

**Local 235, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (General Motors Corp.) and Nick Karras and Marlo D. Hein and Michael Bradley**

**General Motors Corporation, Saginaw Steering Gear Division and Marlo D. Hein.** Cases 7-CB-8803, 7-CB-8861, 7-CB-9115, and 7-CA-32228

November 22, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

The questions presented to the Board in this case include whether the judge correctly found that the Respondent Union violated Section 8(b)(1)(A) by: (1) threatening an employee for engaging in protected activities; (2) retaliating against an employee for testifying at a Board proceeding; and (3) publicly humiliating and blaming that employee for expenses that were incurred by the Union in defending against charges filed with the Board. This case also presents the questions of whether the judge correctly found that the Respondent Union violated Section 8(b)(1)(A) and (2), and whether the Respondent Employer violated Section 8(a)(1) and (3) by adversely affecting the overtime earnings of employee Marlo Hein.<sup>1</sup>

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions as modified and to adopt the recommended Order as modified.

1. The judge found that since August 20, 1991, the Respondent Union, by its agent, Jerry Richardson, violated Section 8(b)(1)(A) and (2) by adversely affecting

<sup>1</sup> On February 12, 1993, Administrative Law Judge Robert T. Wallace issued the attached decision. The Respondents, Local 235 and General Motors Corporation filed exceptions and supporting briefs and the General Counsel filed an answering brief.

<sup>2</sup> The Respondents, Local 235 and General Motors Corporation, have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent Union violated Sec. 8(b)(1)(A) by "publicly humiliating" Michael Bradley because of his involvement in filing a charge with the Board and testifying in a Board proceeding, Chairman Stephens relies on the judge's further finding that the humiliation incident was followed by actual discrimination against Bradley respecting paid out-of-town travel for training. See *M. K. Morse Co.*, 302 NLRB 924, 925 fn. 4 (1991) (derogatory language aimed by employer's supervisor at employee unlawful where linked with implicit threat respecting charge filing); *S. E. Nichols*, 284 NLRB 556, 558, 585-586 fn. 7 (1987), *enfd.* 862 F.2d 952 (2d Cir. 1988) (employer's ridicule of three employees for filing charges unlawful in context of other violations).

the distribution of overtime hours to Marlo Hein, an employee and alternate union committeeperson. The judge also found that the Respondent Union engaged in this conduct arbitrarily and because of Hein's internal political activities.<sup>3</sup> The Respondent Union excepts. The judge also found that the Respondent Employer, by its agent, Al Caffey, violated Section 8(a)(1) and (3) by acquiescing in the Union's allegedly unlawful actions. The Respondent Employer excepts. We find merit in these exceptions.

The facts are largely undisputed. At the General Motors facility involved in this case, overtime hours are shared or "equalized" among the employees engaged in similar work, to ensure that all employees receive an equal amount of overtime opportunities. Pursuant to paragraph 21, "box 2," of the National Agreement between General Motors and the United Autoworkers Union, district committeepersons receive an overtime preference that permits them to work overtime in their classification in place of the unit employee otherwise next entitled to work. In these circumstances, the committeeperson is not "charged" with overtime. The preference is available when fewer than 10 employees are working overtime and there is work in the committeeperson's classification.

The alternate committeeperson receives no such preference or superseniority under box 2. However, the box 2 preference becomes available to the alternate when he is functioning in the absence of the district committeeperson and overtime is available in the alternate's job classification. Hein, an electrician, is the elected alternate to District Committeeperson Michael Bradley, a machinist.

There is a daily requirement for, inter alia, a skeletal site maintenance crew consisting of persons in three skilled trades: one electrician, one pipefitter, and one pyrometer adjuster, for every shift. No weekend overtime work was available for persons in any classification except these three. Therefore, Bradley, a machinist, technically could not take advantage of the box 2 preference because his classification was not one of those three. Bradley, however, attempted to reserve that overtime for electrician Hein by declaring that Hein would function as committeeperson on certain weekends in Bradley's absence.

The first time Bradley and Hein used this procedure was on a weekend in January 1991. Electrician Danny Renberg, disadvantaged by the events, complained to Shop Chairman Jerry Richardson. The matter was discussed by Richardson and Bradley with General Motor's labor relations supervisor, Jim Rodgers, and Labor Relations Representative Al Caffey. They all agreed that Hein had been properly offered the over-

<sup>3</sup> It was stipulated that the allegation of racial discrimination was not asserted against the Employer.

time because he had succeeded to the position of committeeperson in Bradley's absence.

Over the next 6 months, Hein attempted to work virtually every Sunday, but was not allowed the box 2 preference. Hein filed five successive grievances expressly demanding box 2 treatment during the period from May 26–July 7, 1991. These grievances were not pursued.<sup>4</sup>

Hein was permitted to work overtime on the basis of the box 2 preference on the weekend of July 21 and 22, and again on August 18, 1991. The electricians being disadvantaged demanded a meeting at the union hall to complain about their lost overtime. After two meetings and several lengthy discussions among the union committeepersons, Richardson went to Employer Labor Relations Representative Caffey specifically to resolve the electricians' complaints by having Caffey charge the overtime hours to Hein. After a heated debate between them, Hein was charged with 60 hours of overtime that represented four weekend shifts he had worked when fewer than 10 employees in the district were working.

The judge concluded that the Union violated Hein's Section 7 rights and discriminated against him in violation of Section 8(b)(1)(A) and (2). In particular he found that the Union's shop chairperson, Richardson, breached his duty to fairly represent employee Hein by unduly focusing on this one employee, failing to adequately investigate the alleged overtime abuse, and forcing management to acquiesce in Richardson's unilateral determination. The judge also concluded that the Employer participated in the alleged unlawful conduct by relinquishing to the Union its responsibility independently to administer the overtime equalization program established under the National Agreement, in violation of Section 8(a)(1) and (3). We disagree.

We agree with the Union that there is nothing in the record to indicate that it engaged in any arbitrary action against Hein. Richardson was required to respond to the complaints of Hein's fellow electricians. In doing so, after ascertaining the factual basis for their complaints, Richardson determined that Bradley and Hein were violating the provisions of the National Agreement on superseniority preference. Richardson's understanding of how the contractual overtime provisions applied to committeepersons and their alternates was shaped by a 1989 settlement agreement between the Union and General Motors.<sup>5</sup> Richardson directed Bradley to investigate and report to him the hours im-

properly worked and not charged to Hein. Richardson determined, based on Bradley's report to him, which hours Hein had worked and which hours Hein had not been properly charged for on the equalization list. During Bradley's investigation, it was brought to Richardson's attention that another alternate committeeperson, Thelma Davenport, had not been charged for certain overtime she had worked despite the fact that her district committeeperson was working at the same time. Richardson promptly resolved the Davenport situation without incident by charging her for overtime improperly worked. Since the record reveals only these two incidents involving possible abuses of the committeeperson/alternate relationship, we find, contrary to the judge, that Richardson did not "unduly focus on one employee." Richardson adequately investigated the overtime hours worked by Hein in response to complaints by other employees in the same manner that he had investigated and resolved the Davenport situation.

On the basis of his interpretation of the relevant provisions, Richardson requested that General Motors management charge Hein for certain overtime hours. After a "heated" discussion, General Motors management agreed with the Union's position and charged Hein for the overtime hours. Under the circumstances, we agree with the Union that Richardson simply informed management of the agreed-on application of the relevant provisions, and requested that it adopt the Union's view as how best to resolve the pending employee complaints. Management agreed with Richardson's determinations and charged Hein.

We see nothing in the record that would support the judge's inference that Richardson acted for political reasons. Therefore, we conclude that there was nothing unlawful in the Respondent Union's conduct and shall dismiss the relevant 8(b)(1)(A) and (2) allegations of the complaint.

The Respondent Employer argues that it did not violate the Act by deferring to the position of the Respondent Union. We agree with the Respondent Employer that it did not "relinquish" control to the Union but simply agreed with the Union's interpretation of the relevant overtime provisions. Therefore, we find no basis for inferring unlawful motivation on the part of management. Accordingly, we shall dismiss the complaint against the Respondent Employer.

#### ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders the Respondent, Local 235, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, its officers, agents, and representa-

<sup>4</sup> The judge did not discuss this un rebutted evidence in his decision, but implied that management had consistently permitted Hein to receive box 2 treatment until its refusal to do so in August 1991.

<sup>5</sup> The settlement resulted in the withdrawal of charges in Rochester Products Division, General Motors Corporation (Local 1097, International Union United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)), Cases 3-CA-14639 and 3-CB-5347.

tives, shall take the action set forth in the Order as modified.

1. Delete paragraph A,1(b) and reletter the subsequent paragraphs.

2. Substitute the attached notice for the administrative law judge's appendix A.

3. Delete section B and its accompanying appendix.

IT IS FURTHER ORDERED that the complaint in Case 7-CA-32228 be dismissed.

#### APPENDIX A

##### NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to cause General Motors Corporation, Saginaw Steering Gear Division, to discharge or otherwise punish employees for attempting to rectify unsafe and unhealthy working conditions by filing grievances.

WE WILL NOT publicly humiliate or otherwise punish members because they file charges with or testify in proceedings before the Board against the Union.

WE WILL NOT discriminate against members in awarding training opportunities because they testify or otherwise participate in Board proceedings against the Union.

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

WE WILL offer Michael Bradley an opportunity to attend the next subcouncil meeting with expenses paid as reparation for our unlawful act in not having allowed him to attend the subcouncil meeting in New Orleans, Louisiana, during the week of April 6, 1992.

LOCAL 235, INTERNATIONAL UNION,  
UNITED AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA (UAW), AFL-CIO

*Tinamarie Pappas, Esq.*, for the General Counsel.

*Mary Beth Sax, Esq.*, of Detroit, Michigan, for the Respondent Company.

*William Mazey, Esq. (Rothe, Mazey & Mazey)*, of Southfield, Michigan, for the Respondent Union.

#### DECISION

##### STATEMENT OF THE CASE

ROBERT T. WALLACE, Administrative Law Judge. The charge in 7-CB-8803 was filed on July 15, 1991,<sup>1</sup> and the complaint issued on August 28. The charges in 7-CB-8861 and 7-CA-32228 were filed on August 21 and the complaint issued on October 4. Those cases were tried on a consolidated record in Detroit, Michigan, on January 13 and 14, 1992; and a resumption date was set for April 1, 1992. The issue in Case 7-CB-8803 is whether the Union threatened a company employee (Karras) for engaging in protected activities, in violation of Section 8(b)(1)(A) of the National Labor Relations Act. In Cases 7-CB-8861 and 7-CA-32228 the issue is whether the Union, with the complicity of the Company, adversely affected the earnings of another employee (Hein, a Caucasian) for reasons of race<sup>2</sup> and internal union politics, in violation of Section 8(b)(1)(A) and (2) by the Union and Section 8(a)(1) and (3) by the Company.

Prior to the resumption, a new complaint issued in Case 7-CB-9115 in which it is alleged that another employee (Michael Bradley) was retaliated against by the Union for testifying at the January trial and that it coerced other employee members by publicly stating that its precarious financial status was due to expenses entailed in defending itself against charges filed with this Board by members, all in violation of Section 8(b)(1)(A). The new case was consolidated with the earlier ones and tried on a common record in Detroit on June 1 and 2, 1992.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Union, and the Company, I make the following

##### FINDINGS OF FACT/ANALYSIS

###### I. JURISDICTION

The Company, a corporation, manufactures and assembles gears and axles and other components for light-duty trucks at a facility on Holbrook Avenue in Detroit, Michigan, from where it annually ships to points located outside that State products valued in excess of \$1 million. It is admitted, and I find, that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

###### II. NICK KARRAS

Karras has been a company employee and a member of the Union since 1976. He works on the second shift from 3:30 to 11 p.m. as a hi-lo driver. During 1990, he actively supported an effort by dissident union members to elect a new shop chairperson in place of incumbent Jerry Richardson.

In 1991, Karras was a member of an Employee Participation circle composed of about 28 employees and a supervisor, the purpose of which was to advise management of ways to improve safety, quality, and productivity. Member-

<sup>1</sup> All dates are in 1991 unless otherwise indicated.

<sup>2</sup> It was stipulated that the allegation of racial discrimination is not asserted against the Company.

ship was voluntary, and there were about 50 similar groups throughout the plant; and in May the membership of Karras' EPC chose him by a show of hands to be its facilitator.

Shortly thereafter, Karras complained to his union district committeeperson (Aruthurola "Red" Turner) about heat discomfort experienced by second-shift employees because the air-conditioning system was being shut off each day just as workers arrived for the second shift. She wrote out and filed a grievance to that effect on May 16; and 10 employees, including Karras, signed it. Within a few days air-conditioning machinery began to be kept on until 9 p.m.; and while Karras and other signers assumed the grievance had produced that result, they were never so advised.

By June 6, employees again began to complain, this time about the 9 p.m. shutdown. Once more Karras approached Committeeperson Turner. He told her that the heat was unbearable and that a number of employees had asked him to represent them in filing a grievance. Appearing offended, she responded heatedly "No grievance!" and she proceeded to walk up and down the production line repeating those words.

Spotting Turner in the breakroom about 30 minutes later, Karras asked her why she wouldn't write a grievance. She told him it was because of a "letter of understanding" between Richardson and management.<sup>3</sup> Unsatisfied, Karras broached the matter at an EPC meeting 2 days later, and the employees there approved his proposal to circulate a group petition.<sup>4</sup> He did so, and by June 20 had obtained 60 signatures. The document reads as follows:

Union charges management with creating unsafe and unhealthy working conditions, when forcing employees to work in unbearable heat (Saturday, June 15, 1991 and after 9:00 P.M. nightly) without sufficient circulation of air.

Union demands management cease unsafe and unhealthy conditions in Plant #53 by turning on the chill air [system] and leaving it on till the second shift goes home.

On returning from vacation on Wednesday, July 10, Karras tendered the petition to Turner and asked her to receive it as a grievance and assign a number to it. She declined to accept it, telling him: "I will write you a grievance, but I cannot attach a number to something that is not in my grievance pad [i.e., use his language in framing the grievance rather than her own]." She also told him that a second grievance was unnecessary since the earlier (May 16) one was still being investigated. Unsatisfied, Karras invited her and Richardson to come to a meeting of his EPC group scheduled for the following day.

At the meeting Richardson told the employees that the EPC was an inappropriate forum for discussion of a "contract" issue, that Karras had no right to represent them, and that in doing so he was usurping the function of Committeeperson Turner. Having said that, he went on to tell

<sup>3</sup> Karras made inquiries about the letter but was unable to discover anything; and it is not mentioned on this record by the Union or the Company.

<sup>4</sup> The applicable contractual grievance procedure provides for group grievances which can be signed by an employee selected by the group or by all employees in the group.

them he would investigate and try to correct any air-conditioning problem.

When the meeting ended Richardson asked Karras to remain. Then, with Turner and the union-appointed EPC coordinator for the day shift (Ronnie Berry) present, Richardson repeated the reasons given by Turner for declining to accept the petition as a grievance, accused Karras of interfering with Turner's duties as committeeperson by soliciting signatures, and told him he was going to send a letter to Berry directing him to remove Karras as facilitator of the EPC. Richardson then asked to see the petition. Karras, fearful about his job, declined to produce it.

About 10 minutes later, Committeeperson Wiley Tate appeared at Karras' workstation at Richardson's behest and asked for the petition. When Karras told him he had nothing for Richardson "at this time," Tate pointed his finger in Karras' face and said: "If you are man enough, move this finger out of your face," adding: "You will be fired by Monday." Upset, Karras asked Tate how he planned to do that. Tate turned and left the area without responding.

Tate returned a few minutes later accompanied by Richardson and Turner. Repeating the earlier scene, Tate put his finger in Karras' face and assured him he would be fired by Monday.

During the following week, Karras again asked Turner to accept the petition and assign a grievance number to it. When Turner refused, he turned to Richardson and made the same request. Richardson took the document and put it in his briefcase, telling Karras that as shop chairman he didn't have to put a number on it. Then, addressing Turner, he told her "not to file any more of . . . [Karras'] grievances unless they had specific contract issues."

Around July 20, Karras inquired as to the status of the grievance, and was told by Turner that she did not know what happened to it. Since that time, Karras has received no information in that regard.

During the period July 10 through 20, Michael Bradley, a union committeeperson and member of the union negotiating committee chaired by Richardson, was present during a conversation in which Richardson and Tate referred to Karras. According to Bradley's uncontradicted and credited account, they expressed resentment at what they perceived was Karras' effort to undermine the union by raising "his own grievances;" and Richardson went on rhetorically to inquire, "Who does he think he is? [adding] I'm the god damned chairman. For his part, Tate volunteered "to get" Karras.

I find the Union's threats to remove Karras from his position as EPC facilitator and to have him fired were meant as punishment for engaging in a protected activity (i.e., acting concertedly to rectify a perceived unsafe and unhealthy working condition by attempting to file a group grievance)<sup>5</sup> and, accordingly, were in violation of Section 8(b)(1)(A) of the Act. In this regard, I note that Karras made no effort to negotiate directly with management. Rather, he repeatedly sought to go through his union committeeperson. Nor did he usurp any authority of that person, see footnote 3. Further, Union Representative Richardson admitted that the EPC meetings were an appropriate venue for discussion of work-

<sup>5</sup> *Laborers Local 806*, 295 NLRB 941 (1989); *Hancor, Inc.*, 278 NLRB 208 (1996); *Springfield Hospital*, 281 NLRB 643 (1986).

ing conditions, and that safety and health concerns resulting from excessive heat in the plant involved working conditions.

### III. MARLO HEIN

Marlo Hein has been employed at the facility for over 21 years as an electrician. In 1990, he was elected as an alternate to District Committeeperson Bradley, a machinist. Both work the second shift.

Paragraph 10 of the applicable National Agreement provides that an alternate becomes committeeperson whenever the individual holding that title is absent from the plant. That provision presupposes that the normal workshifts of committeepersons and their alternates are the same; and the purpose of succession is to assure continuous representation in handling grievances.

As regards overtime, committeepersons are accorded a preference (under "Box 2" of paragraph 21 of the National Agreement) to work overtime in their regular job in place of a unit employee otherwise next entitled, and they are not charged with such overtime under equalization rules.<sup>6</sup> Alternates, as such, get no preference.

On at least two weekends in 1991, Hein was allowed to work overtime as committeeperson and without charge under circumstances described below.

Having been advised there would be no weekend overtime other than for the usual year-round site maintenance force of one electrician, one pipefitter, and one pyrometer adjuster—and aware that as a machinist he was ineligible to work in those classifications—Committeeperson Bradley advised management on a Thursday or Friday that he would be absent and unavailable for weekend work. Whereupon alternate Hein, an electrician, was allowed to work the weekends as an electrician.

In January, just prior to the first weekend in question, a meeting was held at the plant in the office of Al Caffey, a management labor relations representative. Present were Caffey, his supervisor, Jim Rodgers, Union shop Chairperson Richardson, Bradley, and Hein. The subject was a complaint by an electrician (Danny Renberg, a Caucasian) who felt he should have been given the overtime assignment. After a discussion of the situation, Caffey, Rodgers, and Richardson concluded that Hein was properly offered the overtime because he succeeded to the position of committeeperson in Bradley's absence; and Caffey picked up the telephone and so advised Renberg.<sup>7</sup>

Sometime in June, Bradley was in the parking lot of the union hall with a group of black employees, including Richardson, Committeeperson Aruthurola Turner, and Jerry Cobb. Several times Bradley was referred to as "white boy." Cobb told him "they" were "grooming blacks for the white committeeman jobs," adding "this is Coleman Young's town and when you are in this town you do as we say to do." Richardson volunteered that "all the white guys that are complaining about him are doing it because he is a black

chairman"; and he opined that a skilled trades group called "Caucus 37" which had been newly organized was "nothing but the Ku Klux-Klan."

Hein filled in for Bradley as committeeman on July 18 and 19 (Thursday and Friday) and during the ensuing weekend he again served as the on-duty electrician without being charged for overtime. When Bradley returned on July 22, Richardson told him that his future declarations of unavailability must be submitted in advance in writing to him and to the "labor relations" office. When Bradley asked if that requirement applied to others, Richardson replied: "No, just you." At that time Richardson also mentioned that Renberg had complained again about Hein's weekend overtime. And when Bradley stated that representatives at the Union's international level had approved Hein's not being charged, Richardson replied "I think we are going to do it [charge Hein for the weekend]." In fact, however, Hein was not charged.

On Thursday, August 15, Bradley (by memo as requested) advised Richardson and management that he would be absent on the following weekend. Hein worked on that weekend as electrician and again was not charged.

Later in the month two meetings took place concerning the Hein's overtime. The first was attended by employees in Bradley's district and was held in the union hall. After a general discussion during which Bradley again claimed support at the international level, Richardson announced that he was going to charge Hein for past weekend work and that he would "police" the situation to ensure the same result in the future. The second occurred shortly thereafter in Caffey's office. There Richardson, with Bradley present, told Caffey that he wanted Hein charged for weekend overtime, thereby to resolve complaints of Renberg and other electricians. A short time earlier Caffey had reassured Hein that the contract provisions were being properly applied, and he responded to Richardson by reiterating that position. The latter heatedly replied "I am the Chairman . . . [and] I want him charged. Apparently cowed, Caffey picked up the telephone and gave an order to that effect.<sup>8</sup> Shortly thereafter Hein was charged and, in consequence, his name was placed near the bottom of the equalization list.

The parties correctly agree that Hein was entitled (under "Box 2" of par. 21 of the National Agreement) to overtime without charge during the weekend of July 20/-21. This is because he served as committeeperson on the immediately preceding Thursday and Friday<sup>9</sup> in the absence of the person (Bradley) who regularly held that position and because work in his job classification as an electrician was available during the weekend.

On the two weekends in question, however, a different situation prevailed. Bradley worked Monday through Friday and the postings for weekend work called for a skeletal crew, including an electrician but no machinist, Bradley's regular job. So he was not entitled under the contract to work on those weekends. The question to be decided, therefore, is

<sup>6</sup> Overtime hours are shared or "equalized" among employees engaged in similar work, typically by classification, to ensure that all employees receive equal amounts of overtime opportunities. See National Agreement, par. 71. Equalization lists are maintained, and the employee on any given list with the lowest number of overtime hours is entitled to the next available overtime.

<sup>7</sup> Caffey, Rodgers, and Richardson do not refer to this meeting or to the testimony of Bradley and Hein with respect thereto.

<sup>8</sup> Richardson did not testify about this meeting. For his part, Caffey denies saying it was wrong to charge Hein or that Richardson instructed him to do so. He claims that the matter was not resolved until after he examined worksheets and conferred with his supervisor, Rodgers.

<sup>9</sup> In accordance with company practice overtime assignments for Saturday were posted and bid for on Thursdays, and Sunday assignments were posted and bid on Fridays.

whether by declaring himself absent for the weekends his alternate (Hein) acquired any entitlement. I find he did not. Bradley could not "absent" since on Thursday and Friday he had no entitlement.

That Hein was properly charged, however, does not end the matter if the reason or motivation for that action was discriminatory or otherwise in violation of a union duty fairly to represent its members. See *Longshoremen ILA Local 1426 (Wilmington Shipping)*, 294 NLRB 92, 1156 (1989).

Here, Union Shop Chairperson Richardson gave no explanation as to why in August he abruptly reversed a position he had adopted in January relative to claims by electricians concerning Hein's weekend overtime; and his claimed "investigation" consisted of nothing more than asking Bradley to provide dates Hein had worked on weekends. Indeed, there is no indication that he consulted with officials at the international level of the Union either to verify Bradley's claim they had approved the prior interpretation or to obtain their opinion on the issue.

Further, his interest in possible abuses of the committeeperson/alternate relationship focused solely on that of Bradley and Hein. A broader inquiry readily would have disclosed patently improper situations. For example, alternate Thelma Davenport was not charged for numerous overtime hours during a 7-month period despite the fact that her district committeeperson (Wiley Tate) was working at the same time.

Finally, Richardson assumed management's function under the contract to administer overtime equalization program. He decided that Hein should be charged, and he instructed Management Official Caffey to effect that result. Coerced, the latter promptly did so, and in his haste not only charged Hein for the weekends in question but also for the weekend in July when, admittedly, he properly served as committeeperson.

In these circumstances, I conclude that Richardson, by unduly focusing on one employee, failing adequately to investigate, and forcing management acquiescence in his unilateral determination, breached his duty as a union official fairly to represent the employee. Although the specific manifestation is not of record, I infer that he did so for reasons of internal union politics.<sup>10</sup>

Accordingly, the Union is shown to have trespassed on Hein's Section 7 rights and to have discriminated against him in violation of Section 8(b)(1)(A) and (2). Also, the Company participated in that unlawful conduct by relinquishing to the Union its responsibility independently to administer the overtime equalization program established under the National Agreement, in violation of Section 8(a)(1) and (3).

#### IV. MICHAEL BRADLEY

Bradley testified on January 13 and 14, 1992, and his testimony was adverse to that of other union officials in both the Karras and Hein cases.

On February 16, 1992, he attended a general membership meeting in the union hall of Local 235. Approximately 70 members were there, including Chairperson Richardson and Treasurer Chester Forsythe. President Danny Lack presided.

<sup>10</sup>It does not appear that considerations of race played any part in Hein's being charged; and that portion of the complaint will be dismissed.

When Bradley asked a question about a benefit fund expense item, Forsythe responded "if you want to talk about expenses, lets talk about expenses." He went on to tell the members that Bradley had cost the Union over \$1000 in trial expenses resulting from charges he had filed with the Board, and that "a whole lot more" would be incurred when the trial resumed in April. When Bradley attempted to explain that he had testified under subpoena and had not filed the charges, Lack ruled him out of order telling him to sit down or be thrown out.<sup>11</sup>

The Board has held that statements made by union officials in the presence of members which suggest unpleasant repercussions if they participate in Board processes, constitute unlawful restraint and coercion. *Painters Local 558 (Forman-Ford)*, 279 NLRB 150 (1986). Here, the undisputed statements of Forsythe conveyed a forceful and direct message: members who file charges or testify in Board proceedings against the Union will be subject to public humiliation and blame. I find a violation of Section 8(b)(1)(A).

As a member of the bargaining committee, Bradley had attended a number of 3-day, semiannual, out-of-town meetings at which union officers and other bargaining committee members were instructed on representational and negotiating techniques. Hotel and transportation bills were paid by the Union. Chairperson Richardson was responsible for designating which members of his committee would attend.

Pursuant to Richardson's designation, Bradley and another committeeperson (Tom Medley) accompanied union officers to such a meeting in Chicago, Illinois, in April. Shortly thereafter, Richardson told Bradley and Medley that they would alternate in attending future meetings at least until the Union's financial situation improved.

Another meeting was held in Chicago in October. Medley attended. Bradley remained, not having been asked. Richardson later assured Bradley that he would be offered the next one.

The next out-of-town meeting was scheduled for New Orleans, Louisiana, during the week of April 6, 1992. Bradley asked Richardson about it in February, shortly after the union hall meeting described above. Richardson was noncommittal, stating that Lack and Bradley thought he had refused to attend the October meeting. When Bradley denied having done so, Richardson told him he'd check on it and get back to him.

In March, Bradley once more raised the subject. Again Richardson dissembled, stating that Lack and Forsythe still had a problem. Ultimately, Richardson opted to send Medley to New Orleans rather than Bradley.

Richardson gave no reason to Bradley for nonselection; and he did not refer to the matter when testifying in June.

In the circumstances, and in light of the opprobrium directed against him at the union hall on February 16, an inference is warranted, and taken, that Bradley was not selected because Richardson and other union officials harbored animus against him for his participation in the January trial. Accordingly, I find a further violation of Section 8(b)(1)(A). In this instance, the public interest in assuring unimpeded access to Board processes, including filing charges and testify-

<sup>11</sup>Neither Forsythe nor Lack denies any substantial element in Bradley's account of the meeting. Richardson did not refer to the incident in his testimony.

ing in Board proceedings, transcends union freedom of action in choosing who will attend its education programs. Compare *NLRB v. Union of Marine & Shipbuilding Workers*, 391 U.S. 418 (1968); *Teamsters Local 896 (Anheuser-Busch)*, 280 NLRB 565 (1986).

#### CONCLUSION OF LAW

Respondents violated the Act in the particulars for the reason stated above, and they are not shown to have done so in any other respect. Those unfair labor practices and each of them have affected, are affecting, and unless permanently restrained and enjoined will continue to affect, commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that Respondents engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Since the decision to deny Hein overtime on the weekends in question was proper, but wrongfully motivated, he is not entitled to backpay and none is ordered.

#### Disposition

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>12</sup>

#### ORDER

A. Respondent Local 235, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to cause General Motors Corporation, Saginaw Steering Gear Division, to discharge or otherwise punish employees for attempting to rectify unsafe and unhealthy working conditions by filing grievances.

(b) Selectively, and without adequate investigation, decide questions concerning employee eligibility for overtime equalization and force, or attempt to force, management to accept such determination.

(c) Publicly humiliating or otherwise punishing members because they file charges with or testify in proceedings before the Board against the Union.

(d) Discriminating against members in awarding training opportunities because they testify or otherwise participate in Board proceedings against the Union.

(e) In any like or related manner restraining or coercing employees of the Employer in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Michael Bradley an opportunity to attend the next subcouncil meeting with expenses paid as reparation for our unlawful act in not having allowed him to attend the subcouncil meeting in New Orleans, Louisiana, during the week of April 6, 1992.

(b) Post at its office in Detroit, Michigan, copies of the attached notice marked "Appendix A."<sup>13</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by General Motors Corporation, Saginaw Steering Gear Division, if willing, at all places where notices to employees are customarily posted.

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

[Recommended Order concerning General Motors Corporation omitted from publication.]

<sup>12</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

<sup>13</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."