

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

APPEAL OF:

DENNIS ROSA,
Appellant

-vs-

CASE NO. 1463

UAW LOCAL UNION 1645
(Torrington, Connecticut)
REGION 9A
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued November 22, 2004)

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. Paul Weiler.

Dennis Rosa argues that his Local Union's decision to withdraw a grievance protesting the Company's failure to recall him within one year of his layoff in October 2001 was influenced by collusion with Management and without a rational basis.

FACTS

Local 1645 member Dennis Rosa works for the Torrington Company (now the Timken Company) in Torrington, Connecticut, in the Numerical Control Area. Rosa has a plant seniority date of June 19, 1989, and a departmental seniority date of April 2, 2001.¹ He was laid off from his position on October 26, 2001. According to the Local 1645 Shop Chairperson Barry J. Bayly, Rosa was bumped by a senior machinist who had been reduced from the Torrington Company's Central Machine Shop from a position in the same seniority department as Rosa.²

¹ Record, p. 6.

² Record, p. 37.

In a letter to Regional Representative Dan Mastropietro on November 15, 2002, Rosa claimed that his layoff on October 26, 2001, violated Article IX, §9.8, and Article XIV, §14.3, of the Working Agreement between the UAW and the Torrington Company because at the time, the Company was subcontracting work from its Central Machine Shop and employees in the Numerical Control Area were working overtime.³ The Working Agreement provides in §9.8, that if layoffs can be avoided by reducing the number of hours employees are working on a job below forty hours, but not below thirty-five, or by transferring employees to comparable jobs, the Company will reduce hours or transfer employees, rather than laying them off.⁴ Rosa asserted that his department had been working fifty-eight hours per week since his layoff in October 2001.

The Working Agreement provides in §14.3, that the Company will not subcontract work normally done by bargaining unit employees who are on a work schedule of less than forty-five hours per week, except where there exists "good and sufficient economic reasons." That section further states that no subcontract will be entered into which "in and of itself" causes a reduction of hours below forty-five hours per week or the loss of jobs.⁵ The question of what constitutes good and sufficient economic reasons is subject to the grievance and arbitration procedure.

Rosa claimed that when he was laid off in October 2001, Shop Chairperson Bayly told him that his layoff was the result of a temporary agreement and that he would be recalled in one year. Rosa said that he believed that the one-year agreement described by Shop Chairperson Bayly had been a written agreement. Rosa informed Mastropietro that when he was not recalled after one year he requested a grievance. He reported that Bayly had advised him on November 14, 2002, that the agreement allowing the Company to lay off employees while other employees were working overtime and work was being subcontracted was a verbal one. He wrote:

³ Record, p. 9.

⁴ Article IX, §9.8, of the 2001 Working Agreement between the UAW and the Torrington Company provides, in pertinent part, as follows:

"If the laying off of employees can be avoided by reducing the hours on the operation involved below forty (40) but not below thirty-five (35) hours per week, or by transferring employees to other comparable jobs, such a reduction of hours or transfer of employees may be made."

⁵ Article XIV, §14.3, of the working agreement provides, in pertinent part, as follows:

"In the event that the company subcontracts work normally done by bargaining unit employees who are on a work schedule of less than forty-five (45) hours per week, the question of whether or not the Company's decision to so subcontract was based on good and sufficient economic reasons will be subject to the grievance and arbitration procedure.

* * *

No subcontract shall be entered into which in and of itself causes a reduction of hours below forty-five (45) hours a week or the loss of jobs."

“This verbal agreement took place Oct. 2001. It has displaced at least 5 skilled workers (although I do believe it is more.) This agreement was supposed to be “good” for only one year. I was informed that this was a verbal agreement on November 14, 2002, by Barry Bayly himself. For one year I was led to believe this was a legal written agreement. For over one year I have been out of work because the shop chairman decided to make verbal agreements rather than abide by and enforce the contract.”⁶

Rosa requested that the International Union investigate the agreement between the Company and Chairperson Bayly.

On November 19, 2002, Chairperson Bayly sent Rosa a copy of a written Memorandum of Agreement, dated April 19, 2002, allowing the Company flexibility in subcontracting work and scheduling overtime while employees are on layoff.⁷ The preamble to the Memorandum states that the Company requested these provisions for a period not to exceed one year in order to deal with the extremely depressed economic conditions in the world-wide aircraft market.⁸

On November 23, 2002, Rosa filed a grievance charging Management with violating §9.8, and §14.3, of the Working Agreement.⁹ The Company denied the grievance on the basis that it was untimely. On February 25, 2003, Shop Chairperson Bayly advised Rosa that he would not pursue the grievance because it was untimely and lacked merit.¹⁰ Rosa appealed that decision to his Local Union membership on

⁶ Record, p. 9.

⁷ With respect to §9.8, of the Working Agreement, the Memorandum states as follows:

“In the event of a layoff, the Company desires the ability to work a schedule of more than forty hours and the capability to production requirement transfer appropriate personnel to the department affected by the layoff. This flexibility and short term overtime will permit the company to ensure it can meet or exceed unusual short term customer demand and compensate for short term production bottlenecks that are affecting customer delivery performance. **It is not the company’s intent to use this flexibility to eliminate jobs but to meet unusual short-term customer demand.**”

With respect to §14.3, of the Working Agreement, the Memorandum states:

“The company proposes that it be allowed to subcontract short-term work for good and sufficient economic, quality or customer delivery reasons while departments affected remain on layoff or on a forty hour schedule. **It is not the company’s intent to use this flexibility to eliminate jobs but to meet unusual short-term customer demand.**”
(Record, p. 11)

⁸ Record, p. 11.

⁹ Record, p. 12.

¹⁰ Record, p. 16.

April 7, 2003.¹¹ In his appeal, Rosa claimed that the Company had violated §9.8, and §14.3, of the Working Agreement and that the Union had violated Article 19, §1, and §3, of the International Constitution.¹²

The membership considered Rosa's appeal at a meeting on April 16, 2003. The minutes of the April 16 membership meeting report that Shop Chairperson Bayly denied that he had ever told Rosa he would be recalled to work in one year. According to the minutes, Bayly told the membership that he advised Rosa to accept a job in production, but that Rosa refused.¹³ The minutes indicate that Bayly explained that Rosa was bumped from his job by a more senior employee from the Central Machine Shop, so that the Company was not restricted by the contract from working overtime in the Numerical Control Department.¹⁴ The membership voted to deny Rosa's appeal by a vote of 27 to 3.¹⁵ Bayly advised Rosa of the membership's decision on April 21, 2003, and Rosa appealed to the International Executive Board (IEB) on April 22.¹⁶

¹¹ Record, p. 22.

¹² Article 19, §1, of the Constitution states:

"It shall be the established policy of the International Union to recognize the spirit, the intent and the terms of all contractual relations developed and existing between Local Unions and employers, concluded out of conferences between the Local Unions and the employers, as binding upon them. Each Local Union shall be required to carry out the provisions of its contracts. No officer, member, representative or agent of the International Union or of any Local Union or of any subordinate body of the International Union shall have the power or authority to counsel, cause, initiate, participate in or ratify any action which constitutes a breach of any contract entered into by a Local Union or by the International Union or a subordinate body thereof. Whenever a Local Union becomes a party to an agreement on wages, hours or working conditions, it shall cause such agreement to be reduced to writing and properly signed by the authorized representatives of all the parties to the agreement."

Article 19, §3, states, in pertinent part:

"No Local Union Officer, International Officer or International Representative shall have the authority to negotiate the terms of a contract or any supplement thereof with any employer without first obtaining the approval of the Local Union. After negotiations have been concluded with the employer, the proposed contract or supplement shall be submitted to the vote of the Local Union membership..."

¹³ The minutes state:

"2001: There was a reduction of the work force 4 or 5 people – Warren Chambers bumped Dennis Rosa. Mr. Rosa was the [junior] employee. When Mr. Rosa was bumped, I personally advised him to take a job out in production. He refused to take a job out in production. ..." (Record, p. 28)

¹⁴ The minutes state:

"Mr. Bayly: If he was bumped from his job you do not restrict the Co. to work O. T. If there was a reduction of force in N. C. [Numerical Control], then you restrict Co to work O. T." (Record, p. 30)

¹⁵ Record, p. 31.

¹⁶ Record, p. 32.

Chairperson Bayly responded to Rosa's appeal in a letter to International President Ron Gettelfinger on May 14, 2003. He explained that in October 2000, Human Relations Manager Stephen Welford notified Local 1645 that the Torrington Company intended to eliminate the Central Machine Shop. In a letter dated October 8, 2000, Welford wrote to Bayly:

"Previously, there existed a functional need for a large number of Skilled Trades employees to support the Company's press and machining operations. As the plant exited those businesses, it addressed the excess direct manpower through layoff, severance and transfer. It has not addressed the excess indirect or support manpower issues.

Further, there exists a need to review each skill[ed] trades operation in light of proper staffing requirements and its specific mission. For example, because of the increased business opportunities in our Automotive Division there may be opportunities for people to be transferred to our Test Lab and Prototype operations. This may be at the same time as we seek to eliminate the Central Machine Shop."¹⁷

Bayly reported that the Local was able to preserve 12 positions in the Central Machine Shop through negotiations with the Company following this notice. In October 2001, however, the Company once again advised the Union that it intended to eliminate the Central Machine Shop.¹⁸ Bayly wrote:

"...Subsequent negotiations led to the temporary elimination of five positions in the CMS and the retention of four machinists positions in that area. This was a negotiated temporary solution with the understanding between the parties that we would meet in a year with hopes of there being a better economic situation at that time. This resolution was a result of a number of meetings between the Company and the Local 1645 negotiating committee and not simply a verbal agreement by the Shop Chairman in collusion with the Company as alleged by the appellant."¹⁹

Bayly pointed out that as a result of this agreement, the Company eliminated only five of the machinist positions in the Central Machine Shop, rather than nine as

¹⁷ Record, p. 3.

¹⁸ Record, p. 4.

¹⁹ Record, p. 36.

originally proposed. One of the five machinists whose job was eliminated exercised his right to bump into Rosa's department, and that was why Rosa was laid off. Bayly wrote:

"The Numerical Control area did continue to work overtime after Mr. Rosa was bumped as alleged, however, because there was no reduction of workforce in that area, but simply a bump or replacement by a senior department employee, there was no restriction to be enforced on overtime in that area."²⁰

In response to Rosa's charge that §14.3, should have prevented the Company from eliminating any jobs in the Central Machine Shop while work was being subcontracted from that area, Bayly wrote:

"The Company was then and continues to subcontract work that we believe that the CMS is capable of doing. The Company is taking the position that they have "good and sufficient economic reasons" to do so (see §14.3, p. 39 of the Working Agreement.) That position is arguable and arbitrable; however it is my position and that of the negotiating committee that it was better to negotiate a temporary solution rather than risk losing everything in arbitration during these tough economic times."²¹

Bayly reported that Rosa had been recalled to his job in the Numerical Control area in January 2003, after the Union persuaded the Company to recall two machinists to the Central Machine Shop, "in spite of continued depressed economic conditions."²²

On June 22, 2003, Rosa filed an appeal to the Public Review Board (PRB) from a ruling that he received from a member of the President's staff in response to his appeal to the IEB. In his appeal, Rosa argued that the UAW had not addressed his claim that the verbal agreement that permitted his layoff in October 2001 violated Article 19, §1 and §3, of the International Constitution. Presidential Administrative Assistant Gary Bryner responded to Rosa that his appeal was premature because he had not yet received a decision from the IEB. Bryner stated further that Rosa's appeal appeared to challenge an agreement entered into in October 2001, and that such a challenge would be untimely under Article 33, §4, of the International Constitution. Rosa appealed Bryner's ruling on the timeliness issue to the PRB, and his appeal was remanded to the IEB for a decision on the merits on February 19, 2004.²³

²⁰ Record, p. 37.

²¹ Record, p. 36.

²² Record, p. 38.

²³ Record, pp. 69-70.

President Gettelfinger's staff prepared a report for the IEB on behalf of the President based on the information provided by the appellant and the Regional Office. Staff reported that there was an agreement between the Local and the Company in October 2001 which resulted in the temporary elimination of five positions in the Central Machine Shop and that Rosa was properly displaced in his department by a more senior employee from the Machine Shop. Staff wrote:

"...The appellant was affected when he was displaced by a senior machinist. Without Union intervention there would have been nine reduced machinist[s] instead of five. Given the appellant's standing on the seniority list, he would have been reduced with or without the discussions the Union had with the Company."²⁴

It continued that when Rosa requested a grievance protesting his layoff in October 2002, Chairperson Bayly advised him that his layoff was proper and that his attempt to grieve was untimely. This advice was correct, Staff concluded, because Rosa had not demonstrated that any of his contractual rights had been denied because of the discussions the Union had with the Company over the fate of the Central Machine Shop. Staff acknowledged Rosa's argument that the Union should not have allowed the Company to lay off machinists while work was being subcontracted from the Central Machine Shop, but it pointed out that the Company maintained that there were "good and sufficient economic reasons," for subcontracting the work and that the Local's Negotiating Committee had determined that it was not worth the risk to submit the matter to arbitration.²⁵ Staff pointed out that the Union could not enforce the restriction on overtime in Rosa's department, because there had been no reduction in force in that department.²⁶ There were no contractual violations, staff concluded, and Rosa's grievance protesting his layoff was simply untimely.²⁷

Furthermore, Staff declared that the Local's negotiations with the Company over the Company's intention to close the Central Machine Shop did not require membership approval pursuant to Article 19 of the Constitution. It wrote:

"If the Union stood idly by while the Company proposed the elimination of the Central Machine Shop, one could reasonably question whether or not they fulfilled their fiduciary duty to the membership. Such discussions do not require membership approval; therefore, we find no violation of Article 19 of the International Constitution."²⁸

²⁴ Record, p. 90.

²⁵ Record, p. 88.

²⁶ Record, p. 90.

²⁷ Record, p. 91.

²⁸ Record, pp. 91-92.

Staff concluded that Rosa had not identified a violation of the Local agreement or a duty breached by the Local Union, and it denied his appeal. The IEB adopted staff's report as its decision and notified Rosa on June 22, 2004. Rosa has now appealed to the PRB.

ARGUMENT

A. Dennis Rosa:

I am still appealing the fact that my grievance was not allowed to go through the grievance process. The International Union does not want an arbitrator to hear this case because the parties involved would incriminate themselves if they were compelled to testify. I am asking the PRB to hold the UAW accountable to its own rules and regulations.

The IEB states that I have not identified a violation of the Constitution or a breach of duty by the Union. Article 19, §3, of the International Constitution clearly states that no local union officer or International officer shall have the authority to negotiate the terms of a contract or any supplement thereof without first obtaining the approval of the local union. After negotiations have been concluded, the proposed contract must be submitted to the local membership for a vote.

The Local did bring a supplement to the Working Agreement to the membership on April 19, 2002. This was six months after the verbal agreements took place which led to my layoff on October 26, 2001. This verbal agreement did violate the International Constitution. Simply put, Barry Bayly and Dan Mastropietro acted in secrecy and without membership approval. If this supplement to the contract had been ratified before October 26, 2001, I would have no case. However, the supplement was not approved until April 19, 2002, with the hope that it could be covered up and justify the layoff that occurred in October 2001.

B. International Union, UAW:

Under §14.3, of the Working Agreement, Management has the right to subcontract work for "good and sufficient economic reasons." The Local 1645 Bargaining Committee chose not to challenge Management's conclusion on this point and thereby risk losing the entire Machine Shop. Instead, the Bargaining Committee chose to accept the adequacy of Management's reasons while working to retain as many positions as it could in the Central Machine Shop. This is just the sort of difficult bargaining decision that a Negotiating Committee is elected to make. Article 19, §3, of the International Constitution was not implicated, because there was no amendment to §14.3, of the Working Agreement. The parties simply agreed on the proper application of the phrase "good and sufficient economic reasons" to the existing conditions.

Rosa contends that the Local promised him that his layoff would be for one year. The Local leadership flatly denies having made such a promise. The Shop Chairperson would not have been likely to make such a statement given the precarious economics of the department, and his effort to dissuade Rosa from accepting the layoff. We do not know how Rosa came to believe that this promise had been made. One may only speculate that he interpreted the parties' intention to revisit the economic problem after one year to mean that he would be recalled. Whatever the basis for his belief, he was wrong. Rosa was laid off because he was the junior employee. He disregarded the Local's advice to use his seniority to bump into one of the lower paying jobs in the plant, and came to regret it. He was not promised a fixed term of layoff. No one had reason or motive to make such a promise, and the holding below is that they did not.

The language of the Local Agreement was not amended; it was applied to the facts and economics.

C. Rebuttal, by Dennis Rosa:

If Management did announce that it intended to eliminate the Central Machine Shop, there should have been a meeting with the membership to discuss the issue. Article 19 requires that any change to the contract shall be submitted to the membership for a vote. This did not happen until April 19, 2002. This was six months after I was laid off.

Bumping rights are irrelevant to my complaint. I am complaining about the Local's failure to allow the membership to vote on the amended contract. Any employee in any department could have filed a similar grievance.

The International Union denied that I was promised that I would be recalled in one year under the agreement between the Company and the UAW. I am submitting two documents to support my position, which were in the personnel file which the Timken Corporation forwarded to me on August 18, 2004. Manager Welford of the Timken Corporation described the October 2001 agreement in a letter to Jeff Falkin of the Ingersoll-Rand Company as follows:

“Layoff of additional CMS associates or transfer of personnel; maintain level of outsourcing and subcontracting; severance provided, associates allowed to transfer to other positions for a period of 1 year. We did this to avoid the long drawn out process of Good and Sufficient Cause arbitration.”

The agreement is also described as a one year agreement in the letter written to Agent Jennifer Dease of the NLRB.

The agreement that was made did not simply apply the “good and sufficient” clause. Paragraph 3 of §14.3, states:

“No subcontract shall be entered into which in and of itself causes a reduction of hours below forty-five (45) hours a week or the loss of jobs.”

This is the language that was violated by the verbal agreement reached in October 2001.

DISCUSSION

We agree with the conclusion of the IEB that the agreements negotiated by the Local Negotiating Committee in order to keep the Central Machine Shop open were not in conflict with any provisions of the Working Agreement between the UAW and the Torrington Company. The contract specifically provides that the Company is allowed to subcontract work, and to lay off employees while such work is being subcontracted where good and sufficient reasons exist. The agreement between the Local 1645 Negotiating Committee and Timken Management, which was eventually reduced to writing, simply reflected the Negotiating Committee's decision to accept the Company's determination that good and sufficient economic reasons existed for subcontracting work. It is clear from the record that the loss of jobs in the Central Machine Shop resulted from changes in the Company's operation of the Standard Plant as described in Manager Welford's October 8, 2000, notice to Chairperson Bayly of the Company's intention to eliminate the Central Machine Shop. There was no reduction in force in Rosa's department, so §9.8, of the Working Agreement did not come into play.

Because Rosa's layoff did not violate any provision of the Working Agreement, the fact that the agreements memorialized in the April 19, 2002, Memorandum of Agreement were to apply for a temporary period not to exceed one year was not relevant to his situation. There was no one-year agreement permitting him to be laid off, so that his request for a grievance protesting the Company's failure to recall him after one year had no basis. The grievance of October 2002 protesting the layoff itself was untimely, as stated to Rosa by Chairperson Bayly, and by the Company in its response to his grievance.

Agreements regarding the application of contracts such as those negotiated by the Local 1645 Negotiating Committee in this case are not contracts or supplements within the meaning of Article 19 of the Constitution and therefore do not require membership approval or ratification. *Ellis v. Local Union 326, UAW*, 8 PRB 244, (1994).

The decision of the IEB is affirmed.