

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

APPEAL OF:

RICHIE TAGUE, Member,

Appellant,

-vs-

**CASE NO. 1813**

UAW LOCAL UNION 450  
(Des Moines, Iowa), REGION 4  
(THE UNITED AUTOMOBILE,  
AEROSPACE AND AGRICULTURAL  
IMPLEMENT WORKERS OF AMERICA),

Appellee.

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**DECISION**

(Issued May 26, 2020)

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

The Board addresses whether Richie Tague is entitled to a retroactive increase in lost-time compensation from Local Union 450 as a result of a grievance settlement obtained by the Local.

**FACTS**

Richie Tague is employed by John Deere (“the Company”) at its Des Moines Works in Department 23 (D23). He is represented by UAW Local Union 450. Tague began work for the Company on May 8, 2000.<sup>1</sup> He served as President of Local 450 from 2008 until June 2017. After that, he returned to D23 but continued to work for the Local in various capacities, such as Convention delegate, CAP council representative, and representative to UAW’s Agricultural Implements Council.<sup>2</sup>

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<sup>1</sup> Record, p. 129.

<sup>2</sup> Record, p. 130.

Under the applicable collective bargaining agreement (CBA), employees at the Des Moines Works are paid in part under a productivity program known as the Continuous Improvement Pay Plan (CIPP). Most employees involved in a departmental CIPP are compensated at 115% of their base hourly pay rate. In addition, they receive a lump-sum payment based on productivity every 13 weeks.<sup>3</sup>

On January 27, 2017, Local 450 filed Grievance No. 17-06 regarding an ongoing dispute over the Company's application of the CIPP for D23 employees.<sup>4</sup> The Local contended that the Company had changed the CIPP without a valid contractual basis in violation of the CBA. The Local demanded that the Company restore compensation improperly withheld from D23 employees. The Company took the position that it had introduced a new manufacturing and painting process in D23 which warranted realignment of the CIPP.<sup>5</sup> The Local progressed Grievance No. 17-06 through the initial stages of the grievance process and the matter was referred to the Joint Appeal Board on March 8, 2017.<sup>6</sup> After Tague returned to work in D23, the Local filed Grievance No. 17-41 on his behalf in order to obtain the same relief for him as sought through Grievance No. 17-06.<sup>7</sup> Grievance 17-41 was referred to the Joint Appeal Board on November 16, 2017.<sup>8</sup>

On December 21, 2018, Local 450 and the Company entered into a settlement agreement covering Grievance Nos. 17-06 and 17-41.<sup>9</sup> The parties agreed to an improvement in the base metric for D23 employees retroactive to May 21, 2018. In addition, the Company agreed "on a non-precedent setting basis to pay the difference, for those individuals who entered D23 between 17 April 2017 and 21 May 2018, between 115% (the amount received) and their AE rate prior to entering D23."<sup>10</sup> As a result of the settlement nine employees in D23 received a total of \$74,627.08 in back pay. Tague received \$30,630.19 from the total amount.<sup>11</sup>

Following the settlement, Tague contacted Local President Travis Drake, as well as other Local officers and staff, about receiving a retroactive adjustment to his lost-time compensation for the time period covered by Grievance Nos. 17-06 and 17-41.<sup>12</sup> He calculated that he was owed approximately \$2,248.33 in additional lost-time

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<sup>3</sup> Record, p. 130.

<sup>4</sup> Record, p. 23.

<sup>5</sup> Record, p. 24.

<sup>6</sup> Record, pp. 25, 27-28. The case file received from the International Union contained documents supporting the Local's position that the changes to the CIPP were in violation of the CBA. Given that the Local and Company ultimately entered a settlement agreement covering Grievance Nos. 17-06 and 17-41, and the propriety of that settlement is not in dispute, these background materials are not included in the PRB Record.

<sup>7</sup> Record, p. 29.

<sup>8</sup> Record, p. 31.

<sup>9</sup> Record, pp. 34-35.

<sup>10</sup> Record, p. 34.

<sup>11</sup> Record, p. 131.

<sup>12</sup> Record, pp. 36-51.

compensation.<sup>13</sup> He asserted that the Local had made similar retroactive payments in prior instances.<sup>14</sup> The Local 450 Bylaws provide for the payment of lost time as follows:

**“Section 11.** (a) Local Union member will be compensated for lost time spent on union business at an hourly rate equal to their average straight time hourly earnings, but no overtime will be paid for lost time. With the exception to the Election Committee to be paid straight time during polling hours.

(b) A Local Union member shall be compensated for all lost premium pay when a member is called out of the plant on Union business and loses their premium pay, [which] will be compensated by the Local on an overtime situation other than Saturday or Sunday. . . .

**Section 12.** The Local Union shall pay a representative or member lost time only when that representative or member is performing necessary duties for and on behalf of the Local Union during time for which they would otherwise be compensated by the employer. The amount of lost time should never exceed the amount which the Local Union Representative or member would otherwise have received from their employer for the same period of time for which they are being compensated by the Local Union.

**Section 13.** A dispute over the matter of the amount shall be determined by the Union at the next regular meeting after said dispute has arisen.”<sup>15</sup>

When the Local did not make payment as requested, on March 18, 2019, Tague wrote to the Local’s Recording Secretary requesting to appeal to the Local Executive Board.<sup>16</sup> He was advised that he could attend the next Executive Board meeting on April 9, 2019 to state his appeal.<sup>17</sup> The Executive Board determined that the Local’s Bylaws did not require payment as requested by Tague since he was paid at the rate in effect when the lost time was earned.<sup>18</sup>

On April 30, 2019, Tague submitted a letter to the Local Recording Secretary requesting to appeal the Executive Board decision to the Local membership.<sup>19</sup> He was informed that his appeal would be taken up at the next membership meeting on May 18,

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<sup>13</sup> Record, pp. 85-86. The case file received from the International Union contained documentation regarding the purpose for each of the payments made to Tague. Because the legitimacy of the lost time claimed by Tague is not at issue in this appeal, only whether the rate of compensation should have been increased, this documentation has not been included in the PRB Record.

<sup>14</sup> Record, p. 39.

<sup>15</sup> Record, p. 76.

<sup>16</sup> Record, p. 52.

<sup>17</sup> Record, p. 53.

<sup>18</sup> Record, p. 131.

<sup>19</sup> Record, p. 57.

2019.<sup>20</sup> Tague spoke on behalf of his appeal at the meeting.<sup>21</sup> He argued that the Local had made similar payments in the past. Others spoke against making the payments. A Local Shop Chairman disputed that the examples cited by Tague were comparable to his situation. A Committeeman stated that Tague knew what he was getting paid and, therefore, was not entitled to more. There was also discussion regarding the fact that Tague paid additional dues retroactively on his grievance settlement amount. Some members wondered whether this would set a precedent that back dues should always be paid on settlement amounts. A Shop Chairman expressed the view that the Local might lose members if it made the retroactive payment requested by Tague. Tague made two motions, one to accept his appeal and the other to pay the amount sought by him.<sup>22</sup> Both motions failed.

By letter dated May 18, 2019, Tague appealed the membership's decision to the International Executive Board (IEB). He asserted:

“As of today I have not received my pay according to the bylaws that we get paid our average earnings and bonuses from the local. Article 19 section 11 is the bylaw in violation and any other bylaw or constitution article that may apply.”<sup>23</sup>

Tague also submitted background documents in support of his appeal.

The International President's office decided to assign Tague's appeal to an Appeals Committee, consisting of Rick Hoffman and Max Jeffrey.<sup>24</sup> The Appeals Committee held a hearing on August 22, 2019 at Local 450.<sup>25</sup> Tague attended, as well as the following Local 450 officers: Ray Casper, Guide; Travis Drake, President; Steve Goodner, Retirees Chairman; Jacob Lane, Trustee; Justin Limke, 1st Vice President; Chad McFarland, Recording Secretary; Steve Nelson, Sergeant-at-Arms; Erik Sheldahl, Financial Secretary; and Curtis Templeman, Chairman. International Servicing Representative, Lucas DeSpain, attended on behalf of UAW Region 4.

The Appeals Committee produced a report based on the hearing testimony and relevant documents.<sup>26</sup> The Committee summarized the positions of the parties. Tague argued that the grievance settlement had resulted in an increase in his average hourly earnings for the time period in question and, therefore, he was entitled to additional compensation under the Local's Bylaws. Tague also presented evidence regarding allegedly comparable payments to Local 450 officers Virgil Mackey and James Thornburg. The Local Union took the position that the grievance settlement improved Tague's average hourly earnings only prospectively and that the lump-sum portion of the

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<sup>20</sup> Record, p. 58.

<sup>21</sup> Record, p. 113.

<sup>22</sup> Record, p. 133.

<sup>23</sup> Record, p. 60.

<sup>24</sup> Record, p. 122.

<sup>25</sup> Record, pp. 125-126.

<sup>26</sup> Record, pp. 128-146.

settlement did not represent an increase in average hourly earnings. The Local Recording Secretary also testified that he had been involved in numerous CIPP grievances since taking office in 2000 but had never received an adjustment to his lost-time compensation.

The Appeals Committee concluded that the appeal should be denied.<sup>27</sup> The Committee cited Article 46, §1 of the UAW International Constitution, which provides: “The funds of each Local Union shall be used to defray all necessary expenses which must be approved by the Local Union in regular meeting.”<sup>28</sup> The Committee also relied upon the decision of the Public Review Board (PRB) in *Pearson v. Local Union 140*, 14 PRB 1037 (2013).<sup>29</sup> In that case, the appellant claimed that the local’s membership had improperly denied his claim for lost time. The PRB wrote:

“The rule has now been firmly established that it is up to the Local Union membership to determine whether any expenditure is ‘necessary’ within the meaning of Article 46, §1, of the Constitution, unless there has been a specific policy established by the IEB with respect to the issue. This well-established rule applies to claims for lost time.

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... It is for the membership to decide whether the payment of lost time to any officer is a necessary expense for the Local Union. The membership of Local Union 140 has made its determination with respect to Pearson’s claims and that decision is controlling.”

14 PRB at 1043-1044.

Based upon these authorities, as well as the Local 450 Bylaws, the Appeals Committee concluded:

“Clearly this appeal demonstrates the rules regarding back pay on lost time were not uniformly applied by the local union. The hearing brought to light examples of back pay on lost time being paid and examples of back pay on lost time not being paid.

The local union, with regards to paying back pay on lost time, appeared to be rudderless. This lack of direction required the local union membership to step in and provide guidance.

On May 18, 2019, the membership, acting within their authority, made a ruling which resolved the dispute regarding back pay on lost time. This

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<sup>27</sup> Record, p. 137.

<sup>28</sup> Record, pp. 135-136.

<sup>29</sup> Record, p. 136.

ruling was not contrary to the constitution or any policies of the Union. It is incumbent on the local union going forward to apply the ruling of the membership fairly and uniformly.”<sup>30</sup>

The IEB adopted the report of the Appeals Committee as its decision. The International President’s office sent a copy to Tague on November 18, 2019.<sup>31</sup> This appeal to the PRB followed.<sup>32</sup>

## ARGUMENT

### **A. Richie Tague:**

I am appealing the IEB decision denying my back wages due to the settlement of Grievance Nos. 17-06 and 17-41. The settlement paid out to make my wages whole. During the time period covered by the grievances, I was out on some union business. The total loss in wages is approximately \$2,400. The basis for my claim is that the Local is allowed to recoup money if it overpays a member. Therefore, if the Local underpays a member, it should not be allowed to put together a political campaign to convince members at a union meeting to deny payment when the Local wins a grievance that corrects a member’s pay in the plant.

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

The Local Union exercised its discretion appropriately in denying the request for a retroactive increase in lost-time pay. The dispute presented to the Local Union was whether it should pay lost time in the amount a person was receiving at the time the Local made the payments or whether the Local had an obligation to retroactively increase that amount when a grievance was subsequently settled providing back pay. The Appeals Committee, in a decision adopted by the IEB, found that either position was rational and that the Local Union had been inconsistent in which approach it had taken in past years. The ruling was thus “not contrary to the constitution or any policies of the Union,” and the appeal was denied.

The question of whether lost time should be retroactively increased following a grievance settlement is not specifically detailed in the Local Union’s Bylaws. The Bylaws call for payment for lost time but do not deal with this situation where there was a retroactive settlement.

In support of his position, Appellant relies on two past examples where a grievance resolution did result in a retroactive increase in pay from the Local Union for lost time. As the Appeals Committee found, however, the Local Union was not consistent in that position and had not paid the Recording Secretary retroactive increases multiple times

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<sup>30</sup> Record, p. 137.

<sup>31</sup> Record, p. 127.

<sup>32</sup> Record, p. 147.

since he took office in 2010. In fact, although the Appeals Committee points to inconsistency, the record demonstrates that on two occasions before and including 2010, the retroactive amount was paid but that consistently since 2010, no retroactive payments have been made.

The Local Union membership, consistent with the Bylaws and the International Constitution, considered whether to authorize retroactive payment for Appellant. Based on the facts presented, the Bylaws, and their understanding of what is best for the Local Union, the membership denied the request. This decision was reasonable and must be upheld.

While the IEB's decision should be affirmed on the merits because the Local Union made a reasonable determination, the Local membership's decision in this circumstance is technically beyond review through the internal appeals procedure. Appellant's own initial appeal notes that his appeal is against the "Membership of UAW Local 450" and further that he was appealing "the decision [of] the Membership of Local 450 for not paying the back pay on lost time due to grievance settlement 17-06 and 17-41."<sup>33</sup> How a local union should spend its scarce resources is a determination that is left under the International Constitution to the local union membership. Neither the International acting on an internal appeal through the IEB nor the PRB has the authority to overrule a decision entrusted to the local union membership.

Where the local union membership is not acting contrary to anything in its bylaws or the dictates of the IEB, the local union has the authority to determine what expenditures are "necessary" pursuant to Article 46 of the Constitution. The PRB dealt with a similar situation in *Pearson v. Local Union 140*, 14 PRB 1037 (2013). In that case, the Vice President of Local 140 sought lost-time pay for periods where he filled in for the Local's President. The issue was brought before the membership, which denied the request for lost-time pay. The PRB affirmed this decision, finding that the membership's decision was "controlling." 14 PRB at 1044. Crucially, the resolution of that case was not based on whether Local 140 was correct in determining that Pearson was not eligible for the payment. It was enough that the membership of Local 140 made a decision at all.

The analysis in *Pearson* should apply in this case. Here, as in *Pearson*, a Local Union official sought lost pay from the Local. The Local considered the issue, brought it to its membership, and the membership denied the request. This decision by the Local Union is "controlling" and cannot be disturbed by either the IEB or the PRB.

In addition, Tague argues in effect that past practice dictates that he should receive a retroactive increase in pay following the settlement of the grievance. The Appeals Committee rejected this argument, in part, because the Local had been inconsistent in how it applied retroactive increases to lost-time payments. As stated above, the inconsistent past practice makes the Local Union's determination reasonable.

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<sup>33</sup> Record, p. 60.

However, the PRB in *Pearson* also confirmed that a local union acting through its membership has the right to change its practice. The Board rejected a claim by Pearson that Local 140 erred by not following its “longstanding policy of reimbursing the vice president for assuming the duties of the president when the president is away.” 14 PRB at 1044. The PRB emphasized that it had never held that a local cannot change its practice and then concluded that the local union’s determination was “controlling.” Here, where the Local Union was behaving consistent with its authority under the Constitution and not inconsistent with its Bylaws, its decision controls regardless of past practice.

### DISCUSSION

Tague’s primary argument is that he is entitled to additional compensation under Local 450’s Bylaws. The plain language of the Bylaws does not support this contention. The Bylaws state in relevant part:

**“Section 11.** (a) Local Union member will be compensated for lost time spent on union business at an hourly rate equal to their average straight time hourly earnings, but no overtime will be paid for lost time. . . .

**Section 12.** . . . The amount of lost time should never exceed the amount which the Local Union Representative or member would otherwise have received from their employer for the same period of time for which they are being compensated by the Local Union. . . .”<sup>34</sup>

We agree with the International Union that the Bylaws do not specifically address the issue of a retroactive adjustment to the rate of pay upon which lost-time compensation is based. The language of the Bylaws could reasonably be construed to mean that lost time is based only on the rate in effect when the lost-time compensation was earned. On the other hand, it would not be inconsistent with the Bylaws to permit retroactive adjustments, such as the one sought here. Given the Bylaws’ lack of clarity on the precise issue, the membership appropriately exercised its authority under Article 46, §1 of the Constitution and Article 19, §13 of the Local 450 Bylaws to decide the matter.

Tague’s secondary argument that the Local has made retroactive adjustments in the past is also not persuasive. As the Appeals Committee found, the Local did not have a consistent practice in this regard. In any event, even if similar payments were made in the past, the membership remained the highest authority within the Local on this issue with the power to make a final determination, and it did so. As the Appeals Committee correctly observed, it is now incumbent upon the Local to fairly and uniformly apply the membership’s determination going forward.

Although we reject Appellant’s arguments, we also find it necessary to address the International Union’s position in this case regarding the scope of appellate review. The International asserts that a local’s decision regarding the expenditure of its funds under

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<sup>34</sup> Record, p. 76.



Article 46, §1 cannot be overruled by the IEB or the PRB, provided that the decision is not contrary to the local's bylaws or International policy. The Board does not agree. The International Union bases its position on language from our decision in *Pearson* stating that the local union's decision in that case was "controlling." The International has read this language from *Pearson* too broadly. The Board did not intend to suggest, much less hold, that a local's decision regarding the expenditure of its funds is essentially unreviewable.

Although the Board has "liberally construed the scope of the membership's discretion" under Article 46, §1, *Edwards v. UAW Local Union 148*, 12 PRB 418, 428 (2004), we have never indicated that this discretion is without limit other than the requirements set forth in local bylaws or International policy. If the Board were presented with clear and unrefuted evidence that a local had exercised its discretion irrationally or that its decision was the product of discrimination or bad faith, we would likely find it necessary to set aside the local's decision.

In this case, however, the Local membership's decision was clearly rational. The membership reasonably concluded that it would not be in the Local's best interest to incur additional and unpredictable expenses in the form of retroactive adjustments to lost time. In addition, there is no evidence to suggest that the decision was motivated by discriminatory animus or made in bad faith. Accordingly, the Local's decision should be upheld.

The decision of the IEB is affirmed.