

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

APPEAL OF:

JASON BRANDAU, Member,
UAW LOCAL UNION 723
(Monroe, Michigan), REGION 1A,

Appellant,

-vs-

CASE NO. 1839

UAW LOCAL UNION 723 EXECUTIVE BOARD
(THE UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA),

Appellee.

DECISION

(Issued June 28, 2021)

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

The Board considers whether the Local correctly determined that a retired member is eligible to hold office as Local Financial Secretary-Treasurer consistent with the Local Bylaws and the International Constitution.

FACTS

Appellant Jason Brandau is a member of UAW Local Union 723 located in Monroe, Michigan. Local 723 is an amalgamated Local, representing ten different bargaining units. Brandau is the Unit Chairperson for the Neapco Drivelines unit.¹

On July 19, 2020, the Local conducted nominations for Executive Officer positions.² Joshua Rhoden and incumbent Mike Keck were nominated to run for Financial

¹ Record, p. 1.

² The facts forming the basis of this appeal are identical to those set forth in paragraphs 1-8 of the PRB's decision in PRB Case No. 1834, *Rhoden v. UAW Local Union 723 Executive Board*, issued this same date and, accordingly, have been incorporated here. Citations to the Record in the *Rhoden* case are designated "PRB Case No. 1834 Record."

Secretary-Treasurer. Keck is a retired member, formerly employed at Ford Motor Company. He has been a member of Local 723 for 44 years and was elected as Financial Secretary-Treasurer in 2009, 2011, 2014, and 2017.³

The next day, July 20, 2020, Rhoden lodged a complaint with then Local President Chris Sharpe regarding Keck's eligibility to run for Financial Secretary-Treasurer.⁴ Rhoden claimed that Keck as a retiree member was ineligible to run for the position. Sharpe reviewed the complaint with the Election Committee Chairman, Larry Swiontoniowski.⁵ Based on the Local's Bylaws and the UAW International Constitution, they determined that the complaint had sufficient validity to warrant requesting an interpretation from the International President's office.

Sharpe and Swiontoniowski sent a letter to the International President.⁶ They explained that Article 7, §3(B) of the Local Bylaws states: "The Financial Secretary-Treasurer is to assist the Unit Chairperson in processing and expediting grievance procedures."⁷ They also cited the Interpretations of the Constitution, Article 6, §19(3), which provides: "Retired members are ineligible to run for any local union position which carries responsibility for grievances or bargaining required by the Collective Bargaining Agreements and/or local union bylaws."

Shortly after, Administrative Assistant to the President, Allen Wilson, sent an email response to Sharpe.⁸ Wilson cited the applicable Constitutional provisions and the Local's Bylaws. He concluded:

"Given the foregoing, the applicable constitutional language contained under the cited provisions clearly prohibits a retired member from seeking the office of Local Union 723 Financial Secretary-Treasurer."⁹

Based on this advice, the Election Committee Chairperson ruled Keck ineligible and Rhoden was deemed elected by acclamation.¹⁰

Keck challenged the determination that he was ineligible to run for Financial Secretary-Treasurer. He prepared a detailed written appeal.¹¹ He argued that he was eligible to run for Financial Secretary-Treasurer consistent with the Constitution and Local Bylaws. He pointed to the fact that he was previously ruled eligible in four prior elections, including 2011 when his eligibility as a retiree was challenged by an opposing candidate.

³ PRB Case No. 1834 Record, p. 63.

⁴ PRB Case No. 1834 Record, p. 35. Chris Sharpe ran for re-election as President in the Local's 2020 election but lost to Mike Miller. Miller received 818 votes; Sharpe received 661 votes. Sharpe has protested the entire election and his appeal is currently pending before the PRB as Case No. 1840.

⁵ PRB Case No. 1834 Record, p. 35.

⁶ PRB Case No. 1834 Record, p. 60.

⁷ PRB Case No. 1834 Record, p. 16.

⁸ PRB Case No. 1834 Record, p. 61.

⁹ PRB Case No. 1834 Record, p. 60.

¹⁰ PRB Case No. 1834 Record, p. 35.

¹¹ PRB Case No. 1834 Record, pp. 62-75.

He explained that in his prior terms and those of his predecessors, the Financial Secretary-Treasurer had never been involved in grievance handling or contract negotiations and administration.

In his appeal, Keck also specifically addressed Article 7, §3(B) of the Local Bylaws, which requires that the “Financial Secretary-Treasurer is to assist the Unit Chairperson in processing and expediting grievance procedures.” He explained that this language was added to the Bylaws when a former Financial Secretary-Treasurer had refused to authorize expenditures associated with grievance handling, such as postage for communications to grievants. In response, the Local membership added the language in question to clarify that the necessary funds should be approved to facilitate the grievance process. In addition, Keck asserted that none of the Local’s bargaining agreements require the Financial Secretary-Treasurer to participate in grievance handling. Thus, he asserted that the Financial Secretary-Treasurer’s role is merely administrative and does not involve decision-making with respect to grievance handling.

Initially, Keck presented his appeal to the Local Executive Board at its meeting on August 6, 2020.¹² He did so because Local membership meetings had been cancelled since May 2020 due to COVID-19 and he was concerned that the membership meeting scheduled for August 16, 2020, might be cancelled also.¹³ The Executive Board voted in favor of the appeal and ordered that Keck appear on the ballot. Keck ultimately prevailed in the election:

Mike Keck	736
Joshua Rhoden	682

On August 7, 2020, Appellant Brandau sent an email to the International President’s office challenging the decision of the Local Executive Board.¹⁴ Subsequently, the Local membership voted upon the question of Keck’s eligibility at a meeting on August 16, 2020. As instructed by the President’s office, Brandau resubmitted his appeal by mail on August 28, 2020.¹⁵ However, the appeal was not updated to reflect the membership vote in favor of Keck’s appeal.

Brandau’s appeal argued that Keck as a retiree was ineligible under the Local Bylaws and the International Constitution to run for an office which includes grievance-handling responsibilities. He wrote:

“As a Chairperson at local 723, I believe that I am being denied additional assistance in processing and expediting grievance procedures because my current Financial Secretary Treasurer, a retiree, is unable to do so according to our Local Union Bylaws and the UAW Constitution. By granting a retiree eligibility to run again for a position he is clearly ineligible

¹² PRB Case No. 1834 Record, p. 47.

¹³ PRB Case No. 1834 Record, p. 62.

¹⁴ Record, p. 1.

¹⁵ Record, p. 3.

for, I believe IPS Chairmen like myself, who are hard pressed for resources to begin with, will continue to be denied valuable resources that we sorely need in our local Union to assist us in handling grievances. It is apparent to me that the oversight of allowing a retiree to remain in an office that he is ineligible to hold has gone on for far too long and the membership has suffered because of the local 723 Executive Board's inability to accurately interpret the UAW local 723 bylaws for so many years."¹⁶

The IEB issued its decision on November 9, 2020, adopting the report prepared by the International President's staff.¹⁷ Staff determined that a hearing on the appeal was unnecessary. Staff explained that Brandau's appeal was procedurally defective since he was appealing the Local Executive Board's decision and not the membership's action at the meeting held on August 16, 2020. However, staff determined that the appeal should proceed, nonetheless. The IEB decision credited Keck's assertion that the Local Financial Secretary-Treasurer does not engage in grievance handling and noted that Brandau had not provided any information to the contrary.¹⁸ The decision advised the Local to amend the language in Article 7, §3(B) of the Local Bylaws "with the exclusive objective to render it clear and unambiguous."¹⁹

Brandau filed a timely appeal with the Public Review Board (PRB) seeking to overturn the IEB's decision and have this Board find Keck ineligible for the office of Financial Secretary-Treasurer.

ARGUMENT

A. Jason Brandau:

I am asking the PRB to find Mike Keck ineligible for the office of Financial Secretary-Treasurer based on the Interpretations of the UAW Constitution in tandem with the Local 723 Bylaws. Article 7, §3(B) of the Bylaws details the responsibilities of the Financial Secretary-Treasurer. The Bylaws clearly state that "the Financial Secretary-Treasurer is to assist the Unit Chairperson in processing and expediting grievance procedures."

I believe that the IEB has ruled incorrectly in stating: "within thirty (30) days of receipt of this decision, the local union is advised to revise the language under Article 7, Section 3 of its bylaws, with the exclusive objective to render it clear and unambiguous." The IEB used the rationale that the Financial Secretary-Treasurer has not assisted Unit Chairpersons in processing and expediting grievances in the past and, therefore, it is not a job function of the Financial Secretary-Treasurer to perform these duties. The Bylaw language should be utilized by having an active member who is able to assist the Unit Chairperson in the grievance process, not changed to eliminate whatever ambiguity the

¹⁶ Record, p. 1.

¹⁷ Record, p. 4.

¹⁸ Record, p. 32.

¹⁹ Record, p. 32.

IEB has deemed the language to have. The fact that Keck has not performed his job duties in the past is a result of his status as a retiree who is constitutionally disqualified from undertaking those duties.

In *Amore, et al. v. UAW International President*, 14 PRB 517 (2010), the PRB considered the eligibility of retirees to run for office and recognized the consistent application of the International Union's policy not to allow retirees to hold offices that have responsibility for grievance handling and collective bargaining. The PRB explained that "[t]echnically, these two officers could be called upon to engage in bargaining or grievance handling under the local union's bylaws and some of the unit collective bargaining agreements." 14 PRB at 529. The same is true with regard to Keck because he could potentially take part in Step 3 of the UAW-Neapco Drivelines grievance procedure. The fact that he has not is due to his retiree status. This is similar to the situation presented in *Amore*. I would have obtained assistance from Keck at Step 3 for a grievance regarding dues deductions, but I did not because of his retiree status. As Financial Secretary-Treasurer, Keck should be my subject matter expert who is responsible for the accuracy dues payments from Neapco Drivelines. However, Keck cannot be called upon in a potential Step 3 hearing, even though our agreement allows it, because he is a retiree.

In *Pearson v. Local Union 140, UAW*, 13 PRB 300 (2006), the Board explained the reasons for not permitting retirees to hold offices with responsibility for grievance handling and collective bargaining. These reasons apply to Keck. As a former Ford employee and retiree, he may be "more prone to represent the interests of other retired members instead of current members." 13 PRB at 305 (quoting *King, et al. v. UAW Local 600 Executive Board*, 12 PRB 685, 691 (2005)). In addition, Keck is not "accessible to the membership" because he has no idea what the current changing membership goes through daily due to his retiree status keeping him distanced from the active membership. 13 PRB at 305. As a retiree, he is not as "accountable to the current Union membership as active ones." 13 PRB at 305.

The fact that Keck's eligibility to run for the office of Financial Secretary-Treasurer was not challenged up until now should not be grounds for keeping a retiree as an eligible candidate for a position with grievance responsibilities due to the simple fact that it has been allowed for over a decade. As the PRB has explained in prior cases, just because retirees have held certain offices in the past, the International Union is not obligated to allow them to continue to do so. See *King, et al.*, 13 PRB at 305 (discussing *Hawkins v. Local Union 7, UAW*, 10 PRB 533 (2000)).

B. International Union, UAW:

At the 33rd Constitutional Convention in 2002, the following Interpretation of Article 6, §19 was adopted by the delegates, which states the UAW policy regarding retiree eligibility for local union office:

“Retired members are ineligible to run for any local union position which carries responsibility for grievance or bargaining required by the Collective Bargaining Agreement(s) and/or local union bylaws. (Las Vegas, 6/1/02.)”

In this case, the IEB determined that the Local 723 Financial Secretary-Treasurer position does not carry such grievance handling or bargaining responsibilities. Article 7, §3(B) of the Local Bylaws provides in relevant part: “The Financial Secretary-Treasurer is to assist the Unit Chairperson in processing and expediting grievance procedures.”

The IEB affirmed the Local membership’s position that the Financial Secretary-Treasurer does not have responsibility for grievances or bargaining. Keck argued persuasively that Article 7, §3(B) authorizes the Financial Secretary-Treasurer to provide ministerial assistance only, such as the approval of postage for grievance-related correspondence. The collective bargaining agreements to which Local 723 is a party do not include responsibilities for grievances or bargaining by the Local Financial Secretary-Treasurer.

Appellant Brandau asserts that the membership has been denied a “valuable resource in the grievance procedure” because the Financial Secretary-Treasurer is unable to participate due to his retiree status. However, the Neapco collective bargaining agreement does not provide for participation by the Financial Secretary-Treasurer. Appellant also argues that a particular grievance regarding dues deduction was impacted by the Financial Secretary-Treasurer’s inability to participate in the process. However, this argument is flawed. The Financial Secretary-Treasurer may provide information in support of a grievance regardless of his or her retiree status.

In *Pearson v. Local Union 140, UAW*, 13 PRB 300 (2006), cited by Appellant, the local union president was required pursuant to the local bylaws to represent the local union at all contract negotiations. This requirement is distinguishable from the Bylaws for Local 723 cited above.

In *Amore, et al. v. UAW International President*, 14 PRB 517 (2010), also cited by the Appellant, the PRB upheld the IEB’s decision not to remove retirees from the offices of recording secretary and financial secretary after the IEB determined that those officers were not required to participate in negotiations or grievance handling. That is precisely what the IEB determined in the instant case. The IEB’s investigation into this factual issue is supported by the record and entitled to deference. Moreover, based on this factual determination, the IEB properly concluded that “the extraordinary step of removing a democratically elected officer” was not called for in the case of the Financial Secretary-Treasurer at Local 723. 14 PRB at 529.

DISCUSSION

The PRB has fully addressed the matter of retiree Mike Keck’s eligibility to run for Financial Secretary-Treasurer of Local 723 in its decision in *Rhoden v. UAW Local Union 723 Executive Board*, PRB Case No. 1834, issued this same date. Appellant in this case

seeks the same relief and has raised the same arguments addressed by the Board in *Rhoden*. Accordingly, the PRB incorporates by reference the Discussion section from our *Rhoden* decision as if fully set forth herein and will provide a copy of that decision to Appellant Brandau.

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