

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

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

and

Case 28-CB-144872

JOE MOORE, An Individual

**RESPONDENT'S BRIEF IN OPPOSITION TO THE EXCEPTIONS OF THE GENERAL
COUNSEL**

I. Introduction

With a few exceptions, there is not much dispute about what happened in this case. The Charging Party, Joe Moore, works at the Chrysler Proving Grounds in Arizona. The UAW Health and Safety Representative for the Proving Grounds is Mike Watson. On October 29, 2014, Moore and Watson had a confrontation near the beginning of their shifts. Watson reported the confrontation to the Company, but did not make any request or recommendation that Moore be disciplined. Nonetheless, the Company suspended and then terminated Moore under its “Zero Tolerance” policy.¹

Moore and the General Counsel allege that Watson “tattled” on Moore to punish him for his complaints regarding health and safety issues. The ALJ found, however, that Watson reported the incident

¹ Moore grieved his termination under the UAW Chrysler National Agreement. At the time of the hearing, the Company had agreed to reverse his termination and to pay Mr. Moore approximately \$50,000 in back pay.

“because he was angry with Moore after their confrontation” and that Watson’s actions had “nothing to do with union activity.” (ALJD, p. 7, lines 17-18). The ALJ also found that Watson was not acting as an agent of UAW Local 509 when he reported the confrontation because “there is no evidence that Watson was authorized to act for the Union on subjects of discipline for employees” and that there was also no evidence that the representatives of the Company reasonably believed “that the Union had authorized [Watson] to complain about Moore’s actions. . .” (ALJD, p. 6, lines 23-26)

These factual findings are well supported by the record in this case. Accordingly, the ALJ correctly dismissed the Complaint in this case.

II. Argument

1. The ALJ correctly found that Watson was not acting as an agent of the Local when he reported his confrontation with Moore to Scott Campbell of the Company’s Human Resource Department. This conclusion is firmly supported in the record. The General Counsel cites nothing that indicates that Watson had general authority over the Local’s actions. Instead, Watson’s authority is confined to health and safety matters. That is why the the ALJ found that his job was confined to working with the company health and safety person to make the Company aware of health and safety issues. There is no evidence that Watson’s health and safety responsibilities included matters of employee conduct unrelated to health and safety or employee discipline. And, with respect to health and safety matters, Moore and Watson were on the “same side.” Both faced the same risks from carbon monoxide in the cars. As detailed by the ALJ, Watson acted assertively when he learned of the problem that occurred in the car Moore was driving when he became sick on October 2. (ALJD, p. 3).

The Local officials responsible for disciplinary matters were steward Ray Martinez and shop

chairman Chris Moreland. They did not know knew of the confrontation between Moore and Watson before it was reported to the Company. There is no evidence that they harbored any ill-will toward Moore based upon any health and safety complaints or Moore's union activity. To the contrary, they both diligently pursued Moore's discharge grievance. They grieved on Moore's behalf, they demanded information from the Company and they fought for Moore's reinstatement.

If Watson was not an agent of the Local when he reported his confrontation the Complaint must be dismissed. The Act does not cover situations involving personal disputes between employees. And the fact that an employee has been appointed to the position of a health and safety representative should not automatically make a Local Union liable for all of the employee's actions at the workplace that are unrelated to health and safety.

2. The ALJ also correctly found Watson's conduct had nothing to do with Moore's union activity. Moore had a long history of union activity – he had served as a Union officer and had been a member of the Union's 2011 bargaining committee. There was no evidence that these activities engendered a hostile response from the officials of Local 509. Nor was there any evidence that these activities caused any personal hostility between Moore and Watson. Indeed, Watson expressed respect for Moore's performance as an employee at the hearing.

The ALJ found that Watson knew about the "Zero Tolerance" policy when he reported the confrontation to Campbell and that Watson "must have known that either he, Moore, or both would be disciplined as result of reporting his reporting the incident to Campbell." (ALJD, p. 7, lines 9-11).² This

² This conclusion is open to question. The evidence establishes that Watson had been involved with confrontations witnessed by Company supervisors and that the Company had not fired the

finding, which is not questioned by the General Counsel, strongly supports the conclusion that Watson was acting because he was angry, not because he wanted to punish Moore because they had a disagreement about the appropriate safety measures to protect employees from excessive carbon monoxide exposures. There is no other explanation for Watson's willingness to risk discipline. This conclusion is underscored by the fact that Watson did not ask the Company to discipline Moore. It is also underscored by the ALJ's finding that it was likely that Company representative Campbell believed that Watson was complaining personally as well.

The personal conflict between Moore and Watson, therefore does not implicate the right to engage in concerted activities free from punishment nor the Local's duty of fair representation. Accordingly, the Complaint must be dismissed for this reason as well.

Respectfully Submitted



Stephen A. Yokich
Associate General Counsel
International Union, UAW

Stephen A. Yokich
DOWD, BLOCH, BENNETT, CERVONE,
AUERBACH & YOKICH
8 S. Michigan Avenue, 19th Floor
Chicago, Illinois 60603
312-372-1361

employees involved. GC-16(a); GC-17(a). Of course, if Watson did not believe his report on the confrontation would result in discipline, there is no basis for the Complaint.

CERTIFICATE OF SERVICE

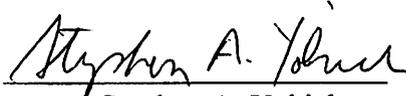
I, Stephen A. Yokich, an attorney, hereby certify that on November 10, 2015, I caused the Respondent's Brief in Opposition to the Exceptions of the General Counsel to be filed electronically with the NLRB and to be served upon the following by e-mail, at the following e-mail address:

Larry A. "Tony" Smith
NLRB Region 28
300 Las Vegas Boulevard South, Suite 2-901
Las Vegas, Nevada, 89101
Larry.Smith@nlrb.gov

Mr. Joe Moore
2158 Roy Rogers Way
Kingman, Arizona 86409-0945
jmoore130@yahoo.com

Mark Kisicki
Ogletree Deakins, Nash Smoak & Stewart
2415 Camelback Road, Suite 800
Phoenix, Arizona 85016
Mark.Kisicki@ogletreedeakins.com

Sarah Rain
Ogletree Deakins, Nash Smoak & Stewart
34977 Woodward Avenue, Suite 300
Birmingham, Michigan 48009
Sarah.Rain@ogletreedeakins.com


Stephen A. Yokich