

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

APPEAL OF:

ROBERT BARRETT, Member  
UAW LOCAL UNION 212  
(Sterling Heights, Michigan) REGION 1,

Appellant

-vs-

CASE NO. 1773

UAW LOCAL UNION 212 EXECUTIVE BOARD  
(THE UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA),

Appellee.

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**DECISION**

(Issued April 20, 2018)

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

Robert Barrett argues that the election for chairperson of the Local 212 Transport Unit should be rerun because of procedural irregularities in the process used to count challenged ballots.

**FACTS**

Robert Barrett was shop chairperson of the Fiat Chrysler Automotive (FCA) Transport Unit at Amalgamated Local Union 212, UAW, in Sterling Heights, Michigan. Local 212 conducted its triennial election of officers and committeepersons on May 18, 2017. Barrett was a candidate for shop chairperson of the Transport Unit in that election. The election produced the following results:

Mark Hook	161	Elected
Rob Barrett	155	
Al Dimercurio	13	
Votes Cast	329 <sup>1</sup>	

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<sup>1</sup> Record, p. 8.

Prior to the election, an issue came up regarding Barrett's attendance at a Chrysler Council meeting in Arizona. At a membership meeting on March 8, 2017, member Mike Bell questioned President Bob Delpapa's decision not to pay Barrett's expenses to attend the Council. The minutes of the meeting reflect the following response by Delpapa:

"Delpapa stated, you said I made the decision? We brought this to the Executive Board. Finances were brought to our attention. We are not in good shape financially to send everyone to the Council. If we would've sent all 7 people, it would've cost over \$17,000.00. Bob stated that there are 4 other locals not sending anyone. There will be another Council in 2017. Financial Secretary Bryan Bonds stated there is a motion on the floor for a vote. This will be a divided house. The result of the vote was:

21-6 IN FAVOR OF SENDING ROB BARRETT TO CHRYSLER COUNCIL

In Session #2 at 4:00 pm, President Bob Delpapa explained as he stated in Session #1, and put a motion on the floor to take a vote regarding sending Rob Barrett Plant Chair Transport to Chrysler Council. In a divided house vote, the result of the second vote was:

"80-0 NOT IN FAVOR OF SENDING ROB BARRETT TO CHRYSLER COUNCIL. THE TOTAL VOTE TALLY OF BOTH SESSIONS WAS 86-21 TO NOT SEND ROB BARRETT."<sup>2</sup>

Barrett wrote a letter to International President Dennis Williams on May 19, 2017, appealing the results of the election for chairperson of the Transport Unit at Local 212. Barrett stated that there was a problem with the way challenged ballots were handled during the election. Barrett explained that he was raising his concern with the International President's office because he believed the local union's president at the time of the election may have tampered with the ballots. Barrett reported that President Bobby Delpapa supported his opponent for chairperson of the Transport Unit. Barrett stated that he had recently learned that Delpapa bought pizza for members attending the second session of the membership meeting on March 8, 2017, in order to influence their vote on the decision whether to pay Barrett's expenses for attending the Chrysler Council meeting. Barrett wrote:

"...While I was at Chrysler Council in Chandler, Arizona, another Local 212 Committeeman from another plant informed me that Bobby Delpapa bought pizza for the entire (IP) plant of Sodecia in exchange for the NO votes concerning the motion for the Local to send me to Chrysler Council.

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<sup>2</sup> Record, p. 5.

With our members' future at stake, our president, Bobby Delpapa bought pizza for an entire NON-Chrysler plant (Sodecia) to keep me, the Transport Plant Chair and Sub-Council Chair from attending Chrysler Council. Bobby Delpapa's actions of buying pizza for the entire plant of Sodecia in exchange to be able to sway a vote is disturbing, unethical, and only proves that he is fully capable of tampering with an election."<sup>3</sup>

President Williams's Administrative Assistant Rick Isaacson responded to Barrett on June 1, 2017. Isaacson informed Barrett that he must present his election protest to his local union or unit membership before appealing to the International Union.<sup>4</sup>

Barrett filed a protest to the election with the Local 212 Recording Secretary John Ellinger on May 23, 2017. At a meeting of the Local 212 Executive Board on June 5, 2017, Barrett explained that the basis for his protest was that challengers were not permitted to view the counting of the challenged ballots.<sup>5</sup> The membership considered Barrett's protest during a meeting on June 6, 2017. The minutes of that meeting indicate that the membership referred the issue raised by Barrett to the local election committee for investigation. The minutes state:

"The second challenger, Mr. Barrett, had conversation at the Executive Board meeting. The findings at the meeting are Mr. Barrett can put in a challenge to the election based on the info provided. So, moving forward based on the Constitution, a package of information requested by Mr. Barrett will be generated and given to the local. Statements from the Election Committee and their Chair will also be given to the local. Once this is done, they will be reviewed and a statement by our new president will be given to Mr. Barrett on the outcome of the findings. Right now, we are waiting for all the documentation."<sup>6</sup>

On June 7, 2017, Barrett submitted a letter to Local 212 President Jason Taylor explaining the basis for his election protest. Barrett reported that Transport Unit employees were permitted to vote either at the plant or at the local union hall. The votes cast at the local union hall were treated as challenged ballots. Barrett reported that his challenger, John Skalski, and Al Dimercurio's challenger, Ron Williams, were present to observe the counting of the ballots. Mark Hook did not choose to have a challenger. According to Barrett, both Skalski and Williams complained to him about the way the challenged ballots were handled. When Skalski and Williams asked election committee chairperson Ernie Bayer where the challenged ballots were, he said they were upstairs being verified by the local union's dues secretary, Jan Abrams. The

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<sup>3</sup> Record, p. 10.

<sup>4</sup> Record, p. 15.

<sup>5</sup> Record, p. 18.

<sup>6</sup> Record, p. 21.

challengers stated that after the ballots from the Transport Unit were counted, Barrett was ahead by five votes. Later, the results were amended based on the challenged ballots, but no one witnessed the counting of these ballots. A recount of the ballots was conducted, but the challengers were concerned that someone had the opportunity to tamper with the challenged ballots while they were upstairs being verified.<sup>7</sup>

Barrett submitted written statements from Skalski and Williams confirming these events. John Skalski reported that he asked election committee chairperson Ernie Bayer why he did not let the challengers know that the challenged ballots were being counted. According to Skalski, Bayer responded that it was not his function to inform them. Bayer stated that they should have been paying attention. According to Skalski's statement, the local union dues secretary threw away the envelopes that contained the challenged ballots after she determined the eligibility of the voters. Skalski reported that he verified that the ballots presented were correctly counted. He added that he was uncomfortable with the process because he was not permitted to view the counting of the challenged ballots. Skalski wrote:

"I would like to state that I was uncomfortable that Jan was verifying the challenged ballots upstairs. Ron and I as challengers never knew the number of challenged ballots submitted or the number of challenged ballots added to the totals until after the recount. We were never offered the opportunity to verify these challenged ballots nor were we made aware of the counting or the location of the count of them. I remained at the same table where our ballots were counted the entire time. I never left that table until I was informed about the addition of the challenged ballots to the totals. I would have expected the challenged ballots to be introduced at the same time as the ballots from the ballot box. I would also expect them to be counted at the same table as where the original ballots were counted. For these reasons, I feel the actions of this Election Committee and Ernie Bayer compromised the integrity of this election. I am not questioning the count; I just do not feel confident of the results of this election due to the opportunity of election tampering of the challenged ballots."<sup>8</sup>

Challenger Ron Williams reported that there was a question about the number of challenged ballots cast because the election committee did not keep track of void ballots. He wrote:

"...After we were through counting, we knew there must have been 17 challenged ballots. I overheard Ernie and Jan talking about 24 challenged ballots. I asked Ernie, 'is the total number of challenged ballots 17 or 24?' Ernie said 17. I asked Ernie, 'then what happened to the other 7?' Ernie

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<sup>7</sup> Record, pp. 23-24.

<sup>8</sup> Record, p. 28.

said, 'Ron, people do that kind of stuff all the time.' I asked Ernie, 'don't you keep track of challenged ballots?' Ernie said, 'No, Ron, they are blank ballots.'"<sup>9</sup>

In his letter to President Taylor, Barrett gave the following description of the counting of the ballots in the Transport Unit election:

On the night of the election, when Ernie Bayer asked challenger Ron Williams what the count was after the ballot box was counted, Ernie was informed that I (Rob Barrett) was ahead by five (5). Ernie then went upstairs to get the verified challenged ballots, which resulted in Mark Hook winning by six (6). It is my understanding that out of seventeen (17) challenged ballots, (13 for Mark Hook, 2 for Al Dimercurio, and 2 for Rob Barrett). However, in challenger Ron Williams's statement, Ernie Bayer said there were actually seven more challenged ballots that were blank that did not need to be counted or documented? Ironically, seven more challenged ballots is the exact number of votes needed to change the outcome."<sup>10</sup>

Barrett pointed out that both challengers were concerned about the integrity of the process, not just his appointed challenger. Barrett stated that the former local union president Bobby Delpapa opposed his candidacy. He accused Delpapa of engaging in unethical tactics to prevent the local union from sending him to the Chrysler Council to represent the Transport Unit. Barrett provided a chapter from the *UAW Guide for Local Union Election Committees* describing the challenged ballot procedure. Barrett argued that the process used in the Transport Unit election violated these guidelines because the tally of void ballots was never posted. As a result of this deficiency, it could not be determined how many ballots were actually cast.<sup>11</sup>

In his response to Rob Barrett's protest, election committee chairperson Bayer reported that he had invited the challengers upstairs to view the counting of the challenged ballots. Bayer stated that the two ballot boxes used in the Transport Unit election were brought to the table to be counted at around 7:45 p.m. He reported that there were 85 challenged ballots. These ballots were taken to the union office upstairs to be verified. Bayer gave the following account of his report to the challengers present in the local union hall when the ballots were sent upstairs to be verified:

"...At that time, all challenged ballots were gathered and kept in the ballot box. I personally announced to all challengers present that the challenged ballots were being transferred upstairs to be checked; would anyone like to assist me in taking the ballots upstairs and to watch the secretary of the

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<sup>9</sup> Record, p. 29.

<sup>10</sup> Record, p. 25.

<sup>11</sup> Record, p. 25.

local check the envelopes due to the fact that the computer was not available for use in the hall and would have to be checked upstairs. No one assisted me to the office upstairs with the box that contained the ballots. ...”<sup>12</sup>

Bayer reported that 75 of the challenged ballots were verified and 10 were void. His report states:

“...There were 75 good ballots and 10 voided ballots, which included right to work members and secret ballot envelopes that were not placed in a challenge ballot envelope in which these ballots were voided. As the chairman of the Election Committee, I followed the specific guidelines in the election booklet to the best of my knowledge. These booklets were passed out at the Election Committee meeting at Region 1, UAW (instructions on page 53 for challenged ballots). The challengers were again asked if they wanted to oversee the counting of these challenge ballots. Ron Williams, challenger for Al Dimarcurio, stated that these ballots should be counted at the end of the election. I stated that the procedure would take way too long to do it that way. As the Election Committee Chairman, I made a conscious decision to count them at that time. The outcome of the challenge ballots did not go in favor of Brother Barrett and a recount was requested by Brother Barrett’s challenger John Skalski, in which I granted. The numbers remained the same. Brother Skalski was satisfied with the recount and did sign off.”<sup>13</sup>

Election committee member Christopher Pfeiffer submitted an email confirming Bayer’s claim that he offered challengers the opportunity to go upstairs and observe the verification of the challenged ballots. Pfeiffer gave the following description of the counting of the challenged ballots:

“...When Jan verified all challenged ballots, they were brought back down and put on the center table. Ernie asked if anyone wanted to watch the challenged ballots be counted. Scott came over with myself, Rick, and Loan, where they were opened by Rick and Loan, two Election Committee members, and verified by myself & Scott. All opened envelopes were saved by Ernie Bayer and all ballots were counted. No problems arose during the election until the final numbers came out. Due to the close race at Transport between Rob and Mark, we decided to do a recount. Once all ballots were counted and tallied, they were then switched to another table to be recounted. P. S. There were two tables for Transport because there were two boxes for Transport. The challenger for Rob B never left the table with the box from Transport. He was only 5 feet from the table

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<sup>12</sup> Record, p. 44.

<sup>13</sup> Record, pp. 44-45.

with the challenged ballots on them and 5 feet from the second box for Transport. The second box had several challenged ballots in it, because it was the box from the union hall. The box from the union hall had so many challenged ballots because there were several people on medical inverse that voted at the union hall.”<sup>14</sup>

Chief Steward Scott Moldenhauer submitted a statement describing the concerns that were raised about the challenged ballots in the Transport Unit race. Moldenhauer wrote:

“...During the initial counts, there was some discussion by the Transport challengers that they were concerned about the challenge ballots leaving the room and that there was no way to know if the challenge ballots were valid or if the correct numbers were confirmed. I am unaware of how these get confirmed and if anyone from the election committee was present when they were confirmed, but there did seem to be some anomalies in terms of voided ballots and whether or not anyone watched over the process from the election committee. I am not sure what happened to the voided ballots other than I saw them be placed to the side on the table I was watching. In my opinion, there is some reasonable doubt in regards to the handling and counting of the challenger ballots, and the process probably needs to be refined going forward. This issue potentially could have affected all the close election races for Local 212.”<sup>15</sup>

Rob Barrett and Ernie Bayer presented their positions to the Local 212 Executive Board at a meeting on June 26, 2017. During this meeting, Chairperson Bayer explained that the challenged ballots were not opened until they were brought down to be counted. He explained that the dues secretary wrote Void or Good on the envelope containing the challenged ballots. The minutes of the Executive Board meeting report that Barrett’s election protest was rejected by a margin of 7 to 2.<sup>16</sup> Barrett was informed of the Executive Board’s ruling at the conclusion of the meeting. In addition, Local 212 sent a letter to Barrett advising him of the Local Executive Board’s ruling on his election protest on July 5, 2017.<sup>17</sup>

Barrett appealed the decision of the Local Executive Board to deny his election protest to the International Executive Board (IEB) on July 11, 2017. In support of his appeal, Barrett mentioned the former local union president’s political opposition to him as chairperson of the Transport Unit. He made the following remarks about the meeting where the vote was taken not to pay for him to attend the Chrysler Council:

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<sup>14</sup> Record, p. 46.

<sup>15</sup> Record, p. 47.

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

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

“...I have been a member of Local 212 for 19 years, 5 years as plant chair. I have never seen 80 members at our local union hall at any given time. I later found out that Bobby Delpapa bought pizza for the entire plant of Sodecia, a non-Chrysler IP Plant, in exchange for their no vote at the 4:00 pm general membership meeting. I decided to attend Chrysler Council at my own expense. Bobby Delpapa did not want to give me the excused ‘Union Business’ time off of work to attend. John Ellinger, who was our Local 212 Recording Secretary, and our local plant representative, was able to finally convince Bobby to grant me the ‘UBUS.’ Mainly due to the fact that I was the elected chairman of our Sub-Council #5 Miscellaneous. Also, I feel that it is important for your office to know that without my knowledge, many of our members took a collection to pay for some of the expenses for me to attend Chrysler Council. Bobby Delpapa made it clear that he did not support me and did not want me to attend a very important Chrysler Council meeting where the future of FCA Transport would be discussed.”<sup>18</sup>

Barrett went on to say that secretary Jan Abrams’s office is ten feet away from the one occupied by President Bobby Delpapa on the night of the election. Barrett argued that Delpapa’s behavior in connection with the Chrysler Council showed that he was capable of tampering with an election. At the same time, the challengers were never permitted to see the challenged ballots until after they had been opened and sorted.

Barrett argued that the challengers are convinced that the challenged ballots were not handled properly and that there was an opportunity for his political opponents to tamper with them. The challengers also questioned the election committee’s failure to account for all of the ballots. Barrett pointed out that the membership had never been given the opportunity to address these concerns. Barrett wrote:

“...In my 19 years at Transport, the voided ballots were always counted and posted along with the official results. Also, I question if this appeal was properly handled at the local level. In the *UAW Guide to Local Union Election Committees*, Chapter 15, page 75 states that: ‘The membership shall consider the challenge and the recommendations of the election committee and if convinced that the election was fraudulently or improperly conducted to such a degree as to invalidate it, may by a majority vote, order a new election.’ Our membership has never had an opportunity to hear this appeal or vote on a new election.”<sup>19</sup>

Barrett asked the IEB to re-run the election for chairperson of the Transport Unit.

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<sup>18</sup> Record, p. 52.

<sup>19</sup> Record, p. 53.

Acting on behalf of President Williams, Administrative Assistant Isaacson conducted a hearing on Barrett's appeal on August 31, 2017. Isaacson prepared a report to the IEB on the appeal based on documents provided by Local 212 and testimony presented at the hearing. Isaacson acknowledged that the membership had never ruled on Barrett's appeal. He reported that he asked President Taylor if membership meetings had been postponed during the summer months pursuant to Article 37, §4(c) of the Constitution. President Taylor responded that the Local Executive Board heard Barrett's appeal in order to ensure timely processing. Isaacson found that this process was procedurally incorrect, but he determined that no useful purpose would be served by referring the protest back to the membership for a ruling.<sup>20</sup>

Based on the testimony provided by the parties, Isaacson described the process used to deal with challenged and void ballots during the election at Local Union 212. According to Isaacson's report, Local Union 212's administrative offices are located on the second floor of a two-story building it shares with UAW Local Union 1264. Both local unions use the union hall on the first floor for meetings. There were two ballot boxes in the Transport Unit election, one at the Transport Plant itself and one at the local union hall. The ballot box at the local union hall was used for all of the ballots cast at that location. The local union hall is mainly used by retirees for voting, but other members can also vote at this location. Any Transport Unit ballots submitted at the local union hall were processed as challenged ballots, because the election committee did not have an eligibility list for Transport Unit employees available to them in the polling area at the hall.<sup>21</sup>

After the polls closed, the ballot boxes at the various units were sealed and transferred to the local union hall for tabulation. There was a separate table for each polling location. The ballots were emptied onto the table for counting. At this point, any ballots in a challenged ballot envelope were separated from the rest and taken upstairs for verification. Once the eligibility of the voter was determined based on the information provided on the challenged ballot envelope, the secret ballot envelope was taken back downstairs to be included in the final tally for each location. In his election protest, candidate Rob Barrett maintained that this process created an opportunity for his opponent to tamper with the ballots. Seventeen challenged ballots were included in the tally for the Transport Unit. This was a sufficient number to have changed the outcome in the race for chairperson, so Barrett is asking to have the election for chairperson rerun.<sup>22</sup>

During the hearing, Barrett and his challengers denied Chairperson Bayer's claim that he offered them the opportunity to come upstairs and witness the verification of the challenged ballots. Skalski and Williams testified that Bayer told them that the dues secretary threw away the challenged ballot envelopes after verifying the eligibility of the

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<sup>20</sup> Record, p. 67, fn. 7.

<sup>21</sup> Record, p. 68.

<sup>22</sup> Record, pp. 68-69.

voters. Appellants referred to Chapter 12, page 56, paragraph 1 of the *UAW Guide to Local Union Election Committees*, to support their claim that the process used at Local 212 was improper. That paragraph states:

“If possible, Election Committee members should not wait until the conclusion of the voting to begin resolving challenged ballots and should start obtaining eligibility information while the election is still in progress. By maintaining a separate challenged voter list containing the same information which was written on the outer envelopes, Election Committee members may be able to resolve some or all of the challenges before the ballot box is opened at the conclusion of the voting. Although preliminary decisions about a challenged voter’s eligibility can be made by Election Committee members while the election is still in progress, a formal announcement regarding the resolution of any challenged ballots should wait until the start of the ballot tally to allow all challengers to be present. To the extent possible, challenged ballots should be resolved prior to the conduct of the tally to help preserve secrecy.”<sup>23</sup>

Barrett argued at the hearing that the number of void ballots should also have been posted.

Isaacson reported that the local union dues secretary Jan Abrams testified that Chairperson Bayer brought the challenged ballots to her in the local union’s office on the second floor of the building. She said it was her role to determine if the voter was eligible and to make certain that no one voted twice. Abrams stated that no one was in the office while she was validating the ballots and that the ballots were never out of her sight. She said when she completed her check of the ballots she took them back down to the union hall and gave them to election committee members Loan Ghitas, Ric Craven, Scott Moldenhauer, and Dan Miller.<sup>24</sup>

Isaacson reported that the Transport Unit is one of the sixteen units that make up Amalgamated Local Union 212. There are 463 eligible voters in the Transport Unit. Based on the testimony of the parties, Isaacson made the following findings: There were 19 challenged ballots in the race for Transport Unit Chairperson and 17 of these challenged ballots were determined to be eligible. There were no void ballots in the Transport Unit election. The challenged ballot envelopes were not thrown away; they were provided for inspection at the evidentiary hearing.<sup>25</sup>

In his report to the IEB, Isaacson referred to the presumption that elections conducted by a local union are valid. He explained that an appellant seeking to overturn the results of an election must show by clear and convincing evidence that

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<sup>23</sup> Record, p. 109.

<sup>24</sup> Record, pp. 75-76.

<sup>25</sup> Record, p. 76.

some improper practice occurred to a degree as to have affected the outcome of the election. Isaacson pointed out that Barrett's appeal rests on the fact that the challenged ballots in the Transport Unit race were not in full view of the challengers for a period of time. Although Isaacson acknowledged that the circumstances were troubling and the procedure less than optimal, he concluded that the situation did not warrant rerunning the election because there is no evidence to show that any impropriety occurred with respect to the ballots. Isaacson pointed out that secretary Jan Abrams testified that the ballots were in her possession during the entire period in question. She further testified that there was no one with her in the dues office during the verification process.<sup>26</sup>

Isaacson noted that there is conflicting testimony about whether election committee chairperson Bayer actually offered the challengers an opportunity to witness the verification of the ballots in the dues office. But even if he failed to make this offer, Isaacson found that would not be sufficient to establish that any impropriety occurred with respect to the ballots. Isaacson observed that the challengers knew how the election committee proposed to deal with the challenged ballots. He held that they ought to have raised their concerns about the process when steps could be taken to address those concerns. Isaacson's report states:

"It is apparent by these two statements that the challengers were fully aware that the challenged ballots had been taken upstairs to be verified. If they had concerns about this process, the time to raise their concerns was at the time of the occurrence when the problem could be remedied."<sup>27</sup>

Isaacson determined that Barrett had not established grounds for rerunning the chairperson's race in the Transport Unit of Local Union 212. He denied Barrett's appeal.

The IEB adopted Isaacson's report as its decision.<sup>28</sup> President Williams provided Barrett with a copy of the IEB's decision on October 13, 2017. Barrett has now appealed the IEB's decision to the Public Review Board (PRB).

## ARGUMENT

### **A. Robert Barrett:**

My protest is based on the improper method used to count challenged ballots in the race for chairperson of the Transport Unit during the election held at Local Union 212 on May 18, 2017. Specifically, the challenged ballots were removed from the polling area and taken upstairs out of view of the challengers. A group of my opponents were also upstairs at the time. There was ample opportunity for the challenged ballots

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<sup>26</sup> Record, pp. 77-78.

<sup>27</sup> Record, p. 79.

<sup>28</sup> Record, p. 63.

to be tampered with or discarded. The election committee did not post the number of ballots used or the number of ballots voided.

The IEB's hearing officer Rick Isaacson wrote that he found these circumstances troubling. I could not agree more. That is why I filed this protest. Isaacson denied my protest based on his conclusion that there is no clear and convincing evidence that the ballots were tampered with. I have provided clear and convincing proof that the ballots were not handled properly and that the improprieties created an opportunity for my opponents to interfere with the election results. On the night of the election, before the challenged ballots were taken upstairs, I was ahead by five votes. An hour later, the election committee chairperson came downstairs with a bunch of ballots wadded up in a rubber band and announced the new election results that had me losing by six votes. I think these circumstances are sufficiently troubling to require a new election.

During the hearing on my appeal, hearing officer Isaacson asked each election committee member what he recalled about the challenged ballot process. Election committee member Ric Craven stated that he counted the challenged ballots during the recount. Mr. Isaacson pointed out that the ballots would already need to have been removed from their challenge ballot envelope in order to be recounted. Two other election committee members, Ghitas and Miller, first stated that they did not remember how the challenged ballots were tallied. Later, when secretary Jan Abrams testified that she brought the challenged ballots downstairs in sealed envelopes, they changed their stories to support Abrams's account. I immediately pointed this out to Mr. Isaacson. Mr. Isaacson responded that my point was taken and joked that I was doing his job.

The election results posted by the election committee showed no void ballots. That is vital to my case and the IEB decision does not address it.

#### **B. International Union, UAW:**

In his appeal, appellant argues that he has established that the challenged ballots were handled improperly and that this gave his opponents ample opportunity to tamper with or destroy ballots in the election. This argument ignores the presumption established by the PRB that all elections conducted by a local union are valid. A member seeking to overturn the results of an election must establish by clear and convincing evidence that an improper practice occurred to such a degree as to affect the outcome of the election.

In this case, appellant Barrett offers no evidence that anyone actually tampered with the ballots. In contrast, Jan Abrams, the local union dues secretary, gave undisputed testimony that the challenged ballots remained solely under her control during the entire period that they were upstairs. Applying the well-established presumption to the arguments presented at the hearing, the IEB's hearing officer concluded that appellant had not met his burden of proof in this case. As a result, the IEB properly rejected Barrett's appeal.

**C. Rebuttal by Robert Barrett:**

I have established that the Local 212 Election Committee failed to comply with the rules established in the *UAW Guide to Local Union Election Committees* in the way they handled the challenged ballots and reported the results of the election. The *Guide* states that the election committee should ensure that the challenged ballot envelope contains the sealed secret ballot envelope within sight of any challengers. In the case of the election at Local Union 212, the election committee and the challengers were all downstairs counting the ballots while the challenged ballots were being verified and removed from the challenged ballot envelope. While this was going on, members of the "Green Slate" opposed to my election were also upstairs and had full access to the office where the challenged ballots were held.

Chairperson Bayer never asked any of the challengers if they wanted to go upstairs and observe the verification of the ballots. And even if he did, how could a challenger be in two places at once? The person who was verifying the ballots, Local 212 secretary Jan Abrams, is not a member of the local election committee. The day after the election, I asked Bayer why Bobby Delpapa, Mark Hook and other Green Slate candidates were allowed to be upstairs around the challenged ballots. He replied that I could have gone up there too if I wanted. That is not proper. The only people who should have been allowed upstairs around the challenged ballots were the election committee members and the challengers.

After election committee chairperson Ernie Bayer learned the results in the Transport Unit race, he went upstairs to where Abrams was verifying the challenged ballots. He was gone for about an hour. He then returned to the table where the Transport Unit ballots were being counted with a wad of opened ballots wrapped in rubber bands. Chairperson Bayer told the challengers that after the addition of the challenged ballots to the vote tally, I had lost the election by six votes. The challengers asked Bayer where these additional ballots had been opened and counted. He pointed to a different table. Both challengers asked him why they had not been informed that the challenged ballots were being opened and counted. He told the challengers it was up to them to pay attention. Both challengers immediately came out to the parking lot to find me. They were both visibly upset. Challenger Ron Williams said to me, "I know I am not your challenger, but they screwed you!"

Both challengers have repeatedly denied chairperson Bayer's claim that he invited the challengers upstairs to view the verification of the challenged ballots. And how, or why would a challenger leave his assigned ballot box to go upstairs? Ron Williams advised chairperson Bayer that the practice in the past had been to verify and count the challenged ballots after completing the tally of the ballots cast at the plant. Bayer responded that we don't have time for that and I don't want to be here all night. At the hearing on my appeal, Bayer claimed that when he brought the challenged ballots downstairs he announced that the challenged ballots needed to be opened by members of the election committee. This was heavily disputed by the challengers. The election committee members who supposedly opened the challenged ballots, Loan

Ghitas, Dan Miller, and Ric Craven, did not remember this. Ric Craven told hearing officer Isaacson that he counted the challenged ballots during a recount of the votes. Isaacson informed Craven that he could not possibly have witnessed the ballots being opened, if he first saw them during a recount.

During the hearing, chairperson Bayer asked if secretary Jan Abrams could testify. Isaacson agreed to this. Bayer then went upstairs to summons Abrams. He was gone for about ten minutes. When Bayer and Abrams returned, Abrams testified that she brought the challenged ballots down and delivered them to a different table to be counted. Only then did Ghitas, Miller, and Craven change their testimony to agree with Abrams's. I quickly called for a point of order because the witnesses had changed their testimony. I pointed out that the only testimony that remained consistent throughout these proceedings is that of the challengers Ron Williams and John Skalski.

I have attached reported results from previous elections. The unit's practice has always been to report the number of void ballots, but that was not done in this election. As a result, it is not clear that the reported results reflect the number of votes cast in the election. On the night of the election, after chairperson Bayer learned that I was ahead in the race for chairperson of the unit, he went upstairs. Bobby Delpapa and Mark Hook were also upstairs. The challenged ballots were upstairs with no challenger present. At this point, anyone upstairs could have picked up a challenged ballot, looked at the name on the outside of the envelope and then decided if that ballot should be counted or voided. If the name on the outside of the envelope was that of a member known to support me, the envelope containing the ballot could have been voided or discarded.

Chairperson Bayer remained upstairs for about an hour after learning that I was ahead by 5 votes. He then returned to the Transport Table downstairs with opened, unsealed ballots and laid them on the table. Bayer announced that when these ballots were added to the total, I lost by 6 votes. When challenger Ron Williams attempted to complain about this process, Bayer responded by pointing out that Williams was not my challenger. Apparently, there were 17 challenged ballots, but there is no way to confirm this since there was no challenger present when the ballots were reviewed and no posted count of the ballots that were void. The challenged ballots were mishandled and the challenged ballots changed the outcome of the election.

The IEB reports that I asserted the local union election committee did not properly handle the challenged ballots. With all due respect, I overwhelmingly demonstrated this to be a fact. Did this mishandling of the ballots compromise the integrity of the election? Yes, not only this election, but the integrity of the UAW's electoral process. Our local is waiting for the outcome of this appeal before conducting an election for financial secretary. President Jason Taylor informed the members that he is waiting for a final decision on my appeal before making arrangements for another election. I am respectfully requesting that the election for chairperson of the Transport Unit be rerun. Our members deserve to know that our elections are fair. Our members need to know that our International Union stands for integrity. Our members need to know that their votes count. Our members deserve better than this.

### DISCUSSION

We agree with Robert Barrett that the procedure adopted by the Local 212 Election Committee for counting the challenged ballots was not consistent with the *UAW Guide to Local Union Election Committees* or the general practices followed in UAW elections. There is no dispute that the challenged ballots were removed from the area where the ballots were being tabulated and turned over to the local union dues secretary, Jan Abrams, to be verified. According to Abrams's testimony no one was in the office with her while she was checking the challenged ballot envelopes to determine whether the person casting the ballot was eligible to vote.

This procedure was improper. The election committee members might rely on information provided by the dues secretary to resolve challenged ballots, but they are required to oversee the entire process. Challengers were not given adequate notice of the counting of the challenged ballots and the method used to conduct that tabulation has never been firmly established; these are serious deficiencies.

To make matters worse, candidates interested in the outcome of the election were apparently permitted to linger in an office next to the one in which the challenged ballots were being verified. The election committee's lack of oversight of the ballot resolution process created an opportunity for someone to have removed a sufficient number of ballots from those cast in the race for chairperson to have changed the outcome. The challenged ballot envelopes identified the voters and members would be able to recognize known supporters of Barrett for chairperson. There is no question that the challenged ballots altered the outcome of the chairperson's election. Under the circumstances, the opaque procedure used for counting the challenged ballots raised justifiable concerns about the validity of the election results not only for Robert Barrett but also in the minds of his constituents. This appearance of impropriety might have been sufficient to require the election for chairperson to be rerun, even in the absence of concrete evidence establishing that any particular ballot had been destroyed.

In response to Barrett's protest, the membership requested further documentation from the election committee and the local union. The Local Executive Board reviewed the documents submitted in connection with Barrett's protest and voted to reject the protest. The Executive Board ought to have presented its recommendation to the membership for approval. Unless membership meetings have been suspended by affirmative membership action pursuant to Article 37, §4(c) of the UAW Constitution, it is the membership's function to review the election committee's report of the election results and to consider any protests in accordance with Article 38, §11 of the UAW Constitution.

It is unfortunate that the package of information generated in response to the membership's action was not referred back to the membership for review. A vote by the membership to accept or reject the results of the election naturally carries substantial weight in the evaluation of any election appeal. In *Piorier v. UAW International*

*Executive Board*, PRB Case No. 1700, 14 PRB 1151, (2014) at 1166, we made the following observation about the membership's role in the review of an election appeal:

“...In light of the expense and disruption involved in rerunning any election, we are generally inclined to defer to the membership's acceptance of election results unless there are clear violations. In this case, however, the membership raised concerns about the validity of the election results. An order by the membership to rerun an election is always a serious issue requiring scrutiny. We conducted a hearing on this appeal, because it appeared that the membership's concerns had not been adequately addressed in the manner anticipated by Article 33 and Article 38 of the UAW Constitution.”

In this case, the membership was never given the opportunity to make a final ruling on Barrett's protest. There was no urgency that required the Local Executive Board to skip this important step in the appellate process. The local union's hasty resolution of the serious issues raised by Barrett only exacerbated the appearance of impropriety.

It was a violation of the rules governing UAW elections for the election committee to relinquish unsupervised custody of the challenged ballots to an employee of the local union who had no official role in the electoral process. If it were established that the challenged ballots were left unattended in an office adjacent to one occupied by Barrett's political opponents, an evidentiary presumption would not provide a sufficient basis to reject Barrett's appeal from the denial of his election protest. Protecting the integrity of the UAW's electoral processes would take precedence over the pragmatic considerations behind the presumption.

Nevertheless, we have denied Barrett's request for oral argument in this case, because the IEB's hearing officer investigated and resolved the one critical question of fact presented by the record. The local union dues secretary was the only party with personal knowledge regarding the security of the challenged ballots while they were in her possession. Only she knew if there was ever an opportunity for Barrett's opponents to interfere with those ballots. She testified that there was not. According to Abrams, the ballots were always in her sight until she delivered them directly to election committee members for counting. Hearing officer Isaacson determined that this testimony was credible.

Jan Abrams's testimony is the deciding factor in this appeal. The election committee members' recollection of the tabulation process seems alarmingly confused. According to Isaacson's report, they were not able to state with certainty when the challenged ballots were actually tabulated. However, there does not seem to be any controversy about the accuracy of the ballot count that was presented to the election committee. The final tally was also confirmed in a recount.

The issue of primary concern to the challengers was the security of the challenged ballots after they were taken upstairs to be verified. Hearing officer

Isaacson questioned Jan Abrams about this period and was satisfied that her testimony adequately addressed the challengers' concerns. As an appellate body, we must rely on the findings of fact made by those who have heard the testimony of witnesses and examined the evidence unless there is compelling evidence to contradict those findings.<sup>29</sup> We do, in fact, trust Isaacson's judgment in assessing the credibility of Jan Abrams's testimony. We would almost certainly reach the same conclusion that he did with respect to her handling of the ballots. But the determination whether this election ought to have been rerun is a very close call.

Isaacson applied the presumption of electoral validity to deny Barrett's request for an order directing the local union to rerun the election for chairperson of the Transport Unit. The presumption of validity is one of several guidelines we have established for evaluating arguments presented in support of an election protest. These guidelines, however, are not intended to operate as a substitute for a thorough analysis of the facts giving rise to an election protest. This is particularly the case where serious procedural deficiencies have been identified.

As we stated in the *Poirier* decision, the underlying reason for the presumption of validity is to avoid unnecessary disruption and expense to the local union based on unsubstantiated complaints, but that expense may be warranted if the legitimacy of the electoral process has been called into question. We expect the International Union to be vigilant when applying various presumptions and evidentiary guidelines so as not to interfere with its Constitutional role in the investigation of election protests and protection of the electoral process.

Put differently, none of these presumptions and evidentiary guidelines are intended to take the place of a thorough investigation into serious complaints or to dismiss substantial concerns raised by candidates and their supporters. The report to the IEB should explain why the presumption is appropriate despite the deficiencies.

We are satisfied that such an investigation did take place in response to Barrett's protest. Nevertheless, if Isaacson had found it necessary to rerun the chairperson's election in order to reassure the membership about the integrity of the process, such an order would not have been out of line, despite the presumption of validity.<sup>30</sup>

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<sup>29</sup> *Sarkissian v. Local Union 6000, UAW*, 5 PRB 624 (1989); *Sasaki v. UAW-GM Department*, 10 PRB 548 (1999); *Jones and Pearson v. Local Union 140*, PRB Case No. 1620, 14 PRB 187 (2009); and *Laurin v. UAW Local 6000 Executive Board*, PRB Case No. 1661, 14 PRB 687 (2011).

<sup>30</sup> In *Green v. UAW International Executive Board*, PRB Case 1690, 14 PRB 1046 (2013), the IEB ordered an election for local union president rerun based on a complaint that retirees were permitted to occupy a room in the local union hall making calls to solicit votes for a candidate while the voting was taking place. We upheld the IEB's decision in that case because the margin of victory between the two candidates for president was so small that the perception of an even playing field was particularly important.

While the potential for misconduct may not, by itself, justify rerunning an election, it is certainly a situation to be avoided. The problems identified by Barrett seem to have been the result of a misguided pursuit of efficiency on the part of the election committee, rather than a deliberate strategy to sway the outcome of the election in favor of a particular candidate. The decision to send the challenged ballots up to a private office out of sight of the challengers or even any member of the election committee may have seemed like the easiest solution to the problem of verifying voter eligibility, but it was bad planning. Some arrangement should have been made to resolve the challenged ballots in the polling area. Election committee chairperson Bayer admitted that he denied Ron Williams's request to count the challenged ballots in the presence of challengers at the end of the election, simply because he thought it would take too long.

Article 38, §10(c), of the UAW Constitution provides that all elections shall be held under the supervision of a democratically elected election committee. Election committee members owe the membership conscientious attention to the entire process of establishing rules for the conduct of the election and ensuring an accurate tabulation of the ballots. The opening paragraph of the *UAW Guide to Local Union Election Committees* greets new election committee members with a reminder of the seriousness of the task they have assumed.<sup>31</sup> A person accepting a position on a local union election committee must be prepared to spend whatever time it takes to ensure that eligible voters are able to cast their ballots, that the ballots are secure, and that they are accurately tabulated. A person who finds these responsibilities too tedious or time-consuming should not accept a position on the election committee, and should not be permitted to serve once such sentiments have affected the performance of his or her duties.

We urge the members of the Local 212 Election Committee to review the errors that occurred during the May 18, 2017 election and in the handling of Barrett's election protest that followed. Although we agree in this instance with the IEB's decision that circumstances do not warrant rerunning the race for chairperson of the Transport Unit, the Local 212 Election Committee should take active steps to avoid lax practices that create an appearance of impropriety even where no improper actions have occurred. In pursuing this goal, it would be useful for election committee members to take advantage of training available to them from the International Union in conducting elections at UAW Local Unions.

The decision of the IEB is affirmed.

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<sup>31</sup> In "A Message to Local Union Election Committee Members", the *Guide* states:

"...During the upcoming weeks, you and your fellow Election Committee members will be entrusted with the responsibility of providing members with the opportunity to exercise the most fundamental of union rights, the right to elect their local union's officers by secret ballot. Don't underestimate the importance of your role – you are an essential part of the democratic process. ..."