

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

APPEAL OF:

BOB KING AND JANE FORD, Members
UAW LOCAL UNION 600
(Dearborn, Michigan),
Appellants,

-vs-

CASE NO. 1499

UAW LOCAL 600 EXECUTIVE BOARD
REGION 1A
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued September 19, 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 Bob King's and Jane Ford's claim that their charges against Jerome Sullivan and Al Murlone, based on the manner in which these two Local Union officials responded to election protests presented at the May 10, 2004, General Council meeting, satisfied the requirements of Article 31, §3, of the International Constitution. Bob King also asserts that his charge against Election Committee members Mattie Solomon and Albert Holmes for refusing to place his name on the ballot as a candidate for Local Financial Secretary-Treasurer satisfied the requirements of Article 31, §3, of the International Constitution.

FACTS

Bob King is a retired member of Local Union 600. On April 12, 2004, King submitted an acceptance of nomination to run for the office of Financial Secretary-Treasurer of the Local Union.¹ The Local 600 Election Committee declared King ineligible to run for the office and informed him of its decision by letter dated April 13,

¹ Record, p. 3.

2004. The Election Committee explained that an Interpretation of Article 45 of the International Constitution adopted at the June 2002 Constitutional Convention declared that retirees are ineligible to run for positions that involve bargaining or grievance handling duties. The Election Committee pointed out that the Financial Secretary-Treasurer of Local 600 has bargaining and grievance handling responsibilities under Article XIII, §2, of the Local Union Bylaws.²

King responded to the Election Committee's ruling in a letter to the Local 600 General Council on April 16, 2004, arguing that Article 45 of the Constitution is not applicable to the position for which he had accepted nomination.³ King appealed the Election Committee's failure to place his name on the ballot in the upcoming elections to the Local 600 General Council on April 26, 2004.⁴ In support of his appeal, King argued that the Election Committee's failure to honor his acceptance of nomination denied him the right to run for office in violation of Article 6, §19, of the International Constitution.⁵ In a letter dated May 1, 2004, King asked that the Local Union election be postponed until he had been granted his right to have his name placed on the ballot as a candidate for the office of Local 600 Financial Secretary-Treasurer.⁶

Local 600's elections took place as scheduled on May 5, 2004. On May 6, King filed a protest to the election with the Local 600 General Council.⁷ In support of his protest, King charged that the Election Committee had not been elected in accordance with Article 38, §10(c), of the International Constitution and Article VIII, §1(a), of the

² The bylaw states:

"These Local Officers shall function as prescribed in the Constitution of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), and shall exercise all powers and duties herein delegated in these Bylaws. All full-time Local Union Officers will be assigned to service the Bargaining Committee from which their seniority continues. Their responsibilities will include assisting the Unit Chairperson in negotiations and third stage agendas. These duties will also apply to all units assigned by the President." (Record, p. 9)

³ Record, p. 3.

⁴ Record, p. 14.

⁵ Article 6, §19, of the Constitution states:

"Any member in good standing who is retired, shall be entitled to a 'retired membership status' which, without being required to pay membership dues during the period of such retirement, shall entitle her/him to all of the privileges of membership except the right to vote in elections conducted pursuant to Article 19, §3; Article 45, §2; and Article 50, §§1 and 5. Appropriate cards denoting such membership status shall be prepared by the International Union and furnished to Local Unions upon request and at cost. The regular withdrawal-transfer provisions of this Constitution shall be applicable if such retired member returns to active employment."

⁶ Record, p. 19.

⁷ Record, p. 21.

Local Union Bylaws.⁸ He further asserted that he had been denied the right to run for office guaranteed by the International Constitution and the Ethical Practices Codes.

The report of the Local 600 Election Committee was presented to the General Council at a meeting on May 10, 2004. The Election Committee's report is attached to the May 10 General Council meeting minutes. The minutes state that a motion to adopt the report of the Election Committee was supported and carried.⁹ The Election Committee reported that Bob King had protested the decision that he was ineligible to run for the office of Financial Secretary-Treasurer, and it explained its position by referring to the Interpretation of Article 45, §1, of the International Constitution and Article XIII, §2, of the Local 600 Bylaws.¹⁰

Following the report of the Election Committee, Local 600 President Jerry Sullivan asked if anyone wished to speak on his or her protest to the election and King took the floor to speak in support of his election protest. An account of King's presentation is attached to the May 10 meeting minutes. According to this account, there was a floor microphone provided to appellants, but King insisted on taking the podium to argue his case. When King refused to leave the stage after being requested to do so, President Sullivan called the Dearborn Police. After the police arrived, King agreed to present his protest using the floor microphone. The report continues as follows:

“...The meeting reconvened. He [King] was instructed by President Sullivan to present his case on why he should have been eligible to run for Local 600 Financial Secretary. After being called out-of-order numerous times by President Sullivan for deviating from his protest, President Sullivan said enough is enough and shut the floor mic off and asked if there were any other comments or questions on the Election Committee's report. ...”¹¹

On May 11, 2004, King filed an appeal with the International Executive Board (IEB) charging that the General Council had refused to act on his appeal. King stated that when he tried to present his appeal, President Sullivan constantly interrupted him with attacks from the podium. He stated that when he protested Sullivan's abuse of the Chair, Sullivan turned off the microphone that he was using. King asked that the IEB assume jurisdiction over his appeal in light of the Local President's refusal to allow him to present his case to the General Council. Presidential Administrative Assistant James

⁸ This issue was addressed by the PRB in *Bob King and Joe Charney v. Local Union 600, UAW*, PRB Case No. 1459 II (June 22, 2004) at p. 13.

⁹ Record, p. 27.

¹⁰ Record, p. 32.

¹¹ Record, p. 36.

Patton acknowledged King's appeal regarding the Local Union's action on his election protest on May 21, 2004.

On May 20, 2004, King and Local 600 member, Jane Ford, filed charges against Local Union President Sullivan and Recording Secretary Al Murlone pursuant to Article 31 of the International Constitution. King and Ford charged that Sullivan and Murlone engaged in conduct unbecoming a member of the Union by the manner in which they handled the election protests filed by King and Ford during the May 10 General Council meeting. King asserted that it was improper for Sullivan to call for a report of the Election Committee prior to hearing the election protests. King stated:

"...The long-standing policy and practice, when conducting election business, is to have the protests heard, considered and acted on by the Council, either voting them up or down. If the protests are favored, then appropriate corrective steps are taken, which could involve a rerun of the protested election. If the protests are rejected by the vote of the Council, the Election Committee's report is presented, voted on and if passed, the election is then certified."¹²

King and Ford charged that Sullivan flatly refused to hear Jane Ford's election protest. Furthermore, when Ford objected to Sullivan's treatment of King, Sullivan responded with an obscenity. King and Ford charged:

"These overt acts of unbecoming conduct and Constitutional violations were witnessed by approximately 65 people, General Council delegates, visiting observers, including at least three International Representatives and a number of active Local 600 Rank & File members. All of whom can offer testimony as to the misconduct of Sullivan and Murlone in their failures to grant Constitutional DUE PROCESS of the properly filed protests and accordingly the specified Constitutional violations."¹³

On May 26, 2004, King filed a charge pursuant to Article 31 of the Constitution against Election Committee members Mattie Solomon and Albert Holmes for their refusal to honor his acceptance of nomination for the office of Financial Secretary-Treasurer. King insisted that there is no language in the International Constitution or the Local 600 Bylaws that prohibits a retired member from running for the office of Financial Secretary-Treasurer. King's charge states:

¹² Record, p. 40.

¹³ Record, p. 41.

“The charged parties, with malice and forethought, failed to honor my properly submitted acceptance of the nomination for the office of Local 600 Financial Secretary-Treasurer, then arrogantly compounded their offense by refusing to adjust their position when timely filed communications pointing out their error of judgment were filed with them. ...”¹⁴

Local 600 Vice President Rory Gamble wrote to King on June 8 and advised him that the Local Executive Board had reviewed his charges against Sullivan and Murlone at a meeting on June 2, 2004. Gamble informed King that the Local Executive Board had determined that his charges were improper under Article 31, §3(c) and (d), of the International Constitution.¹⁵ King and Ford appealed the Local Executive Board’s ruling on their charges against Sullivan and Murlone to the IEB on June 29, 2004.¹⁶ Presidential Administrative Assistant Patton acknowledged King’s and Ford’s appeal on July 30, 2004.

On September 8, Recording Secretary Murlone advised King that his charges against Holmes and Solomon had been reviewed by the Local Executive Board which had determined that the charges were improper under Article 31, §3 (a), (c), (d), and (e), of the International Constitution.¹⁷ King appealed this ruling to the International on September 13, 2004.¹⁸

Local 600 responded to King’s and Ford’s appeal of the Local Executive Board’s action on their charges against Sullivan and Murlone on August 6. Recording Secretary Murlone stated that King was given an opportunity to speak about his protest at the General Council meeting on May 10, 2004. He pointed out that Ford gave her appeal to the Recording Secretary just before the start of the May 10 meeting. He explained that the appeal contained four parts that had to be investigated by the Local. He reported that Ford’s appeal was heard at the General Council meeting on June 7, 2004.¹⁹

The IEB issued a decision in response to King’s appeal of the Local Executive Board’s decision that his charges against Solomon and Holmes failed to satisfy the requirements of Article 31, §3, of the Constitution on October 19, 2004.²⁰ The IEB’s decision is based on a report prepared by the International President’s staff on his behalf. Staff’s report indicates that King’s assertion that nothing in the Constitution prohibits a retired member from running for the office of Financial Secretary-Treasurer

¹⁴ Record, p. 43.

¹⁵ Record, p. 55.

¹⁶ Record, p. 56.

¹⁷ Record, p. 65.

¹⁸ Record, p. 66.

¹⁹ Record, p. 63.

²⁰ Record, p. 73.

was inaccurate. The report quotes the Interpretation of Article 45, §1, of the Constitution which states that retirees may not run for any position which carries responsibility for grievances or bargaining. Staff's report also quotes Article XIII of Local 600's Bylaws. Staff ruled that Holmes' and Solomon's conclusion that King was ineligible to run for the office of Financial Secretary-Treasurer was based on the International Constitution and the Local's Bylaws. Staff concluded, therefore, that the charges submitted by King failed to satisfy the requirements of Article 31, §3(c), in that they did not state a violation of the Constitution or conduct unbecoming a member of the Union.²¹ Staff denied King's appeal and its report was adopted by the IEB. King appealed the IEB's decision to the Public Review Board (PRB) on October 21, 2004.

The International President's staff also prepared a report for the IEB on King's and Ford's appeal of the Local Executive Board's disqualification of their charges against Sullivan and Murlone. Staff's report indicates that the minutes of the May 10 General Council meeting showed that appellants were given the opportunity to speak on their appeals. Although King was ruled out of order by the Chair for deviating from the subject of his protest, staff reported that the minutes did not reflect that he had challenged the ruling of the Chair or addressed the members of the General Council about it.²² Staff ruled that this would have been the proper way for appellants to have addressed their concerns about the presentation of their election protests. Therefore, staff concluded that the charges presented by King and Ford against Sullivan and Murlone failed to satisfy the requirements of Article 31, §3(c) and (d), of the Constitution.²³ King and Ford appealed the decision on their appeal to the PRB on November 11, 2004.²⁴

On May 15, 2005, King forwarded a copy of the IEB's decision on his election protest to the PRB. The IEB's decision is dated May 11, 2005, and is based on a report to the IEB prepared by the President's staff on his behalf. The report indicates that King's appeal from the handling of his election protest was technically flawed, because it amounted to a complaint about a ruling from the Chair at a membership meeting, and Article 33, 2(b), specifically provides that there shall be no appeal beyond the membership on such matters.²⁵ Nevertheless, staff declared that it would address the merits of King's appeal.

Staff pointed out that the only issue raised by the election protest was King's eligibility to run for the office of Financial Secretary-Treasurer. Staff referred once again to the Interpretation to Article 45, §1, of the Constitution concerning the ineligibility of retirees to run for offices involved in collective bargaining, as well as the Local Union

²¹ Record, p. 80.

²² Record, p. 91.

²³ Record, p. 92.

²⁴ Record, pp. 98-99.

²⁵ Record, p. 252.

bylaw that confers bargaining duties on the Local Financial Secretary-Treasurer. In addition, staff reported that minutes of Local 600 Executive Board meetings reveal that the Financial Secretary-Treasurer reports regularly to the Board about bargaining matters. Staff found no fault with the Local Union's ruling on King's ineligibility and it denied his appeal.²⁶ Staff's report was adopted by the IEB as its decision.²⁷

ARGUMENT

A. Bob King on the charges against Mattie Solomon and Albert Holmes:

The arguments offered by the IEB in support of the Local Executive Board's decision not to order a trial on my charges are without Constitutional foundation. There is no language in the UAW Constitution or the Local 600 Bylaws that strictly prohibits a retired member from being a candidate for Local Union Financial Secretary-Treasurer. The Interpretation cited by the IEB addresses positions covered by Article 45 of the Constitution, and not the position of Financial Secretary-Treasurer which comes under the provisions of Article 38, §1, and Article 40, §4, of the Constitution.

Under the Local 600 Bylaws, the responsibility for collective bargaining belongs to the plant bargaining representatives. Local officers assist Unit Bargaining Committees as servicing representatives, not as committee members. Local officers are prohibited by the Constitution from being placed on Unit Bargaining Committees. Furthermore, the fact that the Financial Secretary may participate in the third stage of the grievance procedure does not convert his office from an administrative one to a bargaining position.

During the 2002 election, I challenged the legitimacy of Holmes' and Solomon's election to the Election Committee. I contend that my proper and warranted challenge of the misconduct of that election on the part of the Local officers and their illegally appointed Election Committee prompted their failure to honor my acceptance for the position of Financial Secretary-Treasurer. Mattie Solomon and Albert Holmes willfully and with malice and forethought denied me the right to run for office absolutely committing conduct unbecoming union members and violating their Constitutional responsibilities.

My charges meet all of the requirements of Article 31, §3, of the UAW Constitution and therefore should be submitted to a Trial Committee.

²⁶ Record, p. 253.

²⁷ Record, p. 245.

B. Bob King and Jane Ford on the charges against Jerome Sullivan and Al Murlone:

We stand firmly behind our charges against Sullivan and Murlone in connection with the abusive and bullying tactics launched from the podium by President Sullivan. His arrogant conduct was challenged and he ignored the call for due process. Instead, he turned off the microphone that the appellant was using and continued the usual tirade he reverts to when he is confronted with democratically permitted dissent.

In ruling on our appeal, the IEB and the President's staff did not consider the complete text of our charges, which did satisfy the requirements of Article 31, §3. Instead, they relied on information provided by the parties charged. For those at the IEB level of the procedure to take as factual meeting minutes that were under the complete control of the charged parties is a failure to afford our appeal the due process to which it is Constitutionally entitled. We challenge the accuracy of any information provided to the IEB by the charged parties. We request that our charges be remanded to the Local Union for a trial in accordance with Article 31 of the Constitution.

C. Bob King on the election protest:

The ruling of the President's Administrative Assistant that my appeal was precluded by Article 33, §2(b), of the Constitution is based on a figment of her imagination. The appeal documents clearly show that this is a challenge to the Local 600 election for Financial Secretary-Treasurer and not an Article 33, §2(b), issue.

The minutes of the May 10, 2004, General Council meeting confirm my assertion that I was not afforded the opportunity to present the facts of my election protest. The appointed election Supervisor, Albert Holmes, read his report into the record from the podium, a courtesy that I was denied by the President. Other members were also denied the right to present their protests prior to the report of the Election Committee. I suspect that some candidates were not even notified of the meeting.

The PRB has ruled in previous cases that a properly filed election protest requires that the parties involved be given due process and notification and an opportunity to participate in the Union's discussion of the election issues. This is not a question of parliamentary procedure as suggested by the IEB, but one of fundamental fairness.

D. International Union, UAW:

King should have appealed the results of the protested election under Article 38, §§11 and 12, and Article 33, §3(f), of the International Constitution instead of bringing charges against the members of the Election Committee for carrying out their official duties. The time for such an appeal has now lapsed. The charges should be dismissed because the Constitution and Bylaws were properly applied in this case.

The members of the Election Committee were called upon to interpret the International Constitution and the Local Union Bylaws. There is no evidence that their interpretation was tainted by bias or other wrongdoing. It would be unfair to require them to stand trial for their official acts. Such a trial could deter many from serving on the Local Election Committee. This is particularly so when King had a Constitutional remedy available to redress his complaints. He could have protested the results of the election.

Furthermore, King's appeals regarding the Local's refusal to allow him to run for the position of Financial Secretary-Treasurer should be denied because the provisions of the Constitution and the Local Union Bylaws clearly prohibit retired members from holding offices that have collective bargaining responsibilities. This is a good rule. Retired members are not as accountable to the current Union membership as active ones. They may be less accessible. They may also be more prone to represent the interests of other retired members instead of current members. All of these factors may diminish the ability of the Union to react to the changing nature of the work place. They may also expose the Union to legal liability. In the instant case, the Bylaws of the Local clearly contemplate that the Financial Secretary-Treasurer will have collective bargaining assignments and responsibilities.

DISCUSSION

As a retiree, Bob King was ineligible to run for the office of Local 600 Financial Secretary-Treasurer. The Interpretation of Article 45, §1, referred to by the Local Election Committee to explain its ruling also appears in the Interpretations of Article 6, §19, of the Constitution. The International Union's policy forbidding retirees from holding offices which involve collective bargaining duties applies to any office, not only those described in Article 45. Furthermore, this policy had been firmly articulated by the International Union even before the 33rd Constitutional Convention added the Interpretations to Article 6, §19, and Article 45, §1, to state the rule unequivocally.

For example, in *Hawkins v. Local Union 7, UAW*, PRB Case No. 1283, (January 28, 2000), we considered President Yokich's ruling that retired members are not eligible to run for President of local unions participating in the UAW/DaimlerChrysler National Agreement because a local union President has responsibilities under that Agreement for dealing with grievance and bargaining matters. We found that the language of Article 6, §19, by excluding retirees from elections conducted pursuant to Article 19, §3; Article 45, §2; and Article 50, §§1 and 2, evinced the Constitutional framers' intent to exclude retirees as a class from participation in all aspects of the collective bargaining and contract administration processes.²⁸ In *Bennett v. Local Union 1853, UAW*, PRB Case No. 1429, (April 22, 2003), we applied this rule to affirm the ineligibility of a retiree to run for the office of President of Local 1853, despite appellant's claim that the President of that Local had no bargaining responsibilities, because the

²⁸ PRB Case No. 1283, at p. 5.

Local Union Bylaws named the President as a member of the Bargaining Committee. In this case, Local 600's Bylaws assign specific bargaining and grievance handling responsibilities to the Financial Secretary-Treasurer. The position is therefore one which may not be held by retired members under the International Constitution.

The Election Committee correctly applied the Constitution to declare King ineligible to run for the office of Financial Secretary-Treasurer, so King's charges arising out of that decision were properly disqualified under Article 31, §3(c), of the Constitution.²⁹ Similarly, the charges addressing the manner in which President Sullivan chaired the General Council meeting on May 10, 2004, were properly disqualified under Article 31, §3(c) and (d), of the Constitution.³⁰ As the International Union has stated, King should have presented his arguments as an appeal under Article 33 of the Constitution, rather than bringing charges against the Local Union's officers. As we stated in *Pearsall v. Local 12 Executive Board*, PRB Case No. 1475, (May 26, 2004), Article 33 of the International Constitution sets forth the procedure to be used by members to challenge any action or failure to act on motions presented to the membership or decisions made at local union meetings regarding the rules for conducting the meeting. Charges presented pursuant to Article 31 of the Constitution are not an appropriate means to address such issues.

In any event, the only substantive issue presented by King's election protest was the question of his eligibility to run for the office of Financial Secretary-Treasurer. King's claim that he was eligible is clearly without merit, and he has not shown that he was prejudiced by having his argument on this point cut short by the Chair at the General Council meeting in May 2004. The IEB reviewed King's claim on its merits and correctly denied his appeal.

The decision of the IEB is affirmed.

²⁹ Article 31, §3(c), states:

"The act complained of does not sustain a charge of a violation of the Constitution or conduct unbecoming a member of the Union;"

³⁰ Article 31, §3(d), states:

"The charges involve a question which should be decided by the membership at a membership meeting and not by the trial procedure."