

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

APPEAL OF:

CHARLES REIGHARD, MEMBER
LOCAL UNION 1112, UAW
(Warren, Ohio),
REGION 2B,

Appellant,

-vs-

CASE NO. 1532 II

INTERNATIONAL UNION, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued June 27, 2006)

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.

Charles Reighard asks us to consider whether circumstances warranted a waiver of the time limits for his appeal from the withdrawal of his grievance after President Gettelfinger refused to submit his decision not to waive the time limits to the International Executive Board (IEB) for review.

FACTS

On February 10, 2005, President Gettelfinger refused Charles Reighard's request for a waiver of the time limits applicable to his appeal from Local Union 1112's decision not to pursue a grievance protesting his termination by General Motors Corporation (GM) on April 28, 1999.¹ Reighard attempted to appeal Gettelfinger's decision to the IEB on February 28, but the President's staff refused to process his appeal. On April 27, 2005, Presidential Administrative Assistant Don Sarkesian

¹ Record, p. 4.

informed Reighard that the Constitution does not provide for appeals of the President's decision not to waive the time limits.²

On August 26, 2005, attorney Ellis Boal, acting on behalf of Reighard, requested the Public Review Board (PRB) to consider whether President Gettelfinger's decision was subject to review by the IEB.³ Boal submitted his request to the President's office and Presidential Administrative Assistant Eunice Stokes-Wilson responded on September 1 that there was no Constitutional basis for the PRB to review President Gettelfinger's decision not to waive the time limits on Reighard's appeal.⁴ Boal forwarded his request directly to the PRB on November 7, 2005, and on November 15, 2005, we docketed the matter in order to consider the narrow procedural question whether the IEB has the Constitutional authority to review President's Gettelfinger's decision not to waive the time limits for appeal.

We issued a decision on January 24, 2006, stating that a decision by the International President not to waive time limits is reviewable by the IEB in accordance with Article 12, §18, of the International Constitution.⁵ As there had been no review of Reighard's appeal from President Gettelfinger's refusal to waive the time limits, we remanded the case to the IEB for appropriate action. On February 7, 2006, Boal submitted his appeal from the President's decision to the IEB once again.⁶

In support of the appeal, Boal summarized the circumstances that led to Reighard's termination. According to Boal, on April 16, 1999, someone vandalized six finished vehicles on Company property. A man whose voice Reighard did not recognize informed him of the vandalism by means of a telephone call to his house on the morning of April 18. On April 19, Reighard telephoned Local 1112 Shop Chairperson Larry Wilkins and left the following message on his answering machine:

"...I made my first trip to the plant Saturday night, the results are out on the Final Process at the Final Line...I am going to do whatever it takes to get a fair settlement from that Company. So, if I don't hear from you Wednesday, you can expect me back for more problems...Bye."⁷

² Record, p. 8.

³ Record, pp. 31-44.

⁴ Record, p. 45.

⁵ Article 12, §18, of the UAW Constitution provides as follows:

"The International Executive Board may rescind, reverse or repeal any action of any of the International Officers or Representatives."

⁶ Record, pp. 63-75.

⁷ Record, p. 66.

The Local Union forwarded this tape to Company Personnel Director Paul Emond. Emond then telephoned Reighard, and Reighard returned the call. According to Boal, Reighard repeated the statements of his message to Wilkins to Director Emond in more detail.⁸

Boal reports that Reighard was arrested on April 20 and charged with six counts of felony vandalism. On April 28, Labor Relations Manager Edward Jones delivered a discharge notice to Reighard at the Mahoning County Jail. According to Boal, Jones' notes from his interview with Reighard indicate that Reighard admitted once again that he vandalized the vehicles. The discharge notice issued to Reighard stated that he was being discharged because he had admitted to entering the plant on April 17, 1999, and vandalizing six vehicles.⁹

Reighard eventually pled guilty to telephone harassment. He was sentenced on September 13, 2000. Boal described the sentence as follows:

"...According to a journal entry of the following day, the sentence was no fine or prison time, five years of probation, payment of costs, a mental health evaluation, compliance with treatment, a letter of apology to be approved by the probation department, and a monthly \$10 probation supervision fee. The journal entry also stated he was to have '[n]o contact with General Motors-Lordstown.'"¹⁰

In his letter of apology, Reighard acknowledged having made the telephone calls claiming responsibility for the vandalism, but he denied having actually committed it. The letter of apology that Reighard wrote in accordance with his plea agreement states as follows:

"As the situation stands right now, my actions appear to have cost me a job at which I expected and wanted to work for the rest of my working career, however short that might have been.

Obviously I made the absurd phone call. Why my mind allowed me to actually let it appear that I had done and would do something which I absolutely did not and would not is beyond even my own understanding, even though at the time I thought I was near death and was angry for what I believed were past wrong doings."¹¹

⁸ Record, p. 67.

⁹ Record, p. 67

¹⁰ Record, p. 68

¹¹ Record, p. 69.

On October 30, 2000, Local 1112 informed Reighard that it had withdrawn the grievances protesting his discharge based on the Court's journal entry of September 14, 2000.¹²

Boal described Reighard's various attempts to have the Local Union's decision reviewed and argued that his particular circumstances warranted a waiver of the time limits. Boal stated:

"Reighard, an unschooled member in matters of appeals, has not been the one to drag this out. He expected the union would stand up for him after the plea agreement in 2000. Instead it quit the case. Then the judge told him to have no contact with GM employees. This meant he could not appear at an appeal hearing; union GM employees would necessarily also be present. Without being able to appear, an appeal would have been futile.

Complicating this problem, he was markedly depressed and anxious, and under multiple medications. These were psychiatric conditions, according to Dr. Detwiler, after review of Dr. Kachmer's evaluation. They should excuse his delay in appealing."¹³

In a letter dated February 16, 2005, President Gettelfinger wrote to Boal that his decision not to waive the time limits for appeal is not subject to review by the IEB.¹⁴ On March 13, 2006, Boal asked the PRB to review President Gettelfinger's decision.

ARGUMENT

A. Charles Reighard, by his attorney Ellis Boal:

The IEB has jurisdiction to review a decision by the International President not to waive the Constitutional time limits for appeals. Such jurisdiction is not limited to the question whether the President's decision amounted to an abuse of discretion. As the PRB made clear in its decision of January 24, 2006, the IEB may overrule, rescind, reverse or repeal such a decision in accordance with the authority granted to it under Article 12, §18, of the International Constitution.

In this case, reversal of the President's decision is warranted. Reighard's appeal is one of obvious substance. He was a high seniority employee who was terminated on

¹² Record, p. 70.

¹³ Record, p. 74.

¹⁴ Record, p. 90.

the basis of evidence that was later discredited. Information that came to light after his grievance was withdrawn indicated that he was innocent of the offense for which he was fired. The question whether the threatening telephone calls to Shop Chairperson Larry Wilkins and Personnel Director Paul Emond may have been separate offenses justifying the discipline has not been considered.

In addition, the Local Union's handling of Reighard's case should be subjected to further scrutiny. The Local Union's decision to provide Management with a tape of Reighard's message without first conducting its own investigation was questionable. If Chairperson Wilkins had telephoned Reighard in response to the message, he would have discovered that Reighard was physically incapable of driving a car at the time of the incident, much less climbing over a fence to gain access to Company property. The Local Union representatives did not attend Reighard's discharge interview at the Mahoning County Jail, although they were aware of it.

B. International Union, UAW:

Only the International President may waive the time limits for appealing to the IEB. The decision whether or not to waive time limits is solely within the discretion of the International President and is not subject to review by the IEB. This interpretation of the Constitution is being made pursuant to Article 13, §8.¹⁵

C. Attorney Ellis Boal on behalf of Charles Reighard.

The position taken by the International President is directly contrary to this Board's decision and Order of Remand dated January 24, 2006. Ten days have passed since President Gettelfinger's letter was issued, and there has been no indication that any member of the IEB has objected to it. Therefore, it is now a decision of the IEB in accordance with the applicable paragraph of Article 33, §3(d), of the Constitution. That section states:

“Review by the Full International Executive Board. Both where the appeal has been decided by the Nine (9) Member Committee of the International Executive Board and where it has been decided by the International President, copies of the decision shall be sent to all members of the International

¹⁵ Article 13, §8 of the UAW Constitution provides as follows:

“The International President shall decide disputes or questions in controversy, including all questions involving interpretation of this Constitution, except such cases as follow the procedure and conditions as outlined in this Constitution; all her/his decisions being subject to appeal, first to the International Executive Board and then to the Convention. Notice in writing of appeal of any decision of the International President must be filed with the International Secretary-Treasurer and the International President within (30) days from the date of decision.”

Executive Board. The decision shall become the decision of the full International Executive Board unless, within ten (10) days, one or more members of the International Executive Board raises an objection to the decision, in which case the appeal shall be referred for decision to the International Executive Board at its next regular meeting. ...”

The PRB now has jurisdiction to consider Reighard’s appeal. We are requesting that the PRB exercise plenary review of the President’s decision not to waive the time limits. Reighard would have received plenary review of the President’s decision if the IEB had fulfilled its Constitutional role under Article 12, §18, of the Constitution. If the PRB merely considers whether the decision was an abuse of discretion, Reighard will have been denied full consideration of his appeal. We are asking that the PRB overturn the President’s refusal to waive the time limits.

DISCUSSION

President Gettelfinger’s staff has confused the Constitutional authority to decide an issue with the jurisdiction to review it. While it is true that the Constitution authorizes the President, rather than the IEB, to make the decision whether to waive time limits on appeals, such a decision by the President does not have any unique Constitutional standing. A decision not to waive the time limits is simply a decision by the President subject to appeal in accordance with the procedures described in Article 33 of the Constitution.

As we stated in our previous order, a member’s right to appeal rulings of the President to the IEB is inherent in the structure of the UAW as an organization. The right to appeal also forms an important element of the ethical principles embodied in the UAW Constitution. A member’s right to challenge the rulings of individual officers before the higher governing body ensures that such decisions are not the result of bias or other irrational factors. Under Article 33, §3(d), of the Constitution, the IEB has original jurisdiction to entertain all appeals from any decision of an International Officer, with one narrow exception not relevant to this appeal.¹⁶ The International President’s refusal to refer Reighard’s appeal to the IEB violates not only the appellate procedures clearly enunciated in the UAW Constitution, but also the principles of fairness and ethical conduct espoused throughout the Constitution.

Generally, a decision of the President must be submitted to the IEB for approval, before it can be appealed to this Board. Appellant has asked us to treat President

¹⁶ The IEB’s original jurisdiction is described in Article 33, §3(d), as follows:

“The International Executive Board has original jurisdiction to consider and decide all appeals submitted to it from any decision or action of an International Officer, Regional Director, International Representative or any administrative arm of the National Department of the International Union, except in the relevant types of cases set forth in section 2(b) of this Article.”

Gettelfinger's letter of February 16, 2006, as a decision of the IEB based on the Constitutional procedure that allows the President to decide appeals to the IEB. Under that procedure, the President's decision is circulated to all the members of the IEB, who may raise objections to it within ten days. It does not appear, however, that President Gettelfinger's letter was circulated to the members of the IEB in order to provide them with the opportunity to review it or to raise objections to the President's position. We are not willing to indulge in a fiction that attributes to the IEB approval of a position so at odds with the spirit and the letter of the Constitution.

We have previously ruled, however, that the International Union cannot raise its own error to insulate decisions of the President from review by this Board. In *Darling v. Local Union 499, UAW*, 3 PRB 55, (1980), we responded to a challenge to our jurisdiction based on the failure of the President to present his opinion to the IEB for approval. Our opinion in that case states:

"...The failure to submit the decision to the members of the International Executive Board for their approval prior to its transmission to the parties breached, it is true, the procedural requirements of the Constitution. But the party entitled to complain of the error is not the one who made it, that is, the International Union, but rather appellants who might have claimed they were injured by the omission which deprived them of their right to consideration by each member of the International Executive Board. But appellants have elected not to raise the issue, opting instead to proceed with their appeal as though the breach had not occurred. They were entitled to rely upon the President's advice that he had decided the appeal. Once made aware of the procedural deficiencies, appellants could have claimed the right to a review by the International Executive Board and, had they done so, we would have remanded the appeal for that purpose. However, the International Union may not raise its own error as a device to defeat jurisdiction in this Board."¹⁷

In this case, appellant did claim his right to a review by the IEB, and we therefore remanded the case for appropriate action by that body. The President has refused to comply with our order.¹⁸ Just as an error on the part of the International Union cannot

¹⁷ 3 PRB 55, at 60.

¹⁸ The International Union's letter of February 16, 2006, asserts that its position is an interpretation of the Constitution made pursuant Article 13, §8, of the Constitution. This is apparently a further attempt to insulate the President's decision from review by this Board, because such Interpretations may be appealed to the IEB and then to the Convention, but not to the Public Review Board. That section has no application to this appeal, however. This is simply an appeal to the IEB presented in accordance with the provisions of Article 33 requesting review of the President's decision not to waive the time limits for

insulate the President's decisions from review, neither can a deliberate refusal to follow the Constitution. We will now assume jurisdiction in order to address the issues presented by this appeal.

Our assumption of appellate jurisdiction does not entirely address the International Union's error, however, for the Constitution gives the IEB the authority to rescind or overrule the President. The Public Review Board has no Constitutional authority to waive time limits on appeals to the IEB, nor can we revoke or rescind a decision by the President not to waive time limits. Our jurisdiction is limited to the question whether the decision amounted to an abuse of his discretionary authority. Were there any significant issues in dispute, we would be forced to refer this matter back to the IEB and insist that Reighard be given the benefit of review by that body. In this particular case, however, we find that such an exercise would serve no useful purpose, because the ultimate outcome of Reighard's appeal is so clear.

There is no question that Reighard's appeal to the IEB from the decision to withdraw his grievance was presented far beyond the time limits stated in the Constitution. Reighard acknowledges that Local 1112 notified him on October 30, 2000, that it had withdrawn his grievance, and that he took no action at that time to appeal the decision. We understand that Reighard was under a court order to have no contact with GM's employees at this time, and that he may have believed that this precluded him from appealing the withdrawal of his grievance. We do not need to consider whether his request for a waiver ought to have been granted for this reason, however, because the order was lifted in April 2003.

On April 23, 2003, GM Department Representative Scott Faraday responded to a request from Reighard to reopen his grievance based on new evidence establishing that he could not have committed the vandalism on GM property.¹⁹ Faraday advised Reighard that he had discussed the case with the Local Union representatives who had handled it and had concluded that Reighard's grievance was properly withdrawn based on its merits.²⁰ Under Article 33, §4(c), Reighard had thirty days to appeal Faraday's decision to the IEB. He filed his appeal on December 13, 2004, nearly twenty months later.

appeal. There has been no request for an interpretation of the Constitution, and indeed, no need for one, because the requirements of the Constitution are clear.

¹⁹ The new evidence established that the vandalism had occurred on April 16, 1999, rather than April 17, as stated in Reighard's discharge notice. On April 16, Reighard was at home with his wife the entire evening. On the 17th, Reighard's wife was away from home, and so could not testify as to his whereabouts on that evening. (Record, p. 68) In addition, Reighard obtained a video of someone trying to enter the plant on April 17, using his identification and Social Security Number. Apparently, GM believed this was how Reighard obtained access to the plant. In fact, an analysis of the tape revealed that the person was significantly shorter than Reighard. Furthermore, the investigator's report indicated that whoever had committed the crime must have come over, under or through the fence, which Reighard would not have been physically able to do. (Record, p. 69)

²⁰ Record, p. 17.

Attorney Boal argues that the time limits ought to have been waived in Reighard's case, because he was suffering from depression throughout the relevant period. Reighard has offered to provide documentary proof of his condition as well as evidence that he was physically incapable of committing the vandalism for which he was discharged. Boal notes that Reighard was a high seniority employee and he points to previous cases in which we have ruled that the President ought to have waived time limits because a question of obvious substance was involved.²¹ We do not find these arguments persuasive.

The fact that an appellant has been suffering from depression cannot by itself be held to warrant a waiver of the time limits on appeals involving the withdrawal of grievances. The Union has to be able to regard a case as closed at some point, and the Constitutional time limits specify that point. Only extraordinary circumstances justify setting those limitations aside. Furthermore, this particular appeal does not present a question of obvious substance, because interpreting the facts most favorably to Reighard does not establish a strong case for his reinstatement. The vandalism that occurred on April 16, 1999, was unquestionably a dischargeable offense, and Reighard claimed responsibility for that offense on at least three separate occasions. Although a subsequent investigation cast doubt on Reighard's being the active perpetrator, the facts still suggest that he may have had some involvement. In any event, the telephone calls to the Local Chairperson and to the Company's Personnel Director alone could be construed as threats of violence justifying discharge. It is highly unlikely that an arbitrator would have ordered reinstatement on these facts.

We have no authority to waive the Constitutional time limits applicable to appeals to the IEB. Furthermore, we find nothing in this record that would have been likely to convince the IEB to revoke or rescind President Gettelfinger's refusal to waive the Constitution time limits. The appeal is therefore dismissed.

²¹ *Oates v. International Union, UAW*, 1 PRB 174, (1962); and *Pfeiffer v. Local Union 556, UAW*, 1 PRB 485, (1968).