

THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW

PRB CASE NO. 942

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APPEAL OF:

DAVE YETTAW, MEMBER
LOCAL UNION 599, UAW
(Flint, Michigan),

Appellant

-vs-

CASE NO. 942

LOCAL UNION 599, UAW, REGION 1C
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued March 26, 1992)

PANEL SITTING: Rev. Msgr. George G. Higgins, Chairman,
Prof. Benjamin Aaron, Prof. James E.
Jones, Jr., Dr. Jean T. McKelvey and
Prof. Theodore J. St. Antoine.

APPEARANCES: Ellis Boal, Esq. and Dave Yettaw on behalf
of appellant; Dennis Carl, Robert Roman
and James Wheeler on behalf of Local
Union 599, UAW; Ophalandus Brasfield
and Maurice Treadwell on behalf of the
International Union, UAW.

Local 599 president, Dave Yettaw, claims the Local Executive Board violated his right to freedom of speech guaranteed by the Democratic Practices section of the UAW Ethical Practices Codes when it rejected articles he had submitted to the Local Union newspaper in his capacity as Local Union president.

FACTS

On August 11, 1989, Dave Yettaw filed an appeal with the Local 599 recording secretary protesting the Local Executive Board's (LEB) refusal to publish various articles he had submitted to the Local Union newspaper. Yettaw asserted that none of the articles had expressed a viewpoint that contradicted International Union or Local Union policy. The LEB denied his appeal. Yettaw appealed to the International Executive Board (IEB).

On October 8, 1989, the Local 599 membership considered yet another appeal from president Yettaw challenging the Executive Board's decision not to publish an article he had submitted. The membership again voted to uphold the

Executive Board's decision. Yettaw also appealed this action to the International on October 11.

On February 19, 1990, Local 599 education director Dennis Carl requested information from the International president's office concerning the right of an editor to reject articles submitted by a local union president for publication in the local union paper. On February 22, administrative assistant Maurice Treadwell wrote to Carl and outlined the International Union's policy with regard to local union newspapers. He stated in part:

"In this regard, disputes regarding the propriety of proposed articles/comments for local union newspapers would have to be reviewed on a case-by-case basis and should be resolved by the Local Union Executive Board and/or the Local Union Membership."

Additional appeals involving rejected articles were filed by Dave Yettaw in March, July and August, 1990.

In response to an inquiry from the International concerning Yettaw's appeals, recording secretary Bob Roman wrote to president Bieber on September 18, 1990, explaining the Local's position with regard to Yettaw's articles. Roman stated that the membership had amended the Bylaws to state that whenever a conflict arose concerning the publication of articles in the Local Union paper, the author, editor and Local Union officers would meet jointly to resolve the controversy. In the event a solution could not be reached, the president of the Local is required to call a special meeting of the Local Executive Board to make the decision.

Yettaw's appeals were assigned to administrative assistant Maurice Treadwell for report and recommendation. Treadwell determined that no hearing was necessary to decide Yettaw's appeals. In his report, Treadwell quoted the text of Article V, §3(c) of the Local Union bylaws concerning the Local Union's editorial policies:

"This publication shall conform with the policies of the Local Union and International Union. Any differences relative to a conflict with clearly defined policy, libelous or injurious material, the Officers and Editors shall meet jointly to resolve such controversy. In the event the Officers and Editors cannot agree on a solution, the President of the Local Union shall call a special meeting of the Local Union Executive Board for a decision. This is in conformity with Article 29, Section 7 of the International Constitution and the Local Union Bylaws."

Treadwell noted that Yettaw had refused a proposal for a meeting at the Local Union level concerning the rejected articles. According to Treadwell, Yettaw maintained that he "has the absolute right to have published in the space set aside for his column in the newspaper any comment he so desires (unedited) on matters he perceives to be

relevant to the Union under his byline." Treadwell concluded that Yettaw's position was simply wrong. In any event, he found that Yettaw's articles were not routinely edited or denied publication. To the contrary, his articles appeared frequently as submitted, or in an acceptably modified form. Treadwell recommended that Yettaw's appeals be denied and his recommendation was adopted by the IEB as its decision. Yettaw was advised of the decision on October 15, 1990. He appealed to the Public Review Board on October 30. We heard the parties in oral argument October 19, 1991.

ARGUMENT

A. Dave Yettaw, by his attorney Ellis Boal:

This appeal does not concern an issue of access; it concerns the issue of freedom of speech. President Dave Yettaw has, by virtue of his office, a column assigned to him in the Local Union newspaper. The Ethical Practices Codes of the Constitution guarantee Dave Yettaw the right of free speech. Under the terms of the Constitution, Yettaw had the right to have his columns published free of substantive interference from the newspaper's editor and the Local Executive Board so long as he was not advocating policies or positions contrary to the policies of the International or Local Union.

This appeal also presents an issue different from that confronted previously by the PRB. The *Plyer* case¹ involved the right of access of a local union member, who did not have a column assigned to him in the Local Union newspaper. The *Bier* case², while closer on its facts, is complicated by reason of the fact that Bier was a candidate for public office at the time her articles were censored. Arguably the articles were contrary to International policy. On the other hand, the PRB's decision in the *Kelsey* case³ makes it clear that the right to criticize a local union officer or member is in fact protected by the Ethical Practices Codes. It was wrong, therefore, for the Local Union editor and LEB to censor Dave Yettaw's columns that expressed criticism of Local 599 officials.

A Local Union newspaper editor may edit a column, that is, he may clarify it or correct errors, but he may not edit it for substance. There is no claim here that any of Yettaw's articles were contrary to International Union policy. It is worth noting that some of the articles submitted by Yettaw were completely cut. In these instances, the articles cut were political.

The membership can decide whether or not to have a newspaper, but once it decides to have a newspaper, and to allot signed columns to certain local union officers, the membership or its representatives cannot censor that column.

¹ *Plyer v. Local Union 599, UAW*, 1 PRB 238 (1961).

² *Kelsey v. Local Union 245, UAW*, 4 PRB 46 (1983).

³ *Bier v. Local Union 2500, UAW*, PRB Case No. 888 (1990).

B. International Union, UAW, by Ophalandus Brasfield:

From its earliest days, this Board has ruled that it is the membership which must decide disputes such as that raised by this appeal. *Plyer v. Local 599*. In this case, the membership voted, and voted often sustaining the rejection of Brother Yettaw's submissions. Only recently in *Bier v. Local 2500*, the PRB reaffirmed *Plyer*.

Appellant, as Bier, is the president of the Local, and so had a regular column in the newspaper. However, he apparently lacks the support of both the Executive Board and the membership, both of which time and again have voted to sustain editorial decisions not to publish his proposed articles. Appellant, like Plyer and Bier, was not deprived of his right to speak or communicate, but only of the advantage of having his opinions published and distributed at the Local's expense.

This case does not implicate the Ethical Practices Codes in any meaningful way. We agree that the Codes guarantee to Dave Yettaw a right to speak. This does not mean that the membership has to subsidize his speech. The PRB in *Plyer* uphold a local union's right to decide not to publish a member's submissions. A local union has the right to edit; this is not censorship. At one time, Dave Yettaw himself was editor of the paper and, when he was, he saw the wisdom of editing.

When the Local Union editor wanted to edit one of Yettaw's columns, if Yettaw objected he was obliged by the bylaws to meet with the editor. This is true even though the editor or the members of the Local Executive Board may be his political opponents. If he is dissatisfied with the result, he can appeal. The PRB should provide guidelines, however, so that the issue does not keep arising over and over again.

The International Union conducts seminars to teach local union editors. A booklet is distributed and the local editor is taught that he should not allow local union internal politics to determine what goes in the newspaper. But on the other hand, he should not allow the paper to become a forum for fights between opposing political factions. Leaflets should be used for this purpose.

C. Ellis Boal, Esq., rebuttal:

Dave Yettaw did go through all of the steps, but there is a political imbalance in the Local Union. Dave Yettaw's supporters are not in the majority. The majority is in a position to dictate the content of Dave Yettaw's articles. It is all right to insist on balance in the newspaper, but only at election time.

DISCUSSION

We revisit in this appeal issues which we addressed in *Plyer*, *Kelsey* and *Bier*, prior decisions cited by both Mr. Yettaw and the Union. *Plyer*, which also involved a submission to *Headlight*, established that a member possesses no right to insist that a local union newspaper publish opinions which he believes to be important for consideration by his union brothers and sisters.⁴ *Kelsey* established that the

⁴ We commented:

Ethical Practices Codes protect the right of a member freely to criticize the officers of his union. Finally, Bler stands for the proposition that if an officer by virtue of her position has the right to have a signed column appear in each edition of her local's newspaper, that right is still subject to editing for policy purposes.

The unique issues presented by this appeal concern equality of application of editorial policy by an editor and executive board, and considerations of what types of union policies are entitled to conformity protections. We have been invited by the parties to establish guidelines for the application of editorial conformity. We endeavor to do so here.

The first principle which we believe must guide those responsible for editing for policy conformity is equality of treatment. If an editor insists that the submissions of those officials entitled to signed columns must conform to union policy, then all such submissions should be subject to the same standards. It is improper to insist that some conform while exempting others. The facts of this appeal provide an illustration:

On October 3, 1989, Mr. Yettaw submitted as the president's column an article concerning the response of the "Big Three" to the internationalization of the auto industry, particularly the efforts of the industry to gain concessions from the workers. He commented that the leadership of the UAW has been a willing, though very junior, partner in these corporate strategies. But the results, he argued in the proposed article, was that half a million UAW members have been lost, billions of dollars in wages and benefits have also been lost. The Union, he stated, has lost authority in the workplace, and speed-ups, job overloads, and new threats to health have resulted. These corporate strategies, Yettaw commented, brought success and profitability and

"... A local union newspaper belongs to the entire membership, and it is this body which is ultimately responsible for the determination of the publication's policies. Where there is controversy with respect to any such policy which must be resolved, recourse must be had, as in any other democratic organization, to a vote of the membership or, if the matter has been properly delegated, as it was here, to its chosen representatives. If, through this process it is determined, whether wisely or no, that articles representing only a certain viewpoint shall appear in its paper, this determination does not constitute a deprivation of the right of free speech and press to those who do not share this viewpoint. In presenting his views, complainant professed to speak only for himself. If he were to have a right to have his expressions on politics appear in print, every other member would have the same right. This concept, carried to its logical conclusion, would lead to chaos.

Complainant's assertion that the refusal to publish his articles constituted a denial to him of his rights to free speech and to a free press demonstrates a fundamental misunderstanding of the meaning of these terms. These freedoms, given expression in the First Amendment to the United States Constitution, traditionally have been thought to embrace the liberty to discuss publicly all matters of public concern without previous governmental restraint or subsequent penalty. The restrictions of the First Amendment have been traditionally interpreted to apply to the Federal Government and not to private individuals or organizations. For purposes of this discussion, however, we find it unnecessary to define the limits of a UAW member's rights of free speech and press within the union for it is clear that they have not been encroached upon here. Complainant's right to a free press in connection with political matters cannot encompass more than the right to publish freely his opinions without fear of recrimination from his union. ..."

excessive wages to corporations and their top officers while, he said, "The only increase the Union has realized is our loss of jobs and increases in concessions." This article was rejected, presumably on policy grounds, although no reason was actually articulated. The article which was printed under his byline made reference to the fact that the one he had submitted had been edited. The only portion which was printed dealt with such non-controversial subjects as clean air, auto prices, etc.

Conversely, the editor allowed Ken Scott of the shop committee to state his views on the reasons for the auto industry's problems:

"The huge layoffs in Flint are an example of Roger Smith's leadership and his methods of managing the business. Not enough criticism can be placed on this individual (Roger Smith). He, and he alone, is responsible for General Motors' loss of the market share. If he had been the leader of some foreign country, instead of General Motors, he would have been run out of office or possibly even placed in front of a firing squad for such irresponsible decisions that affect to many people."

If it was permissible for Ken Scott to criticize corporate conduct, it should also have been permissible for Dave Yettaw to do likewise.

To this observation it might be reasonable to assume that the editor would argue that the two submissions were distinguishable; that Scott's article criticized only Roger Smith while Yettaw's implied criticism of implied UAW complicity in the policies for which Mr. Scott criticized Mr. Smith.

This leads to a discussion of principle two: An editor should distinguish between policy and politics. The term "politics" does not reference traditional partisan political activity, but rather is intended to embrace the spectrum of issues which may be the subject of legitimate debate among union members.⁵ Such debate is the lifeblood of any democratic institution. Stifle it and that institution will inevitably be

⁵ In *Kelsey*, supra, we expressed a similar view:

"Appellant Kelsey complains that Keresi's article was 'political' in nature. We agree that these remarks could be considered political. We suspect, however, that many of the other articles which appear monthly in the *Beacon* also could be characterized as political. The point we wish to make is that there is nothing inherently wrong in a local union newspaper publishing political articles. The UAW is, after all, a highly political institution; it should come as no surprise, therefore, that most articles appearing in local union newspapers which deal with issues of concern to local union members will be 'political' in at least some respects.

Appellant Kelsey apparently confuses the use of local union newspapers for political purposes, which is permitted, with the use of a local union newspaper to promote the candidacy of a particular candidate or slate of candidates without affording a like opportunity to all candidates, which is not permitted. But there is nothing in the Constitution of the UAW which prohibits the use of local union newspapers for the publication of political articles. ..."

crippled or even die. In the name of policy conformance, legitimate political comment ought not be censored.

The official editorial policy of Local 599 appears to embrace this principle:

"To our readers: This paper is the voice of your local and International Union. This is our ONLY vehicle for bringing to you, on a regular basis, the views and actions of the leaders you elected so you can evaluate them. Through the paper, we explain Union policies and show how your dues are spent.

The paper is also the voice of the member. We welcome articles from UAW Local 599 members in good standing, and stories about our members.

While we welcome your contributions, we ask that they be constructive. ALL ARTICLES SHOULD CONTRIBUTE POSITIVELY TO THE WELFARE OF THIS UNION AND ITS MEMBERS, AND WE WILL ACCEPT NO PERSONAL ATTACKS ON ANY UNION LEADER OR MEMBER. We will accept a thoughtful discussion of all related issues in the letters column, and reserve the right to reply to those that seem to reflect a misunderstanding of the Union and its policies.

Your articles must be less than 150 words.

Any member with a problem in regard to their articles, should follow Local Union Bylaws as established in Article 5, Section C.

We look forward to hearing from you."

Nevertheless, despite the claim that the paper is the "only vehicle" for bringing to the membership "on a regular basis the views and actions" of the Local's leaders so the membership could "evaluate them", the editor regularly refused in the name of Union policy to print the views of president Yettaw. Again, an example illustrates the point. On February 12, 1991, Mr. Yettaw submitted for publication in the February 15 edition of *Headlight* a column dealing with the subject of censorship. It also commented on events which transpired at the previous membership meeting. It was totally rejected by the education director to whom the Executive Board had given authority for printing and editorial decisions for *Headlight*. Yettaw returned to the same subject in his article submitted for the February 22 edition. Excised from his proposed column was the following:

"CENSORSHIP"

"Last week I did not have a column in the *Headlight* because the article I submitted was totally rejected by the Education Director. Also, I was not allowed to even make a

one-sentence explanation to say my article was not for the eyes of the membership.

Last week, a committee was appointed by me to study and research the basics of democratic free speech and free press. The committee is comprised of members of the Executive Board and I am confident they will return, to the membership, an objective and equitable policy for the publication of our union newspaper."

Certainly it is not a "clearly defined policy" of the UAW that a claim of unwarranted or intrusive censorship should not be aired before the membership. Yet, in the name of policy conformance, this proposed article protesting censorship was itself censored. This, in our view, was totally antithetical to the stated editorial policy of Local 599 and Article V, §3(c) of the Local bylaws.

Union policy is normally formulated only after an issue has been thoroughly examined, aired and debated by the Union's officials and members. During this phase of policy development, the editorial policy of Local 599 commands, as ought all such policy statements, that viewpoints on the subject are entitled to expression. Whether the issue be collective bargaining policy, world trade, political endorsements, or any other like matter of controversy within the Union, until a policy decision is actually reached requirements of freedom of expression protect from censorship the views of persons who have been given, by virtue of office or position, the right to express them in a union publication.

Once a union policy has been so formulated, the Union's Constitution provides for the requirement of editorial conformance. For example, after discussion and debate, the IEB decided upon a travel expense policy for delegates to the Union's 1989 Convention in Anaheim, California. Mr. Yettaw disagreed with the policy and registered his objection to its application to Local 599. He was overruled, and the allowance formula became an official Union policy. Nevertheless, Mr. Yettaw, as was his right, continued to demur. But to carry on his disagreement with the IEB on this subject he attempted to continue to air his views in his proposed column in the July 6, 1989, edition of *Headlight*. His submission included the following:

"Also be asking those who flew to Anaheim and the travel for airfare less than \$741.00 to pay it back to the Local Union (some delegates only paid \$268.00 actual airfare). The International Union has forced us to change our travel expense in our Local Union By-Laws to conform with the International Union's ruling . . . in 1987 it was stated that this manner of misusing union funds was violation of the International ruling as well as a violation of the Federal Law. So in requesting back any amount in excess of the actual cost of airfare, to the Local Union, I am protecting your dues dollars as well as fulfilling the obligation of the president's office and complying with Federal Law."

In our view, the Constitution allows editorial rejection of this statement. Mr. Yettaw is free to pursue the vindication of his viewpoint by speech, leaflet or other

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means, but he is not entitled to have his position printed at Union expense on a matter on which Union policy has been resolved.

It is our hope that these principles will assist those with editorial responsibilities in carrying out their assigned task. Naturally, on occasions there will be difficult calls to make, and these decisions will have to continue to be reviewed on a case by case basis. But the overriding emphasis should always be upon freedom of expression. The healthiest societies and institutions are those which allow and encourage debate over controversial issues. The UAW has, virtually since its inception, been in the forefront of the American labor movement in protecting the free speech rights of its members. Curtailment of such expression should be sparing and limited to those submissions which clearly contravene an established Union policy.

APPEAL OF:

JERRY AHRENS, LARRY ALLEN,
MARIE BABCOCK, PENNY BENNETT,
ART BURGESS, GARY CHRISTOPPERSON,
TOM CONNER, LORRIE CRAIG, WANDA DAVIS,
TERRY DeWITT, JEANENE DRANSFIELD,
SHARON DUNLAVY, RONALD DUOSS,
ROLAND ERICKSON, RICK GATES,
MAUREEN HAERTERICH, JIM HARRISON,
BILL LEWIS, RANDY MEDLEY, SCOTT MEYER,
GREG PRYOR, CRAIG SCHUMACHER,
MEL SKINNER, JAMES STEURER,
BOB STONE, LEIF THORESON
and CLARENCE WALLS, MEMBERS
LOCAL UNION 95, UAW
(Janesville, Wisconsin),

Appellants

-vs-

CASE NO. 941

REGION 10, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued August 9, 1991)

PANEL SITTING: Rev. Msgr. George G. Higgins, Chairman,
Prof. Benjamin Aaron, Prof. James E. Jones,
Jr., Dr. Jean T. McKelvey, Prof. Theodore J.
St. Antoine and Prof. Paul C. Weiler.

We are presented here with the question of whether an International representative's settlement of appellant Sharon Dunlavy's grievance challenging the assembly line speed established by management was devoid of any rational basis.

FACTS

Sharon Dunlavy works on the second shift in the underbody area at the General Motors plant in Janesville, Wisconsin. On December 1, 1988, Dunlavy filed a grievance charging management with violating the established line speed. By letter dated August 1, 1988, management had established a line speed for the underbody area of 68.3 jobs per hour or .88 minutes per job. Dunlavy charged that this speed