

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**INTERNATIONAL UNION, UNITED AUTOMOBILE,  
AEROSPACE, AGRICULTURAL IMPLEMENT WORKERS  
OF AMERICA (UAW), AMALGAMATED LOCAL  
UNION NO. 509, AFL-CIO**

**and**

**Case No. 28-CB-144872**

**JOE MOORE, An Individual**

*Larry Smith, Esq.*, Counsel for the General Counsel.

*Stephen Yokich, Esq.*, Counsel for the Respondent.

*Thomas Stewart, Esq., Ogletree, Deakins, Nash, Smoak & Stewart, P.C.*, Counsel for the Employer.

**DECISION**

**STATEMENT OF THE CASE**

JOEL P. BIBLOWITZ, ADMINISTRATIVE LAW JUDGE. This case was heard by me on July 28, 2015, in Kingman, Arizona. The complaint herein<sup>1</sup>, which issued on March 27, 2015, and was based on an unfair labor practice charge that was filed on January 22, 2015, by Joe Moore, an individual, alleges that International Union, United Automobile, Aerospace, Agricultural Implement Workers of America (UAW), Amalgamated Local Union No. 509, AFL-CIO, (the Respondent and/or the Union), has been the exclusive collective-bargaining representative of the employees at the Employer's car endurance test facility in Yucca, Arizona. It is alleged that on October 29, 2014<sup>2</sup>, Moore and Mike Watson, the Union's health and safety representative at the facility, had an argument about a health and safety issue that Moore experienced and Watson reported the argument to the Employer's representative, with the intent to have Moore suspended and terminated, and he was suspended and terminated by the Employer. It is alleged that by Watson's actions, the Respondent violated Section 8(b)(1)(A) and (2) of the Act.

**I. JURISDICTION AND LABOR ORGANIZATION STATUS**

Respondent admits, and I find, that the Employer has been an employer within the meaning of Section 2(2), (6) and (7) of the Act and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

**II. THE FACTS**

The facts can be stated briefly: on October 29, Moore and Watson had a brief confrontation over a health and safety issue that Moore experienced on October 2, unrelated to

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<sup>1</sup> This was originally a consolidated complaint against Local 509 and Fiat Chrysler Automobiles Group, NV, the Employer, but the Employer settled its portion of the case prior to the opening of the record.

<sup>2</sup> Unless indicated otherwise, all dates referred to herein relate to the year 2014.

any union activity, and Watson reported what occurred to the Employer's supervisor, but without any recommendation of what, if anything should be done about it. After a brief investigation, the Employer suspended and then terminated Moore. The sole issue here is whether the Union violated the Act because Watson reported the incident to the Employer, which resulted in  
 5 Moore's discharge.

The complaint alleges that Watson held the position of the Union's health and safety representative and was an agent of the Union within the meaning of Section 2(13) of the Act. The Union, in its answer, admitted that he held the position of the Union's health and safety  
 10 representative at the time "and that Mr. Watson represents the interests of the UAW unit at the Proving Grounds on health and safety matters. It denies the other allegations of this paragraph." Watkins was appointed to be the Union's health and safety representative in late 2008 and held the position until his retirement. He testified that as the Union's health and safety representative he had the authority to act on health and safety issues on behalf of the Union.  
 15 Watson was asked if he was responsible for enforcing the health and safety provisions of the contract between the Employer and the Union and he answered that he does not have the authority to enforce: "I don't...all I can do is make aware issues, investigate them, and turn over my findings. The health and safety rep has no enforcement out there...you work with the company health and safety person. You make them aware of the issues...and then you try to  
 20 resolve the issues for the safety of the membership." He testified that as the Union's health and safety representative, he has the authority to stop work, or withdraw a vehicle from service, if there is "imminent risk" of injury or death.

The unit involved in this matter is drivers, driver/mechanics, mechanics, technicians and stockroom employees employed at the Employer's Arizona Proving Ground in Yucca, Arizona and the Union is the collective-bargaining representative of this unit. At this facility, the employees test the Employer's vehicles by driving them at speeds up to 150 miles an hour. In addition to its current production vehicles, these employees also test drive prototype vehicles and current production vehicles containing possible future components. Moore began working  
 25 for the Employer as an endurance driver in 1999. Admittedly, he was an excellent employee who was elected vice-chair of the Union in 2005, and was on the Union's bargaining committee in 2008 and 2011. On October 2, while driving a vehicle, he developed a bad headache and stomach ache. He radioed his supervisor to tell him how badly he felt and was told to bring the car back into the shop, which he did. When he returned, he met Rob Canday, his regular  
 30 supervisor and told him that he wasn't feeling well and Canday asked him to complete some forms, but Moore told him that he felt sick and needed to go home. He completed the reports and Canday offered to take him to a medical center, but he refused and said that he just needed to get home. Before leaving, Moore told him that the problem might be carbon monoxide and that they should put a carbon monoxide monitor in the car and Canday said that they would test  
 35 the vehicle at high speed. Moore left the facility and on the way home he had to stop the car on the highway and he vomited on the side of the road. When he returned home, he took some aspirin and fell asleep. When he woke up, he felt better.  
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Later that day, Vern Vanotti, a member of the bargaining unit, prepared a report that  
 45 stated, inter alia:

During 1st shift a driver reported having a headache, towards the end of the shift while driving this vehicle... The driver went home for the rest of the day. The driver could not confirm if it was due to exhaust gases or fuel odor.  
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The vehicle was scheduled to perform the EHSM test during the second shift. But to be on the safe side the supervisor made sure that this vehicle had a gas meter before the

vehicle went out to perform the test.

5           Toward the second half of the EHSM test the driver reported a spike in CO levels...During the CO spike the HVAC mode was not confirmed and since the spike in CO only happened once and only during the EHSM. The vehicle was returned to regular cycles on third shift with the gas meter. The vehicle ran over the weekend with the meter and no issues.

10          Vanotti's report on October 6 states:

          On Monday 10/6/14 the engineer was notified about the issue with this vehicle. At this point the vehicle was shut down to investigate further.

15           All 4 vehicles were scheduled to run EHSM on second shift again. At this time a plan was made to run all our vehicles with the suspect vehicle in the front of the pack with a gas meter and one of the rear vehicles with a gas meter as well.

          No issues were reported during this run.

20           Watson testified that in Moore's presence, Vanotti told him that when he drove the car, all the alarms went off and Watson told him to "shut it down right away." Watson told a supervisor that there were reports of CO in the vehicle and that it was not to be driven without meters. He also told an engineer at the plant to inspect the car, and a loose bolt that could cause a small leak was discovered; it was tightened and repaired. Moore testified that when he reported for work on October 3, he asked Canday if there was anything wrong with the vehicle that he drove the prior day and Canday said not that he was aware of. Chris Moreland, the Union's unit chairman, testified that shortly after October 2, Moore requested a meeting with him and his Steward, Roberto Martinez, about the possible exposure to carbon monoxide on October 2 and they met on October 8 at which time Moore told them about how he became sick after driving on that day. In addition, a few days before October 29, Watson told Moore that an engineer told him that there was an exhaust leak in the vehicle he drove on October 2, and that he shut down the vehicle and put in a work order so that the fresh-air mode in the air conditioning would remain on full time.

35           Moore testified that on the morning of October 29, he happened to see Watson and asked him, "Where are we on the carbon monoxide poisoning issue?" Watson said that he didn't know and Moore said that he met with Scott Campbell and Margaret Keely, both in the Employer's HR department, and Martinez on the subject and that they didn't know where to place the carbon monoxide meter, that there was no policy, and Watson responded, "Well, so what, how does that include me?" Moore then said that they didn't know where to put the meter and when to turn it off and Watson stuck his finger out and said, "It's my turn to talk. This is my turn" and Moore stopped talking and Watson said, "he's doing what he can but look, dude, I'm not going to put a carbon monoxide meter in every vehicle we have." Moore then said that Vanotti had told him that the carbon monoxide reading on the vehicle 'was through the roof' and that he got sick and was vomiting while on the way home. Watson laughed and said that he really wasn't sick and Moore said that he didn't think that was funny. He began to get upset and started to walk away and when he was about 20 feet away from Watson with his back turned, Watson said, "fuck you man." Moore stopped, turned around and began walking toward Watson, who started walking toward him and when he was about 6-8 inches from him<sup>3</sup>, he told

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<sup>3</sup> His statement to the Employer states that at this time he "was very close to him."

Watson, "fuck you." Watson then put his chest out and said, "do it, do it" and Moore said, "do what?" Moore then turned around and started walking away from Watson who used some vulgar terms and Moore called him an asshole and walked away<sup>4</sup>.

5           Watson testified that as he arrived for work on October 29, Moore asked him what was going on with the CO situation and he answered that they had been working on it. Moore then said that the drivers should all have personal meters and Watson replied that would be nice, but it was up to the Employer if they wanted to pay for them. Moore then asked what about the meeting that he had with Campbell, Martinez and Keely and he said that he was not at the  
10 meeting. Moore then told him that on October 2 he got sick and almost died, and Watson said that he didn't know about that, and Moore responded, "Well, you can just fuck off." Watson then responded, "Well, you can fuck off" and "he came back, got in my face very, very close and was looking down on me and went around and around me. Finally, I just said do what you are going to do, because I was sick of it." Watson testified that at that time, Moore, who is taller and  
15 younger than he is, was about an inch away from him. At that point, Moore turned and left the area.

          At the conclusion of that situation Watson told Campbell that he and Moore had "an altercation, and that it got very heated. . . that we got very close to getting physical" and that he  
20 was concerned about it. Watson was asked if he knew that by informing the Employer of the incident, it "could result in negative consequences" for Moore and he testified that he never thought that it would result in Moore's termination. He did not ask Campbell to discipline or fire Moore; he reported the incident to prevent another incident like it from occurring again. He was aware that the Employer has a zero-tolerance policy towards harassment and violence, but did  
25 not understand that it could result in discipline up to and including termination for Moore. Watson did not receive any discipline because of the incident. Campbell testified that Watson reported the incident to him right after it occurred. He told him that it began with a discussion of carbon monoxide in the vehicles and it escalated from there and he wanted to report it, but the subject of discipline never came up during the conversation. After getting written statements  
30 from both Moore and Watson, he issued a suspension-(discipline pending) to Moore on the following day, stating:

          On 10/29/2014 you were placed on notice of suspension, pending investigation, for  
35 possible violations of Standards of Conduct #15 "Fighting, horseplay or other disorderly, disruptive or unruly conduct." This suspension was a result of a preliminary investigation that ensued after a co-worker, UAW H&S representative Michael Watson, informed HR that they [sic] felt physically intimidated by your conduct in the South Parking Lot on the morning of 10/29/2014 at approximately 7:00 a.m.

40           During the preliminary investigation it was revealed, by your own admission, that you willfully stopped, reversed course of direction, and approached to within inches of Mr. Watson's face. Accordingly, this behavior is implied conduct that is intended to likely be perceived as intending to create a fear of bodily harm.

45           On November 3 Campbell prepared an executive summary of the incident, which states that after Moore became agitated and upset, he approached Watson to within 2 inches and screamed "fuck you." The statement further states:

50           <sup>4</sup> Both Moore and Watson gave statements to the Employer about this incident and there are no major differences between their testimony and the written statements that each one gave to the Employer later that day.

Despite the conflict of who said “fuck you” first, by Mr. Moore’s own admission, he stopped, turned around, and approached Mr. Watson at close range. These actions indicate that he was the clear aggressor in this instant case.

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Moore testified that later in the day on October 29, he went with Martinez into a meeting with Campbell and Stanley Kinder, the test operations supervisor. Campbell said that he received a report that he was in some kind of a confrontation with Watson and that he walked toward him. Moore replied that he walked away from Watson twice and even though both of them had said fuck you, he was the one who walked away and Campbell replied, “but you walked toward him and that’s all I need.” Campbell and Kinder stepped out of the room and when they returned, Campbell said that he was charging him with fighting and horseplay and Moore replied that there was no fight or horseplay, and he repeated that he was the one who walked away. Campbell told him that since he was such a good employee, he was not going to humiliate him by walking him out of the building; rather he could walk out the side door with Martinez. On November 11, he was told by Moreland and Martinez that the Employer had fired him because of the October 29 incident and that the Union was grieving it at the second level. On November 12, Campbell wrote to him saying that after a review of the facts, it was determined that he violated the Employer’s Standards of Conduct # 14 (“Threatening, intimidating, coercing, harassing, retaliating, or abusive words and/or actions...”) and 3–7 (“Workplace Violence Prevention”) and that his suspension was being converted to a discharge effective November 12. Moore had no prior discipline while employed by the Employer.

Campbell testified that the Employer is very serious about its workplace violence rules and as there were no witnesses who could corroborate the events of October 29, he looked at the statements prepared by Moore and Watson and based on them he determined that Moore was “a clear aggressor” in the incident. Although he was aware that Watson said fuck you to Moore, he was not punished for his actions.

Michelle Demarsh, who is employed by the Employer in the stockroom, testified that she had a disagreement with Watkins in about early 2014 involving the location where the tires are stored. She was angry and told Watson “to leave me the F... alone, stay out of my F...ing business, and if he continued with it, I would consider it harassment. He said that he could go anywhere he wanted to”. She was not disciplined for this incident. Watson testified that this incident involved a housekeeping issue and Demarsh yelled and cursed at him. He didn’t report this incident to the Employer because Kinder witnessed the incident. In 2010, temporary employees complained that employee Richard Charlesworth was harassing them and tailgating their cars. Campbell testified that after an investigation, Charlesworth was suspended for 30 days. Also in 2010, employee Robert Fry was suspended for 30 days for arguing loudly with a female employee, pushing chairs out of the way, and telling her: “Listen here, little girl.”

Admittedly, the Union has represented Moore in objecting to his termination by grieving the termination. In fact, at the conclusion of the hearing, it was reported that the parties had settled the grievance.

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### III. ANALYSIS

There are two issues to be determined: was Watson an agent of the Union within the meaning of Section 2(13) of the Act, and did the Union, by the action of Watson in reporting the October 29 incident with Moore to Campbell, violate Section 8(b)(1)(A) and 8(b)(2) of the Act?

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In *Cornell Forge Company*, 339 NLRB 733 (2003), the Board stated:

5 The burden of proving an agency relationship is on the party asserting its existence. The agency relationship must be established with regard to the specific conduct that is alleged to be unlawful. An individual can be a party's agent if the individual has either actual or apparent authority to act on behalf of the party. [Citations omitted]

10 In discussing apparent authority, the Board stated in *Communications Workers Local 9431 (Pacific Bell)*, 304 NLRB 446 fn. 4 (1991): "Under this concept, an individual will be held responsible for actions of his agent when he knows or 'should know' that his conduct in relation to the agent is likely to cause third parties to believe that the agent has authority to act for him." "Apparent Authority is created through a manifestation by the principal to the third party that supplies a reasonable basis for the latter to believe that the principal has authorized the alleged agent to do the act in question." *Shen Automotive Dealership Group*, 321 NLRB 586, 593 (1996). Watson was appointed to the position of health and safety representative for the Union in 2008, and held that position for approximately 6 years. He was the Union's representative at the facility on health and safety issues and worked with the Employer's representatives on these issues when they arose. However, he testified that he did not "enforce" these issues; his job was to make the Union and the Employer aware of the issues when they arose and to work with the Employer's representative to correct them, although he had the authority to take a vehicle out of service if he determined that there was imminent risk of injury or death from the vehicle. I find that Watson was not an agent of the Union as it regards to Moore's discipline. The violation alleged here is Watson's statement to Campbell about the confrontation that he had with Moore and there is no evidence that Watson was authorized to act for the Union on subjects of discipline of employees, or that Campbell would reasonably believe that the Union had authorized him to complain about Moore's actions on October 29; rather, it is more likely that Campbell understood that Watson was complaining personally about Moore's actions. Martinez the steward, and Mooreland, the unit chairman, would have been the Union's agents who would discuss discipline with the Employer, and there is no evidence that they were aware of the situation until after the incident was reported to Campbell. For these reasons I find that the evidence does not support a finding that Watson was an agent of the Respondent.

35 After observing Moore and Watson, as well as the relevant testimony, I credit Moore's version of the events of October 29 although it appears that the testimony of both was somewhat exaggerated. I therefore find that Moore initially walked away from Watson and after Watson cursed him, he turned around and walked toward Watson and Watson walked toward him. When they were about 6–8 inches apart he cursed Watson, who pushed his chest out and said, "Do it." After asking what he meant, and cursing Watson again, he walked away. At the conclusion of this incident, Watson told Campbell that he had an "altercation" with Moore that got very heated and almost got physical, and that he was concerned about it. He did not ask Campbell to discipline or fire Moore and he reported it to prevent a similar incident from occurring again. Section 8(b)(2) of the Act makes it an unfair labor practice:

45 To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

50 As to the initial requirement, in *International Operating Engineers, Local 12 (Kiewit Industrial)*, 337 NLRB 544,545 (2002), the Board stated: "An 8(b)(2) violation can be established by direct evidence that the union sought to have the employer discriminate, or by sufficient circumstantial

evidence to support a reasonable inference that the union requested that the employer discriminate.” *Avon Roofing & Sheet Metal Co.*, 312 NLRB 499 (1993). *Toledo World Terminals*, 289 NLRB 670, 673 (1988) stated: “to establish an ‘attempt to cause’ violation, there must be some evidence of union conduct; it is not sufficient that the employer’s conduct might please the union.” In *Quality Mechanical, Inc.*, 307 NLRB 64, 66 (1992), the administrative law judge as affirmed by the Board, stated: “the Board and reviewing courts have long held that a union may be held accountable for results triggered by what on the surface appears an innocent act which the union well knew would produce a desired result.” Although Watson did not ask Campbell to discipline Moore, he knew of the Employer’s zero-tolerance policy toward violence and harassment, and he must have known that either he, Moore, or both, would be disciplined as a result of his reporting the incident to Campbell.

However, Section 8(b)(2) is not limited to any discharge; it states that the discharge has to have been in violation of Section 8(a)(3) of the Act, and the complaint alleges that the Respondent caused the Employer to discriminate against Moore in violation of Section 8(a)(3) of the Act. Although I have found that Watson reported the incident to Campbell knowing that it might result in discipline to Moore, it was done because he was angry with Moore after their confrontation on October 29, having nothing to do with union activity<sup>5</sup>. Unlike most cases involving Section 8(b)(2) of the Act, Moore supported the Union, has served as a union officer, and was a member of the Union’s bargaining committee, and there is no evidence of animus on the part of the Union caused by his union activities. In addition, there is no evidence that he engaged in any antiunion or dissident activities. In *Operating Engineers Local 478 (Stone & Webster)*, 271 NLRB 1382 (1984) and *Graphic Communications International Union (Bang Printing)*, 337 NLRB 662 (2002), the Board found Section 8(b)(2) violations because of the charging parties’ union activities: dissident activities and activities opposing the reelection of the union’s business manager. As the discharge that resulted from Watson’s report to Campbell on October 29 had no connection with Section 8(a)(3) of the Act or dissident or antiunion activities by Moore, I recommend that the allegation be dismissed. *Operative Plasterers & Cement Masons, Local No. 299*, 257 NLRB 1386 (1981); *UAW, Local 812 (Acklin Stamping Company)*, 355 NLRB 824 (2010).

#### CONCLUSIONS OF LAW

1. Fiat Chrysler Automobiles Group, NV has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. International Union, United Automobile, Aerospace, Agricultural Implement Workers of America (UAW), Amalgamated Local Union No. 509, AFL–CIO, has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent did not violate the Act as alleged in the complaint.

On these findings of fact, conclusions of law and based upon the entire record, I hereby

<sup>5</sup> *Paperworkers Local 1048 (Jefferson Smurfit Corp.)*, 323 NLRB 1042 (1997) and *Good Samaritan Medical Center*, 361 NLRB No. 145 (2014), cited by Counsel for the General Counsel in his brief, both involved charging parties whose antiunion activity resulted in the unions reporting them to their employer, resulting in the employee’s discharge in *Good Samaritan*, supra, while in *Paperworkers*, supra, the employer’s investigation resulted in the employee being exonerated.

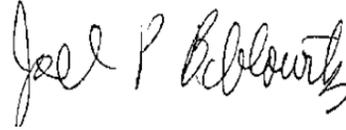
issue the following recommended<sup>6</sup>

ORDER

5 It is recommended that the complaint be dismissed in its entirety.

**Dated, Washington, D.C. September 8, 2015**

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**Joel P. Biblowitz**  
**Administrative Law Judge**

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50 <sup>6</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.