THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW

APPEAL OF:

THOMAS BALTRUSAITIS, II, et al., Members,
UAW LOCAL UNION 412
(Warren, Michigan),

Appellants,

-vs- CASE NO. 1793

UAW REGION 1
(THE UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA),

Appellee.
/

DECISION
(Issued January 22, 2020)

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

APPEARANCES: Thomas Baltrusaitis, II, Patrick Barth, Tim Mauro-Vetter, and Michael Savasky on behalf of Appellants; Mark Liburdi, Bill Karges, Lee Bainter, Thomas Brenner, Sarah Laws, Anthony Feyers, and Reginald Ransom on behalf of the International Union.

In this decision, we consider whether Appellants' challenge to the withdrawal of their grievance concerning a transfer of operations is timely and whether they have adequately stated a claim of fraud or collusion that may fall within the Board's jurisdiction.

FACTS

Thomas Baltrusaitis and the other Appellants are engineers employed by FCA US LLC ("the Company") in the former Advance Manufacturing Engineering Powertrain (AMEPT) division, which is now known as the EMEC Department.[1] Currently, Appellants

[1] Record, p. 10.

work at the Trenton Engine Complex (TEC) located in Trenton, Michigan. They are members of Unit #25 and represented by UAW Local Union 412. Appellant Baltrusaitis is the current Unit #25 Chairman. Appellant Gregory Skonieczny is the current Unit #25 EMEC Chief Steward.[2]

On September 26, 2011, then Vice President of Employee Relations, Alphons Iacobelli, wrote a letter to then Vice President and Director – UAW Chrysler Department, General Holiefield.[3] In accordance with Section 57 of the 2007 UAW-Chrysler Engineering, Office and Clerical Agreement ("National Agreement"), the letter advised that the Company intended to transfer the work performed by the AMEPT division at the Chrysler Technical Center (CTC) located in Auburn Hills, Michigan to the TEC in Trenton, Michigan. As a result, members of UAW Local 412, Unit #53 would be transferred to UAW Local 412, Unit #25. The Company indicated that Unit #53 would transfer "in its entirety."[4] The transfer process was to begin by the end of the third quarter of 2011. The Company cited a number of efficiencies it expected to realize as a result of the transfer of operations.

Section 57 of the 2007 National Agreement is entitled "Transfer of Operations." Subsection 57(a) provides that when operations are transferred from one represented seniority group to another, the Company "will determine the number of additional employees, if any, the receiving seniority group will need to perform the transferred operations."[5] Employees whose jobs are transferred are permitted to retain their seniority. Employees not wishing to transfer may exercise their seniority within their current seniority group. Section 57(b) requires that the Company provide notice and confer with the Union regarding the transfer of employees impacted by the transfer of work:

> "When operations are to be transferred from one such unit to another such unit, the Corporation will notify the International Union in writing of such transfer. Such notice will be given in advance and as promptly as the circumstances in each case permit. Plant Management will advise the Unit Chairman/President at the receiving unit as well as the unit from which the operations are being transferred of impending transfers and upon request will discuss the details, including where available, the nature of the work involved and the numbers of employees affected. The Corporation, at the request of the International Union, will negotiate the advisability of transferring to the receiving unit employees who are affected by the transfer of the work."[6]

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[2] The PRB appeal was signed by 22 individuals. Record, p. 445. Five individuals subsequently requested to join the appeal and were added. Record, pp. 458, 459, 464, 471, 475. By letter dated March 25, 2019, the PRB designated Baltrusaitis as spokesperson for Appellants.
[3] Record, p. 35.
[4] Record, p. 35.
[5] Record, p. 5.
[6] Record, p. 5.

In the event the parties are unable to reach agreement, Section 57(c) sets forth default rules to govern the order in which employees are offered the opportunity to transfer.[7] The 2007 National Agreement also contains a management rights clause which provides that the "Corporation has the exclusive right to manage its plants and offices and direct its affairs and working forces, except as limited by the terms of" the National Agreement.[8]

As announced, the Company began the transfer of AMEPT operations in 2011. Appellants were unhappy about the transfer because it added significant time to their daily commutes, approximately an hour each way, in addition to increased fuel costs and vehicle wear and tear. Transferred employees did not receive a relocation allowance because the National Agreement only provides for such payment when the transfer location is 50 or more miles away from the prior work location.[9]

Not long after the transfer began, Appellants became aware that other employees within their unit were continuing to work out of the CTC, only rarely reporting to the TEC in Trenton, if at all. It is alleged that nearly all of the AMEPT management employees continued to work almost exclusively from CTC.[10] With regard to non-management employees, it is alleged that supervisors and some engineers would find excuses to report to the CTC or simply "camp out" in conference rooms with the explicit or tacit approval of their managers, who also preferred working from the CTC.[11] In other instances, employees within the transfer group would work from the offices of suppliers located near the CTC to avoid commuting to Trenton.[12] Appellants believed that it was unfair that some employees were being required to report to Trenton, while others continued to work primarily from the CTC or nearby locations, especially since those who avoided the long commute to Trenton had more time available to work overtime assignments.[13]

As early as 2012, Appellants complained to the Company's Human Resources department about the uneven treatment of employees within the transferred unit.[14] At various points, the Company committed to enforcing the transfer equally, even agreeing to cancel badge access to the CTC for employees in the transfer group. It is unclear, however, whether the Company ever fully acted upon the matter.[15]

Another source of discontent for Appellants arose from the use of pool cars located at the CTC.[16] Employees transferred to Trenton preferred to use pool cars located at the CTC for weekend overtime assignments at nearby plants. Some managers permitted Trenton-based employees to use the CTC pool cars while others would not allow the

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[7] Record, p. 5.
[8] Record, p. 2.
[9] Record, pp. 8-9, 91.
[10] Record, pp. 167-168, 187, 230-231.
[11] Record, pp. 162, 178, 193, 217.
[12] Record, pp. 156, 159.
[13] Record, pp. 312-313.
[14] Record, pp. 171-173.
[15] Record, pp. 177, 182-183, 196-197, 234.
[16] Record, pp. 160, 163-166.

practice.[17] In addition, some employees reportedly used the CTC pool cars even during the work week in order to avoid reporting to Trenton.[18] The Record indicates that the issue of the location and access to pool cars was raised by the Union during local contract negotiations in 2013, but it is unclear if any resolution was reached.[19]

As early as 2013, Appellants and others noticed what they believed to be an increase in the number of non-bargaining unit (NBU) employees doing bargaining unit work.[20] They attributed this increase to the transfer. The number of salaried bargaining unit (SBU) employees within the AMEPT group decreased, according to Appellants as a result of the long commute to Trenton and low morale attributable to unequal implementation of the transfer.[21] Around 2014, the Company formed the "Advanced Planning Group" at CTC, also referred to as the "Strategic Planning Group." According to Appellants, non-bargaining unit employees in this group began to perform work traditionally performed by them. Appellants filed several grievances relating to the Advanced Planning Group in 2014 and 2015.[22]

Appellants felt that the Local Unit leadership was not responsive to their concerns related to the transfer of operations. They allege that from 2012 to 2015 the Unit #25 leadership took "company-friendly positions" on a number of issues.[23] In particular, Appellants assert that the past Unit leadership ignored their concerns regarding the erosion of the SBU workforce and the reassignment of work to NBU employees. They also allege that grievances were not properly handled, with few grievances presented at the first step, none at the second step, and hundreds of grievances filed prior to the transfer withdrawn without precedent (WWP) with no documentation or explanation.[24] Appellants assert that the prior leadership enjoyed privileges such as increased access to overtime as a result of their acquiescence to management in Union matters.[25]

In June 2015, new Union leadership for Unit #25 took office. In the same month, the National Negotiating Team reached out to the new Unit leadership to determine what issues from the group should be forwarded in the National negotiating process.[26] Several grievances regarding the transfer of work to the Advanced Planning Group were submitted to the National Negotiating Team.[27] The Record does not reflect the disposition of these grievances.

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[17] Record, p. 186.
[18] Record, pp. 184-185.
[19] Record, pp. 201-204, 206-207.
[20] Record, p. 199.
[21] Record, p. 213.
[22] Record, pp. 326-339.
[23] Record, pp. 343, 350.
[24] Record, p. 350.
[25] Record, p. 350.
[26] Record, p. 318.
[27] Record, pp. 320-340.

In 2015, Appellants filed grievance 15-25-001 regarding the 2011 transfer of operations.[28] That grievance sought payment of $30,000 for each affected employee under the National Agreement's Relocation Allowance Plan.[29] This grievance was not pursued beyond the second step.[30]

On August 2, 2017, Appellants filed grievance 17-25-001 on behalf of all employees in the transferred group.[31] The grievance form claimed a violation of the "Purpose and Intent" of the National Agreement.[32] The grievance asserted:

> "The entire EMEC SBU workforce has been damaged with the illegal 'Transfer of Operations' that took place back on November 11th, 2011. FCA colluded with the UAW and created the illegal Transfer of Operations [which] was executed by the company with the full support of corrupt UAW officials. The collusion between FCA and the UAW not only violated Labor Law, it has damaged all SBU employees of EMEC. …
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> After the AME PT SBU engineers were forced to move due to the Transfer of Operations, management created the 'Strategic Planning Group' in the area that was vacated by the AME PT engineers. Now NBU employees are doing traditional EMEC SBU engineering work."[33]

The grievance sought $172,800 payable to 55 EMEC employees to compensate for additional daily commuting time, as well as a $45,000 car voucher per employee to compensate for added mileage placed on their vehicles. The grievance also requested that employees be relocated back to CTC and the return of all work traditionally performed by SBU employees. The allegations of collusion contained in the grievance were based

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[28] Record, p. 93. Documents pertaining to grievance 15-25-001 are not included in the Record, but general descriptions of the grievance are given at various points in the Record materials.
[29] Record, pp. 8-9.
[30] Record, p. 140.
[31] Record, p. 90.
[32] The preamble to the 2007 National Agreement is entitled "Purpose and Intent" and provides:

> "The general purpose of this Agreement is to set forth terms and conditions of employment, and to promote orderly and peaceful labor relations for the mutual interest of the Corporation, the employees and the Union.
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> The parties recognize that the success of the Corporation and the job security of the employees depends upon the Corporation's success in building a quality product and its ability to sell such product.
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> To these ends the Corporation and the Union encourage to the fullest degree friendly and cooperative relations between their respective representatives at all levels and among all employees."

Record, p. 2.
[33] Record, p. 90.

upon the government's indictment of Alphons Iacobelli on July 26, 2017 for violations of Federal labor law and tax evasion.[34]

Management answered that the grievance was untimely because the transfer occurred in 2011 and that it lacked merit because the transfer was conducted in accordance with the National Agreement.[35] Appellant Baltrusaitis progressed the grievance to Step 2. Management gave the same response, and also asserted that the grievance was the same as the one filed in 2015.[36] At the next stage in the process, UAW Region 1 International Representative Thomas Brenner withdrew the grievance. Appellants were notified of the withdrawal by letter dated November 3, 2017.[37] On December 8, 2017, Appellants filed an appeal with the International Union, which was ruled untimely.[38] Appellants did not seek to appeal the International President's determination regarding timeliness.

On February 2, 2018, Appellants filed grievance 18-25-001, which is the subject of the current appeal, on behalf of all employees in the transferred group.[39] The grievance form claimed a violation of the "Purpose and Intent" of the National Agreement. The grievance stated:

> "The EMEC SBU workforce has been damaged by the actions of an FCA executive who violated the Labor Management Relations Act and who also paid off UAW official(s) 'to take company-friendly policies.' One such policy was the 'Transfer of Operations' that took place back on November 11th, 2011. FCA illegally influenced UAW official(s) with monies, which led to the questionable Transfer of Operations of Unit #53 from CTC to Unit #25 at TEC. After the AME PT SBU engineers were forced to move due to the Transfer of Operations, management created the 'Strategic Planning Group' in the area that was vacated by the AME PT engineers. Now NBU employees are doing traditional SBU engineering work, work once done by SBU Unit #53 engineers.
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> The illegal actions of the FCA executive was verified in January-2018 when news articles came out saying that the executive pled guilty to criminal charges. . . ."[40]

The relief sought was essentially the same as grievance 17-25-001.

Management answered that the grievance was similar to 17-25-001, which had been withdrawn, and also lacked a contractual basis.[41] Unit #25 forwarded the grievance

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[34] Record, p. 104.
[35] Record, p. 90.
[36] Record, p. 93.
[37] Record, p. 396.
[38] Record, p. 434.
[39] Record, p. 10.
[40] Record, p. 10.
[41] Record, p. 10.

to UAW Region 1 and a Step 2½ grievance meeting was held on August 7, 2018.[42] By letter dated August 27, 2018, International Representative Brenner advised Unit #25 that the grievance had been withdrawn.[43]

On September 24, 2018, Baltrusaitis and Skonieczny appealed the withdrawal of 18-25-001.[44] In support of their appeal, they submitted voluminous documentation to the International Union, including documentation used to support grievance 17-25-001. Appellants emphasized that on December 15, 2017 Iacobelli had pled guilty to providing prohibited payments to Holiefield, whereas the allegations of collusion in grievance 17-25-001 were based solely on the government's indictment. Appellants inferred a connection between the unlawful payments and the transfer of operations, based primarily on the letter sent from Iacobelli to Holiefield in 2011 notifying the Union of the intended transfer.[45] They characterized the transfer as a "company-friendly position" taken by the UAW under Holiefield's leadership.[46] They asserted that the Union leadership had agreed to the transfer without regard to the negative impact on the employees involved. They also argued that the transfer was a sham, as evidenced by the fact that not all employees within the division were forced to move. They asserted that the Company's true intent was to shift their work to the Advanced Planning Group.[47]

On October 19, 2018, International Representative Brenner responded to an inquiry from International President Gary Jones's staff regarding the settlement of grievance 18-25-001.[48] Brenner explained that grievance 18-25-001 was a duplicate of grievance 17-25-001 which he had previously withdrawn as untimely because it related to the transfer of operations six years earlier. He also asserted that, even if the grievance were timely, it failed to provide sufficient evidence to sustain the allegations.[49]

President Jones's staff determined that a hearing was unnecessary on the appeal.[50] Acting on behalf of the President, staff members prepared a report to the International Executive Board (IEB) based primarily upon the information supplied by UAW Region 1. Staff concluded:

> "This is the Appellants' second attempt to grieve the 2011 transfer of operations. The Appellants do not cite any provision of any collective bargaining agreement between the parties that would have prohibited the Company from transferring the relevant operations from its Auburn Hills headquarters to Trenton Engine. Rather, Appellants claim that the 2011 transfer of operations was illegal, allegedly, because it was the product of

[42] Record, pp. 12-13.
[43] Record, p. 13.
[44] Record, p. 14.
[45] Record, pp. 23, 35.
[46] Record, p. 23.
[47] Record, pp. 369-370.
[48] Record, pp. 380-381.
[49] Record, p. 381.
[50] Record, p. 373.

> the corruption that came to light In 2017. Appellants, however, produced no evidence of any connection, nor offered any facts that might establish one, between the 2011 transfer of operations and the corruption outlined in Iacobelli's 2017 indictment and subsequent plea agreement. As a result, Representative Brenner concluded that this case would not prevail before the Company or an arbitrator.
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> Representative Brenner recognized that the instant grievance, Grievance No. 18-25-001, is identical to Grievance No. 17-25-001, which he had previously withdrawn and which had not been appealed. Representative Brenner did not think it was appropriate or meritorious to file a new grievance on a settled issue when there was no new evidence to support it. We agree. In addition, filing a new grievance in such a circumstance does not re-start the constitutional timeline for appealing a Union representative's decision on a disputed issue."[51]

Accordingly, staff denied the appeal.[52] The IEB adopted the staff's report as its decision on February 7, 2019.[53]

On February 9, 2019, Baltrusaitis wrote to President Jones taking issue with the determination not to hold a hearing on his appeal.[54] The International President's office responded on February 20, 2019 and advised that the next step in the appeal process was to the Public Review Board (PRB) or the Convention Appeals Committee.[55] By letter dated February 24, 2019, Appellants appealed to the PRB.[56]

Following its initial review of this appeal, the PRB determined to hold oral argument. In order to aid its consideration of this case, the Board requested that the International Union provide information and documentation related to various aspects of Appellants' allegations by letter dated June 12, 2019. The International Union requested additional time to respond in light of the fact that the transfer of operations had occurred many years earlier in 2011. Before the International had prepared its response, however, there was a fire at Solidarity House that caused major damage and records maintained by the UAW FCA Department were impacted by the blaze. The International President's office advised the PRB that records, including those of the UAW FCA Department, had to be sent to a facility in Texas for asbestos and lead decontamination. Later, the International advised that the documents had been returned from decontamination but they were no longer maintained in proper order making it difficult to locate relevant materials. At that point, the PRB determined to proceed with oral argument even without the requested information. The PRB heard the parties in oral argument on December 14, 2019.

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[51] Record, pp. 378-379.
[52] Record, p. 379.
[53] Record, p. 372.
[54] Record, pp. 429-431.
[55] Record, p. 436.
[56] Record, pp. 437-439.

ARGUMENT

A. Thomas Baltrusaitis:

The IEB's rejection of the appeal of the grievance 18-25-001 did not consider the fact that one of its former officers, General Holiefield (now deceased), colluded with FCA management, in particular, Alphons Iacobelli, in the handling of the matter set forth below. Appellants seek a hearing, which was deemed unnecessary by the IEB. The reason for this hearing is to exhaust every potential avenue of recourse before external means are most likely employed. The PRB has jurisdiction in this matter because of the alleged collusion with management in an attempt to eliminate the AMEPT SBU by "company-friendly" means.

The letter dated September 26, 2011 from Iacobelli to Holiefield stated that there would be a transfer of operations "in its entirety," but this never happened. To this very day, the operations are not transferred in their entirety. The original plan (per the Powertrain Engineering Center Strategy document dated September 2, 2011) was that J.P. McBride, the AMEPT Director at the time, was the only person from the AME organization to maintain an office at CTC and everyone else in the department would be transferred to Trenton.[57] Shortly after the transfer of SBU members and their immediate supervisors took place, a new NBU group was developed at CTC titled "Strategic Planning." This group blatantly took the work from the former Unit #53 SBU employees as their own. They still operate in this manner today. The purpose behind the transfer was to erode the jobs of salaried UAW-represented workers. Conveniently, the organization split off with two directors immediately after our group was transferred. Mike Crawford became the head of the group in Trenton and J.P. McBride became the director of the newly formed Strategic Planning group at CTC. Currently, there are no less than seventeen NBU personnel considered part of the manufacturing engineering group, who are still located within CTC. This is blatant shifting of SBU work to NBU personnel.

The second major issue stemming from this "company-friendly" transfer is the elimination of travel time and the use of company cars to and from our "home base" to servicing plants. This is because over 85% of the Unit lived within a short distance of the CTC in Auburn Hills, Michigan. Unit employees always reported to the CTC as their home base, checked out a company car, and drove to the servicing location on company time. Once the transfer of operations took place, everyone had to drive their own vehicle on their own time to Trenton, Michigan, or servicing locations, even though an employee might drive past the servicing location on the way to the new home base in Trenton. This was by company design to short-change the Unit members of drive time, as well as curtail the use of company cars and decimate the SBU ranks. The cost of fuel, tires, oil, and other wear and tear to Unit member's vehicles is a major sore spot in this group. Many people have since transferred to other departments as opportunities have become available, have retired early, taken positions at other companies, or have even transferred to NBU positions within FCA to try and overcome the financial hardship and time-consuming burdens of the transfer.

[57] The September 2, 2011 document is not included in the Record.

Furthermore, being relocated beyond 50 miles should have resulted in a relocation allowance, which was never paid. If this matter were taken to arbitration, it is clear that the most direct route between Auburn Hills and Trenton would be considered straight down Interstate 75 to the West Road exit and proceeding through Woodhaven to the Trenton facility. This is over 50 miles. Instead, FCA calculated the mileage according to a route down Telegraph Road, which is not the most direct route. The Company cannot choose the route to be taken to give itself a financial advantage. Some people have actually moved to the Trenton area now, and others probably would have if they had received relocation allowances.

The previous grievance 17-25-001 does indeed allege that FCA bribed UAW officials to gain "company-friendly" deals. But the Unit did not have clear evidence of wrongdoing until Iacobelli's plea agreement was made public in January 2018. However, the corruption which took place dates back to our situation in 2011, as Iacobelli has admitted guilt to criminal acts dating back to 2009. Iacobelli's admissions provide circumstantial evidence of wrongdoing related to the transfer of operations.

Appellants strongly urge that a hearing be held, so that the Unit members may at least express their frustrations to a higher level. An explanation needs to be given as to why the UAW still believes this decision was not "company-friendly" and most likely coerced by bribery.

B. International Union, UAW:

There is no evidence that Appellants' grievance was improperly handled because of fraud, discrimination or collusion with management. This case is about Representative Brenner's decision to withdraw grievance 18-25-001. He made that decision because grievance 18-25-001 involved the exact same issues that he had already resolved in grievance 17-25-001.

Appellants raise two main issues in their appeal. First, they claim a new NBU group called Strategic Planning was created to take their work. That allegation was addressed in both grievance 17-25-001 and 18-25-001. Second, Appellants raise a host of travel time issues. Those same issues were raised in both grievance 17-25-001 and 18-25-001. In the 2018 grievance, like the 2017 grievance, Appellants do not cite any provision of the National Agreement that prohibited the Company from transferring the relevant operations from its Auburn Hills headquarters to TEC. Rather, in both grievances, Appellants allege that the 2011 transfer of operations was illegal because it was the product of corruption that came to light in 2017. Appellants, however, produced no evidence of any connection, nor offered any facts that might establish one, between the 2011 transfer of operations and the corruption outlined in Iacobelli's 2017 indictment and subsequent plea agreement. As a result, Representative Brenner concluded reasonably that this case would not prevail before the Company or an arbitrator.

Appellants failed to perfect an appeal to the IEB in grievance 17-25-001. They should not be allowed to appeal now by simply filing an identical grievance and restarting

the clock. Such a procedure would allow Appellants to circumvent the clear time limits for an appeal set forth in Article 33, §4(c) of the International Constitution.

Appellants' claim that Iacobelli's plea agreement provided a basis for a new grievance. The plea agreement, however, did not provide any relevant new information to support a new grievance. Neither Iacobelli's indictment, nor his subsequent plea agreement contain any allegation or admission linking Iacobelli's misconduct to the 2011 transfer of operations.

Representative Brenner correctly identified grievance 18-25-001 as being identical to grievance 17-25-001 which he had previously withdrawn, and which had not been properly appealed. He reasonably concluded that it was inappropriate and without merit to file a new grievance on a settled issue when there was no new evidence to support it. In addition, he reasonably concluded that filing a new grievance in these circumstances should not re-start the constitutional timeline for appealing his decision on the 2011 transfer of operations issue. Brenner's decision was rational and well within the discretion afforded representatives when handling grievances.

C. Rebuttal by Thomas Baltrusaitis:

In response to the International Union's position statement in this appeal, Appellants acknowledge that transfer of operations took place in 2011 and it took six years to file our first meaningful grievance against the improper transfer. First of all, Alphons Iacobelli, who now has pled guilty and is serving time, has admitted to willfully corrupting UAW officers going as far back as 2009. His admission of guilt certainly covers the time period of the transfer of operations in 2011. The September 26, 2011 letter regarding the unit transfer was written by none other than Iacobelli himself to Holiefield. Holiefield's wife has pled guilty as part of the government's corruption case and therefore the PRB should conclude that her husband was also involved. Unit #25 members have reached out to Iacobelli personally to see if he will admit that the transfer of operations constituted part of the joint conspiracy. This request has yet to receive a response, perhaps because the UAW has a lawsuit pending against him at the present moment, and his legal advisors will not allow him to respond. Furthermore, the International Union has acknowledged that the 2011 negotiations were tainted by conspiracy to violate the Labor Management Relations Act. The transfer of our group occurred on November 11, 2011, immediately following management's corruption of certain union officials during the 2011 negotiation. These facts lend credence to the allegations within the grievance.

Regarding the issue of timeliness, grievance 17-25-001 was filed, progressed through the proper procedure, and missed the final appeal deadline by one day. The grievance should have been hand carried to Solidarity House before the weekend, as grievance 18-25-001 was. However, it is now understood that grievance 17-25-001 should not have been written to include the UAW as colluding with FCA management, because the UAW membership cannot write a meaningful grievance against itself. The proper procedure for such allegations would be charges before the National Labor Relations Board and/or under the Ethical Practices Codes of the UAW International

Constitution. Once guilty pleas were entered and FCA management had confessed to corrupting certain UAW officials, grievance 18-25-001 was formulated such that the UAW could now side with the Unit #25 membership against FCA for justice against the past wrongdoings, since we are now all reasonably aware of the admitted corruption.

Unit #25 did not attempt to "reset the clock" by writing the second grievance, 18-25-001. The first grievance, 17-25-001, only showed that Unit #25 knew the past UAW leadership had not bargained in good faith for them, and that the Unit was trying diligently to prove this fact. At that point, there were only the allegations in the indictment, not admitted collusion. Thus, there is compelling new evidence to support the facts stated in grievance 18-25-001.

In conclusion, Appellants request that the PRB order the following relief. The International Union shall bargain for and pursue grievance 18-25-001 to its fullest extent and obtain a make whole remedy from FCA on behalf of all individuals who were within the Unit as of November 11, 2011. At a minimum, a retroactive moving allowance should be bargained for, as well as lost travel-time compensation since 2011 and reimbursement for vehicle damage by means of a new vehicle voucher. Furthermore, negotiations should be held between the UAW and FCA to investigate the means by which this transfer of operations unfolded, and the work that was blatantly taken from UAW-represented workers and given to FCA management. The final outcome should be to have the SBU group now in Trenton, relocate back to the CTC in Auburn Hills, and utilize pool cars for travel to all servicing locations, as was the past business practice.

DISCUSSION

In this decision, the PRB addresses the two threshold issues in this case: (1) timeliness; and (2) whether the PRB has jurisdiction over a claim such as the one raised by Appellants. As fully explained below, we conclude that this matter is timely and that Appellants have stated a claim which may fall within our jurisdiction. Accordingly, in this decision, we also direct the International Union to provide certain information to the Board which is necessary for the PRB to render a final decision in this appeal.

Timeliness

The International Union's primary argument to this Board is that Representative Brenner properly concluded that grievance 18-25-001 was identical to grievance 17-25-001 which he had previously withdrawn, and that there was no new evidence to support the second grievance. The International further argues that Appellants failed to perfect a timely appeal of the withdrawal of 17-25-001 and instead were seeking to circumvent the time limits for appeal under Article 33, §4(c) of the International Constitution by refiling the same grievance.[58] Secondarily, the International argues that both grievances were

[58] There is some dispute between the parties regarding when the appeal of grievance 17-25-001 was filed with the International. The materials in the Record before us do not resolve the matter. Nevertheless, it is undisputed that Appellants did not appeal the International President's determination regarding timeliness

untimely since the transfer of operations occurred many years earlier in 2011. Appellants respond that the guilty plea entered by Iacobelli and made public in January 2018 provided sufficient new evidence to support grievance 18-25-001 and distinguish it from 17-25-001. Appellants further assert that they could not be considered reasonably aware of this new evidence until the guilty plea was publicly released.

We agree with Appellants. The International Union has failed to give due regard to the material change in circumstance resulting from Iacobelli's guilty plea. As Appellants acknowledge, the government's initial indictment of Iacobelli prompted them to file grievance 17-25-001. However, at the indictment stage, the government had only made allegations. Although these allegations certainly gave rise to suspicion on the part of Appellants, the indictment itself did not amount to proof.

Iacobelli's guilty plea was fundamentally different. The plea agreement was an admission that Iacobelli had engaged in criminal conduct, specifically that he had caused unlawful payments to be made to certain UAW officials, most notably General Holiefield. The plea agreement identifies numerous "overt acts" involving hundreds of thousands of dollars in payments or things of value to Holiefield or his girlfriend (later wife) between 2009 and 2011-2012, which were made or authorized by Iacobelli.[59] The plea agreement further states that these and other prohibited payments and things of value were delivered in an effort to obtain "benefits, concessions, and advantages for FCA in its negotiation, implementation, and administration of the collective bargaining agreements" with the UAW for 2011 and 2015.[60]

The essence of Appellants' grievance 18-25-001 is that the 2011 transfer of operations was either the product of or tainted by Iacobelli's criminal conduct. Appellants cannot be considered reasonably aware of the existence of such a claim until Iacobelli's guilty plea was made public. Indeed, until that point, Iacobelli and others had concealed and denied the criminal conduct to which he ultimately confessed.

In finding Appellants' claim timely, the Board recognizes that much of the language used in grievance 18-25-001 is identical to 17-25-001 and that the remedy sought is essentially the same. But this fact alone does mean that 18-25-001 lacked new evidence. In the grievance, Appellants also cited the fact that the plea agreement was first made public in January 2018 and indicated that this was the essential piece of new evidence supporting the grievance.

During oral argument, the International Union cited our decision in *Notchick v. Local Union 2209, UAW*, 11 PRB 255 (2001) in support of its timeliness argument. However, the facts in that case are distinguishable from those presented here. In *Notchick*, the Local Union withdrew appellants' original grievance and they did not appeal

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as they could have done under Article 33. Accordingly, the PRB must now consider the timeliness of the attempted appeal of grievance 17-25-001 a settled matter.

[59] Record, pp. 59-61.

[60] Record, pp. 59, 57.

the withdrawal. Subsequently, appellants prevailed upon their Local Union to rewrite the exact same grievance. Appellants did so on the advice of their counsel who believed that refiling the grievance would then provide an opportunity for an appeal. Appellants presented no new evidence and, instead, the sole purpose in refiling the grievance was to restart the clock for an appeal. Under those circumstances, the PRB agreed with the International that "[r]e-filing a grievance previously denied cannot serve to restart the appeal process." 11 PRB at 259. In contrast, this case involves a grievance based on new evidence which was unavailable to Appellants at the time the first grievance was filed.

For the same reasons, we disagree with the International's position that the grievance itself was untimely because it was filed many years after the 2011 transfer of operations occurred. This argument misconceives the nature of Appellants' grievance. Again, Appellants' allegation in their 2018 grievance is that the transfer was effectuated through fraud and collusion. They cannot be considered to have been reasonably aware of such a claim until the plea agreement was released.

The Board appreciates that Appellants made known their unhappiness with the transfer of operations and the manner in which it was implemented in a variety of ways before filing grievance 18-25-001. Although the Record is sparse as to Appellants' earlier unsuccessful grievances regarding the Advanced Planning Group and the relocation allowance issue, these appear to be based on assertions of unfairness and arbitrary company conduct. Nevertheless, the specific claim which they pursue now involving collusive bad faith based on newly discovered facts could not have been raised at those earlier points in time.

Jurisdiction

The International Union has raised several arguments in this case which challenge the Board's jurisdiction over this appeal. As we explain below, Appellants have made a sufficient showing in support of their claim to warrant further inquiry in order for the PRB to make a final determination as to its jurisdiction.

The PRB exercises the authority and jurisdiction granted to it under the UAW International Constitution. Article 32, §3(a) of the Constitution provides:

> "The Public Review Board shall have the authority and duty to make final and binding decisions on all cases appealed to it in accordance with Article 33 of the International Constitution, and to deal with matters related to alleged violation of any UAW Ethical Practices Codes that may be adopted by the International Union."

Article 33, §3(f) also addresses the Board's appellate jurisdiction:

> "In addition to the jurisdiction conferred elsewhere in this Constitution, the Public Review Board has jurisdiction to consider and decide appeals from

> any decision or action . . . [w]here the International Executive Board has decided an appeal which concerns action or inaction relative to the processing of a grievance against an employer subject, however, to the limitation of Section 4(i) of this Article."

Section 4(i) states:

> "In any appeal to the Public Review Board, under Section 3(f) of this Article, concerning the handling of a grievance or other issue involving a collective bargaining agreement, the Public Review Board shall not have jurisdiction unless the appellant has alleged before the International Executive Board that the matter was improperly handled because of fraud, discrimination or collusion with management, or that the disposition or handling of the matter was devoid of any rational basis."

Article 33, §3(f) also sets forth the following requirements with respect to determining the Board's jurisdiction in cases involving the processing of grievances:

> "In cases that involve the processing of grievances, the Public Review Board shall first determine whether the specific allegation upon which appellant claims the Public Review Board's jurisdiction to be based is or is not true. If the jurisdictional allegation is found to be false, it shall dismiss the appeal. If the appeal is thus dismissed, the appellant may, within thirty (30) days of notification of the dismissal, appeal the case to the Convention Appeals Committee, provided that in such an appeal, the appellant may not again raise any issue which the Public Review Board resolved in dismissing for lack of jurisdiction."

In urging the Board to reject this appeal, the International argues that Appellants have not alleged, much less demonstrated, any fraud or collusion with management on the part of Representative Brenner who made the decision to withdraw Appellants' grievance. We agree that Appellants have not raised such an allegation. Further, there is nothing in the Record to suggest any fraud or collusion on the part of Brenner. However, the International Union attempts to construe the language of Article 33, §4(i) too narrowly. We believe that the requirement that appellant "allege . . . that the matter was improperly handled because of fraud, discrimination, or collusion with management" may apply to the "handling of [an] other issue involving a collective bargaining agreement." The language of Article 33, §4(i) does not necessitate that the alleged wrongdoing relate to the grievance-handler. Appellants allege fraud or collusion with respect to the interactions involving Iacobelli and Holiefield that were part of the 2011 negotiations; in other words, the events giving rise to the grievance itself, as opposed to its subsequent handling. Such an allegation falls within the scope of Article 33, §4(i).

Similarly, the International contended during oral argument that the proper vehicle for Appellants' claim of fraud and collusion was a complaint under the UAW Ethical Practices Codes (EPC), not a grievance and Article 33 appeal. But these two avenues

for member complaints are not mutually exclusive. There can be overlap between them. The EPC process, however, is solely internal to the Union. Appellants' chief complaint is that the Company effectuated the transfer of operations through fraudulent and collusive means. Appellants could not initiate an EPC complaint against Alphons Iacobelli. Indeed, they could only achieve redress against the Company through the grievance process. And, although we are not aware of any limitation that would prevent reinstatement of a grievance through the EPC complaint process, Article 33 is the usual method to seek such relief. Therefore, the fact that Appellants did not choose to pursue an EPC claim does not foreclose their current appeal under Article 33.

The International Union also argued during the hearing that Appellants' allegations of fraud and collusion are immaterial because the Company had the right to transfer operations under the terms of the applicable 2007 bargaining agreement. Similarly, the International maintains that there is no contract violation because the Company had the right to transfer the work. Thus, it is further argued that in the absence of a contract violation, the decision to withdraw the grievance was rational. The Board does not agree with the International's analysis in this regard.

Although the bargaining agreement does not contain restrictions on the Company's ability to transfer work, it does require notice to the Union and the opportunity for the Union to "negotiate the advisability of transferring to the receiving unit employees who are affected by the transfer of work."[61] The notice requirement and ability to request some negotiation regarding the impact are not meaningless *pro forma* requirements. Instead, the contract is structured to provide the Union with an opportunity, albeit a limited one, to weigh in on the transfer. As the International acknowledged during oral argument, the Union will commonly use this opportunity to attempt to convince the employer not to transfer the work at all or, at minimum, to limit the negative impact on employees. During oral argument, Appellants asserted that in their experience the Union would ordinarily be able to obtain some payment or other protection for employees in a situation similar to theirs. Of course, the Union ultimately may not be successful in such efforts, but that does not mean there is no value in having this type of notice and confer provision in the contract. The essence of Appellants' claim is that the Company avoided complying with its contractual obligations by unlawfully obtaining the acquiescence of certain Union officers and as a result deprived the Appellants of the benefit of these contractual provisions. Such a claim states a contract violation.

The International Union also urges the Board to reject this appeal because Appellants have presented no direct evidence that fraud or collusion specifically impacted the transfer. When questioned during oral argument, Appellants acknowledged to the Board that they have no such direct evidence available to them.[62] The International's argument essentially raises the question of who bears the burden of proof at this juncture. In the past, the PRB has largely, although not invariably, placed the burden to prove the

[61] Record, p. 5.

[62] As discussed during oral argument, Appellants actually tried to obtain direct evidence from Iacobelli himself. Unsurprisingly, he declined to respond to Appellants' request that he provide information to them.

facts necessary to establish the Board's jurisdiction on the appellant. As a general matter, we believe that this is the proper approach. However, ultimately the Constitution tasks the Board with making a determination as to whether an appellant's allegations are true or not.[63] Placing the burden of proof solely on the appellant may not satisfy that mandate in some circumstances.[64] This case presents such a circumstance.

Here, it would be exceedingly difficult for Appellants to obtain direct evidence that Iacobelli's criminal conduct specifically impacted the 2011 transfer of operations. Obviously, Iacobelli and those who engaged in criminal conduct with him went to great lengths to conceal their misdeeds. As set forth in the plea agreement, they even filed false tax returns and Department of Labor reports to hide their wrongdoing.[65] The Federal government needed years, employing all the information gathering tools at its disposal, to collect the information necessary to bring an indictment. So, Appellants' inability to provide direct evidence in this case is understandable.

We find, however, that Appellants have provided sufficient circumstantial evidence to warrant further investigation into the 2011 transfer of operations. Iacobelli's indictment and subsequent plea agreement indicate that illicit payments to Holiefield and others occurred during the time period relevant to the transfer. Significantly, the Company provided notice of the transfer in a letter from Iacobelli to Holiefield. It may be that this letter was signed and addressed by these men in their official capacities and that they had no personal involvement in matters related to the transfer. But at this point, there is nothing in the Record to establish who was involved in the transfer on behalf of the Company and the Union. Under the circumstances as currently known, it does not seem improbable that Iacobelli and Holifield were personally involved. The transfer involved a substantial number of employees, approximately 200. The Company also announced the transfer just as negotiations for the 2011 National Agreement were wrapping up, when presumably principals on both sides were in frequent contact.

Appellants' allegation that fraud or collusion tainted the transfer of operations is also bolstered by the evidence that they have presented indicating that the Company did not transfer Appellants' unit "in its entirety," as initially announced. The Record materials

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[63] International Constitution, Art. 33, §3(f).

[64] In a variety of past cases, the PRB has found an appellant's claims warranted further investigation. *See, e.g.*, *Green v. UAW-GM Department*, PRB Case No. 1788, at 7 (Apr. 8, 2019) (Board requested International Union to provide demographic information in response to appellant's claim of systemic discrimination); *Hendley v. Region 1, UAW*, 14 PRB 256, 267 (2010) (hearing conducted by PRB Director to obtain further information regarding appellant's challenge to the withdrawal of his termination grievance); *Downs v. Local Union 2250*, 6 PRB 193, 198 (1991) (remanding appellant's claims of campaign violations to Local Union to conduct a hearing); *Brown v. Local Union 1832*, 3 PRB 201, 206-207 (1982) (directing International Union to conduct an inquiry on specific questions raised by appellant's claim for violation of the Constitution); *Heams v. Local Union 12*, 3 PRB 261, 263 (1982) (directing member of PRB staff to examine ballots and review election records to resolve appellant's claim of election fraud). In addition, in the context of discrimination claims, the Board has adopted the burden-shifting framework set forth by the Supreme Court in its *McDonnell-Douglas* decision. *See McClure v. Local Union 652*, 6 PRB 354, 359 (1992).

[65] Record, pp. 60, 63-64.

submitted by Appellants clearly indicate that many management employees and even some SBU employees continued to work at CTC. Certainly, the uneven implementation of the transfer might simply be attributable to managerial employees' unwillingness to subject themselves to long commutes. We also understand the International's point that Union has no say regarding the Company's deployment of NBU personnel. Nevertheless, the fact that NBU employees and others did not actually transfer lends credence to Appellants' claim based on Iacobelli's plea agreement that the transfer was the product of fraud and collusion, as opposed to a bona fide operational change motivated by considerations of efficiency.

The Record also reflects numerous grievance claims filed over the years since the transfer alleging that various tasks previously performed by Appellants' group have shifted to NBU employees. In addition, during oral argument, Appellants provided several examples based upon their personal experience. However, Appellants did not provide direct evidence that the work of the new NBU Strategic Planning group is, in fact, identical to the work previously carried out by Union members. Although the evidence in the current Record may fall short of that ultimately needed to sustain a claim for erosion of bargaining unit work, nonetheless it suggests that the 2011 transaction was not simply a straight-forward transfer of operations.

Under these circumstances, Appellants have made a sufficient showing that fraud or collusion could have impacted the 2011 transfer of operations to warrant further investigation of the claim. It may well be that based on an investigation into who was involved in the decision to add the transfer of operations agreement toward the end of the 2011 negotiations -- accompanied by review of International records returned from decontamination once they are properly organized, or convincing oral testimony -- what will emerge is sufficient evidence to justify a finding of rationality and not collusion. But as the PRB has stated many times, in order to satisfy even rational basis scrutiny, the Union must provide a "minimum rational level of investigation."[66] Representative Brenner did not perform any investigation regarding the substance of Appellants' grievance because he concluded that it was identical to the previously withdrawn grievance and, therefore, untimely. On appeal, the IEB likewise declined to hold a hearing after concluding that the appeal failed on timeliness grounds. Therefore, at this stage, the PRB lacks an adequate Record upon which to make a determination with regard to the substance of Appellants' claim.

In ruling that Appellants' grievance requires further investigation, we do not suggest that every allegation of fraud or collusion warrants the same level of scrutiny. The PRB has had several recent cases where appellants made vague or wholly unsubstantiated allegations that corruption involving FCA officials impacted the disposition of their grievances.[67] The Board has sustained the International Union's

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[66] *Johnstone v. UAW-FCA Department*, PRB Case No. 1792, at p. 9 (June 10, 2019); *Dailey v. Region 2B*, 14 PRB 933, 947 (2013).

[67] *See Johnstone*, PRB Case No. 1792, at p. 8, n.32; *Kreszowski v. UAW-FCA Department*, PRB Case No. 1799, at pp. 9-10 (Oct. 31, 2019)

rejection of such claims, especially when the record overall "support[ed] a conclusion that negotiations were carried on in good faith" with respect to the subject matter of the grievance. *Moldenhauer v. UAW-FCA Department*, PRB Case No. 1785, at p. 19 (Feb. 4, 2019). However, in this case, the Board requires additional information in order to make a final determination on the validity of Appellants' allegations as required under the Constitution.

As a result of oral argument, however, the Board is convinced that two aspects of Appellants' case do not warrant further inquiry. The first is Appellants' claim that they were entitled to a moving allowance under the terms of the collective bargaining agreement. According to Appellants, they should have received a relocation allowance because travel by the most direct route between the CTC and Trenton is over 50 miles. The International Union argued persuasively that there is no support for Appellant's proposed reading of the contract's 50-mile limit and, therefore, no reasonable prospect for success in arbitrating the issue. The second issue which need not be pursued further relates to the usage of pool cars. It was established at the hearing that pool cars are a local issue, and the Record confirms that there were attempts to handle Appellants' complaints about the allocation of pool cars at the local level. As such, there does not appear to be any plausible connection between the handling of this matter and the criminal conduct which forms the backbone of Appellants' grievance regarding the transfer of operations. Accordingly, although the PRB previously requested information from the International Union regarding these matters, we are rescinding those portions of our prior information request.

Supplementation of the Record

In light of the above ruling on timeliness and our discussion with respect to establishing the Board's jurisdiction, the PRB orders that the International Union supplement the Record in this case by responding to the following information requests. To the extent that these requests differ from those issued to the International prior to the Board's hearing, those portions are underlined. The International Union is directed to provide responses and supporting documentation within 60 days of the issuance of this decision. In addition, the International Union should indicate what efforts were made to locate documents or persons with knowledge in relation to each information request.

1) By letter dated September 26, 2011, Chrysler notified the UAW that it intended to transfer its Advance Manufacturing Engineering Powertrain (AMEPT) operations (Unit #53) from the Chrysler Technical Center (CTC) in Auburn Hills, Michigan to the Trenton Engine Complex (TEC) in Trenton, Michigan. (Record, p. 35) Please describe any prior or further communications -- written or oral -- between Chrysler and the UAW at the International, Regional, or Local level regarding the proposed transfer or the impact on employees, including the names of the individuals involved and the specific topics addressed. Did the Union attempt to convince Chrysler at any point not to transfer the AMEPT operations? If yes, please describe those attempts. If not, please explain why no attempt was made. Were there any negotiations or discussions between

Chrysler and the UAW related to the transfer of operations, including as part of the 2011 National Agreement negotiations? If so, please describe and provide copies of any executed agreements, bargaining proposals, or meeting minutes.

2) Chrysler's letter dated September 26, 2011 indicates that Unit #53 would transfer "in its entirety" (Record, p. 35), but Appellants allege that the Company applied the transfer unevenly such that some employees within the Unit continued to work from the CTC or nearby locations. Please describe any steps taken by the Union to investigate the allegation that the Company was treating employees unequally with regard to the transfer and the conclusions reached through such investigation. Please describe any steps taken by the Union to address the issue of uneven application of the transfer with the Company and the Company's response regarding this issue.

3) Appellants allege that work traditionally performed by AMEPT employees was shifted to non-bargaining unit employees following the transfer of operations. Please describe any steps taken by the Union to investigate the alleged shifting of work to non-bargaining unit employees and the conclusions reached through such investigation. Please describe any steps taken by the Union to address the issue of the erosion of bargaining unit work with the Company and the Company's response regarding this issue.

It is so ordered. This case is continued for further proceedings before the PRB consistent with this decision.