THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW

APPEAL OF:

BRIAN GASKIN, ET AL., Members,
UAW LOCAL UNION 723
(Monroe, Michigan), REGION 1A,

Appellants,

-vs- CASE NO. 1802

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

Appellee.
_____/

DECISION
(Issued October 29, 2019)

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

The issue in this case is whether the UAW FCA Department lacked a rational basis for its decision to withdraw the seniority grievance filed on behalf of Brian Gaskin and the other Appellants.

FACTS

Brian Gaskin and the other Appellants work for FCA US LLC ("the Company") in Department 9100 at the Engine Plant located in Dundee, Michigan.[1] They are represented by UAW Local Union 723. Gaskin and the others were hired on May 23,

[1] The original grievance which is the subject of this appeal was filed on behalf of 11 members in Department 9100 who were hired on May 23, 2012: Racine Green, Alisa Rodriguez, Candise Green, Maria Davis, Loretta Gayle, Brian Gaskin, Diona Moore, Lorenzo Moore, James Hunter, Avante Marion, and Robert O'Neal, Jr. Record, p. 73. In his submission to the IEB, Gaskin indicated that Maria Davis is now deceased. Record, p. 89. Staff's report to the IEB recognized that the original grievance was filed on behalf of a group of members but considered Gaskin to be the sole appellant because only he had signed the appeal letter. Record, p. 97.

2012 and assigned to an alternative work schedule (AWS) consisting of four 10-hour workdays per week.[2]

Under the applicable bargaining agreement for Production, Maintenance and Parts employees, newly hired workers are considered probationary employees for the first 90 days of their employment.[3] The 90 days of employment as a probationary employee must be accumulated within a one-year period. Letter of Agreement No. 208, Section 2(a) also provides that days lost for specified reasons during the probationary period are not considered "days of employment," including "[a]ny period of five (5) or more consecutive normal work days on which the employee does not work such as model change, temporary adjustments, inventory, non-occupational disability, or personal absence or any combination thereof."[4] Employees only obtain seniority after completing the probationary period.

> "After employees have finished the probationary period, they shall be entered on the seniority list of their department or division and shall rank for seniority from the day ninety (90) days prior to the day they completed the probationary period."[5]

Thus, any days not included as "days of employment" in the probationary period are not credited for purposes of establishing an initial seniority date. The bargaining agreement also specifies that "[t]here shall be no seniority among probationary employees."[6]

During their probationary period, Appellants were laid off starting on June 30, 2012 and returned to service on July 9, 2012.[7] In the case of temporary layoffs, the collective bargaining agreement provides for the order in which employees are subject to layoff, as follows:

> "When there is a temporary layoff, employees on each shift in each classification and in each department or such grouping of departments performing substantially similar work as may be agreed upon locally will be laid off as follows:
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> (a)--Probationary employees will be laid off.
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> (b)--Employees with seniority will be laid off in the inverse or descending order of their seniority with the most senior employee being laid off first. They will be advised of the expected duration of the layoff and their scheduled return date. However, such employees may elect to remain at work and if able to perform the

[2] Record, p. 73.
[3] Record, p. 1.
[4] Record, p. 5.
[5] Record, p. 1.
[6] Record, p. 1.
[7] Record, p. 76.

> available work will be permitted to do so in the same seniority order up to the number of employees required. . . ."[8]

The layoff period was counted against Appellants' "days of employment" in determining when they had reached the end of their probationary period. As a consequence, they were assigned a seniority date of May 31, 2012 at the end of their probationary period.[9]

Some probationary employees within Department 9100 were not laid off during the time period from June 30, 2012 through July 9, 2012.[10] These employees continued to accrue "days of employment" toward their probationary period and ultimately these days were recognized for seniority purposes. As a result, there are employees in Department 9100 who were hired on the same date as Appellants, who have their hire date as their seniority date, as opposed to Appellants who have May 31, 2012 as their seniority date. There are also employees in Department 9100 who were hired on May 30, 2012, but not laid off from June 30, 2012 through July 9, 2012. These employees now hold a seniority date one day higher than Appellants.

According to Gaskin, the Company "hand-picked" probationary employees to retain during the layoff period. He states: "If the workers didn't work in the zone/area of the individual that was doing the hand picking, unfortunately you didn't get picked to work."[11] Gaskin complains that the Company "hand-picked" as opposed to using seniority dates or Company identification (CID) numbers to determine the order of layoffs among probationary employees within the Department.[12]

On November 5, 2016, Local 723 initiated Grievance No. 16-0263 on behalf of Gaskin and ten other employees.[13] The grievance form stated:

> "The Union Protest[s] the applied Seniority date given to these employees hired on 5/23/2012. We Charge the company with improperly not counting 7/2, 7/3, 7/4/2012 (4 work Days A-3crew) as 'Days of Employment' the scheduled period was less than 5 work days so this period should be considered 'Days of Employment'"[14]

The grievance form indicated that the contract section involved was Letter No. 208, Section 2(a) pertaining to days lost during probation for "[a]ny period of five (5) or more

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[8] Record, p. 2.
[9] Record, p. 73.
[10] Record, pp. 15-16, 20.
[11] Record, p. 87.
[12] Record, p. 83.
[13] The Record contains no explanation as to why Gaskin's grievance was not filed until 2016 when the challenged seniority dates were presumably established in 2012. Staff's report to the IEB noted that the grievance appeared "grossly belated" but offered no explanation for the timing of the grievance. Record, p. 99. There is also no indication in the Record that the Company raised timeliness as an issue in response to the grievance.
[14] Record, p. 73.

consecutive normal work days."[15] As relief, the Local demanded that the employees' "seniority be corrected to 5/23/2012 and each employee be made whole."[16] The Company issued a Step 1 response on November 7, 2016 stating:

> "Employees were placed on layoff on 6/30/12 and were not reinstated until 7/9/12, all during their probationary period. Time off roll during a probationary period does not count toward days worked, nor their seniority. No contractual violation has occurred. Grievance denied."[17]

The Union continued to appeal the grievance through Step 4 of the process.[18]

On November 9, 2017, the grievance was moved to the Appeal Board "for language interpretation" and was assigned Case No. 31337.[19] International Representative Rod Heard prepared the following description of the appeal:

> "Nature of Issue: In 2012, there w[as] a group of DEP members that had their seniority (CSD) Corporate service dates changed due to a temporary adjustment (one-week layoff of 7/1/2012 encompassing dates 6/30/2012 thru 7/09/2012).
>
> The Union contends that these members should have not experienced any days lost towards their seniority during the 7/1/2012-week layoff due to their AWS Schedules did not cause them to be laid off for five (5) or more consecutive normal work days (Letter 208-2011 PMP Agreement).
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> During the Fourth Step Grievance meeting the Union protested that FCA management was in violation by not counting the DEP member's last day worked as a day of employment (6/30/2012), instead they used this date to push back their seniority dates. FCA Management response was th[at] all seniority [dates] were accurate and implied that there were no contractual violations, so I am appealing this grievance for corrective action."[20]

On October 8, 2018, the Appeal Board issued a disposition indicating that the Union had withdrawn Grievance No. 16-0263.[21] On October 11, 2018, UAW FCA

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[15] Record, p. 73.
[16] Record, p. 73.
[17] Record, p. 73.
[18] On December 18, 2016, Production Committeeman Lorenzo Jamison, Sr. wrote a memo regarding the Step 2 disposition of Grievance No. 16-0263. He stated: "I need to rewrite the grievance, write another grievance entirely, or amend the grievance to include more members." Record, p. 74. This is likely a reference to the fact that other employees within Department 9100 who were hired around the same time as Appellants had their seniority impacted by the June 30 through July 9, 2012 layoff, yet the original grievance only included employees hired on May 23, 2012. Gaskin's IEB appeal submission indicates that Jamison wrote a second grievance on December 18, 2016, No. 16-0282 which became Case No. 31336 before the Appeal Board. Record, p. 86. However, no documents from the grievance file for No. 16-0282 are included in the Record.
[19] Record, pp. 73, 75, 78.
[20] Record, p. 76.
[21] Record, p. 78.

Department International Representative Joe Ferro notified Appellants through Local Production Committeeman Lorenzo Jamison that the grievance had been withdrawn. Ferro wrote that he made the decision not to arbitrate "because [he] found no violation based upon a reasonable interpretation of the Collective Bargaining Agreement."[22]

Gaskin filed an appeal with the International President which was received on November 13, 2018.[23] Although only Gaskin signed the appeal, he asserted that it was filed on behalf of all employees covered by the original grievance. By letter dated November 16, 2018, the International President's Office requested that Gaskin provide additional information regarding the appeal. Gaskin responded, indicating the basis of the appeal as follows:

> "We believe that the Union Local 723 should have went to Management and informed them that it was wrong the way they were going about conducting the way they choose to hand pick workers who were going to work. We also believe the Union Local 723 should have fought for our corporate service date to be reverted back to our hire date 5-23-12.
>
> The contract language we believe was violated [because] the company didn't honor the proper usage of the CID numbers during selecting workers to work the week of the 1 wk (6-30-12) layoff."[24]

The International President's Office also requested that International Vice President Cindy Estrada provide information regarding Gaskin's grievance. International Representative Ferro responded.[25] In terms of Gaskin's complaint that the Company had "handpicked" among workers, Ferro pointed to Section 60 of the bargaining agreement setting forth procedures to implement a temporary layoff. He emphasized that all members covered by the grievance were probationary employees who are to be laid off first under Section 60. He also noted that Section 60 provides for layoffs to be implemented by "employees on each shift in each classification and in each department performing substantially similar work as may be agreed upon locally."[26]

Ferro further explained that the grievance was based upon the Appellants' interpretation of Letter No. 208 and how it should be applied to them in light of their alternative work schedule consisting of four 10-hour days per week. He noted that the alternative work schedule had been added to the agreement in 2011, whereas Letter No. 208 was agreed to in 1996. He also referenced Section 49(c) of the bargaining agreement covering "Loss of Seniority" which indicates that an absence of five scheduled workdays is considered equivalent to 40 scheduled work hours.[27] In his view, Appellants lost 40 schedule hours during the one-week layoff and this should be considered equivalent to

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[22] Record, p. 79.
[23] Record, pp. 80-83.
[24] Record, pp. 88-89.
[25] Record, pp. 92-93.
[26] Record, p. 92.
[27] Record, p. 6.

"[a]ny period of five (5) or more consecutive normal work days" as provided for in Letter No. 208.

The International President's staff determined that a hearing on Gaskin's appeal was unnecessary. Acting on behalf of the President, staff members prepared a report to the IEB based upon the information provided by Gaskin and International Representative Ferro. Staff determined that the appeal should be denied. First, staff rejected Gaskin's argument that the Company violated the bargaining agreement when it selected among probationary employees for layoff.[28] Staff noted that Gaskin's appeal suggested that the Company selected among work zones or areas and that this practice does not appear to violate the agreement which provides that layoffs are done by groupings of departments, shifts and classifications. Staff also emphasized that the bargaining agreement provides that probationary employees do not have seniority. Therefore, Gaskin's claim that probationary employees should have been laid off in order of their hire dates was found to lack a contractual basis.

Finally, staff rejected the argument that the five-day period under Letter No. 208 was not triggered during the 2012 layoff because Gaskin and the other employees work an alternative schedule of four work days and one of the days during the layoff period was the July 4 holiday.[29] Staff found that the consistent practice under the agreement had been that a one-week layoff during the probationary period gave rise to a one-week adjustment in seniority date, even though the language in Letter No. 208 had not been updated after the introduction of the alternative work schedule in 2011.

The IEB adopted the staff's report as its decision.[30] The International President provided Gaskin with a copy of the IEB decision on March 6, 2019. Gaskin promptly appealed to the Public Review Board (PRB) on behalf of himself and the other employees included in the original grievance.[31]

ARGUMENT

A. Brian Gaskin:

I am appealing the disposition of our grievance which sought the restoration of our original seniority date of May 23, 2012 instead of our current seniority date of May 31, 2012. Seniority is supposed to mean everything in a union shop. Although we have documents showing that we were hired by FCA on May 23, 2012, we have repeatedly been denied the right to our actual seniority date.

At the time we were hired, the bargaining agreement stated that probationary employees were to be laid off first. But this was not followed by our union leadership at

[28] Record, p. 98.
[29] Record, p. 99.
[30] Record, p. 95.
[31] Record, pp. 115-116.

the time because a handful of probationary employees were handpicked based on the zones in which they worked or who they knew during the temporary layoff from June 30, 2012 through July 9, 2012. The probationary employees who did not work anticipated having to work an extra probationary week but did not anticipate that the Union would count backwards from the last week worked as a probationary employee in order to modify our seniority.

B. International Union, UAW:

Gaskin's main contentions regarding his layoff and seniority date are inconsistent with the plain language of the applicable collective bargaining provisions. First, Gaskin complains that other employees were retained while he was laid off. He also complains that his seniority date should not have been moved one week. However, as International Representative Ferro noted in his assessment to the IEB, Section 60 of the Production, Maintenance and Parts Agreement allows the parties to agree to lay off employees by department or groupings of departments doing similar work. It also makes clear that where the parties have agreed that certain departments will face layoffs, probationary employees are to be laid off first. It was reasonable for Representative Ferro to reject Gaskin's contentions that he was somehow treated inconsistent with the parties' agreement by being laid off.

Gaskin is also incorrect about the application of his seniority date. Appellant seems to misunderstand the application of Letter No. 208 to his situation. Under that letter, a layoff of a work week (five or more consecutive days) is not considered "days of employment" for a probationary employee. As noted, this language pre-dates the implementation of the alternative work schedule (AWS) that Gaskin was working under. Nevertheless, even though Gaskin was regularly scheduled to work four days, and not five, it is not disputed that he was laid off for a full week, or 40 consecutive hours of employment. The fact that one of those days included a contractual holiday does not change the analysis. In reviewing whether or not the Company violated the agreement, the Union must determine, despite any technical arguments that may be made, whether or not the Company's actions are consistent with the letter and the spirit of the agreement. Under these circumstances, it was reasonable for Representative Ferro to conclude that the Company's application of Letter No. 208 to Gaskin's layoff was not improper.

DISCUSSION

The PRB's jurisdiction to review appeals concerning grievance handling is limited to allegations that the matter was improperly dealt with due to fraud, discrimination, or collusion with management or that the disposition of the matter was devoid of any rational basis.[32] In this case, Gaskin and the other Appellants do not claim that the withdrawal of their seniority grievance was motivated by fraud, discrimination, or collusion with management. Nor is there any basis on the Record to believe that any such factors influenced the disposition of their grievance. Instead, they contest the UAW FCA

[32] UAW International Constitution, Article 33, §4(i).

Department's conclusion that the Company's handling of their seniority did not violate the bargaining agreement. Given the applicable contract language, however, the Union's conclusion was rational.

First, the Union reasonably found that Appellants' alternative work schedule did not provide a basis to claim that they had not lost a period of five or more workdays during their probation pursuant to Letter of Agreement No. 208. As Representative Ferro has explained, Letter No. 208 was agreed upon in 1996. The alternative work schedule consisting of four 10-hour days was not added to the agreement until 2011. Although the language of Letter No. 208 was not modified to account for the new four-day schedule, the Union reasonably concluded that the parties did not intend the introduction of the new schedule to create an exception to Letter No. 208. It is rational for the Union to take the position that four 10-hour days are the functional equivalent of a period of five or more consecutive work days since both consist of 40 scheduled work hours.[33]

Second, Gaskin asserts that the Company should have selected probationary employees for layoff based upon seniority date or CID number. However, the layoff provisions in the collective bargaining agreement do not set forth a basis for selecting among probationary employees. The contract provides that probationary employees are to be laid off prior to employees who hold seniority, but is silent regarding the order for layoffs among probationary employees. In addition, the agreement explicitly provides that "[t]here shall be no seniority among probationary employees."[34] Given that language, it would be difficult to argue successfully that the Company should have selected among probationary employees based upon seniority. We recognize that the Company implemented the 2012 layoff in such a way that Appellants were removed from service while other probationary employees hired after them continued to work. We appreciate how unfair this must seem to Appellants since layoffs following an employee's probationary period are implemented on a strict seniority basis. However, there is no language in the contract to prevent the Company from selecting among probationary employees without regard for hire dates. Similarly, there is no contractual basis to insist that probationary employees be selected for layoff based upon CID numbers.

Appellants also suggest that the Company's selection was based on some form of favoritism, asserting: "If the workers didn't work in the zone/area of the individual that was doing the hand picking, unfortunately you didn't get picked to work."[35] To the extent that work area played a role in selecting employees for layoff, the International emphasizes that the bargaining agreement permits the implementation of layoffs on that basis.[36] In terms of the claim that the selection involved "hand picking," it is conceivable that, under some circumstances, the Union could successfully grieve selection based upon highly unusual or egregious favoritism or bias that is impermissible. However, Appellants' bare

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[33] Where it "has not been demonstrated that the Union's interpretation of [a contractual] provision is irrational or unfair," the PRB will not second-guess the interpretation. *Harmon v. Region 1A*, 13 PRB 334, 339 (2006).
[34] Record, p. 1.
[35] Record, p. 87.
[36] Record, p. 2.

allegation that the Company engaged in “hand picking” without more does not provide a sufficient basis to support such a claim, especially in the absence of clear contract language governing retention among probationary employees. Therefore, it was not irrational for the Union to decline to pursue Appellants’ claim further in this regard.

The decision of the IEB is affirmed.