Local 933, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (Allison Gas Turbine, Division of General Motors Corporation) ***and*** **Paul A. Sallee** ***and*** **Robert Mitchell.** Cases 25–CB–6710, 25–CB–6935, 25–CB–6746, 25–CB–6767, and 25–CB–6782

June 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On January 17, 1992, Administrative Law Judge Wallace H. Nations issued the attached decision. The General Counsel filed exceptions and a supporting brief, and Charging Party Paul Sallee filed exceptions, a supporting brief, and an erratum. The Respondent filed cross-exceptions, a supporting brief, and an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs[1] and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 933, International Union, United Automobile, Aerospace and Agricultural Implement Workers of American (UAW), AFL–CIO, Indianapolis, Indiana, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Discriminatorily refusing to process a grievance because an employee worked for a nonunion employer or for other arbitrary reasons.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

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

WE WILL NOT discriminatorily refuse to process a grievance because an employee worked for a nonunion employer or for other arbitrary reasons.

WE WILL NOT threaten employee Robert Mitchell or any other employee that we will not represent them because of their involvement in intraunion activities.

WE WILL NOT attempt to cause or cause Allison Gas Turbine, Division of General Motors Corporation, to transfer Robert Mitchell or any other employee from plant 8 to plant 5 because the employee filed charges against us with the National Labor Relations Board and WE WILL NOT offer to have the attempted transfer or transfer rescinded if the charges are dropped.

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

LOCAL 933, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL–CIO

Merrie Thompson and *John Petrison, Esqs.*, for the General Counsel.

Barry A. Macey, Esq., of Indianapolis, Indiana, for the Respondent.

M. Beth Sax, Esq., of Detroit, Michigan, for the Party in Interest.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. Robert Mitchell, an individual, filed charges against Local 933, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (the Union or Respondent) on May 11 (Case 25–CB–6746), June 11 (Case 25–CB–6767), and June 27, 1990 (Case 25–CB–6782). Paul A. Sallee filed charges against the Union on March 9, 1990 (Case 25–CB–6710), and March 29, 1991 (Case 25–CB–6935). After a series of earlier complaints, the Regional Director for Region 25 issued an order consolidating cases,

[1] Charging Party Sallee has requested oral argument. The request is denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

We have not considered the evidence submitted with Charging Party Sallee's exceptions and brief, which is outside the record.

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

Regarding the first paragraph in sec. III,B, of the judge's decision, we note that Sallee was employed by the Allison Transmission Division on June 18, 1984.

We note that there are no exceptions to the judge's dismissal of the complaint allegation regarding the Respondent's request that Robert Mitchell provide it with a copy of his sworn statement given to the Board.

[3] We have modified the judge's recommended Order and notice to conform to the violations found.

consolidated complaint and notice of hearing on May 6, 1991.[1] This consolidated complaint consolidated all the above-listed cases and alleged that the Union had engaged in conduct in violation of Section 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act. The Respondent Union has filed timely answers denying the commission of any unfair labor practice.

Hearing on the consolidated complaint was held in Indianapolis, Indiana, on June 20 and 21, 1991. Briefs were filed by Respondent and the General Counsel on October 1, 1991. Based on the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs, I make the following

FINDINGS OF FACT

I. JURISDICTION

Party in Interest Allison Gas Turbine Division of General Motors Corporation (Turbine or the Employer) has at all times material to these cases engaged in the manufacture and nonretail sale and distribution of gas turbine engines and related products from two plants located in Indianapolis, Indiana. Both the Respondent and the Party in Interest admit and I find that Allison Gas Turbine is now and has been at all times material an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

All parties admit and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

The consolidated complaint alleges that the Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act by:

a. On or about January 9, 1991, requesting of the Employer that it change the employment records of Paul A. Sallee, including certain seniority records, with the intent and purpose of adversely affecting said employee's seniority rights and attendant employment rights and to undermine the grievance filed by Sallee regarding his seniority rights.

b. Since on or about September 9, 1990, and continuing to date, refusing to process to arbitration the above-noted grievance filed by Sallee.

c. On or about June 6, 1990, acting through its agent, Jerry Williamson, threatening not to process the grievances of employees who opposed certain union officers in intraunion elections.

d. On or about June 18, 1990, acting through Bill Collins, threatening the employees of the Employer with refusal to represent them if they filed unfair labor practice charges against the Respondent with the Board, or if they cooperated with the Board in the investigation of such charges.

e. On or about June 18, 1990, through consultation with the Employer, attempting to cause and causing the Employer to transfer Robert Mitchell from day shift work in the Employer's Plant No. 8 to evening shift work in the Employer's Plant No. 5.

e. On or about June 18, 1990, acting through its agents David L. Fenwick, A.S. McAtee and Dale Bastian, requested and directed the employees of the Employer to provide the Respondent with their copies of sworn statements, or the contents thereof, given by the employees to the Board in the investigation of charges in Case 25–CB–6710.

A. *Background Facts*

Allison Gas Turbine is an incorporated Division of General Motors Corporation and operates two facilities, Plant 5 and Plant 8 in the Maywood suburb of Indianapolis. General Motors Corporation also maintains a facility called the Allison Transmission Division in the Speedway suburb of Indianapolis. Hereinafter, the two facilities will be referred to as Turbine and Transmission, respectively. At one time, both Allison Gas Turbine and Allison Transmission were under common management and the employees of both divisions were in one bargaining unit, represented by the involved Union. At some point in 1983, General Motors Corporation decided that each division should be separately operated and managed. In furtherance of this end, General Motors and the Union entered into an agreement (the ''Split Memorandum'') on December 16, 1983, which placed the employees of each division into separate bargaining units and governed the treatment of employees after the split.

Both before and after the split, there were occasions when employees have transferred from the Transmission Division to the Gas Turbine Division and vice versa. Before the split, such transfers were not accompanied by any loss or change in seniority. After the split, if a production employee of one division transferred to the other, the production employee's plant seniority transfers with him, and he retains recall rights at the plant from which he transferred. Skilled trades employees who transferred from the Transmission Division to the Gas Turbine Division bring their GM seniority with them. Skilled trade employees also have a skill trades seniority date. This date becomes important if a layoff of skilled employees occurs, and it is obviously to one's advantage to have the earliest seniority date possible as the order of layoff is governed by seniority.

With respect to the transfer of skilled trades seniority, the Split Memorandum states in paragraph 11:

> 11. Those employees who are currently reduced or laid off from a skilled trades classification or are reduced or laid off prior to the expiration of the 1982 National Agreement, shall have recall rights to their original classification as well as other skilled trades classifications to which they have previously established skilled trades status under the National Agreement, in either plant. Those employees refusing such recall shall surrender any further recall rights to that classification. Those employees reduced from a skilled trades classification after the expiration of the 1982 National Agreement will have recall rights to their original classification within the plant from which they were reduced.

Paragraph 11 of the Split Memorandum was interpreted by a letter dated May 17, 1988, which specifically supercedes

[1] At the outset of the hearing, the consolidated complaint also included two cases, 25–CA–20695 and 25–CA–20729, wherein the Respondent was Allison Gas Turbine, Division of General Motors. These two cases were settled as the record opened and the General Counsel asked that they be severed from the remaining cases for that reason. This request was granted.

an October 23, 1984 interpretation. The May 17 letter reads as follows:

> Per our conversation, we have mutually agreed that the provisions of Paragraph 11 of the Memorandum of Understanding regarding the division of the Bargaining Unit at Allison Gas Turbine Division and Allison Transmission Division dated December 16, 1983 is interpreted as follows regarding the establishment of a new date of entry:
>
> (a) Skilled Trades employees who are laid off from their home plant and are subsequently hired in a Skilled Trades classification(s) at the secondary facility (AGTD) or (ATD) by virtue of the special Area Hire Pool provision set forth in said Memorandum of Understanding shall establish a new date of entry at the secondary facility pursuant to Appendix D-1 of the UAW-GM National Agreement dated October 8, 1987. The employees' plant seniority will be transferred in accordance with Paragraph 9 of the cited Memorandum of Understanding and shall apply to National Agreement benefits governed by plant seniority.
>
> (b) Skilled Trades employees who have established dates of entry subsequent to October 15, 1984 will have these dates adjusted in accordance with Paragraph (a) above.

Appendix D-1 provides, in relevant part:

> 1. Effective January 7, 1985, employees who are or who become permanently laid off from any plant covered by the National Agreement who retain unbroken seniority in any such plant on the date they acquire seniority in any other plant in accordance with Paragraph (57) of the Agreement, will have a seniority date established in that plant as follows:
>
> (D) Journeymen or E.I.T.S. (employees-in-training) employees with unbroken Skilled Trades seniority dates or dates of entry of January 7, 1985 or before, who are employed in the same or related Skilled Trades Classification, will establish a date of entry of January 7, 1985 in that classification.

B. *Did Respondent Violate the Act by Refusing to Process a Grievance filed by Paul Sallee to Arbitration?*

Paul Sallee testified that he has been employed by Allison Gas Turbine since September 1986. He was employed by Transmission on June 18, 1984, in the position of skilled grinder until he was laid off in April 1986. In his initial employment with Transmission, he was a probationary employee for 90 days, and after completion of the 90-day period he received a 10-cent-an-hour raise. Prior to his employment by Transmission, Sallee had been a journeyman tool and die maker for 25 years.[2]

In September 1986, he was contacted by Turbine and told to report for an interview under the area hire provisions. In response he went to Plant 8 and met with General Foremen Dick Roll and Luther Baker. At this time, Sallee believed he might be recalled to Transmission and asked the foremen if he had to accept a job with Gas Turbine. He was told by them that under the area hire agreement he had to take the job if offered. They asked about his experience as a jig bore operator and Sallee informed them he was a journeyman tool and die maker, though he had not held that position in his employment with Transmission.

He was informed that he would be on probation for 30 days, which is standard under the area hire provisions. After 30 days, he received a 10-cent-an-hour wage increase. The Employer's personnel records relating to Sallee indicate he was rehired pursuant to the Split Memorandum on September 15, 1986.[3] In 1987, Sallee was told by some machine repairmen that they had been on layoff from Transmission and hired on at Gas Turbine and that they were not getting the D-1 seniority date. The appendix D-1 date, January 7, 1985, predated his date of employment with Turbine, September 1986, by about 20 months. Sallee believed he was entitled to the earlier date and thus he spoke with his union committeeman, Skip May, about the situation. According to Sallee, May told him that all but one grievance filed over the situation had been withdrawn and all would be settled when that one was settled, and his situation would be resolved at that time.

By late spring 1989, having nothing happen to get him the D-1 date, Sallee decided to go to management directly about his seniority. He contacted Robert Plummer, company supervisor of hourly employment, in May 1989. At this time, there was an election scheduled for union offices. Many of the incumbent elected union officials were being opposed by a group of candidates running together on a slate called the New Directions slate. Sallee testified that he was involved in the elections, supporting the New Directions slate by wearing a hat, buttons and passing out cards. As May was an incumbent, Sallee was opposed to his reelection, a fact of which May was aware.

According to Sallee, he complained to Plummer that he was getting the runaround from the Union about his seniority, and Plummer said he would pull his files and look into the situation. Plummer called him back later in the day and said that he had reviewed the records and that Sallee was correct.[4] About 2 days later, Sallee saw May and told him

[2] In 1982, Sallee had worked for a nonunion employer, Belcan, who did some subcontract work for Gas Turbine. Union employees at Turbine bitterly opposed this subcontracting, contending that the work involved could and should be performed by union employees. Employees of Belcan who were assigned to Turbine were viewed with distain by the union employees there. Sallee, while an employee of Belcan, was assigned to work at Turbine for about 10 months in 1982. This facet of Sallee's past employment was common knowledge among the some of the employees of Turbine.

[3] The circumstances of Sallee's hiring created the problem which resulted in the subsequent filing of his grievance. Under the Split Memorandum, Sallee should have been rehired only in the same skill classification he held while working at Transmission or in a related skill. He was not as neither the Union nor the Employer consider the skills of grinder and jig bore operator to be related. This mistake, which could occur only because Sallee had broad skill training, would later serve to harm him under the Employer's and the Union's interpretation of their various agreements respecting skill trades seniority.

[4] As noted about, the records looked at by Plummer indicated that Sallee was rehired at Turbine pursuant to the Split Memorandum. Unless one noted that Sallee was not rehired into the same skill classification or a related skill classification to the one he held at Trans-

Continued

about his conversation with Plummer. Shortly thereafter, he received another call from Plummer who said he spoken too soon, that the Company was still waiting on word from the International Union.

Plummer testified that in April or May 1989, Sallee called him and said that he was a tool-and-die maker at Plant 8, that he had transferred from Transmission where he had held a single-purpose classification as a jig bore operator, that because of the 1988 local agreement which for the first time included the jig bore single-purpose skill in the broader category of tool and die maker, he felt entitled to the D-1 skilled trade seniority date. Plummer told him that he agreed.

However, Plummer testified that he changed his mind after speaking with his supervisor and looking at Sallee's records. The records indicated to him that Sallee had gone from a single-purpose skill trade at Transmission into another different and separate single-purpose skill trade at Turbine.[5] He informed Sallee of this position within 2 weeks of Sallee's initial call.

Immediately after the election, Sallee requested May to file a grievance in his behalf, having been told by his alternate committeeman, John Gorbett, that nothing could be done about his problem unless a grievance was on file. According to Sallee, he told May that he was an area hire and had been told by the union chairman at Plant 3 that area hires were entitled to the D-1 seniority date. He also told May that he was required to take the job with Transmission or lose benefits under the area hire provisions. May had no comment but did file a grievance dated July 12, 1989, which stated:

> I charge mgt. in violation of Appendix D-1 of the N/A in as much as I was hired at Allison Gas Turbine and I was laid off from Detroit Diesel Allison which is now called Allison Transmission and I was not given the seniority date that of 1-7-85 that is spelled out in the National Agreement. I demand this condition be corrected at once and mgt. abide by Appendix D-1 of the N/A and I be given a seniority date that of January 7, 1985.

Under the portion of the grievance form entitled ''Disposition by Foreman'' is written: ''No violation of Appendix D-1 of the National Agreement in that the employee did not hire in to a related classification.''

This portion of the form was signed by Company Foreman Ron Nardi and dated July 21, 1989.

Shortly after the filing of the grievance, Sallee was informed that it had been withdrawn without prejudice. Having been told by a fellow employee, Winfred Turner, that the grievance was withdrawn allegedly because Sallee broke seniority by working for a company named Belcan while on layoff status, Sallee confronted Gorbett and asked why no one checked with him as he had not broken seniority.[6] Gorbett indicated that the issue of Sallee's seniority was still being worked on and not to worry about it. Sallee then asked May why the grievance had been withdrawn and May said that he did not have the D-1 date coming. Sallee then said that he had heard that May had given Gorbett another reason for withdrawing the grievance and May responded, ''Well, you elected Gorbett.''

May testified that Allison Gas Turbine has about 1200–1300 skilled tradesmen employed. He was aware that some skilled tradesmen transferred from Allison Transmission to Allison Gas Turbine and some were given the January 7, 1985 D-1 skilled trade seniority date. The only such transferring employee of whom he is aware that did not receive that date was Paul Sallee.

May testified that Gorbett withdrew Sallee's grievance while serving as his alternate while he was on a 1-day vacation. May was unaware of any other grievance concerning seniority that had been settled at the first level of the grievance process. May testified that he and Gorbett investigated Sallee's grievance by pulling Sallee's records. Based on his investigation, May decided that Sallee was not entitled to the D-1 date because he was not hired in as a tool and die maker; he was hired in as a jig bore operator at Gas Turbine, and he was a grinder operator at Transmission.

Gorbett's testimony is generally the same as May's in this regard. He testified that prior to the union election, Sallee had told him of his seniority problem, explaining that he was a tool and die operator at Transmission. Based upon this representation, Gorbett encouraged Sallee to file a grievance. He testified that after the election, May prepared and filed the grievance on July 12. Gorbett then met with May about the

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mission, and was intimately familiar with the provisions of the Split Memorandum and appendix D-1, noted earlier, it would appear that Sallee was indeed entitled to the D-1 seniority date.

[5] The classification of tool-and-die maker encompasses a number of more restrictive or as they are called, single-purpose skill classifications, including the positions of grinder and jig bore operator. It is the Company's and the Union's position that under the provisions of appendix D-1, set out earlier in this decision, Sallee would have had to transfer from Transmission to Turbine in the same or a related skill classification for which he held seniority at Transmission in order to be entitled to the D-1 date. Sallee held seniority at Transmission only in the grinder classification and was hired in at Turbine in the jig bore operator classification. As these are different, and in the minds of both company official and union officials, unrelated single-purpose skill classifications, Sallee did not meet the requirements of appendix D-1. It is their consistent position that the fact that these two single-purpose skill classifications, as well as a number of other classifications were combined into the broader classification of tool and die maker by a local agreement executed in 1988, does not make the single-purpose classifications held by Sallee related as of the date of his hiring at Transmission. Although it is not certain from the evidence, Sallee was evidently hired for a different skill trade at Turbine based on his status as a journeyman tool and die maker. Although he did not have seniority in this broader job classification with the Employer, he did have the training and experience to qualify for this classification and thus, could be hired to work in a number of single-purpose skilled classifications, including jig bore operator, though such classification was not the same or related to his previous job classification of grinder. The Employer's records do not reveal that any other skilled trade employee transferring from Transmission to Turbine was hired into a different skill classification than the one they worked in at Transmission. So Sallee is in an apparently unique situation in this regard.

[6] Turner testified that he spoke with Gorbett about Sallee's grievance about 2 days after it had been withdrawn. According to Turner, Gorbett said he had withdrawn the grievance because Skip May had told him that Sallee did not have anything coming to him, that he had broken seniority and had worked for Belcan. All parties agree that Sallee did not break seniority while on layoff status with Transmission. Turner further testified that if you wanted to prejudice one employee against another at Turbine, you would tie them to Belcan.

grievance. He also learned that the Company had told Sallee that he was entitled to the seniority date he sought. He and May went to see Plummer, who told them he had spoken too soon and that he had said the wrong thing to Sallee. Plummer let Gorbett look at Sallee's records and at that point, Gorbett learned that Sallee had not held a tool and die maker classification in his employment with GMC. At this point, Gorbett changed his mind about the merits of Sallee's grievance and decided it did not have merit.

Gorbett testified that shortly thereafter, he and May told Sallee of their beliefs with respect to the grievance and advised him of his appeal rights. With respect to the Belcan issue, Gorbett testified that it was common knowledge in the plant that Sallee had worked for Belcan, but denied that this fact had any bearing on the decision to withdraw the grievance.

Sallee then filed an appeal of the withdrawal with the Local Union. The appeal was given to William (Bill) Collins, who had just been elected to the position of chairman of the bargaining committee as a member of the New Directions slate and had taken office in July 1989. Collins testified that prior to his election, he had no conversations with Sallee about his entitlement to the D-1 date. After the grievance had been withdrawn, he received Sallee's appeal. In his elected position it was his duty to investigate the grounds for the appeal. In this regard, Collins testified that he contacted Union Committeemen Steve Couch, Skip May, and John Gorbett about the merits of the grievance. He decided that the grievance did not have merit and presented that position the executive board when it ruled on the appeal. He told the executive board that Sallee was not hired into the same or related trade when he was hired at Turbine, and that Sallee had broken seniority at the Transmission plant because he had refused recall at that plant after being hired at Turbine.[7] The executive board ruled unanimously to deny the appeal.

The next step in the appeal process was its presentation to the Union's general membership, and accordingly, it was taken up at a general membership meeting held on September 10, 1989.[8] According to Sallee, when the topic of the appeal came up, Collins stated that the recommendation of the executive board was that the appeal be denied because Sallee had broken seniority by working for Belcan. Sallee stated to the membership that this was a lie and made some derogatory comments about Don Newton, the immediate past bargaining committee chairman, stating his belief that the Union was fighting his effort to get the D-1. date, not the Company. Newton then addressed the membership, stating that Sallee was not an area hire, but rather a new hire. He said he had discussed the matter with the International and that Sallee did not deserve the D-1 date. Sallee admitted that Newton had taken the same position about a year earlier when he was bargaining committee chairman, and had been approached by Sallee about his seniority problem..

At that point, the membership was told to vote on the appeal and Sallee was not allowed to comment further. Sallee then approached Newton, who had the Local's sergeant-at-arms escort Sallee to the back of the room in which the meeting was being held. A voice vote was then taken on the appeal and the leadership deemed the appeal denied.

Robert Mitchell, a millwright with Allison Gas Turbine, testified that he had been a union member since 1974. He was elected to the executive board of Local 933 in 1989, running on the New Directions slate. He evidently participated in the executive board meeting at which Sallee's appeal was denied, but did not offer evidence about this meeting. Mitchell testified that at the September 10 meeting Collins told the membership that Sallee had broken seniority and had worked for Belcan, recommending that Sallee's appeal be denied. He testified that Newton also spoke, mentioning the same things, and added that Sallee was a liar and his case had been checked with the International.

Collins testified that he told the membership at the September meeting, the same things he had told the executive board and requested the appeal be denied. When asked whether he referred to the fact that Sallee had worked for Belcan, he answered, ''Not to my knowledge.'' He testified that he heard Belcan mentioned from someone on the membership floor and did not hear any union official refer to Belcan in connection with Sallee. He testified that in connection with Sallee's appeal, Sallee first spoke on his own behalf. Then Collins spoke and after finishing his presentation, recognized Don Newton. According to Collins, Newton said that Sallee was not a rehire, but was in fact a new hire at Turbine and had no right to the D-1 date. The membership then voted on the matter. According to Collins, Sallee then approached Newton and a commotion ensued, which ended with the Local's sergeant-at-arms separating the two.

The official minutes of the September 10 meeting with respect to Sallee read as follows:

> The recording Secretary read the appeal of Brother Paul Sallee. Brother Sallee spoke on his behalf. He questioned why his D-1 date when he transferred to Maywood was different than those of other employees. He had worked in the tool room at Speedway. He was classified as a Tool Die Maker at Maywood. He referred to the split memo and the National Agreement concerning D-1 dates. Chairman Collins outlined the circumstances to the Membership concerning the grievance appeal. He stressed that he was not hired in as a Tool Die Maker so he was not entitled to the January 7, 1985 D-1 date. He recommended that the Appeal be denied. Former Chairman Don Newton also commented on the Appeal. He also recommended that the Appeal

[7] This is not correct because Sallee never broke seniority. However, Collins apparently believed he did and his statements to the executive board are consistent with the information fellow employee Turner gave to Sallee, in that his previous employment with Belcan played a part in the decision to withdraw his grievance.

[8] Local Union President David Fenwick testified that if the membership had voted to overrule the executive board on Sallee's appeal, the Local would have reasserted the grievance with the Employer. He held out little hope that the Employer would change its position in this event. International Union Administrative Assistant Ophelandus Brassfield testified that under the Union's national agreement with the Employer, this would not be the proper procedure to follow. Rather, if the decision of executive board of the Local is overturned by the membership, then that decision must be reviewed by the International Union before the grievance could be reactivated. This procedure is almost identical to the appeal procedure afforded Sallee in the event that occurred, the vote to affirm the executive board's decision to deny Sallee's appeal to it. The appeal procedure will be discussed in more detail at a later point in this decision.

> be denied. It was moved that the Appeal be denied. Seconded and Carried. The Appeal stands denied.

Sallee then decided to file his appeal with the International Union and was told by the Local's secretary that he had 60 days, which turned out to be incorrect. His initial appeal to the International was turned down as being untimely. Sallee filed his charge with the Board, and subsequently, his appeal to the International was allowed, but denied for reasons which will be discussed later.

The matter of Sallee's grievance and its handling by the Respondent has two distinct parts in my opinion. First, did the Union violate the Act by the actions of its officers in the presentation of Sallee's appeal at the September membership meeting, and second, if so, is Sallee entitled to the remedy that the General Counsel seeks.[9] That remedy involves an Order that the Union process Sallee's grievance through arbitration and require it to pay for independent counsel for his representation. I agree with the General Counsel that the Local Union violated the Act by its treatment of Sallee's grievance as alleged in the consolidated complaint, but do not find that the remedy requested is called for under the evidence of record.

I credit the description of the general membership meeting given by Sallee and Mitchell over that of Collins. Collins was shown to be less than a candid witness in his testimony relating to the complaint allegations surrounding Mitchell. Newton did not testify, President Fenwick did not deny the statements attributed to Collins and Newton nor did May. Indeed, Collins did not deny the statements about Belcan attributed to him, merely giving an answer akin to not remembering. Sallee's previous employment with Belcan had nothing whatsoever to do with his grievance and tying the grievance to that employment demonstrates to me that Collins was unlawfully prejudiced in his consideration of the grievance and in his presentation of the grievance to the membership. Given the feeling of the members about Belcan, saying that Sallee had broken seniority by working for Belcan surely ruled out any chance for a honest vote on the merits of the appeal.

The Respondent, when as here, acting in a statutory representative capacity, is prohibited from action against any employee on consideration or on the basis of classifications that are irrelevant, invidious, or unfair. *Miranda Fuel Co.*, 140 NLRB 181 (1962). Section 8(b)(1)(a) of the Act proscribes acts of disparate treatment or negligent conduct which are motivated by hostile, invidious, irrelevant, or unfair considerations, which may be characterized as arbitrary, discriminatory, or bad-faith conduct. *Vaca v. Sipes*, 386 U.S. 171 (1967). In finding a violation of the Act by a union in its decision not to process a grievance to arbitration, the Board held in *Bottle Blowers Assn. Local 106 (Owens-Illinois)*, 240 NLRB 324 (1979):

> Where, as here, a union undertakes to process a grievance but decides to abandon the grievance short of arbitration, the finding of a violation turns not on the merit of the grievance but rather on the whether the union's disposition of the grievance was perfunctory or motivated by ill will.

I find that Collins' reference to Sallee's employment with Belcan at the September 10 membership meeting is clear evidence of ill will toward Sallee and was clearly hostile, invidious, irrelevant, and unfair. By make such statements, Collins, as an agent for the Respondent, engaged in conduct violative of Section 8(b)(1)(A) of the Act and that conduct is attributable to the Respondent.

However, on the question of remedies for this violation, I must take into consideration the Board's holding in *Rubber Workers Local 250 (Mack-Wayne Closures)*, 290 NLRB 817 (1988), that where the General Counsel has shown the grievance is not wholly frivolous and the Union breached its statutory duty, the Union must prove the grievance was not meritorious. I believe it has done so. As discussed in detail above, the provisions of the Split Memorandum, as interpreted by the letter of May 1988, and the relevant provisions of appendix D-1 appear to require that for Sallee to be entitled to the D-1 seniority date, he must have transferred to Turbine or have been rehired by Turbine in either the same or a related skill classification to the one in which he held seniority at Transmission. This did not happen. That I find this to be an absurd and irrational requirement under the circumstances of this case is really of no moment. This is how the Employer and the Union interpret their agreements in apparent good faith and their good-faith interpretations are what count.

As will be demonstrated briefly below, the International Union has afforded and is affording Sallee the recourse of a fair and impartial review of his grievance. Thus far, the review upholds the decision not to further process the grievance for reasons which are consistent with the applicable agreements and not tainted by any discriminatory motives.

As noted earlier, the proper procedure for reactivating Sallee's grievance would be approximately the same whether the membership upheld or overruled the executive board's decision to deny Sallee's appeal. Under either circumstance, the decision on whether to reinstate becomes that of the International Union. In these circumstances, and in the case of Sallee, the International Union sends a team of responsible retired members to investigate and make a written recommendation to the International executive board on whether the grievance should be arbitrated or reactivated. That had occurred by the time of hearing herein and their recommendation was that the grievance did not have merit under a rather technical interpretation of the facts and the controlling documents. In a nine-page written report which sets out the facts relied upon, the team of retirees concluded:

> Employment as a single purpose journeyman in one plant and in a different single purpose classification in another plant does not grant any superior right to appel-

[9] Respondent contends that the complaint insofar as it seeks redress for the withdrawal of Sallee's grievance is barred by Sec. 10(b) of the Act as the withdrawal occurred on July 27, 1989, and Sallee's charge was not filed until March 9, 1990. However, the matter complained of is not the withdrawal of the grievance, but the actions of Respondent's officials at the September 10 membership meeting. This event occurred within the 6-month limitations period prescribed by Sec. 10(b). Until the September 10 meeting, Sallee had no proof that the withdrawal of his grievance was based at least in part on unlawful grounds, and because he believed that May may have had the grievance withdrawn for personal reasons, could have expected he would receive fair treatment from the Local's executive board and membership.

> lant (Sallee). He did not meet the test of having worked as a Tool & Die Journeyman in any General Motors plant until the effective date of the Local Agreement combining single purpose classifications into the broader classification. His claim to the earlier date does not have solid foundation.

Their recommendation was then presented to an appeals panel which upheld the above conclusion. A further appeal is open to Sallee and he is pursuing it. The General Counsel does not question the fairness or impartiality of the International Union's appeal process. However, he stresses that had the grievance been urged at the local level without all the acrimony which surrounded it, the Employer may well have acceded to Sallee's requested relief. That might have happened, as changing Sallee's seniority date costs the Employer nothing. On the other hand, the Union has a duty to fairly represent all of the employees at Turbine, not just Sallee. Changing his seniority date to an earlier one would necessarily adversely affect at least one other employee. Thus I believe it is incumbent upon the Union to make a fair and reasoned decision as to whether Sallee's claim has merit before it proceeds with his grievance. The International has shown that it has done so, has found that Sallee's claim does not have merit for reasons which are rational and reasonable within the confines of the applicable agreements, and thus, I find a make-whole remedy is not called for.

C. *Did the Respondent on or About January 9, 1991, Violate the Act by Requesting that the Employer Change the Employment Records of Sallee?*

As noted earlier in this decision, a notation in Sallee's personnel records accompanying the September 15, 1986 hire date indicates that Sallee was rehired pursuant to the Split Memorandum and did not enter Turbine as a new hire. The issue was significant because under the the Split Memorandum skilled trades employees could be recalled only to their own classification or to another skilled trades classification to which they have previously established skilled trades status. This language is similar to the ''related Skilled Trades Classification'' language of appendix D-1. Accordingly, to be eligible for rehire under the Split Memorandum, an employee would likely be entitled to the D-1 date. Thus, the presence of this notation in Sallee's records appeared to International Union Representative Ophelandus Brassfield, who was in charge of the appellate procedure, to be inconsistent with the conclusion that Sallee was not entitled to the D-1 date.

The Local had taken the position that Sallee was a new hire at the Maywood plant. The Company's position was also that he was a new hire, not a rehire under the Split Memo, and not entitled to the appendix D-1 date. Therefore, when Brassfield was in Indianapolis in December 1990 or January 1991, he went to the local union hall and discussed the matter with Collins and Newton. He became convinced that the Local's position was correct so he contacted Plummer and questioned him as to whether the company records were correct. Plummer responded that the records were in fact incorrect and Brasfield asked him for a letter confirming this information.

By letter dated January 14, 1991, the Company responded as follows:

> On January 9, 1991, we discussed correcting the Kardex record of Paul Sallee. As you are aware, Sallee's record inaccurately reflected his entry status as that of a rehire under the AGTD/ATD split memorandum. This error has been corrected to appropriately reflect Sallee's entry status as that of a new hire. In making this correction, it is impossible to remove the incorrect H15 code. Further, it is impossible to have 2 entry code reflected on the same action/effective date. Therefore, the inaccurate H15 code has been moved back to a 9/17/86 effective date. The proper code, H01, has been entered on the correct hire date of 9/8/86. I hope this will clarify the situation.

I cannot find that this action is in any way violative of the Act. I do find that Brassfield was not acting out of any improper motive and was in fact making an impartial investigation into the appeal of Sallee. The inquiry he made of Plummer was logical and a request to correct the records logical if they were incorrect. The records where not changed to eliminate the earlier reference to Sallee being rehired, rather, they had added to them a reference that he was a new hire. Thus, what had been in the records before remained for anyone to see and question. I would also note that the inquiry was made subsequent to the hearing on the appeal before the retiree panel.

Brassfield followed this inquiry by asking for an opinion from the UAW's General Motors department, a branch of the International Union that is expert in matters pertaining to the Union's contracts With General Motors. This department verified that the recommendation of the retirees was correct. As I have not found that Brassfield's actions violated the Act as alleged, I recommend that the involved complaint allegation be dismissed.

D. *Did Respondent Violate the Act by Requesting or Directing that Robert Mitchell Turn Over to it his Sworn Statement Given to the National Labor Relations Board?*

After Sallee was unsuccessful in overturning the executive board's decision to deny his appeal at the September 10, 1989 membership meeting, and after the rejection of his initial appeal of that vote, Sallee filed his charge with the Board. Executive board member Robert Mitchell was called upon to give a statement to the Board about the September 10 meeting and did so. Mitchell testified that at a executive board meeting held shortly thereafter in May 1990, the local president, Fenwick, asked who had given a statement to the Board. According to Mitchell, Fenwick was very upset and commented that the statement was the reason that the Union was going to lose Sallee's case. He asked Mitchell for a copy of the statement and Mitchell replied he did not have one at that time. The Recording Secretary, McAtee asked what right Mitchell had giving a statement to the Board. After the meeting, Fenwick repeatedly asked for a copy of the statement and Mitchell refused to supply it. They also asked that he sign a release so the Board could supply the statement to the Union's attorney. He was asked on a number of occasions by the an employee of the Union and his alternate committeeman, Dale Bastian, to sign the release.

Mitchell never told anyone who asked him that he refused to turn over the statement.

Fenwick testified that he was asked by the Union's attorneys to obtain any statements given by the Union's officials in the Sallee matter so they could prepare for the case. He admits asking Mitchell for a copy of his statement and testified that Mitchell said he would supply it, but never did. He denied making more than one request for Mitchell's statement.

I cannot find a violation of the Act as alleged in this regard. It is logical that the Union would want to see the statement of any of its officers given to the National Labor Relations Board (NLRB) as such statements are attributable to the Union. Mitchell never refused to turn over his statement so it was logical that the Union would continue asking for it as Mitchell claims it did. Even Mitchell does not allege that he was in any way threatened or coerced in this regard. He was in no way restrained from giving a statement to the Board and a request to know what he said, given his official position, was surely legitimate. I also do not find that the Union violated the Board's dictates in *Johnnie's Poultry Co*., 146 NLRB 770 (1964). Unlike an employer, the Union has no clear and apparent ability to adversely affect his working conditions or even his continued employment. Thus an assurance there would be no reprisals taken against him does not seem necessary, especially in the absence of any coercive attempt to force him to turn over the statement. The request was made for Mitchell to voluntarily give his statement and he did not refuse. In his position with the Union, he knew the purpose of the request.

I will recommend that this complaint allegation be dismissed.

E. *Did Respondent Violate the Act by Threatening not to Process the Grievances of Employees who Opposed Union Officers in Intraunion Elections?*

In May 1990, Mitchell was given discipline by the Employer. He had been handbilling at the plant complaining about the ethics of Zone Committeeman Couch. He reported for work late and was told by his foreman that he was going to have a disciplinary interview. He was then called to a meeting with his foreman and Union Committeeman Jerry Williamson. He was written up for reporting to work late on the day he handbilled. After the writeup, Williamson told him that the local union officials wanted him written up and would be mad because he was going to represent him. A grievance was filed over the discipline and the discipline was rescinded within a week. On June 6, Williamson also indicated to Mitchell that the union officials were upset because Mitchell had supported the New Directions slate in the election and had won over the incumbent executive board member in his own race.

Williamson was alleged to be a statutory agent of the Respondent and this status was admitted. Therefore his statements are attributable to the Respondent. Williamson did not testify and I can find no reason to find that the threats attributed to him were not made. Even though Mitchell's grievance was successfully processed, the threats made by Williamson would certainly have the effect of restraining Mitchell's further participation in intraunion affairs, a protected activity. Thus I find that the statements made by Williamson are violative of Section 8(b)(1)(a) of the Act. See *Steelworkers Local 1397*, 240 NLRB 848 (1979).

F. *Did Respondent Violate the Act by Threatening to Cause and Causing Transfer of Mitchell?*

In May and June 1990, Robert Mitchell filed unfair labor practice charges against Respondent with the Board. In June 1990, Mitchell was shifted from his normal assignment in Plant 8 to night work at Plant 5, performing heat treat. He was told by his supervisor that the shift was for training as he was still in his apprenticeship at the time. He responded that the real reason was politics, and the supervisor agreed, saying he should speak with the general foreman in the plant about the transfer. The general foreman told him that he did not really want to transfer him, but that it was out of his hands as Robert Oatts was having it done.[10] The general foreman agreed that politics was behind the transfer.

Mitchell then went to the bargaining committee chairman, Collins, and asked if he was aware of the transfer. Collins said no. Mitchell then reminded him of an earlier threatened transfer instigated by Union Committeeman Steve Couch for political reasons. Collins had squelched that proposed transfer by speaking with an executive with Turbine. Collins responded that he had stopped his transfer once, but was not going to do it again, pointing to a copy of Mitchell's Board charges which were on his desk. Mitchell said the charges should have nothing to do with his transfer. Collins then told Mitchell that he would try to speak about the matter with an official of the Employer, but was unsuccessful in his efforts to reach one. He then told Mitchell that he would contact him later that day.

After work, Mitchell and his wife went to Collins' home and asked Collins if he had spoken with anyone about the transfer. Collins responded that he still had a problem with the charges, and that he would stop the transfer only if Mitchell would withdraw his charges.

When the transfer actually occurred, Mitchell spoke about it with Oatts, who informed him that the apprentice committee had not made the transfer, that the transfer was political and had been made by the Union's shop committee. Oatts could not remember making this statement, but again noted that he did not move Mitchell. His transfer was to last 6 months, but it was shortened to 3 months by the Company after charges were filed.

Collins acknowledged that he had on one occasion blocked the transfer of Mitchell from Plant 8 to Plant 5 because he believed the transfer was engineered by Zone Committeeman Steve Couch out of political animosity. With respect to the second attempt to transfer Mitchell, Collins testified that Mitchell came by his office and complained about the scheduled transfer. Collins testified that he had Mitchell's NLRB charges on his desk and told Mitchell that he would make

[10] Robert Oatts is labor relations representative and skilled trades coordinator for the Employer. In his position, Oatts is responsible for placement of apprentices and employees in training. He was a member of the apprentice committee during 1990. It has been the practice of the Employer that this committee approve the movement of apprentices from one location to another. As part of the apprentice program for millwrights (Mitchell's classification), it is necessary that they undergo heat treat training, a relatively hot and undesirable job. Oatts did not transfer Mitchell and his transfer did not go through the apprentice committee, the first such case of which Oatts was aware. Oatts also testified that apprentices are given training in Plant 8, and thus, there was no apparent need to transfer Mitchell to Plant 5.

some phone calls to determine why he was being transferred. After Mitchell left, he attempted to reach Company officials about the move, but was unsuccessful. He later reached Max Orr, a company official who he had convinced to block the first attempted transfer of Mitchell. In the latest conversation, Orr told him that the transfer was to further Mitchell's apprenticeship training and Collins dropped the conversation. He testified that he later told Mitchell he was being transferred for training reasons.

Collins testified that prior to his conversation with Orr, Mitchell came to his house and reiterated his request that Collins block the transfer as it was politically inspired by Couch. According to Collins, he told Mitchell at this point that the move was for training and that if he could prove the transfer was politically motivated, he would try to stop the transfer. He acknowledged that Mitchell had told him that he believed that the move was motivated by his filing of charges with the National Labor Relations Board.

Upon being confronted with a tape recording of his meeting with Mitchell, Collins admitted that he told Mitchell that if he dropped the NLRB charges, he would try to stop the transfer.

I believe the credible evidence establishes that Mitchell's transfer was engineered by Respondent because he filed charges with the NLRB against Respondent. The argument that the transfer was for training reasons does not hold up. All transfers for training are supposed to go through the apprentice committee. Mitchell's did not. There is no need to transfer an apprentice from Plant 8 to Plant 5 for heat treat training as such training can be and is performed at Plant 8. Although the Employer's official in charge of apprentice training, Oatts, testified, he offered no reason why the Employer would transfer Mitchell and disclaimed any involvement with the move. As the Employer had no reason to transfer Mitchell for its own legitimate reasons, the only conclusion I can draw is that the Union had him transferred. The transfer came very shortly after Mitchell filed charges with the Board and the Union offered no legitimate reason why it would want Mitchell to receive heat treat training in Plant 5 rather than Plant 8. However, its bargaining committee chairman did point out a connection between the transfer and the filing of charges by Mitchell, and this is the only apparent reason for the transfer to be found in the credible evidence. In making this finding, I credit Mitchell's testimony over that of Collins as Collins was credible only when confronted with proof he was not telling the whole truth. I do not rely on the hearsay statements Mitchell attributes to employer representatives who did not testify nor or those Collins attributes to Max Orr.

Having found that Respondent engineered the transfer to restrain and coerce Mitchell from availing himself of the Board's processes, and then offering to stop the transfer if Mitchell dropped the charges filed with the Board, I find that Respondent has violated Section 8(b)(1)(a) as alleged in the complaint. *Painters Local 558*, 279 NLRB 150 (1986). When the very union officials who engineered the treatment complained off are the ones who will handle a grievance filed over the treatment, it seems to me to be a useless act and one repugnant to the Act to require Mitchell to seek redress through the Union's grievance procedure before complaining of his treatment to the Board. The Respondent's arguments along this line are not persuasive.

CONCLUSIONS OF LAW

1. Allison Gas Turbine Division of General Motors Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Local 933, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged in and is engaging in unfair labor practices in violation of Section 8(b)(1)(a) of the Act by:

a. Bargaining Committee Chairman William Collins referring to Paul Sallee's employment with Belcan at the September 10 membership meeting in an attempt to convince the membership to deny Sallee's appeal of the withdrawal of his grievance for reasons which are hostile, invidious, irrelevant, and unfair.

b. Respondent's statutory agent, Jerry Williamson, threatening employee Robert Mitchell that the Respondent would not represent him because of Mitchell's involvement in intraunion activities.

c. Respondent's causing the Employer to transfer employee Robert Mitchell from Plant 8 to Plant 5 because Mitchell filed charges against Respondent with the Board, and by offering to have the transfer rescinded if Mitchell dropped his charges.

4. The unfair labor practices found to have been committed by Respondent are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent is not found to have committed the other unfair labor practices alleged in the consolidated complaint.

REMEDY

Having found that Respondent has violated Section 8(b)(1)(a) of the Act, it is recommended that it be ordered to cease and desist therefrom and post appropriate notice. A make-whole remedy for Sallee is not recommended for reasons set forth at an earlier point in this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[11]

ORDER

The Respondent, Local 933, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Considering or referring to Paul Sallee's employment with Belcan in an attempt to convince the membership to deny Sallee's appeal of the withdrawal of his grievance for reasons which are hostile, invidious, irrelevant, and unfair.

(b) Threatening employee Robert Mitchell that the Respondent will not represent him because of Mitchell's involvement in intraunion activities.

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

(c) Causing or attempting to cause the Employer to transfer employee Robert Mitchell from Plant 8 to Plant 5 because Mitchell filed charges against Respondent with the Board, and by offering to have the transfer rescinded if Mitchell dropped his charges.

(d) In any like or related manner coercing or restraining in the exercise of rights guaranteed you by Section 7 of the Act.

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

(a) Post at its business offices and meeting places copies of the attached notice marked ''Appendix.''[12] Copies of this notice, on forms provided by the Regional Director for Region 25, after being signed by Respondent Union's authorized representative, shall be posted by Respondent Union at its business office immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken to ensure that the notices are not altered, defaced, or covered by any other material.

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

[12] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''