

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

APPEAL OF:

RACHEL JOHNSTONE, et al., Members,  
LOCAL UNION 212, UAW  
(Sterling Heights, Michigan), REGION 1,

Appellant

-vs-

CASE NO. 1792

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

Appellee.

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**DECISION**

(Issued June 10, 2019)

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

APPEARANCES: Rachel Johnstone and Scott  
Moldenhauer on behalf of Appellants;  
Lee Bainter, Mark Liburdi, James  
Britton, Darryl Nolen, Anthony Feyers,  
and Sarah Laws on behalf of the  
International Union; Jason Taylor from  
Local Union 212.

We consider whether the UAW-FCA Department lacked a rational basis for its decision to settle Rachel Johnstone's grievances challenging her disciplinary suspension and claiming disparate treatment based on disability and gender.

**FACTS**

Rachel Johnstone is employed by FCA US LLC ("the Company") at the Headquarters and Technology Center in Auburn Hills, Michigan. She works in a bargaining unit represented by UAW Local Union 212. Her seniority date is August 7,

1995.<sup>1</sup> Scott Moldenhauer is also an Appellant in this case. He is the Local 212 Engineering Unit Chairman/Chief Steward. In 2002, Johnstone was diagnosed with a sleep disorder. From 2003 to 2005, she was certified by the Company under the Family Medical Leave Act (FMLA) in order to take leave related to the disorder. The Company requires that an employee be recertified each year for FMLA leave. In 2006, the Company denied recertification for FMLA leave, but Johnstone's supervisors continued to accommodate her informally by allowing her to arrive later and work later. In addition, her symptoms improved with treatment and she had less need for flexibility in scheduling.

In May 2017, Johnstone developed bursitis in her shoulder which made sleeping more difficult, exacerbating her sleep disorder. On May 30, 2017, Johnstone's supervisor noticed her sleeping on the job and woke her. The next day, Johnstone went to her doctor to get treatment for her shoulder and remained out of work until June 12. Following her return, on June 15, Johnstone's supervisor issued her a one-day disciplinary suspension for sleeping on the job on May 30.<sup>2</sup>

On the next day, June 16, Johnstone had her physician complete the Company's Medical Inquiry Form for a Reasonable Accommodation Request under the Americans with Disabilities Act (ADA). The physician indicated that Johnstone suffers from sleep apnea. In the space provided to identify any and all accommodations, the physician wrote: "she may doze periodically if sedentary and needs to be awoken."<sup>3</sup> Johnstone suggested that her physician list this accommodation because she had previously witnessed supervisors waking other employees. Johnstone advised her supervisor Jeffrey Lamb that she was seeking a disability accommodation. She intended that her accommodation request would help her avoid further discipline for conduct related to her sleep disorder. On June 19, 2017, Johnstone emailed Annette Smith-Worthy in the Company's Human Resources department, asking how to submit the reasonable accommodation form for approval. As instructed, Johnstone scanned and emailed the form to Smith-Worthy on the same day.<sup>4</sup>

After submitting her ADA request Johnstone did not hear back from the Company, but also did not experience any further problems in the workplace until November 7, 2017. On that day, Johnstone was working at her desk and supervisor Lamb approached and accused her of sleeping. Johnstone concedes that her eyes were closed while she listened to music but denies sleeping.

On November 8, 2017, supervisor Lamb prepared a report, stating that:

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<sup>1</sup> Record, p. 10.

<sup>2</sup> Record, p. 7.

<sup>3</sup> Record, p. 2.

<sup>4</sup> Record, pp. 5-6.

“On Tuesday, November 7th 2017, [Johnstone] was found to be sleeping at her workstation when I went to her work area. Her head was down and hands in her lap while sitting in her chair. When I tapped on her desk to wake her up, she slowly came to.”<sup>5</sup>

The report indicated that Johnstone would receive a thirty-day disciplinary layoff for violation of Standards of Conduct #5, failure to exert normal effort on the job or sleeping on the job. The Company immediately notified Union Steward Russ Hibbs of the suspension.<sup>6</sup>

On November 9, 2017, Johnstone and Hibbs met with Lamb to discuss the November 7 incident. Johnstone was presented with the supervisor’s report. She responded by asking about her ADA request and whether that had been taken into consideration. Hibbs asked Johnstone further about the ADA request because he was previously unaware of it. Lamb decided to proceed with the 30-day suspension and escorted Johnstone out of the facility. On November 13, 2017, Hibbs emailed a copy of Johnstone’s accommodation request to Lamb.<sup>7</sup> He requested that Johnstone be returned to work immediately based upon her earlier request for accommodation to which the Company had failed to respond. The Company declined to rescind the suspension and Johnstone remained out of work until December 11, 2017.

On November 15, 2017, Local 212 filed grievance MEO-OD-17-003 (“17-003”), which was prepared by Hibbs. The grievance asserted that the Company had failed to follow Section 33 of the National Agreement, which establishes guidelines for progressive discipline. The grievance stated:

“Management has failed to maintain its agreement to follow the terms of the National Agreement Sec (33). Jeff Lamb agreed that he was going to follow the step procedure then was advised by Dan Grady from Human Relations to bypass the 5 days and go to a 30 day DLO.”<sup>8</sup>

The Union requested that Johnstone be reinstated immediately and made whole. The grievance also demanded future compliance with current agreement terms. At the hearing in this case, Moldenhauer explained that the Local had repeatedly encountered situations where management, particularly Labor Relations representative Dan Grady, bypassed steps in the progressive discipline process. These abuses of the disciplinary process were a topic of on-going discussions with the Company to obtain better adherence to the terms of the National Agreement. On November 22, 2017,

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<sup>5</sup> Record, p. 7.

<sup>6</sup> Record, p. 8.

<sup>7</sup> Record, p. 9.

<sup>8</sup> Record, p. 10.

management answered grievance 17-003 and asserted that the departure from the guidelines was appropriate because management had written up Johnstone “on several occasions” for the same violation.<sup>9</sup>

On November 21, 2017, Johnstone sent an email to Hibbs stating her belief that the Company was discriminating against her due to her permanent disability and gender.<sup>10</sup> She claimed that she was not being treated the same as male workers who fall asleep on the job and are not disciplined. After attempting to engage informally with management on the issue of disparate treatment, Local 212 filed grievance MEO-OD-17-005 (“17-005”) on November 27, 2017.<sup>11</sup> The grievance alleged disparate treatment based on disability and gender. As relief, the Union requested “a thorough investigation into the facts and that appropriate action be taken.” The Union also requested that Johnstone be made whole for lost wages and benefits due to her suspension. In support of the grievance, the Union provided evidence related to a specifically-named male employee whose manager would wake him up routinely a couple of times per day, even without a formal accommodation request in place.<sup>12</sup> The Company denied the grievance on December 4, 2017, stating that there had been no discrimination.<sup>13</sup>

After Johnstone returned to the workplace on December 11, 2017, she continued to feel that she was receiving disparate treatment from management. In response, she made a report through the Company’s ethics helpline. She also contacted Deric Davis, Chairperson of the Local 212 Civil Rights Committee. Davis investigated Johnstone’s claims by talking with several co-workers. He also attempted to speak with management personnel, but they did not respond to his requests to discuss the matter. On February 9, 2018, Davis prepared a report on his findings.<sup>14</sup> Davis related that over the past few years he had walked through Johnstone’s department and personally witnessed 10-15 men sleeping at their workstations on several occasions. Davis also documented his interviews with Johnstone’s co-workers who stated that her supervisor treated her differently than the men in her department.<sup>15</sup> They claimed that Johnstone

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<sup>9</sup> Other than the incident on May 30, 2017, there is no indication in the record that management ever issued other discipline to Johnstone for sleeping on the job. During the hearing on this appeal, International Representative Lee Bainter indicated that management showed him records reflecting additional warnings issued to Johnstone for sleeping on the job. However, the Company records did not indicate that Johnstone was ever advised that she was being written up or issued any formal disciplinary warnings. Accordingly, the Union disregarded management’s claim of additional discipline, other than for the May 30 incident, in determining how to proceed with Johnstone’s grievances.

<sup>10</sup> Record, p. 13.

<sup>11</sup> Record, p. 14.

<sup>12</sup> Record, pp. 16-17.

<sup>13</sup> Record, p. 14.

<sup>14</sup> Record, pp. 63-66.

<sup>15</sup> At the PRB hearing, it was estimated that approximately 8% of the employees in Johnstone’s Department are female.

was watched more closely by her supervisor, including while on breaks. They also claimed that Johnstone alone was required to submit a detailed outline of the work that she had performed, even though she was often given assignments without clear instructions, unlike the men in her group. In January and February 2018, Johnstone also met with Vicki Patterson from the Company's Diversity Office to discuss her discrimination complaint, including alleged harassment by her supervisor, as well as her accommodation request.

While these grievances were being pursued on Johnstone's behalf, Hibbs and Moldenhauer continued to press management for a response regarding her accommodation request.<sup>16</sup> Smith-Worthy took the position that waking up a dozing employee is not a reasonable accommodation and offered to meet to explore other options.<sup>17</sup> The Company indicated that the parties should engage in an interactive process in order to identify an appropriate accommodation. After researching the ADA further, Moldenhauer and Hibbs agreed that this was the proper way to proceed and along with Johnstone continued discussions with management regarding possible accommodations. As a result, in May 2018, the Company provided Johnstone with a device that sounds a small alarm in her ear if she dozes off.<sup>18</sup> Since receiving the device, Johnstone has not experienced further problems in the workplace related to her sleep disorder.

The Union progressed Johnstone's grievances beyond the Local level. Lee Bainter, UAW-FCA Department International Representative, handled the grievances at the next step in the process. He made the decision to address the grievances separately with the Company. Moldenhauer told Bainter that he disagreed with this strategy because in his view the two grievances were interrelated. On June 4, 2018, the FCA US LLC-UAW Appeal Board addressed grievance 17-005. At the time, Bainter was aware of the report prepared by Chairperson Davis regarding Johnstone's discrimination complaint. The Appeal Board issued a disposition for 17-005, which provided:

"The Union and the Company consider this case resolved. The report created by the Local UAW Civil Rights Committee will be presented to the Company Diversity office for review and any appropriate action in accordance with Letter 20 of the 2016 National Agreement. Management and Human Resources associated with this case will be reminded of our commitment to participate with civil rights investigations."<sup>19</sup>

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<sup>16</sup> Record, pp. 11, 12, 18-19, 22.

<sup>17</sup> Record, p. 23.

<sup>18</sup> Record, pp. 93-94.

<sup>19</sup> Record, p. 28.

Bainter wrote to Johnstone on June 12, 2018 advising her of the grievance settlement.<sup>20</sup>

On June 25, 2018, the Appeal Board issued a disposition for 17-003, which stated:

“The parties discussed this case at length. The Company and the Union recognize that the grievant did violate a Company Standard of Conduct (SOC). In full and complete resolution of this case, the parties agree that the 30-day DLO will be reduced to a 5-day DLO for violation of SOC #5. The grievant will be awarded 17 days of pay, less normal applicable deductions and taxes. This decision of the Appeal Board shall form no basis or precedent for a decision or settlement in any other case.”<sup>21</sup>

Bainter wrote to Johnstone on July 20, 2018 to advise her of the settlement.<sup>22</sup>

On July 10, 2018, Moldenhauer and Johnstone appealed the settlement of grievance 17-005 to the International Executive Board (IEB).<sup>23</sup> In support of the appeal, they argued that Johnstone would not have faced discipline for sleeping on the job if the Company had acted promptly on her accommodation request after it was first submitted. They also argued that Johnstone faced disparate treatment, asserting generally that male employees were not similarly disciplined and citing the specific example of a male employee routinely awoken by his supervisor. They maintained that Johnstone should have been reimbursed for the entire 30-day suspension, instead of “letting management off the hook.”<sup>24</sup> On September 24, 2018, Moldenhauer and Johnstone appealed the settlement of grievance 17-003 to the IEB.<sup>25</sup> They raised the same arguments as in their earlier appeal.

On October 8, 2018, International Vice President Cindy Estrada responded to an inquiry from International President Gary Jones’s staff regarding the settlement of grievance 17-005.<sup>26</sup> Estrada explained that the grievance was settled in accordance with the 2015 National Agreement, specifically Letter 20 which provides a procedure for initiating and investigating discrimination complaints, and Letter 124 establishing local Equal Application committees. She further explained that an investigation was conducted, and a report submitted to the Union and Company Diversity Office. With

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<sup>20</sup> Record, p. 29.

<sup>21</sup> Record, p. 30.

<sup>22</sup> Record, pp. 35-36.

<sup>23</sup> Record, p. 31.

<sup>24</sup> Record, p. 33.

<sup>25</sup> Record, p. 37.

<sup>26</sup> Record, pp. 43-44.

respect to Johnstone's request to be made whole for losses resulting from her suspension, Estrada asserted that this matter was addressed through the settlement of grievance 17-003.

President Jones's staff determined that a hearing was unnecessary on the appeals filed by Johnstone and Moldenhauer.<sup>27</sup> Acting on behalf of the President, staff members prepared a report to the IEB based upon the information supplied by Appellants and the UAW-FCA Department. Staff reviewed the disposition of the two grievances. Considering the factual record, staff concluded that the "decision to settle [the grievances] was not devoid of a rational basis" and was "based upon reasonable consideration of the applicable collective bargaining agreement."<sup>28</sup> Staff further found that "[t]here is no evidence of fraud, discrimination, or collusion with management regarding this settlement."<sup>29</sup>

The IEB adopted staff's report as its decision. President Jones provided the appellants with a copy of the IEB decision on January 23, 2019.<sup>30</sup> Johnstone and Moldenhauer appealed the IEB's decision to the Public Review Board (PRB) on February 8, 2019.<sup>31</sup>

## ARGUMENT

### **A. Rachel Johnstone and Scott Moldenhauer:**

Based on all the evidence, Appellants believe that the settlement of the grievances was improper. If the Company's Human Resources representative had followed up in a timely manner after Johnstone submitted her accommodation request in June 2017, she would have received the earpiece in mid-year 2017 and, therefore, would not have faced discipline in November 2017. The Company was clearly treating others within the Department differently, especially her male counterparts. Johnstone was found to have been discriminated against in the report prepared by Local 212 Civil Rights Chairperson Davis, and to this day the Company has not presented evidence to the contrary. The information presented in the report should have provided enough justification to make Johnstone whole for the losses resulting from her suspension. Appellants believe that settling the case as if both parties were at fault by accepting five days without pay for Johnstone is an affront to the struggle for women's rights. Johnstone denies that she was sleeping on the day in question, and there is no evidence to prove otherwise beyond the word of her supervisor who showed

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<sup>27</sup> Record, p. 46.

<sup>28</sup> Record, p. 74.

<sup>29</sup> Record, p. 74.

<sup>30</sup> Record, p. 45.

<sup>31</sup> Record, p. 75.

discriminatory animus toward her. The Company has also sought to use Johnstone's disability against her.

Appellants are seeking to have both grievances reinstated because they believe Johnstone was discriminated against and should be made whole for all losses resulting from her unjustified suspension. Settling grievance 17-003 at a discount is irrational and irresponsible and the settlement of 17-005 obtained no meaningful relief. These settlements set a bad precedent in dealing with gender discrimination and for workers who have a medical disorder. If the Union does not fight for employees on these issues, the Company will continue to target women and those with disabilities.<sup>32</sup>

**B. International Union, UAW:**

**C.**

The Union's decision to settle these grievances was rational and not improperly motivated due to fraud, discrimination or collusion with management. Regarding grievance 17-003, Bainter was able to obtain a 25-day reduction in Johnstone's discipline with back pay. In his letter to Johnstone, Bainter stated his opinion that the chances of obtaining a more favorable result through arbitration were slight, and that the Union should not expend resources arbitrating such a claim.

Regarding grievance 17-005, Bainter was able to obtain a commitment from the Company to review the report from the Local 212 Civil Rights Committee, and request that the Company Diversity Office take any appropriate action consistent with the Parties' National Agreement. This resolution also responded to Johnstone's desire that an investigation be undertaken and that the Local Civil Rights Committee's report be taken seriously.

Given the uncertainties always attendant to arbitration, Bainter made the rational decision to favorably settle the grievances. Johnstone had been cited in the past for the same infraction. Although there was a delay in addressing her accommodation request, it is not certain that her requested accommodation, to be awakened if she dozed off, would have convinced an arbitrator that the Company's penalty was too severe, especially since the Company, although belatedly, found that the requested accommodation was not reasonable.

## DISCUSSION

Our jurisdiction over claims arising from the disposition of collective bargaining grievances is limited to the question whether the matter was improperly handled

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<sup>32</sup> In their initial appeal to the PRB, Appellants asserted for the first time in the appeal process that the grievance settlements reflected an attitude of deference to management on the part of the UAW-FCA Department. Appellants suggested that this deference was related to the conduct forming the basis of recent indictments against Company and Union officials, but offered no specific facts establishing any connection between those events and the case before us. During the hearing on this matter, Appellants did not attempt to present any further evidence of any such connection or otherwise raise this issue. In our view, Appellants abandoned this line of argument.



because of fraud, discrimination, or collusion with management or whether the disposition was devoid of a rational basis.<sup>33</sup> In this case, we have no reason to doubt the good faith of the union representatives involved in handling Johnstone's grievances at each stage of the process. However, a "union representative's obligation to a member requires more than good faith to survive scrutiny under the 'rational basis' test." *Neely v. Region 3, UAW*, 14 PRB 1, 9 (2009). Johnstone is a high-seniority employee who was subjected to serious discipline by the Company.<sup>34</sup> In addition, she had raised discrimination claims deemed credible and substantial by the Local's Civil Rights Chairperson. She was entitled to vigorous advocacy on her behalf.

"When this Board reviews a representative's handling of a grievance, we do not substitute our evaluation of the merits of a grievant's case over that of the representative who has personally met with the people involved and reviewed the grievance record. Our concern is whether the representative has provided the minimal rational level of investigation, expertise, and advocacy a UAW member has the right to expect."

*Dailey v. Region 2B*, 14 PRB 933, 947 (2013). In this case, the handling of Johnstone's grievances fell short of this standard in some key respects.

We turn first to the handling of grievance 17-003. Our hearing in this matter substantially clarified the timeline surrounding Johnstone's request for a disability accommodation and her subsequent discipline. Most significantly, the hearing established that Union Steward Russ Hibbs first became aware of Johnstone's request for a disability accommodation during the meeting with her supervisor held on November 9, 2017, when the 30-day suspension was issued. Then, on November 13, 2017, Hibbs sent an email to Johnstone's supervisor attaching a copy of her accommodation request and asserting that she should immediately be returned to service based on her pending request. Nevertheless, when Hibbs filed grievance 17-003 two days later, he did not cite Johnstone's accommodation request as grounds to reverse the discipline in its entirety. Instead, he framed the grievance solely in terms of a violation of the progressive discipline steps set forth in the National Agreement. The grievance stated:

"Management failed to maintain its agreement to follow the terms of the National Agreement Sec (33). Jeff Lamb agreed that he was going to follow the step procedure then was advised by Dan Grady from Human Resources to bypass the 5 days and go to a 30 day DLO."<sup>35</sup>

During the PRB hearing, International Representative Bainter explained his handling of Johnstone's grievances at the Appeal Board level. Bainter acknowledged

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<sup>33</sup> UAW International Constitution, Article 33, §4(i).

<sup>34</sup> Under Section 33 of the applicable UAW-FCA National Agreement, a 30-day suspension is the final disciplinary step before discharge.

<sup>35</sup> Record, p. 10.

that the UAW-FCA Department had not arbitrated a grievance since 2014 and explained that there were no prior arbitration decisions in the UAW files addressing disability accommodations. Specifically, with respect to grievance 17-003, Bainter explained that the grievance itself indicated that a five-day suspension was the appropriate disciplinary measure. Although he argued to management that no discipline should have been imposed due to Johnstone's accommodation request, he concluded that an arbitrator would not reduce the discipline to a lesser amount than the grievance as written indicated to be appropriate. We believe that Representative Bainter reasonably concluded that an arbitrator would not award relief beyond what is stated on the face of the grievance. Under the circumstances, his decision to settle the grievance in exchange for a reduction to a five-day suspension was rational.

No satisfactory explanation, however, has been given for the initial decision to frame grievance 17-003 solely in terms of discipline assessed in excess of the steps set forth in the National Agreement. Steward Hibbs knew of Johnstone's accommodation request before preparing the grievance, and even cited this as grounds to demand her return to work in his November 13, 2017 email to her supervisor. Nonetheless, in the grievance itself, he did not assert that the Company improperly subjected Johnstone to discipline due to the pending request. It was not rational to omit from the grievance Johnstone's principal ground for reversal of the discipline. She advised the Local Union from the start that the discipline was not merely excessive but inappropriate, given her previously submitted accommodation request. In addition, Johnstone appears to have maintained throughout the grievance process that she did not fall asleep in the workplace on November 7, 2017, as she was accused of doing. In fact, Moldenhauer emphasized on appeal that in this regard it was Johnstone's word against the word of her manager who showed discriminatory animus toward her.<sup>36</sup> Johnstone's denial of the charge also provided a basis to challenge her disciplinary suspension in its entirety. But again, this is not reflected in grievance 17-003, which as written concedes that a five-day suspension is appropriate discipline in Johnstone's case.

We appreciate that the Local Union had on-going concerns regarding management's failure to adhere to the progressive disciplinary steps contained in the National Agreement. Johnstone's situation, however, was plainly not an appropriate case through which to advance those concerns. At the hearing, Chief Steward Moldenhauer acknowledged that grievance 17-003 may have been miswritten but asserted that it should be construed in conjunction with grievance 17-005 which was premised on discrimination and also sought complete relief for Johnstone. However, we agree with Representative Bainter's assessment that an arbitrator would not award greater relief than is indicated on the face of the grievance. A second grievance could not cure this defect.

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<sup>36</sup> As the PRB has noted in the past, UAW Administrative Letter, Volume No. 54, Letter 4, dated August 12, 2008, states: "If there are factual disputes in a given case, the grievance handler should accept the grievant's version of the facts, if credible."

The applicable UAW-FCA National Agreement contains a side letter providing for the reinstatement of grievances following review by the PRB. Therefore, such relief can be ordered by the Board in this case. Under the rather unique circumstances of this matter, however, we do not think that it would be appropriate to order reinstatement with respect to grievance 17-003. Here, the error lies in how the grievance was written in the first instance. If the grievance were simply reinstated, this defect would remain, and it is highly unlikely that an arbitration proceeding would yield any recovery beyond what has been obtained through settlement. Because reinstatement cannot provide appropriate relief in this case, the Union should instead reimburse Johnstone in an amount equivalent to her lost compensation due to the five-day suspension in order to make her whole for the failure to properly seek such compensation through grievance 17-003. Johnstone indicated at the hearing that the approximate amount of her lost wages is \$1,500. The parties should meet to agree on the exact amount of reimbursement.

We now turn to the second grievance filed on Johnstone's behalf. After grievance 17-003 was filed, Johnstone asked Hibbs to file a grievance asserting that she had been subjected to disparate treatment based on disability and gender. Accordingly, Hibbs filed grievance 17-005 on November 27, 2017 claiming discrimination and requesting appropriate action by the Company and a make-whole remedy for Johnstone. Johnstone returned to work on December 11, 2017 and continued to experience what she believed to be discriminatory treatment. She reported the discrimination via the Company's ethics helpline and made a report to Civil Rights Chairperson Davis. Davis investigated Johnstone's complaint and produced a report on February 9, 2018 finding her allegations credible.

Representative Bainter was aware of Chairperson Davis's report when he discussed grievance 17-005 with management. He sought a settlement which would advance the consideration of the report through the process for reporting discrimination to the Company set forth in Side Letter 20 of the National Agreement. At the hearing, however, Bainter acknowledged that the National Agreement does not provide a mechanism for the Company to report back to the Union on the disposition of discrimination complaints. Thus, it remains unknown in this case what steps, if any, the Company took in response to Chairperson Davis's report. Neither Johnstone nor her Local representatives are aware of any such measures taken by the Company. In response to questions from the Board, Bainter agreed that he could have used the grievance process, including arbitration if necessary, to obtain an agreement with management regarding concrete steps to address the discrimination concerns raised by Johnstone. Considering the seriousness of the findings presented in the Davis report, we believe that even the minimal rational level of advocacy required the Union to attempt to obtain such an agreement from management in this case.

In addition, Bainter made clear at the hearing that he fully understood that the discipline imposed upon Johnstone was the product of the Company's failure to act upon her ADA accommodation request. Although we find reasonable Bainter's explanation that he could not pursue full restitution of lost wages due to the manner in which grievance 17-003 was written, no explanation has been provided as to why the

Union did not seek to have the disciplinary suspension cleared from Johnstone's service record as the product of the discriminatory treatment challenged in grievance 17-005. Again, even a minimum level of rational advocacy demands that the Union seek such relief under the current circumstances.

Thus, with respect to 17-005, the Board will direct the International Union to reinstate the grievance for the purpose of obtaining an agreement with the Company specifying measures to be taken to address the problems identified in Chairperson Davis's report. In addition, the International Union should seek to have the five-day disciplinary suspension removed from Johnstone's service record.

In finding that aspects of the Union's handling of Johnstone's grievances do not satisfy the rational basis test, we nevertheless recognize that discrimination cases such as Johnstone's can be complex both factually and legally. Moldenhauer and Hibbs undertook to educate themselves regarding the ADA interactive process and diligently represented Johnstone in that aspect of this matter. We are also mindful that Bainter attempted to locate prior arbitration awards on the property addressing disability accommodations but found that he was without prior precedent to guide him. That said, Side Letter 124 of the National Agreement, which the International Union cited in its presentation to us, commits the Union to using the contractual grievance and arbitration procedure in order to resolve alleged violations of "policies against discrimination because of race, color, religion, age, sex, national origin, status as a qualified person with a disability, sexual orientation, union activity or membership in any other legally protected class." To the extent that the International Union offers resources to assist in dealing with these often-challenging cases, we would recommend that grievance handlers be encouraged to take full advantage of all educational opportunities made available.

As outlined above, the following relief is awarded in this matter:

- (1) In lieu of the reinstatement of grievance 17-003, we direct the Union to reimburse Rachel Johnstone in an amount equivalent to her lost compensation due to her five-day suspension; and
- (2) We direct the International Union to reinstate grievance 17-005 for the purpose of obtaining an agreement with the Company specifying measures to be taken to address the problems identified in Chairperson Davis's report and to remove the five-day disciplinary suspension from Rachel Johnstone's service record.

It is so ordered.