

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 3**

**INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, DISTRICT 65, LOCAL 330
(INGERSOLL-RAND COMPANY)**

and

Case 03-CB-168560

CHRISTOPHER KARLIS, an Individual

GENERAL COUNSEL'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE

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I. PRELIMINARY STATEMENT

Ingersoll-Rand Company (Employer) manufactures centrifuge air and gas compressors. International Association of Machinists and Aerospace Workers, District 65, Local 330 (Respondent) represents a unit of production and maintenance employees at the Employer's facility in Cheektowaga, New York. The current collective-bargaining agreement between the Employer and Respondent is effective from August 3, 2015 to August 5, 2019 (CBA).

The CBA contains a provision, Paragraph 40(a), that provides that stewards are immune from being bumped from their job classifications. In addition, the CBA contains a provision, Paragraph 54(b), that Respondent interprets to mean that stewards are immune from being bumped from their job classification. Under clear Board precedent, both of these provisions are presumptively unlawful, because they extend superseniority protection beyond layoff and recall and are not necessary to maintain a steward in his area of representation, i.e., on the shift to which he is assigned. Respondent has not attempted to rebut this presumption. Also, paragraphs 40(a) and 54(b) of the parties' CBA have been applied by Respondent to protect stewards in their job classifications, on their shifts, rather than in a limited fashion to retain them on their shifts solely for the purpose of representation. It is therefore respectfully submitted that Respondent, by maintaining with the Employer and applying these two provisions of the CBA, has violated Section 8(b)(1)(A) and (2) of the Act.

Additionally, in January 2016, the Employer laid off some of the bargaining unit employees. One of those employees, Hoyt Jones, avoided layoff by bumping into the pipefitter classification on third shift. This resulted in there being four third-shift pipefitters. A couple of weeks later, the Employer conducted a shift equalization that dropped the number of pipefitters

allocated for third shift back to three. Therefore, one of the three existing pipefitters, who were less senior than Jones, needed to be bumped to another shift.

Christopher Karlis and Fred Fineour were two of those three third-shift pipefitters. Karlis had more natural seniority than Fineour. However, Fineour was the third-shift steward. After the shift equalization, Karlis was told by his supervisor that he was selected as the pipefitter who would be bumped by Jones. Karlis protested to Respondent's agents Fineour and Chief Steward James Neureuther, asserting that his natural seniority over Fineour should mean that he should be allowed to stay on third shift. Karlis referred to the provision in the CBA that specified that superseniority for stewards only applied in the case of layoff or recall, and thus that Fineour's superseniority as a steward only provided that he could stay on his shift, not necessarily stay in his job classification. Fineour and Neureuther were both steadfast that the CBA protected Fineour not only from displacement from his shift (which is lawful) but also in his job classification (which is unlawful), referring in particular to Paragraph 40(a).

As a result of Respondent's position, Fineour remained a third-shift pipefitter and the Employer bumped Karlis from third shift to first shift, over his objections and despite his higher natural seniority. This was a presumptively unlawful use of superseniority, because it went beyond the use to which the Board says superseniority can be put – that is, maintaining a steward on the shift to which he was assigned.

Respondent has attempted to rebut this presumption by asserting that the only option available to it at the time of the layoff and shift equalization was that in order to keep steward Fineour on his assigned shift, he would have had to bump into the third-shift janitor position. Respondent contends that this was not reasonable, because it would have entailed a "severe and unreasonable pay cut." However, the Board has ruled that this is not an adequate defense to an

overly broad use of superseniority. It is therefore respectfully submitted that Respondent, by causing the Employer to discriminate against employees not holding union office by displacing Karlis from the third shift and maintaining Fineour in the pipefitter classification on the third shift, has violated Section 8(b)(1)(A) and (2) of the Act.

II. STATEMENT OF THE CASE

This matter was heard by Administrative Law Judge Thomas M. Randazzo on August 8, 2016. A Complaint and Notice of Hearing (Complaint) was issued on May 26, 2016 and amended during the hearing. (GC Ex. 1(e); Tr. 13-15, 73-74.)¹ The Complaint is based on Case 03-CB-168560, in which the original charge was filed on January 28, 2016 and an amended charge was filed on April 12, 2016. (GC Exs. 1(a), 1(c).) Respondent filed its Answer and Affirmative Defense (Answer) on June 16, 2016. (GC Ex. 1(i).)

The Complaint, as amended, alleges that, since about July 28, 2015, Respondent and the Employer have maintained a collective-bargaining agreement that contains the following provisions in Articles VII and IX:

40. Shift Preference. (a) An employee may exercise his seniority to displace the junior employee (who is not a Steward) on a different shift within the same classification on Monday and no more frequently than at three (3) month intervals thereafter. Employees (including Stewards and the Chief Steward) within the same job classification in multi-shift operations shall have the right to work out mutually agreeable shift preferences, subject to the approval of the employee's immediate supervisor.

54. Shift Change. (b) Shift Equalization. When the Company changes the number of people between shifts in a classification, the shift changes will be on a seniority basis without completing a Shift Preference Form, however, a shift steward cannot be displaced from the shift to which he was elected.

¹ General Counsel's Exhibits will be referred to as "GC Ex. ___" References to the transcript will appear as "Tr. ___."

The Complaint, as amended, also alleges that Respondent violated Section 8(b)(1)(A) and (2) of the Act by, at all material times, applying Paragraphs 40(a) and 54(b) of the collective-bargaining agreement between Respondent and the Employer to protect stewards in their job classification, on their shifts, rather than in a limited fashion to retain them on their shifts solely for purposes of representation.

The Complaint, as amended, further alleges that Respondent and the Employer applied the CBA (including but not limited to Paragraph 40(a)) so that Respondent's steward Fred Fineour could remain in a specific position in the pipefitter classification on the third shift, and that thereby Respondent caused and attempted to cause the Employer to discriminate against employees who are not union stewards by bumping Christopher Karlis from his position on the third shift so that Fineour could remain in a specific position in the pipefitter classification on the third shift. The Complaint, as amended, alleges that by these actions Respondent violated Section 8(b)(1)(A) and (2) of the Act. (GC Ex. 1(e); GC Ex. 1(l); Tr. 13-15, 73-74.)

Respondent, in its Answer, admits that the Employer has at all material times been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Respondent further admits that it at all material times has been a labor organization with the meaning of Section 2(5) of the Act. In its Answer and at the hearing, Respondent also admits the agency status of Respondent's Chief Steward James Neureuther, steward Fred Fineour, steward Richard Tatarski, and Union President Ronald Frier.² (GC Ex. 1(i); GC Ex. 1(l); Tr. 13-14.)

² Respondent denies that either Neureuther or Fineour are agents of District Lodge 65, but admits that they are agents of Local Lodge 330. (GC Ex. 1(i).)

Respondent, in its Answer, denies that the CBA language quoted in the Complaint is at Paragraph 40(a), stating instead that it is Paragraph 41(a).³ In its Answer and at the hearing, Respondent further denies that it has violated Section 8(b)(1)(A) and (2) of the Act by any conduct alleged in the Complaint, as amended. As an affirmative defense, Respondent asserts that the application of the CBA at issue was “reasonable and lawful” because, had it not been applied as it was, third-shift steward Fineour “would not have been able to retain his [steward] position without undergoing a severe and unreasonable pay cut” and third-shift employees would have been deprived of the representation of their elected steward. (GC Ex. 1(i); Tr. 74-75.)

III. STATEMENT OF FACTS

A. Contractual provisions

The CBA contains the following provision at Article IV, Representation:

14. Stewards and Shop Committee. The Union shall be represented by two Stewards on the first shift, two Stewards on the second shift, and one Steward on the third shift. There shall also be a Chief Steward. In the absence of a regular Steward, the Union may appoint an acting Steward. The Chief Steward shall be considered as having top seniority in the Plant. Each Shift Steward will be considered as having top seniority on his shift. However, when any employee ceases to be a Steward, such employee shall take his regular place on the seniority list. When a shift is not operating, such top seniority ceases. Top seniority for purposes of this Paragraph shall apply only in the case of layoffs and rehires.

Stewards are to remain on the shift to which they are elected during their term of office, provided they can perform the work available in a normally efficient manner.

(GC Ex. 3 at p. 3.)

The CBA also contains the following provision at Article VII, Seniority:

40. Shift Preference. (a) An employee may exercise his seniority to displace the junior employee (who is not a Steward) on a different shift within the same

³ This denial appears to have been based on the previous collective-bargaining agreement, under which the quoted language was at Paragraph 41(a). (GC Ex. 2 at pp. 12-13.) At the hearing it was stipulated that Paragraph 40(a) under the current CBA and Paragraph 41(a) under the previous collective-bargaining agreement are identical. (Tr. 89-90.)

classification on Monday and no more frequently than at three (3) month intervals thereafter. Employees (including Stewards and the Chief Steward) within the same job classification in multi-shift operations shall have the right to work out mutually agreeable shift preferences, subject to the approval of the employee's immediate supervisor.

(GC Ex. 3 at p. 11.)

The CBA also contains the following provision at Article IX, Overtime:

54. Shift Change. (b) Shift Equalization. When the Company changes the number of people between shifts in a classification, the shift changes will be on a seniority basis without completing a Shift Preference Form, however, a shift steward cannot be displaced from the shift to which he was elected.

(GC Ex. 3 at pp. 17-18.)

B. Bumping of Christopher Karlis from the third shift

In January 2016,⁴ the Employer laid off some of its employees. (Tr. 31.) One of the employees laid off was Hoyt Jones, who had worked in the test lab on the third shift. (Tr. 31, 97-98.) Due to his high seniority and the fact that he had previously held the pipefitter position, and pursuant to the CBA, Jones avoided layoff by bumping into the pipefitter classification on the third shift. (Tr. 31-32.) At the time, there had already been three pipefitters on the third shift; Jones' bumping into that classification on the shift raised the number to four. (Tr. 33, 53, 77-78.) Some weeks later, the Employer did a shift equalization that restored the number of third-shift pipefitters to three. (Tr. 53-54, 98.) Therefore, as a result of Jones' move, one of the existing third-shift pipefitters had to be bumped to a different shift. (Tr. 33, 98.)

Two of the existing pipefitters on the third shift were Christopher Karlis and Fred Fineour. (Tr. 33, 34.) Fineour was at that time the third-shift union steward. (Tr. 33.) Fineour had the least natural seniority of the other pipefitters on the shift, including Karlis. (Tr. 33; see also GC Ex. 4.) In addition to the pipefitter classification, the third shift also had a janitor

⁴ All dates herein are 2016 unless otherwise noted.

position which was held by Matt Shaw. (Tr. 40, 86-87.) Shaw had less natural seniority than Fineour. (Tr. 40, 87, 104; see also GC Ex. 4.) Under the CBA, the janitor position is an “open” Group One position, meaning that any bargaining unit member can take the position with no prior experience. (Tr. 40, 86; GC Ex. 3 at p. 44.)

In late January, Karlis’s supervisor informed him that he would be the pipefitter bumped from the third shift. (Tr. 77-79.) Karlis did not want to move from the third shift because he had oriented his life around that schedule and because third shift paid a \$0.75/hour shift differential. (Tr. 79.) In that conversation with his supervisor, Karlis said that he disagreed with the decision to move him from the third shift rather than Fineour, because Karlis had more natural seniority. (Tr. 79-80.) Karlis said that he would take up the matter with Respondent and human resources. (Tr. 80.)

Shortly thereafter, Karlis had a discussion with Fineour in which Karlis expressed his disagreement with the decision to bump him from the third shift. (Tr. 81.) Karlis referred to Paragraph 14 of the CBA as the provision he thought dictated that Fineour’s superseniority as a steward only provided that he could stay on his shift, not necessarily stay in his job classification.⁵ (Tr. 81.) Fineour referred Karlis to Paragraph 41 of the previous collective-bargaining agreement (Paragraph 40 under the current CBA) as the provision he said dictated that as a steward he was protected by superseniority from removal from both his job and his classification.⁶ (Tr. 82-83.)

⁵ As noted above, Paragraph 14 provides that “[e]ach Shift Steward will be considered as having top seniority on his shift,” but that “[t]op seniority for purposes of this Paragraph shall apply only in the case of layoffs and rehires,” and that “[s]tewards are to remain on the shift to which they are elected during their term of office, provided they can perform the work available in a normally efficient manner.” (GC Ex. 3 at p. 3.)

⁶ Fineour and Karlis were at that time referring to the printed copy of the previous collective-bargaining agreement because printed copies of the current CBA had not been distributed yet.

Within the next few days, Karlis had a discussion with James Neureuther, Respondent's Chief Steward, about being bumped from the third shift. (Tr. 83.) Also present were Respondent agents Ron Frier, Respondent's local president, and Rick Tetarski, the first-shift steward. (Tr. 83-84.) Karlis again protested that he should not be bumped from the third shift because he had more seniority than Fineour, referring again to Paragraph 14 of the CBA to support his claim. (Tr. 84.) Like Fineour, Neureuther in turn referred Karlis to Paragraph 41 of the previous collective-bargaining agreement as the provision that provides that stewards are protected by superseniority both in their shift and their job classification. (Tr. 84.)⁷ Frier and Tetarski supported Neureuther's position. (Tr. 85.)

Within the next couple of days, Karlis spoke to Tricia Knapp, the Employer's director of human resources. (Tr. 85.) He again referred to the contract and protested his being bumped from the third shift. (Tr. 86.) Despite his many protests, Karlis was bumped from third to first shift so that the steward, Fineour, could remain in his classification as a pipefitter.⁸ (Tr. 86.)

Respondent has taken inconsistent positions between the investigation of the charge and the testimony at the hearing regarding the contractual basis for bumping Karlis from the third shift. Karlis credibly testified that Respondent's agents Fineour and Neureuther referred Karlis only to Paragraph 41 (Paragraph 40 of the current CBA) to justify its position that Fineour could not be bumped from his shift or his job classification. (Tr. 83-84.) Consistent with Karlis's testimony, Neureuther gave an affidavit to the Board during the investigation of the charge in which he stated that Paragraph 41 meant that stewards cannot be bumped; he did not cite any

(Tr. 81-82.) As noted above, Paragraph 41 of the previous agreement is identical to Paragraph 40 of the current CBA.

⁷ At the hearing, Neureuther testified that paragraph 41 (paragraph 40 of the current CBA) states that stewards cannot be bumped. (Tr. 37, 69.)

⁸ In approximately July 2016, the Employer moved Karlis back from first shift to third shift. (Tr. 87.)

other provision of the contract for this proposition. (Tr. 37, 67-69, 71.) At the hearing, Neureuther changed his position, maintaining that Paragraph 41 (Paragraph 40 of the current CBA) was irrelevant and that Paragraph 54(b) was the provision that mandates that stewards cannot not be bumped from their shift or job classification. (Tr. 34-36, 43-44, 52-53, 66, 69-70.) Fineour also testified that Paragraph 54(b) protects a steward not just in his shift but also in his job classification. (Tr. 107.)

IV. ARGUMENT

A. Legal principles

It is well established that a contractual provision giving union stewards superseniority over employees who do not hold union office is unlawful except in limited circumstances. *Dairylea Cooperative*, 219 NLRB 656, 658 (1975), *enfd. sub nom. NLRB v. Teamsters Local 338*, 531 F.2d 1162 (2d Cir. 1976). Because of the “inherent tendency” of superseniority provisions to discriminate against employees who do not hold union office, the limited use of such provisions is justified only when it “furthers the effective administration of bargaining agreements on the plant level by encouraging the continued presence of the steward on the job” in his area of representation, i.e., on the shift to which he is assigned. *Id.* Therefore, it is permissible for a superseniority provision to protect a steward in his shift for purposes of layoff and recall. *Id.* For the same reasons, superseniority provisions that enable “purely defensive” shift maintenance, i.e., protection for a steward from being bumped from the shift to which he is assigned, are lawful. *Auto Workers Local 561 (Scovill, Inc.)*, 266 NLRB 952, 953 n. 9 (1983).

A contractual provision giving union stewards superseniority over employees who do not hold union office in circumstances that go beyond layoff and recall, or beyond purely defensive shift maintenance, is presumptively unlawful, subject to rebuttal by a showing that the

superseniority is justified by a legitimate statutory purpose. *Dairylea*, supra at 658; *Scovill*, supra at 953 n. 9. This is because such a provision would “unlawfully encourage[] union activism and discriminate[] with respect to on-the-job benefits against employees who in the exercise of their rights under Section 7 of the Act prefer to refrain from such activity.” *Dairylea*, supra at 657. The burden of rebutting the presumption of unlawfulness of such a provision is on the party asserting that the provision is lawful. *Id.* at 658.

In addition, the overly broad use of superseniority to discriminate against an employee not holding union office is presumptively unlawful. See, e.g., *Mechanics Educational Society Local 56 (Revere Copper)*, 287 NLRB 935, 936-37 (1987); *Joy Technologies, Inc.*, 306 NLRB 1, 2-3 (1992). For instance, “[p]rotecting a steward against bumping by an employee otherwise entitled to the job is presumptively unlawful as a job-related discrimination based on union activity that goes beyond layoff and recall.” *Revere Copper*, supra at 937. Only the “minimal exercise” of superseniority protection is permitted, which “means that a steward may be afforded superseniority to keep *a* job, but not necessarily *his* job, in his area of representation.” *Id.* at 936-937 (emphasis added). See also *Joy Technologies*, supra.

Further, superseniority cannot lawfully be used to prevent downgrading of the steward’s position (including a possible diminishment of wages) within his area of representation, because this would be beyond the minimal extent necessary for the steward to carry out his representational duties. See *Joy Technologies*, supra at 2 (unlawful for union to demand that vacant higher paying position be transferred from one plant to another so that the position could be awarded to union’s committeeman in order to accommodate his desire to remain committeeman in that plant); *Electronic Workers IUE Local 633 (Gulton Electro Voice)*, 276 NLRB 1043, 1044 (1985) (rejecting ALJ’s reasoning that use of superseniority protection from

job bumping was justified to avoid chief steward “possibly be[ing] bumped into the lowest paying job in the plant,” which might result in her “not be[ing] encouraged to continue her employment or stewardship”); *Electronic Workers Local 221 (Kidder, Inc.)*, 333 NLRB 1149, 1152 (2001) (ALJ, affirmed by Board, found unlawful extension of union official’s superseniority rights to encompass wage protection and job classification protection unavailable to other unit employees). Such is the case even at the risk of a steward resigning his position. See *Joy Technologies*, supra at 2; *Gulton Electro Voice*, supra at 1044. As noted by the Board,

it nevertheless remains the union’s task to build and maintain its own organization, and where the immediate problem is simply a matter of encouraging employees to be stewards a union can alone handle the situation simply by paying employees or by giving them other nonjob benefits for work in such a capacity.

Dairylea, supra at 659. Accord *Joy Technologies*, supra at 2 (quoting *Dairylea*); *Gulton Electro Voice*, supra at 1044 (quoting *Dairylea*).

B. Paragraphs 40(a) and 54(b) of the CBA are unlawful

Paragraph 40(a) of the CBA, dealing with shift preference and quoted above, provides that “[a]n employee may exercise his seniority to displace the junior employee (who is not a Steward) on a different shift within the same classification on Monday and no more frequently than at three (3) month intervals thereafter.” Thus, the provision entirely protects a steward from being displaced by a more senior employee – both from his shift and his job classification.

While protecting a steward from displacement from the shift to which he is assigned is lawful, it is unlawful to extend that protection to his job classification, because this goes beyond layoff and recall, that is, beyond the minimal exercise of superseniority necessary to allow a steward to carry out his representation duties. *Revere Copper*, supra at 936-937. As noted above, the Board has stated that “a steward may be afforded superseniority to keep a job, but not

necessarily *his* job, in his area of representation.” *Id.* at 937 (emphasis added). Paragraph 40(a) is therefore presumptively unlawful on its face, subject to Respondent’s rebuttal showing that the provision is justified by a legitimate statutory purpose. In its Answer and at the hearing, Respondent did not attempt to rebut this presumption. In absence of a successful rebuttal, Paragraph 40(a) is unlawful on its face. In addition, Respondent’s application of this unlawful provision is a separate violation of Section 8(b)(1)(A) and (2) of the Act.

Paragraph 54(b) of the CBA, dealing with shift equalization and quoted above, provides that “a shift steward cannot be displaced from the shift to which he was elected.” Respondent’s agents Neureuther and Fineour each testified that this provision protects a steward not just in his shift but also in his job classification. (Tr. 66, 107.) The plain reading Respondent ascribes to Paragraph 54(b) renders it unlawful on its face for the same reasons discussed above with regard to Paragraph 40(a). Specifically, it exceeds the permitted minimal exercise of superseniority to use it to prevent a steward from being moved from his job classification when his natural seniority would not support such a result, and when there is another position available to the steward on the same shift. See *Revere Copper*, 287 NLRB at 936-37. Respondent has failed to rebut the presumption that Paragraph 54(b) is unlawful by showing that it is justified by a legitimate statutory purpose. Therefore, Paragraph 54(b) is unlawful on its face. In addition, Respondent’s application of this unlawful provision is a separate violation of Section 8(b)(1)(A) and (2) of the Act.

Even if Paragraph 54(b) is found to be lawful on its face, Respondent unlawfully applied it to Karlis in the instant case. Respondent’s agents Neureuther and Fineour each testified that Paragraph 54(b) was what Respondent relied on in determining that it would use superseniority to keep Fineour in the pipefitter classification on third shift and instead have the Employer bump

Karlis from the third shift.⁹ (Tr. 52-53, 98-99.) For reasons discussed below, any reliance by Respondent on Paragraph 54(b) in causing or attempting to cause the Employer to bump Karlis from third shift was unlawful.

C. Respondent unlawfully caused and attempted to cause the Employer to bump Karlis from his shift

As described above, in January the Employer conducted a shift equalization resulting in one pipefitter being bumped off the third shift. Respondent determined that Fineour, because of the superseniority that attended his position as third-shift steward, could not be bumped by Jones from his shift or from his pipefitter classification on the shift. As a result, and despite the fact that Fineour had less natural seniority than Karlis among the third-shift pipefitters, Respondent determined that Karlis would be bumped from the third shift. Shortly thereafter, in accordance with Respondent's position, the Employer bumped Karlis to first shift, over Karlis's objections.

Respondent's determination that Fineour could not be bumped by Jones from the pipefitter classification, despite Fineour's having less seniority than Karlis and despite the janitorial position into which Fineour could have bumped, is precisely what the Board has described as "[p]rotecting a steward against bumping by an employee otherwise entitled to the job," which is "presumptively unlawful as a job-related discrimination based on union activity that goes beyond layoff and recall." *Revere Copper*, 287 NLRB at 937. Again, the Board allows only the "minimal exercise" of superseniority protection, which "means that a steward may be afforded superseniority to keep *a* job, but not necessarily *his* job, in his area of representation." *Id.* at 936-37 (emphasis added). The third-shift janitor position was held by Matt Shaw, an

⁹ This is despite Karlis's credible testimony that Neureuther and Fineour told him that it was Paragraph 41 of the previous collective-bargaining agreement (Paragraph 40 of the current CBA) that determined that he, not Fineour, would be bumped from the third shift. (Tr. 82-84.) This is also despite the fact that Neureuther gave an affidavit to the Board during the investigation of the charge in which he stated that Paragraph 41 of the previous collective-bargaining agreement was the relevant provision. (Tr. 37-38.)

employee with less seniority than Fineour. Thus, Fineour could have bumped into the janitor position in order to remain on the third shift. But this did not happen. Therefore, Respondent's causing and attempting to cause the Employer to bump Karlis from the third shift, despite his natural seniority over Fineour, was presumptively unlawful, subject to Respondent's rebuttal that this exercise of superseniority was for a legitimate statutory purpose.

However, Respondent has not rebutted this presumption. Respondent raised in its Answer an affirmative defense stating that had Karlis been able to remain a third-shift pipefitter in keeping with his natural seniority over Fineour, Fineour would have been forced to change job classifications to stay on the third shift, his area of representation. Because the janitor position into which Fineour could have bumped by virtue of seniority and experience paid considerably less than what he earned as a pipefitter, Respondent asserts that it would have been "unreasonable" to expect Fineour to bump into that position. Respondent asserts that maintaining Fineour as a pipefitter was therefore necessary for the third shift to be represented by its steward, and thus it was "reasonable and lawful."

This argument is without merit. It is clear that Fineour could have remained in his area of representation by bumping into the third-shift janitor position. As the Board has held, it is no defense to point to a diminishment of wages as that reason that superseniority supposedly must be used to prevent downgrading of a steward's position within his area of representation. *Joy Technologies*, 306 NLRB at 2; *Gulton Electro Voice*, 276 NLRB at 1044. The Board has instructed that, where a union is challenged to persuade an employee to remain a steward for the wage that is available, given his natural seniority, to keep him on his shift, this is something that is properly remedied only by the union, for instance by paying the steward or providing him with some other non-job benefit. *Dairylea*, 219 NLRB at 659. In this case, Respondent's defense is

insufficient to overcome the fact that its use of superseniority went beyond layoff and recall – went beyond protecting Fineour on the shift to which he was assigned – and thus unlawfully discriminated against Karlis because he, unlike Fineour, did not hold union office.

In addition, at the hearing and implicitly in its Answer, Respondent disputed whether or not it applied Paragraph 40(a) of the CBA in its determination that Karlis needed to be displaced from the third shift so that Fineour could remain in the pipefitter classification. This dispute does not aid Respondent, because the Complaint, as amended, is predicated on its application of the CBA as a whole – no matter what provision of the CBA Respondent argues it applied. (Tr. 13-15; see also GC Ex. 1(l).)

V. CONCLUSION

The General Counsel has shown that Respondent maintained with the Employer Paragraphs 40(a) and 54(b) of the parties' collective-bargaining agreement, applied the collective-bargaining agreement so that Respondent's steward Fred Fineour could remain in a specific position in the pipefitter classification on the third shift, and caused the Employer to discriminate against employees who are not union stewards by bumping Christopher Karlis from his position on the third shift, all in violation of Section 8(b)(1)(A) and (2) of the Act. For the reasons set forth above, it is respectfully submitted that Respondent violated the Act in the manner alleged in the Complaint, as amended, and that the relief requested in the Proposed Order should be granted.

VI. PROPOSED CONCLUSIONS OF LAW

1. Ingersoll-Rand Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining with the Employer Paragraph 40(a) of the parties' collective-bargaining agreement, Respondent violated Section 8(b)(1)(A) and (2) of the Act.
4. By maintaining with the Employer Paragraph 54(b) of the parties' collective-bargaining agreement, Respondent violated Section 8(b)(1)(A) and (2) of the Act.
5. By applying the collective-bargaining agreement so that Respondent's steward Fred Fineour could remain in a specific position in the pipefitter classification on the third shift, Respondent violated Section 8(b)(1)(A) and (2) of the Act.
6. By causing and attempting to cause the Employer to discriminate against employees who are not union stewards by bumping Christopher Karlis from his position on the third shift, Respondent violated Section 8(b)(1)(A) and (2) of the Act.
7. Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

VII. PROPOSED ORDER

Respondent, International Association of Machinists and Aerospace Workers, District 65, Local 330, its officers, agents, successors and assigns shall

1. Cease and desist from:
 - a. Maintaining and enforcing any clause in its collective-bargaining agreement with Ingersoll-Rand Company ("the Employer") that protects stewards in their job classification beyond what is needed to keep them on their shifts for the purpose of representation.
 - b. Causing or attempting to cause the Employer to discriminate against any employees by requiring that the collective-bargaining agreement be enforced to preclude the bumping of stewards for any purpose other than layoff and recall unless it is necessary to do so to keep them on their shifts for the purpose of representation.
 - c. In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative actions necessary to effectuate the policies of the Act:
 - a. Notify the Employer that it has no objection to reinstating Christopher Karlis to his shift, and any other affected unit employees, who but for

the unlawful assignment of superseniority would not have been displaced from their shift.

- b. Jointly and severally with the Employer make Christopher Karlis and any other unit employees whole, with interest, for any loss of earnings they may have suffered as a result of the discrimination against them.
- c. Within 14 days after service by the Region, post at its business office and meeting places copies of the attached notice. Copies of the notice, on forms provided by the Regional Director of Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted, including on bulletin boards maintained at the Employer's plant/facility where the unfair labor practices occurred. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.
- d. Within 21 days after service by the Region, file with the Regional Director a sworn statement of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

VIII. PROPOSED NOTICE TO MEMBERS

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union;
- Choose a representative to bargain with your employer on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT maintain and enforce any clause in our collective-bargaining agreement with Ingersoll-Rand Company ("the Employer"), that protects stewards in their job classification beyond what is needed to keep them on their shifts for the purpose of representation.

WE WILL NOT cause or attempt to cause the Employer to discriminate against any employees by requiring that the collective-bargaining agreement be enforced to preclude the bumping of stewards for any purpose other than layoff and recall unless it is necessary to do so to keep them on their shifts for the purpose of representation.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL notify the Employer that we have no objection to reinstating Christopher Karlis to his shift, and any other affected unit employees, who but for the unlawful assignment of superseniority would not have been displaced from their shift.

WE WILL jointly and severally with the Employer make Christopher Karlis and any other unit employees whole, with interest, for any loss of earnings they may have suffered as a result of the discrimination against them.

DATED at Buffalo, New York this 12th day of September, 2016.

/s/
JESSICA L. NOTO

/s/
ERIC D. DURYEA
Counsel for the General Counsel
National Labor Relations Board
Region Three
130 South Elmwood Avenue
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