

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

APPEAL OF:

JOSEPH YUNK, Member,
UAW LOCAL UNION 1102
(Green Bay, Wisconsin), REGION 4,

Appellant,

-vs-

CASE NO. 1838

UAW LOCAL UNION 1102
(THE UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA),

Appellee.

DECISION

(Issued May 28, 2021)

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

The issue in this case is whether the Local Union correctly rejected Appellant's election protest challenging the fact that retirees who had not paid dues were permitted to vote and alleging other election improprieties.

FACTS

Appellant Joseph Yunk is a member of UAW Local Union 1102 located in Green Bay, Wisconsin. Local 1102 is an amalgamated local and represents employees at two facilities, Northern Engraving and Machine Company (NEMCO) and Paper Converting Machine Company (PCMC). Yunk works for NEMCO.

In April 2020, Local 1102 began the process for electing members of the Local Executive Board. The Election Notice stated:

“Elections will be held to fill the following Executive Offices: President, Vice-President, Recording-Secretary, three (3) Trustees, Sergeant-at-arms,

Guide, and one (1) Retired Member. A Unit Chairperson will also be elected. The Unit Chairperson will also serve on the Executive Board.”¹

Nominations were uncontested for all Executive Board positions except for Unit Chairperson.² Three individuals ran for Unit Chairperson, including Appellant Yunk and the incumbent Craig Kosbab.

Voting for the Unit Chairperson position was conducted on May 3 and 5, 2020. The final vote tally was:

Craig Kosbab	93
Jeffrey M. Schaut	35
Joseph Yunk	27 ³

Therefore, Kosbab was elected without the necessity of a runoff.⁴

Following the election, Yunk contacted the Local Recording Secretary, Brad Sengstock, and asked why retirees who do not pay union dues had been permitted to vote in the election.⁵ He also indicated that he wanted to protest the election. On May 5 and 7, 2020, the Election Committee Chairperson, Frank Hayden, spoke with Yunk and explained the circumstances in which retirees are permitted to vote.⁶ Yunk asked Hayden for a written statement from the International Union confirming that retirees were eligible to vote. Hayden indicated that he would contact Joe Preisler, International Servicing Representative, to obtain a statement. Hayden later advised Yunk that Preisler told him that a statement could not be provided.⁷ Yunk also asked to inspect the list of eligible voters and it was shown to him.⁸

On May 11, 2020, Yunk sent a letter to the International Union. Yunk indicated that he was “appealing the decision from 1102 Board on the election for Unit Chair.”⁹ He indicated that his election protest was based upon Article 6, §19 of the International Constitution which he understood to permit retirees in good standing to vote, but not those retirees who do not pay dues.¹⁰ He complained that the Local had failed to provide a

¹ Record, p. 14.

² Record, p. 19.

³ Record, p. 21.

⁴ Following the conclusion of the election for Local Executive Board members, Local 1102 began the process of electing five Bargaining Committee positions. Record, pp. 26-27. After that election was concluded, the Local conducted elections for steward positions. Record, pp. 37-38.

⁵ Record, p. 62.

⁶ Record, p. 56.

⁷ Record, p. 56.

⁸ Record, p. 56.

⁹ Record, p. 22.

¹⁰ Article 6, §19 states in pertinent part:

“Any member in good standing who is retired, shall be entitled to a ‘retired membership status’ which, without being required to pay membership dues during the period of such retirement, shall entitle her/him to all of the privileges of membership except the right to

letter of clarification from the International Union on retiree good standing and stated that he “need[ed] clarification from [the] International.”¹¹ Yunk also claimed that election notices had been mailed to 250 retirees but only six retirees voted and only two of the voting retirees had paid dues.¹²

On June 4, 2020, Administrative Assistant to International President, Anthony Feyers, sent correspondence to the Local 1102 Recording Secretary in an attempt to determine whether Yunk had followed the necessary steps at the local level with regard to his appeal.¹³ The Recording Secretary responded by letter dated June 13, 2020.¹⁴ He stated that no formal decision had issued at the Local level but that the Election Committee had explained to Yunk that any person who retires in good standing is entitled to retired membership status regardless of whether the person pays dues. The Recording Secretary further advised that Yunk had been directed to contact the International Union directly to seek clarification on the matter.

On July 6, 2020, the International President’s office received another letter from Yunk dated June 23, 2020, requesting to add additional arguments to his earlier appeal.¹⁵ Yunk indicated that the Election Committee Chairperson told him that election notices were sent to 250 retirees but declined to show Yunk the mailing list. Yunk questioned whether all 250 retirees had been notified since only six voted. Yunk also complained that the winning candidate, Craig Kosbab, had called members to solicit their votes.

On July 16, 2020, Feyers again wrote to the Recording Secretary indicating that the Local’s prior correspondence failed to convey the requested information.¹⁶ The Recording Secretary responded by letter dated August 1, 2020, reiterating that Yunk had been directed to seek clarification from the International and that Feyers should communicate with Yunk directly, not the Local.¹⁷ The Recording Secretary also explained that Yunk had requested a copy of the list of members to whom election notices were mailed and that the request had been denied due to privacy concerns. The Recording Secretary also provided copies of the Local’s recent election postings.

On August 27, 2020, Feyers sent a letter to Yunk responding to his May 11, 2020 letter requesting clarification regarding good standing for retiree members. Feyers explained:

“ . . . please be advised that retired members are not required to pay the voluntary monthly dues of three dollars to be a member in good standing. When an active member in good standing retires, she/he is automatically a

vote in elections conducted pursuant to Article 19, Section 3; Article 45, Section 2; and Article 50, Sections 1 and 5.”

¹¹ Record, p. 22.

¹² Record, p. 23.

¹³ Record, pp. 29-30.

¹⁴ Record, p. 34.

¹⁵ Record, p. 79.

¹⁶ Record, p. 47.

¹⁷ Record, p. 48.

retired member in good standing. Those retirees are eligible to vote in those elections outlined in Article 38, Section 1 of the UAW International Constitution (namely the executive officers of the local union).”¹⁸

Feyers cited Article 55, §5(b), as well as Article 6, §19.¹⁹ He also explained that the definition of “member in good standing” found in Article 16, §2 only applies to active members.²⁰

On September 27, 2020, Yunk sent a letter to the International President’s office indicating that he intended to appeal Feyers’ August 27, 2020 letter.²¹ He also stated that he had yet to receive a response to his additional correspondence sent on July 7, 2020 regarding the mailing of election notices to retirees.

On November 9, 2020, Yunk gave a letter to the Local President, Jacob Nordstrom.²² The letter requested proof that election notices were mailed to retirees and members on layoff due to COVID-19.

At this point, Feyers scheduled a hearing for November 11, 2020 at Local 1102 “due to the unclear purpose of Appellant’s appeal and the incomplete information provided by the local union.”²³ Appellant Yunk attended the hearing. Present on behalf of the Local were: Jacob Nordstrom, Local President; Ryan Welty, Local Vice President; Brad Sengstock, Recording Secretary; and Frank Hayden, Election Chairperson. Joe Preisler, International Servicing Representative, attended for UAW Region 4.

The International Executive Board (IEB) issued its decision on December 22, 2020, adopting the report prepared by the International President’s staff based upon the hearing conducted at Local 1102.²⁴ Staff explained that local elections are presumed valid unless there is clear and convincing evidence of improprieties that could have affected the outcome.²⁵ Staff reiterated that retirees were properly permitted to vote in the election for the reasons set forth in Feyers’ August 27, 2020 letter.²⁶ In terms of Yunk’s complaint that the Local had failed to provide a letter from the International Union regarding the propriety of permitting retirees to vote, staff explained that the Local was not obligated to

¹⁸ Record, p. 49.

¹⁹ Article 55, §5(b) states:

“Retirees will not be required to pay membership dues during the period of retirement, in accordance with Article 6, Section 19 of this Constitution. To assist in financing these activities, a three dollar (\$3.00) per month voluntary retired membership dues is hereby established. All UAW retirees are eligible to participate in the three dollar (\$3.00) voluntary retired membership dues.”

²⁰ Record, p. 50. Article 16, §2 specifies that “[i]n order to remain a member in good standing, each member will pay a minimum monthly dues amount to the Financial Secretary of the Local Union.”

²¹ Record, p. 51.

²² Record, p. 58.

²³ Record, p. 63.

²⁴ Record, p. 60.

²⁵ Record, p. 64.

²⁶ Record, p. 64.

obtain such a letter.²⁷ Instead, Yunk needed to make the request either through his Regional Director or directly to the International President's office.

With respect to Yunk's complaints about the mailing list and the phone calls made by Kosbab, and his allegation that election notices were not mailed to retirees and members on layoff, staff found that these claims were untimely because they were first submitted more than 30 days after Appellant was aware or should have been aware of the underlying facts.²⁸ However, staff also addressed the substance of these claims in order to educate Appellant and the Local on election matters.

In terms of reviewing the mailing list, staff explained that candidates are entitled to view the eligible voter list upon request prior to the election but are not entitled to receive a copy.²⁹ Although finding it unclear when Appellant first requested to view the list, staff found that he ultimately did inspect the voter list on May 7, 2020.

As far as the calls allegedly made by Kosbab, staff explained that candidates are permitted to contact voters by phone provided that no union or employer resources are used.³⁰ Lastly, staff found that Yunk had provided no evidence to support his allegation that election notices were not mailed to retirees or members on layoff.³¹

Yunk has now filed a timely appeal with the Public Review Board (PRB) requesting that the Board set aside the IEB decision and rerun the election for Unit Chairperson.

ARGUMENT

A. Joseph Yunk:

The IEB decision failed to address the violations committed by the Local 1102 Election Committee. The Committee allowed retirees to vote for Unit Chairperson in violation of Article 6, §19 of the International Constitution. I confronted the Election Committee Chairperson before the election questioning the eligibility of retirees and citing Article 6, §19. He assured me that the Committee was only going to notify members on layoff by mail.

In addition, the Election Committee has no proof that they notified retired members by mail or members on lay-off due to COVID-19. I do not believe that they notified all 250 retiree members. With my appeal, I have enclosed a list of 14 members, including myself, who were not notified by mail. There are more members who were not notified by mail, but they did not want me to use their names out of concern for retaliation from union officials.

²⁷ Record, p. 65.

²⁸ Record, p. 65.

²⁹ Record, p. 65.

³⁰ Record, pp. 65-66.

³¹ Record, p. 66.

For these reasons, I believe that the election should be rerun. How are we ever going to trust that future elections are run fairly if nothing is done about this? There was a lot of fraud. The Election Committee attended training so there is no excuse for what occurred.

B. International Union, UAW:

The PRB has a well-established standard of review in appeals challenging election results. The Board applies a presumption that all elections conducted by a local union are valid. To rebut this presumption, a challenger must show by clear and convincing evidence that some improper practice occurred to such a degree that it could have affected the outcome of the election. *Boline v. UAW International Executive Board*, PRB Case No. 1818, at p. 7 (July 13, 2020). That showing has not been made in this case.

Appellant asserts that only retirees in good standing should be allowed to vote, not ones that do not pay dues. Appellant also requested clarification as to what are the requirements to be considered a member in good standing. It was explained to Appellant by the Local and the International President's office that under the UAW Constitution, all retirees in good standing can vote in local elections. The International President's office explained what is required to be a retiree in good standing. It was also affirmed at the hearing that no retirees voted improperly during the election.

In Appellant's original appeal, he states that Local 1102 would not provide a letter from the International Union clarifying when a retired member is in good standing. Local union and regional representatives are not permitted to give official interpretations of the UAW Constitution. Appellant must solicit such a request either through his Regional Director or a directly from the UAW President's office. The UAW President's office did in fact provide Appellant with a letter dated August 27, 2020, clarifying what constitutes a retired member in good standing.

The remaining issues which Appellant forwarded after the filing of the original appeal were submitted more than 30 days after the facts that gave rise to the charges were known or should have been known. These charges are untimely under Article 33, §4(b)-(c) and, therefore, cannot be considered. Even if these issues were timely, the Appellant must provide evidence to support his allegations. "The reviewing body cannot be expected to supply arguments to fill gaps in an overly general election protest in order to give meaning to it." *Slimp v. Local Union 3520*, PRB Case No. 1743, at p. 13 (Apr. 12, 2016). Appellant provided no evidence to support his untimely additional issues.

DISCUSSION

The PRB has for many years applied an established standard of review in appeals challenging election results, based on the presumption that all elections conducted by a local union are valid. To rebut this presumption, a challenger must show by clear and

convincing evidence that some improper practice occurred to such a degree that it could have affected the outcome of the election.³² Appellant has not made such a showing.

Appellant Yunk's initial complaint regarding the election was that retired members who do not pay dues were permitted to vote.³³ He contended that these retirees were not members in good standing. In correspondence dated August 27, 2020, the International President's office explained that retirees are not required to pay monthly dues in order to be considered in good standing. Instead, retiree dues payments are voluntary. This is clearly stated in Article 55, §5(b) of the Constitution: "Retirees will not be required to pay membership dues during the period of retirement, in accordance with Article 6, Section 19 of this Constitution." The IEB decision affirmed the explanation provided by the President's office and rejected Yunk's argument that some retirees voted improperly. The PRB agrees with the IEB's conclusion that there was no election violation with respect to retiree voters.

In terms of Yunk's claim that the Local should have provided a letter from the International Union clarifying the status of retiree voters, this claim too was properly rejected. Yunk has not pointed to any authority for his assertion that the Local was obligated to obtain such a letter. The International Union has explained that a member should make such a request directly to the UAW President's office or with the assistance of the member's Regional Director. In any event, the issue of whether the Local was obligated to provide Appellant with an official letter is immaterial to the question of whether an election violation occurred in this setting. In other words, even if Appellant were correct, his claim would not provide grounds for overturning the election.

Appellant Yunk has also raised several other challenges to the election. These issues were not raised in his initial appeal submission to the IEB. Therefore, the IEB found these aspects of Yunk's appeal to be untimely. The IEB may be correct that Yunk raised these issues belatedly. However, we also note that there was considerable confusion surrounding the handling of Appellant's election protest at the Local level.³⁴ In

³² See, e.g., *Boone v. UAW Local Union 933*, PRB Case No. 1763, p. 11 (June 9, 2017); *Williams v. International President, UAW*, 13 PRB 341, 353 (2006); *Martin and Pierce v. Local Union 624, UAW*, 8 PRB 411, 414 (1994).

³³ Article 6, §19 prohibits retiree members from voting in elections for stewards and committee persons conducted under Article 45, §2. The election at issue in this case was for Local Executive Officers and, therefore, was conducted under Article 38.

³⁴ Article 38, §11 provides as follows with respect to election protests:

"Following each election, the Election Committee shall report in writing the canvass of the results of the election to the membership's next membership meeting. No protest to an election shall be considered unless raised within seven (7) days of the closing of the polls or at the next membership meeting, whichever is later. A protest must either be in writing, or made at the membership meeting. If written, the protest must be actually received by the Local Union Recording Secretary before the deadline. In the event that membership meeting(s) have been suspended by affirmative membership action(s) pursuant to Article 37, Section 4(c), the protest must be submitted to the Local Union Recording Secretary within seven (7) days of the closing of the polls or the next Local Union Executive Board meeting (not to exceed thirty (30) days from the date of the election), whichever is later.

any event, the IEB addressed Appellant's claims on the merits in addition to finding them untimely. Therefore, the PRB also will address the substance of these claims.

Yunk complained that the Election Committee declined to show him the membership mailing list. As the IEB explained in its decision, candidates are entitled to review a local's list of eligible voters prior to the election date, although they are not entitled to a copy of the list. Here, it is unclear whether Appellant requested to review the list prior to the election. He was shown a copy of the list on May 7, 2020, two days after the election. Even if Appellant had established that he made a proper request to view the list, his purpose was to determine whether the list included retirees who had not paid dues. As explained above, retirees are not required to pay dues in order to be considered in good standing to vote. Therefore, even if Yunk was improperly denied the opportunity to view the list prior to the election, this would not provide grounds for overturning the election.

Yunk also alleges that one of his opponents, Craig Kosbab, campaigned by telephoning members at their homes. This claim is insufficient to establish an election violation. Candidates are permitted to call members at their homes, provided that no union or employer resources are used to obtain phone numbers or make the calls. Here, Appellant has not alleged, much less demonstrated, that any union or employer resources were used by his opponent.

Lastly, Appellant claims that the Election Committee failed to mail election notices to retired members and members on lay-off. He has cited the fact that only a handful of retirees voted in the election in support of this claim. However, at the hearing conducted by the President's office, Appellant failed to present any direct evidence and the hearing testimony from Local officers confirmed that notices were mailed to these members. Now, before the PRB, Appellant has presented a list of 14 members who assert that they did not receive notice of the election by mail. Even if the PRB were to accept this additional information at this late stage in the appeal process, it is insufficient to establish an election violation. Although a local must make a reasonable effort to insure that members receive mailed election materials, the fact that mail delivery might have been unsuccessful in some instances is not enough in itself to establish an election violation, especially if voters were also provided with election information through alternate channels of communication.

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

The protest will be directed to the Local Executive Board, which shall rule on the protest within thirty (30) days after receipt."