

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

APPEAL OF:

KEITH WILSON, Member,
UAW LOCAL UNION 659
(Flint, Michigan),
Appellant,

-vs-

CASE NO. 1502

REGION 1C, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued September 6, 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
Weiler.

Keith Wilson argues that the decision to withdraw a grievance protesting his termination for failure to perform a job assignment lacked a rational basis.

FACTS

Keith Wilson worked at Android Industries in Flint, Michigan in a bargaining unit represented by the A. I. Unit of UAW Local 659. On April 3, 2003, Wilson was terminated for failing to sweep the floor in his area after being instructed to do so. Local 659 filed Grievance 09112 protesting Wilson's termination. On May 27, 2003, International Representative J. T. Thomas informed Wilson that the Union had concluded that his grievance did not warrant further processing.¹ Wilson appealed the Union's decision not to pursue his grievance to the International Executive Board (IEB) on March 11, 2004.²

¹ Record, p. 2.

² Wilson initially appealed the decision to withdraw his grievance to his Local Union, but the President's staff pointed out that it was error for the Local to have considered it. Staff stated that Wilson's appeal should have been made directly to the IEB, because the grievance was withdrawn by the International Representative at the fifth step of the grievance procedure. (Record, p. 18)

The President's staff determined that a hearing was unnecessary on Wilson's appeal and they prepared a report for the IEB on behalf of President Gettelfinger based on the evidence provided by Wilson, the Local Union, and the Regional Representative. Staff observed that the Company denied Wilson's grievance at successive steps of the grievance procedure on April 7, April 14, and May 3, claiming that there had been no violation of the collective bargaining agreement.³

Staff reported that Step 5 of the grievance procedure provides as follows:

"If the grievance is not resolved in Step 4, the union must, within fifteen (15) calendar days after the Ai-Flint's answer in Step 3, by written notice, submit the grievance to Federal Mediation and Conciliation Service for mediation. Both parties may mutually agree to waive Step 5."⁴

Accordingly, after the Union failed to reach an agreement with the Company to settle Wilson's grievance at Step 4 of the grievance procedure, it submitted the grievance to Federal Mediator Don Power in accordance with Step 5. Mediator Power advised the Local that if the case were presented to an arbitrator, the Union would lose.⁵ The Union withdrew Wilson's grievance based on Power's advice.

Staff reported that there was no dispute as to the circumstances that led to Wilson's terminations. Wilson was instructed on at least three occasions to sweep his area and he failed to perform the assignment. Furthermore, staff noted that the discipline assessed for Wilson's refusal to perform his assignment was progressive. Staff indicated that Wilson's disciplinary record prior to his discharge reflected the following actions:

"Poor Workmanship	7/31/2002	Written Verbal Warning
Poor Workmanship	8/8/2002	Written Warning
Poor Workmanship	2/3/2003	Coaching
Poor Workmanship	2/14/2003	Final Warning – 3 Day Suspension" ⁶

Staff found that the order to sweep the floor was not improper and that Wilson had no basis for refusing to do this task. It pointed out that the Union generally advises employees to perform any protested assignment, and to grieve the propriety of the assignment later. It stated that an employee should not ordinarily refuse to perform an assignment unless it threatens his or her safety or health.⁷ Staff concluded that the

³ Record, p. 17

⁴ Record, p. 17.

⁵ Record, p. 17.

⁶ Record, p. 16.

⁷ Record, p. 19.

decision not to take further action on Wilson's grievance did not lack a rational basis and it denied the appeal.

The IEB adopted staff's report as its decision and notified Wilson on October 12, 2004. Wilson has now appealed the IEB's decision to the Public Review Board (PRB).

ARGUMENT

A. Keith Wilson:

I think I should be given another chance for employment at A. I. Genesee. The penalty of discharge is too severe for failing to sweep the floor. Furthermore, I feel it was wrong for a fellow Union member to write me up for this. I thought Union members were supposed to support one another. I was not the only person who worked in this area, so why was I the only one to get discharged for failing to sweep the floor?

B. International Union:

Appellant has not presented any argument that would support overturning the IEB's decision denying his appeal. He has not identified any contractual violation on the part of the Company. Nor has he shown that discrimination, fraud, or collusion with management influenced the Union's decision not to pursue his grievance. Furthermore, the Union's conclusion that these facts would prevent an arbitrator from finding that the discharge was without just cause was reasonable.

DISCUSSION

Wilson complains that discharge was too severe a penalty for failing to sweep the floor, but the record shows that the penalty was assessed as the final step in a series of progressive disciplinary actions. Wilson does not dispute the fact that he received a final warning on February 14, 2003, just two months prior to his discharge. Nevertheless, Wilson's Local Union presented his grievance at each step of the procedure in an effort to convince the company to give him another chance. The Union only withdrew the grievance after being advised by the Federal Mediator that it could not be successfully arbitrated. It is clear from this record that all of Wilson's arguments were thoroughly considered by the Union before the decision was made to withdraw his grievance.

We are empowered to reinstate a grievance only where we find that the decision to withdraw the grievance was influenced by impermissible factors such as fraud, discrimination, or collusion with management, or that the decision to withdraw it was devoid of any rational basis. There is no evidence of improper motivation on the part of the Union in the handling of Wilson's grievance. Furthermore, the International Representative's decision to withdraw the grievance was based on an evaluation of the case by the Federal Mediator made in accordance with the provisions of the collective

bargaining agreement. Therefore, the decision cannot be said to have lacked a rational basis.

The decision of the IEB is affirmed.