

**Ford Motor Company and Joseph Bellino  
International Union, United Automobile, Aerospace  
and Agricultural Implement Workers of America (UAW)  
and its Local 36 and Joseph Bellino.  
Cases 7-CA-17633 and 7-CB-4745**

19 March 1984

**DECISION AND ORDER**

**BY MEMBERS ZIMMERMAN, HUNTER, AND  
DENNIS**

On 27 January 1981 Administrative Law Judge Joel A. Harmatz issued the attached decision. The General Counsel filed exceptions and a supporting brief, and Respondent Unions filed cross-exceptions and a supporting brief.<sup>1</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions, cross-exceptions, and briefs, and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

The complaint alleges that Respondent Unions (Respondent International and Respondent Local) violated Section 8(b)(1)(A) and (2) of the Act, and that Respondent Employer violated Section 8(a)(3) and (1) of the Act, by maintaining and giving effect to a provision in their collective-bargaining agreement which grants "preferential seniority," or superseniority, for purposes of layoff and subsequent recall to, inter alia, Respondent Local's financial secretary and treasurer. The judge found that these named officers played a vital role in the "representational interests" of and "existence of services available to" employees because of their shared "immediate" responsibility for the financial existence of Respondent Local. He therefore recommended dismissing the complaint, relying on, inter

<sup>1</sup> By letter dated 4 November 1983 Respondent Unions brought to the Board's attention the court opinion in *Benson v. General Motors Corp.*, 716 F.2d 862 (11th Cir. 1983), which they asserted held that Sec. 10(b) begins to run when the challenged seniority status of an employee is first granted, and that later manifestations of such seniority do not give rise to a new 10(b) period. Respondent Unions assert that Sec. 10(b) bars the prosecution of the instant case, and that they have been raising 10(b) issues as a matter of course in superseniority cases.

A review of the pleadings, the record evidence, the judge's decision, and Respondent Union's cross-exceptions and brief in support does not reveal that Sec. 10(b) was raised as a defense, or that it has been previously considered in this case. Accordingly, Respondent Unions are not entitled to raise this issue now. See, e.g., *McKesson Drug Co.*, 257 NLRB 468 fn. 1 (1981). In addition, we find Respondent Unions' contentions are without merit. See also *Auto Workers (Scovill, Inc.)*, 266 NLRB 952, 953 (1983).

alia, *Limpco Mfg.*,<sup>2</sup> *American Can Co.*,<sup>3</sup> *Allen Testproducts*,<sup>4</sup> and *Otis Elevator Co.*<sup>5</sup> For the reasons that follow, we do not agree with the dismissal and find instead that the Respondent violated the Act as described below.

As more fully set forth by the judge, the facts show that the collective-bargaining agreement between the Respondents contains a provision which grants seniority for purposes of layoff and recall to union officers in specified offices.<sup>6</sup> In essence, the superseniority provision involved here allows union officers, including, inter alia, Respondent Local's financial secretary and treasurer, preferential seniority in the case of layoff and recall, notwithstanding the seniority list at the plant at which they work. Under this superseniority provision, Respondent Local's treasurer George Morgan and its financial secretary Donald Mills, both of whom were afternoon-shift inspectors, were able to maintain their respective positions during a massive layoff at Respondent Employer's Wixom, Michigan facility in March and April 1980. It is undisputed that without the operation of the superseniority provision Mills would have been laid off and Morgan would have been reduced or bumped to a production job. It is clear that employees more senior than Mills and Morgan were downgraded solely because of the superseniority provision.

As heretofore noted, the judge found that both financial secretary and the treasurer performed numerous duties which entitled them to exercise superseniority rights.<sup>7</sup> While recognizing that neither

<sup>2</sup> *Electrical Workers UE Local 623 (Limpco Mfg.)*, 230 NLRB 406 (1977), enfd. sub nom. *D'Amico v. NLRB*, 582 F.2d 820 (3d Cir. 1978).

<sup>3</sup> 235 NLRB 704 (1978). But compare *American Can Co.*, 244 NLRB 736 (1979).

<sup>4</sup> *Industrial Workers AIW (Allen Testproducts)*, 236 NLRB 1368 (1978).

<sup>5</sup> 231 NLRB 1128 (1977).

<sup>6</sup> The relevant provision of the collective-bargaining agreement reads as follows:

**Layoff & Recall of Union Officers**

Notwithstanding their positions on the seniority list, all local building or unit officers (that is, the President, Vice-President, Recording Secretary, Financial Secretary, Treasurer, Sergeant-at-Arms, Guide and three (3) Trustees) shall have preferential seniority in their respective units in case of layoff and subsequent recall. . . .

<sup>7</sup> The judge found, and the record indicates, that the financial secretary had the following duties and responsibilities, among others: maintenance of all financial and membership records; filing of all governmental reports; maintenance of Respondent Local's property and equipment; collection of members' arrearages; approving and processing vouchers for disbursements, including strike benefits; receipt of dues, initiation and other fees, fines, and other income; and administration of dues checkoff. The treasurer had the following duties and responsibilities: depositing income into Respondent Local's account; verifying expense vouchers; and signing checks to cover these vouchers. Together, the financial secretary and treasurer prepared and delivered monthly and yearly financial reports to the membership. They also participated in audits. Pursuant to Respondent Local's practices, both officers, together with three other elected officials, comprised the "top five," who met to discuss policy, including grievances and fair representation matters. Both Mills and Morgan performed other functions on a voluntary basis, such as answering questions about the contract.

the treasurer nor the financial secretary had a direct role in the processing of grievances, the judge concluded that the "financial well being" of Respondent Unions was intimately bound up with the quality and existence of services available to union members, including such services as taking grievances to arbitration, providing expert assistance in collective-bargaining responsibilities, and protecting other vital interests. Thus, the judge determined that the superseniority provision here was a legitimate exercise of union concern which did not unlawfully discriminate in favor of unionism. As indicated, we reverse that conclusion.

The Board has recently reconsidered the issue of superseniority as construed by *Limpco Mfg.*, above, and related cases, and has decided to overrule those cases. In *Gulton Electro-Voice*,<sup>8</sup> the Board concluded that "superseniority accorded to officers who do not perform steward or other on-the-job contract administration functions is not permissible because it unjustifiably discriminates against employees for union-related reasons."<sup>9</sup> The Board emphasized that it was not "in the business of assuring that a union has an efficient and effective organization to conduct collective bargaining" where such assurances discriminated impermissibly against individual employee rights.<sup>10</sup> In sum, the Board held in *Gulton*:

We will find unlawful those grants of superseniority extending beyond those employees responsible for grievance processing and on-the-job contract administration. We will find lawful only those superseniority provisions limited to employees who, as agents of the union, must be on the job to accomplish their duties directly related to administering the collective-bargaining agreement.<sup>11</sup>

In the instant case, the judge extensively analyzed the duties of the treasurer and financial secretary and correctly concluded that none of those duties required a direct role in grievance processing. We agree. We also agree with the General Counsel that these two union officials do not figure in the daily representational scheme at Respondent Employer's facility so as to accord legality to their superseniority.<sup>12</sup>

<sup>8</sup> 266 NLRB 406 (1983). Accord: *Auto Workers (Scovill, Inc.)*, 266 NLRB 952.

<sup>9</sup> 266 NLRB at 406.

<sup>10</sup> Id. (quoting from dissent in *Limpco*, 230 NLRB at 409).

<sup>11</sup> Ibid.

<sup>12</sup> In *Gulton*, the Board specifically found that the duties of a recording secretary and financial secretary-treasurer, which included, inter alia, administering dues withholding plans, depositing income, and other financial responsibilities, did not involve on-the-job activities. The duties performed by the treasurer and financial secretary here likewise, we conclude, do not involve on-the-job activities.

Accordingly, we find that, by maintaining and enforcing the superseniority provision with respect to the treasurer and the financial secretary, Respondent Local and Respondent International have violated Section 8(b)(1)(A) and (2) of the Act, and Respondent Employer has violated Section 8(a)(3) and (1) of the Act. Furthermore, by according George Morgan and Donald Mills superseniority under the unlawful provision to the detriment of other unit employees, Respondent Local and Respondent International further violated Section 8(b)(1)(A) and (2), and Respondent Employer further violated Section 8(a)(3) and (1).

#### THE REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

We have found that the superseniority provision here in dispute is unlawful and we shall therefore order that Respondent Local and Respondent International cease and desist from maintaining and enforcing such provision in the bargaining agreement with Respondent Employer. We shall also order that Respondent Employer cease and desist from maintaining and enforcing such provision in its bargaining agreement with Respondent Unions. To remedy the discriminatory application of the unlawful provision we shall order that Respondent Employer offer to reinstate any employees who would not have been laid off or downgraded but for the unlawful assignment of superseniority to the treasurer and financial secretary, and that the Respondents jointly and severally make affected unit employees whole for any loss of earnings they may have sustained as a result of the discrimination against them. We shall also order that the Respondents expunge from their files any reference to the unlawful discrimination herein, and shall notify the affected employees that this has been done and that the unlawful discrimination will not be used as a basis for future personnel actions against them.<sup>13</sup> Backpay shall be computed in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as provided in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). Also, in order to remedy in full the effects of the Respondents' unlawful conduct, Respondent Employer's backpay obligation shall run from the ef-

<sup>13</sup> See *Sterling Sugars*, 261 NLRB 472 (1982); *Boilermakers Local 27 (Daniel Construction)*, 266 NLRB 602 (1983); *R. H. Macy & Co.*, 266 NLRB 858 (1983).

fective date of the discrimination against affected unit employees to the time it makes such recall offers, while Respondent Unions' obligations shall run from such effective date to 5 days after the date of their notification to Respondent Employer that they have no objection to the recall or upgrading of unit employees affected by the unlawful grant of superseniority to union officers. Finally, we shall order that Respondent Employer cease and desist in any like or related manner from interfering with, restraining, or coercing its employees in the exercise of rights guaranteed by Section 7 of the Act, and that Respondent Local and Respondent International likewise cease and desist from restraining or coercing employees they represent in the exercise of those same rights.

#### CONCLUSIONS OF LAW

1. Ford Motor Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 36 are labor organizations within the meaning of Section 2(5) of the Act.

3. By maintaining and enforcing a seniority clause in their collective-bargaining agreement according Respondent Local's treasurer and financial secretary superseniority, Respondent Employer and Respondent Unions have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(a)(3) and (1) and Section 8(b)(1)(A) and (2) of the Act, respectively.

4. By according George Morgan and Donald Mills superseniority to the detriment of other unit employees under the seniority provision found unlawful herein, Respondent Employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act, and Respondent Local and Respondent International have engaged in, and are engaging in, unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### ORDER

The National Labor Relations Board orders that  
A. Respondent Employer, Ford Motor Company, Wixom, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining and enforcing collective-bargaining provisions with Respondent Unions, Interna-

tional Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 36, according Respondent Local's treasurer and financial secretary superseniority.

(b) Discriminating against any employees by retaining or recalling Respondent Local's treasurer or financial secretary instead of other employees when such other employees have greater seniority in terms of length of employment than has one of the aforementioned union officials.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Jointly and severally with Respondent Unions make any unit employees whole for any loss of earnings they may have suffered by reason of the discrimination against them, such lost earnings to be determined in the manner set forth in the section of this Decision entitled "The Remedy," and offer to reinstate or recall any employees who would not have been laid off or would have been recalled but for the unlawful assignment of superseniority to Respondent Local's treasurer or financial secretary.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Expunge from its files any reference to the discrimination against employees affected by the superseniority as applied to Respondent Local's treasurer and financial secretary, and notify them in writing that this has been done and that evidence of the unlawful discrimination will not be used as a basis for future personnel actions against them.

(d) Post at its establishment in Wixom, Michigan, copies of the attached notice marked "Appendix A."<sup>14</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent Employer's authorized representative, shall be posted by Respondent Employer immediately upon receipt and maintained for 60 consecutive days in conspicuous places in-

<sup>14</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

cluding all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Employer to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Post at the same places and under the same conditions as set forth in paragraph A,2,(d), above, as soon as forwarded by the Regional Director, copies of the attached notice marked "Appendix B."

(f) Mail signed copies of the attached notice marked "Appendix A" to the Regional Director for posting by Respondent Unions.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Employer has taken to comply.

B. Respondent Unions, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 36, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining and enforcing these provisions in its collective-bargaining agreement with Respondent Employer, Ford Motor Company, according Respondent Local's treasurer and financial secretary superseniority with respect to layoff and recall or for any other purposes.

(b) Causing or attempting to cause Respondent Employer to discriminate against employees in violation of Section 8(a)(3) of the Act.

(c) In any like or related manner restraining or coercing the employees of Respondent Employer in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act.

(a) Jointly and severally with Respondent Employer make any unit employees whole for any loss of earnings they may have suffered by reason of the discrimination against them, such lost earnings to be determined in the manner set forth in the section of this Decision entitled "The Remedy."

(b) Notify Respondent Employer in writing that they have no objection to reinstating the affected unit employees who but for the unlawful assignment of superseniority would not have been laid off or reassigned.

(e) Expunge from their files any reference to the discrimination against employees affected by the superseniority as applied to Respondent Local's treasurer and financial secretary, and notify them in writing that this has been done and that evidence of the unlawful discrimination will not be used as a basis for future actions against them.

(d) Post at their offices and meeting halls used by or frequented by their members and employees it represents at Respondent Employer's Wixom, Michigan facility copies of the attached notice marked "Appendix B."<sup>15</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by Respondent Unions' authorized representative, shall be posted by the Respondent Unions immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to the above-described members and employees are customarily posted. Reasonable steps shall be taken by the Respondent Unions to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Post at the same places and under the same conditions as set forth in paragraph B,2,(d), above, as soon as forwarded by the Regional Director, copies of the attached notice marked "Appendix A."

(f) Mail signed copies of the attached notice marked "Appendix B" to the Regional Director for posting by Respondent Employer.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Unions have taken to comply.

<sup>15</sup> See fn. 14, above.

## APPENDIX A

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT maintain and enforce any clause in our collective-bargaining agreement with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 36 according Local's treasurer and financial secretary superseniority with respect to layoff and recall or other considerations.

WE WILL NOT discriminate against any employees by failing to retain or recall them instead of the Local's treasurer or financial secretary when such union officials do not in fact have greater seniority in terms of length of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights protected by Section 7 of the Act.

WE WILL offer to those who were discriminatorily laid off instead of the Local's treasurer or financial secretary immediate and full reinstatement to

their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL expunge from our files any reference to the discrimination against employees affected by the superseniority as applied to the Local's treasurer and financial secretary and WE WILL notify them in writing that this has been done and that evidence of the discrimination will not be used as a basis for future personnel actions against them.

WE WILL jointly and severally with the Unions make any unit employees whole for any loss of earnings they may have suffered as a result of the discrimination against them, with interest.

#### FORD MOTOR COMPANY

#### APPENDIX B

#### NOTICE TO EMPLOYEES AND MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT maintain and enforce any clause in our collective-bargaining agreement with Ford Motor Company according Local's treasurer and financial secretary superseniority with respect to layoff and recall and other considerations.

WE WILL NOT cause or attempt to cause Ford Motor Company to discriminate against any employees by requiring that the collective-bargaining agreement be enforced so as to not retain them or recall them instead of the Local's treasurer or financial secretary when the Local's treasurer or financial secretary does not in fact have greater seniority in terms of length of employment.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their rights protected by Section 7 of the Act.

WE WILL notify Ford Motor Company that we have no objection to reinstating the affected unit employees who but for the unlawful assignment of superseniority would not have been laid off or reassigned.

WE WILL expunge from our files any reference to the discrimination against employees affected by the superseniority as applied to the Local's treasurer and financial secretary, and WE WILL notify them in writing that this has been done and that evidence of the discrimination will not be used as a basis for future personnel actions against them.

WE WILL jointly and severally with Ford Motor Company make any unit employees whole for any

loss of earnings they may have suffered as a result of the discrimination against them, with interest.

#### INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORK- ERS OF AMERICA (UAW) AND ITS LOCAL 36

#### DECISION

#### STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge. This proceeding was heard by me in Detroit, Michigan, on December 1, 1980, on unfair labor practice charges filed on April 9, 1980, and a consolidated complaint issued on May 29, 1980, alleging that Respondent Unions violated Section 8(b)(1)(A) and (2) of the Act and Respondent Employer violated Section 8(a)(3) and (1) of the Act by maintaining and giving effect to a provision of their collective-bargaining agreement which insofar as material afforded "preferential seniority . . . in case of a layoff and subsequent recall" to the Local Union's financial secretary and treasurer. In its duly filed answer, Respondents denied that any unfair labor practices were committed. Following close of the hearing, briefs were filed on behalf of the General Counsel and jointly on behalf of the Respondent International Union and Respondent Local 36.

On the entire record in this proceeding, having had the opportunity to observe directly the witnesses while testifying and their demeanor, and on consideration of the posthearing briefs, I make the following

#### FINDINGS OF FACT

##### I. JURISDICTION

Respondent is a Delaware corporation, with a principal office and place of business in the city of Dearborn, Michigan, and a plant located in Wixom, Michigan, the sole facility involved in this proceeding, from which it is engaged in the manufacture, sale, and distribution of automobiles, trucks, automotive parts, and related products. During the calendar year 1979, a representative period, Respondent in the course of said operations purchased and caused to be transported and delivered to its Michigan plants goods and materials valued in excess of \$500,000, of which goods and materials valued in excess of \$50,000 were transported and delivered to its plant in Wixom, Michigan, directly from points located outside the State of Michigan.

The complaint alleges, the Respondents at the hearing stipulated, and I find that Respondent Employer is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

##### II. THE LABOR ORGANIZATIONS INVOLVED

The complaint alleges, Respondents admit, and I find that International Union, United Automobile, Aerospace

and Agricultural Implement Workers of America (UAW) and its Local 36 are and have been at all times material herein labor organizations within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICES

The complaint in this proceeding challenges a provision which has appeared in successive collective-bargaining agreements between Respondents since 1941 as unlawfully impeding individual employee rights guaranteed by Section 7 of the Act. Said allegations of discrimination are founded upon *Dairylea Cooperative*, 219 NLRB 656 (1975), enfd. 531 F.2d 1162 (7th Cir. 1976), where a Board majority (Chairman Murphy, Members Jenkins, Kennedy, and Penello, with Member Fanning dissenting) for the first time intervened with respect to collectively negotiated terms which bestowed special employment benefits on union officials. In that case the Board deemed unlawful a contractual provision which afforded union stewards superseniority which not only protected against layoff and recall, but was operable as to other employment advantages, such as overtime bidding, route selection, vacation selection, and shift preference. The Board, in finding that such an arrangement was presumptively unlawful, alluded to the statutory policy requiring insulation of employees' job benefits from their organizational activity,<sup>1</sup> and concluded that "in view of the inherent tendency of superseniority clauses to discriminate against employees for union-related reasons, and thereby to restrain and coerce employees with respect to the exercise of their rights protected by Section 7 of the Act, we do find that superseniority clauses which are not on their face limited to layoff and recall are presumptively unlawful, and that the burden of rebutting that presumption (i.e., establishing justification) rests on the shoulders of the party asserting their legality."<sup>2</sup> In said holding, however, the Board conceded as follows: ". . . we are aware that it is well established that steward superseniority limited to layoff and recall is proper even though it, too, can be described as typing to some extent an on-the-job benefit to union status."<sup>3</sup>

While the instant case does not involve union stewards, it does involve key elected officials of the Local union; namely, the financial secretary and treasurer, who, by virtue of contractual superseniority during a major layoff, were excluded therefrom and permitted to retain their classifications, to the detriment of other workers with greater continuous service. The General Counsel's challenge to this application of the contract rests primarily on the fact that formal duties of the treasurer and financial secretary did not entail steward-like functions or direct responsibility with respect to the grievance machinery. The General Counsel argues further that the performance of their official union functions did not require continued presence on the job in their prelayoff classifications, and hence the grant of superseniority served no statutory interest and was inherently discrimi-

natory under the Act as an employment-based reward for union activity.

By way of background it is noted that the above claim arises in a plant which, prior to the layoff in April 1980, was manned by a production and maintenance unit consisting of in excess of 5000 employees. The bargaining relationship between Respondents was one of long standing dating back some 40 years, with the Wixom plant being a mere segment of industrywide bargaining which defined the terms of employment for some 120,000 to 180,000 Ford employees. On the union side, the terms applicable are administered by various local unions jointly with the International Union and are memorialized in a master working agreement<sup>4</sup> which covers the nationwide bargaining unit as well as local agreements, including that governing the Wixom plant.<sup>5</sup>

The provision under interdict by the instant complaint first appeared in agreements between the parties in 1941, and since that date has reappeared in negotiated contracts, which were ratified by the membership, with revisions of a minor and nonmaterial nature. Since its source lies in the national agreement, superseniority for union officials is part of an industrial scheme affecting some 120,000 employees. The clause in article VIII under scrutiny provides in material part as follows:

#### Section 19—Layoff and Recall of Union Officers

Notwithstanding their positions on the seniority list, all local building or unit officers (that is, the President, Vice-President, Recording Secretary, Financial Secretary, Treasurer, Sergeant-at-arms, Guide and three (3) Trustees) shall have preferential seniority in their respective Units in case of a layoff and subsequent recall, provided that there is work available which they can perform. . . .<sup>6</sup>

The foregoing clause was implemented between March and April 1980, when a massive layoff at the Wixom plant cut back some 2800 jobs. At the time, George Morgan, the treasurer of Local 36, and Donald Mills, the financial secretary of Local 36, were afternoon shift inspectors. By virtue of article VIII, section 19, Morgan and Mills were able to maintain their positions as "inspectors" on the afternoon shift. Had they not exercised superseniority, Mills would have been laid off, while Morgan would have been reduced or bumped to a production job, and Respondents concede that more senior employees were downgraded solely by virtue of this exercise of superseniority.

In *Dairylea*, supra, the Board acknowledged that superseniority limited to layoff and recall may lawfully be extended to those holding the position of shop steward on "the ground that it furthers the effective administration of bargaining agreements on the plant level by encouraging the continued presence of the steward on the job."<sup>7</sup> Here, the General Counsel contends that the treat-

<sup>1</sup> See, e.g., *Radio Officers v. NLRB*, 347 U.S. 17 (1954); *Scofield v. NLRB*, 394 U.S. 423, 429 fn. 5.

<sup>2</sup> 219 NLRB at 658.

<sup>3</sup> *Ibid.*

<sup>4</sup> See Jt. Exh. 1.

<sup>5</sup> See Jt. Exh. 3.

<sup>6</sup> See Jt. Exh. 1.

<sup>7</sup> 219 NLRB at 658.

ment accorded Mills and Morgan was excessive as their duties did not formally relate to the processing of grievances or contract administration in degree sufficient to "resemble representational functions as contemplated by the Board in *Dairylea* . . . or its progeny," and, further, that the protection conferred in this instance extended beyond layoff and recall by insulating Mills and Morgan from bumping by other more senior employees. In this latter respect, the General Counsel argues that the spirit of Board law bars protection against bumping except in the case of stewards or those directly engaged in the representation process or, at a minimum, where the performance of such representational functions would be impeded by downgrading.

Weighing against these arguments is the fact that, since *Dairylea*, a divided Board has broadened the area in which superseniority could be extended lawfully to union officials who were neither stewards nor engaged directly in the processing of grievances. Thus, in *Electrical Workers UE Local 623 (Limpro Mfg.)*, 230 NLRB 406 (1977),<sup>9</sup> a Board majority (Chairman Fanning, Members Murphy and Walther, with Members Jenkins and Penello dissenting) dismissed allegations of discrimination where the "recording secretary" of an amalgamated local representing some 230 to 250 members avoided layoff solely through application of a superseniority clause in a collective-bargaining agreement. This, despite the fact that the recording secretary had no formal responsibility in connection with the grievance process and did not perform steward-type functions. In so holding, the majority stated as follows:

In this regard, we do not consider that the administration of the collective-bargaining agreement is limited solely to grievance processing or other "steward-type" duties performed at the workplace. What is at stake is the effective and efficient representation of employees by their collective-bargaining representatives. Certainly, the representational activities carried out by union officials involved in the administration of the collective-bargaining agreement on behalf of employees extend beyond the narrow confines of grievance processing. These encompass at the very least a functioning local to assert the presence of the union on the job. The Act guarantees employees the right to be so represented through the collective-bargaining process. In fact, perhaps the most important union officer, the president, is usually not involved in grievance proceedings. We shall not therefore presume . . . that union officers, even though they may not perform steward-type duties, are not as involved as stewards in the administration of the collective-bargaining agreement. On the contrary, we believe that, once it has been initially demonstrated that the official responsibilities of the union officer in question bear a direct relationship to the effective and efficient representation of union employees, then this officer is

entitled to the benefit of the same presumption afforded to union stewards.<sup>9</sup>

Subsequently, the General Counsel's burden as defined in *Limpro*, supra, was broadened measurably. Thus, in *American Can Co.*, 235 NLRB 704 (1978), a panel majority (Chairman Fanning and Member Truesdale, with Member Penello dissenting) upheld the implementation of contractual provisions conferring superseniority and protecting against layoff, inter alia (1) a "guard" whose duties were "to take charge of the door and see that no one enters who was not entitled to do so," and (2) trustees whose duties were "to have charge of the hall and all property of the local union . . . and perform such other duties as the local union may require." The panel majority in rejecting the contention that the grant of superseniority to the guard and trustees was overly broad, and hence beyond the limited exception permitted under the Act, actually intensified the presumption of legitimacy in the following terms:

A documentary description of officers' duties showing no visible or direct impact by them on contract administration is insufficient evidence to overcome the presumption and to establish a violation of the Act. The Board will not, on the basis of such evidence, second-guess a union's decision as to what officers aid the union in effectively representing the unit. Thus, the parties to a collective-bargaining agreement do not have to justify applications of superseniority to union officers, but, in order to establish a violation, the General Counsel must prove that a particular application is invalid. [235 NLRB at 704-705.]

In the instant case there can be little debate that representational interests turn vitally on the role played by the Local's financial secretary and treasurer.<sup>10</sup> Together they share immediate responsibility for fiscal existence of the Local, which is nonamalgamated in nature and serves some 5000 members employed by, or on furlough from, the Wixom plant. Mills and Morgan were elected by secret ballot to 3-year terms and their respective offices required membership on the Local's executive board. As for their duties, the financial secretary maintains all financial records, membership records,<sup>11</sup> and, together with the treasurer, prepares and delivers monthly and yearly financial reports to the membership. The financial secretary filed all governmental reports, whether financially related or not, maintains the Local's property and equipment, and sees to the collection or arrearages owed

<sup>9</sup> 230 NLRB at 407-408.

<sup>10</sup> Under the UAW constitution, these duties may be combined into a single office. Testimony indicates that, within the Employer's operation, approximately half of the locals combine the positions into a single office, with the difference based on size, and the larger locals tending to split the functions between the separate offices involved here.

<sup>11</sup> Maintenance of the membership records requires daily updating as to internal status changes such as suspensions, expulsion, transfer, and reinstatement. This is within responsibility of the financial secretary whose duties also include notification of the International of any such changes. In addition, the financial secretary must update membership rolls to reflect death, layoff, discharge, retirement, or any other such personal action affecting a member's payroll status.

<sup>8</sup> Aff. sub nom. *D'Amico v. NLRB*, 582 F.2d 820 (3d Cir. 1978).

by members. The latter is also responsible for approving and processing vouchers for all disbursements ranging from routine expenditures to strike benefits. The duties of the financial secretary include receipt of all dues, initiation fees, readmission fees, fines, and all other income of the Local Union, as well as administration of contractual checkoff arrangements, including responsibility for assuring that members have executed timely checkoff authorization necessary to facilitate the Employer's remittal of dues to the Union. The treasurer is responsible for depositing income into the Local's account, verifying all expense vouchers, and signing all checks issued to cover the latter.<sup>12</sup> He also assists the financial secretary in the preparation of financial reports and verifies those made to the membership on a monthly and annual basis. The treasurer, also together with the financial secretary, participates in audits conducted by the International Union every 2 to 3 years.

Pursuant to the Local 36 practice, the top elected officials are referred to as "the top five." This group meets from time to time to discuss various policy concerns, including grievances and whether union representatives have extended fair treatment to particular employees.<sup>13</sup> The "top five" includes the treasurer and the financial secretary.

Nonetheless, it is a fact that the latter play no direct role in the administration of the grievance procedure and, as observed by the General Counsel, their involvement in deliberations respecting grievances may well be limited to the sporadic and occasional. Nonetheless, it is fair to state that the financial well-being of the Union bears on the quality and, perhaps, the existence of services available to the membership. Indeed, apart from the general institutional services affordable through the representative, budgetary considerations may well determine whether particular grievances will be processed to arbitration, whether expert assistance will be secured in connection with the overall collective-bargaining responsibility, and whether programs will be available to educate and otherwise vindicate membership interests. The treasurer and the financial secretary are the custodians of the Local's financial integrity and assessment of the import thereof ought not discount the fact that Local 36 has a membership base consisting of thousands of employees. The conclusion that their status within the Local was sufficient to support protection through superseniority is supported persuasively by *American Can*, supra, where a panel majority took a "hands off" approach with respect to internal union judgment as to less stratified union officials. However, the cause of financial officers was specifically addressed in *Industrial Workers AIW (Allen Test-products)*, 236 NLRB 1368 (1978). There, a panel majority (Chairman Fanning, Members Murphy and Truesdale, with Members Jenkins and Penello dissenting) held that a "financial secretary," whose fiscally related duties were

indistinct from those of Mills in this proceeding and included those of Morgan, performed official functions within that class of union officials as to whom superseniority could be conferred to the detriment of more senior employees.

Although, based on the foregoing, I find that superseniority provision was lawfully applied to protect Mills and Morgan from layoff, the General Counsel further contends that a violation nonetheless inures because Respondents went further by permitting Mills and Morgan to be retained in their extant classification, thereby insulating them from downward and lateral bumping by more senior employees. While the General Counsel concedes that the precedent supports this latter form of extended protection, she claims that it has been conferred only and applies solely to those who were stewards or performed steward-like duties.<sup>14</sup> Thus she contends that no statutory interests is furthered by deeming union officers, who do not perform such duties, to benefit legitimately from superseniority to insulate them from bumping. In other words, it is claimed by the General Counsel that a superseniority clause affording protection against bumping, though lawful as to those directly involved in the grievance procedure, loses validity when extended to other union officers including the financial secretary and the treasurer, irrespective of the latter's contribution to the "effective and efficient representation of union employees."<sup>15</sup> Serious doubt exists as to whether precedent permits this narrow view. The majority in *Limpro* discredited any such distinction with respect to "Layoffs," and there is no indication in the ensuing precedent that its vitality reemerges where "classification retention" through superseniority is in issue.<sup>16</sup> Indeed, in *Otis Elevator Co.*, 231 NLRB 1128, a panel majority (Chairman Fanning, Members Murphy and Walther, with Members Jenkins and Penello dissenting) dismissed allegations of discrimination based on the exercise of contractual superseniority to permit union officers to retain their same classification as against lateral bumping by others with greater seniority. In that case, the General Counsel, as here, argued that the superseniority clauses were unlawful because not limited to layoff and recall. Although the officers involved were not directly engaged in the grievance procedure, as a result of the layoff, the union itself eliminated the steward positions and the five officers, following the layoff, assumed those functions. However, notwithstanding the internal decision, it remained as fact that, prior to the layoff, the beneficiaries of superseniority in that case were officers who were not directly involved in the grievance procedure.

In any event, the General Counsel contends that, because assurance against bumping was unnecessary to the fulfillment of official responsibility held by Mills and

<sup>12</sup> Checks are countersigned by the Local's president.

<sup>13</sup> Both Mills and Morgan performed functions apparently on a voluntary basis which were not ancillary to their official positions as treasurer and financial secretary. As superseniority exists solely on the basis of their service in the elected positions, other duties—assumed as a matter of personal choice, special skills, or combination of the two—have been considered irrelevant to the inquiry.

<sup>14</sup> See, e.g., *Hospital Service Plan of New Jersey*, 227 NLRB 585 (1976); *Union Carbide Corp.*, 228 NLRB 1152 (1977); and *Stage Employees IATSE Local 780 (McGregor-Werner)*, 227 NLRB 558 (1976).

<sup>15</sup> *Electrical Workers UE Local 623 (Limpro Mfg. Co.)*, supra at 407 fn. 8.

<sup>16</sup> In the view I take of the case, I need not pass on the contention by Respondent Unions that, absent protection against bumping to the treasurer and the financial secretary, their ability to continue to furnish the same quality of service to the Local would be diminished.

Morgan, the strong statutory policy seeking to preserve neutrality and to insulate union activity from employment conditions requires that exceptions be strictly construed "to facilitate contract administration, not to strengthen or justify union bureaucracy." However, the financial secretary and the treasurer were elected by secret ballot by the entire Local membership in the face of a subsisting bargaining contract and an outstanding arbitration award protecting them against bumping. This benefit by its nature is defensive, furnishing no advantage with respect to promotion nor opportunity for increased earnings. At the same time, uncontradicted testimony establishes that this encroachment on the overall seniority system was negotiated initially to remove any temptation on the part of managers to disrupt union affairs through manipulation and reprisal against union officials under the guise of economic justification.<sup>17</sup> Protection against bumping is perfectly compatible with the Union's legitimate concern for self-preservation, an objective which serves the membership as a whole. And while it might be said that the quality of the bargaining history at Ford reduces any such threat to the nonexistent, article VIII, section 19 of the national agreement affords assurance that such is, and shall continue to be, the case.

This statute is often brought to bear on disputes which turn on an accommodation of competing interests. Here, the statutory policy encouraging stability of existing collective-bargaining relationships must be weighed against

the impact of negotiated terms on employee rights.<sup>18</sup> In my opinion, the insulation of high-level elected officials from bumping triggered by management determinations is neither excessive nor sufficiently beyond the area of legitimate union concern to form a predicate for exalting Section 7 of the Act with overarching weight. Accordingly, the allegations that Respondent Unions violated Section 8(b)(1)(A) and (2) and that Respondent Employer violated Section 8(a)(3) and (1) by the treatment accorded Financial Secretary Mills and Treasurer Morgan shall be dismissed.

#### CONCLUSIONS OF LAW

1. The Respondent Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondent International and Respondent Local 36 are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent Employer did not violate Section 8(a)(3) and (1) of the Act and Respondent Unions did not violate Section 8(b)(1)(A) and (2) of the Act by maintaining and implementing a provision in their collective-bargaining agreement by which superseniority was conferred on Local 35's financial secretary and treasurer in a manner which prevented layoff and permitted retention in their classifications to the detriment of more senior employees.

[Recommended Order for dismissal omitted from publication.]

<sup>17</sup> See credited testimony of Dan Forchione, administrative assistant to the International vice president, Don Efland, director of the UAW National Ford Department.

<sup>18</sup> *Steel v. Louisville & Railroad Co.*, 323 U.S. 192, 203 (1944); *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953).