

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

APPEAL OF:

LARRY REYNOLDS, Member,  
UAW LOCAL UNION 1435  
(Perrysburg, Ohio), REGION 2B,

Appellant,

-vs-

**CASE NO. 1833**

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

Appellee.

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**DECISION**

(Issued April 7, 2021)

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

The Public Review Board (PRB) considers whether the UAW FCA Department acted rationally when it settled Appellant's termination grievance in exchange for his reinstatement for the sole purpose of accepting early retirement.

**FACTS**

Appellant Larry Reynolds was employed by FCA US LLC ("the Company") as a production worker at its Toledo Machining Plant (TMP). His seniority dated was April 27, 1998.<sup>1</sup> He was represented by UAW Local Union 1435, located in Perrysburg, Ohio.

In December 2017 and January 2018, Reynolds sent several text and Facebook messages to a female co-worker containing pornographic images.<sup>2</sup> On December 20,

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<sup>1</sup> Record, p. 50.

<sup>2</sup> Record, pp. 4-9, 17. The case file provided by the International Union included copies of the text messages in unredacted form. The images in the texts show genitalia and unidentified persons engaged

2017, the female co-worker responded in a text message, stating: “Nigga if you don’t stop sending me this shit.”<sup>3</sup> At least four more pornographic images were sent by Reynolds following the co-worker’s text.<sup>4</sup> After that, Reynolds ceased communicating with the female co-worker.<sup>5</sup> The female co-worker did not report receiving the text messages to the Company or the Union at the time.<sup>6</sup>

The nature of the relationship between Reynolds and the female co-worker, who joined the Company in March 2012, is not entirely clear from the record. There are indications that they were friends at one point, at least in the work setting.<sup>7</sup> However, on May 7, 2018, Reynolds attempted to post a petition in the breakroom requesting to have the female co-worker removed from his department.<sup>8</sup> The petition read:

“I wish to file petition with the Local Union 1435 concerning the unprofessional behavior of one of my co-workers [name omitted]. She has displayed behavior that has made the working environment uncomfortable and hostile for several colleagues. I would like to have her removed from department 9851. [Name omitted] has displayed behavior such as

- Inability to work with others
- Micromanaging
- Prying
- Obnoxious
- Ripe
- Childish behavior
- Defensive
- He said, She said”<sup>9</sup>

When the Local Union would not permit the petition to be posted in the breakroom, Reynolds posted a photograph of the petition on an unofficial Facebook page for TMP employees.<sup>10</sup> On the posted image of the petition, Reynolds wrote “HOOD RAT” in large

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in sexual acts. The PRB redacted the images from the text messages before including these materials in the official Record. In addition, the report prepared by a third-party investigator redacted the name of the female co-worker, as well as all other employees interviewed during the investigation. Accordingly, these individuals are not referred to by name in this decision.

<sup>3</sup> Record, pp. 5, 20.

<sup>4</sup> Record, pp. 6-8.

<sup>5</sup> Record, p. 20.

<sup>6</sup> Record, p. 20.

<sup>7</sup> Record, p. 19.

<sup>8</sup> Record, p. 18.

<sup>9</sup> Record, p. 11.

<sup>10</sup> Record, p. 18.

red lettering.<sup>11</sup> He also posted a comment on Facebook which read “THOT,” an acronym for “That Ho Over There” or “That Harlot Over There.”<sup>12</sup>

The female co-worker saw Reynolds’ Facebook post and was angered by it.<sup>13</sup> She was also contacted by a Union Committeeperson, who asked her how she felt about the post. She indicated that she was willing to let the incident go because she was concerned that the Company would place all employees involved, including herself, on an unpaid leave of absence while it investigated.<sup>14</sup>

A week or so later, however, an incident occurred in the breakroom which lead the female co-worker to prepare a written statement dated May 21, 2018.<sup>15</sup> She recounted that she entered the breakroom to heat her lunch in the microwave. Reynolds was present and started yelling. According to her statement, Reynolds shouted:

“All these sluts be in my business and then having my dick in their mouth. Y’all sluts need to mind your own damn business and keep my dick out y’all mouths. These sluts want to know where I’m at. Don’t worry about where the fuck I’m at. If you want to know come ask me. And you can.”<sup>16</sup>

She stated that another co-worker asked Reynolds who he was referring to and he nodded his head toward the female co-worker and said “that knucklehead over there.”<sup>17</sup> When interviewed by the Company, Reynolds said that he could not recall the statements that he made in the breakroom.<sup>18</sup> Reynolds and other employees told the Company that there is a considerable amount of “shop talk” and crass language in the breakroom.<sup>19</sup> The other employees interviewed said that they did not recall the statements attributed to Reynolds by the female co-worker.<sup>20</sup>

In the May 21, 2018 statement, the female co-worker recounted the above incident and complained about the May 7 petition posted on Facebook.<sup>21</sup> Her statement also indicated that Reynolds had sent sexual content to her in the past, but the actual messages were not included. A Union Committeeperson provided a copy of the May 21,

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<sup>11</sup> Record, p. 10. According to the Urban Dictionary, “hood rat” generally means a “person who lives and exhibits attitudes of inner city life, usually a negative connotation that implies poor upbringing, bad manners, little to no education and low class behavior.” See <https://www.urbandictionary.com/define.php?term=Hoodrat>. According to Dictionary.com, when applied to a female, the term “hood rat” means “a young promiscuous woman from an impoverished urban area.” See <https://www.dictionary.com/browse/hood-rat>.

<sup>12</sup> Record, pp. 12-13, 18 (citing <https://www.urbandictionary.com/define.php?term=Thot>).

<sup>13</sup> Record, p. 21.

<sup>14</sup> Record, p. 21.

<sup>15</sup> Record, p. 21. The May 21, 2018 written statement was not included in the case file provided by the International Union. However, the contents of the statement are described in the report prepared by the third-party investigator.

<sup>16</sup> Record, p. 21.

<sup>17</sup> Record, p. 21.

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

<sup>19</sup> Record, pp. 18-19.

<sup>20</sup> Record, pp. 19-20.

<sup>21</sup> Record, p. 14.

2018 statement to a Labor Lead in the plant. The Labor Lead spoke to the parties involved and potential witnesses but described the results of his investigation as “inconclusive,” due to the reluctance of witnesses to cooperate.<sup>22</sup> Therefore, he decided against disciplinary action at the time.<sup>23</sup>

Then, on October 15, 2018, another incident occurred which the female employee reported to the Labor Lead the next day.<sup>24</sup> She reported that she entered the breakroom and Reynolds began telling a story to other co-workers about “a girl that used to drive a forklift, may have been a ‘crackhead’ and had an affair with a supervisor.”<sup>25</sup> Although she was not referred to by name, the female co-worker believed that Reynolds was referring to her because rumors had previously circulated in the plant that she had been romantically involved with the supervisor.<sup>26</sup> When she reported this incident to the Labor Lead, the female co-worker also provided copies of the pornographic text messages she had received from Reynolds.<sup>27</sup> The Labor Lead believed that there was no way to substantiate whether Reynolds had actually sent the messages and did not follow-up on the matter, although he kept the copies in his file.<sup>28</sup>

On or about December 3, 2018, the female co-worker filed a police report regarding Reynolds’ conduct.<sup>29</sup> The Local Union President became aware of the report and notified the Human Resources Manager at TMP. Before December 3, 2018, the Human Resources Manager had no knowledge about the female co-worker’s prior complaints.<sup>30</sup> The Human Resources Manager immediately began an investigation.

Ultimately, the Company retained a third-party investigator, an attorney with the law firm of Ogletree Deakins, to conduct a formal investigation.<sup>31</sup> The third-party investigator interviewed the female co-worker, Reynolds, the Labor Lead, the Human Resources Manager, and four other employees. A final report was sent to the Company on January 16, 2019. The report concluded that Reynolds had violated FCA’s Policy 3-6 “Discrimination and Harassment Prevention,” finding:

- “1. Reynolds sent [redacted] sexually explicit messages and posted a petition to an unofficial union Facebook page containing derogatory terms about [redacted].
2. Reynolds used profanity and sexually explicit language in the breakroom.”<sup>32</sup>

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<sup>22</sup> Record, p. 14.

<sup>23</sup> Record, pp. 14-15.

<sup>24</sup> Record, p. 15.

<sup>25</sup> Record, p. 22.

<sup>26</sup> Record, p. 22.

<sup>27</sup> Record, p. 15.

<sup>28</sup> Record, p. 15.

<sup>29</sup> Record, p. 16.

<sup>30</sup> Record, p. 16.

<sup>31</sup> Record, p. 12.

<sup>32</sup> Record, p. 12.

The Company terminated Reynolds' employment on February 1, 2019 for violating Policy 3-6, based upon the investigation results.<sup>33</sup> The Local Union immediately filed a grievance. Throughout the lower levels of the grievance process, the Company refused to reinstate Reynolds.<sup>34</sup> Region 2B referred the grievance to the Appeal Board on April 3, 2019.<sup>35</sup> At that point, International Representative Mark Dickow assumed responsibility for the grievance.

Dickow met with the Company several times regarding the grievance but the Company remained adamant that it would not reinstate Reynolds.<sup>36</sup> Dickow also discussed the case with Reynolds on several occasions.<sup>37</sup> Faced with the Company's refusal to reinstate, Dickow asserts that he sought guidance from the UAW Legal Department. The Legal Department expressed the view that the Union was unlikely to prevail at arbitration given that the female co-worker had requested that Reynolds stop sending pornographic messages to her and yet he continued to do so.<sup>38</sup> At that point, Dickow decided to request that the Company allow Reynolds to accept early retirement. The Company agreed.

According to Dickow, he immediately advised Reynolds regarding the settlement.<sup>39</sup> They had a conversation on January 7, 2020 regarding the anticipated amount of his retirement benefits.<sup>40</sup> Dickow believed that Reynolds was pleased with the settlement and in agreement with it.<sup>41</sup> The settlement was finalized in an Appeal Board disposition dated January 27, 2020, stating: "The appeal board has decided to reinstate Mr. Reynolds for the sole purpose to immediately retire on Jan 31, 2020."<sup>42</sup> Dickow formally advised Reynolds of the disposition by letter dated January 28, 2020.<sup>43</sup>

Dickow also notified the President of Local 1435, Timothy Walbolt, regarding the settlement. Walbolt took steps to finalize the settlement, but Reynolds refused to sign the early retirement package when it was presented to him on January 30, 2020.<sup>44</sup> According to Walbolt, Reynolds indicated that "he was working on something else first."<sup>45</sup>

Instead, by letter dated February 24, 2020, Reynolds filed an appeal with the International Executive Board (IEB).<sup>46</sup> He asserted that he was not consulted in advance regarding the settlement of his grievance. He also argued that his termination was unjust

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

<sup>34</sup> Record, pp. 27-28.

<sup>35</sup> Record, p. 29.

<sup>36</sup> Record, p. 52.

<sup>37</sup> Record, pp. 30, 54.

<sup>38</sup> Record, p. 42.

<sup>39</sup> Record, p. 42.

<sup>40</sup> Record, pp. 32-35, 42.

<sup>41</sup> Record, p. 42.

<sup>42</sup> Record, p. 31.

<sup>43</sup> Record, p. 36.

<sup>44</sup> Record, p. 40.

<sup>45</sup> Record, p. 40.

<sup>46</sup> Record, p. 37.

due to his long tenure. He claimed that the misconduct leading to his termination was consensual and done in a joking manner. Lastly, he claimed that other employees in similar situations had received more favorable treatment. Reynolds' appeal indicated that he was represented by attorney Francis J. Landry for the purposes of the Article 33 proceedings.<sup>47</sup>

The International President's office obtained background information on Reynolds' grievance from the UAW FCA Department. On September 15, 2020, Administrative Assistant to the President, Casandra Shortridge, conducted a hearing at Local 1435. Reynolds attended the hearing but was not represented by his counsel.<sup>48</sup> The following were also in attendance: International Representative Dickow; Region 2B International Servicing Representative Walter Schwiefert; former Local 1435 President Walbolt; current Local 1435 President Robert Bickerstaff; and Local 1435 Recording Secretary Jeremiah Cutcher.<sup>49</sup>

During the hearing, Dickow, Schwiefert, and Walbolt testified that they were in communication with Reynolds throughout the grievance process, which included discussions regarding the settlement and the amount of his early retirement benefits.<sup>50</sup> Appellant was given an opportunity to respond to this testimony and did not refute it.<sup>51</sup>

Reynolds testified that he had a "consensual relationship" with his accuser.<sup>52</sup> This varied from his statement during the Company investigation that he and his accuser were nothing more than co-workers.<sup>53</sup> He acknowledged that she asked him to stop sending sexually explicit texts to her but explained that her request was done in a "joking[] manner."<sup>54</sup> In support of his allegation that he had been treated in an arbitrary and discriminatory manner, Reynolds argued that other employees involved in fights on Company property had been rehired.<sup>55</sup> Reynolds also acknowledged that the Company was unwilling to reinstate him but argued nevertheless that the Union should have obtained a settlement returning him to employment.<sup>56</sup>

During the hearing, Dickow testified that he investigated the grievance to build a case on Appellant's behalf, but his investigation only generated more evidence of Appellant's offensive behavior.<sup>57</sup> Once this behavior was uncovered, the Company took the position that it had to terminate Reynolds to protect itself from future liability. The Company informed the Union it had lost a civil lawsuit brought by the accuser because of

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<sup>47</sup> Record, p. 38.

<sup>48</sup> Record, p. 49.

<sup>49</sup> Record, p. 49.

<sup>50</sup> Record, p. 54.

<sup>51</sup> Record, p. 54.

<sup>52</sup> Record, p. 55.

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

<sup>54</sup> Record, p. 55.

<sup>55</sup> Record, p. 56.

<sup>56</sup> Record, p. 57.

<sup>57</sup> Record, p. 57. It is unclear from the Record what additional evidence came to light as a result of Dickow's investigation.

the incidents involving Reynolds.<sup>58</sup> Dickow testified that the Company also argued Appellant's work conduct history was unfavorable.<sup>59</sup> He concluded there was no good defense that the Union could present in arbitration to save Appellant's job.

In response to Reynolds' assertions during the hearing that other employees had been treated more favorably, Dickow subsequently asked the Company if there had been any incidents at TMP in the prior ten years like the incident involving Appellant. The Company indicated that there had not been any similar incidents.<sup>60</sup>

Based on the hearing testimony, the International President's staff recommended that Reynolds' appeal be denied. Staff quoted UAW Administrative Letter Volume No. 46, Letter No. 3, which states: "In the case of the discharge of a high seniority person, however, we advise arbitration unless the grievance clearly lacks merit."<sup>61</sup> Staff concluded: "Based on the facts of this case record, Dickow did have a rational basis for settling the grievance."<sup>62</sup> Staff also noted that the grievance settlement was still available since the Company had not withdrawn the offer.<sup>63</sup>

The IEB adopted Staff's report as its decision on November 10, 2020. Reynolds filed a timely appeal to the Public Review Board (PRB). Reynolds again designated attorney Landry as his representative but signed and submitted the appeal himself.

## ARGUMENT

### **A. Larry Reynolds:**

I am appealing the IEB decision upholding the settlement of my termination grievance by International Representative Dickow. In a letter dated January 28, 2020, Dickow advised me that he had decided to settle my grievance instead of proceeding to arbitration. The settlement called for me to be reinstated for the purpose of immediately retiring on January 31, 2020. I was never consulted in advance of this decision, nor was I asked if I agreed with it. I was informed after the fact.

I contend that my termination was unfair. I was a long-tenured employee of FCA US LLC and its predecessors and a long-time member of Local 1435. The inappropriate conduct attributed to me was consensual, occurred off of the worksite, and was done jokingly. I was subsequently set up by the complaining employee and I was not able to defend myself fully. The action of the Union was arbitrary and discriminatory. Other similarly situated individuals have been more favorably treated. A full and independent investigation was not conducted. I am seeking reinstatement of my grievance and/or damages that I have incurred.

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<sup>58</sup> Record, p. 57.

<sup>59</sup> Record, pp. 1, 57.

<sup>60</sup> Record, p. 47.

<sup>61</sup> Record, p. 57.

<sup>62</sup> Record, p. 58.

<sup>63</sup> Record, p. 58.

**B. International Union, UAW:**

Although Appellant raises several issues on appeal, he fails to produce any evidence showing that International Representative Dickow's decision lacked a rational basis. Nor does he provide any evidence of fraud, discrimination, or collusion with management.

Appellant claims that he was never consulted in advance of the grievance settlement. Former President of Local 1453 Timothy Walbolt, Region 2B International Servicing Representative Walter Schwiefert, and Dickow all testified that they were in communication with the Appellant throughout the grievance procedure and echoed the same message that the Company was unwilling to reinstate Appellant.

Appellant claims the inappropriate conduct was consensual, done in a joking manner, and that he was set up by the employee who filed the complaint. However, Appellant acknowledged that his accuser asked him to stop sending sexually explicit text messages. Appellant did stop sending the sexually explicit text messages briefly, only to resume sending them again. Appellant offered no evidence to support his claim that he was set up by the complainant.

Appellant claims that the action by Dickow was arbitrary and discriminatory. Appellant did not provide any evidence or testimony indicating that Dickow's actions or motives were arbitrary or discriminatory in nature. Appellant felt that there were other employees who "have worse cases" and were reinstated. Dickow followed up with the Company to find out if there were any other similar situations with employees who had received a different outcome. Dickow was informed by the Company that within the last ten years, there were none.

Appellant claims that a full and independent investigation was not conducted. The record proves otherwise. As stated above, the Company not only had its EEO Compliance and Governance Office perform an investigation, but an independent third party also performed an investigation. And finally, the Union executed its own investigation throughout the grievance process. The facts found by the Union investigation led Dickow to believe that the Union was unlikely to prevail in arbitration.

### DISCUSSION

The PRB's jurisdiction over appeals related to the settlement of grievances is limited to claims 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.<sup>64</sup> Here, Reynolds has not provided any information suggesting that the disposition of his grievance was tainted by fraud, discrimination, or collusion with

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<sup>64</sup> UAW International Constitution, Article 33, §4(i).

management. Therefore, the Board focuses on whether the International Representative's decision to settle the grievance lacked a rational basis.

During the Company's investigation, Reynolds acknowledged sending text messages containing pornographic images to a female co-worker. The evidence indicated that he continued to send the messages even after she told him to stop doing so. When questioned by the Company, Reynolds also did not deny making the profane statements in the breakroom attributed to him by the female co-worker. Instead, he only indicated that he did not recall doing so. Given the weight of the evidence showing that Reynolds committed serious violations of the Company's harassment policy, the International Representative made a reasonable decision to settle the termination grievance in exchange for the opportunity to accept early retirement.

Reynolds argues that he was not consulted in advance about the settlement. However, three Union representatives have attested that Reynolds was advised beforehand about the settlement. In addition, the Record reflects that the Union representatives communicated frequently with Reynolds throughout the grievance process, which lends further credibility to the assertion that he was consulted. In any event, as the Board has stated in numerous prior cases, a Union representative does not require the grievant's permission to accept a settlement.<sup>65</sup> Thus, even if the Board were to credit Reynolds' claim that he was not advised in advance, this alone would not provide grounds to sustain his appeal.

On appeal, Reynolds also points to the fact that he is a high seniority employee. In cases involving the discharge of a high seniority employee, the PRB has consistently required that the Union have "a clear and substantiated basis" for deciding to withdraw a termination grievance. *Dailey v. UAW Region 2B*, 14 PRB 933, 945 (2013). We find that this standard is satisfied here. The Union pursued the grievance through all available steps prior to arbitration and reasonably concluded that the chances of prevailing in an arbitration proceeding were remote. Ultimately, the International Representative was able to obtain a settlement which will enable Reynolds to receive valuable early retirement benefits that would otherwise be unavailable to him as a terminated employee.

Reynolds further argues in support of his appeal that the interactions with his female co-worker were consensual and "done jokingly." The evidence in the Record, however, simply does not support Reynolds' claims. To the contrary, the female co-worker raised objection both to Reynolds directly and later to management. Even if Reynolds somehow intended his communications as jokes, this is not an adequate defense since the Company's harassment policy specifies that "an employee may violate the policy without intending to harass."<sup>66</sup>

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<sup>65</sup> See *Russell v. UAW FCA Department*, PRB Case No. 1811, at 13 (Apr. 27, 2020); *McCombs v. UAW Local Union 2250*, PRB Case No. 1768, at p. 22 (Dec. 18, 2017); *Schillinger v. UAW Technical, Office, Professional Department*, 14 PRB 714, 732 (2012).

<sup>66</sup> Record, p. 1.

Lastly, Reynolds vaguely claims that other individuals in similar circumstances were treated more favorably. However, the International Representative asked the Company whether there were any similar incidents at TMP in ten years prior to Appellant's termination and was advised that there were none. Without any details to substantiate his claim of unequal treatment, Reynolds' argument is unavailing.

The decision of the IEB is affirmed and the appeal is denied.