

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

APPEAL OF:

ROGER FERRELL,  
Appellant,

-vs-

CASE NO. 1492

UAW LOCAL UNION 856  
(Toledo, Ohio)  
(THE UNITED AUTOMOBILE, AEROSPACE  
AND AGRICULTURAL IMPLEMENT  
WORKERS OF AMERICA),  
Appellee.

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**DECISION**

(Issued January 14, 2005)

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

We consider whether the decision of the Local 856 Bargaining Committee to withdraw Roger Ferrell's grievance protesting a three day suspension lacked a rational basis.

**FACTS**

Roger Ferrell works at Aircraft Braking Systems Corporation (ABS) in Akron, Ohio in a Bargaining Unit represented by Amalgamated Local Union 856, UAW. Ferrell's job at ABS is machining torque tubes for aircraft brakes.<sup>1</sup> On January 22, 2002, ABS Management counseled Ferrell for inefficiency. Supervisor Larry Skinner prepared a written memorandum of the counseling step. Skinner wrote:

“Step: Counseling

Roger Ferrell was informed that his efficiencies were too low/53% and that if his efficiencies were not brought up that further disciplinary action would result.”<sup>2</sup>

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<sup>1</sup> Record, p. 51.

<sup>2</sup> Record, p. 1.

Skinner commented further that he felt Ferrell ought to be able to complete four, or at least three, parts during his shift. Supervisor Skinner issued Ferrell another documented warning that he was not performing efficiently on February 26, 2002.<sup>3</sup>

On March 8, 2002, Ferrell was issued a three-day suspension. The notice of suspension states:

“As a result of your unacceptable performance you are being suspended for cause.”<sup>4</sup>

The suspension was reviewed by representatives of the Company and the Union on March 20, 2002, and the Company maintained that the suspension was justified. Local 856 filed Grievance A-9423-02 on March 23, 2002, protesting the discipline as excessive and unjustified. The grievance was withdrawn by the Local 856 Executive Bargaining Committee on September 18, 2002.

Ferrell appealed the withdrawal of his grievance to the Local Union on October 14, 2002. The Bargaining Committee Chairperson responded to Ferrell's appeal as follows:

“In response to your appeal of Grievance A-9423-02, the wrongful suspension of Roger Ferrell, the Bargaining Committee carefully reviewed all the facts and documents pertaining to your grievance. We decided that we would not pursue your grievance any further. We would try to get the suspension pulled after a year per our prior conversations. If you have any question pertaining to the reasons that we made our decision, give me a call at the hall.”<sup>5</sup>

Ferrell appealed the Bargaining Committee's action to the Local 856 membership on January 30, 2003. In support of his appeal, Ferrell explained that he was suspended for producing only two parts when his supervisor wanted him to produce three. He stated that he was suspended because he had previously received a verbal and a written warning for inefficiency. Ferrell argued that it was very difficult to get three parts per shift on his job unless someone left you a part half completed. He wrote:

“...This was all pertaining to a job I was running in which my supervisor wanted 3 parts a shift and I was only getting 2. For the 5 years I have been in the Torque Tube Cells we

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

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

<sup>5</sup> Record, p. 9.

have always gotten 2 parts a shift and sometimes 3 only if someone left you one half done. ...”<sup>6</sup>

Ferrell went on to say that he had inspection records, referred to as “In-Process Control Sheets,” filled out by employees on this particular job dating back two years to support his position that it was not possible to get more than two parts per shift on his job, but that the Bargaining Committee Chairperson, John Jonke, told him to hold on to his paperwork until the Step 3 meeting. He stated that the Bargaining Committee then withdrew his grievance at a problem solving meeting in September 2002, without ever having reviewed his paperwork, or his personal notes.

The ABS Unit considered Ferrell’s appeal at a meeting on February 9, 2003. The minutes of that meeting indicate that the membership voted to reinstate Ferrell’s grievance by a vote of 10 to 3.<sup>7</sup> In accordance with the membership’s decision, Chairperson Jonke wrote to ABS Human Resources Vice President E. L. Searle on February 10, 2003, and requested reinstatement of the grievance. Searle responded to Jonke on February 25, 2003, that the Company would not reinstate the grievance. Searle wrote:

“...As you are aware, a meeting was held on September 18, 2002, during which time this grievance and others were discussed. As a result of these discussions, the Union indicated they would withdraw Grievance A-9423. The Company accepted this decision in good faith and does not believe there is any reason at this time to reconsider Grievance A-9423. For the Company and Union to continue to have a positive working relationship, we must have the trust that once a commitment is made, it will be honored.”<sup>8</sup>

Ferrell appealed to the International Executive Board (IEB) to have his grievance reinstated on March 27, 2003. In his appeal to the IEB, Ferrell pointed out that the Union and the Company had still not considered his paperwork or his personal notes. He charged that the Bargaining Committee acted in a perfunctory and irresponsible manner by withdrawing his grievance without investigating the facts. Ferrell submitted his personal notes concerning his productivity on the job. At the conclusion to his notes, he wrote:

“This has always been a problem job. These parts are not roughed out first, most jobs are. We start with raw stock, pre heat-treated to 50-55 Rockwell, and go straight to finish. Lots of tool wear and clean up. Some days it runs smooth,

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<sup>6</sup> Record, p. 11.

<sup>7</sup> Record, p. 13.

<sup>8</sup> Record, p. 15.

others it doesn't. I don't run this job any different than anybody else, yet I was the only one wrote up and suspended."<sup>9</sup>

Ferrell also submitted the inspection records filled out by employees on his job.<sup>10</sup>

Bargaining Committee Chairperson Jonke responded to Ferrell's appeal on May 14, 2003. He explained that the Bargaining Committee grieved the discipline issued to Ferrell based on his claim that he usually ran two parts per shift and that that was all he was capable of running. Jonke continued:

"...After Roger's suspension was where we had a problem with supporting our decision with the grievance. You see, after the suspension, Roger started running three parts per shift. This happened on several occasions, we have documentation to support the dates in which Brother Ferrell produced more than the two parts which he told us he's only capable of running."<sup>11</sup>

John Hunter of the International President's staff conducted a hearing on Ferrell's appeal on March 29, 2004, and prepared a report for the IEB based on the testimony given during the hearing. Hunter reported that Ferrell explained that prior to his suspension, he was instructed to clean up his work area before beginning to build his pieces, which required about forty-five to ninety minutes each day.<sup>12</sup> According to Hunter, Ferrell testified further that when he returned from suspension, he was told that he did not have to clean the area any longer, so that he could get more pieces out.

Hunter wrote that International Representative David LaChance testified that he was in the plant on another matter before the Local withdrew Ferrell's grievance and asked Ferrell if he wanted a time-study done on the operation. LaChance stated that Ferrell said he did not want a time-study done. Furthermore, LaChance declared that Ferrell did not say anything to him about having to clean up the area.<sup>13</sup>

Hunter noted that Ferrell had not provided the Bargaining Committee with the documents that he claimed supported his argument that it was only possible to build two parts per shift on his job even though he spoke to members of the Bargaining Committee frequently while his grievance was pending. In any event, Hunter found that Ferrell had built more than two pieces per shift after he returned from suspension. In light of the prior warnings that Ferrell had received about his efficiency on the operation,

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<sup>9</sup> Record, p. 26.

<sup>10</sup> Record, pp. 27-38.

<sup>11</sup> Record, p. 21.

<sup>12</sup> Record, p. 46.

<sup>13</sup> Record, p. 46.

Hunter concluded that the Bargaining Committee's decision to withdraw Ferrell's grievance was not devoid of a rational basis. He found no evidence that discrimination, fraud or collusion with Management motivated the settlement.<sup>14</sup>

Hunter denied Ferrell's appeal, and his report was adopted by the IEB as its decision. Ferrell was notified of the IEB's decision on August 27, and he appealed that decision to the Public Review Board (PRB). On October 28, while his appeal was pending before the PRB, Ferrell submitted a time-study performed on his operation by an Industrial Engineer which appears to show that it requires three and a half hours to build a part.<sup>15</sup>

Chairperson Jonke responded to this submission on November 11. He stated that the time-study submitted by Ferrell was performed on a different and much slower machine. Jonke wrote:

“...Roger is claiming it takes three and a half hours to run a part but doesn't tell you that this particular order was run on a different and much slower machine. The run standard was temporarily changed for this order and one other order only.  
...”<sup>16</sup>

Jonke added:

“This Bargaining Committee reviewed all the information that we had at the time pertaining to Roger's grievance before making our decision. We had paperwork showing that Roger on several occasions did more than what he claim[ed] he was capable of being able to do. This factor and the rest of the information we used in making our decision was explained to Roger upon withdrawing his grievance and at the meeting with the International Executive Board.”<sup>17</sup>

Ferrell responded to Jonke's letter on November 19. He acknowledged that the Company had changed the standard back to a little less than two hours to run a part.<sup>18</sup> Ferrell insisted, however, that employees on this job are still only getting two parts per

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<sup>14</sup> Record, p. 48.

<sup>15</sup> The document that Ferrell submitted is dated October 25, 2004, and indicates a run standard on the Torque Tube job of 3.5228. (Record, p. 62)

<sup>16</sup> Record, p. 68.

<sup>17</sup> Record, p. 68.

<sup>18</sup> A document dated November 1, 2004, indicates a run standard on the Torque Tube job of 1.7522. (Record, p. 74)

shift, and he submitted copies of In-Process Control Sheets for October and November to support this argument.<sup>19</sup>

## ARGUMENT

### **A. Roger Ferrell:**

On March 8, 2002, I was suspended for running only two parts the previous day. I had been informed that the Company expects three parts, but it is common for employees to get only two parts. It is possible occasionally to get three parts if someone leaves you one half done. This is shown on the In-Process Control Sheets that I submitted to the IEB.

The day before I was suspended, I came to work and found that the first shift had left a part half done, so I should have been able to get three parts finished during that shift. I had two parts completed by lunch, but then my machine broke down. Maintenance worked on the machine for the rest of my shift, but never got it running. My time card for that day indicates that I made two parts in four hours, which is ninety percent efficiency. The time card notes that I was down for maintenance for four hours. It was simply not possible to produce three parts on the day before my suspension.

The Bargaining Committee withdrew my grievance without investigating the facts. I am now appealing this matter to you in the hopes that my grievance will be reinstated, and I can get the suspension lifted from my file and be made whole.

### **B. International Union:**

Appellant was cited by the Company for efficiency violations twice during the month preceding the three-day suspension he received in March 2002. He never explained to the Local Bargaining Committee why he could not perform the operations that others had been performing when he was disciplined. Nor did he raise the issue of being required to clean the work area.

The International Servicing Representative spoke to Ferrell before the Bargaining Committee closed the grievance and offered to have a time-study performed on Ferrell's operation. Despite being offered numerous options for having such a study performed, Ferrell repeatedly declined. In light of the appellant's refusal to have his operation evaluated, his failure to present evidence to support his claims, and the record of recent efficiency warnings by the Company, Local 856 decided to withdraw his grievance and pursue an informal resolution with the hope of having the suspension removed from his record after one year. This approach to resolving the dispute was not devoid of a rational basis.

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<sup>19</sup> Record, pp. 72-73.

Appellant can point to no discriminatory action on the part of the Union in handling his grievance, and the record contains no evidence of fraud or collusion with Management. Absent evidence pointing to an irrational basis for the Local's decision, its judgment on the proper way to settle the matter should not be disturbed.

**C. Rebuttal by Roger Ferrell:**

The Bargaining Committee's decision to withdraw my grievance was devoid of a rational basis because they did not investigate the matter first. I offered my In-Process Control Sheets to Chairperson Jonke on several occasions to support my case, but he would not take them.

I did not repeatedly decline the offer of a time-study. When the International Representative asked me if I wanted the job analyzed, I said that there was no reason to do a time-study because we have always gotten two parts per shift. I have worked here since 1983, and I do not believe that I need evaluations of what my job duties are. Nevertheless, I asked some of the other employees on this job if they thought we should have it time-studied and they said yes. I told the Bargaining Committee this and they said that they would look into it, but nothing came of it.

The Bargaining Committee did not try to have the suspension removed from my record after one year. I still believe that the Bargaining Committee acted in a perfunctory and irresponsible way and that their decision was based on what the Company told them rather than the facts. I have had no resolution at all on this matter. I lost forty-four hours of pay, and, after two and a half years, the suspension is still in my file.

**DISCUSSION**

There has been no allegation that improper motivations influenced the Bargaining Committee's decision to withdraw Ferrell's grievance, so the only question presented by this appeal is whether that decision lacked a rational basis. We find that it did not.

Ferrell was subjected to discipline when he failed to bring his efficiency level up to the Company's standard after being warned twice about his performance on the job. The Local Union grieved the discipline based on Ferrell's claim that the Company's standard was unreasonable. The Bargaining Committee withdrew the grievance after it concluded that the Company's standard was reasonable. Chairperson Jonke stated that this conclusion was based on a review of all of the records available regarding Ferrell's operation, in particular, the paperwork showing that Ferrell was able to complete three parts per shift after he returned from his suspension.

Ferrell argues that the Bargaining Committee withdrew his grievance without considering his evidence, but the record does not support this claim. Chairperson Jonke has stated that the Bargaining Committee considered all of the documents

related to the operation. The records which Ferrell offered to Chairperson Jonke included In-Process Control Sheets for particular days during which employees recorded having built fewer than three parts on his operation. Ferrell also submitted hand-written notes describing the problems that he personally encountered meeting the Company's standard of building at least three parts per shift. The fact that employees occasionally had trouble meeting the Company's standard would not establish that the standard was unreasonable.

Ferrell's appeal to the membership on January 30, 2003, of the Bargaining Committee's decision to withdraw his grievance is based solely on his position that the Company's performance standard on his job was unreasonable. He does not mention having to clean up his area, or that his machine required maintenance, and it does not appear that he raised these issues with the Bargaining Committee prior to the decision to withdraw his grievance. Ferrell's arguments and his documentary evidence all addressed the reasonableness of the Company's performance standard.

Ferrell acknowledges that the International Servicing Representative offered to have a time-study done on his operation on at least one occasion. A time-study on the operation would have addressed the issues raised by Ferrell's grievance and could have resulted in a favorable resolution of the grievance if it had supported his position. Yet, Ferrell did not take advantage of this opportunity during the relevant period. Ferrell's evidence plainly did not convince the Company that its standard was unreasonable, and it was not irrational for the Bargaining Committee to conclude that the evidence also would have been unpersuasive if the grievance were presented to an arbitrator.

The decision of the IEB is affirmed.