

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

APPEAL OF:

JAMES O. POWELL AND NEIL RIDDLE,  
Appellants

IN THE MATTER OF:  
MICHAEL STEWART, MEMBER  
UAW LOCAL UNION 862  
(Louisville, Kentucky),

-vs-

CASE NO. 1466

UAW INTERNATIONAL EXECUTIVE BOARD  
REGION 3  
(THE UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF ARMERCA),  
Appellee.

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**DECISION**

(Issued March 18, 2004)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson,  
Prof. Benjamin Aaron, Prof. Janice R. Bellace,  
Professor James J. Brudney, Prof. James E.  
Jones, Jr., Prof. Paul Weiler and Prof. Marilyn  
V. Yarbrough.

James Powell and Neil Riddle argue that their charges against the Local 862 Building Chairperson Michael Stewart for pursuing grievances which resulted in their layoff from their skilled trades positions satisfied the requirements of Article 31, §3 of the International Constitution.

**FACTS**

On April 25, 2003, UAW Local 862 members James Powell and Neil Riddle submitted charges against the Local Building Chairperson Michael Stewart pursuant to Article 31 of the International Constitution asserting that Stewart had failed in his duty to represent them in connection with their layoff from skilled trades. They charged:

“...He has failed to fairly represent us, characterized by bad faith, arbitrarily choosing to promote the welfare of others at our expense, failure to accurately apply the terms of our

contractual agreements and behavior as unbecoming a member of the Union in terms of honesty and trustworthiness in performance of his duties....”<sup>1</sup>

In support of their charges, Powell and Riddle submitted a statement giving a detailed history of an ongoing dispute between the Union and the Company over the use of employees from the plant’s Temporary-Changeover Pool. They explained that they have worked at Ford Motor Company’s Kentucky Truck Plant in Louisville, Kentucky since 1995. In 1999, they were working regular jobs in production and also as carpenters in the plant’s Temporary-Changeover Pool.<sup>2</sup> During 1999, five employees, including Powell and Riddle, were pulled from Production and used by the Company as full-time carpenters. Appellants stated that when the Union asked the Company to give these five employees permanent skilled trades positions, the Company refused, returned the five employees to Production, and brought carpenters into the plant on a contract basis.<sup>3</sup>

At this point the Union filed Grievance THOJ00006 demanding that the five employees from the Changeover Pool be returned to the full-time skilled trades positions that they held before the work was contracted out. The Company denied this grievance based on the following disposition:

“Denied. The Company has reviewed its use of C. O. T. Carpenters and determined that they were being utilized outside of the spirit and intent of the Master Agreement, Appendix H, and therefore they were returned. C. O. T. Carpenters may be used in the future for purposes of tradesmen declining overtime.”<sup>4</sup>

Powell and Riddle report that the carpenters’ grievance was eventually settled after two of the employees from the Changeover Pool were given full-time positions as carpenters. Powell and Riddle were not given full-time positions as carpenters when

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<sup>1</sup> This statement is found on page 1 of the record. The document the appellants submitted to support their charge is 24 pages long with 10 pages of exhibits. (Record, pp. 1-34)

<sup>2</sup> The Changeover Pool was established pursuant to Appendix H, Part B, 3(c) of the 1999 Collective Bargaining Agreement between the UAW and Ford Motor Company. The section provides:

"Temporary-Changeover Pool

Local agreements may be negotiated to permit the establishment of a skilled trades supplementation pool consisting of temporary changeover employees selected from within the plant to help meet skilled manpower needs during overtime periods resulting from skilled tradesmen declining overtime opportunities under Appendix H."

<sup>3</sup> Record, p. 3.

<sup>4</sup> Record, p. 25.

Grievance THOJ00006 was settled. They assert, however, that the Skilled Trades Committeeperson at the time told them that they would fill any future full-time carpenter positions that became available.<sup>5</sup>

According to Powell and Riddle's statement, the Company in September 2000, once again began to use four carpenters from the Changeover Pool on a full-time basis, despite its former acknowledgment that this arrangement was outside the intent of the Changeover Pool provision in the contract. Powell and Riddle describe the situation as follows:

"Both the Union and the Company allowed us to work outside the provisions of the contract, primarily to keep out outside contractors. There was never any 'understanding' that we would remain in this job indefinitely. As a matter of fact, the whole situation was rather unstable, since Management told us on a regular basis that they were getting ready to move us back to Production. This went on for two years."<sup>6</sup>

In September 2002, Bargaining Committee Chairperson Mike Stewart advised Powell and Riddle that the Union was going to try to make their positions permanent. Appellants report that on November 8, 2002, Bargaining Committeeperson Johnnie Klefort advised them that the Union had gotten them their full-time positions as carpenters. On December 4, 2002, the Company posted a notice stating that Powell, Riddle and two other employees had been accepted as full-time journeypersons in the carpenter trade with a date of entry of November 11, 2002.<sup>7</sup>

In the meantime, on October 15, 2002, the Company had posted a letter describing the new positions negotiated by the Local Union and inviting employees to submit documents establishing their qualifications for the positions.<sup>8</sup> Appellants acknowledge that they were troubled by the October 15 posting. In reference to this posting their report states:

"...It raised a lot of questions in our minds regarding the Company's intentions towards us. At that point, we still had complete confidence that the Union was working in our behalf to make us whole. In recent months, Management told us that when the Company approved the new positions,

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<sup>5</sup> Record, p. 3.

<sup>6</sup> Record, p. 4.

<sup>7</sup> Record, p. 32

<sup>8</sup> Record, p. 27.

it never intended to request documentation from the plant. However, once the positions were approved, Mike Stewart insisted on posting the request.”<sup>9</sup>

Powell and Riddle report that after the letter was posted, employees in the plant showed a considerable amount of interest in the new carpenter positions. They state:

“...We knew then, that if the Company was planning to post the positions, we had little or no chance of seeing justice come to us after two years of being misclassified. Even at this point, we thought the Company had refused Mike Stewart’s request to make us whole, and Management was intending to get the help they needed by posting the positions plant wide.”<sup>10</sup>

After Powell and Riddle received their promotions into the carpenter classification, four employees filed grievances charging that the jobs had not been filled by seniority. In regard to these four grievances, appellants state:

“...Mike Stewart told us the grievances were based on the jobs being bid, then not being filled by seniority. Then some Union reps got word from Management that, if the Union brought up these grievances, the Company intended to lay all of us off. In spite of that, Mike Stewart chose to pursue the grievances, and he handled them himself. Neither John Timbers (Bargaining Committee), Joe Spaulding (Bargaining Committee) nor Joe Gorsick (Skilled Trades Committeeperson) were part of any negotiations that took place between Mike Stewart and Labor Relations/Hourly Personnel regarding these four grievance.”<sup>11</sup>

On February 3, 2003, the Company advised the four carpenters who had been promoted on November 11, 2002, including Powell and Riddle, that they would be laid off and returned to the line effective February 28, 2003. In the statement supporting their charges, Powell and Riddle describe a number of encounters with Chairperson Stewart regarding the four grievances that led to their displacement. They describe a meeting on February 14, 2003, as follows:

“...We started the meeting asking about the grievances that had been filed against us. We wanted to know why they had

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<sup>9</sup> Record, p. 4.

<sup>10</sup> Record, p. 4.

<sup>11</sup> Record, p. 5.

been filed. We understood that the Company had agreed three years ago, as settlement of our grievance, that Alan, Neil and Jim would be the next Carpenters to fill any future positions that came up.

Mike said the grievances were filed because the jobs were bid, these men had been passed up, and they just wanted what we had received. We told him these jobs were never even bid. The Company didn't have to bid them (as told to us by Joe Spaulding on Feb 12).<sup>12</sup>

The appellants report that Jim Powell and Mike Stewart then had a heated discussion during which Powell accused Stewart of failing to represent him and Stewart told Powell he could "get a lawyer" and "take him to court."<sup>13</sup> Powell and Riddle state that they were returned to Production in March 2003.

At the conclusion of their description of the events giving rise to their charges against Stewart, Powell and Riddle emphasize that they are not taking issue with Stewart's decision to pursue grievances on behalf of the other employees. They state:

"Please understand, we do not take issue with the grievances themselves, because it is a contractual right of each Union member to invoke the grievance process if s/he feels the Company in any way has wronged him/her. The heart of these charges deals with the way Mike Stewart acted toward and affected us as he pursued settlement of these grievances, largely through his failure to accurately perform his obligations as stipulated in our governing documents."<sup>14</sup>

The Local 862 Executive Board considered Powell's and Riddle's charges at a meeting on April 25, 2003, and determined that they were proper under Article 31, §3 (a), (b), (c), (d), and (e) of the International Constitution. The parties were notified of the Local Executive Board's decision on May 12, 2003.<sup>15</sup> Michael Stewart appealed that determination to the International Executive Board on May 19.<sup>16</sup>

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<sup>12</sup> Record, pp. 8-9.

<sup>13</sup> Record p. 9.

<sup>14</sup> Record, p. 17.

<sup>15</sup> Record, pp. 35-37.

<sup>16</sup> Record, p. 38.

Local 862 responded to Stewart's appeal on June 9, 2003. Local Recording Secretary Ronald Hardin reported that the Executive Board found that the charges satisfied all of the requirements of Article 31, and that it was not the responsibility of the Executive Board to determine the merit or validity of the charges.<sup>17</sup>

The International President's office determined that a hearing on the appeal was unnecessary and decided the matter based on the information provided by the charging parties, the Regional Office and the appellant. The President's Administrative Assistant Eunice Stokes-Wilson prepared a report on the appeal for the International Executive Board (IEB). Stokes-Wilson held that Powell and Riddle's charges against Chairperson Stewart failed under Article 31, §3(c) of the International Constitution which states:

"The act complained of does not sustain a charge of a violation of the Constitution or conduct unbecoming a member of the Union."<sup>18</sup>

Stokes-Wilson referred to an interpretation of the Constitution issued by the International Executive Board on January 27, 1961, in which the IEB specifically ruled that charges which attack the judgment, discretion or wisdom of a Local Union official with respect to the handling of grievances do not sustain a charge of a violation of the Constitution or conduct unbecoming a Union member and should not be submitted to a Trial Committee. Stokes-Wilson noted that the Public Review Board has recognized an exception to this principle where it is alleged that the Local official in question acted with culpable intent to injure the person filing the charges, citing *Kenny Dillon vs. Local Union 735, UAW*, 3 PRB 152 (1981). She found, however, that there was no allegation of wrongful intent in the charges under consideration that is specific enough to qualify for this exception.<sup>19</sup>

Stokes-Wilson reversed the decision of the Local Executive Board and directed the Local Union to take no further action on the charges against Stewart. The IEB adopted Stokes-Wilson's report as its decision and the Local Union was notified on August 29, 2003. Appellants Powell and Riddle report that the IEB's decision was read to the membership of Local 862 at a meeting on October 14, 2003. The charging parties have now appealed the IEB's decision to the Public Review Board.

## ARGUMENT

### **A. James Powell and Neil Riddle:**

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<sup>17</sup> Record, pp. 42-44.

<sup>18</sup> Record, p. 50.

<sup>19</sup> Record, p. 51

The information presented at our membership meeting was that the International Executive Board disqualified our charges because we did not show malicious intent. We do not understand why the IEB is bringing up the notion of "malicious intent." The basis of our charge was Chairperson Stewart's bad faith and his arbitrary decision to promote the welfare of others at our expense. We charged that his failure accurately to apply the contract amounted to conduct unbecoming a Union member.

In addition to the evidence already submitted, we can show that Stewart threatened to sue Jim Powell and to have him fired. We have also discovered that two of the employees who were promoted to the carpenter classification at our expense lacked the minimum qualifications to hold the job. At least one of these employees has personal ties to Chairperson Stewart.

**B. International Union, UAW:**

Since this dispute is clearly one involving the handling of a grievance, the appellants' charges can only be sustained if they can prove that the charged member acted with culpable intent to harm their interests. The appellants have presented no evidence that the Union intended to harm them. To the contrary, their supporting documentation shows that the Union acted conscientiously to resolve the issue involving the use of employees from the Changeover Pool as full-time carpenters.

Appellants were dissatisfied with the Union's resolution of the matter, but this kind of dispute is not properly resolved under Article 31, since the resolution of grievances rarely amounts to conduct unbecoming a Union member. Appellants were not without a remedy, however. Article 33 provided the proper route to appeal the Local Union's decision regarding the layoff issue. Appellants chose not to take that route, instead pursuing their claims under Article 31. They have plainly failed to meet that provision's requirements and their charges were properly dismissed.

**C. Rebuttal, by Powell and Riddle:**

We believe that Michael Stewart's actions promoting four chosen individuals as full-time carpenters at our expense amounted to a disregard of the recognized interests of Union members in a manner so flagrant as to be willful and wanton within the meaning of the Public Review Board's decision in *Comley v. Noble*, 1 PRB 347 (1965).

Mike Stewart made a commitment to us that he was going to Management on our behalf to gain us a date of entry into our trade. Once the four new carpenter positions were approved, he abandoned us to pursue what we believe to have been his actual intention all along: to secure at least two of those jobs for his personal friends and allies. None of the individuals who were promoted to the carpenter trade held sufficient qualifications for the position.

It sounds very noble for Stewart to say that he was trying to get the jobs awarded to the most senior, qualified individuals, but that is not what he did. Stewart went

through all of the documentation that was submitted and selected not the most senior, and not the properly qualified, but four individuals for reasons known only to him. If he had been doing the right thing, he would have had the support of the rest of the Bargaining Committee. Instead, senior members of the Committee told us that they warned Stewart against pursuing this course of action. He disregarded their counsel and did not involve them in any of the negotiations that took place with Management on this subject.

We believe that the International Executive Board placed too narrow an interpretation on Section 3(c) of Article 31. Chairperson Stewart knew that his actions would be detrimental to our interests. He led us and Management to believe that he was trying to make things right, but once he got the permanent jobs approved, he turned his back on us and put other employees in our places. The whole situation reeks of special favors and cutting deals with total disregard for the written contract. Mike Stewart woefully abused the power of his office in his dealings with us. If he is innocent, let him prove it before his peers.

### DISCUSSION

As the President's Administrative Assistant Eunice Stokes-Wilson stated in her report to the International Executive Board, an accusation that a Committeeperson used poor judgment in the handling of a grievance does not sustain a charge of a violation of the Constitution or conduct unbecoming a Union member and would, therefore, be an improper accusation to submit to a Trial Committee pursuant to Article 31 of the Constitution. This general principle is set forth in the International Executive Board's *Interpretations of the Constitution of the International Union*, adopted at the 33<sup>rd</sup> Constitutional Convention. We affirmed this principle in *Comley v. Noble*, 1 PRB 347 (1965). In that decision, we held that a charge that a committeeperson exercised poor judgment in the handling of a grievance should not be submitted to a Trial Committee, absent a claim that the accused acted out of malice or improper motivation.

Appellants argue that Stewart's conduct falls within the exception to the general principle concerning the impropriety of charges against committeepersons in connection with the handling of grievances where it is alleged that the committeeperson acted out of malice or improper motivation. In *Maewethers Marshall v. Local 1364, UAW*, 1 PRB 522, (1969), we interpreted the *Comley* exception to include a claim that the committeeperson acted with "a culpable intent to injure the charging party or a disregard of that interest so flagrant it could be considered as willful and wanton." (1 PRB 522, 526) Appellants argue that Stewart knew that pursuing the four grievances challenging their promotion to the carpenter trade would be detrimental to their interests, and so could be characterized as a willful and wanton disregard of their interests.

A committeeperson will frequently encounter situations where the pursuit of a grievance on behalf of one employee will necessarily be detrimental to the interests of another. The difficult task of sorting out the respective rights of claimants to a limited number of positions does not constitute a disregard of the interests of those whose

claims do not succeed. When a committeeperson acts to enforce the seniority provisions of a collective bargaining agreement, he acts for the benefit of all the members and should not be made to answer to charges that he promoted the welfare of one employee over another.

Appellants claim, however, that Stewart failed to apply the contract accurately and that the employees who were promoted were not the most senior or the most qualified for promotion. These are arguments that would be appropriate to support a grievance, or in this case, an appeal pursuant to Article 33 of the Constitution from the Committeeperson's refusal to file a grievance. As we stated in *Maewethers Marshall v. Local 1364, UAW*, cited previously, the UAW system provides for the filing of charges exclusively for disciplinary ends to protect the local from conduct inimical to its interests; they are not intended for remedial purposes. If appellants believed that Stewart was applying the contract incorrectly, the appropriate route for them to challenge Stewart's conduct was the grievance procedure and the appeals procedure set forth in Article 33 of the International Constitution.

The decision of the International Executive Board is affirmed.