

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

APPEAL OF:

NORM McCOMB
IN THE MATTER OF TOM CARNAHAN,
MEMBER, LOCAL UNION 659, UAW
(Flint, Michigan),

Appellant,

-vs-

CASE NO. 1453 II

INTERNATIONAL EXECUTIVE BOARD, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued October 25, 2006)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson,
Prof. Benjamin Aaron, Prof. Janice R. Bellace,
Prof. James J. Brudney, Prof. James E. Jones,
Jr., and Prof. Maria L. Ontiveros.

Whether the International Executive Board (IEB) has established that Norm McComb owes non-dues money to his Local Union within the meaning of Article 48, §6, of the International Constitution.

FACTS

On May 13, 2002, Thomas W. Carnahan of UAW Local 659 submitted charges in accordance with Article 31 of the International Constitution and the Ethical Practices Codes against the Local Union's President, Norm McComb, claiming that McComb improperly received compensation from General Motors (GM) pursuant to Appendix K of the UAW/GM Agreement, while he was also receiving his salary as a full-time officer of the Local Union. Carnahan asserted that McComb should have turned over the income that he received from GM to the Local Union pursuant to Article 48, §§5(a) and 6, of the Constitution.¹

¹ Record, Book 1, p. 28.

The International Union advised the Local Recording Secretary that Carnahan's claim should be investigated in accordance with Article 48, §6, of the Constitution. Following this advice, the Local conducted a hearing on Carnahan's claim on August 9, 2002. At that hearing, McComb presented documents to support his position that the money he received from GM was not wages but retirement benefits.² Based on the information presented at the hearing on August 9, the Local 659 Executive Board found that McComb had not received money improperly within the meaning of Article 48, §6, of the Constitution.³ Tom Carnahan appealed the Local Union's decision to the IEB on August 22, 2002.

President Gettelfinger's Administrative Assistant, Bill Capshaw, conducted a hearing on Carnahan's appeal on February 27, 2003. Capshaw prepared a report to the IEB on President Gettelfinger's behalf based on testimony taken at that hearing. In his report, Capshaw declared that the money GM paid to McComb during the period from April through August 2000 was not part of his retirement package.⁴ Capshaw held that the money McComb received during this period was paid pursuant to Appendix K of the 1999 National Agreement between GM and the UAW, and therefore, constituted wages.⁵ Capshaw reported that it is an established practice at Local Union 659 for full-time officers to report any wages received from GM to the Local and have them deducted from their salary. He commented:

"McComb's explanation and conduct stands in stark contrast to the longstanding application of the local bylaws and the testimony of other officers present at the hearing. For example, Buck Kline, Vice President, testified that he reports to his plant four hours each month. Management then pays his vacation pay, holiday pay and benefits. Kline brings his pay stubs to the local union and is only paid the difference between his regular rate of pay in the plant and his salary provided by the local bylaws as a full-time officer."⁶

Based on these conclusions, Capshaw ruled that McComb should be required to reimburse the Local Union \$19,919.18 for the wages and vacation pay that he received from GM while he was also receiving his full salary and vacation pay from the Local Union as its President.⁷ The IEB adopted Capshaw's report as its decision on April 25, 2003, and McComb appealed the IEB's decision to the Public Review Board (PRB).

² Record, Book 1, pp. 56-57.

³ Record, Book 1, pp. 63-65.

⁴ Record, Book 1, p. 92.

⁵ Appendix K of the GM/UAW National Agreement establishes the Job Security Program under which eligible laid off employees continue to receive their regular straight time hourly rate of pay.

⁶ Record, Book 1, pp. 93-94.

⁷ Record, Book 1, p. 95.

We remanded the case to the IEB on December 23, 2003, because Carnahan's original charges had not been filed until approximately two years after the events they described, and therefore, appeared to be untimely. We asked the IEB to address the issue of timeliness.⁸ The IEB did not respond to our Order of Remand at that time, but instead referred the matter back to the Local 659 Executive Board.

The Local Executive Board conducted a hearing on the timeliness issue on February 6, 2004. The minutes of the hearing indicate that McComb testified that Carnahan first raised the issue about the money he received from GM in 2000 on March 25, 2001. McComb testified that he appeared before the Flint Metal Center Unit membership meeting on the same day to explain that he was taking the retirement package. The minutes of the hearing report that McComb made the following statement:

"Same day Tom took me in the hallway by the kitchen and talked about that issue. The Regional Director was well aware; I spoke to him [and] told him I was going to take the package. I don't know what the big secret was. Everybody knew I took the package. I paid union dues on the money I received from the corporation. I paid dues on money I received from the Local Union Hall, so I paid double dues during the period of time in which I received weekly benefits. Nobody raised a flag or asked any questions. It only became an issue at election time."⁹

The Local Executive Board determined that Carnahan's original complaint was untimely.¹⁰ The Local 659 Joint Council adopted the Local Executive Board's ruling on March 14, 2004.

Carnahan appealed the Joint Council's ruling to the IEB on March 23, 2004. The International Union acknowledged Carnahan's appeal on June 2, 2004, but took no further action.¹¹ On September 28, 2005, Carnahan wrote to President Gettelfinger requesting his assistance in resolving the issue raised by his appeal.¹² There is no response to this letter in the record.

On November 15, 2005, Administrative Assistant Capshaw sent a notice to McComb that he intended to conduct a hearing on Carnahan's appeal on December 1,

⁸ Record, Book 2, p. 6.

⁹ Record, Book 2, p. 12.

¹⁰ Record, Book 2, pp. 9-15.

¹¹ Record, Book 2, p. 25.

¹² Record, Book 2, p. 29

2005. The record contains copies of this notice addressed to McComb in Flushing, Michigan, and in Myrtle Beach, South Carolina.¹³ In his appeal to this Board, however, McComb states that he did not receive either of these notices.¹⁴ McComb did not attend the hearing. On January 3, 2006, Capshaw submitted a response to the PRB's Order of Remand based on the hearing he had conducted on December 1, 2005. We forwarded a copy of Capshaw's letter to McComb on January 26, 2006. McComb responded to Capshaw on August 1, 2006.¹⁵

ARGUMENT

A. Administrative Assistant Bill Capshaw on behalf of the IEB:

When I asked members of the Local 659 Executive Board to explain the basis for their conclusion that Carnahan's complaint against McComb was untimely, the response from almost everyone was that everybody knew that McComb had accepted the retirement package in 2000, and that Carnahan had not presented his complaint until 2002. What the Local Executive Board members did not realize, however, was that McComb had received salary and vacation pay from the Local Union at the same time that he was receiving wages and vacation pay from GM. I believe that several of them sincerely did not understand the significance of the distinction between "everyone knew he took the package" and what everyone did not know: the fact that he received double compensation from April 2000 until August 2000, contrary to the Local bylaws.

I asked Committeeperson Tim Duplanty who was present at the Unit meeting on March 25, 2001, if he remembered McComb having informed the membership about his retirement package. Duplanty testified that he did remember McComb's appearance at the meeting, but he conceded that McComb never stated that he would be receiving double payments. At the close of the hearing, several of the attendees came forward to say that if they had it to do over again, their votes would have been different now that they have a clear understanding of the distinction between taking advantage of the retirement offer and receiving double compensation for the period at issue.

I did consider the timeliness issue when I conducted the initial hearing on Carnahan's appeal in February 2003. The first question I asked Carnahan was why he did not raise the issue earlier, and Carnahan testified that he did not become aware of the problem until the triennial elections of May 2002, when rumors began to circulate that McComb had received money from GM while he was a full-time officer of the Local Union. At that point, Carnahan asked Regional Director Cal Rapson to investigate the matter. The Regional Director called me at that time and asked my advice on what would be the best way to proceed. The Director was personal friends with McComb and

¹³ Record, Book 2, pp. 30-31.

¹⁴ Record, Book 2, p. 52.

¹⁵ We granted McComb an extension until August 31, 2006, to respond to Capshaw's report, because he was away from his residence and did not have access to his personal records.

did not want to appear partial in any way nor did he think that this should be made into a political circus. I recommended that he advise Carnahan to reduce his complaint to writing and to give it to the Local 659 Recording Secretary for processing in accordance with Article 48, §6.

I do not know why Carnahan added a claim under Article 31 to his initial charge, but the matter was properly addressed under Article 48, §6, of the Constitution and I instructed the Local to proceed with an investigation pursuant to that section. Carnahan did not object to this approach and it was consistent with his initial request for an investigation by the Regional Director. The time limits applicable to actions brought pursuant to Article 48, §6, are more flexible than those applicable to a charge brought pursuant to Article 31. Normal time limits are not applicable to matters of financial misconduct that are dealt with pursuant to Article 48, §§5 or 6. There are numerous PRB decisions wherein the actual misconduct occurred years before it was first discovered and dealt with. In its investigation of alleged Ethical Practices Codes Violations at Region 4 which became PRB Case No. 640, the Board went back in time more than a decade in their search for evidence of financial wrongdoing.

I concluded that Carnahan's complaint was timely because he did not know that McComb was receiving double compensation until the issue arose in the context of the election in May 2002. In the considerable time this case has been pending, McComb has not produced one single person from any unit of Local 659 to testify that he or she was aware of McComb receiving double compensation. We have reviewed every set of Local 659 Executive Board minutes, Joint Council minutes, and the local newspaper, *The Searchlight* from February 2000 until April 2002 and there is no evidence whatsoever that McComb told anyone about his dual compensation.

In any event, the PRB should not have considered the timeliness of Carnahan's complaint, because McComb did not raise this issue as a defense to Carnahan's complaint until after the IEB's decision was issued. In *Browning v. Local Union 662, UAW*, 6 PRB 83 (1990), this Board rejected an argument based on untimeliness because it had not been presented to the IEB. The Board's opinion states:

"Appellant Browning in his response to the International Union's answer to his appeal for the first time injected the issue of timeliness into this matter, claiming that Larry Smith's protest of the adjustment of his seniority was untimely. Mr. Browning may not raise issues at the Public Review Board level of his appeal which were not asserted to the Local membership and the International Executive Board. ..."¹⁶

¹⁶ 6 PRB 83, at 85.

Furthermore, the PRB should not have considered Maccomb's original appeal from the IEB's decision of April 25, 2003. The IEB directed McComb to reimburse the Local Union for the money he received from GM in 2000. McComb had not complied with that direction as required by Article 33, §4(e), of the Constitution before appealing to the next level. I realize that the President's staff may have forwarded the appeal to the PRB, but that does not alter or suspend the provisions of Article 33, §4(e).

B. Norm McComb:

I am totally confused by this new appeal hearing. The International Union claims I was sent a notice of this hearing. I did not receive that letter. If I had, I would have had to request a postponement, because I would not have been able to attend a hearing until I returned to Michigan in the summer. I have lost the box of documents that I had relating to this appeal, but I believe Carnahan's original charge was presented under Article 31 of the Constitution and it was clearly untimely. It was found to be untimely by the Local Union Executive Board again and again. Administrative Assistant Capshaw has now changed the basis of the charge to Article 48, §6.

Capshaw insists that I was in the JOBS Bank after my retirement from GM and that I received wages and vacation pay pursuant to Appendix K. I was never in the JOBS Bank. Employees in the JOBS Bank had to punch in and out on a time card in order to be paid. They could be called to work at another GM location and some of them were. I was never in the JOBS Bank and I never received any compensation from GM pursuant to Appendix K. The money that I received from GM during the period from April 2000 until August 2000 was my retirement benefit under the Special Retirement Agreement.

The terms of the Special Retirement Agreement provided that an employee who signed the agreement to retire would be released from the JOBS Bank. That meant that the employee could stay home, take another job outside of GM, go on vacation, or whatever he wanted. At the same time, GM agreed to pay the employee an amount equal to the weekly wage he would have received in the JOBS Bank plus credits toward additional vacation pay. These weekly payments continued until August 1, 2000, at which time GM paid a lump sum of \$25,000, and the regular retirement benefit commenced. Although I was not in the JOBS Bank because I was on leave for union activity, I was eligible for this program as a member of the Flint Engine Plant Unit. My wife and friends convinced me that I would be a fool not to accept this offer. I also discussed this decision with our Regional Director Cal Rapson, and he encouraged me to accept the offer.

In March 2000, I received a phone call from the Personnel Director at the New Flint South Engine Plant and was told I needed to cancel my Paragraph (109)¹⁷ letter from the plant so they could start to send me the weekly checks I was entitled to under

¹⁷ Paragraph (109) of the GM/UAW National Agreement provides for a leave of absence for union activity.

the retirement agreement. I told him I was not going to go into any JOBS Bank or go back into the new plant to work. He told me that I did not have to. He said I was entitled to the weekly checks as part of my retirement package and that I was considered retired as far as GM was concerned. So, I cancelled my leave from GM and continued on with my job as the elected President of Local Union 659 and was paid accordingly. I also started to receive weekly checks at home in accordance with the Special Retirement Agreement.

Capshaw has characterized the weekly checks I received as JOBS Bank wages, but he apparently does not understand how the JOBS Bank works. It is clear that he is trying to paint a picture of wrongdoing, as he repeatedly refers to these checks as double wages. At the time that I was President of Local 659, the compensation due to a Local Union officer for service to the Local was not affected by his retirement income. If anyone who took the retirement incentive was called upon to provide a duty or service to the Local, they would have been paid by the Local and still received their retirement monies. If someone was called out of the JOBS Bank who did not take the retirement package, they would have had to have a Paragraph (109) letter from the Local Union. In that case, they would be paid only by the Local.

The money paid to me under the Special Retirement Agreement did not include wages. It was based on wages, which may account for the confusion here, but the facts are plain. Administrative Assistant Capshaw ought to understand how special retirement agreements work because he received the benefits of such an agreement when he was given continued retirement credits from his home plant while working for the International Union earning yet another retirement package. He never worked back in his home plant while on staff, but now enjoys two pensions, one from the Union and the other from the Corporation for years of service he never performed. These are called negotiated benefits. They are similar to what was negotiated for me and over 400 other employees at the Flint Engine Plant.

I would like to respond to Capshaw's claim that this was all a big secret. All of the employees at the Engine Plant were given a copy of the negotiated retirement incentive package between the UAW and General Motors. Over 400 employees took advantage of this one-time retirement incentive offer. The offer was announced in the local newspapers including the *Flint Journal* and *Detroit News* and on local television news channels 5 and 12. Everyone in the community knew of it. I did not hide it. I even announced it in union meetings of our Local. What I did not do was brag about getting 45 to 50 thousand dollars and still wanting to be elected again as President of our Local Union. I know people and their jealousies, and it would not have been in my best interest to rub that information in their faces and ask for a vote too. How stupid would that be?

I am asking this Board to find me innocent of double-dipping based on the record in this case.

DISCUSSION

The fact that McComb did not question the timeliness of Carnahan's charge during the hearing conducted by the Administrative Assistant Capshaw in February 2003 did not preclude this Board from raising the issue when it considered his appeal. In the first place, this is not a case where an appellant has attempted to introduce a defense based on time limits at the PRB level after having failed to present this argument to the IEB. McComb was not the appellant in the case considered by the IEB in 2003. The Local 659 Executive Board had ruled in his favor on the merits; there was no reason for him to raise this defense until after the IEB had issued its decision. It was up to Carnahan to establish that he had presented a timely, meritorious claim against McComb. In any event, McComb's failure to raise the issue would not preclude this Board from observing that Carnahan's claim was untimely on its face, and asking the IEB to address the issue.

The record in this case is a good illustration of the importance of requiring that claims made pursuant to Article 48, §6, of the Constitution be presented within a reasonable time after the events they describe.¹⁸ By the time the Local 659 Executive Board investigated Carnahan's claim against McComb, it had to rely on reports of telephone conversations that took place two years earlier and recollections of what was said at membership meetings for which no minutes existed. Administrative Assistant Capshaw now maintains that he considered the timeliness issue and determined that Carnahan's charge was timely. He argues that this finding is implicit in his conclusion that McComb should be required to reimburse the Local for the money he received from GM in 2000.

Indeed, Capshaw has identified the very problem presented by his initial report to the IEB on Carnahan's appeal. None of the crucial factual determinations are made explicit; all must be inferred from the conclusions reached. Capshaw initiated his discussion with a declaration that McComb received wages from GM after he accepted the Special Retirement Agreement. Capshaw then went on to describe the way this Local has traditionally treated wages earned by full-time officers. However, his characterization of the payments made to McComb as wages is a conclusion regarding the issue in dispute. McComb explained the nature of the money he received and why he did not report it to the Local and have it deducted from his salary. He testified that a Company representative told him that the weekly checks he received were part of his retirement benefit. The Local Executive Board accepted his explanation. The report adopted by the IEB as its decision rejected the findings of the Local Executive Board, but did not provide any evidentiary basis for that rejection.

It was not sufficient for the IEB simply to declare that the money McComb received was wages rather than part of his retirement package. Conclusions on

¹⁸ PRB Case 640 has no application to this case. Case 640 was not an appeal but a unique situation where the International Union requested the assistance of the Public Review Board in conducting an investigation.

dispositive issues must be based on evidence and reasoning from that evidence. The IEB's decision does not identify any evidence that contradicts McComb's version of the events that took place in 2000. Furthermore, because of Carnahan's failure to raise the issue in a timely manner, we saw little likelihood that a fair and thorough analysis of the evidence could be conducted in 2003 when the case first came to us. That was why we requested the IEB to address the timeliness issue.

Carnahan's request for an investigation into claims that McComb received more money from the Local Union than he was entitled to in 2000 was clearly untimely. Carnahan acknowledged during the hearing conducted by Administrative Assistant Capshaw in February 2003 that his charges were triggered by rumors circulating in the context of a Local Union political campaign, rather than by any recent discovery on his part. If Carnahan believed that the retirement benefit paid to McComb in 2000 ought to have been deducted from his salary as Local Union President, the time to raise that issue was in 2000 when it could be resolved based on the documentary evidence and testimony of the parties involved.

Even if the International Union had been able to present evidence to support its claim against McComb in 2003, it cannot now resurrect and enforce claims that it failed to prosecute for nearly twenty months. Carnahan appealed the Joint Council's acceptance of the Local 659 Executive Board's finding that his claim was untimely to the IEB on March 23, 2004. It does not appear that McComb was provided with any notice of this appeal. The International Union's acknowledgment of Carnahan's appeal on June 2, 2004, does not indicate that a copy was sent to McComb. After that, no action was taken on the matter until November 15, 2005, when a letter was issued giving McComb fifteen days advance notice of a hearing scheduled for December 1, 2005. By this time, McComb was entitled to believe that the Joint Council's decision on March 14, 2004, had finally resolved all of the issues raised by Carnahan. Requiring McComb to attend a hearing and respond once again to Carnahan's allegations after this passage of time violated the guarantee of due process set forth in Paragraph 3 of the Democratic Practices section of the UAW's Ethical Practices Codes.¹⁹

In his January 2006 response to our Order of Remand, (submitted more than two years after our Order), Capshaw raises for the first time the fact that the International Union did not require McComb to comply with the IEB's April 25, 2003, decision before it referred his appeal to the PRB. He argues that we should have rejected McComb's appeal based on Article 33, §4(e), of the International Constitution.²⁰ Arguably, the

¹⁹ Paragraph 3 states as follows:

"All Union rules and laws must be fairly and uniformly applied and disciplinary procedures, including adequate notice, full rights of the accused and the right to appeal, shall be fair and afford full due process to each member."

²⁰ Article 33, §4(e), provides as follows:

"COMPLIANCE PENDING APPEAL. The decision of the lower tribunal, in all cases, must be complied with before an appeal can be accepted by the next tribunal in authority and shall remain in effect until reversed or modified. The International President may,

International's referral of McComb's appeal to us amounted to a waiver of the requirement of compliance pending appeal. The International Union did not raise the issue in response to McComb's appeal and it is, therefore, not before us now. In any event, enforcement of the rule would clearly be inappropriate in light of our determination that this record does not support a conclusion that McComb received funds improperly within the meaning of Article 48, §6. The International Union's investigation into the claims raised by Tom Carnahan in May 2002 should now be closed.

It is so ordered.