

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

APPEAL OF:

UAW LOCAL UNION 2865, ET AL.

Appellant,

IN THE MATTER OF:

STEPHEN BRUMBAUGH

-vs-

CASE NO. 1747

UAW LOCAL UNION 2865 JOINT COUNCIL
REGION 5
(Berkeley, California)
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued May 16, 2016)

PANEL SITTING: Prof. Janice R. Bellace, Chairperson,
Prof. James J. Brudney, Prof. Harry C.
Katz, and Prof. Maria L. Ontiveros.

Representatives of UAW Local Union 2865 argue that the IEB violated the right of local union members to express their views freely when it nullified the membership's motion to approve the Boycott, Divestment and Sanctions (BDS) resolution.

FACTS

UAW Local Union 2865 represents the academic student employee unit at the following campuses of the University of California (UC): Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, Santa Barbara, and Santa Cruz. On January 14, 2016, UAW Local Union 2865 filed an appeal to the Public Review Board (PRB) challenging a decision by the International Executive Board (IEB) nullifying a resolution in support of the Boycott, Divestment and Sanctions (BDS) movement adopted by the

membership during a meeting on December 4, 2014.¹ The BDS movement is a global campaign designed to put pressure on Israel to end its occupation of Palestinian land, among other things. Attorney Ellis Boal entered his appearance on behalf of the local union and identified Local 2865 Northern Vice President David McCleary as the spokesperson for the appellants.² Vice President McCleary informed the PRB he was authorized to speak on behalf of the remaining members of the UAW Local 2865 Executive Board, the UAW Local 2865 Joint Council, and individual members of UAW Local Union 2865.³

The text of the resolution to support the BDS movement was drafted by the Local 2865 Joint Council and approved by the Council during a meeting on October 18, 2014. The resolution states as follows:

“Should the UAW 2865 and its members join the global movement for Boycott, Divestment, and Sanctions, until such time as Israel has complied with International law and respected the rights of Palestinians in the West Bank and Gaza Strip, Palestinian citizens of Israel, and all Palestinian refugees and exiles?”⁴

The resolution gives the following description of its proposed implementation:

“If approved, UAW 2865 will join the movement in the following ways:

UAW 2865 will call on the University of California (UC) and UAW International to divest their investments, including pension funds from Israeli state institutions and international companies complicit in severe and ongoing human rights violations as part of the Israeli oppression of the Palestinian people. UAW 2865 will also call on the UC and the UAW International to decline to conduct business with said companies.

UAW 2865 will call on the government of the United States of America to end military aid to Israel.”⁵

¹ Record, pp. 170-172.

² Record, pp. 173-174.

³ The following members of Local Union 2865 asked to join in McCleary’s appeal: Ghaleb Attrache, Susan Beaty, Brandon Buchanan, Daniel Benjamin, Emily Breuninger, Tory Brykalski, Jesus Camacho, Robert Cavooris, Scott Graham Bishop Falcone, Erik Green, Tara M. Grousalves, Shannon Ikebe, Marianne Kaletzky, Seth Leibson, Zachary Levenson, Blanca Missé, M. Irene Morrison, Matthew Palm, Victoria Porell, Marco Antonia Rosales, John Serop Simonian, Michelle Ty, Srigowri Vijayakumar, Joshua Williams, Duane Wright, Omar Zahzah, and Jackie Zaneri. (Record, pp. 171-172 and 318)

⁴ Record, p. 58.

⁵ Record, p. 58.

In addition to its support for the general BDS movement, the Local 2865 Joint Council adopted a ballot initiative calling for an individual commitment to participate in an academic boycott. The initiative states:

“I will personally adhere to this boycott, refusing to take part in any research, conferences, events, exchange programs, or other activities that are sponsored by Israeli universities complicit in the occupation of Palestine and the settler-colonial policies of the state of Israel.”⁶

The BDS resolution was presented to the local union membership for a vote on December 4, 2014. The membership voted in favor of the boycott. The local union reported that 2168 votes were counted with 1411 voting in favor of the resolution and 749 opposed to it, so that the resolution passed.⁷

On December 17, 2014, Local 2865 member Stephen Brumbaugh appealed the local union’s decision to support the BDS movement to the Local 2865 Executive Board.⁸ On May 7, 2015, Local 2865 President Mar Velez sent Brumbaugh an email advising him that the Joint Council had voted to reject his appeal.⁹ Brumbaugh appealed the decision of the Local 2865 Joint Council to the IEB on June 3, 2015. Brumbaugh asked the IEB to exercise its authority to overrule the Joint Council and declare the BDS resolution invalid.¹⁰

In support of his appeal, Brumbaugh pointed out that the BDS resolution was at odds with an official policy of the International Union. He reported that on November 17, 2014, Region 5 Director Gary Jones sent a letter to Local Union 2865 reaffirming a statement adopted by the UAW, along with numerous other labor organizations, opposing the BDS movement.¹¹ Brumbaugh argued that the BDS resolution had the potential to harm the interests of UAW members by calling for divestment from represented companies such as Caterpillar, Boeing, General Electric, Lockheed Martin, and Raytheon.¹² Furthermore, Brumbaugh maintained that the language of the resolution was so vague it could be extended to any company. He further argued that the resolution was an inappropriate object for the expenditure of union resources. His appeal states:

“...Also, given the expansive aim of the BDS resolution, it has no logical endpoint and could consume the local union’s focus indefinitely, thereby

⁶ Record, p. 58.

⁷ Record, p. 60.

⁸ Record, pp. 61-68.

⁹ Record, p. 69.

¹⁰ Record, pp. 1-8.

¹¹ Record, p. 2.

¹² Record, p. 3.

diverting precious time and resources away from efforts to advance the employment rights of the local union's rank and file members. This is yet another reason that the BDS resolution should be invalidated.¹³

Brumbaugh argued that in addition to conflicting with an established policy of the UAW International Union, the BDS resolution violated the UAW Constitution and the local collective bargaining agreement between Local Union 2865. He asserted that the language of the resolution encouraged discrimination against union members based on their religion and national origin in violation of Article 2, §2 of the UAW Constitution.¹⁴ Brumbaugh further maintained that the process used to adopt the resolution was fundamentally undemocratic, regardless of the merits of the resolution itself. His appeal states:

“While the proponents of BDS have attempted to cloak their radical agenda in the legitimacy of an ‘election,’ the facts demonstrate that the BDS resolution does not enjoy broad support from those that the local union is intended to represent. Indeed, of the more than 13,000 student workers represented by the local union, fewer than 1,500 members voted to support the BDS resolution. (See UAW 2865 BDS Vote: Election Committee Report.) The legitimacy of the election is further undermined by a litany of procedural improprieties, as well as by a coordinated effort to prevent those opposed to the BDS resolution from informing voters about its negative implications for the UAW and other unionized workers.”¹⁵

Local 2865 Recording Secretary Erik Green responded to an inquiry from President Dennis Williams's staff regarding Brumbaugh's appeal on June 19, 2015. Green argued that the local union's vote to adopt the BDS resolution was not beyond the local union's authority under the UAW Constitution, because the resolution did not challenge the International Union's authority to assert a position with respect to the movement, but only asked that it reconsider that position. Green's letter states:

“...Member Brumbaugh's statement evidences that his argument is premised on the assumption that the local is purporting to set a BDS policy for the UAW. However, the ballot language simply does not set BDS policy for the UAW. In fact, the resolution, by what it seeks – asking the International to change its position – recognizes and accepts the International's authority. In short, the local is not claiming that its resolution changed or set UAW International policy. The local's resolution

¹³ Record, p. 8.

¹⁴ Record, p. 4.

¹⁵ Record, p. 6.

explicitly acknowledges that UAW's stated policy remains intact, unless and until the International itself decides otherwise."¹⁶

Green denied that the resolution had the potential to harm the interests of UAW members. Here again, Green relied on the fact that the resolution does not demand any specific action, but instead recommends that the International Union take certain political issues into account in connection with its dealings with other institutions. His letter states:

"Again, it is important to begin with the text of the resolution itself. Nothing in the resolution seeks to ask any other local to breach its collective bargaining agreements. The resolution does not seek any action by any other UAW local. The resolution asks the International to divest pension funds from certain companies, based on a political position taken by those companies. The resolution does not specify any timeline, nor state how the International should accomplish divestment if it chooses to do so, and essentially does not proclaim to the International how it might accomplish the objective sought by the resolution. ..."¹⁷

Green rejected Brumbaugh's claim that the resolution discriminated against members on the basis of their religion or national origin in violation of Article 2, §2, of the UAW Constitution. Green argued that the resolution was designed to end support of institutions that are complicit in the violence that affects both Israelis and Palestinians and was not directed against any individuals. He suggested that the resolution was a protected expression of a political position. His letter states:

"...This language itself distinguishes based on politics and political opinion, not based on statehood, and certainly not based on religion. There is no vilification of any member expressed in the resolution. There is no requested 'boycott' of any person, no exclusion of any individual. This distinction is important. The resolution is explicitly an expression of political opinion, and no more."¹⁸

Green also responded to Brumbaugh's claim that pursuit of the BDS movement involved an inappropriate expenditure of union resources. He wrote:

"...First, we note that the union has never lost its focus on collective bargaining and representation matters, having significant contractual wins during the last round of bargaining, and continuing to vigorously enforce our contractual rights. Second, we note that the bulk of the organizing around this BDS vote, including educational efforts by members both in

¹⁶ Record, p. 23.

¹⁷ Record, p. 24.

¹⁸ Record, p. 25.

support of and against the resolution, was done by unpaid volunteer members of the union. Funds spent on this campaign were utilized primarily for the printing of ballots and related tasks to ensure that the vote was conducted in a fair and adequate process.”¹⁹

Green concluded his response to Brumbaugh’s appeal as follows:

“We have attempted here to explain why the executive board of UAW Local 2865 declined to invalidate the resolution adopted by the local’s members. We ask that the International carefully consider this reasoned position and its importance to many of our members. Regardless of the International’s position on the BDS movement, we ask that the International simply recognize and understand the importance of this matter to many of the local’s members. We also respect and welcome the dissenting and different opinions of many of our members, including member Brumbaugh. We welcome further conversations with the International on this subject and remain willing to provide additional documents and/or statements of position as desired. Thank you for your consideration of this important matter.”²⁰

In addition to Recording Secretary Green’s response, the Local 2865 Election Committee submitted a file of documents reflecting the drafting of the resolution and its presentation to the membership for a vote to support the local union’s claim that the process used for adopting the resolution was fair and democratic.²¹

Acting on behalf of President Dennis Williams, Administrative Assistant Allen Wilson conducted a hearing on Brumbaugh’s appeal on August 21, 2015. Hearing officer Wilson prepared a report to the IEB on the appeal based on documents submitted by the parties and testimony given at the hearing. Wilson’s report contains the letter dated November 17, 2014, from Region 5 Director Gary Jones addressed to the president and recording secretary of Local Union 2865. The letter states:

“Dear Sisters Glowa & Quintanila:

The International Union has received numerous requests for a position from the Local 2865 leadership and membership regarding the BDS movement. Please find enclosed a 2007 Statement of Opposition to Divestment from or Boycotts of Israel, signed by over 40 national labor leaders.

¹⁹ Record, p. 26.

²⁰ Record, p. 29.

²¹ Record, pp. 16-18.

The International Union's previous position has not changed."²²

The statement attached to Director Jones's letter was prepared by the Jewish Labor Committee (JLC). The statement describes the JLC's concern about the motives of those supporting the BDS movement. It states:

"With the large number of local, regional, and international conflicts, with the diverse range of oppressive regimes around the world about which there is almost universal silence, we have to question the motives of these resolutions that single out one country in one conflict."²³

The JLC argued that a just resolution to the Israeli-Palestinian conflict would require meaningful negotiations toward a two-state solution, rather than boycotts or divestments. The statement adopted the following position with respect to movements advocating divestment from or boycotts of Israel:

"Rather than divestment from Israel, we believe that investment of time, energy and material aid is the best means to alleviate the ongoing suffering of Palestinians and Israelis. Engagement, rather than disengagement, with the Israeli people and the Palestinian people is needed, so that a just and fair resolution of this conflict may be pursued, and so that meaningful progress towards achieving the legitimate needs of Palestinians and Israelis can be made."²⁴

UAW International President Ron Gettelfinger endorsed the statement attached to Director Jones's letter.²⁵

Administrative Assistant Wilson's report also contains statements submitted by members of Local Union 2865 as well as various labor organizations describing their opposition to the BDS movement.²⁶ His report contains questions and answers on the proposed resolution prepared by its supporters and statements from various members explaining why they supported the resolution.²⁷ In his discussion of the appeal, hearing officer Wilson acknowledged the strong feelings expressed in writing and by testimony during the hearing on both sides of the issue regarding support for the BDS movement. He pointed out, however that the resolution adopted by the local union raised a question about the extent of a local union's autonomy as a subordinate body within the International Union under the UAW Constitution. Wilson's report states:

²² Record, p. 114.

²³ Record, p. 115.

²⁴ Record, p. 115.

²⁵ Record, p. 116.

²⁶ Record, pp. 89-113.

²⁷ Record, pp. 131-159.

“With the foregoing as a framework, we will address the overall issue that begs the indomitable question, how much autonomy is a local union provided when an appeal levied against it claims that the subordinate body has blatantly ventured outside of its constitutional parameters by engaging in intolerant actions against UAW members, while concurrently subverting the Union in collective bargaining? Last but not least, we are tasked with speaking to the implication that charges the International Union with complicity in a questionable local union resolution that, inherently, influences the vilification of UAW members.”²⁸

Wilson concluded that the language of the resolution and the boycott amounted to discrimination and vilification within the meaning of Paragraph 1 of the UAW Ethical Practices Codes. He commented:

“Based, in large part, upon the above excerpt(s) extracted from the BDS resolution, notwithstanding the denotation and connotation of words, it is our unanimous belief that the notion of BDS, credibly, espouses discrimination and vilification against Israelis and UAW members who are of Jewish lineage. From this perspective, we find that the BDS resolution is systematic in its decrying orations about Israel and its stated atrocities against Palestinians. Conversely, as emphasized earlier, the local union’s critique of any other ethnicity or victimizer outside of the Israeli and/or Jewish population is not present in its arguments. Thus, the local union’s platform is apparent in its unfavorable stance against the state of Israel, Israelis and, invariably, Jewish union members.

To re-emphasize, the BDS resolution neglects the prior-cited language under the EPC of the International Constitution relatable to discriminatory and vilifying activities against members of the UAW as it focuses, exclusively, on the actions of the state of Israel and principally drafted its resolution in the same fashion.²⁹

In addition, Wilson held that the language of the resolution and the academic boycott violated the “No Strike” clause in violation of Article 19, §1 of the collective bargaining agreement between the UAW and UC. This violation, he asserted, amounted to a subversion of the UAW’s collective bargaining policy. His report states:

“Thus, when a contract is in full force and effect at a UAW facility, the union is constitutionally foreclosed from engaging in any activity that could

²⁸ Record, pp. 159-160.

²⁹ Record, pp. 163-164.

be construed as 'to subvert the union in collective bargaining.' The BDS resolution unquestionably disrupts this language."³⁰

As a result of this effect, Wilson maintained that the resolution and the boycott were beyond the Constitutional authority of the local union as described in Article 37, §6 and §7 of the UAW Constitution. Those sections provide as follows:

"Section 6. Each subordinate body shall strive to attain the objectives set forth in this Constitution; to maintain free relations with other organizations; to do all in its power to strengthen and promote the labor movement; to cooperate with Regional Board members, the International Representatives and help promote organizational activities.

Section 7. No local union or other subordinate body and no officer, agent, representative or member thereof shall have the power or authority to represent, act for, commit or bind the International Union in any matter except upon the express authority having been granted therefore in writing by the International Executive Board or the International President."³¹

Wilson referred to Director Jones's letter of November 17, 2014, as the official statement of the International Union's position with respect to the BDS movement. He found that the local union's adoption of the BDS resolution was in direct opposition to the expressed policy of the International Union. He noted that despite Director Jones's statement, the local union's resolution had the effect of associating the UAW International Union with the BDS movement. Wilson held that this violated Article 37 of the UAW Constitution and overstepped the local union's authority to act as a subordinate body of the UAW. He explained:

"It is, again, obvious to us that as a subordinate entity under the banner of the UAW, the local union's enactment of the BDS resolution has inextricably intertwined the International Union in an international social movement controversy. Moreover, because the local union is a body of the UAW, albeit a subordinate body, the UAW International Union is, conceptually, viewed as being adjoined and/or in support of the BDS resolution and the movement against the state of Israel regardless, inconsiderate, and irrespective of the denials of the local union. This involuntary attachment of the local union's BDS resolution to the International Union is an overt breach of the prior alluded to provision under Section 7 of the Constitution."³²

³⁰ Record, p. 165.

³¹ Record, pp. 166-167.

³² Record, p. 167.

Wilson went on to address Brumbaugh's argument that the method used to adopt the resolution and the boycott was undemocratic. He found that the evidence in the record did not support this claim. His report states:

"Nevertheless, it has been established that the appellant's allegations about clandestine local union BDS activities, intentional informational gatherings on Jewish holidays, and an overall lack of information from the local union appears to be a collective assertion that fails for lack of proof or substantive evidence. To the contrary, the case record discloses that the local union made an earnest effort to engage the membership in the BDS discussions."³³

Wilson determined that the BDS resolution adopted by the Local Union 2865 Joint Council on October 18, 2014, and passed by the membership at a meeting on December 4, 2014, violated the UAW Constitution and exceeded the authority of the local union acting in its capacity as a subordinate body of the UAW International Union. Wilson declared the resolution nullified.³⁴

The IEB adopted Administrative Assistant Wilson's report as its decision.³⁵ President Williams provided Stephen Brumbaugh and Local Union 2865 with a copy of the IEB's decision on December 15, 2015. The local has now appealed the IEB's decision to the PRB.

ARGUMENT

A. Attorney Ellis Boal on behalf of UAW Local Union 2865, et al.:

The IEB improperly equated opposition to Israeli policies with vilification of individual Jewish members of the UAW. The resolution adopted by the union clearly states that the union's representation of all of its members will continue as before regardless of the outcome of the vote on the resolution. The ballot presented to the membership states in its final paragraph as follows:

"In carrying out the activities set forth above and in acting on this proposal, we affirm that this proposal should not be interpreted or applied to seek to influence the hiring or other employment decisions of the University or individual academics or UAW members; nor will it in any way limit or affect the representative functions of the union including, without limitation, which grievances we pursue, our position on tenure disputes, etc. Additionally, this resolution does not seek to influence or affect what is taught in the classroom or the pedagogy or scholarship of UAW members

³³ Record, p. 168.

³⁴ Record, p. 169.

³⁵ Record, p. 44.

or of other academics regardless of who they are, while at UC or when involved in UC-sponsored programs or events. Nor does this resolution seek to discourage association with individual Israeli scholars. The UAW is strictly committed to opposing all forms of discrimination including discrimination based on race, religion, national origin or ethnicity, and we affirm our strong commitment to the principles of academic freedom for all in the UC community.”³⁶

No evidence has been presented of any deviation from this policy of non-discrimination.

The conflation of Israeli policies with Judaism ignores the more than 20 percent of Israeli citizens who are non-Jewish minorities, not to mention the roughly six million predominantly Muslim and Christian Palestinians living under occupation or economic blockade. It also ignores the views of many Jewish UAW members who expressed support for the BDS resolution and who see Israel’s actions as harmful to Jews inside and outside of Israel.

There are good reasons for United States institutions to target the illegal Israeli occupation of Palestine because of the U.S. government’s intimate relationship with the Israeli government. The U.S. can have a greater influence on Israel than other nations. U.S. foreign policy uniquely singles out Israel by making it the largest recipient of foreign military aid. Pension funds such as those of the UAW or the UC system hold large investments in Israeli and multinational corporations complicit in Israel’s occupation of Palestinian lands.

UAW Local 2865 has not limited its condemnation of oppression to Israeli actions, but has passed resolutions condemning human rights abuses in a variety of countries, especially our own. Recent resolutions condemning abuses in Ferguson, Missouri, and in Ayotzinapa, Mexico, were described in an email to members following the BDS resolution vote. The local has also taken action in recent years in support of fossil fuel divestment, the Occupy movement, immigrant rights, justice for Trayvon Martin, the South African Marikana miners, the Chilean student movement, and many others. When the Local 2865 Joint Council endorsed a resolution condemning the Mexican government for the murders of 43 students in Ayotzinapa, it was not seen as an attack on the Mexican people. The UAW Local 2865 leadership recognized the controversial nature of this particular debate. For that reason, after the proposal was raised by a caucus of members passionate about Palestinian rights, the leadership of the union brought the issue to the membership for a vote.

The IEB’s decision ignored the affirmative mandate stated in Article 2, §6, of the UAW Constitution to solidify the labor movement and build solidarities with other unions. Appellants’ resolution seeks to join with Palestinian labor unions representing the hundreds of thousands of workers who called for the BDS in 2005. If critiquing policies

³⁶ Record, p. 58.

of a country were always construed as discriminating against individuals of that national origin, the UAW would never be able to support workers whose rights were being systematically denied in any particular country. If this policy were the norm, the UAW would not have been able to join the international boycott against the apartheid government of South Africa in the 1980s, because it might have been construed as discrimination against UAW members of South African descent.

The IEB's decision does not explain how the BDS resolution undermines the International Union's bargaining policy. The resolution calls upon the UC and UAW International to divest the investments, including pension funds, from Israeli institutions and international companies complicit in severe and ongoing human rights violations. This resolution does not call for the breach of any collective bargaining agreement. No evidence was presented that UC or the UAW does business with any of the companies affected by the resolution other than to own their securities. There is no request that the UAW cease negotiating with these companies over current collective bargaining agreements, but only a request that they not begin any new bargaining relationships with such companies.

The IEB's argument that the resolution overstepped the local union's authority as a subordinate body in the UAW ignored the federalist structure of the union, which espouses a spirit of local autonomy permitting the passage of non-binding democratic resolutions such as the one in controversy here. The UAW Constitution provides in Article 19, §3, that International officers cannot negotiate the terms of a contract without the approval of the local union. Also, the PRB has ruled that a local union membership can vote to award back pay to a grievant, even after the IEB found that no wrong had been done. *Dawkins v. UAW*, 2 PRB 296, 301 (1975). If a local can self-determine bargaining strategy and make whole its members, it stands to reason that this fundamental unit of union democracy should be able to pass non-binding resolutions that reflect the sensibilities of its members regarding International Union policy.

The resolution adopted by the membership of Local Union 2865 does not conflict with an established International Union policy. It is a request that the policy be changed. It is the members' absolute right to petition the International Union on matters of union policy. The seven-year-old statement referred to in Director Gary Jones's letter of November 17, 2014, acknowledged that other labor leaders disagreed with the position on the BDS movement. There is no universal consensus on this issue among labor organizations. The statement attached to Jones's letter refers favorably to efforts of unidentified Palestinian trade unionists to engage in mutually supportive activities. In fact, the membership's resolution arguably fulfills the statement by engaging with Palestinian trade unionists such as Shaher Saed. Saed is General Secretary of the Palestinian General Federation of Trade Unions (PGFTU). The PGFTU has joined with other Palestinian trade unions in calling for divestment from corporations complicit in Palestinian rights abuses. UAW Local Union 2865 answered that call for international labor solidarity.

The International Union cannot nullify a request from local union members that it reconsider past policy decisions. The first question on the ballot adopted by the membership simply calls upon the UAW, the UC, and the US government to divest and decline to do business with companies that are complicit in the abuse of Palestinian rights. Asking the International to reconsider its stated policy is within the powers granted to a UAW local union. To the extent that the IEB decision attempted to nullify the academic boycott, it is meaningless. The boycott was merely a membership survey not a resolution. A membership survey can be neither enforced or nullified.

B. Attorney Scott A. Edelman on behalf of Stephen Brumbaugh:

The PRB should decline to review the decision of the IEB on Stephen Brumbaugh's appeal because it addresses political issues and collective bargaining policy. Both of these subjects are beyond the jurisdiction of the PRB under the UAW Constitution. In *Downs v. International Executive Board*, PRB Case No. 1096, 8 PRB 548 (1995), the PRB rejected an appeal challenging the IEB's position on single-payer national healthcare stating that it involved a political issue that should be addressed by political processes. The Board ruled that such political disputes did not present a justiciable issue under Article 33 of the UAW Constitution. The PRB dismissed an appeal in *Davis v. International Union, UAW*, PRB Case No. 1441, 12 PRB 244, (2003), after concluding that the issue presented was essentially a political issue and the Constitution provides the PRB with no authority to resolve political issues.

Here, the parties agree that a political issue lies at the heart of this appeal. The local union itself has repeatedly emphasized the inherently political nature of this dispute. In their statement of reasons, appellants argue that the BDS resolution is essentially a call for political action to change United States and Israeli policy. Likewise, the IEB's decision was premised in part on its concern about the UAW becoming "inextricably intertwined" in a divisive political debate about a foreign conflict. Accordingly, because the local union's appeal addresses political issues that are properly left to the International Union and its political processes, it should be dismissed for failure to state a justiciable issue, based on the rule established in *Downs*.

The PRB should also decline to consider this appeal because it involves review of the union's collective bargaining policy in violation of Article 33, §3(f) of the UAW Constitution. The PRB has taken this limitation seriously and has routinely rejected appeals that implicate matters related to collective bargaining, including where a UAW local has voted on the matter.

If the PRB decides to consider the merits of this dispute, it should deny the local union's appeal in its entirety. The local union has not stated any basis for overturning the IEB's interpretation of the UAW Constitution in this case. As the PRB has previously emphasized, IEB decisions which involve interpretations of the UAW Constitution are entitled to substantial deference. *Schrade v. International Union, UAW*, PRB Case 583, 3 PRB 370 (1983) and *Vicola et al. v. Local Union 653, UAW*, PRB Case No. 631, 4 PRB 108 (1984). In *Vicola*, the Board's opinion states:

“...Nevertheless, to our minds it is clear that the framers of the Constitution intended that the primary authority for interpreting the Constitution is the President, the International Executive Board, and the Constitutional Convention, and not the Public Review Board. We have consistently held, therefore, that the interpretations accorded to the Constitution by the President and the IEB are entitled to great weight and only when clearly in error do we believe we are authorized to overturn those interpretations.”³⁷

Accordingly, an appellant challenging an interpretation of the Constitution must establish that the interpretation was clearly erroneous. The local union’s appeal unquestionably fails to meet this high threshold. In fact, the local union’s argument does not claim that the interpretation was erroneous, but only that it ignored certain circumstances. That is not an adequate justification to reverse the IEB. Therefore, even if the local union’s claims were true, which they are not, they would not constitute sufficient grounds for overturning the IEB’s decision.

There is no merit to the local union’s argument that the IEB improperly equated opposition to Israeli policies with vilification of individual Jewish members. The IEB concluded that the language of the resolution and the academic boycott amounted to discrimination and vilification within the meaning of Paragraph 1 of the UAW Ethical Practices Codes based on the statements given by members about the activities of pro-BDS members of the local union. These members described specific behaviors that were threatening and insulting. The testimony of these witnesses demonstrated that the IEB was not confronted with a theoretical question about when and under what circumstances criticism of Israeli policies might cross the line into anti-Semitism. Rather, it was presented with concrete evidence that members of the local union who were Jewish, Israeli, and/or opposed to the BDS movement in favor of a more balanced approach to the Arab-Israeli conflict were subject to significant harassment, discrimination, intimidation, and vilification. In light of such evidence, there is no doubt that the IEB’s conclusion that the BDS resolution violates the EPC is far from “clearly erroneous.”

In addition to prohibiting activities that disregard the rights of other union members, Paragraph 1 of the EPC also prohibits activities that subvert the union in collective bargaining. The BDS resolution clearly violates this prohibition as well. Simply put, the local union cannot credibly claim that calling for economic warfare against certain companies whose employees are represented by the UAW will have no impact on the UAW’s collective bargaining with those companies. There is no dispute that the resolution is intended to inflict severe economic harm on companies that have collective bargaining agreements with the UAW and which employ thousands of UAW-represented workers. Indeed, the BDS resolution calls on the UAW and the UC to

³⁷ 4 PRB 108, at 112.

divest from such companies and decline to do business with them. It is disingenuous for the local union to assert that the resolution does not call for the breach of any collective bargaining agreements, when the resolution promotes precisely such breaches by calling for economic warfare against companies with which the UAW has bargaining relationships.

The resolution also involves a specific breach of the UAW contract with the UC. As the IEB reported, Article 19 of the local union's contract with the UC contains a "No Strike" clause. It provides:

"...The UAW, on behalf of its officers, agents, and members agrees that there shall be no strikes, stoppages or interruptions of work, or other concerted activities which interfere directly or indirectly with University operations during the life of this agreement or any written extension thereof. The UAW, on behalf of its officers, agents, and members, agrees that it shall not in any way authorize, assist, encourage, participate in, sanction, ratify, condone, or lend support to any activities in violation of this article."³⁸

By facilitating a broad-based academic boycott that seeks to disrupt a wide variety of programs run by the University, the local union's resolution violates this portion of the collective bargaining agreement.

The IEB also correctly determined that the BDS resolution violates Article 2, §2 of the UAW Constitution by targeting certain members of the union based on race and ethnicity. The local union seeks to excuse and justify the divisiveness caused by the BDS resolution by comparing it to other resolutions condemning human rights abuses. They argue that the local union's condemnation of the Mexican government for the murders of 43 students in Ayotzinapa was not taken as an attack on members of Mexican descent. The fact that a previous political statement by the local union was not discriminatory is irrelevant. The local union's position on the situation in Ayotzinapa did not seek to harm Mexican companies and state institutions, to end US aid to Mexico, or to promote an academic boycott of Mexican universities and academics. And, in sharp contrast to the present situation, there is no evidence that the local union's previous forays into politics resulted in certain groups and individuals within the UAW feeling that they were being singled out and discriminated against by their UAW brothers and sisters.

The BDS resolution also violates Article 2, §6 of the UAW Constitution by jeopardizing the UAW's relationships with other labor unions. For example, as noted in the IEB Decision, the California Teamsters – who represent nearly 250,000 workers in California and 14,000 workers in the UC system – provided extensive written and oral testimony during the IEB's investigation that the Teamsters view the BDS resolution as

³⁸ Record, p. 165.

a direct attack on the economic security of their members. The Teamsters' representatives testified that they believe the actions of Local Union 2865 has damaged the relationship between the UAW and the Teamsters Union in California. Similarly, the president of the American Federation of Government Employees warned that the BDS movement is completely contrary to the principles of union solidarity. In light of this compelling testimony, there is no doubt that the BDS resolution violates the UAW International Constitution by elevating the political preferences of a small number of local union BDS activists above the UAW's fundamental interest in the solidification of the entire labor movement.

The local union has attempted to refute the IEB's conclusion that the BDS resolution exceeded its authority under Article 37, §6 and §7 of the UAW Constitution by stressing the non-binding nature of the resolution. This attempt to backpedal must fail, however, given the plain language of the BDS resolution itself. The resolution calls on the UC and the UAW to take specific actions such as divestment in various companies and declining to do business with others. The resolution asks two highly symbolic and economically significant entities to fundamentally alter important commercial relationships. The BDS resolution expressly advocates and is intended directly to facilitate the imposition of severe economic harm on certain companies and institutions. Regardless of the actual impact of the resolution, there is no question that it is squarely at odds with the official position of the International Union on an important public policy matter. In short, having sought to use the name, resources, and power of the UAW to promote economic warfare against certain companies, the local union cannot now claim that the BDS resolution is merely a request that the International Union consider changing its official policy.

Members of the local union are free to work to change the official policy of the UAW International Union. They are free to express their views in a wide variety of media. However, local union members do not have the right to use the name, power, and resources of a UAW local union to publicly undermine the policies of the UAW International Union. The IEB properly held that the local union exceeded its authority under the UAW Constitution when it adopted the BDS resolution and academic boycott. Stephen Brumbaugh asks the PRB to deny the local union's appeal and uphold the decision of the IEB in its entirety.

C. International Union, UAW:

The International Constitution and the UAW Ethical Practices Codes (EPC) establish democratic rights for members to speak freely and participate in decisions governing the union. However, these rights are not without limitation. The duties and powers of subordinate bodies within the UAW's structure are set forth in Article 37 of the International Constitution. That article makes clear that the International Union has the ultimate authority to establish union policies. As noted in the IEB's decision, the local union's decision to adopt the BDS resolution in defiance of the position stated in Director Gary Jones's letter was contrary to the language of Article 37, §6 and §7 of the UAW Constitution, which explicitly limit a local union's power to act for the union. In an

early decision, *Dawkins v. UAW*, PRB Case 349, 2 PRB 296 (1975), the PRB recognized the International Union's ultimate authority over policy decisions. The decision states:

"The organization of the UAW is essentially federalist: primary authority resides in the International organization and not its constituent local unions. Thus local unions are chartered by the International organization which charters may be revoked by the International and may be used by the local union so long as the local and its members comply with the laws of the International Union. ..."³⁹

In their appeal, appellants attempt to turn the UAW's federalist structure on its head. They argue that the UAW espouses a "spirit of local autonomy." In support of this idea, appellants point to Article 19, §3 of the Constitution, which requires the International Union to obtain approval of the local union before negotiating the terms of a contract. This assertion omits the section's description of the International Union's final authority to approve negotiated contracts. Article 19, §3, goes on to provide:

"...Should the proposed contract or supplement be approved by a majority vote of the local union or unit members so participating, it shall be referred to the Regional Director for her/his recommendation to the International Executive Board for its approval or rejection. ..."

Thus, appellants' statement that the local can self-determine bargaining strategy is incorrect and its reliance on Article 19 to support that assertion is misplaced.

Appellants discount the letter from Regional Director Jones by stating that it attached a seven-year-old position statement of U.S. labor leaders. They assert that the position statement acknowledged disagreements among other labor leaders about the merits of the BDS movement. Once again, this statement is misleading. The other labor leaders referred to who are in disagreement with the position are individuals in the United Kingdom, not the United States. The U.S. labor movement continues to share broad consensus that the BDS movement is not the answer to the ongoing question of resolving the Palestinian-Israeli conflict. Appellants claim that their resolution complied with the position statement by maintaining contact with mutually supportive activities of Palestinian unions. This argument distorts the language of the 2007 statement. The statement actually provides:

"Trade unionists and their organizations seeking such a just and fair resolution should be assisting those working to bring the two sides together in direct talks and then negotiations. In this regard, we call for increased engagement of trade unions with their counterparts on all sides of the Israeli-Palestinian conflict. We support efforts of Palestinian and

³⁹ 2 PRB 296, at 301.

Israeli (emphasis added) trade unionists and their organizations to maintain contact and cooperative and mutually supportive activities, even in the midst of tumult and political change within their respective communities.”

Obviously, this is a very different call than the one-sided representation made by appellants. The 2007 statement advocates cooperation between Palestinian and Israeli unions, not support for one group at the expense of another.

Appellants next argue that the UAW is a political institution which invites debate on political issues, citing *Yettaw v. Local Union 599, UAW*, PRB Case No. 942, 6 PRB 236 (1992). That case allowed that local union officials have the right to express opinions on union policy in a local union publication. However, the case goes on to say that when union policy has been formulated, the UAW Constitution requires editorial conformance. Thus, in the cited case, the PRB found that the local union newspaper editor properly refused to print a column submitted by Mr. Yettaw opposing a position on which union policy had been resolved. The case recognized the right of members to express viewpoints contrary to established union policy by speech, leaflets, or other means, but found that the right to free speech did not extend to having articles contrary to the union’s established policy published in a local union newspaper at union expense.

Finally, appellants attempt to defend their actions by asserting that the BDS resolution is non-binding as it relates to action by the UAW and the University of California. Appellants claim that the resolution did not violate the limitation on its authority stated in Article 37, §7 of the UAW Constitution, because it did not seek to commit or bind the International Union to any position. However, the resolution calls on the University of California to take actions such as divesting investments and declining to conduct business with certain companies. This direct call to the University contradicted the expressed policy of the International Union and disregarded the authority of the International Union as a signatory to the collective bargaining agreement with the University. The resolution did not merely ask the International Union to reconsider its internal policies as claimed by appellants. Instead, it made a demand on an employer on behalf of the entire UAW without authority granted to it by the International Union.

Moreover, the IEB rightfully questioned whether the BDS resolution created a potential breach of the no strike clause found in the collective bargaining agreement between the International Union, its Local 2865, and the University of California. Article 19 of the collective bargaining agreement prohibits concerted activities which interfere with the University’s operations. The BDS resolution calls for a cessation of business with companies doing business with Israel. The resolution could be read as concerted action that interferes with the University’s operations, such as conducting research that involves one of the targeted companies.

Aside from being outside the scope of the local union’s authority, the BDS resolution also violated the Ethical Practices Codes by seeking to cause economic

damage to companies that employ thousands of workers represented by the UAW and other unions. There is ample evidence in the record that the employees of these companies perceive the BDS resolution as a threat. The record includes a letter from UAW Local 298, which represents employees at Raytheon. This letter strongly encourages the International to overturn the BDS resolution because it attacks all workers employed by these defense contractors, especially union workers.

The appellants curiously claim that the UAW's representation of workers at the targeted companies does not amount to conducting business, so that the resolution does not subvert the union's collective bargaining activities in violation of Paragraph 1 of the EPC. Appellants state that there is no request that the UAW break current contracts with companies, but a request that they not enter into any future contracts. Under that rationale, the UAW should not engage in collective bargaining when the current contracts expire, despite its obligation to do so under the law and its duty to represent its members.

The BDS resolution has also jeopardized the UAW's relationships with other labor organizations in violation of Article 2, §6 of the UAW Constitution. The IEB's report published letters from other unions, including the California Teamsters, which represents 250,000 other workers in California, 14,000 of whom work in the UC system. Those letters and testimony given at the hearing revealed that other unions view the BDS resolution as a direct attack on the economic security of their members. Appellants assert that the IEB ignored the testimony of appellant McCleary about his continued working relationship with these other unions, but that testimony does not negate the views expressed by ranking officials in the Teamsters or other unions.

The IEB also concluded that the BDS resolution amounted to vilification of Jewish and Israeli members and promoted discrimination in violation of the EPC. Although the language of the resolution disavows discrimination on the basis of religion or national origin, in reality it singles out Israelis for criticism and condemnation. Testimony given during the IEB's hearing revealed that the local allowed, and even promoted, hateful accusations directed at members opposed to the BDS resolution during the campaign promoting it. Specifically, the local union sponsored speakers who compared Israelis and supporters of Israel to Nazis, possibly the most hateful invective in modern history. Similarly, the local union allowed its own officials to compare anti-BDS members to the Ku Klux Klan. The local union made no effort to separate itself from these statements during the BDS campaign, nor did it discuss or acknowledge the problem presented by these statements during the IEB's hearing. The local union had a duty to challenge statements comparing Israelis to Nazis during a union sponsored event, if they were to be true to their claim to condemn bigoted hate speech.

Appellants argue that their resolution does not discriminate or vilify individuals by asserting that it only targets Israeli state institutions and corporations. They maintain that the BDS resolution cannot be discriminatory because it is supported by some Jewish members. These circumstances do not nullify the vilification experienced by members who opposed the resolution. It does not reduce the discriminatory impact of

the resolution on Israelis and Jewish members who support the state of Israel and have expressed that view

The IEB's decision to nullify the BDS resolution was within its authority under the UAW Constitution. The decision was reasonable and proper in light of the facts presented. The decision of the IEB in this case should be affirmed.

D. Rebuttal by Attorney Ellis Boal on behalf of UAW Local Union 2865:

As a result of the IEB's decision nullifying the membership's vote to adopt the BDS resolution, the local has not taken any steps to implement the vote. It has not asked the UAW or the UC to adopt the policies called for in the resolution. The local considers this delay in implementing the membership's decision an ongoing violation of the members' right to express themselves freely about a public issue.

The triggering event of the present dispute was the widely publicized Israel-Gaza conflict of July and August 2014. On July 12, 2014, on the website of Labor for Palestine, twenty-two Palestinian labor and other organizations re-issued a world-wide call for support of the BDS movement. At its July 2014 meeting, the Local 2865 Joint Council called for a membership vote on BDS resolution. The Joint Council's resolution targeted the Israeli state, and not the Jewish people. It noted that many Jews and Jewish organizations support BDS. A vote on the resolution was scheduled to be held in the upcoming term when the membership would be at its fullest strength.

A caucus describing itself as "Informed Grads" quickly formed in response to the Joint Council's decision. The Informed Grads caucus published a detailed critique of the local union's proposed resolution. The Informed Grads caucus did not appeal the Joint Council's decision, but instead concentrated, appropriately, on trying to win support for its position at the ballot box.

The language of the actual ballot was determined during a seven-hour meeting on October 18, 2014. Detailed minutes of the meeting were prepared. The minutes are published in the IEB's decision.⁴⁰ The Informed Grads caucus was invited to participate in the meeting. Opportunities to provide alternative viewpoints were provided to all parties on the local union's website and at the nineteen polling stations on election day. The local authorized expenses up to \$3,100 to conduct the vote. The money went primarily for printing ballots and related tasks to ensure that the vote was fair. In fact, the IEB specifically found that the local "made an earnest effort to engage the membership in the BDS discussion" and the voter participation was high.⁴¹

A sixty-five percent majority (1,411 to 749 out of 2,168 voters from the local) voted yes on the BDS proposal. Fifty-two percent (1,136 of 2,168 voters from the local)

⁴⁰ Record, pp. 48-56.

⁴¹ Record, p. 168.

voted yes on the voluntary academic boycott survey. The number of members eligible to vote at the local union is 6,062. Therefore, the percentage of the eligible voters who participated in the decision to adopt the BDS resolution was thirty-six percent, which was higher than the percentage that turned out for the last general election.

On December 17, 2014, the sixtieth day after the Joint Council determined the ballot language and the voting date, Stephen Brumbaugh appealed the local union's decision to join the BDS movement to the Local 2865 Executive Board and Joint Council.⁴² The UAW Constitution, Article 33, §4(c), allows sixty days for appeals to a local union. However, the bylaws of Local Union 2865 allow only thirty days for such an appeal. Article 19, §1 of the local union bylaws provides as follows:

“Consistent with the Constitution of the International Union, UAW, a member feeling her/himself aggrieved by any action, inaction, or decision of the local union, campus unit, or one of its representatives must initiate her/his complaint or appeal within thirty (30) days of the time s/he is aware, or reasonably should have been aware of the action, inaction, or decision.”

The bylaws were submitted to the International Union for approval in 2007. On November 1, 2007, President Ron Gettelfinger approved the bylaws. Although Gettelfinger recommended some amendments to the local union's proposed bylaws, the International Union allowed the thirty-day time limit on appeals to the local union to stand.

All the parties agree that October 18, 2014, is the date that triggered the running of the time limits for this appeal. Under the UAW Constitution, neither a local union nor the IEB has jurisdiction to act on an untimely appeal, even if there was no timeliness objection. See *Pochik in the matter of Kapera v. Local Union 372, UAW*, PRB Case No. 1209, 10 PRB 52, 58 (1998) and *McComb in the matter of Tom Carnahan v. International Executive Board*, PRB Case No. 1453 II, 12 PRB 308, 313 (2006). Brumbaugh's appeal, filed 60 days after the triggering date for the time limits, was untimely in accordance with the bylaws of Local Union 2865. Therefore, neither the local union nor the IEB had jurisdiction to consider Brumbaugh's claim that the BDS resolution violated the UAW Constitution or the Ethical Practices Codes, and neither does the PRB. Accordingly, the PRB should vacate the local union's and the IEB's decisions for lack of jurisdiction and treat the membership's vote on the BDS resolution as if it had never been appealed.

In support of his appeal to the PRB, appellant Stephen Brumbaugh characterizes the IEB's response to his appeal as an inherently political decision. He urges the PRB to dismiss the local union's appeal as calling for a political decision that ought to be resolved by the union's political process. In support of this argument, Brumbaugh cites

⁴² This appeal is in the IEB's decision at pp. 61-68.

the PRB's decision in *Downs v. UAW, supra*, but he misconceives the point of that decision. In *Downs*, the UAW had published an article in *Solidarity* advocating a position on national health care. The PRB observed that the International's decision to publish was within its powers of administration described in Article 7 of the Constitution and therefore not subject to review. Unlike the situation in *Downs*, the UAW did not adopt its political stance on the BDS resolution as part of the exercise of its administrative powers. It adopted its political position in response to an appeal presented in accordance with Article 33.

The local does not disagree that the IEB acted politically. We believe politics is the reason the IEB refused to pay attention to the actual language of the resolution. Similarly, it is the reason we see so many factual errors in the report to the IEB defending the decision. However, it was improper for the IEB to have taken a political stance in response to a proceeding under Article 32 or Article 33 of the UAW Constitution. Under Article 33 and the Ethical Practices Codes, the IEB may not decide an appeal based on its own politics. Political issues of concern to the entire union must be resolved at the Convention. It is only in such a context that the parties can work freely to establish union policies democratically.

It has not been established that opposition to the BDS movement actually is the official policy of the UAW. The roots of the conflict at the heart of the BDS movement go deep into history. Following recognition of Israel by the UN in 1947, some 750,000 Arabs were displaced in the war of 1948 and that of 1967. The UN addressed their displacement in Resolution 194, which recognized the right of Palestinian refugees to return to their homes. The Local 2865 Joint Council referred to Resolution 194 when announcing the vote of the BDS resolution. Member Omar Zahzah also cited Resolution 194 in his testimony before the IEB.

Local 2865's action is not the first expression of rank-and-file dissatisfaction with the UAW's involvement in Israel and Palestine. The local's announcement of the vote on the BDS resolution reported that there was precedent for the protest. In 1973, Arab-American UAW members in Detroit protested the International Union's purchase of Israeli bonds that financed the seizure of Palestinians' lands. In 2005, Palestinian trade unions first collectively called for the BDS resolution.

In 2007, the Jewish Labor Committee (JLC) in the United States organized a letter in opposition to the BDS movement. The letter was signed by the presidents of many major US labor unions. Without mentioning Israeli violations of international law or refusals to comply with Resolution 194, the union presidents reasoned that BDS unfairly singled out the Israeli government. The union leaders at that time took the position that labor unions should advocate for a two-state solution by engagement with both Palestinian and Israeli unions. International President Ron Gettelfinger was one of the union leaders who signed the JLC letter.

President Gettelfinger and the other signatories to the JLC letter purported to speak only for themselves. There is no evidence that the IEB knew of the JLC

statement, much less that the IEB as a body endorsed President Gettelfinger's support for the letter in 2007. When IEB member and Regional Director Gary Jones sent the letter to Local 2865 in November 2014, claiming that the International Union's previous position had not changed, he did not provide a copy of this communication to any other member of the IEB. The appellants have not offered any evidence that Director Jones had any knowledge of the IEB's actual position on the JLC letter. A number of labor unions within the United States are opposed to the letter, including the UE, the ILWU, and the organization for Labor for Palestine. Other than Director Jones's claim that the International UAW supported the JLC statement, appellants have not produced any IEB resolution or article in *Solidarity* showing that the IEB had taken any political position with respect to the BDS movement in December 2014.

Should the PRB reach the merits of this appeal, the local union asks the Board to find that the IEB violated the rights of its members to free speech when it nullified the member's decision to advocate in support of the BDS resolution. The student workers recently organized and represented by the UAW bring their own unique values to the table. These values are reflected in the draft proposal to join the BDS movement that is republished in the IEB's decision. It states:

"Working together as a global labor movement to oppose injustice around the world strengthens us all in our individual struggles against anti-labor employers and states and in our collective efforts to build the world that working people deserve."⁴³

In furtherance of these goals, the University of California Student Association (UCSA) as well as the undergraduate student governments at seven of nine UC campuses have passed similar BDS resolutions.

In responding to Brumbaugh's appeal of the membership's action, the IEB denounced the values that prompted the local union's decision as discriminatory and vilifying. Citing no expert testimony or other factual basis, the IEB's decision equated the local's opposition to Israeli government policies with vilification and discrimination against Jews. No evidence supports this position. All that the resolution expressly targeted was Israeli oppression of the Palestine people, the policies of the State of Israel, and its failure to comply with international law.

The IEB asserted that the BDS resolution violates Article 2, §2, of the Constitution by targeting a specific group based on race, ethnicity, or religion. The language of the resolution is silent about religion or ethnicity; it speaks only to the actions of the Israeli government. The IEB's decision ignores the context of the local union's action. The local union found that over 1,100 Palestinians in Gaza have been killed as a result of the most recent Israeli bombardment. Appellant Brumbaugh argued

⁴³ Record, p. 130.

that only an extremely small minority of Jews support the BDS movement. There is no evidence to establish how many of the supporters of the resolution were Jewish.

The IEB suggests that the resolution violates Article 2, §6 of the Constitution by failing to work for the solidification of the entire labor movement. Certainly, people within the labor movement hold different views on this subject of the BDS movement. The Local 2865 Joint Council voted down a resolution supported by the Informed Grads caucus calling for a two-state solution and a right of Jewish self-determination fulfilled in the state of Israel. Others in the labor movement, such as the Teamsters and AFGE officials believe Local 2865 is wrong about this. However, these are issues which the local must determine for itself. The local took no position on what a political solution should look like. As to the views of members of other unions, except for the 2007 JLC statement, which was never renewed or officially endorsed by the IEB, and the anecdotal expressions of officers from the Teamsters and AFGE, there is no evidence to establish what the position of the labor movement is on the Palestinian-Israeli conflict.

The IEB maintained that the resolution subverts the union's collective bargaining in violation of the Ethical Practices Codes. This is a puzzling assertion. Local unions commonly make their bargaining goals public far in advance of the beginning of negotiations. The BDS resolution was not framed as a bargaining demand. But assuming the parties regarded it that way, if the UC saw this resolution as a threat that the local union intended to take a hard stand on the issue when negotiations begin for the 2018 contract, the declaration is within the local union's power and authority. It is the local union's right to establish policy goals in accordance with Article 19, §3 of the Constitution. There is no suggestion in the resolution that the UAW should abandon representation of employees at BDS targeted companies. Likewise, there was no request that the UC or the UAW break current contracts with BDS-targeted companies, if the UAW has any contracts with such companies. There is no evidence that the local intends any concerted action before expiration of the current contract. The academic boycott is also explicitly an individual choice.

The most bizarre reason asserted by the International Union for rejecting the local union's decision to adopt the BDS resolution is its claim that the decision implicates the UAW International Union in support of the movement without authorization. The local never claimed it was acting as an agent of the International Union or that it was acting on its behalf. The BDS's call for action by the UAW demonstrates that the local leadership understood the local's status as a subordinate body.

Suppose that the local had actually called for the UAW or the UC to violate its contracts, or engage in conduct prohibited by external law. Suppose, say, the local resolution had called for a wildcat strike. Certainly, historically, the UAW has taken such action: the magnificent Flint sit-down strike was completely illegal. The members' right to freely express their views should protect speech even if it calls for illegal action. However, a close reading of the protested ballot demonstrates that its recommendations are free of that fault. Acting in the highest traditions of UAW democracy, the local

membership had a right to speak out. The members of Local 2865 declared their solidarity with the Palestinian people. We ask the PRB to reverse the IEB's nullification of the membership's vote.

DISCUSSION

The Local 2865 Joint Council presented its proposal that the local union should join in the BDS movement to the local union membership at a meeting on December 4, 2014. Local 2865 sent an email describing the results of the vote on the motion to Stephen Brumbaugh on December 10, 2014. Brumbaugh appealed the membership's decision to the local union executive board on December 17, 2014.⁴⁴ This appeal was timely regardless of whether the applicable time limit was sixty or thirty days. The action being appealed was the membership's decision on December 4, 2014. There is no basis for starting the time limits for filing an appeal in October. In any event, the time limits stated in Article 33 of the UAW Constitution would take precedence over any contrary limits stated in the local union bylaws. The local union could not diminish a member's access to the appellate procedures described in Article 33 by adopting a bylaw inconsistent with the UAW Constitution.

After the local union rejected Brumbaugh's appeal, he asked for review by the IEB. The IEB determined that the local union's vote to support the BDS resolution exceeded its authority under the UAW Constitution. The IEB, therefore, granted Brumbaugh's appeal and declared the resolution nullified. Appellants now ask the PRB to overrule the IEB and reinstate their resolution. Our jurisdiction to consider this appeal arises from Article 33, §1 of the Constitution, which states that any subordinate body or member shall have the right to appeal any action, decision or penalty by the IEB. The subordinate body seeking review of the IEB's decision in this case is the local union. Individual members of UAW Local 2865 have asked to join in this appeal, but it does not appear that they seek any additional remedy as individuals. The Local 2865 Joint Council has also joined in this appeal, apparently to defend and explain the language that was drafted to present to the membership on December 4, 2014. However, the remedy sought by all of the appellants in this case is sought on behalf of Local Union 2865. The appellants want this Board to reverse the IEB's ruling nullifying the BDS resolution.

Appellants argue that the IEB's action violated their right to free expression guaranteed by the UAW Ethical Practices Codes. The International Union responded to this claim by declaring that supporters of the BDS movement engaged in conduct that could be construed as harassment and vilification of Jewish and Israeli members within the meaning of Paragraph 1 of the Democratic Practices section of the Ethical Practices Codes. We have consistently recognized that the right to free speech guaranteed by the UAW Constitution is a cherished one and not to be lightly abridged. Under our

⁴⁴ Record, pp. 58-60.

precedents, a very clear showing of vilification or harassment would be required to justify any interference with an individual's expression of a political view.⁴⁵

However, we do not need to conduct a detailed investigation into whether any of appellants' speech crossed over into the very narrow limitations on freedom of expression described in the Ethical Practices Codes. That is because the essential question raised by this appeal is whether a local union, acting in response to a motion presented at a membership meeting, may adopt its own official position on an issue that is contrary to one endorsed by an International Union President and affirmed by the Regional Director as the official position of the UAW. The answer to that question under the UAW Constitution is that it may not.

As noted in the IEB's decision, Article 37, §7 of the Constitution prohibits a local union from acting on behalf of the UAW International Union in any manner except upon express authority granted by the IEB or the International President. Individual members of a UAW local union may advocate for a wide range of political positions. Article 23 of the Constitution encourages members to participate in political activism to promote the general welfare of the community. What the members may not do is commit the UAW as an organization to a political position that it opposes. The record reveals that members of Local 2865 sent inquiries to their Regional Director about the UAW's policy in regard to the BDS movement and they received an unequivocal response. Director Jones provided appellants with the JLC letter that had been endorsed by International President Ron Gettelfinger. Jones explained that the position described in the JLC statement, which is to reject the divestment and boycott strategy in favor of cooperative efforts to negotiate a two-state solution to the Israeli-Palestinian conflict, was still the UAW International Union's position on the issue.

The UAW International Union had the authority to articulate a position with respect to the political issue at the heart of the BDS movement and it has done so. The local union's announcement of the membership's resolution demonstrates that appellants intended to associate the prestige and standing of the UAW with a position contrary to the one described by Regional Director Jones. The email dated December 10, 2014, with the subject, "UAW 2865 Makes History with Vote in Solidarity with Palestinian Workers and Students," asserted that UAW Local Union 2865 had become the first major labor union in the United States to endorse the BDS movement.⁴⁶ The motion adopted by the local union purporting to give UAW backing to the BDS movement was beyond the authority of Local Union 2865 and so was properly nullified by the IEB.

Appellants' arguments in support of their request to overturn the IEB's decision are primarily political arguments. They claim that the International Union has incorrectly

⁴⁵ See *Laney v. International Union, UAW*, PRB Case No. 559, 3 PRB 271, 278 (1981); and *Byas v. Local Union 249 Executive Board*, Case 1242, 10 PRB 262, 265 (1998).

⁴⁶ Record, p. 59.

characterized their movement and ignored the realities of the political situation in Palestine and Israel. Their appeal seems to request an evaluation of the relative merits of the conflicting political stances adopted by Local 2865 and the UAW International Union with respect to the BDS movement. There is no basis in the UAW Constitution or the Ethical Practices Codes for this Board to make any judgment about the underlying political issues giving rise to this appeal. We have consistently refused to take a position on political issues. Article 33 is not designed to adjudicate such matters. As we noted in *Downs, supra*, there are political processes for political issues.⁴⁷

The IEB's order nullifying the BDS resolution adopted by Local Union 2865 is affirmed.

⁴⁷ 8 PRB 548, at 553.