THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW

APPEAL OF:

GREGG SHOTWELL, Member
LOCAL UNION 2151, UAW
(Coopersville, Michigan),
Appellant

-vs- CASE NO. 1504

UAW GENERAL MOTORS DEPARTMENT
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.
_______________________________________/

DECISION
(Issued November 29, 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.

We consider here Gregg Shotwell's claim that the International Union's decision to combine the ratification votes of General Motors and Delphi Corporation employees on the 2003-2007 UAW-GM-Delphi National Agreement deprived Delphi employees of the right to participate in Union self-government in violation of the Union's Ethical Practices Codes. In addition, Shotwell argues that Article 19, §4, of the International Constitution required the Union to submit a Supplemental Agreement establishing wages and benefits for new hires at Delphi to members of Delphi local unions for ratification. The International Union has raised procedural objections to Shotwell's Ethical Practices Compliant which we will also address.

FACTS

Gregg Shotwell works at Delphi Corporation in Coopersville, Michigan, in a bargaining unit represented by UAW Local 2151. On October 20, 2003, Shotwell filed two appeals with the International Executive Board (IEB). In one of his appeals, Shotwell protested the International Union's decision to combine the ratification votes on the 2003-2007 UAW-GM National Agreement of UAW members employed by General Motors (GM) and members employed by Delphi Corporation.

Shotwell argued that members employed by Delphi were effectively disenfranchised by this procedure, because GM employees outnumber Delphi employees by a margin of four to one. He maintained that the contract applicable to Delphi employees differed significantly from the UAW-GM National Agreement in that it authorized the parties to negotiate a Supplement to the National Agreement establishing a different wage and benefit package for new hires. He wrote:

> "I contend that the decision of the International UAW to combine the votes of UAW members at GM and Delphi as if both parties were voting on the same contract violates the UAW Ethical Practices Code in that it deprived UAW members at Delphi of 'a full share in Union self-government.'"[1]

Shotwell argued that the GM employees voting on the Agreement would not have known that Delphi employees were not going to be allowed to vote on whether to ratify the Supplement authorized by the Agreement. He wrote:

> "…Furthermore, UAW-GM members had no reason to believe that UAW-Delphi members would not be permitted to vote on the 'Supplement' because the UAW Constitution Article 19, §4, states: 'National agreements and supplements thereof shall be ratified by the Local Unions involved.' Therefore, UAW-GM members were not aware that ratification of the GM Agreement would impose a two-tier wage and benefit structure on their brothers and sisters at Delphi."[2]

In his second appeal, Shotwell argued that the International Union's decision not to allow Delphi members to vote on the Supplement violated Article 19, §§3 and 4, of the International Constitution which requires that National Agreements and Supplements thereof will be ratified by the local unions involved.[3] In both appeals,

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[1] Record, p. 96.

[2] Record, p. 96.

[3] Article 19, §3, of the Constitution provides, in pertinent part, as follows:

> "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, or unit membership in the case of an Amalgamated Local Union, at a meeting called especially for such purpose, or through such other procedure, approved by the Regional Director, to encourage greater participation of members in voting on the proposed contract or supplement. …"

Article 19, §4, provides:

Shotwell asked that the Supplement anticipated by the 2003-2007 UAW-GM-Delphi National Agreement be submitted for ratification to those local unions representing employees of Delphi Corporation without interference from those UAW members employed by GM who would not be affected by the Supplement.[4]

The Memorandum of Understanding authorizing the parties to negotiate a Supplement to the National Agreement establishing wage and benefit levels for new hires at Delphi was initialed by the parties on September 18, 2003.[5] The terms of the National Agreement, including the Memorandum of Understanding, were explained to the members in a *UAW GM and Delphi Report* dated September 2003. This booklet was apparently distributed to members of Locals 2151 and 167 at an informational meeting conducted on September 27, 2003.[6] The effective date of the 2003-2007 GM and Delphi National Agreements is October 6, 2003. Shotwell read his appeals to the membership of Local Union 2151 at meetings conducted on November 3 and 5, 2003. The minutes of the B Shift meeting indicate that Shotwell explained that he had to mail his appeal to the IEB before presenting them to the membership for approval in order to satisfy the Constitutional time limits.[7]

The minutes indicate that Shotwell asked for a show of hands from the membership to support his appeal. Local President Robert Betts is reported to have stated that no membership action was necessary on the appeal, because the action being appealed was taken not by the Local, but by the International Union. Betts went on to say, however, that he would allow a show of hands in support of the appeal as a courtesy to Shotwell. This same process was followed at the C Shift meeting on the morning of November 5, and the A Shift meeting in the afternoon on November 5.

On November 12, 2003, President Betts wrote the following letter regarding the events at the membership meetings in November:

> "To whom it may concern:
>
> This letter is to document the support [of] the membership for brother Shotwell's appeal as read to the membership attending the November 2003 local union membership meetings.
>
> B-Shift: 22 of 25 present supported the appeal.

"National agreements and supplements thereof shall be ratified by the Local Unions involved."

[4] Record, pp. 95 and 97.

[5] Record, p. 66.

[6] There is a note in the record describing a contract informational meeting with members from Local 2151 and Local 167 on September 27. (Record, p. 93)

[7] Record, p. 99.

> C-Shift: 22 of 24 present supported the appeal.
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> A-Shift abstained from hearing the question. There were 22 present.
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> These numbers are recorded in our Local Union meeting minutes."[8]

Shotwell forwarded Betts' letter along with copies of his two appeals to the IEB and to the Public Review Board (PRB) on November 18, 2003. He wrote:

> "Enclosed is my appeal against the UAW International and the certification of support from UAW Local 2151. Please note in the letter signed by UAW Local 2151 President Robb Betts that no members voted against the motion to support the two appeals. Some members chose to abstain. In the one party state of the union, appointees always support the Administration Caucus. In this matter, appointees chose to abstain."[9]

GM Department Assistant Director Jim Shroat responded to Shotwell's appeals in two separate communications addressed to Presidential Administrative Assistant Don Sarkesian on December 5, 2003. In response to Shotwell's complaint that combining the GM and the Delphi ratification votes deprived Delphi members of a full share in Union self-government in violation of the Ethical Practices Codes, Shroat pointed out that the proposed Resolutions for the new contract came from UAW-GM and UAW-Delphi locals where they were voted on and approved. The Resolutions were then sent to the GM Subcouncils. The Subcouncils, according to Shroat, are comprised of delegates elected by local unions representing employees of both GM and Delphi. The UAW National General Motors Negotiating Committee members are elected by the Subcouncils. Shroat pointed out that members from Delphi local unions made up more than thirty-six percent of the UAW GM-Delphi National Negotiating Committee responsible for negotiating the 2003-2007 National Agreement, even though they make up less than twenty percent of the total membership covered by the Agreement. Shroat wrote:

> "Delphi members indeed had the opportunity for meaningful participation in the decision making process affecting themselves and the communities' welfare through their elected representatives and the power of their own vote. I

[8] Record, p. 112.

[9] Record, p. 113.

> would call this more than ‘a full share in Union self-government.’”[10]

In support of this argument, Shroat provided copies of Articles I, II and III of the UAW National General Motors Council Bylaws which describe the General Motors Council, the Subcouncils and the procedures for the election of Subcouncil officers and the UAW National General Motors Negotiating Committee.

Shroat stated that Shotwell’s claim that combining the vote disenfranchised Delphi members and that Delphi members were therefore discouraged from voting was not supported by the ratification results. He noted that the ratio of participation by GM versus Delphi members was not significantly different.[11] Furthermore, Shroat reported that the Delphi members overwhelmingly ratified the 2003-2007 UAW-GM-Delphi National Agreement by a margin of 72.3% to 27.7%.[12] In support of this statement, Shroat provided Ratification Reports for General Motors locals and for Delphi locals.

Shroat also denied Shotwell’s claim that the members from GM did not know that they were approving an agreement that would impose a two-tier wage and benefit structure on their brothers and sisters at Delphi. Shroat reported:

> “There were informational meetings held and the same highlights were presented and discussed for UAW-GM and Delphi Chairpersons and Presidents, locally elected and appointed leadership and rank and file members across all 11 Regions represented under the 2003-2007 UAW-GM and Delphi National Agreements prior to the ratification process. The National Negotiating Committee unanimously endorsed the agreements and recommended ratification to the membership. Both memberships also supported the Agreements and overwhelmingly passed them.”[13]

Shroat attached to his communication a page from the *UAW-GM and Delphi Report* of September 2003, which describes the plan to negotiate a Supplement to the National Agreement describing wage and benefit levels for employees hired at Delphi after the effective date of the Supplement. The Report states:

> “Future New Hires
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> No later than 90 days after the effective date of the 2003 UAW General Motors National Agreement, the UAW and

[10] Record, p. 125.

[11] Record, p. 124.

[12] Record, p. 124.

[13] Record, p. 124.

> Delphi will enter into discussions for the express purpose of negotiating 'competitive wage and benefit levels' for employees hired on a permanent basis after the effective date of the Supplement."[14]

In response to Shotwell's appeal from the International Union's decision not to hold a separate ratification vote on the Supplement, Shroat argued that the Memorandum of Understanding authorizing the parties to negotiate the Supplement was an integral part of the National Agreement. He stated that the process agreed to by the parties was well-publicized, and that the text of the Memorandum of Understanding was printed virtually word for word in the highlights featured in the *UAW-GM and Delphi Report.* Shroat argued that the Delphi membership had already been given the opportunity to reject this arrangement during the ratification vote on the National Agreement. He wrote:

> "If members of Delphi Locals were displeased with this feature of the Tentative Agreement, they had ample opportunity to reject it, just like the local that Brother Shotwell hails from (LU 2151) did. As it was, the vast majority of the membership accepted the 'Supplement' and entrusted the leadership to bargain its terms by voting to endorse the new National Agreement. In ratifying the agreement, workers did indeed participate meaningfully in making decisions affecting their and their communities' welfare."[15]

In addition, Shroat pointed out that National Agreements frequently contain general outlines of proposed supplemental agreements with the understanding that the parties will work out the details of the supplemental agreements following ratification of the main agreement. He noted that there were a number of items that were outlined in this fashion in the 2003 Agreement. He argued:

> "The appellant's effort to have the terms of the 'supplement' voted on—assuming one is successfully negotiated—appears to be a backdoor way to get a second vote on one provision of the overall National Agreement that Brother Shotwell disapproves of, but which has already been ratified. The UAW Constitution does not provide for such a vote."[16]

On February 20, 2004, Presidential Administrative Assistant Sarkesian wrote to Shotwell that his Ethical Practices Complaint had not been approved by the

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[14] Record, p. 133.

[15] Record, p. 128.

[16] Record, p. 128

membership as required by Article 32, §5(b), of the Constitution because the minutes of the November membership meeting did not reflect that any motion to approve the Complaint had been made or voted on.[17] On March 8, Shotwell introduced a motion at the B Shift membership meeting to amend the November minutes to reflect more accurately the membership's action on his appeal. The minutes of the B Shift meeting reflect the following action taken:

> "Brother Shotwell made a motion and supported by Brother Huizenga to amend the minutes of the UAW Local 2151 November meeting minutes for all three shifts to accurately record the motion made to support the appeals made to the UAW International Executive Board. Motion carried total votes.
> B—17/0 C—9/1 A—6/11 Total—32/12"[18]

The motion and the vote are also recorded in the minutes of the C Shift and the A Shift meeting.[19]

Shotwell submitted the minutes of the March membership meetings to the International Union on March 19, 2004. In response to this letter, Sarkesian wrote to President Betts on April 29 and asked him to explain what had happened at the November meetings. Betts responded on June 9, 2004, with a statement by Margaret TenBrink, who was acting Recording Secretary at the November meeting, regarding the action taken at the November meeting. TenBrink explained that President Betts believed that no membership action was necessary on the appeal, because it addressed action taken by the International Union. She reported, however, that when the meeting opened it was apparent from the number of members present that people had come to vote on the appeal.[20] She described the following actions taken in response to Shotwell's appeal at the B-Shift meeting:

> "…He then read the appeal as it was written. When he completed the reading a Brother immediately raised his hand to make a motion to uphold the appeal as read, and immediately another Brother stood to second the motion, leaving the Chair no time to respond. To my recollection, it

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[17] Article 32, §5(b), provides, in pertinent part, as follows:

> "If a complaint is against the operation of the International Union or any officer or representative thereof, the complaint must be made by a member of a Local Union and approved by membership action of that Local Union. The complaint and a certification of the approval shall be submitted to the International President who shall forward a copy of the complaint directly to the Chairperson of the Public Review Board. …"

[18] Record, p. 186.

[19] Record, pp. 189 and 192.

[20] Record, p. 226.

> was at this time that Brother Shotwell explained it was not his intent to have the membership vote on the appeal. He did express his desire to have a count, by show of hands, and recorded in the minutes the support for such an appeal. …"[21]

On July 30, 2004, Administrative Assistants Charlotte Rossi and Don Sarkesian conducted a hearing on Shotwell's appeals on behalf of International President Ron Gettelfinger. Hearing officers Rossi and Sarkesian prepared a report for the IEB based on testimony given at the hearing as well as information provided by the GM Department, Local 2151 and appellant Shotwell. The hearing officers reported that Representatives from the GM Department responded to the merits of Shotwell's appeal and Ethical Practices Complaint.

GM Department Representatives pointed out that no other members or local unions complained about the ratification procedure applied to the National Agreement or the Supplement. They observed that Delphi local unions voted to ratify the National Agreement by a large margin, and insisted that the membership knew that there would not be a separate vote on the Supplement when they voted to ratify the National Agreement.[22] They reported that this information was available in the contract highlights, the Memorandum of Understanding and the actual contract language which was available at ratification meetings.[23]

The GM Department Representatives maintained that the ratified Agreement gave them the authority to establish competitive wage and benefit levels for new hires at Delphi and that they were merely implementing provisions of that Agreement when they negotiated the Supplement. They provided other examples of situations where the National Agreement authorizes the GM Department to negotiate specific terms without obtaining a second ratification vote, such as the details of a transfer of operations under Paragraph 96 of the Agreement.[24]

The hearing officers held that the action taken by the Local 2151 membership did not satisfy the requirements of Article 32, §5(b), that an Ethical Practices Complaint against the International Union be approved by the Local membership. They found that the Complaint had not been presented for approval as an Ethical Practices Complaint at the meeting on November 2003, and they held that Shotwell's subsequent attempt to amend the November minutes could not correct the deficiency.[25] In any event, the hearing officers concluded that the Ethical Practices Complaint was without merit. They wrote:

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[21] Record, p. 226.

[22] Record, p. 252.

[23] Record, p. 253.

[24] Record, p. 255.

[25] Record, pp. 256-257.

> "As is the practice, each member was afforded the right to attend and participate in ratification explanatory meetings, voice their opinions on relevant issues concerning the tentative agreement, and, finally, vote 'yes' or 'no' on ratification. The record shows no violations of the EPC."[26]

Furthermore, the hearing officers wrote that combining the votes of GM and Delphi employees on ratification is a matter of UAW bargaining policy, and that there are sound practical reasons for the policy. They wrote:

> "These companies used to be a single company (i.e., GM); they still operate in a highly integrated fashion on important issues like flow backs and job security—both of which are crucial to members at both companies.
>
> Considering the history regarding how all UAW-Delphi and UAW-GM members were once one company, and the very strong shared interest our members at both companies still have because of the intertwining of these very important concerns, it makes sense that the International Union developed the bargaining structure, strategies and policies it did—including a combined ratification process."[27]

The hearing officers also ruled that Article 19 of the Constitution did not require separate ratification of the Supplement by UAW-Delphi members. They held that the membership's ratification of the National Agreement clearly authorized the Union to take the steps spelled out in the Memorandum of Agreement, including the establishment of a separate, competitive wage structure for new hires at Delphi. In support of this holding, the hearing officers cited the Public Review Board's decision in *Wendy Thompson, et al. v. UAW General Motors Department,* 9 PRB 64 (1996).[28] Moreover, the hearing officers pointed out that no current employees were affected by the Supplement that was negotiated by the GM Department. The Supplement only applies to new hires. On this point, the hearing officers observed:

> "…Presumably, when a future employee applies for work at a Delphi plant, they will be doing so voluntarily with the full understanding of 'the Supplement's' terms. …"[29]

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[26] Record, p. 258.

[27] Record, p. 259.

[28] In that case, the PRB upheld a ruling of the International President under Article 33, §2(b), of the Constitution that a memorandum of agreement negotiated by the GM Department pursuant to the provisions of Document 91 was not a contract or supplement that was subject to ratification. (at p. 71)

[29] Record, p. 261.

The hearing officers denied Shotwell's appeal and the IEB adopted their report as its decision. Shotwell appealed the IEB's decision to the PRB on January 5, 2005. We requested written briefs on the questions raised by this appeal. We received the International Union's brief on September 9, 2005, and appellant Shotwell's response on October 4, 2005.

ARGUMENT

A. Gregg Shotwell:

I obtained the approval of the membership for my Ethical Practices Complaint as required by Article 32, §5(b), of the International Constitution. The membership believed that they had taken sufficient action to approve the Complaint at the November 2003 meeting. President Betts provided a signed verification of the membership's support for my Complaint. I learned from Administrative Assistant Sarkesian in February that the minutes of the November meeting did not reflect that a motion was made or a vote taken to approve my Complaint in November. I made a motion to amend the November minutes at the meeting in March. No one ruled this motion out of order. It was not until the hearing on July 30, 2004, that I learned that Vice President Peggy TenBrink did not think that the motion to amend was in order. I did not attempt to rewrite history as the International Union contends. I corrected a mistaken record of the event and the members supported my clarification of the record by a wide majority. My correction of the record was substantiated and approved by the membership after discussion and debate.

The International Union maintains that the membership authorized the Supplement when they ratified the National Agreement. They compare the Supplement to agreements made pursuant to Paragraph 96 concerning a transfer of operations or the establishment of a policy concerning absenteeism. There is no comparison between an absenteeism policy and a supplement which permanently alters the wages and benefits of all future hires. Under the terms of the Supplement, new hires will not only make eleven dollars less per hour, but they will have no defined benefit pension plan. The prospect of hiring new employees at lower wages, with lower health care costs and no defined benefit pension gives Delphi an incentive to fire high seniority members. Older workers feel like walking targets, not respected senior members. We will be working side by side with UAW members who receive half the compensation that we do. It is a demoralizing situation, fraught with tension, conflict and irreconcilable differences.

The two-tier Supplement severs the traditional solidarity between generations. Current employees at General Motors have a vested interest in negotiating pension benefit increases for retirees because one day they hope to retire and reap those benefits. New hires at Delphi will not have any interest in protecting pension benefits for Delphi retirees. It is reasonable to expect that new hires will negotiate for their own benefit at the expense of retirees. We expect that new hires will vote to increase our

out-of-pocket expenses for health care. The Supplement has profound consequences for the security of our retirement. The consequences for UAW members at Delphi are clearly different than the consequences for UAW members at GM.

The International Union claims that members knew that Delphi employees would not be given the opportunity to vote on the Supplement. This was not stated in any of the materials distributed at the informational meetings. I have seen no documentation that states members would not be permitted to vote on the Supplement. At the one Local where members were alerted to the fact that a separate ratification would not take place, Local 2151, the contract was soundly defeated. I have submitted numerous statements from UAW members attesting to the fact that they were not informed that Delphi employees would not be allowed to vote on the Supplement, and that they would not have approved the contract if they had known this.

Shroat argues that Delphi members had the opportunity to present resolutions to the Negotiating Committees who drafted the National Agreement and that this satisfied the Constitution's guarantee of the right to participate in decisions affecting the Union. The record contains the resolutions submitted to the Negotiating Committees by Delphi locals and none of them advocate a two-tier supplement or a combined vote between UAW members at Delphi and GM. On the other hand, many of the resolutions address the concerns of UAW-Delphi members who lost their accumulated pension credits at GM when Delphi was spun off, and the fear that Delphi's current employees could lose their pensions if Delphi went bankrupt.

There is no precedent for combining ratification votes on separate contracts with separate companies no matter how similar the contracts may be. The only time this occurred was during the ratification of the UAW-GM-Delphi Contract in 1999. But the negotiations over the spin-off had not been completed until after the ratification in 1999. GM and Delphi were still one company at that time. Now Delphi and General Motors are independent companies with separate Boards of Directors. Executives at Delphi divested themselves of any stock holdings in GM in order to demonstrate their independence. Independence from GM is a major component of Delphi's plan to win new business from GM competitors.

GM workers outnumber Delphi workers four to one. Consequently, when UAW-Delphi members learned that the votes on the two separate contracts would be combined, many members who opposed the Agreement because of the Supplement felt that their votes had been nullified. The International claims that the results of the ratification vote demonstrate that Delphi members approved the Agreement. These numbers do not validate the gerrymander that took place. The results of an improper voting procedure do not change the fact that Delphi members were deprived of a full democratic right to vote on the contract that will so profoundly affect them.

The requirements of Article 19, §§3 and 4, are clear. National Agreements and Supplements thereof must be submitted to the local unions involved for ratification. The Supplement was signed by four officials of the UAW-GM Department, but it was never

ratified by the local unions affected by it. The National Agreement gave the International Union the authority to negotiate the Supplement, but it did not abrogate the right of UAW members to vote whether to ratify it.

Note that the Supplement extends four years beyond the Agreement that was ratified by the membership. If this practice is allowed to stand uncontested, what will prevent future negotiators from implementing a supplement that extends indefinitely without ratification? And where is the protection of the right of a bargaining unit to self-determination in the matter of wages, hours and other terms and conditions of employment if the International Union negotiators are granted unchecked discretionary power?

The International Union argues that only new hires will be affected by the Supplement. The International Union's failure to understand the full ramifications of the Supplement is alarming. The terms of the two-tier agreement are so egregiously unequal that Management has an incentive to fire high seniority employees. The nonchalance of the International Union about this situation reveals a sharp disassociation with the harsh realities faced by the rank and file. We are all severely affected by the Supplement and by the International Union's decision to deprive us of our right to vote on it.

The only remedy for this situation is to allow UAW-Delphi local unions to vote on the Supplement without the involvement of GM local unions who are not affected by it.

B. International Union:

The appellant's Ethical Practices Complaint is defective in that he failed to comply with the requirements of Article 32, §5(b). Appellant did not request approval of his Complaint from the Local Union. His subsequent attempt to revise the Local's minutes to reflect that he had done so was unsuccessful.

In any event, combining GM and Delphi ratification votes did not violate the Ethical Practices Code. Subsequent to the spin-off, elected leaders from both Delphi and GM locals participated in Councils and Subcouncils which elected Negotiating Committee members. The Negotiating Committee worked collectively to draft the 1999 and 2003 National Agreements that would cover employees at both Corporations. Delphi and GM employees selected members of the Council, Subcouncils and Negotiating Committee through a democratic process; those employees had the opportunity to participate in ratification meetings; and those employees voted to approve the National Agreement by over 72% and 80% respectively.

It is also perfectly fair to let these two interrelated groups vote as a unit. Delphi became a separate, independent corporation in May 1999; nevertheless, there are strong ties between GM and Delphi. When Delphi was established, it assumed the existing UAW-GM Agreement covering its hourly workers and that continued in effect through September 14, 1999. Delphi employees who retired by January 1, 2000, were

considered to be GM employees entitled to GM pensions and post-retirement health care benefits. Employees from one Company have hiring rights at the other Company based on seniority under the Area Hire provisions of the National Agreement. These are the so-called flow back rights. GM and Delphi hourly represented employees with unbroken seniority, who are either actively employed or on layoff or leave of absence from a GM or Delphi unit, and were hired on or before October 18, 1999, are covered by the 2003 flow back Agreement. These rights were improved under the 2003 Agreement by extending the duration of the flow back opportunity through December 31, 2006. Also the pool of eligible employees was expanded to include all employees hired before October 18, 1999, rather than only those who acquired seniority prior to the expiration of the 1996 Agreement.

With the opportunity of flow back transfers between Delphi and GM, employees of Delphi today may be employees of GM tomorrow, and vice versa. There is no denying the shared interests here. Finally, the Union's bargaining policy of maintaining the UAW-GM and UAW-Delphi Agreements as mirror agreements necessitates the combined ratification. No reason for separate ratification exists where agreements are so similar and the shared interests of these groups are so visibly apparent.

In any event, the decision to combine the ratification votes on the 2003 Agreement is not reviewable by the PRB. The decision to mirror the GM and Delphi National Agreements and accordingly to combine ratification votes on the agreements was a bargaining policy and so not subject to review in accordance with the limitation stated in Article 33, §3(f), of the International Constitution.[30] The Union had certain strategic goals and objectives in negotiating the National Agreements as it did, as evidenced by listed GM responsibilities to Delphi employees and the business obligations GM owes to Delphi Corporation. In both 1999 and 2003, the UAW's bargaining policy was carried out from beginning to end, from inclusion of Delphi members on the national Negotiating Committee to the provision in the National Agreements that the Delphi contract would "mirror" the GM contract. The PRB has consistently held, based upon Article 33, §3(f), that it is forbidden from reviewing issues of official UAW bargaining policy, unless the policy itself is discriminatory or devoid of rational basis.

The membership does have a voice in approving or disapproving UAW bargaining policy under Article 19, of the Constitution. Article 19, describes a democratic process through which the membership can express dissatisfaction with the Union's bargaining goals and policies by voting against a tentative agreement. However, once an agreement is approved, Article 19, §4, does not require that any portion of the ratified agreement be submitted to the participating local unions once again for ratification, even where subsequent negotiations are anticipated. Article 19,

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[30] Article 33, §3(f), contains the following limitation of PRB jurisdiction:

> "In no event shall the Public Review Board, under this or any other article, have jurisdiction to review in any way an official collective bargaining policy of the International Union."

§§3 and 4, describe the process to be used by the International Union for negotiating and achieving ratification of National Agreements; it does not create individual membership rights to challenge those agreements. Our position is consistent with the analysis of this Article and its legislative history published by this Board in *Appeal of Don Liddell,* 2 PRB 92, (1974). In *Liddell,* the PRB accepted the view that the language in Article 19 §3, which allows for separate ratification procedures to be adopted by skilled trades employees, confers no rights on anyone, but rather confers a power in the IEB to establish separate ratification procedures for certain employees. This legislative history of Article 19 described by this Board in *Liddell* supports the UAW's flexibility to fashion ratification frameworks designed to achieve its bargaining goals.

Despite the limitation stated in Article 33, §3(f), the PRB has considered claims that the membership's right to express dissatisfaction with the Union's bargaining policy has been infringed. PRB decisions involving "enabling" language illustrate the Board's role in the protection of the membership's rights under Article 19. Where the enabling language is clear as to the issues to be dealt with and the kinds of solutions anticipated, Article 33, §3(f), would preclude PRB review of decisions or actions taken in accordance with that language. On the other hand, where the Union attempted to resolve mid-term issues without appropriate enabling language, the PRB correctly held that the membership should be allowed to express itself pursuant to Article 19. In *Appeal of Al Daly, et al. (Local Union 475, UAW)* 1 PRB 816 (1973), for example, the PRB held that an agreement changing seniority provisions would require ratification in the absence of enabling language. On the other hand, in *Beaves, et al. v. UAW Local Union 1268,* PRB Case No. 1266 (1999), the PRB held that no ratification was necessary of an agreement affecting skilled trades work that was specifically authorized by the contract.

Circumstances might exist where the PRB would have jurisdiction to review the enabling language itself, if the language had the effect of negating the democratic rights embodied in Article 19. Certainly, on one extreme, a situation may arise where enabling language allows changes to existing wages and benefits for current employees without ratification of such supplements or modifications. In such a case, simply making a nod to Article 33, §3(f), does not get the Union over the Article 19 §4, hurdle. Nevertheless, the Union must be able to deal with interim issues arising under negotiated agreements without going back to the membership in every circumstance. Negotiated enabling language allows the Union to carry out its responsibilities as bargaining agent.

In this case, the membership voted to enable the Union to make changes to the working conditions of future employees within well-defined and concrete parameters. The 2003 Delphi National Agreement provided that Management and the UAW would sit down within 90 days of the contract ratification to discuss wages and benefits for new employees. The guidelines for these discussions established that the parties would negotiate competitive auto supply industry wages and benefits within a specified period of time. The membership authorized the Union to enter into these negotiations, which would not directly affect existing Delphi employees. It is worth emphasizing that the Supplement only affects future hires. It does not apply to anyone who was employed at

GM or Delphi at the time of the National Agreement ratification. The future hire group is a null class, one that does not exist until folks are actually brought into the Delphi fold.

In accordance with standards articulated in prior PRB decisions, negotiations that implement agreements can be distinguished from those that supplement agreements by the presence of enabling language that meets standards of clarity and specificity. Implementation agreements must result from enabling language specifically contemplating and authorizing such agreements. By contrast, supplemental agreements are agreements which are not anticipated by an existing labor agreement and which affect existing provisions or rights provided under that agreement. The April 2004 Delphi-UAW Agreement concerning wages and benefits for new hires qualifies as an implementation of the 2003 National Agreement under the PRB's prior rulings.

Furthermore, holding a second, separate ratification vote on the Supplement could create serious practical problems. GM and Delphi negotiated for an entire collective bargaining agreement, including the UAW's commitment to establish new wage and benefit rates for new hires at Delphi. The employer would be on strong ground to argue that the Union cannot pull out isolated elements of an integrated agreement and subject those elements to separate ratification. And, if the Supplement were voted down, the employer might take the position that the second vote was either of no effect or that it voided the entire National Agreement. Neither possibility is appealing.

C. Rebuttal by Gregg Shotwell:

The International argues that Delphi's employees participated in the ratification process by electing members of the Councils, Subcouncils and Negotiating Committees who drafted the National Agreement, and by participating in ratification meetings. The participation by Delphi employees in the GM negotiating Subcouncils did not justify combining the ratification vote. American Axle was part of the GM Council for two contracts after they were sold and Lear was also part of the GM Council after it was sold. American Axle and Lear did not participate in the GM Council after they became separate bargaining units and as a result, members of these units retained their full democratic rights.

I was a delegate to the Special Collective Bargaining Convention in 2002 and the subject of combining the ratification of the two separate units was never brought up. Delegates to the Special Collective Bargaining Convention were caught off guard by the decision to combine ratification votes and the proposal for a two-tier supplement for Delphi, and in this respect got no benefit from their participation in the GM Council. There is no evidence that a combined ratification vote or a two-tier supplement for Delphi was discussed at any Council meeting. There is no evidence that members were told at ratification meetings that Delphi members would not be permitted to vote on the Supplement once it was negotiated. When members are deprived of important information, the democratic process is effectively nullified.

The International claims that the combined ratification vote was justified by the close ties between the two corporations, including flow back rights between GM and Delphi. The existence of flow back rights has never before been used as a justification for combining ratification votes of two entirely separate bargaining units. If Delphi and GM made up a single bargaining unit, members would be able to transfer into any job openings and retain their seniority and their pension credits. This is not the case between Delphi and GM. Our priority for transfer to GM is limited and second class. If there is an opening, GM employees have first bid. In the event that I do find a job at GM, my plant seniority will be the same as a new hire, i.e., I would start at the bottom. The so-called improvement in the flow back rights under the 2003 Agreement was illusory. No one wants to transfer to a company with a two-tier supplement that has done nothing but downsize since its inception. In any event, the extension of the application period had nothing to do with the decision to combine ratification votes. The existence of flow back rights is a distraction from the discussion of constitutionally protected rights to self-government and ratification.

The power to implement previously ratified contractual provisions does not translate into a right to negotiate new terms and conditions without ratification by the local unions involved as required by Article 19, §4, of the Constitution. In the 2003 Agreement, UAW members gave the International Representatives permission to negotiate a Supplement but it was never communicated that the Supplement would not be submitted to the Delphi Local Union for ratification as required by the unambiguous language of Article 19, §4, of the Constitution. Accordingly, the members had a right to assume that the Supplement would be presented for ratification.

Local unions have approved two-tier wage supplements in the past. Tough choices are sometimes necessary. But the imposition of a two-tier wage supplement without ratification is impermissible under this Board's ruling in *Ferrell v. International Union, UAW,* 2 PRB 835 at 842, (1979). In that case, the Board stated the following principle:

> "…Certainly, it would appear that in order to conform to the requirements of Article 19, §3, the delegation of authority actually to negotiate substantive changes in the Agreement would have to be clear and unequivocal and, in any case, were the Committee to negotiate agreements national in scope or supplements thereto, these would have to be submitted to the local unions involved for ratification."

The Supplement cannot be considered the implementation of any previously negotiated and ratified agreement. What happened in this case was ratification prior to negotiation, which has no Constitutional support or legislative history. Since the Supplement extends until 2011, four years beyond the expiration of the current contract, future hires have been disenfranchised in advance. The extended time frame was not spelled out in the Memorandum of Understanding.

The serious practical problems identified by the International Union that might be caused by submitting the Supplement to ratification result from its own decision to circumvent the Constitution. Negotiations with an employer must be guided by the principles spelled out in the Constitution. The issue I present to the PRB is a Constitutional one and should be judged on Constitutional grounds. The appeal should not be decided based on speculation about the employer's reaction.

DISCUSSION

The minutes of membership meetings conducted on November 3 and 5, 2003, and the Local Union officers' statements regarding what happened at those meetings, establish that Shotwell did obtain the necessary membership approval for his Ethical Practices Complaint as required by Article 32, §5(b), of the Constitution. The minutes report that Shotwell read his Ethical Practices Complaint to the membership and asked for their approval as required. President Betts erroneously advised the membership that Shotwell did not need to obtain membership approval of his Complaint because it addressed actions taken at the International level. Nevertheless, the membership at the B and C shift meetings voted to support the appeal, and the members at the A shift meeting did not vote against it, but merely abstained. President Betts certified the membership's support for the appeals in a letter dated November 12, 2003. That is all that was required by Article 32, §5(b). It was not necessary for Shotwell to return to the membership in March to amend the minutes, although when he did so the membership once again affirmed its support for his appeals.

Nevertheless, we find that Shotwell's appeals do not raise issues that may appropriately be addressed by this Board pursuant to its authority under Article 32, of the Constitution to consider Complaints arising under the Ethical Practices Codes. Shotwell has argued that the International Union's decision to combine the votes of GM and Delphi local unions on the ratification of the 2003 National Agreement amounted to a gerrymander designed to dilute opposition to the Agreement on the part of members of Delphi local unions, and particularly to the proposal to negotiate a Supplement altering the wages and benefits applicable to future employees of Delphi Corporation.

It may well be that one of the reasons for combining the ratification votes on the 2003-2007 UAW-GM-Delphi National Agreement was to assure ratification of the Agreement by the widest possible margin; however, such a motivation does not run afoul of the guarantee that members shall be entitled to a full share in Union self-government. The Democratic Practices section of the Codes clearly recognizes that members do enjoy the right to self-government when they act through elected representatives. The ratification framework that Shotwell objects to was put in place by duly elected representatives acting on behalf of their constituents. The fact that combining the votes made the proposal to negotiate the Delphi Supplement less important to the electorate at large than would have been the case had the votes of the Delphi locals been considered separately did not disenfranchise Delphi members. In any event, the Union has demonstrated that the 2003 UAW-GM-Delphi Agreement

would have been ratified by the majority of the members from the combined Delphi local unions even if their votes had been counted separately.

It is part of the nature of representative government that elected representatives must have discretion to adopt strategies in order to achieve the desired objectives of their constituents. Because of the flow back rights of GM and Delphi employees and the financial relationship between GM and Delphi, the financial viability of Delphi was important to both GM and Delphi employees. One of the objectives of the 2003 negotiations was to retain the GM level of benefits for members currently employed by Delphi, in the face of extraordinary pressure from the employer for the Union to accept drastic reductions in those benefits. This was a legitimate objective. The Delphi Supplement was an essential part of the Union's bargain to obtain this objective. The Ethical Practices Codes do not require that each member have a voice deciding which strategies should be adopted to achieve the Union's objectives.

The Ethical Practices Codes are designed to address schemes involving illegitimate goals, deceptive practices or otherwise inappropriate conduct. Shotwell argues that the presentation of the 2003 National Agreement to the membership was deceptive because the members were not informed that the Supplement would not be submitted to the Delphi locals for ratification after it was negotiated. While it is true that the information about the Supplement published in the September 2003 *UAW GM and Delphi Report* does not specifically state that the Delphi Supplement would not be submitted for ratification, there is clearly no second ratification vote anticipated. The possibility that an agreement might not be reached is anticipated, but there is no suggestion that an agreement might be reached and then rejected by the membership of the Delphi local unions in a subsequent ratification vote. Although the Union did not emphasize its decision not to submit the Supplement to the Delphi locals for ratification, the presentation of the matter was not deceptive. It is not improper for the Union to stress the positive aspects of a negotiated contract when urging ratification. The published contract highlights effectively put the members on notice that the Union did not intend a second ratification vote after the Supplement was negotiated.

The decision on the part of the representatives elected by the members of both the GM and Delphi locals to combine the ratification votes on the 2003 Agreement was bargaining policy within the discretion of the Negotiating Committee. The proposal in the 2003 Agreement to authorize the parties to negotiate a Supplement creating a two-tier wage and benefit contract at Delphi was adequately described in the contract highlights to inform the membership of what they were approving. Therefore, we find that the ratification procedures adopted by the Union with respect to the 2003 National Agreement and the proposed Supplement did not violate the Democratic Practices section of the Ethical Practices Codes.

Shotwell's claim that Article 19, §§3 and 4, of the Constitution required ratification of the Supplement presents a more difficult question. We have, in previous cases, affirmed our jurisdiction to consider appeals based on claims that agreements had not

been ratified in accordance with Article 19. In *Ferrell, supra,* we responded to the International Union's challenge to our jurisdiction to consider such claims as follows:

> "…We have considered such appeals before both on direct submission by the officers of the International Union and as a result of a direct appeal such as had been presented here. We hold once again that Article 33, §8(c) of the Constitution authorizes our review of claims of violations of the procedural requirements of Article 19, §§3 and 4." (Footnotes omitted.)[31]

In considering claims that agreements have not been ratified as required by Article 19, §§3 and 4, we have consistently held that interim agreements which alter wages, seniority or other conditions of employment are Supplements within the meaning of Article 19, §3, and must be submitted to the affected members for ratification.[32] As noted by Shotwell, even where the master agreement contained clear and unequivocal language authorizing the negotiation of supplemental agreements, we have stated that such agreements would have to be submitted for ratification.[33] On the other hand, we have distinguished supplements requiring ratification from administrative decisions made in the course of a current contract.[34] For example in *Beaves, et al., supra,* we declared that an agreement which merely implemented the existing contract did not require ratification. We stated:

> "…What the parties did here was to work out a special problem that arose under the current collective bargaining agreement. It did not diminish or alter the rights of appellants in any respect. It simply provides an alternate means of manning work when Electricians, for whatever reason, are not available. …"[35]

The International Union has attempted to present the Delphi Supplement as the implementation of some aspect of the 2003 National Agreement, and this has led it into some strained reasoning, for the two-tier Agreement is clearly a Supplement. There is no provision of the National Agreement being implemented here. The two-tier Agreement alters wages and benefits for a class of Delphi employees. Shotwell argues persuasively that such a drastic change in the working conditions of what was

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[31] 2 PRB 835, at 841.

[32] *Calvin C. Hopkins v. Local 730, UAW,* 1 PRB 469, (1969); *Appeal of Al Daly, et al, (Local Union 475, UAW),* 1 PRB 816, (1973), *Ferrell v. International Union, UAW,* 2 PRB 835 at 842, (1979).

[33] *Ferrell, supra.*

[34] *Smeltzer v. Local Union 652, UAW,* 5 PRB 669, (1989); *Beaves, et al., v. UAW Local Union 1268,* PRB Case No. 1266 (1999),

[35] PRB Case No. 1266, at p. 11.

anticipated to be a large percentage of Delphi's workforce would affect the entire workforce.

We have never before confronted the jurisdictional issues raised by Shotwell's request that we order the International Union to submit the Supplement to the Delphi local unions for ratification. Most of the cases in which we have addressed claims of violations of Article 19 came before us as grievance appeals, and the remedy sought was compensation for some loss perceived to have occurred as a result of the application of the challenged agreement. The distinctions we have drawn in prior cases between Supplements and administrative decisions implementing existing agreements were made with a view to determine whether the appellant's rights under the existing agreement had been violated. These distinctions do not help us resolve the jurisdictional issues posed by Shotwell's appeal.

The International Constitution, in Article 33, §3(f), unequivocally bars this Board from reviewing the International Union's collective bargaining policy in any way. Arguably, this might preclude our review of Shotwell's claim that the plan not to ratify the Delphi Supplement violated Article 19, §§3 and 4, of the Constitution, because the decision was part of the Union's bargaining policy. Such a broad interpretation of Article 33, §3(f), might mean that this Board could provide no remedy for even flagrant violations of Article 19 of the International Union, because decisions made in connection with the ratification of contracts will nearly always have policy ramifications. We do not reach this broader issue, however, because we find that the procedures followed in this case did not violate the requirement that National Agreements and Supplements be ratified based on our reasoning in *Liddell, supra*.

Liddell was submitted to us directly by the officers of the International Union to consider the merits of the skilled trades workers' claim that language added to Article 19, §3, giving them the right to vote separately on National Agreements, gave them the power to veto those Agreements.[36] We held that it did not. In that case, the International Union declared that a National Agreement had been ratified despite its rejection by skilled trades workers. The IEB determined that the skilled trades workers' primary objection to the contract was a Letter of Understanding dated October 26, 1973, allowing non-journeymen to fill journeyman positions under certain circumstances. Our decision describes the IEB's response to the situation as follows:

> "…The contract itself, it concluded, was acceptable to Ford skilled tradesmen. The remedy in that circumstance, it decided, was not to declare the contract rejected, but rather to renegotiate the October 26 letter of understanding. Having received Company assurances that it would renegotiate the terms of the letter, in view of the decisive overall majority in favor of ratification, the IEB determined to

[36] The same issues were presented in *Poszich, et al., v. International Union, UAW,* 2 PRB 125 (1974). The decisions are identical.

> declare the agreement ratified and put it into effect. Shortly thereafter, by agreement with the Company, a local option system was devised to replace the October 26, 1973 letter of understanding. …"[37]

The appellants claimed that the skilled trades workers' rejection of the contract meant that the contract had not been ratified under the language of Article 19, §3.[38] We concluded that the procedure followed by the IEB was what was intended by the Constitution. Our concern in *Liddell* was that a mechanical application of the language in Article 19, §3, authorizing separate ratification by skilled trades workers would effectively disenfranchise production workers. We explained:

> "…To conclude that such sweeping power was given to a special group, would be a startling surprise to the production workers who were repeatedly assured that the action taken would not divide the union or subject the great majority to minority dominance. …"[39]

We recognize that the position of the Delphi employees is distinguishable from that of the skilled tradesmen in *Liddell*; however, their demand that the Supplement be submitted to the Delphi locals for ratification raises a similar problem. There is no question that the arrangement providing for ratification of the Delphi Supplement prior to the actual negotiation of the anticipated two-tier arrangement was an integral part of the Negotiating Committee's strategy for preserving GM level benefits for Delphi's current employees. If Article 19, §4, were interpreted to mean that the Delphi local unions must be given the right to reject the Supplement, the entire ratification framework put in place by the Negotiation Committees would have to be dismantled. That would, in effect, give to Delphi employees the kind of veto power over the National Agreement that we found unacceptable in *Liddell.* Article 19, §4, merely requires that National Agreements and Supplements shall be ratified; it does not dictate the framework for ratification. The International Union has the authority and the flexibility to establish ratification procedures, even one which provides for ratification of a Supplement prior to its negotiation. Article 19 provides the membership with a means for rejecting those procedures, but once the procedures are accepted by the majority, they govern the ratification process. Article 33, §3(f), precludes our review of the wisdom or fairness of the ratification process adopted.

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[37] 2 PRB 92, at 97.

[38] The applicable language of Article 19, §3, provides:

> "Upon application to and approval of the International Executive Board, a ratification procedure may be adopted wherein apprenticable skilled trades and related worker, production workers, office workers, engineers, and technicians would vote separately on contractual matters common to all and, in the same vote on those matters which relate exclusively to their group."

[39] 2 PRB 92, at 109.

Finally, we note that the ratification framework adopted by the International Union in this case did not give the parties *carte blanche* in negotiating the Supplement. The description of the proposal in the *UAW GM and Delphi Report* defines the subject matter of the Supplement quite clearly, and the members who are to be covered by it. The parties were not free to alter wages of existing employees or to negotiate other conditions of employment beyond the "competitive wage and benefit levels" anticipated. A challenge might appropriately be considered to a Supplement that exceeded the authorization stated in the ratification framework. Furthermore, while the Constitution has expressly forbidden this Board from evaluating the merits of the Union's bargaining policies, the members are not without means to challenge the Union's policies and decisions through their delegates to the Constitutional Convention and other political avenues available under the Constitution.

The appeal is denied.

Member Jones concurs in the decision of the majority of the Board.