THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW

APPEAL OF:

EDWIN MANION AND MICHAEL SIMPSON, Members
LOCAL UNION 900, UAW
(Wayne, Michigan) REGION 1A,

Appellants

-vs- CASE NO. 1752

UAW-FORD DEPARTMENT
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.
_____/

DECISION
(Issued November 10, 2016)

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

APPEARANCES: Edwin M. Manion, Mike Simpson and Ellis Boal on behalf of appellant; Betsey Engel, Rick Isaacson, Allen Wilson, Chuck Browning, and Reggie Ransom on behalf of the International Union.

We consider whether the UAW-Ford Department's settlement of Edwin Manion's and Michael Simpson's grievances after they were reinstated by the IEB lacked a rational basis.

FACTS

Edwin Manion and Michael Simpson were classified as skilled trades carpenters at Ford Motor Company's Michigan Truck Plant (MTP). Manion had a seniority date of January 30, 1995. Simpson had a seniority date of July 15, 1996. They both had a skilled trades entry date of September 27, 1999.[1] In 2009, Manion and Simpson were represented by UAW Local Union 900.

[1] Record, pp. 57-58.

The local seniority agreement between Ford Motor Company and Local Union 900 dated September 15, 1990 provides that job openings at the Wayne Assembly Plant (WAP), the Michigan Truck Plant (MTP)[2] and the Integral Stamping and Assembly Operations (Wayne ISA) are filled by recall from the same seniority list. The agreement contains a provision referred to by the parties as the 6-10-15 rule that governs when an employee from one plant can use seniority to displace an employee in one of the other two plants. The 6-10-15 rule provides:

> "a. Employees with fifteen (15) or more years' seniority will be allowed to displace employees with less than fifteen (15) years seniority.
>
> b. Employees with ten (10) or more years' seniority, but less than fifteen (15) years will be allowed to displace employees with less than ten (10) years' seniority.
>
> c. Employees with six or more years' seniority but less than ten (10) years' will be allowed to displace employees with less than six (6) years' seniority."[3]

Manion and Simpson were laid off on April 3, 2009. At the time of their layoff in April 2009, Manion and Simpson had 9 years and 7 months of skilled trades seniority.[4]

On May 1, 2009, Local 900 submitted a letter to the Michigan Truck Plant/Michigan Assembly Plant informing management of an ongoing violation of Manion's and Simpson's seniority rights. The letter reports that two employees actively employed at the Wayne ISA plant were loaned to the MTP/MAP while Manion and Simpson were laid off. The union pointed out that if Manion and Simpson were considered as being laid off from the WAP, then they should have been allowed to displace the lesser seniority carpenters working there. On the other hand, if they were considered as being laid off by the MTP/MAP, then the use of outside contractors at that location was a violation of their seniority rights.[5] Local 900 filed Grievance WJW 68617 for Edwin Manion on May 14, 2009, protesting the ongoing violation of his seniority rights.[6] Local 900 filed Grievance WJW 69658 for Simpson on May 19, 2009, protesting

[2] The Michigan Truck Plant is subsequently referred to as MTP/MAP because in November 2008 it was retooled for the production of small cars and renamed the Michigan Assembly Plant.

[3] Record, pp. 2-3.

[4] Record, p. 105.

[5] Record, pp. 49 and 50.

[6] Record, p. 51.

the ongoing violation of his seniority rights.[7] Local 900 filed a second grievance for Manion protesting violations of the local seniority agreement on July 17, 2009.[8]

On July 2, 2010, Manion and Simpson sent a letter to International President Bob King explaining their positions with respect to these grievances.[9] Edwin Manion pointed out that a painter named Gjeregj Ljuljduraj, with a seniority date of February 19, 2001, was not laid off on April 3, 2009, even though he had less seniority than Manion. In addition, 3 carpenters from the WAP and 3 carpenters from Wayne ISA were brought to the MTP to perform retooling work while Manion was laid off. Manion reported that an overtime hours list posted on November 23, 2010, moved Gjeregj Ljuljduraj ahead of him on the seniority list. This change occurred without any explanation, even though by November 2010 Manion had more than ten years skilled trades seniority and Lluljduraj had less than ten years. Manion informed President King that he had reported this problem to the skilled trades chairperson, but was informed that the issue was "above him." Mike Simpson raised similar complaints about the placement of Gjeregj Ljuljduraj on the seniority list. Simpson wrote:

> "This is not only an important issue to each of us for the obvious reason of being placed properly on the seniority list, but it is also our understanding that we may be transferred to assembly work because of our current position on the seniority list. However, it is our understanding that Gjeregj Ljuljduraj may not be transferred because of his immediate improper placement above us on the seniority list. Even if Gjeregj Ljuljduraj would be transferred to assembly work, obviously his potential recall date would be ahead of us."[10]

Manion and Simpson pointed out that there was carpenter work available at the MTP during the entire period of their layoff. Their letter states:

> "During the time that we were on layoff, carpenters were brought into the Michigan Truck Plant to perform our job assignment. These individual(s) in some cases had greater Ford Motor seniority than we did and in other cases less seniority than we did. However, of those carpenters brought in (during our layoff) from Wayne Assembly Plant some had less seniority than we did. Those carpenters brought in from ISA had more seniority, but were not part of our unit."[11]

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[7] Record, p. 52.

[8] Record, pp. 54-56.

[9] Record, pp. 57-61.

[10] Record, p. 59.

[11] Record, p. 60.

Simpson also asked why skilled trades employees assigned to the Expedition were not allowed to follow their assignments when this work was transferred to the Kentucky Truck Plant (KTP).

International Representative Mike Oblak of the UAW National Ford Department responded to Manion's and Simpson's letter on August 31, 2010.[12] Oblak stated that the concerns expressed by Manion and Simpson were based on their belief that the MTP had not actually closed, so that their seniority continued to accumulate. In fact, according to Oblak, the MTP was closed so that the 6-10-15 rule was applied at the time Manion and Simpson were laid off in April. Oblak wrote:

> "The vast majority of your concerns stem from the belief you have that Michigan Truck Plant is not closed. I can only tell you that it is. Your last day was when you were placed on seniority layoff in April 2009. At that time, your local seniority agreement was implemented and 6-10-15 was applied.
>
> Five carpenters were picked up in Integrated Stamping Assembly because they had openings and the rest were laid off because at that point of the layoff, the rest, including yourself and Mr. Simpson, did not have enough seniority to displace anyone in the Wayne Assembly Plant. You would have had to have over 10 years to bump anyone out. Currently, you, along with most laid off tradespersons from various locations, are in the Michigan Assembly Plant on a temporary assignment and are being utilized in preparing the plant for the launch of the new Focus. Hopefully, at the end of your temporary assignment, there will be a need for carpenters."[13]

Oblak went on to address Manion's and Simpson's concerns about other employees moving ahead of them on the seniority list. He wrote:

> "All of the points that you raised in your letter about overtime runs and seniority lists and why you are not ahead of the carpenters in the Wayne Assembly Plant has only one explanation—you are not part of that plant. You are on the recall list when a need for carpenters occurs in line with your seniority. You currently are on a temporary assignment and they are permanent members of the Wayne Assembly Plant/Michigan Assembly Plant. If you, at the time of your layoff, would have had over 10 years, you would have bumped anyone with less than 10 years. You cannot grow

[12] Record, pp. 68-69.

[13] Record, p. 68.

> into that time. It is at the point in time when you were laid off in April 2009 when you apply 6-10-15 seniority rights."[14]

Oblak explained that Manion and Simpson were not able to transfer to the KTP when the production of the Expedition moved because the transfer was limited to operators who were directly tied to the production and carpenters are not directly tied to production.

The UAW Ford Department withdrew Manion's and Simpson's grievances on January 4, 2011. The disposition of Ed Manion's grievances states:

> "Wdl – Upon the closing of the Michigan Truck Plant, the Local 900 Seniority 6-10-15 Agreement was applied based upon available openings. This action was a 'point-in-time' action based upon years of seniority/Date of Entry. Since Mr. Manion did not have enough seniority to be placed as a carpenter in Wayne Assembly or Wayne ISA, Mr. Manion was placed on short-term layoff in April 2009. He was then returned to work as a carpenter in May of 2009 to work on the demolition/construction phase of the new Michigan Assembly Plant."[15]

The disposition of Michael Simpson's grievance states:

> "Wdl – Upon the closing of the Michigan Truck Plant, the Local 900 Seniority 6-10-15 Agreement was applied based upon available openings. This action was a 'point-in-time' action based upon years of seniority/Date of Entry. Since Mr. Simpson did not have enough seniority to be placed as a carpenter in Wayne Assembly or Wayne ISA, Mr. Simpson was placed on short-term layoff in April 2009. He was then returned to work as a carpenter in May of 2009 to work on the demolition/construction phase of the new Michigan Assembly Plant."[16]

Michael Simpson appealed the decision to withdraw his grievance to the International Executive Board (IEB) in a letter dated March 14, 2011. Edwin Manion appealed the decision to withdraw his grievances on March 23, 2011 and April 6, 2011.[17] On February 15, 2013, President King's staff conducted a hearing on Simpson's and Manion's appeals. Acting on behalf of the International President, Administrative Assistant Chuck Browning prepared a report to the IEB on the appeal based on a review of the events affecting the Ford plants represented by Local Union 900, the applicable contract language, materials presented by the appellants, and testimony given at the hearing.

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[14] Record, p. 69.

[15] Record, p. 73.

[16] Record, p. 74.

[17] Record, p. 103. The appeal letters have apparently been lost.

Browning reported that production of the Ford Expedition and the Lincoln Navigator ceased at the MTP in November 2008, and these operations were transferred to the KTP. Production employees were given the opportunity to transfer with these operations in accordance with Article VIII, Section 24(b) of the 2007 UAW-Ford National Agreement.[18] At the same time, November 2008, Ford announced that the MTP would be retooled for the production of small cars and renamed the Michigan Assembly Plant (MAP).[19] Ford subsequently described plans to build the Ford Focus at the new MAP and allow approximately 3,200 employees to transfer with the Focus operation from the WAP to the MAP.[20]

Manion and Simpson were actively working when the Expedition and Lincoln operations moved to Kentucky, but they were not given the opportunity to move with the work because their assignments were not directly related to production.[21] They were initially laid off in December 2008 when the Expedition and Lincoln operations were transferred to Kentucky. Browning's report describes their subsequent recalls and layoffs. They were recalled to the MTP on March 18, 2009. At the end of one week, they were instructed to report to the Wayne ISA plant. After they worked for one week at that location, management informed them that they were there by mistake and should report back to the MTP. They worked at the MTP for a week and were laid off effective April 3, 2009.[22]

Manion and Simpson were instructed to report to the WAP on July 20, 2009. At that time, management informed them that they were being offered a temporary job assignment performing carpenter work at the Michigan Assembly Plant. They were asked to sign a document stating that they were from Ford's closed Michigan Truck Plant and acknowledging that they were being given a temporary assignment to the Michigan Assembly Plant. Although Manion and Simpson refused to sign this document, they were permitted to return to work and continued in that assignment until 2012. Browning's report gives the following description of these events:

> "The appellants were instructed to report to the Wayne Assembly Plant on July 20, 2009. They were informed by management that they were being offered a temporary job assignment performing carpenter work at the Michigan Assembly Plant. They were asked to sign a document stating that they were from the closed facility, referred to as the Michigan Truck Plant, and acknowledge that this would be a temporary assignment to the Michigan Assembly Plant. Although the document referenced two

[18] Record, p. 100.

[19] Record, p. 25.

[20] Record, pp. 46-48.

[21] Record p. 101.

[22] Record, pp. 101-102.

> different names of plants, both names described the same building. Both appellants refused to sign, but were allowed to return to work. The appellants continued to work until it was determined in 2012 by the company that the temporary assignment had ended and they were placed on indefinite layoff from the Michigan Truck Plant." [23]

During the hearing before Administrative Assistant Browning, appellants pointed out that the decision to withdraw their grievances was based primarily on Representative Oblak's insistence that the Michigan Truck Plant was a closed facility. Appellants produced numerous documents contradicting this claim. In his report to the IEB, Browning gave the following description of appellants' presentation:

> "…These documents consist of copies of press releases from Ford Motor Company, communications from the UAW Local Union 900, communications from Ford Motor Company, contract highlights from the 2007 and 2009 UAW Ford contract negotiations, copies of contractual language and a copy of the Wayne County Brownfield plan. In these documents, it describes the status of the Michigan Truck Plant as being retooled, converted, undergoing an extensive physical transformation and transitioned to the Michigan Assembly Plant. None of these documents identified the Michigan Truck Plant as closing. Additionally, the documents related to the contract do not identify the Michigan Truck Plant as a closed facility with other plants designated to close, and in one document, it states that a commitment from Ford Motor Company had been negotiated with the UAW that no members would be placed on indefinite layoff as a result of the retooling of the Michigan Truck Plant."[24]

Browning reported appellants' testimony that carpenter work was being performed on a continuing basis at the MTP from the time that production of the Expedition and Navigator ended in 2009 through January 2012. Appellants argued that they should have been recalled to perform this work at the MTP/MAP prior to employees from the other two plants. Appellants denied that anyone told them they were being placed on indefinite layoff as a result of a plant closure. According to Browning's report, appellants testified that Manager Garrick Lee assured them that they would be back in a few weeks. Finally, appellants complained that they were not given the option of reducing to their former production classification in lieu of being laid off within the skilled trades classification.[25]

According to Browning's report, appellants argued that they were laid off in April 2009, despite the need for carpenters at the MTP, in order to prevent them from gaining

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[23] Record, p. 103.

[24] Record, p. 104.

[25] Record, pp. 104-105.

the additional months of seniority that would have allowed them to displace lower seniority carpenters at the Wayne Assembly Plant. Browning's report states:

> "The appellants also argue that they were indefinitely laid off in April of 2009 in order to prevent them from gaining the necessary seniority required in accordance with the local seniority agreement to effectively displace the lower seniority carpenters that were assigned to the Wayne Assembly Plant. They presented a document that confirms that two carpenters at that facility, Elbert Johnson and Gjeregj Ljuljduraj held lower seniority dates of entry into the classification of February 19, 2001. They also pointed out that Elbert Johnson was not currently working within the classification because he was serving as the UAW Plant Chairman at the Wayne Assembly Plant. The appellants stated that they had accumulated nine years and seven months of seniority within their classification and needed only five more months to displace the lower seniority carpenters. They maintain that all of the other skilled trades workers laid off from Michigan Truck in all of the other classifications were reassigned to permanent positions at the two remaining facilities on the site."[26]

In response to appellants' arguments, Representative Oblak stated that when production ended at the MTP, management made the decision to assign all remaining work at the MTP to the WAP. Oblak maintained that Manion and Simpson did not have the seniority to displace any carpenters at the WAP or Wayne ISA when they were laid off. Oblak pointed out that the company has the right to set manpower levels and make assignments.[27]

After reviewing the history of the dispute, Administrative Assistant Browning determined that there was merit to appellants' claim that their seniority at the MTP remained intact following the transfer of production operations to Kentucky. Browning wrote:

> "…The skilled trade workers that were previously assigned to the Michigan Truck Plant were reassigned to the Wayne Assembly Plant and the Wayne ISA Plant in a manner that depopulated all of the skilled trade seniority units at the Michigan Truck Plant, with the exception of the carpenter classification. The company made a decision to transfer the five highest seniority carpenters and lay off the three lowest seniority carpenters from the Michigan Truck Plant. This action, in itself, is within the confines of the collective bargaining agreements; however, by not transferring the three low seniority carpenters and placing them on layoff from the Michigan Truck Plant, the company left the already existing seniority structure intact. The argument the appellants present is that the

[26] Record, p. 105.

[27] Record, p. 107.

> seniority group of carpenters at the Michigan Truck Plant continued to exist by not reassigning them to another seniority group at the site, as they did with all of the other skilled trades from the Michigan Truck Plant, has a valid contractual basis."[28]

Browning observed that carpenter work was being performed at the Michigan Truck Plant throughout the period from November 2008 through January 2012. Browning agreed that the seniority group of carpenters from the Michigan Truck Plant should have been the primary group used to perform carpenter work at that location. Browning wrote:

> "The position the company presented to the union that the 6/10/15 provision in the local seniority agreement was properly administered in the case of the appellants seems to be correct; however, the position that the company had the right to ignore the contractual rights of the existing seniority group of carpenters to which the appellants belonged to, based on the Michigan Truck Plant 'closing', has not been substantiated by any language in the collective bargaining agreements pertinent to this issue."[29]

Browning reported that appellants submitted estimates of the earnings they lost as a result of the violation of their seniority rights. Notes in the record indicate that Manion estimated he lost $143,973.27 during the period from 2009 to 2012.[30] Simpson estimated that he lost $102,528.15 during the same period.[31] Appellants asked to have their grievances reinstated so they could seek reimbursement for these losses. Browning held that the request should be granted.[32] The IEB adopted Administrative Assistant Browning's report as its decision. On May 13, 2013, President King provided Manion and Simpson with a copy of the IEB's decision.[33]

On May 30, 2013, UAW National Ford Department Representative Reggie Ransom requested reinstatement of the grievances filed for Edwin Manion and Michael Simpson.[34] On June 20, 2013, Ford Motor Company denied the reinstated grievances, claiming that there had been no violation of the collective bargaining agreement. The grievance disposition for both Manion and Simpson states:

> "Grievance is respectfully denied. Upon the closing of the Michigan Truck Plant, the Local 900 6-10-15 Agreement was applied based on available

[28] Record, pp. 107-108.

[29] Record, pp. 108-109.

[30] Record, pp. 90-92.

[31] Record, pp. 93-97.

[32] Record, p. 109.

[33] Record, p. 98.

[34] Record, p. 110.

> openings. This action was a 'point-in-time' action based upon Ford Service Date/Date of Entry. At the time of placement (February 23, 2009 – March 30 2009), the aggrieved did not have enough service per the provisions of the 6-10-15 Agreement to be placed at either Wayne ISA or Wayne Assembly. He was placed on layoff in April 2009 and was returned to a temporary carpenter position in July 2009 for the demolition/construction phase of the new Michigan Assembly Plant. No contractual violation has occurred. Furthermore, the aggrieved has not provided any new evidence since the reinstitution of this grievance to support his case."[35]

On January 10, 2014, Ford Motor Company and the UAW-Ford Department settled Manion's and Simpson's grievances. The settlement agreement states:

> "In full and complete settlement of the above grievances and without any precedent, the Company and the Union agree that Mr. Manion and Mr. Simpson will each receive a lump sum payment of $2,500.
>
> The above grievances, filed in May 2009, also requested that Mr. Manion and Mr. Simpson be recalled from layoff status and returned to the carpenter classification. Both Mr. Manion and Mr. Simpson were recalled from layoff to the carpenter classification effective July 20, 2009."[36]

Based on this settlement agreement, Manion's and Simpson's grievances were withdrawn. Ford Department Representative Reggie Ransom advised Manion and Simpson of the settlement of their grievances on January 17, 2014.[37]

On February 14, 2014, Manion and Simpson appealed the settlement of their grievances to the IEB. In support of their appeal, appellants asserted that the IEB's decision dated May 13, 2013, was binding on Ford Department Representative Reggie Ransom. Appellants reported that they asked Representative Ransom to explain how he arrived at the settlement of $2,500. Appellants pointed out that their exhibits introduced during the IEB hearing on February 15, 2013 showed that Manion lost approximately $143,000 and Simpson lost approximately $102,000. Given the difference in the amounts claimed, appellants asked how the Ford Department reached a conclusion that they were entitled to identical amounts. Appellants asked for the UAW to explain its position on whether the Michigan Truck Plant was closed or retooled. Appellants requested copies of any correspondence between the UAW and Ford Motor Company regarding their grievances after they were reinstated. They asked the UAW

[35] Record, pp. 111-112.

[36] Record, p. 114.

[37] Record, pp. 116-117.

to address the contractual findings expressed in the IEB's decision.[38] Appellants returned the money that had been paid to them in accordance with the settlement.[39]

Representative Ransom responded to an inquiry about appellants' appeal in a memorandum addressed to International President Bob King on April 8, 2014.[40] In his memorandum to King, Ransom took the position that the MTP had closed when the Expedition and the Navigator operations moved to Kentucky. He wrote:

> "On April 3, 2009, both grievants were indefinitely laid off (ILO) because their home plant (MTP) closed as a result of transfer of operations; the building structure stayed intact for retooling. The production of the Ford Focus was built at the Wayne Assembly Plant (WAP). The WAP workers utilized some of its original space and majority of the new retooled Michigan Assembly Plant (MAP) space. The MAP continued to build the Focus and it received some additional products like the Focus Electric, Focus ST, C-Max Hybrid, C-Max Energi (plug-in hybrid). In essence, the WAP became MAP."[41]

Ransom argued that there had been no violation of the collective bargaining agreement because the 6-10-15 was properly applied to Manion and Simpson after their plant was eliminated. In response to appellants' specific question about why the settlement was so low, Ransom asserted that the settlement was low because there was no violation. Ransom pointed out that Article VII, Section 10 of the UAW-Ford National Agreement authorizes the Ford Department to settle any grievance at any time before it is heard by the Umpire.

On July 21, 2015, International President Dennis Williams sent a memorandum to UAW Vice President Jimmy Settles on behalf of the IEB asking him to make arrangements to reinstate Manion's and Simpson's grievances. On August 5, 2015, Ford Motor Company notified Representative Ransom that Michael Simpson's grievance had been settled for a lump sum payment of $22,046.30.[42] On the same day, Ford Motor Company notified Ransom that Edwin Manion's grievance had been settled for a lump sum payment of $27,906.00.[43] The bases for the lump sum payments to the two grievants are explained in charts attached to the notification. The charts credit the Company with the prior grievance settlement of $2,500. On August 6, 2015, Representative Ransom notified Simpson and Manion that their grievances had been settled and closed. Manion and Simpson appealed the withdrawal of their grievances to

[38] Record, pp. 120-121.

[39] Record, pp. 122 and 124.

[40] Record, pp. 132-136.

[41] Record, p. 133.

[42] Record, pp. 141-142.

[43] Record, pp. 144-145.

the IEB on September 9, 2015. Both appellants claimed that they had not been given a reasonable explanation for the low settlement amount negotiated by the union compared to their actual losses.

Vice President Jimmy Settles responded to inquiries about the two appeals in memorandums dated October 15 and October 19, 2015. In response to Manion's appeal, Settles wrote:

> "The reason and the contractual basis for the settlement is because Reggie Ransom, Ford Department's Arbitration and Umpire Coordinator, did not believe that the aforesaid grievance had merit in accordance to the local and national agreements to prevail before an arbitrator. Therefore, Mr. Ransom settled the case prior to arbitration. More importantly, the appellant in this case did not meet the qualifications of the 6-10-15 rule to bump carpenters with less seniority:"[44]

Settles adopted the language from Representative Ransom's prior memorandum asserting that the MTP did not continue in operation as the MAP following retooling. Settles explained that it was the WAP operation that continued at the old MTP site, now renamed MAP. In other words, the new MAP continued as the WAP, so that Simpson and Manion could not displace Ljuljduriaj Gjeregi and Elbert Johnson under the 6-10-15 rule. In his conclusion, Settles wrote:

> "The appellant believed that he was owed the difference in pay between actually working in his carpenter classification and the amount received from unemployment. The appellant believed the layoff was unwarranted and not contractual. In spite of appellant's beliefs, the facts strongly support the initial layoff was warranted in accordance to the CBA and there was no violation. The Company was within its management rights to lay off affected employees. Therefore, the appellant could not have bumped Messrs. Gjeregi and Johnson in accordance to the 6-10-15 rule (Exhibit 4, p. 55-57). <u>There was no contractual violation</u> yet; the Union negotiated a monetary settlement award (30,406.00 - $2,500 = $27,906.00) for less than the full difference between their carpenter classification pay and the amount of pay received in unemployment (Exhibit 2)." (Emphasis in original.)[45]

Settles reported that there is a reinstatement of grievance letter in the National Ford Agreement, but he argued that reinstatement would be inappropriate in this case, because appellant's demand for more money was not supported by the contract. Settles submitted a similar memorandum in response to Simpson's appeal.[46]

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[44] Record, p. 160.

[45] Record, p. 163.

[46] Record, pp. 166-171.

Acting on behalf of International President Dennis Williams, Administrative Assistant Allen Wilson conducted a hearing on the appeals of Manion and Simpson on December 4, 2015. Following the hearing, on December 18, 2015, appellants' attorney Ellis Boal submitted a letter commenting on the record and the arguments presented at the hearing. Boal pointed out that Representative Ransom's determination that there had been no violation of the collective bargaining agreement had twice been rejected by the IEB. He stated that for this reason, Manion and Simpson came to the hearing assuming that the merits of their grievances had been established. Boal pointed out that the appellants had explained the basis for their monetary claims and that the Ford Department Representative at the hearing did not challenge the figures presented. He stated that the appellants therefore regarded their figures as having been accepted by the IEB.[47]

Boal stated that appellants were shocked to discover that Representative Ransom still maintained that there had been no violation of the collective bargaining agreement even after their grievances had been reinstated for the third time. Boal pointed out that the highest authority in the UAW for interpreting contracts between Conventions is the IEB. Boal quoted excepts from the IEB's decision dated May 13, 2013, and argued that the IEB specifically found that appellants' seniority group at the MTP remained intact after the production operations were moved to Kentucky so that appellants should have been the primary group used to perform work within their skilled trades classification after 2008. Boal remarked:

> "Brother Ransom slighted this holding in asserting simply on page 1 of both letters that the appellants 'did not meet the qualifications of the 06-10-15 rule to bump carpenters with less seniority,' without considering the IEB's additional point that the company could not ignore the contractual rights of existing seniority carpenters."[48]

Boal pointed out that the response of the UAW-Ford Department to appellants' third appeal to the IEB did not introduce any arguments beyond those already presented at earlier steps of the appeal process. With respect to the dollar amounts negotiated by the UAW-Ford Department in settlement of appellants' grievances, Boal made the following observation:

> "As to the specific dollar numbers Ford and the National Ford Department came up with to reach the settlement, we are unable to comment. The Department entered negotiations convinced that it had a losing hand, an incorrect position which undoubtedly it conveyed to Ford. Numbers

[47] Record, p. 180.

[48] Record, p. 182.

> reached on such assumptions have no reality and cannot be given credence."[49]

Boal also argued that appellants were entitled to interest on the money they lost because of the union's undue delay in processing their claims.

Administrative Assistant Wilson prepared a report to the IEB on Manion's and Simpson's appeals based on documents in the record and testimony given at the hearing. Wilson asserted that the IEB's role in reviewing appeals with respect to grievances is to determine whether some impropriety affected the handling of the matter or if the disposition of the grievance lacked a rational basis. Wilson pointed out that the principle is well established that a grievant is not authorized to dictate the terms of a settlement agreement, but that it is up to the union representative to exercise his or her best judgment in determining the outcome. Applying this principle to Manion's and Simpson's appeals, Wilson wrote:

> "…In this instant case, the decision to settle the grievances in question, which were remanded back into the procedure by the IEB, was made by the National Ford Department's International Representative Reggie Ransom who has the contractual authority to do so. Although the appellants had their grievances reinstated back into the procedure on two occasions, Representative Ransom determined the settlement that he was able to achieve in the last series of discussions with the company was the best possible grievance outcome in relation to the allegations in question."[50]

Wilson asserted that there could be no possible question of improper motivation on Ransom's part, because the record established that he made an earnest effort to follow the directives of the IEB in his pursuit of a remedy for the appellants. Wilson found that the basis for Ransom's settlement was clearly explained to appellants. His report states:

> "As a consequence, Representative Ransom negotiated what he deemed as an adequate compensatory sum of wages and benefits from the Company in the 3 ½ Stage of the grievance proceedings, prior to the Umpire/Arbitration Stage. The basis of these grievance awards was clearly revealed to all parties in the foregoing communications from the National Ford Department to the appellants. The calculations were based entirely upon the difference between the appellants' 40-hour weekly gross and the Supplemental Unemployment Benefits, which they received during the contested grievance periods. It was also inclusive of the

[49] Record, p. 183.

[50] Record, p. 245.

> applicable profit sharing and lump sum bonuses, and again, was revealed in the total settlement of the grievances."[51]

Wilson referred to Boal's argument that the reinstatement of appellants' grievances suggested that their grievances had merit. In response to this argument, Wilson wrote:

> "Thirdly, the appellants argue that because their grievances were ordered back into the procedure by the IEB, they assumed that they were meritorious. Even if we lend deference to this claim, the end result is to have the grievances satisfactorily resolved based upon the facts and evidence contained in the case record. The union believes that it satisfied this objective with the agreed upon grievance settlement."[52]

In response to appellants' argument that the MTP had never actually closed, Wilson referred to the Wayne ISA Manpower Transition Plan dated August 11, 2008, and pointed out that the plan did not limit the company's right to use temporary layoffs pursuant to Article VIII, Section 21 of the collective bargaining agreement. In closing, Wilson concluded that Representative Ransom made an appropriate and rational decision to settle the grievances after they were reinstated. Wilson found no evidence that fraud, discrimination, or collusion with management influenced Ransom's decision.[53]

Wilson denied Manion's and Simpson's appeals. The IEB adopted Wilson's report as its decision. President Dennis Williams provided Manion and Simpson with a copy of the IEB's decision on February 15, 2016. Ellis Boal submitted an appeal to the Public Review Board (PRB) on behalf of Manion and Simpson on April 15, 2016. We heard the parties in oral argument on October 1, 2016.

ARGUMENT

A. Attorney Ellis Boal on behalf of Edwin Manion and Michael Simpson:

Appellants share the same skilled trades date of entry into the carpenter classification, September 27, 1999. They were employed at Ford's Michigan Truck Plant (MTP) when it ended production of SUV trucks (Lincoln Navigator and Ford Expedition) in 2008. Ford transferred that work to Kentucky. Throughout this appeal there has been controversy about the nature and consequences of that decision. During the first hearing on appellants' appeal on February 15, 2013, appellants introduced a variety of publications showing that the action was not a plant closing, but

[51] Record, pp. 245-246.

[52] Record, p. 247.

[53] Record, p. 248.

a plant retooling. After the retooling, MTP was renamed the Michigan Assembly Plant (MAP).

In 2008, Local 900 President Anderson Robinson, Jr. published a letter in the local union newspaper about the retooling of the MTP and the combination of the operations that had been performed at the three plants under the jurisdiction of Local 900. One of the points of agreement in these plans was that none of the affected employees would be placed on indefinite layoff. Robinson wrote:

> "With regards to the moves, there are two key points that I am proud to announce. First, we required and negotiated a commitment from Ford that none of our members would be placed on indefinite layoff as a result of this move. And second, we have secured a commitment for each of our plants to be placed on Three-Crew operations, which will give our members a 4-day work week and potentially add more jobs.[54]

Appellants were placed on indefinite layoff on April 3, 2009. There was no shortage of carpenter work available at MTP during the period that appellants were laid off. The local union filed grievances WJW17471, 69659, 68617, and 69658 in 2009 protesting the ongoing violation of appellants' seniority rights. After they had been laid off for 108 days, management offered Manion and Simpson work in the carpenter classification. They were also asked to sign a document falsely stating that the MTP was a closed facility. The document stated that appellants would be temporary employees. Manion and Simpson refused to sign this document. Manion later found a re-formatted version of the document in his personnel file. This version had a space for a union representative to acknowledge the signatures. This space was signed illegibly on July 31, 2009. There is nothing else in the record to support the claim that appellants' assignment on July 20, 2009, was temporary.

In 2013, the IEB ruled in favor of appellants' argument that they were entitled to be recalled to perform available work in the carpenter classification in line with their skilled trades entry date at the MTP during the retooling and after the plant was renamed the MAP. Ford Department representatives were bound to accept the IEB's interpretation of the applicable agreements. Ford Department Representative Reggie Ransom negotiated a settlement of $2500 for each appellant on January 10, 2014. Ford deposited the money in Manion's and Simpson's accounts, per direct deposit authorizations they had previously executed. Appellants wrote checks returning the money to Ford. Ford returned the checks, which remain uncashed today.

When appellants appealed the Ford Department's settlement of their reinstated grievances for $2500, Representative Reggie Ransom responded by asserting that the grievances did not have merit. Ransom insisted that the MTP was a closed plant and the 6-10-15 rule had been properly applied. Ransom added:

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[54] Record, pp. 26-27.

> "Grievants made reference that the Union was bound to language mentioned in the IEB decision. The Union is bound to contractual language and the UAW cannot just demand that the company settle the grievance to the wishes of the grievants."[55]

On July 21, 2015, appellants were notified that President Williams had instructed the Ford Department to reinstate their grievances a second time. There was no written IEB opinion. The PRB may infer, however, that the IEB again rejected Ford Department explanations that the appellants' grievances lacked merit because the MTP closed in 2009. Representative Ransom negotiated the settlements of $27,906 for Manion and $22,046.30 for Simpson. Ford again paid the appellants. Appellants once again returned the settlement money. At that point, they returned to the IEB.

Ransom and the IEB now assert that the settlement sums were the best possible outcome because they cover profit sharing, lump sum payments, and the difference between appellants' 40-hour weekly gross wage and their unemployment benefits. The periods covered are April to July 2009 for both appellants, January to November 2012, for Manion, and 2011 to 2014 for Simpson. But this means that Manion forfeited overtime, holidays, vacation pay and the maximum profit sharing bonus in 2012. Simpson lost overtime, holidays, down time, a lacuna of two weeks from June 24, 2013 to July 8, 2013, and a return to the renamed Michigan Assembly Plant from 2011 to 2014. Both appellants are entitled to interest for six years on these losses. Ford Department Representative Ransom has not advanced any theory that would defeat appellants' claim to these lost wages.

Furthermore, Ransom's handling of appellants' grievances was arbitrary and inconsistent with his duties to these members in the processing of their grievances. Ransom should have met with appellants to try to explain the settlement. He should have discussed the status of the MTP following the transfer of the SUV operations and why he considered it a closed plant. He should have provided some rationale for the specific monetary settlements he negotiated. Twice the IEB held that appellants' grievances had merit. That determination required Ransom to meet with appellants and conduct a further investigation of the merits of their claims. Ransom's reports to the IEB in October claim that he personally met with appellants several times. This is not so. He met with them only once in response to their second appeal to the IEB.

Both the union and management recognized that there had been a violation of appellants' rights. The IEB explained the basis for this conclusion in its 2013 decision. The IEB is the union's highest authority when it comes to collective bargaining. The UAW-Ford Department was obligated to abide by and implement the IEB's decision, even if that meant forcing the grievances into arbitration. The settlement offered by Ford Motor Company recognized that appellants had suffered an ongoing monetary loss

[55] Record, p. 135.

as a result of the contractual violation. The losses incurred by appellants as a result of the violations of their skilled trades seniority are significant. According to their calculations, the losses for Manion are over $130,000 and the losses for Simpson are over $200,000. The UAW-Ford Department has not provided any reason for accepting such a reduced amount in settlement of appellant's grievances. Appellants wish to seek full reimbursement of their loss through arbitration. They understand that by pursuing this remedy they risk losing the monetary settlements that have been achieved.

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

At the outset, the limited nature of this appeal must be noted. The UAW Constitution limits the PRB's jurisdiction to review the handling of grievances to allegations that the matter was improperly handled because of fraud, discrimination, or collusion with management, or that the disposition or handling of the matter lacked a rational basis. Appellants have not asserted that fraud, discrimination, or collusion influenced Representative Ransom's decision to settle their grievances. There is no evidence in the record that Ransom's decisions were improperly motivated. The only basis appellants can assert for relief, therefore, is that Ransom's decision to settle the grievances was devoid of a rational basis. This record does not support such a conclusion.

Appellants contend that the transition of operations at the building that formally housed the MTP should not be referred to as a plant closing. There is no debate that the company transferred all operations from the MTP to the KTP and then transferred production of the Ford Focus from the Wayne Assembly Plant (WAP), along with its workforce, to the building that formerly housed the MTP. As Representative Ransom asserted in his responses to appellants' arguments, the WAP operation continued in the physical location of the former MTP and became the MAP, rather than any continuation of the former MTP operation. Moreover, there is no real contractual significance to using the term "closing" versus a "transfer of operations and retooling." The National UAW Ford Agreement, Appendices M and O, govern both circumstances. Under the Ford Agreement, displaced workers receive no special status or treatment whether their plant is closed or they are placed on indefinite layoff. Appellants did not have the seniority under the local agreement, referred to as the 6-10-15 agreement, to bump any carpenters at WAP. At the time production ceased at the MTP, appellants had 9 years, 7 months skilled trades' seniority. They would have needed 10 years' seniority to bump the lower seniority WAP employees Gjeregi and Johnson.

The original decision to withdraw appellants' grievances in 2011 was rational in light of this contract language, so it should not have been overturned. The settlement ultimately accepted by Representative Ransom becomes even more rational when the grievance history is reviewed. The appellants were actively working as temporary employees when their grievances were withdrawn and they did not file grievances protesting their indefinite layoff in 2012. Therefore, when their grievances were reinstated in 2013, management raised an issue about the appellants' failure to file a second grievance. The lack of any grievance protesting appellants' losses after 2012

was a serious weakness in their case. When considering what sort of award the union might be able to obtain from the Umpire, the UAW-Ford Department had to consider the likelihood that management would successfully use the lack of a second grievance to defeat any claims for wages after 2012. Representative Ransom expressed this concern in 2014 to explain his settlement of the grievances for a small sum. Ransom's memorandum to President Bob King on April 8, 2014 states:

> "The issue with the carpenters who transfer to MAP from Monroe (Local 723) took place after the fact. These events took place in 2012. The grievances were filed in 2009 and they do not address the issue."[56]

If this argument were accepted, the amount of back pay sought by appellants would be greatly reduced. Despite this weakness, Representative Ransom was able to obtain a substantial monetary settlement after the grievances were reinstated the second time. Appellants might have received nothing if the case had been presented to the Umpire.

There also exists a rational basis for the calculation of the amounts due to appellants as a result of the alleged violation of their seniority rights. It is based on the wages they would have received during the period for a forty-hour week. This is a customary method for calculating the settlement of a claim for wages lost as a result of a seniority violation. Overtime and shift premiums are not generally included in such calculations. Appellants appear to be of the view that their contentions are iron clad and that the union would certainly prevail and obtain the approximately $300,000 they seek in lost wages if their case proceeded to arbitration. They assert that the company has advanced no defense that could defeat their claims. This assertion is inaccurate.

Appellants assert that Representative Ransom had a duty to meet with them and explain the basis for his settlement of their grievances. As part of this contention, they point out that the IEB twice held that the grievances had merit and that the third IEB decision, issued on February 15, 2016, did not overturn that determination. Appellants do not address the fact that the third IEB decision found the August 2015 settlements to be reasonable and proper. After reinstating the grievances as directed on July 15, 2015, the UAW National Ford Department made efforts to resolve the grievances prior to a potential arbitration. International Representative Ransom reviewed the contract language and determined that appellants did not meet the requirements of the Local 900 Seniority Agreement 6-10-15 provision to bump carpenters with less seniority. This conclusion did not appear to conflict with any provision of the Wayne ISA Manpower Transition Plan. The case was complicated by the Company's contention that appellants' failure to grieve the layoffs in 2012 limited any potential liability in the matter. Despite the company's position, International Representative Ransom successfully negotiated a substantial monetary settlement for the contested period of 2012 and later dates. Ransom provided appellants with notice of the settlement which included an explanation of the calculations.

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[56] Record, p 135.

The IEB gave no specific instructions to the UAW-Ford Department over the terms of any settlement of the reinstated grievances. Its decision did not constrain in any way the broad discretion exercised by a grievance handler in the disposition of a grievance appeal. Furthermore, it cannot be claimed that Ransom's decision to resolve the grievances for less than the amount claimed by the appellants was devoid of any rational basis. Ransom investigated the facts, analyzed the applicable contracts and the timing of the grievances and concluded that the settlement offered would not be guaranteed if the case proceeded to arbitration. Ransom made his decision based on the relative merits and weaknesses of the cases presented. Ransom had no obligation to meet with the grievants in person to explain the basis for his settlement.

C. Executive Administrative Assistant Chuck Browning on behalf of the International Union, UAW:

While it is true that the UAW-Ford National Agreement does not contain any specific language applicable to appellants' situation, that is because the situation at the MTP in 2009 was entirely unique. It was an unanticipated situation. There are no provisions in the UAW-Ford National Agreement governing the cessation of production at a plant and the retooling of that plant for a different operation. Appellants were seniority employees at the MTP, but they could not move with the plant's operations to Kentucky because they were not directly tied to the process being moved. Management had the contractual right to set manpower requirements for the WAP and they brought five carpenters over from the MTP when production ceased there, but left three carpenters behind. One of the three found another position, but these two appellants did not. Management's decision not to transfer these employees to the WAP forced the union to consider where they fit in this transition. When management began to use carpenters to perform the retooling work on the MTP, the IEB reasoned that these people should have been the primary group called back because their seniority was attached to the building where the work was being performed.

As a contractual argument, this idea about the appellants being in the primary seniority group at the MTP required some interpretation. At some point, the MTP became the MAP, but there is nothing in the contract defining that point. There was no event that ever definitively broke up appellants' seniority unit, so we maintained it continued to exist. People were still working at the MTP location throughout the retooling period. Where else did these employees fit but at the MTP performing the retooling work within the carpenter classification? There was no shortage of work for carpenters. It was a possible argument grounded in the contract. It might have been risky to take this argument to the Umpire, but it was something we talked about as a basis for settlement. The really significant point from my standpoint was that the company had made a commitment in the Manpower Transition Plan that no UAW members would be placed on indefinite layoff as a result of the retooling of the Michigan Truck Plant. I mentioned that commitment in my report to the IEB. Only one of the appellants could actually have bumped based on seniority because one of the lower seniority employees, Elbert Johnson, was a shop chairperson. Nevertheless, the

commitment ought to have protected both of these employees. That was the reason we sent the grievances back. Some arrangement should have been made for Manion and Simpson.

In 2015, therefore, prior to the opening of negotiations on the UAW-Ford National Agreement, I went over to the company to work something out. I spoke with Ford Motor Company representatives Jack Halverson and John Wright. I pointed out that there was a commitment that there would be no permanent layoffs and we have two people out on the street. I argued that we needed to fix this, regardless of any technicalities about the lack of a second grievance after 2012. Subsequently, the company made the settlement offers described in the correspondence dated August 5, 2015.

D. Rebuttal by attorney Ellis Boal on behalf of Edwin Manion and Michael Simpson:

In response to this appeal the International Union raises for the first time the argument that appellants did not file a separate grievance protesting their layoff in 2012. The International Union asserts that Ford Motor Company contended that this failure limited the company's liability for the violations that occurred after 2012. The UAW-Ford Department did not raise this argument previously. Representative Ransom argued that the transfer of carpenters to MAP in 2011 and 2012, took place "after the fact." Ransom dropped this argument in 2015 after the second reinstatement of appellants' grievances. Up until now, there has never been any claim that Ford Motor Company took the position that the new violations were after the fact and therefore irremediable. If Ford ever did take that position, the company abandoned it in 2015 when they negotiated the settlement under consideration here. In fact, there was no need for appellants to file cumulative grievances each time their rights were violated after 2009. All three of the grievances they filed in 2009 said that the violations were ongoing. All three grievances have remained either in the procedure or on appeal since that time.

In its response to this appeal, the International Union argues that it does not matter whether the transfer of operations from the MTP is called a closing or a retooling, because "displaced" workers receive no special status as a result of a plant closing. This argument misses the point. There was plenty of work available in appellants' classification following their layoff in 2009, and therefore no reason for them to have been displaced. In accordance with the Wayne ISA Manpower Transition Plan dated August 11, 2008, all MTP employees were to be transferred rather than placed on indefinite layoff. As appellants have previously argued, management's right to use temporary layoffs was not applicable to their situation, because their layoffs were not temporary. The primary reason the union has denied any remedy for the violation of appellants' seniority rights has always been their insistence that the MTP closed.

There is presently a binding factual determination by the IEB that appellants' grievances did have merit. The latest IEB decision concludes that Representative Ransom made a rational decision that his settlement was the best the union could achieve. The decision asserts that there can be no question of improper motivation on

the part of the Ford Department Representative because he made an "earnest effort" to follow the directives of the IEB. As to Ransom's motivation, appellants would observe once again that he has insisted throughout this process that the MTP is a closed plant. In his responses to the International Union's inquiries about his efforts to obtain a remedy for the grievances, he defied the IEB by declaring repeatedly that the grievances lacked merit.

As to the irrationality of the settlement itself, appellants have summarized its deficiencies: no overtime, holidays, down time, vacation pay, partial profit sharing, interest, adjustments to their records, a two-week layoff for Simpson, and a failure to return him to his classification at the renamed Michigan Assembly Plant. Appellants were not called back to work in 2009; they were taken on as temporary employees. Simpson is now working under the jurisdiction of UAW Local 600 and would like to return to his home unit. Appellants have been requesting grievances to address the violations of their seniority rights throughout the period under consideration. If there had been a contractual break in appellant's seniority at the MTP, the parties would have been required to address that in some way. That never happened. Appellants have never been restored to the status they would have had if the violation had not occurred. We are asking to have the case submitted to the Umpire to make appellants whole for the established violation of their seniority rights.

DISCUSSION

We have determined that Representative Reggie Ransom's decision on August 6, 2015 to withdraw Edwin Manion's and Michael Simpson's grievances lacked a rational basis. Ransom did not adequately evaluate the settlement offered by Ford Motor Company on August 5, 2015, as a response to problems identified in the IEB's 2013 decision. Instead, Ransom justified his settlements by reasserting his conclusion that there had been no violation of the UAW-Ford National Agreement. Ransom's response to the IEB's initial reinstatement of appellants' grievances demonstrates that he did not understand the procedural significance of the reinstatement. In his memorandum to International President Bob King dated April 8, 2014, Ransom effectively asserted that his interpretation of the collective bargaining agreement took precedence over the IEB's ruling. Even after the grievances were reinstated by International President Dennis Williams for a second time, the UAW-Ford Department ignored the rationale of the IEB's decision and relied on Representative Ransom's interpretation of the contract language to justify the settlement presented by the company.

The decision of the IEB dated May 3, 2013 did more than identify a possible argument that might be asserted on behalf of the appellants. The decision presented a persuasive position based on the unique circumstances at the MTP that appellants' seniority group remained intact during the retooling of the plant so that they should have been the primary group recalled to work at that site in the carpenter's classification. In addition, the IEB's prior decision relied on a published commitment by the company that there would be no indefinite layoffs in connection with the transition from the MTP to the

MAP. Yet, Ransom's memorandum to International President Bob King on April 8, 2014, does not address in any way the rationale for the remand described in the IEB's decision. After appellants' grievances were reinstated for the second time, the UAW-Ford Department justified the August 2015 settlements based on the arguments in Ransom's original memorandum, most significantly, his assertion that there was no contractual violation. We learned during oral argument that Representative Ransom did not participate in the discussions that led to the monetary awards offered to settle Manion's and Simpson's grievances. He accepted these offers as the best that could be obtained because he still did not believe there had been any violation of the contract.

The International Union's defense of the settlements as rational is based on a misunderstanding of the process set in motion by the reinstitution of a grievance in response to an appeal presented in accordance with Article 33 of the International Constitution. The IEB's 2016 decision assumed the UAW-Ford Department exercised the same broad discretion in the disposition of these grievances in 2015 that generally applies to the settlement process. During oral argument, the International Union asserted that the sole issue now presented is whether there was some rational basis for the sums offered to settle the grievances. There was a basis for the calculations, but that is no longer the issue. That position ignores the processes leading up to the latest settlement offer.

In 1976, the parties to the UAW-Ford Agreement adopted a letter of understanding that provides for the reinstitution of a grievance when the IEB, the PRB, or the Convention Appeals Committee (CAC) has determined that the matter was improperly concluded. The UAW favors this reinstatement remedy in response to complaints about errors in the handling of grievances and has negotiated similar letters of understanding in its collective bargaining agreements with various employers. This remedy spares an appellant from the time and expense involved in litigating such claims. It also gives the parties flexibility to address such complaints within the grievance procedure so that the burden of compensating an appellant for any actionable lapses in the processing of a grievance are not shifted entirely to the union, as would be the case in a lawsuit asserting a violation of the union's representational duties.[57]

Our review of the outcomes on those rare occasions where we have applied this remedy of reinstituting a grievance is discouraging, however. In recent years, cases which have been submitted to the Umpire following the reinstitution of a grievance have been uniformly unsuccessful. There are institutional barriers to the successful arbitration of a remanded grievance that have prevented the process from functioning as the useful tool the parties intended it to be.

We addressed this problem directly in *Jerry Moran v. UAW Agricultural Implement Department,* PRB Case 955 II, 6 PRB 303 (1992). We had remanded Jerry Moran's case to the International Union with directions to conduct a further investigation

[57] See *Bowen v. US Postal Service,* 459 US 212 (1983).

into whether his discharge grievance should be submitted to arbitration. Following the remand, the International Union assigned the task of conducting the investigation to the same representative who made the original decision to withdraw the grievance. Finding that investigation inadequate, we remanded the case again with instructions to arbitrate it, but we also expressed concerns about the institutional barriers to a successful presentation of the case to the Umpire that were inherent in the process. The decision states:

> "However, this is not the end of our consideration of this appeal. We are painfully cognizant that in every instance in which we have directed the reinstatement and arbitration of a grievance, the ultimate result has been that the arbitrator has ruled against the union and the grievant, this despite the fact that in our considered judgment, in nearly all of these cases the grievant had a strong claim on the merits. Is it possible that in none of these cases was the grievant's contractual rights violated by his employer, or is there some other, more likely reason for this phenomenon? We think there is.
>
> Unfortunately, in these instances the individual selected to arbitrate the grievance has to know that the union and employer had previously agreed to "settle" the grievance on the basis of its withdrawal. No matter how objective and impartial the individual selected to arbitrate the grievance may be, inevitably the fact that he or she knows the parties themselves, the employer and union who jointly pay the arbitrator, considered the grievance to be without merit may unconsciously or even consciously affect the arbitrator's decision. In short, it appears that the remedy of reinstating a grievance and ordering it arbitrated may not be an effective remedy."[58]

A few years after the *Moran* decision, we once again confronted the dysfunction we identified in that opinion. In *Karl Morris v. Local Union 1853,* PRB Case No. 1131, 9 PRB 213 (1996), we remanded appellant's grievance and directed the International Union to negotiate a settlement that made the grievant whole or else to submit the case to arbitration. Once again, the same International Representative who originally withdrew the grievance was assigned the task of presenting the case to the Umpire. We found his handling of the matter to be so deficient that we ultimately awarded the appellant monetary damages. Our second opinion in response to Morris's appeal, *Karl Morris v. Local Union 1853,* PRB Case No. 1131 II, 9 PRB 225 (1999), contains clarifying language about the scope of the grievance handler's discretion following a remand. It states:

> "When we remand a case back to the union based on a finding that the union's decision to withdraw the case was flawed, the purpose of such a

[58] 6 PRB 303, at 309.

> remand is to cure the defects. Under these circumstances, the Umpire staff does not have the same broad discretion in the handling of such a referral as it has in the processing of the hundreds of grievances it receives out of the grievance procedure. At this point, the Umpire Staff must attempt to address the concerns that we have stated in our order remanding the case."[59]

The problems we recognized in the *Moran* and the *Morris* decisions are present in this case as well. Therefore, we believe it is crucial to underscore the process set in motion by an order of the IEB or the PRB reinstituting a grievance. The broad discretion normally exercised by a grievance handler in the negotiation of a grievance settlement does not apply to reinstated grievances. If the defects in the original handling of the grievance are not addressed by the remand, the entire process is a pointless exercise. After a grievance has been reinstated, the job of the representative assigned to handle the grievance is to address the problem identified by the remanding authority. In order to perform that function, the grievance handler must form a clear comprehension of the reason for the reinstatement as well as the nature and extent of the remedy sought by the grievant.

Furthermore, the IEB's jurisdiction to review complaints about the handling of grievances is not limited to allegations that the matter was improperly handled as a result of fraud, discrimination, or collusion with management, or that the disposition of the matter was devoid of a rational basis. These limitations on the PRB's jurisdiction, found in Article 33, §4(i) of the UAW Constitution accompany certain substantive limitations on our authority found in Article 33, §4(i). These jurisdictional limitations arise from the democratic practices inherent in the Constitution. The IEB, on the other hand, is the highest authority in the UAW between Constitutional Conventions.[60] The IEB may declare, as a matter of the International Union's collective bargaining policy, that the resolution of a grievance was inadequate on its merits. That is essentially what happened in this case.

The IEB's authority to act in cases such as this is not limited to making a determination that the grievance handler's decision was devoid of a rational basis. In fact, Representative Ransom's original disposition of appellants' grievances had a basis in the absence of any specific provision in the National Agreement addressing their claims. The parties had not anticipated the situation, so the contract was ambiguous in this regard. The IEB has the authority under the UAW Constitution to articulate how the Union wants that uncertainty addressed. Once the Union's policy has been established by the IEB, the UAW-Ford Department is bound to follow it.

Because that adherence did not happen in the instant case, we are especially concerned about the Union's approach following our remand. In that regard, one of the

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[59] 9 PRB 225, at 237.

[60] UAW Constitution, Article 7, §1(b).

complaints raised by appellants in this case was the failure of anyone from the UAW to communicate with them about their concerns during the entire span of years that these grievances were pending. Appellants received notice of the settlements in the mail after their grievances had been withdrawn. They had no opportunity to provide any input into the negotiation of the grievance settlements. The settlements themselves were based on a calculation that did not fully address the seniority violation identified by the IEB. We understand that Umpire staff representatives cannot meet personally with every grievant prior to withdrawing his or her grievance, but the remand in 2013 altered the requirements of this situation. As we have stated, in preparation for negotiating the settlement of a remanded grievance, the grievance handler must gain a full understanding of the nature and extent of the appellant's loss. It is up to the Umpire Staff to determine how best to gain this understanding, but some consultation with the appellants would appear to be indispensable. During oral argument, Representative Ransom explained that he was reluctant to meet with Manion and Simpson because they wanted to have their attorney present and he does not meet with attorneys. In both the *Moran* and the *Morris* decisions, we recommended that the Union consider allowing the grievant to have independent legal counsel participate in preparation and presentation of the case after a grievance has been remanded. We expanded this recommendation in *Raymond Acton, Jr. v. UAW General Motors Department*, PRB Case 1366, 11 PRB 362 (2003). The decision contains the following in a footnote to the order.

> "We would suggest that the Union select someone other than Leon Skudlarek to handle this grievance. Skudlarek, although no doubt an able advocate, has made statements in connection with this appeal that might later be used against him in settlement negotiations or in the event of a proceeding before the Umpire. Moreover, in general, where the decision of an individual to withdraw or settle a grievance is reversed, some other person ought to be selected to represent the grievant. Finally, we would encourage the Union to allow the participation of Acton's legal counsel in the prosecution of this case to the extent the parties' procedures permit."[61]

While there may be no role for outside counsel in the presentation of a grievance to the Umpire under the UAW-Ford Agreement, it would make sense for the UAW-Ford Department to allow the attorney to assist appellants in presenting their claims to the Department's advocate so that representative may form a clearer picture of what would be an acceptable settlement short of arbitration.

Appellants' grievances should be reintroduced into the grievance procedure of the UAW-Ford National Agreement at the stage where they were withdrawn. In the event the Union is not able to convince the Company to provide a sufficient remedy to address the violation of appellants' seniority rights, we direct that the matter be submitted to the Umpire for a resolution of the seniority violations identified. During oral

[61] 11 PRB 362, at 367, fn. 6.

argument, Representative Ransom stated that he would refer arbitration of this appeal to his successor on the UAW-Ford Umpire staff. We agree that would be a wise decision.

It does not entirely address the problem we have identified in the reinstatement process, however. Appellants' advocate before the Umpire cannot be effective if he is unconvinced of the merits of their contractual arguments and unaware of the extent of their losses. If a settlement acceptable to appellants cannot be negotiated, the Umpire Staff must move beyond the position it previously asserted with respect to the merits of appellants' claims and be prepared to make a persuasive argument following the reasoning stated in the IEB's 2013 discussion.

At the same time, we would counsel appellants that those institutional impediments to a successful arbitration we have identified are, to a certain extent, unavoidable. The Umpire will be aware of the history of these grievances and the fact that the UAW-Ford Department originally determined no violation of the contract had occurred. A monetary settlement based on the IEB's contractual argument may be the best resolution of appellants' claims even if it falls short of the full make whole remedy propounded by appellants. As in the *Morris* case, we will retain jurisdiction over the appeal pending final resolution, including any unresolved issues relating to the remedy.

The decision of the IEB is reversed. The grievances of Edwin Manion and Michael Simpson are remanded for processing in accordance with this decision.

It is so ordered.