

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

APPEAL OF:

DENNIS LAPSO, et al,
Appellants,

-vs-

CASE NO. 1550

UAW NATIONAL FORD DEPARTMENT
REGION 2B
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued February 20, 2007)

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

Appellants assert that the procedures adopted by UAW Local 1250 to conduct a ratification vote on an agreement to modify the 2003 UAW-Ford National Agreement violated the requirements of Article 19, §3, of the International Constitution.

FACTS

The appellants in this appeal to the Public Review Board (PRB) are active and retired Ford employees from various UAW Local Unions.¹ The lead appellant is Dennis Lapso, a retired member of UAW Local 1250 in Brook Park, Ohio. All of the appellants are challenging the ratification procedures used by Local 1250 in December 2005 to

¹ The following UAW members are named as appellants in this appeal to the Public Review Board: Dennis Lapso (Local 1250, retired), Robert Ingalls (Local 182, retired), Joseph Haley (Local 600, retired), Filomena Venditti (Local 400, retired), Liviano Venditti (Local 400, retired), Douglas Kowalske (Local 600, retired), Judith Wraight (Local 600), Ali Canada (Local 849), Gary Walkowicz (Local 600), Phillip Burchart (Local 849), Shane Calkins (Local 849), Daniel Cobb (Local 600), Shane Herrell (Local 849), Allen Myers (Local 849), Charles Staley (Local 849), Willie Woods (Local 849), Murray Boyk (Local 600), Marjorie Harder (Local 400), David Dogonski (Local 600), Joseph Callahan (Local 879), Harold Corey (Local 600), and Ron Lare (Local 600).

obtain approval of a tentative agreement modifying the health care benefit provisions in the UAW-Ford National Agreement. Appellants are asking the PRB to order Local 1250 to rerun the ratification vote, because, they assert, the procedures followed at that Local Union disenfranchised a large number of eligible voters.²

On December 14, 2005, UAW Local 1250 President Tim Levandusky issued a bulletin to the Local's members regarding a ratification vote on a tentative agreement with Ford Motor Company changing certain provisions of the health care program in the UAW-Ford National Agreement. Levandusky stated that the International Union had directed the Local to turn in the results of the ratification vote by noon on Thursday, December 22, 2005. In order to accomplish this, Levandusky announced that the ratification vote would be conducted at the Union Hall on Tuesday, December 20, 2005, from 6:00 a.m. to 6:00 p.m. Levandusky further announced that shift meetings would be conducted at the Union Hall on December 20, during which benefit representatives would be available to answer questions.³ On December 15, 2005, Local 1250 issued another bulletin describing the changes to the health care program as follows:

“Changes for active workers

If the tentative agreement is ratified by active UAW-Ford members and approved by the court, active workers will forgo future pay increases through the deferral of 17 cents of future quarterly cost-of-living adjustments (COLA) and the 3 percent wage increase scheduled for September 2006. In addition, after the 17-cent deferral COLA deferral has been reached, an additional 2 cents of each subsequent quarterly COLA adjustment will be deferred.

Health care coverage for UAW-Ford active workers will continue with no changes, other than several administrative changes and increases in prescription drug co-payments.

Changes for retirees and surviving spouses

Retirees with Ford pension incomes of \$8,000 or less and whose Ford pension rate is \$33.33 or less per month per year of service will not be affected by the proposed changes. Their health care coverage will continue as is, except for administrative changes.

All other UAW-Ford retirees and surviving spouses will be required to pay monthly premiums of \$10 for individual

² Record, pp. 99-102.

³ Record, p. 10.

coverage and \$21 for family coverage. Deductibles and co-payments will be implemented.”⁴

On December 16, 2005, UAW President Ron Gettelfinger and Vice President Gerald Bantom sent a message to all members covered by the UAW-Ford National Agreement recommending ratification of changes to the health care benefits provided in the National Agreement.⁵ The specific changes are described in detail in a UAW Ford Report dated December 2005.⁶

A ratification tally sheet indicates that the total votes cast by all 29,543 members voting on the Agreement were 14,819 in favor of ratification and 14,724 opposed. The margin of victory is stated to be 50.20 percent.⁷ On December 22, 2005, the UAW National Ford Department announced that the health care proposal was approved by 51% of the members voting.⁸ The appellants appealed the ratification of the health care proposal to the International Executive Board (IEB). On January 22, 2006, attorney Ellis Boal submitted a statement in support of the appeal to the IEB on behalf of the appellants.⁹ Boal argued that the ratification process was flawed at the Local Union level, because the Local Unions were not given adequate time to conduct the ratification vote.¹⁰ Dennis Lapso filed a separate statement of reasons describing the specific problems faced by UAW Local 1250 in conducting the ratification vote.¹¹

Lapso reported that the Local Union officers returned from the National Ford Council meetings on Friday, December 16, 2005. He argued that this did not give the officers enough time to pass out the information bulletins to all of the members who were scheduled to be laid off on that day. Lapso maintained that some of the members did not even know there was to be a ratification vote. Lapso further complained that the election was conducted at the Local Union hall from 6:00 a.m. until 6:00 p.m. on December 20, but that there was no one at the hall to explain the agreement until 9:00 a.m. Lapso argued in addition that retirees should have been allowed to vote on the agreement.

Lapso also appealed to his Local Union membership to reject the results of the ratification vote conducted by the Local. The ratification tally sheet indicates that 63 percent of the members of Local Union 1250 approved ratification of the tentative agreement. Minutes of a Local 1250 membership meeting dated February 21, 2006,

⁴ Record, p. 11.

⁵ Record, p. 2.

⁶ Record, pp. 3-9.

⁷ Record, p. 14.

⁸ Record, pp. 15-16

⁹ Record, pp. 20-34.

¹⁰ Record, pp. 32-33.

¹¹ Record, p. 40.

report that Lapso argued that 2,000 active members of Local 1250 were disenfranchised because they were on temporary layoff at the time of the vote. Furthermore, he stated that the Local's 3,000 retirees should have had a voice in the decision to take away some of their benefits. According to the minutes, Lapso asserted that the Local Union should reject the ratification vote and tell the International Union that the Local did not appreciate being given five days to conduct a ratification election without knowing what was in the contract.¹² The minutes report that Local President Levandusky responded that no one protested the ratification process at the time of the vote. He acknowledged that some members were on layoff, but he said that the Local was able to get highlights of the tentative agreement into everybody's hands. The minutes report that when President Levandusky asked the membership to respond to Lapso's appeal, the membership turned it down.¹³

Lapso appealed the membership's action to the IEB on March 8, 2006, and designated attorney Ellis Boal as his counsel.¹⁴ Boal filed a statement in support of Lapso's appeal on behalf of all of the appellants addressed to President Gettelfinger's Administrative Assistant Dave Curson on April 18, 2006. Boal argued that the results of the ratification vote conducted by Local 1250 should be rejected because over half of the Local Union's plants were on temporary layoff at the time of the vote. According to Boal, Lapso reported that President Levandusky told Vice President Gerald Bantom at the National Ford Council meeting that it would be almost impossible to have a fair election in five days when half of the membership was laid off. According to Lapso, Bantom told Levandusky to do the best that he could.¹⁵ Boal referred to the language in Article 19, §3, of the International Constitution, which requires ratification votes to be conducted at a meeting called especially for that purpose or through another procedure designed to encourage greater participation of the membership. Boal stated:

“Obviously, holding the vote in the plant on five days' notice at a time when 2000 members were on a one-week layoff did not 'encourage greater participation of members in voting.' The vote could have been done by mail ballot. Alternatively, it could have been delayed until the first week of January when the plant was back to full strength. There was no reason to hurry, because the changes if approved were not expected to go into effect until mid-2006. The court class action was on hold at the beginning while Ford tried for a different judge.”¹⁶

¹² Record, p. 43.

¹³ Record, p. 43.

¹⁴ Record, p. 46.

¹⁵ Record, p. 47.

¹⁶ Record, p. 47.

President Levandusky responded to Lapso's appeal to the IEB in a letter addressed to Administrative Assistant Curson on June 2, 2006. Levandusky stated that the Local's plants were working on December 14, when the announcement was made about the ratification vote. He said that the only exception was the Casting Plant, where approximately 125 members were on layoff. Levandusky stated that these employees were informed about the ratification vote when they picked up their paychecks at the plant payroll office on December 16. Levandusky stated that all of the employees were informed about the ratification vote and the contents of the proposed changes to the National Agreement. He explained:

"...On Wednesday, December 14, after the meeting that was held in Detroit with the UAW National Ford Council, I immediately faxed a copy of the Benefit Highlights Booklet to my Local Union so my staff could start making copies of it for the same day distribution in the plants. Also, upon my arrival back to Cleveland at approximately 4 p.m., I dropped off a copy of the Benefit Highlights to a local printer who made an additional 3,500 copies. Additionally, a leaflet regarding explanation meetings and voting information (Attachment A) (Also see supplement Attachment B) was distributed in the plants starting with the afternoon shift followed by the midnight shift. The day shift received this information the next day, December 15, 2005. Both the Highlights and Information Bulletin were distributed by handing it out man to man. Therefore, by 6 p. m. on December 15, all members on site received this information. ..."¹⁷

Levandusky observed that the Local's retirees were not denied the right to vote, as asserted by Lapso; they were not eligible to vote.

The President's staff prepared a report on the appeal for the IEB based on the information submitted by the appellants and their counsel, the UAW National Ford and GM Departments, and Local Union 1250. Staff explained that in 2005, Ford Motor Company representatives approached the UAW Ford Department seeking modification of the health care provisions in the UAW-Ford National Agreement. Ford's representatives claimed that without some relief from its health care obligations the Company could be forced into bankruptcy.¹⁸ Initially, the UAW advised the Company that it would not reopen the existing agreements until negotiations began for the 2007 National Agreement. Ford then claimed that it had the legal right to modify health care provisions for retired members with or without the Union's consent. The Union denied that Ford had that right and threatened legal action. Ford eventually agreed to open its books to an independent study to demonstrate the need for immediate and desperate

¹⁷ Record, p. 67

¹⁸ Record, p. 111.

action. Ultimately, staff explained, the UAW was convinced that a modification of the health care package was necessary to keep Ford Motor Company operative for the long term.¹⁹

Staff reported that the parties reached a tentative agreement in December 2005. The agreement could not become effective until it was ratified by the active Ford membership and approved by the Court on behalf of the retirees. Therefore, on December 14, 2005, the UAW National Ford Council convened a meeting to seek authorization to take the tentative agreement to the membership for a vote. During this meeting, President Levandusky of Local 1250 raised concerns about the logistics of the vote at his Local Union. Staff reported:

“Local 1250 President Tim Levandusky advised Vice President Bantom that the units at his Local Union would be engaged in extensive layoffs the following week, and it would be difficult to conduct the explanatory meetings and ratification votes. Vice President Bantom acknowledged the difficulty of the situation and advised the President that he would have to do the best that he could do in light of the situation.”²⁰

Staff went on to describe the actions that Levandusky took to make certain that every member of the Local who was eligible to vote on the ratification knew about the scheduled vote and had a copy of the bulletin describing the changes to the contract, as follows:

“Levandusky swung immediately into action. He contacted his Local Unit Representatives, faxed them the ‘summary highlights’ for duplication, an informational report (Exhibit B) to be distributed to the membership with a schedule (Exhibit C) advising the membership that explanatory meetings would take place at 7:45 a.m., 2:00 p.m., and 3:30 p.m. on December 20, 2005, and that ratification voting would take place at the same location on the same date from 6:00 a.m. to 6:00 p.m.”²¹

Staff reported that the officials of Local Union 1250 handed a copy of these materials to each person working in all three units prior to the end of the day shift on Thursday, December 16. The information was given to the 125 employees who were on layoff from the Casting Plant when they came to pick up their paychecks on December 16.²²

¹⁹ Record, p. 112.

²⁰ Record, p. 114.

²¹ Record, p. 114.

²² Record, p. 118.

Staff explained the Union's decision to expedite the ratification process as follows:

"On December 14, 2005, once the National Ford Council supported the tentative amendments to the National CBA, the International Union made a decision that it was in the best interest of the membership to conduct ratification prior to the long Christmas shutdown. The national press was heavily reporting on the auto industry, the newly ratified agreement at General Motors, and the tentative pact at Ford. It was reasonably believed that if the true information was presented to the membership prior to the long break before those facts became distorted through so many other avenues, the will of the membership would more clearly be heard. It was announced that ratification must be completed by December 22, 2005. The Council accepted the dates established even though there were some delegates that voiced individual concerns over the dates set forth, including Local 1250 President Tim Levandusky."²³

Staff observed that Vice President Bantom recognized that any time a National Agreement is voted on, one or more of the sixty separate locations involved may be disadvantaged by the timing. Staff commented:

"...Unfortunately, there is rarely a week in such a large system that is fully operational and, in these turbulent times in the auto industry, no one owns the crystal ball that could determine what week that may be."²⁴

Staff reported that Local 1250 responded to the difficult situation in an admirable way, so that the information about the ratification vote was distributed while most of the units were still operating. Staff noted that not a single active member of Local Union 1250 joined in Lapso's appeal or claimed to have been disenfranchised.²⁵ Staff found no evidence of any violation of the Constitution or any established UAW policy in the ratification vote conducted at UAW Local 1250, and it denied the appeal.²⁶

The IEB adopted staff's report on August 15, 2006. Attorney Ellis Boal has now filed an appeal to the Public Review Board (PRB) on behalf of Dennis Lapso and the other appellants.

²³ Record, p. 157.

²⁴ Record, p. 158.

²⁵ Record, pp. 158-159.

²⁶ Record, p. 160.

ARGUMENT

A. Attorney Ellis Boal on behalf of Dennis Lapso, et al.:

The UAW National Ford Department reached an agreement with Ford Motor Company granting health care concessions in December, subject to membership ratification. On December 14, the UAW National Ford Council met with representatives of the Ford local unions. The Ford locals were told to get the ratification done by December 22, a shorter period than the 13 days allowed to the GM locals to ratify similar concessions in the GM National Agreement. At the December 14 meeting, Local 1250 President Tim Levandusky protested the time frame. Dennis Lapso reported that Levandusky stated that it would be “almost impossible” to complete the ratification vote during this period, because of a scheduled layoff during the following week. Vice President Bantom ordered Levandusky to proceed anyway. The decision of the IEB asserts that the Local made a concerted effort and accomplished the “almost impossible” task of distributing all of the relevant information to the Local membership prior to the scheduled layoff.

The IEB does not give any details about how the Local accomplished this task. We have attempted to obtain information from the Union to support its claim that all of the active members of Local 1250 were informed about the ratification vote and the contents of the tentative agreement. The IEB’s decision refers to a telephone call made by President Levandusky following the meeting on December 14, but it does not identify the date, time, contents, or participants in the call. The timing is important because the distribution of information did not begin until after the call, and it would help to determine whether the Local actually succeeded in notifying all the members. The IEB stated that “nearly” all of the plants represented by Local 1250 were operating when the Local distributed the information, but it does not give any specifics. There is no detailed factual support for the IEB’s finding that in two days or less after Levandusky’s telephone call to the Local, all active members had access to summary highlights and meeting notices. Furthermore, the IEB has not rebutted Lapso’s assertion that members were permitted to begin voting at 6:00 a.m., while the first shift meeting to explain the contents of the agreement did not actually begin until 9:00 a.m. The voting which took place before the first shift meeting violated the requirement of Article 19, §3, that the vote should be conducted at a meeting called especially for that purpose.

As one would expect in a union, Article 19, §3, of the International Constitution emphasizes the importance of membership participation in ratification votes. The applicable language states:

“...After negotiations have been concluded with the employer, the proposed contract or supplement shall be submitted to a 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. ...”

The only justification that the IEB has given for proceeding headlong to conduct the ratification vote at Local Union 1250 is pressure from the national media. No specific example of media distortion of the heavily reported GM or Ford deal is given. In fact, the Union used pro-business media to spread its message. The bulletin distributed to the membership of Local Union 1250 reprinted an article from the December 15, 2005, edition of the *Wall Street Journal* about the tentative agreement. The *Journal* article predicts a close vote. It states:

“The UAW might have its work cut out getting the plan approved: On the GM vote, 61% of workers approved the concessions, compared with the more than 90% the union usually gets.”

Between the mandate to maximize membership participation and a vague concern about media distortion there is no doubt which principle should have prevailed.

Unlike every previous national ratification vote in the automobile industry, the UAW expected this one to be close. It should, therefore, have been particularly careful to maximize membership participation. There is no Constitutional requirement that locals must all vote during the same week. When Levandusky raised his concerns about the layoffs at Local 1250, the Local should have been allowed to maximize its members' opportunity to participate in the ratification vote, either with a mail ballot, or by delaying the polling to the first of the year when the Local was back to full strength. At the very least, the matter should have been referred to the Regional Director for his assessment.

There is no question that 2000 eligible voters were scheduled to be laid off on the day of the ratification vote. Undoubtedly, the most dedicated of the 2000 eligible laid off members did come in and vote. But equally likely, at least 95 of them did not. The tabulation of the votes showed that the contract was ratified nationally by a margin of just 95 votes. The percentage of votes cast in favor of the contract at Local 1250 was 63%. This means that if the votes cast by Local 1250 were deleted from the national tally, the combined results from the other local unions would have defeated the contract. Because a sufficient number of voters may have been discouraged from voting by the arrangements at Local Union 1250 to have affected the outcome of the national vote, the ratification should be rerun in this Local under conditions where active members have a reasonable opportunity to vote.

B. International Union, UAW:

Appellants seek review of the Constitutionality of the ratification vote on a tentative agreement modifying the UAW-Ford National Agreement conducted by Local

1250 on December 20, 2005. The agreement ratified by the members provided for deferral of a general wage increase scheduled for September 2006 and deferral of a portion of COLA increases so that those funds could be used to fund retiree health care. The tentative agreement also provided for changes in retiree health care benefits provided to current and future retirees.

Appellants argue that special voting procedures should have been adopted at Local 1250 because of an extensive layoff that was scheduled at the time of the ratification vote. None of the appellants are Local 1250 members eligible to vote on the ratification of agreements. All are either members of other local unions or retirees. Appellant Lapso appealed the Local 1250 ratification vote before the Local membership on February 12, 2006, and the membership rejected the appeal. Not a single UAW member eligible to vote in the Local 1250 election has joined in this appeal of the membership's action.

This appeal should be denied. Appellants have not identified any violation of the International Constitution in connection with the ratification vote at Local Union 1250. The record shows that Local 1250 members voted at a special meeting called for the purpose of ratifying the tentative agreement as required by Article 19, §3, of the International Constitution. In addition, extraordinary efforts were made to ensure that all members had an opportunity to cast an informed vote.

C. Attorney Ellis Boal on behalf of Dennis Lapso, et al:

The tally sheets for the ratification vote at Local Union 1250 are not in the record, but President Gettelfinger has not denied appellants' estimate of the tally as 693 to 507 in favor of the Agreement, so we may assume that estimate is substantially correct. It is clear, therefore, that without including the votes from Local 1250, the Ford Agreement would have been defeated nationally.

The IEB decision states that all members "had or had access to" voting information not later than December 16, 2005. This cannot be affirmed from the information in the record. Levandusky says that he ordered 3500 print copies of the highlights only after his arrival in Cleveland at 4:00 p.m. on December 14. There is no indication what day or what time the printing job was done. The attachments identified as A and B, which were said to have been distributed to all workers by December 15, bear three different dates ranging from December 14 to December 16. No affidavit or signed statement of any Local representative attests that he or she personally supervised or carried out the distribution or that it covered all areas of all the plants prior to December 15. As to the 125 members already on layoff in the Casting Plant, President Levandusky asserts that they were given voting information when they picked up their paychecks on December 16, but there is no indication of how many may not have come in for their checks on that day, or may not have come in at all because they received their check by mail or direct deposit.

Further factual inquiry is necessary if this appeal is to turn on the issue of the IEB's finding that the members were fully informed. Lack of information is not the only basis for this appeal, however. Of greater concern to appellants is the fact that voter turnout was not maximized and that the voting started three hours before the informational meetings.

In his response to this appeal, President Gettelfinger points out that no active member of Local 1250 joined in this appeal. It is true that appellants did not solicit statements from active members on layoff the week of the ratification attesting that they were discouraged from voting. Appellants do not see this as a major consideration, however. Lapso and the other 21 appellants from other locals have standing to appeal the ratification, because the order to proceed with the vote came from the UAW International Union rather than from the Local. The vote at Local Union 1250 affected the outcome of the ratification vote nationally. The UAW does not contest appellants' point that at least 95 of the members on layoff at the time of the vote, who would have voted under reasonable conditions, did not vote. The voting schedule mandated by the International Union minimized rather than maximized voter participation. Even after the International Union was alerted to the problem at Local Union 1250, it swept the issue aside rather than referring it to the Ohio Regional Director, who had the authority to deal with it. These circumstances are clear from the record, so the fact that appellants did not gather additional appellants or affidavits from potential voters is not significant.

DISCUSSION

It is clear from this record that President Levandusky and his staff at Local Union 1250 took extraordinary steps to ensure that every member of Local 1250 who was eligible to vote on the amendment to the UAW-Ford National Agreement received information about the contents of the amendment and the procedures for ratification. Appellants do not suggest that there was any bad faith or any improper attempt to sway the outcome of the ratification vote on the part of the Local Union officials who organized the vote at Local 1250. Appellants simply suggest that the Local did not have adequate time to make certain that each eligible voter was fully informed.

It is true, as appellants have argued, that we cannot conclude with absolute certainty on the basis of this record that every member of the Local was informed about the upcoming vote. It may also be true that some members, who might otherwise have voted, did not vote because the date of the ratification vote coincided with a scheduled layoff at the plants represented by Local Union 1250. We are satisfied, however, on the basis of this record that the results of the ratification vote at Local 1250 reflected the will of the active membership.

The contents of the tentative agreement and its ratification by a very narrow margin were well publicized. The fact that Local 1250's approval of the amendment by a margin of 63 percent tipped the balance in favor of its approval nationally would have been apparent to the members of Local 1250. Yet, the active membership did not challenge the results of the vote or raise questions about the procedures for ratification

followed at Local 1250. Appellant Lapso raised his issues before the membership and the membership rejected his appeal. We do find it significant that no active member of UAW Local 1250 joined in this appeal. If a substantial number of active members opposed to ratification of the amendment believed that their voices had been silenced by the circumstances at Local Union 1250, some of them would have objected. The fact that no active member of Local 1250 joined in this appeal supports the conclusion that the membership accepted the process and the result. There has been no showing in this record that Article 19, §3, of the International Constitution has been violated.

The decision of the IEB is affirmed.