THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW

APPEAL OF:

SANDRA M. RADTKE, Member,
UAW LOCAL UNION 961
(Marysville, Michigan)
REGION 1,

Appellant

-vs- CASE NO. 1769

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

Appellee.
/

DECISION
(Issued January 22, 2018)

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

APPEARANCES: Sandra M. Radtke and Margaret Mock on behalf of appellant; Rick Isaacson, James Britton, Mark D. Liburdi, and Michael Spacil behalf of the International Union; Timothy W. Taylor and Michael Booth on behalf of Local Union 961.

Sandra Radtke argues that International Representative Michael Spacil's decision not to pursue a grievance protesting her termination by Fiat Chrysler Automotive (FCA) lacked a rational basis.

FACTS

Sandra Radtke worked for ZF Friedrichshafen AC Corporation ("ZF") at its Marysville Axle Plant (MAP) in a bargaining unit represented by UAW Local Union 961. Radtke began working for Chrysler Corporation at its Detroit Axle Plant (DAP) on June 19, 1995. She transferred to the MAP on June 7, 2010 after the Detroit Axle plant

closed.[1] There is a commercial agreement between Chrysler LLC and ZF which continues the UAW's status as the bargaining representative of ZF's employees, even though ZF does not have a direct bargaining relationship with the UAW.[2] Prior to the transfer of employees from the DAP to the MAP, ZF entered into a Memorandum of Understanding (the MOU) with the UAW and Chrysler LLC which provided that the terms of the UAW-Chrysler Production, Maintenance and Parts (PM&P) Agreement would continue to apply to operations at the MAP.[3] The MOU states:

> "Chrysler employees working at ZF will remain subject to the terms of the Chrysler-UAW Production, Maintenance and Parts Agreements (PM&P) (National Agreements) and the Marysville Axle Plant Local Agreement, except as modified herein.
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> Paramount to a final agreement is an understanding with the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) that the Parties will jointly develop a long-term agreement which will provide work opportunity for Chrysler employees in Marysville in exchange for an Operational Agreement competitive with the Tier 1 manufacturing supply base.
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> To accomplish this objective, the Parties (Chrysler and the UAW) – ZF agree that this Memorandum of Understanding is applicable to operations at MAP and the provisions that follow will be utilized during the planning, staffing, launch, and production phases of these new operations. Further, this MOU is based upon the principles of joint cooperation between the parties, trust, and mutual respect of all employees."[4]

Chrysler Group LLC became Fiat Chrysler Automotive, (FCA) in 2014. In 2015, the collective bargaining agreement between Chrysler Group LLC and the UAW (the UAW-Chrysler PM&P Agreement) was replaced by an agreement between FCA US LLC and the UAW, effective October 22, 2015, (the UAW-FCA PM&P Agreement).

On March 2, 2015, ZF management issued Radtke a Notice of Disciplinary Action. The action described in the Notice is "Disqualification." The notice gives the following reason for the disqualification:

> "On Wednesday, February 25, 2015, Sandra Radtke left the plant unauthorized at 2:30 am. This is a violation of Category I, Rule number 10

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[1] Record, p. 72.

[2] The commercial agreement is not in the record. Representatives of the International Union clarified this arrangement during oral argument.

[3] Record, pp. 5, and 121-129.

[4] Record, pp. 5 and 121.

> 'Leaving your work area or plant premises during working hours without the permission of your supervisor.' Furthermore, this incident has violated condition #6 of Ms. Radtke's conditional reinstatement: 'It is understood and agreed that you will abide by the FCA US LLC Standards of Conduct, all plant shop rules and that any violation of these rules is grounds for discipline up to and including discharge.' As a result, Sandra Radtke has been disqualified from ZF Axle Drives Marysville, LLC effective March 3, 2015."[5]

Local Union 961 filed Grievance No. 2015-0093 protesting Radtke's disqualification on March 2, 2015. The grievance states:

> "THE UNION IS PROTESTING MANAGEMENT'S DISQUALIFICATION OF EMPLOYEE SANDRA RADTKE, (CID #928094). On March 2, 2015, Management shut off Sandra Radtke's badge and notified the Union that they were disqualifying Mrs. Radtke for an alleged incident on February 25, 2015. Allegedly, Mrs. Radtke left the plant without informing her Supervisor Christie Handlon. The Union contends that Mrs. Radtke asked her supervisor Christie Handlon if she could go to medical on February 25, due to being sick to her stomach with stress. Supervisor Christie Handlon denied Mrs. Radtke medical treatment. When Mrs. Radtke was denied medical treatment, so she asked to go home and see her own doctor. Supervisor Christie Handlon said she would not keep her against her will and that Mrs. Radtke could go home. Furthermore, Supervisor Christie Handlon informed Steward Michael Booth that she was allowing Sandra Radtke to go home. The Union charges management with the unjust Disqualification of Sandra Radtke."[6]

The record contains a Disposition of Grievance No. 2015-0093, signed by International UAW-Chrysler Department Representative Michael Spacil and representatives of FCA US, LLC, indicating that the UAW withdrew the grievance without precedent and that the Company consented to the withdrawal. This disposition is dated September 14, 2015.[7]

On March 11, 2016, Local Union 961 filed Grievance No. 2016-C0011 on behalf of Sandra Radtke asserting that the Company failed to follow the collective bargaining agreement in connection with the disciplinary action issued to Radtke on March 2, 2015. The grievance states:

> "The Union is protesting Management's action of failing to follow the Agreement when it comes to issuing discipline. The Union is further

[5] Record, p. 13.

[6] Record, p. 14.

[7] Record, p. 21.

> protesting the current practice of invoking long-term open ended suspensions (Disqualification). The grievant was mailed a disqualification notice discipline while she was off work and in the process of applying for a Medical Leave of Absence. The Local Union was notified on 3-2-15 of this fact and submitted Grievance #2015-0093. Her record was adjusted on 3-3-15 to reflect a disciplinary suspension for this disqualification. The Local Union recently learned that the above-referenced grievance has been withdrawn, and upon checking her record learned that Sandra Radtke had been re-coded now as terminated. The Company has a responsibility per the Agreement with UAW Local 961 to make a final disposition on suspensions no later than 5 days from the date of the incident unless additional circumstances require additional time. Radtke was denied State unemployment benefits that she was entitled due to the fact that she was listed in the system as serving a disciplinary suspension. These types of open-ended suspensions violate the intent of the Agreement and put undue hardship on the employee. Further, as of the writing of this grievance neither party (Radtke or the Local Union) has received notice from the Company per Section 40 that she has been terminated. We charge management 5315 with violation of the above-referenced sections of the Agreement."[8]

Grievance No. 2016-C0011 demanded that Radtke be reinstated with full redress. It further requested that management refrain from long open-ended disqualifications and notify the affected employees and their representatives of decisions to discharge. Management denied Grievance No. 2016-C0011 on April 7, 2016 based on the following answer:

> "The termination of Sandra Radtke was proper. The case was withdrawn after extensive discussions between FCA Corporate Union Relations and the International UAW. Further, any attempts by the Union to revisit the grievant's discharge shall be in accordance with Letter 7 of the National PM&P Agreement."[9]

Letter (7) of the National PM&P Agreement provides for the reinstatement of grievances that have been withdrawn prior to arbitration if the IEB, the PRB, or the CAC, upon review of an appeal from the settlement of the grievance, determines that the disposition was improper.

Radtke appealed the decision to withdraw Grievance No. 2015-0093 to the International Executive Board (IEB) on April 22, 2016. In her letter to the IEB, Radtke also asked for information on the status of the Union's efforts to get her reinstated in

[8] Record, p. 28.

[9] Record, p. 28.

some capacity.[10] Radtke explained that she had two grievances pending in connection with her disqualification on March 2, 2015. She wrote:

> "I have spoken with several union representatives over the last year who have come and gone and who have worked on my file in one capacity or another. The last union official I spoke with was Tim Taylor who told me that he had put in two grievances on my behalf in an attempt to get my job back, but I have not heard from Mr. Taylor or the union since about March 11, 2016 when he told me about the grievances."[11]

In support of her appeal from the disposition of Grievance No. 2015-0093, Radtke gave the following account of the event that led to her disqualification:

> "I do not understand how my attempts to seek medical attention while at work led to my termination. Everyone involved was aware that I was being treated for anxiety and depression at the time and that I was under my doctor's care. My condition was a result of work-related harassment, which I do not think I need to go into detail here, as I again want my job back. However, I can certainly rehash all those circumstances at any point if need be. I believe the union and management also have a copy of a doctor note from my doctor, Stephen Swetech, D. O. about my treatment. Just in case, I have enclosed another copy of the note with this letter."[12]

The record contains the following note from Dr. Stephen M. Swetech dated October 16, 2015:

> "Here today and found medically fit for full duties. Sandra did leave work early for anxiety on 2/25/15. Seen on 3/2/15 by Dr. Klumkowski for anxiety and depression. Seen at Con Center on 3/2/15 as well. She had schedule difficulty to see me during that period."[13]

Radtke argued that she left work on February 25, 2015 to seek medical attention so that her absence should have been covered by the Family and Medical Leave Act (FMLA) or some similar medical policy.

President Dennis Williams's staff sent Radtke an inquiry requesting further details regarding the disposition of her grievance.[14] In response to this inquiry, Radtke

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[10] Record, pp. 29-30.

[11] Record, p. 29.

[12] Record, p. 29.

[13] Record, p. 22.

[14] Record, p. 31.

reported that her grievance was settled by International Representative Michael Spacil. She said she was notified of the disposition of the grievance by certified mail, which she received on February 29, 2016.[15] Radtke gave the following description of the communications she received from the International Union regarding her case:

> "I had 3 International Reps on my case (Andy Ackles, Paul Caucci & Mike Spacil). All 3 knew all of the details. Andy called me and stated he would have something worked out for me. Next, Paul called me and stated the same thing. Neither one did anything. The last contact was from Mike; he sent me a letter stating my grievance was withdrawn."[16]

President Williams's Administrative Assistant Rick Isaacson wrote to Radtke on June 2, 2016, that her appeal could not be considered because it was not filed within the time limits established by Article 33, §4(c) of the International Constitution.[17]

Grievance No. 2016-C0011 was referred to Step 4 of the grievance procedure on July 11, 2016.[18] On August 26, 2016, International Representative Rashon Byrd notified Radtke that the Region had referred her grievance to the UAW-FCA Department for further consideration.[19] Representative Byrd sent a memorandum to International Representative Michael Spacil describing the issue of concern to the Union in connection with Grievance No. 2016-C0011. The memorandum states:

> "Sandra Radtke – Sandra's supervisor gave her permission to leave work. According to Sandra, she first requested to go to medical because she was having a panic attack, her supervisor then allowed her to go home. Sandra stated that she doesn't recall being told to bring back a doctor's note upon her return, once she returned to work no one ever asked for a doctor's note until she was called to the office. Sister Radtke was suspended for a little over five months before being terminated."[20]

On January 12, 2017, Representative Spacil reached the following agreement with FCA Representative Andrea Beauvais with regard to MAP disqualifications:

> "1. ZF Disqualification is reviewed by Anthony Scarletta/company labor rep in Marysville;

[15] Record, p. 33.

[16] Record, p. 34.

[17] Record, p. 36.

[18] Record, p. 38.

[19] Record, p. 43.

[20] Record, p. 44.

2. Review of DQ is done within 10 working days unless there are extenuating circumstances requiring additional time to investigate;

3. If DQ is deemed just and proper, the employee will be dispositioned as 'terminated' in our system and notified of the termination by company representative via certified mail in a reasonable timeframe and per the contract."[21]

Representative Spacil withdrew Grievance No. 2016-C0011 on January 17, 2017, based on the following disposition:

> "The discharge case for Sandra Radtke was withdrawn at the Appeal Board on 9/14/15 after extensive discussions between the Company and the Union (Appeal Board Case #30569). Any attempts to revisit this discharge by the Union shall be in accordance with Letter 7 of the National PM&P Agreement.
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> The practice of long-term disqualifications in Marysville was also discussed. FCA and ZF discussed the practice of employee disqualifications including how to ensure timely notification and disposition of employee terminations."[22]

Representative Spacil notified Radtke of the disposition of Grievance No. 2016-C0011 on January 25, 2017. Spacil explained that he made the decision not to arbitrate the grievance because the settlement provided the same relief that the Union would likely receive at arbitration.[23]

Radtke appealed the decision to withdraw her grievance to the IEB on February 21, 2017. In support of her appeal, Radtke pointed out that she has more than 21 years of seniority with the Company. She reported that the Company has now listed her as terminated although FCA never sent her any notification confirming her termination. Radtke maintained that the withdrawal of Grievance No. 2015-0093 protesting her disqualification had nothing to do with the grievance protesting her termination. Radtke provided the following explanation of the basis for her subsequent grievance:

> "My appeal is based on my belief that per the Agreement my rights were violated because the Company allowed ZF to discipline me outside the guidelines of the Agreement. I was placed on disqualification beginning 2-27-15, which in essence is a long-term suspension. Disqualification is not even something discussed in the National Agreement and to the best of my knowledge is particular to the Marysville Axle Plant. Since the

[21] Record, p. 57.

[22] Record, p. 58.

[23] Record, p. 59.

> withdrawal of Grievance #2015.0093, I was left in limbo. I called my Union representatives at the Local Union to ask what happens next because I received the notification that my disqualification grievance had been withdrawn and I was informed that my employment record had been changed to reflect that I had been terminated. As I stated earlier, to date I have not been notified of such a fact by the Company. That is why I filed Grievance #2016.C0011. Per Section 40 of the Agreement, I am entitled to be notified that I have been discharged. Mr. Spacil treated this grievance as if it were reinstating the earlier grievance but that one dealt with an improper disqualification and the other improper discharge."[24]

Radtke stated that the settlement of Grievance No. 2016-C0011 did nothing to address the issue of how she was terminated or the fact that she is still out of a job after 20 years with the Company.

International President Dennis Williams's staff determined that a hearing was unnecessary on Radtke's appeal. Acting on behalf of the president, staff prepared a report to the IEB on the matter based on information received from Radtke, Region 1, and the UAW-Chrysler Department.[25] Staff's report to the IEB contains Representative Spacil's notes from his interview of Radtke about the incident that led to her disqualification on March 3, 2015. The interview was conducted on November 1, 2016. Spacil reported that Radtke gave the following account of the events on February 25, 2015:

> "…Sandra described the workday on 2/25/2015. She was one month into the plant after a previous eight months DLO. She was four hours into her shift. The supervisor was pressuring her to keep on cycle time. She asked for more training. Supervisor started helping her do the job. Sandra felt like she was being harassed. Started feeling like she was going to have a panic attack. Rotated to another job but supervisor continued watching and pressuring Sandra. Once break time came, Sandra started inquiring about going home with Steward Mike Booth. Mike went to the supervisor but supervisor said they are shorthanded and cannot let her go home. Mike came back to Sandra and said supervisor won't let her leave and asked if Sandra wanted to try going to medical. Sandra said let's try it. So Sandra went to supervisor and asked, but supervisor said no because it's not work related. While Sandra was on her job, Mike came to see her so she told him supervisor will not let her go home. Mike went back to talk to the supervisor. Mike came back to Sandra and said the supervisor is going to send a floater (Rich) to take her place so she can go see her doctor. Supervisor told her she is going to let her leave because she cannot hold her against her will. Sandra left. Tried to see a Doctor Stephen Swetech but he was unavailable. Sandra went

[24] Record, pp. 70-71.

[25] Record, p. 61.

> back to work the next day, February 26, with no questions asked. Friday at the end of her shift the supervisor took her to HR and they questioned her about leaving early. Sandra went to work on Sunday evening and the Company was prepared to disqualify her for not bringing the proper paperwork from her doctor. Mike Booth called her and told her not to come in to work because they were going to disqualify her. Sandra immediately attempted to apply for S/A, but her doctor couldn't process the paperwork, because Sandra had been disqualified. Sandra will attempt to get a letter from the doctor about her attempting to see him that day. Tim (by phone) said he would rather see us establish an improper disqualification and ultimate discharge."[26]

Spacil also submitted a report responding to the specific allegations in Radtke's appeal. Spacil stated that Paragraph (40) of the PM&P Agreement, which describes management's responsibility to provide notice of disciplinary actions, does not set a time limit on suspensions. Spacil acknowledged that FCA failed to fulfill its obligation under Paragraph (40) of the UAW-Chrysler PM&P Agreement to notify Radtke when her disqualification was converted to termination, but he explained that the company refused to discuss this aspect of the grievance because management maintained that all aspects of Radtke's termination had been settled by the withdrawal of Grievance No. 2015-0093. Spacil wrote:

> "Response: Section (40) of the Production, Maintenance and Parts Agreement requires the Company to notify an employee when they have been discharged. In Sister Radtke's case, the Company failed to fulfill that requirement. However, the Company refused to discuss reinstating Sister Radtke due to the withdrawal of a previous grievance to reinstate her.[27]

Spacil's report goes on to address Radtke's complaint about having been left in the limbo of disqualification for so long and her argument that there is no basis for disqualification in the PM&P Agreement. Spacil explained that although Radtke was coded as a suspension after March 2, 2015, she was essentially discharged. Spacil's report states:

> "…Although the time period Sister Radtke was coded as a discipline suspension, she was notified by local management that she was being disqualified. Local management uses the term Disqualification when they have no intention of reinstating the employee. Disqualification of an employee is the highest level of discipline available to local management. Sister Radtke was notified within a reasonable time by local management that she was being disqualified."[28]

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[26] Record, p. 74.

[27] Record, p, 72.

[28] Record, p. 72.

Spacil went on to explain that under the arrangement between ZF and FCA, ZF does not have the authority to terminate employees. FCA has retained the sole authority to discharge an employee. ZF uses disqualification to suspend employees while the matter is being investigated. Spacil wrote:

> "On 6/7/2010, sister Radtke transferred to the ZF Marysville Axle facility in Marysville, MI. ZF manages FCA employees at this location. Due to the arrangement, ZF management does not discharge FCA employees. They use the disqualification process and then investigate the case with FCA, who ultimately has the responsibility to either reinstate or discharge the employee."[29]

Spacil provided the following description of the steps leading up to Radtke's discharge:

> "While still on disqualification, Grievance 2015-0093 was withdrawn by the Chrysler Department. As a result, the Company (FCA) converted Sister Radtke's disqualification to a discharge on 1/29/2016. Sister Radtke was on a disqualification from 3/3/2015 to 1/29/2016. The company did not provide Sandra with notification that she has been discharged from the Company. Grievance 2016-C0011 was settled with the Company. The settlement provided for the Company to either reinstate or discharge an employee within 10 scheduled working days from a disqualification. The Company refused to negotiate terms to reinstate Sandra and referred to Letter 7, Reinstated Grievances of the Letters, Memoranda, and Agreements."[30]

Spacil also provided a history of Radtke's employment with Chrysler and ZF. He wrote that Radtke had no discipline on her record prior to transferring to the MAP, but she had difficulty following ZF's standards of conduct. This difficulty and the longer travel time to the plant created excessive stress for Radtke. As a result, her disciplinary record escalated to the disqualification stage. She was previously suspended for eight months. The Appeal Board succeeded in having her reinstated with an award of back pay, but her problems continued. Spacil gave the following description of Radtke's status when her second grievance reached the Appeal Board step:

> "…One month after reinstatement, she tried to get excused to leave work and the supervisor denied it, so she left unexcused with a requirement to return with a doctor's note. She returned the next day without a doctor's note. At the beginning of the first shift of the next week, Sandra was disqualified once again. She has been off work since then, including a withdrawal of the grievance at the Appeal Board. The Local now has a

[29] Record, p. 72.

[30] Record, p. 72.

> grievance at the Appeal Board for the Company not following the proper procedure for discharging Sandra."[31]

In their report to the IEB, President Williams's staff acknowledged Radtke's claim that she believed she had permission to leave the plant but reported that the Union could not persuade management that was the case.[32] Staff held that the only question presented by the appeal was whether the decision to settle Grievance No. 2016-C0011 was motivated by impermissible factors or devoid of a rational basis. Staff concluded that it was not. Staff commented:

> "It remains unfortunate that while the current grievance settlement achieved by the Union lessens the time that an employee can be placed on disqualification status by ZF management (10 days), the Company still refused to retroactively discuss the appellant's discharge status because her initial discharge grievance had been withdrawn by the Union (9-14-15). And because the appellant failed to perfect a timely appeal to the International Union, her window for appealing the initial discharge grievance was considered as closed. In addition, as we have cited, even though the latest Grievance No. 2016-C0011 was settled by the Union to benefit future employees with the issue at hand, the appellant's discharge status remains unaltered."[33]

Staff found nothing in the record that would call into question Representative Spacil's conclusion that he could not obtain a better settlement for Radtke before an arbitrator. Staff denied Radtke's appeal and their report was adopted by the IEB as its decision.

President Williams provided Radtke with a copy of the IEB's decision on April 27, 2017. Radtke appealed the IEB's decision to the Public Review Board (PRB) on May 25, 2017. The PRB heard the parties in oral argument on December 16, 2017.

ARGUMENT

A. Sandra Radtke:

I am employed by FCA at the Marysville Axle Plant managed by ZF. I have over 21 years of seniority. I am currently listed as terminated even though to date FCA has never sent me any notification that my employment has been terminated. I was placed on disqualification on March 2, 2015 for leaving the plant without permission on February 25, 2015, but the record will show that I had permission to leave the plant on that night in order seek medical attention. The Local Union filed Grievance No. 2015-0093 to protest my improper disqualification. Grievance No. 2015-0093 was not a

[31] Record, p. 75.

[32] Record, p. 78.

[33] Record, p. 80.

discharge grievance because at the time it was written, I had not been discharged. There is nothing in the collective bargaining agreement between FCA and the UAW about disqualification.

Three different International Representatives were involved in the processing of Grievance No. 2015-0093, Andy Ackles, Paul Caucci, and Mike Spacil. All three of these representatives told me that they were trying to work something out for me. On February 29, 2016, I received a letter from Representative Spacil informing me that Grievance No. 2015-0093 had been withdrawn. I called my Local Union Steward Michael Booth and asked what the next step should be. Booth consulted the FCA Dashboard posted on the internet and discovered that my status had been converted from suspended to terminated on January 29, 2016. We immediately filed Grievance No. 2016-C0011 protesting the termination. In responding to my appeal, International Representative Spacil has confused the two grievances. Grievance No. 2015-0093 was about my improper disqualification. Grievance No. 2016-C0011 addressed my discharge.

The disqualification issued to me on March 2, 2015, asserts that I violated the terms of my conditional reinstatement letter. I had been disqualified on May 22, 2014, based on trivial complaints. I was being bullied by the supervisor. She would cite me for things beyond my control such as complaining that my work area smelled like urine. At one time, she wrote me up for wearing yoga pants to work. My disqualification in May 2014 was not supported by the disciplinary procedure in the collective bargaining agreement. The Local Union grieved my disqualification and I was returned to work and paid $30,000. The conditional reinstatement letter was just a document I had to sign upon my reinstatement. There was never any understanding that my reinstatement was probationary.

I returned to work on January 25, 2015, but I was not assigned to the job I previously held. I was working on the line and there were many problems on that line. The problems were not specifically connected to my operation; they held a plant-wide meeting to discuss the problems on that line. In addition to that, I was not properly trained for the job. On the day I left the plant, I was having trouble because I did not know how to do my job. I started to have a panic attack. I left the plant on Wednesday night and returned to work on Thursday. No one informed me that I needed to provide medical documentation when I returned to work. No one raised an issue about medical documentation when I reported to work on Thursday. On Friday, February 27, at 5 a.m., I was called into the production office and disqualified.

Grievance No. 2016-C0011 was written to protest my discharge. I would have had no reason to file such a grievance prior to that because I was not discharged. As a result of my status as disqualified, I was considered an active employee and therefore ineligible to collect unemployment benefits. The Union was still negotiating for my reinstatement after Grievance No. 2015-0093 was withdrawn. I received a telephone call from International Representative Mike Spacil on January 17, 2017, informing me

that my grievance had been sent back to the Local Union for resolution. There is a record of this telephone call in the IEB's decision.[34]

B. Michael Booth on behalf of Sandra Radtke:

I informed management that Radtke needed to leave work in order to seek medical attention at around 2 a.m. on Wednesday, February 27, 2015. The company was not shorthanded that evening. There were more than enough employees to perform the work on the line. Management told me she could not be excused because her medical condition was not work related. Nevertheless, she did not leave without permission. Her departure was coded HOMR (Home Early—Request). That is not the same as leaving the plant without permission. An employee who did that would be coded AWOL. HOMR is not a violation of the Code of Conduct; it happens all the time. There is an Urgent Care facility for Chrysler employees who have a medical emergency on the job that is not work related. Radtke's conditional reinstatement letter has no bearing on the situation. No one regarded Radtke's departure from the plant on February 27 as a violation of shop rules. There was also no discussion about medical documentation at the time. The Company does not have a consistent practice with regard to the documentation required to establish a medical excuse when an employee has to leave early in order to seek medical attention. No one said anything about the need for such documentation on Wednesday. When Radtke was called to the production office on Friday, she spoke with the attendance representative about her medical condition. She is being treated for depression and panic attacks. She went to the Urgent Care center on Monday, because her doctor was not available. She saw her regular doctor on Tuesday.

Grievance No. 2015-0093 is not a discharge grievance. This grievance addressed the improper disqualification. Later, after this grievance was withdrawn, FCA changed their records to reflect a termination. Even then, FCA did not notify Radtke that her employment had been terminated. When we learned that FCA had converted the disqualification to a discharge we filed Grievance No. 2016-C0011. Grievance No. 2016-C0011 protested the improper discharge.

FCA has now taken the position that it will only discuss the discharge if we obtain an order from the PRB to reinstate Grievance No. 2015-0093, so we are asking the PRB to order that grievance reinstated so that Radtke's wrongful discharge can be reversed. We believe that the PRB has jurisdiction to order such a reinstatement because Representative Spacil's resolution of the two grievances lacked a rational basis. The International Union clearly intended to revisit the issue of Radtke's termination after the company's abuse of the disqualification process was addressed, but Spacil used the wrong process to dispose of Grievance No. 2015-0093. The withdrawal of grievances is governed by Section 30, paragraph (b) of the PM&P Agreement, which states:

[34] Record, p. 77.

> "A grievance may be withdrawn either without prejudice or without precedent. If without prejudice, it may be reinstated within three months of withdrawal. If so withdrawn, all financial liabilities shall be cancelled. If the grievance is reinstated, the financial liability shall date only from the date of reinstatement. Where one or more grievances involve a similar issue, those grievances may be withdrawn without prejudice pending disposition of the appeal of a representative case. In such event, the withdrawal without prejudice will not affect financial liability. If a grievance is withdrawn without precedent, it may not be reinstated, but the withdrawal shall not serve as a precedent in any other case, although the withdrawal may be referred to by management in future cases."

The record shows that Grievance No. 2015-0093 was withdrawn without precedent. Management maintained that this foreclosed further discussion of the justification for Radtke's disqualification. That was not the Union's intention. That was a mistake.

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

On March 2, 2015, Local Union 961 filed Grievance No. 2015-0093 protesting Radtke's disqualification. ZF's use of the term disqualification reflects the unique relationship between ZF and FCA at the Marysville facility. Although the Marysville plant is operated by ZF, its employees are still FCA employees. Thus, when ZF seeks to terminate an employee from its facility, it must first "disqualify" that employee so that FCA can determine whether the circumstances justify termination. The disqualification is commonly understood as a disciplinary layoff pending other action. It is ultimately up to FCA to make a final decision with respect to the termination of its employees and in this case FCA decided that the discipline assessed was appropriate.

So although Grievance No. 2015-0093 protested Radtke's disqualification, that disciplinary action was just the initiation of her termination. The subject of the grievance was whether the circumstances justified termination. Grievance No. 2015-0093 was referred to the UAW-Chrysler Department Appeal Board on August 4, 2015, and assigned to International Representative Andy Ackles. According to notes provided by Ackles, FCA took the position that Radtke did not have permission to leave the plant on February 25, 2015, so that her departure violated the terms of her prior conditional reinstatement agreement. Ackles's notes also indicate that the International Union was attempting to negotiate an alternate remedy for Radtke in light of ZF's refusal to reinstate her, such as placing her at a different location. During this period, FCA produced the document dated September 14, 2015, withdrawing Radtke's Grievance No. 2015-0093 and forwarded that disposition to the UAW-Chrysler Department for processing. This disposition of the grievance was put on hold during the 2015 national contract negotiations.

On September 11, 2015, Servicing Representative Paul Caucci took over the negotiations on Radtke's behalf. Caucci reported that on October 8, 2015, FCA manager Jamie Holzhausen requested documentation to reflect the medical treatment Radtke received for the condition that forced her to leave the plant on February 25, 2015. Radtke made an appointment with her doctor for October 16, 2015, in order to obtain verification of her treatments.[35] When the 2015 negotiations concluded, Radtke's grievance was assigned to Representative Michael Spacil. Spacil initiated discussions with FCA management about the possibility of returning Radtke to work. He met with FCA manager Holzhausen in January 2016, but Holzhausen insisted that the medical documentation Radtke supplied was inadequate because it did not establish that she had seen a doctor on the day she left the plant. At this point, Spacil concluded that he would not be able to obtain Radtke's reinstatement at ZF through negotiations with FCA management, so he withdrew Grievance No. 2015-0093. After Spacil withdrew Grievance No. 2015-0093, the UAW-Chrysler Department processed the disposition dated September 14, 2015, and mailed it to Radtke on February 15, 2016.

After the withdrawal of Grievance No. 2015-0093, Local Union 961 filed Grievance No. 2016-C0011 on Radtke's behalf protesting ZF management's failure to follow the UAW-Chrysler PM&P Agreement in connection with Radtke's termination. One of the remedies sought by the Union with this grievance was an end to the use of disqualification to postpone resolution of an employee's disciplinary grievance. The second request demanded that appellant be returned to work and made whole for all losses. The parties conducted lengthy discussions on Grievance No. 2016-C0011 and reached an agreement about the ZF's disqualification practices. The parties agreed that ZF and FCA would discontinue the practice of long-term, open ended suspensions. FCA agreed to complete investigations within 10 days of a suspension. The parties could not reach an agreement to reinstate Radtke, however. International Representative Spacil withdrew the portion of Grievance No. 2016-C0011 demanding that Radtke be returned to work, because he believed the Union had obtained all of the relief it could have received at arbitration.

While it may be true in a technical sense that appellant's disqualification was separate from her termination, the grievance defending the conduct that led to the discipline was Grievance No. 2015-0093. That grievance was withdrawn. Radtke did not file a timely appeal from its withdrawal. Under these circumstances, it was rational for Spacil to conclude that the merits of the disciplinary grievance had been resolved and that FCA's conversion of her disqualification to a discharge was a formality that did not revive the claim that her termination was unwarranted.

The arrangement between ZF and FCA is a difficult one for the Union, because the Union has no direct contractual relationship with ZF. If there were no ZF, however, there would have been no jobs for those former Detroit Axle Plant employees who were unable to secure employment at one of Chrysler's other plants when the Detroit Axle

[35] Record, p. 142.

Plant closed. The length of time that Radtke was coded as "disqualified" amounted to an abuse of the grievance resolution process. The time required for FCA to investigate the reasons for discharge varies, but the intent was never to leave an employee on a long-term disciplinary layoff such as occurred in Radtke's case. Disqualification is the term ZF uses to indicate that it does not intend to reinstate an employee. As a practical matter, therefore, Radtke's disqualification was equivalent to a termination. Nevertheless, the ambiguity about her employment status put her in a situation where she could not obtain benefits available to employees who have been terminated. The Union pursued every avenue in its efforts to negotiate some relief for Radtke, but they were unable to obtain a settlement that would have returned her to work.

The Union did succeed in negotiating a settlement that eliminated the kind of lengthy, unresolved disqualification that Radtke experienced. The settlement provided a defined period for FCA to review disciplinary layoffs so that other disqualified employees are not left without a permanent decision for an indefinite length of time. It is a shame that an employee with 21 years of seniority has been terminated, but we do not believe any further remedy would have been obtained if Radtke's case had been submitted to the Impartial Chairperson for arbitration. Radtke had already been brought back from disqualification resulting from her trouble performing her assignments at ZF. Leaving the plant without a supervisor's permission is a Category I offense, subject to immediate discharge. Leaving the plant as a result of a medical issue might not always result in discharge, but in the context of a conditional reinstatement letter, the arbitrator would be very unlikely to overturn the discipline. Representative Spacil reviewed previous rulings under the UAW-Chrysler PM&P Agreement, and he found no record of any decision reinstating an employee who was discharged while working under the terms of a last chance reinstatement agreement. The numerous meetings between representatives of the FCA and the UAW culminated in an agreement to end the practice of indefinite suspensions. While it is unfortunate that appellant could not benefit from this settlement, it cannot be said that the settlement on either issue was devoid of a rational basis.

C. Rebuttal by Timothy Taylor on behalf of Sandra Radtke:

The conditional reinstatement letter does not govern Radtke's situation because she did not violate the terms of the letter. Her absence was not unexcused. Steward Michael Booth was right there with her during this entire episode. He would never have allowed her to leave the plant on the night of February 25, 2015, if he thought management was going to call this leaving the plant without permission. She had permission to leave on that night.

The rule cited to justify Radtke's disqualification states: "Leaving the work area or plant premises during working hours without the permission of your supervisor." This rule has never been applied in the way it was applied to Radtke's request to go home early. Furthermore, it is not the practice of ZF's management to insist on a doctor's excuse immediately upon an employee's return to work following such a request. The entire case against Radtke rests on unspoken rules and obligations. It is not clear what

management expected Radtke to do on the night of February 25, 2015. She was under stress to the point that she could not physically return to work. The supervisor did not indicate what she was supposed to do, but only said she could not force her to stay. How could Radtke possibly have put this in the context of a conditional reinstatement letter? She was merely asking to go to medical. That is not a violation of any rule.

DISCUSSION

A. Timeliness

Radtke's appeal of the Union's handling of her two grievances protesting her disqualification and discharge is timely. She is not precluded from raising any issues related to the termination of her status as an employee of FCA as a result of her failure to appeal the disposition of Grievance No. 2015-0093 within the time limits for appeals established in Article 33, §4(c) of the UAW Constitution. Article 33, §4(b) of the Constitution states that the time limit applicable to appeals begins to run from the time the appellant first becomes aware, or reasonably should have become aware, of the action or decision being appealed. There is nothing in the record to establish the date when Radtke received notification that her employment at FCA had been terminated and that the Union was no longer pursuing a grievance protesting her termination.

The dates on the documents in the record reflecting actions taken by the International Union with respect to Radtke's grievance are inconsistent with the communications Radtke received. The record indicates that Grievance No. 2015-0093 was withdrawn on September 14, 2015. It was this disposition that FCA management claimed foreclosed any further discussion of her discharge. If that were the case, Radtke's employment with FCA was effectively terminated in September of 2015. Yet, the International Union did not communicate with Radtke about the status of Grievance No. 2015-0093 until mailing her a copy of the disposition in February 2016, which she received on February 29. Radtke had no reason to suppose that the disposition of Grievance No. 2015-0093, which from her standpoint occurred in February 2016, concluded the Union's efforts to seek her reinstatement at ZF, because the International Union continued to pursue that remedy in connection with Grievance No. 2016-C0011. During oral argument, it was revealed that International Representative Michael Spacil was not even involved in the processing of Radtke's grievance when the document disposing of Grievance No. 2015-0093 was created. He had no control over the language of that disposition stating the withdrawal was without precedent.

The IEB's decision reports that Representative Spacil interviewed Radtke about the circumstances leading to her discharge on November 1, 2016. In addition, notes in the IEB's decision support a conclusion that Representative Spacil was still communicating with Radtke about the merits of her discharge grievance as late as January 2017. In response to our inquiry about the International Union's communications with Radtke, President Williams's staff acknowledged that Radtke had never received unequivocal notification that her employment at FCA had been

terminated.[36] Radtke first received notice that the International Union had abandoned its efforts to have her reinstated at the MAP on January 25, 2017. That is the date when the Constitutional time limits on her appeal began to run, regardless of any linguistic maneuvers on the part of the two corporate entities involved in negotiations with the Union over her status.

As soon as she learned that Grievance No. 2015-0093 had been withdrawn, Radtke contacted her Local Union representatives for advice on how to proceed. The Local Union representatives responded by filing Grievance No. 2016-C0011. Radtke was entitled to rely on the advice of her Local Union representatives regarding the next appropriate step after Grievance No. 2015-0093 was withdrawn, regardless of whether this was, in fact, the correct procedure. Radtke consistently did what she was instructed to do with respect to the pursuit of her grievances and her appeal from their disposition.

Radtke's attempt to appeal the withdrawal of Grievance No. 2015-0093 to the IEB on April 22, 2016, was prompted by FCA management's insistence that the Union obtain an order from the IEB reinstating Radtke's grievance before they would consider the merits of her claim to have been wrongfully discharged. The IEB's initial ruling that Radtke's appeal was untimely created the impression that the Union might have been able to negotiate Radtke's return to work if only she had filed a timely appeal from the withdrawal of Grievance No. 2015-0093. As we learned during oral argument, however, that option was no longer available after February 2016. ZF regarded its disqualification of Radtke to be a final decision, not a provisional act subject to challenge. The Union's presentation during oral argument confirmed that it has little ability to influence decisions made by ZF management.[37] By April 22, 2016, it was already clear that the Union was not going to be able to negotiate Radtke's reinstatement at the MAP. The only possible avenue to achieving this resolution of her grievance would have been to submit the matter to arbitration. The letter in the PM&P Agreement authorizing the Union to reinstate grievances limits the Company's exposure to liability in cases where an arbitrator finds that an employee was wrongfully discharged.[38] FCA management

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[36] Record, 109.

[37] We previously encountered the troubled labor relations situation at the MAP in *Margaret Mock v. UAW-Chrysler Department,* PRB Case No. 1735 (2016). Our decision in that case reports the testimony of Regional Representative Greg Bauer that ZF is anti-union and that there are numerous unresolved issues in the plant affecting represented employees. Employees with contractual rights to transfer out of the MAP to other Chrysler facilities were encouraged to do so. (Case 1735, at 14) Margaret Mock, now a Committeeperson at the Local, was present during oral argument on Radtke's appeal and spoke about this issue.

[38] Letter (7) Reinstated Grievances in the PM&P Agreement states, in pertinent part as follows:

> "It is agreed, however, that the Corporation will not be liable for any claims for damages, including back pay claims, arising out of the grievance that either (i) are already barred under the provisions of the aforementioned National Agreements at the time of reinstatement of the grievance or (ii) that relate to the period between the time of the original disposition and the time of reinstatement as provided herein. It is further agreed that the reinstatement of any such grievance shall be conditioned upon the prior agreement of the Union and the employee or employees involved that none of them will

insisted on the reinstatement letter before it would entertain discussions that might lead to arbitration. FCA's demand for a reinstatement of grievance letter was not an invitation to enter into further settlement negotiations to reduce the discipline imposed by ZF.

B. Union Decision Not to Pursue Arbitration

The question now presented by Radtke's appeal is whether International Representative Spacil's conclusion that he could not persuade an arbitrator to return Radtke to her position at the MAP lacked a rational basis. Where a grievance involving the discharge of a high seniority employee has considerable merit, the Union representative responsible for processing the grievance must articulate a clear and substantiated basis for withdrawing the grievance once it becomes clear that no settlement can be obtained through negotiations.[39] The record presented by this appeal, therefore, raised serious concerns about Representative Spacil's decision to abandon his efforts to seek Radtke's reinstatement, despite the difficult bargaining situation at ZF. If the Union could establish that Radtke had, in fact, experienced a medical emergency requiring immediate attention on the night of February 25, 2015, Radtke would have had a reasonable case to present to the arbitrator.

During oral argument, Spacil testified that he based his decision to accept the settlement Grievance No. 2016-C0011 heavily on the fact that Radtke was working under the terms of a conditional reinstatement letter requiring strict compliance with ZF's Standards of Conduct and plant shop rules. The conditional reinstatement letter does not, by itself, provide a rational basis for Representative Spacil's decision not to pursue Radtke's reinstatement. We would not endorse the position that a conditional reinstatement letter deprives a high seniority Union member of access to arbitration to challenge discharge for minor deviations from published rules and regulations. Although the International Union has observed that leaving the plant without permission is listed as a Category I violation, it does not seem to rise to the level of other rules included in that Category, such as possession of firearms and explosives or stealing Company property. Furthermore, it is not immediately apparent that Radtke's departure from the plant on February 25, 2015 violated the rule.

During the processing of Radtke's two grievances, ZF and FCA management gave various and conflicting descriptions of the violation that prompted Radtke's disqualification. The notice of disciplinary action issued on March 2, 2015, charged Radtke with leaving the plant without permission, but the testimony of the Local Union Steward present on the evening of February 25, 2015, established that she had permission to leave the plant on that date, even if her absence that evening was considered unexcused.

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thereafter pursue such claims for damages against the Corporation in the grievance procedure, or in any court or before any Federal, provincial, state, or municipal agency."

[39] *Dailey v. Region 2B,* PRB Case No. 1681, 14 PRB 933 (2013), at 945.

In response to our inquiry about Radtke's appeal, the International Union reported that Manager Jamie Holzhausen informed Representative Spacil that FCA was denying Radtke's grievance because she did not bring documentation to show that she had seen a doctor on the day she left the plant.[40] But that claim has never been established as a basis for Radtke's discharge. Management may have questioned the sufficiency of Radtke's medical documentation during her disciplinary hearing on Friday, February 27, 2015, but there is no record of what took place at that meeting. In any event, there is no published rule or established practice that such documentation is required when an employee asks to leave work to seek medical attention.

The Local Union representatives testified during oral argument that failure to produce proof of immediate medical attention has never been used as a basis for discharge. The only evidence of this rule is the flow chart that was introduced into the record in response to our inquiry.[41] During oral argument, we learned that these flow charts are internal company documents that have not been shared with employees or the Union. They have no relevance to the merits of Radtke's discharge grievance.

What is of relevance are Representative Caucci's notes indicating that in October 2015 FCA Manager Jamie Holzhausen asked him to provide documentation regarding Radtke's treatment for the condition she claimed forced her to leave work in order to seek medical attention.[42] In response to this request, Radtke provided Dr. Swetech's letter dated October 16, 2015.[43] Dr. Swetech's letter does not indicate that he treated Radtke for a panic attack or that she had ever experienced such an episode. It also does not appear that Radtke informed her supervisor that she was having a panic attack when she asked to leave the plant on the night of February 25, 2015. The grievance protesting Radtke's disqualification reports that she asked to go to medical because she was sick to her stomach with stress. The medical documentation Radtke submitted to explain her departure states that she was being treated for anxiety and depression.

The first mention in the record of a panic attack is Rashon Byrd's memorandum dated August 26, 2016, referring Radtke's case to the International Union.[44] If Radtke had presented sufficient documentation to establish that she was under a doctor's care for frequent panic attacks requiring hospitalization, and that she had requested an accommodation for the condition, she might have been able to claim that her disqualification violated the Americans with Disabilities Act (ADA). Even in the absence of such a request for accommodation, the Family and Medical Leave Act (FMLA) might well provide protection to an employee suffering a severe unforeseen medical

[40] Record, p. 107.

[41] Record, pp. 139-140.

[42] Record, p. 142.

[43] Record, p. 22.

[44] Record, p. 44.

emergency in the workplace.[45] According to the International Union's response to our inquiry about this appeal, Manager Holzhausen requested additional time to evaluate Radtke's grievance in order to respond to a charge she filed with the National Labor Relations Board.

Management's request for documentation of Radtke's medical condition was apparently for the purpose of evaluating the possibility that FCA could be found liable to Radtke under federal law for the way it handled her request to seek medical attention. But regardless of what motivated management's request, the problem with Radtke's medical documentation is that it does not establish that she experienced a medical emergency on the night of February 25, 2015. Once Holzhausen was satisfied that Radtke could not produce adequate medical documentation to support a claim against FCA under any federal statute, he informed the Union representative handling her appeal, by this point Representative Michael Spacil, that FCA was unwilling to challenge ZF's disqualification of Sandra Radtke.

The Union continued its efforts to find some remedy for Radtke throughout 2016, despite FCA's refusal to overturn her disqualification by ZF. Grievance notes in the record show that the two International Representatives involved in Radtke's case prior to Spacil were attempting to have her placed at a different FCA location. This would have been a good resolution for Radtke if it could have been negotiated, but it was not a remedy the Union could achieve through arbitration. The arbitrator can only enforce the collective bargaining agreement. Radtke had no contractual right to be placed in a different FCA location or she would have exercised it long ago.

When Representative Spacil took over Radtke's case following the 2015 contract negotiations, he focused mainly on obtaining an agreement to curb abuse of the grievance resolution process by the two corporate entities ZF and FCA. This is reflected in the notes Spacil provided to the IEB in response to Radtke's appeal. Spacil's timeline describes his meetings with FCA Human Resources Representative Andrea Beauvais regarding Radtke's disqualification on November 21, 2016, as follows:

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[45] Normally, the FMLA requires the employee to provide medical certification prior to the commencement of the leave. When this is not possible, however, the employee must provide the requested certification to the employer within the time frame requested by the employer, which must allow at least 15 calendar days after the employer's request. 29 CFR 825.305(b) states:

> "(b) *Timing.* In most cases, the employer should request that an employee furnish certification at the time the employee gives notice of the need for leave or within five business days thereafter, or, in the case of unforeseen leave, within five business days after the leave commences. The employer may request certification at some later date if the employer later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to the employer within 15 calendar days after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts or the employer provides more than 15 calendar days to return the requested certification."

> "11/21/2016 1:38 PM. Met with Andrea at the Appeal Board with Jeff Jarema. Andrea is working with FCA to speed up the process of disqualifications so the employee isn't waiting extended periods of time. Andrea will attempt to set a day limit. Andrea cannot reinstate Sandra but wants me to follow Letter 7 to reinstate the initial grievance. Also, Andrea is willing to backdate a termination letter in case Sandra wants to use it for unemployment benefits."[46]

During oral argument, Spacil explained that he accepted the settlement of Grievance No. 2016-C0011 because he believed Radtke's conditional reinstatement would prevent a successful arbitration of her discharge grievance. This basis for Spacil's conclusion became clearer during the hearing on Radtke's appeal. The difficulty in Radtke's case was not simply that she violated some posted rule, but that management was convinced she could not perform her job effectively. Spacil's history of Radtke's relationship with ZF, published in the IEB's decision, provides a more persuasive basis for his evaluation of the Union's chance of success before an arbitrator than the conditional reinstatement letter alone. This interview reveals that Radtke was unable to work with her immediate supervisors to bring her performance up to the standards required by management. She perceived her supervisor's efforts to mentor her as harassment and targeting. Spacil wrote:

> "Sandra started at Detroit Axle with seniority of June 19, 1995. She had no discipline on her record prior to transferring to Marysville Axle in 2010. Since that time, ZF has been targeting her for not following their internal ZF standards of conduct. Sandra has been finding herself under excessive stress due to these rules as well as the extra travel time to/from the plant. As a result, Sandra's record escalated to the level of discipline (disqualification). She was out for eight months. After the appeal board negotiated for her return, including a back pay of $25,000, Sandra's problems continued. …"

The Union could make the case that Radtke had permission to leave the plant on the night of February 25, 2015, but it is also clear that Supervisor Christie Handlon let Radtke know that this was not a wise choice. Radtke perceived Handlon's attempts to assist her on that night as harassment inducing stress, but the description of Handlon's actions would not be likely to strike an impartial observer as particularly threatening or inappropriate. Although not clearly articulated in her reinstatement letter, the condition of Radtke's previous return to work at ZF was that she stop resisting the efforts of management to bring her performance up to the Company's standards.

The Local Union representatives at ZF have consistently acted energetically on Radtke's behalf to protect her seniority. It appears that Representative Spacil may not have communicated clearly the difficulties of Radtke's case to those representatives.

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[46] Record, p. 75.

The record shows, however, that the International Union represented Radtke reasonably in connection with her troubles at ZF. It was the International Union that succeeded in having Radtke reinstated at the Appeal Board level on January 25, 2015. We do not know exactly what was communicated to Radtke about the terms of her reinstatement on that date, but ZF clearly regarded this as a final chance for her to conform to its standards. An arbitrator might sympathize with the sources of Radtke's stress and acknowledge her efforts to adjust to ZF's more demanding standards, but her inability to perform to management's standards in this environment would also have been evident. An employer has the right to impose standards, even fairly demanding ones.

Under all of these circumstances, Representative Spacil's conclusion that he could not achieve Radtke's reinstatement through arbitration did not lack a rational basis. We hope Radtke can take some solace from the fact that her grievance resulted in an arrangement that seems to have effectively curtailed open-ended use of the disqualification process at ZF.

The appeal is denied.