excess of forty. The second sentence of the bylaw does not operate as a limitation of the president's salary. It introduces something in addition to the base. The fact that the bylaw describes overtime independently from the minimum forty hours suggests that the president's compensation may exceed forty hours. The local union understood how Hubbard was being compensated and approved her pay. There is no basis at all for a conclusion that Hubbard acted with knowing intent to receive funds improperly.

The UAW's auditor did not consider the bylaw unambiguous. He made several efforts to obtain an interpretation of the bylaw from the International Union and finally refused to complete his audit report when these efforts prove unsuccessful. No one ever claimed during this period that the meaning of the bylaw was unambiguous. When Romero first met with Hubbard to discuss her compensation, he told her it was not his function to interpret local union bylaws. He advised her to get clarification from the International Union. The local union attempted to amend the bylaws to conform to the president's practice by defining her compensation as 55 hours' straight time. The proposed amendment eliminated the second sentence of the bylaw because it no longer applied after Ford sold the plant. This effort is reflected in the general membership meeting minutes of January 25, 2014. But the motion to amend the bylaws did not pass.

Appellant Malana Hubbard followed the instructions of the auditor and obtained advice from the local union's servicing representatives before accepting compensation for hours exceeding the minimum forty referred to in the bylaws. At all times, Hubbard acted in good faith in reliance on the instructions she received. Hubbard respectfully requests the PRB to reverse and set aside the IEB's decision and cancel the Auditing Department's repayment order.

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

The IEB determined that Malana Hubbard received compensation in excess of that expressly authorized by the local union bylaw. The bylaw authorizes compensation for forty hours per week plus overtime based on the overtime allocated to full-time appointed officers. The only appointed representative at the Faurecia facility in Saline, Michigan, was Monica Bass. She left the plant on December 12, 2012. After that, there were no appointed representatives at this location. Hubbard concedes that her overtime pay was not based on that allotted to appointed representatives, but was rather the actual hours she worked. She claims that various representatives of Region 1A authorized this approach. The IEB discredited her testimony in this regard. To the

extent that Hubbard received approval of her compensation it was with the understanding that she was calculating it in accordance with the bylaw. It is highly improbable that these representatives would have told her to continue her pay practice if they had known it exceeded that authorized by the bylaw.

Hubbard was aware from the beginning of her tenure that there was a problem with the payment of overtime to the local union's officers. On November 1, 2012, International Auditor Manuel Romero met with Hubbard to review an audit for the period from July 1, 2010 to September 30, 2012. Romero's notes from the meeting indicate that he advised the local to suspend all overtime allocations pending clarification from the Region about the proper application of the bylaw. Romero provided Hubbard with the Administrative Letter which establishes the UAW's policy with respect to the compensation of local union officers. It states unequivocally that all forms of compensation must be specified in the bylaws. Hubbard's tortured interpretation of the bylaw in effect at the Local Union 892 violates that policy.

Appellant raised the issue of her compensation with the Region, but she did so without disclosing all the material facts. Over the next two years, representatives of the Region advised Hubbard that her overtime practices were permissible, provided they were consistent with the local union's bylaws. The Region was unaware, however, that the last appointed representative had left the jurisdiction of Local Union 892 on December 12, 2012. When members of Local 892 raised complaints about Hubbard's compensation with the Region, Director Gamble wrote to Hubbard on October 28, 2014, reminding her that all compensation must be specified in the bylaws. Hubbard responded to Gamble on November 7, 2014, stating unequivocally that she intended to continue accepting compensation for all of the hours she worked. Hubbard's assertion in her letter to Gamble that it is the president's prerogative to interpret the local bylaws are not the words of a novice local union officer seeking instructions.

During the hearing conducted on Hubbard's appeal to the IEB, Hubbard testified that she wrote this letter to Gamble at the direction of Auditor Romero. Hubbard stated that Romero advised her that writing such a letter would force the Region to provide her with a definitive interpretation of Article 31, Section 5. In her appeal to the PRB, Hubbard asserted that she wrote this letter at the suggestion of International Servicing Representative Rod Heard. Hubbard maintained that her letter was not written in defiance of Gamble's advice, but in an effort to obtain confirmation of the practice which had been approved by the Region. The text of the letter is not susceptible to such a reading. It does not ask for Gamble's opinion, but states that the president is empowered to interpret the bylaws. Hubbard now claims that Gamble's failure to respond to her letter of November 7 constituted a tacit approval of her interpretation. Gamble's letter of October 28, 2014, contradicts this reading. In fact, over the next few months, the Region continued to demand that Hubbard justify the overtime pay she was receiving.

It was not until late March 2015 that the Region was able to confirm that Faurecia did not have any appointed representatives. Hubbard not only failed to provide this

information to the Region on a timely basis, but misled Gamble by inaccurately claiming that members of the Local's Health and Safety Committee – who are elected, meet only a few hours a week and receive no overtime by virtue of their service – were full-time appointed representatives. By withholding information about the lack of full-time appointed representatives at the Faurecia plant, Hubbard deprived the Region of the information it needed to offer her sound advice.

But even if the Region had knowingly condoned appellant's pay practices, it would make no difference. As President Williams explained in his June 9, 2015 decision, errant advice from a union representative cannot justify a departure from the local union's bylaws. Local union servicing representatives cannot authorize payment of compensation in excess of that explicitly described in the bylaw. The only compensation explicitly authorized by the local union bylaw during Hubbard's administration was the minimum forty hours. The bylaws describe the president's position as full-time to indicate that the local union is responsible for all of the president's compensation because this officer does not also work in the plant. The reference in the bylaw to the overtime allocated to appointed representatives was included in the bylaws of Ford local unions to ensure that the president's compensation would not fall below that of appointed representatives as a result of the overtime allocated to employees working in the plant. When this was a Ford plant there were numerous appointed representatives. There is a complex role for appointed representatives under the UAW-Ford National Agreement. All of that was discontinued when the plant was sold to Faurecia.

Even if the transition from Ford to Faurecia created an ambiguity about the meaning of the bylaw, payments in excess of forty hours would still not be authorized. In accordance with the Administrative Letter provided to all of the officers of Local Union 892 any payments must be expressly authorized. The policy established by this letter shifts the burden of proving entitlement to the officer receiving compensation. It was Hubbard's duty as an officer to understand and follow the International Union's policies with respect to compensation.

Hubbard insists that she should not be found guilty of misappropriation, even if the payments were not authorized by the bylaws, because she acted in good faith. In *Jordon U. Sims v. International Union, UAW*, PRB Case No. 416, 2 PRB 584 (1977), the PRB recognized that Article 48, applies to unauthorized payments of all kinds, whether prompted by malice or the result of negligence. The International Union does not believe that appellant acted in good faith, however. The situation in this case could have been avoided if Hubbard had been forthright from the beginning. At the beginning of the transition from Ford to Faurecia, Hubbard was the elected local union vice president. The entire pay scale at the plant was reduced after Faurecia took over, which in turn decreased the local union's income. People who could contractually transfer to other jobs at Ford Motor Company did so. The elected president subsequently left the plant and Hubbard assumed the office of president. When she became president of the local union, Hubbard was one of the few remaining Ford employees at the plant. Assistant Regional Director Al Przydzial went to the plant to

discuss with Hubbard the local union's drastically altered financial situation resulting from the sale, including its compensation of local union officers. When Przydzial followed up with an inquiry about the situation at Saline, Hubbard told him that the local union would manage its own affairs and did not require his assistance. Hubbard should have worked with Przydzial to resolve the compensation issue in 2012.

C. Rebuttal by Attorney Harvey I. Wax on behalf of Malana Hubbard:

Nothing like the communication between Hubbard and Assistant Director Al Przydzial described by the International Union ever occurred. Przydzial came to the local union in 2012 to discuss the union's financial situation following the sale of the plant to Faurecia. With respect to the president's compensation, Przydzial told Hubbard to continue doing what she was doing. Hubbard never told Przydzial that she did not need his assistance in the administration of the local union. The conversation described by the International Union never took place.

There was clearly a great deal of uncertainty about the meaning of the bylaw in effect when Hubbard became president of Local 892, and Hubbard's interpretation of the ambiguous text seems increasingly reasonable in the context of this discussion. The International Union's rejection of Hubbard's argument relies heavily on its claim that she concealed the fact that there were no appointed representatives at the Saline plant. The presence of appointed representatives was never part of the conversation Hubbard had with the servicing representatives about her compensation in 2012. Auditor Romero initiated this inquiry in November 2014, but it is irrelevant to Hubbard's argument. She never calculated her compensation based on the existence of appointed representatives, nor did she ever claim that there were full-time appointed representatives at the Saline plant within the meaning of the local union's bylaw. There were no UAW-Ford appointed representatives in the plant after October. The International Union knew this because they knew there were no Ford employees in the plant after that date.

Even if the International Union's present understanding of the bylaw is accepted, there is still some ambiguity about the second sentence. Does the phrase "an equal share of overtime as allotted to the full-time appointed officers" mean that the local president is limited to the identical overtime dollars paid to a particular appointed officer, so that if the appointed officer worked three hours' overtime in a given week, that is all the time the president could spend at her duties? What if there are several appointed officers working – is the president entitled to an average of their overtime hours? Or does the bylaw mean that, even where no appointed officer received overtime in a given pay period, the president is entitled to pay for overtime hours worked measured by the overtime pay rate of the appointed officers? Based on the language, it is disingenuous for the Union to claim there is only one possible interpretation of the bylaw. Appellant's reading of the bylaw as authorizing the overtime she received from and after December 12, 2012 is logical and understandable.

It is true that Hubbard is not skilled at reading bylaws and drafting reports of discussions about these matters. She is not a lawyer. She did not think to make a record of her conversations with the servicing representatives. She had no experience in dealing with disputes of this nature. When this controversy arose, she was a little over her head. But there is also no document in the record refuting her explanation of what she did. Her method of computing her compensation was a matter of record and clearly did not depend on the existence of appointed representatives. Plus, she received all of these verbal assurances that it was acceptable.

Any errors that may have occurred in regard to Hubbard's compensation in 2013 and 2014 were the Union's fault. Hubbard should have been entitled to rely on the assurances she received. None of the people she discussed this issue with ever articulated a clear interpretation of the bylaw prior to March 23, 2015. The procedure applied to investigate this issue and the union's treatment of Hubbard during that process was unfair. Hubbard should not have been put in this financial situation as a result of her service as local union president. If Hubbard were not entitled to this compensation, she should have been notified of that long before March 2015. Hubbard is not employed at the present time; she cannot now afford to pay the \$40,600 demanded by the union. In addition, the penalty imposed by the International Union goes beyond a demand for repayment. Misappropriation is a serious charge. Hubbard's reputation has been seriously damaged by these proceedings.

The IEB's decision that appellant engaged in financial misconduct and misappropriation is contrary to the great weight of credible evidence and should be set aside.

DISCUSSION

In one of our earliest cases reviewing the application of Article 48 to collect union funds that had been received improperly, we stressed the remedial nature of such proceedings.⁴⁴ Article 48 is essentially a collection procedure and does not require the establishment of any wrongful intent on the part of the misappropriating party. We have affirmed this position in several subsequent decisions.⁴⁵ Based on that understanding of the process, we have concluded that the imposition of a suspension in accordance with the procedures described in Article 48, does not require the kind of notification and

⁴⁴ *Thompson v. International Union, UAW*, PRB Case No. 117, 1 PRB 322 (1964). The opinion states:

"...Considered in this light, rather than having the characteristics of a punitive procedure, it is clear that the provision merely provides a means whereby a member in a special fiduciary relationship to his union may be removed from his position of trust until such time as the doubt which has been cast upon his fiscal responsibility has been resolved."
(at 327)

⁴⁵ *Jordon U. Sims, v. International Union, UAW*, PRB Case No. 416, 2 PRB 584 (1977); *Joyce Lartigue v. UAW International Executive Board*, PRB Case No. 1634, 14 PRB 320 (2010); *Belinda Johnson v. UAW International President*, PRB Case No. 1643, 14 PRB 440 (2010); and *William Kiddell v. International Union, UAW*, PRB Case No. 1658, 14 PRB 651 (2011).

trial that must precede the imposition of a penalty. As for the auditor's determination that a member has received union funds improperly or otherwise engaged in misconduct, Article 48, §5(b) provides adequate safeguards to protect an officer from an erroneous or unfair determination. In such cases, the member is entitled to a hearing conducted by an appointee of the IEB to determine if there are grounds for the auditor's conclusion that improper payments were made. The function of such a hearing is described in Article 48, §5(b), as follows:

“...The hearing officer/s shall conduct a fair hearing to illuminate the facts and issues. The hearing officer/s shall make a written report to the International President within twenty-one (21) days of the close of the hearing.”

In other words, the role of the hearing officer appointed pursuant to Article 48, §5(b) is not to make a case against the member for misappropriation, but to find out what prompted the auditor's concerns. Unfortunately, as a result of the emotional atmosphere engendered by accusations of financial misconduct, the hearing officer appointed to conduct Article 48 proceedings sometimes has difficulty maintaining the impartiality anticipated by the process. As a result, the illuminating function of such a hearing can be impaired. That may have happened in this case. The conclusions in the report adopted by President Williams on June 9, 2015, provide insufficient insight into the circumstances that gave rise to this controversy.

In preparation for oral argument, therefore, we wrote to the parties seeking further clarification of their arguments. In particular, we asked the International Union if they were interpreting the local union's bylaw to mean that Hubbard was restricted to working only forty hours per week regardless of the demands of the job. In response, Administrative Assistant Rick Isaacson explained why the auditor concluded that Hubbard was limited to forty hours of compensation per week under the local union bylaw in effect when she took office. He wrote:

“...The applicable bylaw sets forth the criteria for determining when the president is entitled to work overtime. Unless overtime has been allotted to full-time appointed officers, the president may not be paid for more than forty (40) hours regardless of the demands of the job. Put another way, the president lacks discretion to decide when he/she will work overtime.”⁴⁶

The problem Isaacson identified with Hubbard's reading of the bylaw is that it gives her unlimited discretion to decide how much compensation she should receive. Prior to Hubbard's tenure as president of Local Union 892, the president's compensation was not determined based on the number of hours he or she worked. Under the old system, the president's compensation in addition to the minimum forty hours was based on a formula. The formula defined a limit which the president's compensation could not

⁴⁶ Record, p. 284

exceed, regardless of the number of hours she worked. When Hubbard began calculating her compensation based on the number of hours she worked, there was no such limit. The record shows that in November 2012 Hubbard began to claim up to 28 hours per week in addition to her regular compensation of forty hours, without any documentation to explain the basis for these additional hours.⁴⁷ Administrative Assistant Isaacson pointed out during oral argument that the UAW's Administrative Letter places the burden on a local union officer to demonstrate that any compensation paid is specified in the bylaws. To the extent that the authorization in the bylaw is ambiguous, therefore, Isaacson asserted that Hubbard was not entitled to be compensated.

There is nothing in the record to show that this problem with the bylaw was fully explained to Hubbard when she assumed the office of president of Local Union 892 in 2012. Auditor Romero set Hubbard on the wrong path when he suggested that the local should obtain clarification from the Region about the meaning of its bylaw regarding the payment of overtime. If the bylaw was unclear, an email or letter from a Regional representative was not going to fix the problem. The UAW's Administrative Letter regarding compensation requires all forms of compensation to be stated in the bylaws. Where clarification is required, the Administrative Letter states:

“If the local union wishes to add to or clarify the bylaws, the changes must be approved by the International Union following membership approval.”⁴⁸

The membership's approval of any expenditures from its treasury is a crucial step in the process. Romero ought to have directed Hubbard in 2012 to bring this matter before the membership so that a definitive interpretation of the bylaw could be established.

Hubbard has suggested that she was relying on the local union's established practice in calculating her compensation, but our inquiries to the parties revealed that Local 892 did not have clearly established practice with respect to the president's compensation when Hubbard took office. Prior to the sale, the company paid the president's basic forty-hour wage and the union paid an additional amount based on the overtime allotted to full-time appointed representatives. Thereafter, the cost of the full-time president's basic forty-hour compensation was shifted to the local union.⁴⁹ The sale of the Saline plant to Faurecia created a genuine ambiguity in the local union's

⁴⁷ Record, p. 86.

⁴⁸ Record, p. 2.

⁴⁹ In response to our inquiry about the situation at the Saline plant following the sale, attorney Wax wrote:

“Prior to the sale, the local union president was being paid 40 hours per week at the contract rate by the Saline plant and overtime hours worked was paid by Local 892. Prior to the sale the Saline contract historically had a provision requiring the plant to pay the president's 40-hour weekly salary. When the Region and the International negotiated the contract with Faurecia they agreed to remove that provision and add Article 28, Section 28.02, which grants a leave of absence for a full-time elected officer without pay or benefits.” (Record, p. 279)

bylaw because the formula no longer applied. Amending the bylaws by changing the word Ford to Faurecia did nothing to address the problem, because Faurecia does not use full-time jointly appointed representatives.

Hubbard's resolution of the ambiguity to allow payment at the established straight time rate for all work actually performed is a reasonable interpretation of the definition of the president's compensation based on the text of the bylaw. As a practical matter, assuming that a local union's financial resources were sufficient, we would expect a local union to compensate its president for hours in excess of forty when the demands of the job required her to work.

Furthermore, the record supports Hubbard's testimony that she received assurances from the local union's servicing representatives that her interpretation was an acceptable reading of the bylaw. International Representative John Moore corroborated Hubbard's report about his advice during the hearing conducted by Administrative Assistant Allen Wilson. Although Wilson characterized Moore's testimony as a "different version of events," Moore's testimony does not contradict Hubbard's.⁵⁰ Wilson's report states:

"...When questioned by the hearing officer, Region 1A Representative John Moore testified that although he did say that 'you were to keep doing what you were doing,' he clarified that he did so under the belief that what you were doing, in terms of your pay practices, was in conformity with your local union bylaws governing compensation for local officers."⁵¹

Hearing officer Wilson did not ask Representative Moore what he believed Hubbard was doing, and the record does not support a conclusion that Hubbard deceived the representatives she consulted about the fact that there were no longer full-time appointed representatives at the plant. In fact, it would have made no sense for her to attempt such a deception, because the audit very clearly demonstrated that she was not basing her compensation on the hours worked by full-time appointed representatives. There is nothing in the record to suggest that Hubbard said anything at all about full-time appointed representatives to Representative Moore. Representative Moore did not testify at the investigatory hearing on May 19, 2015 that he believed Hubbard was basing her compensation on a formula derived from the overtime allotted to full-time representatives in the plant.⁵² The gist of Moore's testimony is that he did not know Hubbard's practice was inconsistent with the bylaw because he did not foresee that the International Union would subsequently reject Hubbard's interpretation of the bylaw.

⁵⁰ Record, p. 124.

⁵¹ Record, p. 124.

⁵² Record, p. 124.

It would have been useful to have had Auditor Romero and at least one of the local union's servicing representatives present during oral argument to get a better understanding of why the overtime payments to Hubbard were allowed to continue for two and half years before being challenged by the International Union. In 2012, Auditor Romero identified a problem with the local union's bylaw regarding the president's compensation and instructed the local to get clarification from the Region before compensating the president for overtime. We do not know exactly what Romero was concerned about in 2012 and his exit notes do not include any comments explaining the basis for Romero's concern. His advice at that time may have been in response to concerns raised about the way Hubbard's predecessor was paid. Hubbard responded to Auditor Romero's concern by asking several servicing representatives for advice about how to calculate her compensation. We do not fully understand why auditor Romero was still seeking verification of the hours worked by UAW-Ford appointed representatives as late as November 2014. Romero knew that Hubbard was not basing her compensation on an allocation of overtime to UAW-Ford appointed representatives. Perhaps he was trying to develop a formula to justify a portion of the compensation paid to Hubbard in excess of the minimum. Romero's testimony and that of Representative Moore might have helped clarify what the people involved in this situation believed about the president's entitlement to overtime at Local Union 892 while Hubbard was in office.

Hubbard's more specific description of John Moore's advice gives a clearer understanding of what he thought she was doing. When Hubbard wrote to Director Gamble on February 27, 2015, to explain her practice, she reported that Representative Moore told her to keep track of her time because she could perform her duties as president from anywhere.⁵³ From this advice, it appears that Representative Moore believed Hubbard was billing the local for performing occasional duties outside of the regularly scheduled local union office hours. Given the genuinely ambiguous text defining the president's compensation subsequent to the sale of the Saline plant, if Hubbard had submitted claims for compensation based on occasional, carefully documented, telephone calls and other demands on her time outside of business hours, her right to such compensation would be difficult to challenge, even within the restrictive reading of the bylaw recommended by the UAW's Administrative Letter. That is not the case presented by this record, however. The substantial problem with Hubbard's claims for overtime, as noted in the schedule attached to the audit, is that they are undocumented. The overtime is based solely on the bylaw and not on the documented performance of duties on behalf of the local union.

Furthermore, it is not sufficient for Hubbard to show that she reasonably believed the bylaw authorized her to claim unrestricted overtime hours. As president of Local Union 892, Hubbard had a fiduciary responsibility to her members to ensure that all expenditures of local union funds were consistent with the UAW Constitution,

⁵³ Hubbard quoted Moore as saying, "...if you answer the phone, you are on the clock and that you can be president from anywhere." (Record, p. 75)

established policies of the UAW International Union, the local union bylaws, and the membership's decisions with regard to what constitutes necessary expenditures.⁵⁴ As a result of the International Union's narrow focus on the lack of full-time appointed representatives at the Saline plant, we have no clear record of what was taking place at the local union level. In a matter regarding challenged claims on the local union's treasury, we would expect to receive minutes from membership meetings where the topic was raised and where members had the opportunity to voice their concerns on the record. The only evidence in our record of the membership's participation in this controversy are brief notes from an executive board meeting on January 17, 2014, reporting that a motion was introduced regarding the compensation paid to local union officers. The executive board meeting minutes state:

"Motion by Brothers Quick/Kopeck: To ensure that no local officer/member shall be paid over forty hours per week by Local 892, per bylaw. RULED OUT OF ORDER."⁵⁵

The minutes go on to report that Quick challenged the ruling of the chair. A vote was taken and the challenge was denied, so Quick's motion was ruled out of order.⁵⁶ Minutes of a membership meeting that took place on January 25, 2014, indicate that Quick and Heath introduced a motion regarding the president's interpretation of the local union bylaws regarding overtime. The minutes report:

"Motion by Brothers Quick/Heath: the membership rules on the president's interpretation of the bylaws as it pertains to unlimited overtime being paid. (The chair of the meeting then removed herself from this portion of the meeting and a vote was conducted by Vice President Hall). CARRIED."⁵⁷

Attorney Wax reported that the membership voted on several occasions to reject an amendment to the bylaw that would have clarified the president's right to compensation.⁵⁸ On October 28, 2014, Director Gamble referred to "several phone calls" from members to Representative Edward Honsinger regarding the president's compensation. Gamble's description of these communications is vague; he does not identify the members, the precise nature of their concerns, or provide any correspondence from them in regard to the issue. Nevertheless, although the record is thin, it is clear that the issue of the president's right to compensation beyond the minimum forty hours was being debated among the members of Local Union 892.

⁵⁴ See *Alvin Carthon v. UAW International President*, PRB Case No. 1653 II, 14 PRB 589 (2011), at 598.

⁵⁵ Record, p. 49.

⁵⁶ Record, p. 49

⁵⁷ Record, p. 53.

⁵⁸ Record, p. 294.

Under the circumstances, Hubbard was not free to ignore the membership's concerns based on vague verbal assurances that she could "keep doing what you are doing" with respect to the compensation package due to the local union president. She had an affirmative obligation to obtain a clear, documented interpretation of the existing bylaw before accepting compensation for any hours in excess of forty hours per week, regardless of the hourly rate paid for such time. She failed to pursue that obligation responsibly.

We questioned Hubbard about her efforts to obtain clarification of the local union bylaw during oral argument. What Hubbard's testimony revealed most startlingly was her complete incomprehension of a president's role within a local union under the UAW Constitution. When asked about the intent of the motion to amend the bylaws at the membership meeting on January 25, 2014, Hubbard testified that she did not know what the members' intention was when they introduced this motion. She stated that she had little contact with members in the plant. She reported that she had no supportive constituency among the Faurecia employees and that members of the local union were hostile to her throughout the period of her presidency. She did not seem to regard herself as an elected representative. The membership meeting on January 25 provided Hubbard with an opportunity to go on the record and explain the basis of her compensation and why she felt it was justified. Instead, she removed herself from the membership meeting during this crucial debate. When we questioned Hubbard about the duties of her office that required her to work such long hours, she was unable to explain precisely what she was doing. She could only say that there was a lot of work to do. Under these circumstances, we concur with the IEB's finding that Hubbard received local union funds improperly.

At the same time, we do not believe the record supports a finding of deliberate financial misconduct. We share attorney Wax's view that the erroneous payments were, at least in part, the union's fault. Regional servicing representatives also owe a duty to local union members. The local union's servicing representatives were remiss in failing to address the compensation issue directly in response to Hubbard's inquiry in 2012. They should have questioned Hubbard more closely about what she was paying herself and how she was justifying her compensation in terms of the local union's bylaw. The Regional servicing representatives knew that the local union's situation had been completely altered. They ought to have taken a more active role in educating this inexperienced president about her responsibilities. At the very least, they ought to have informed the local union of its need to adopt a bylaw relevant to the local union's altered circumstances. The IEB's determination that Hubbard engaged in financial misconduct is reversed. Nevertheless, Hubbard was the recipient of the improper payments, and therefore, the person ultimately responsible for the mistake. She is not entirely without fault either. An individual assuming the role of local union president may be expected to understand that any expenditure of local union funds requires explicit documentation.

In the absence of such documentation, the International Union determined that Hubbard's compensation exceeded amounts that were unambiguously authorized by the local union bylaw and a related UAW Administrative Letter. Once the improper

payments were identified, the International Union properly invoked the procedures described in Article 48, §5 and §6, to recover those funds on behalf of the local. Although the improper payments were the result of a misunderstanding as opposed to misappropriation, Hubbard's obligation to reimburse the local union remains.

We appreciate the hardship imposed on appellant by the union's demand for immediate repayment of the overtime she received as local union president over a period of two and half years. Based on the union's testimony during oral argument, we understand that the local union has already recovered the payments made to Hubbard through a claim against the bonding company. The Union is now seeking repayment of these funds from Hubbard in order to reimburse the bonding company. A payment schedule to cover this obligation is part of the union's Constitutionally authorized collection procedure. The union has made restitution agreements of this type in the past in connection with Article 48 proceedings.⁵⁹ The International Union is directed to work with appellant to establish a reasonable method for her to repay the amount covered by the bond, specifically \$40,680. Based on the total record and the testimony of the parties in oral argument, we believe that should be the limit of Hubbard's liability in connection with the compensation she received while president of Local Union 892.

It is so ordered.

⁵⁹ See, for example, *Randall Pearson v. International Union, UAW*, PRB Case 1264, 10 PRB 390 (1999).