

UNITED STATES OF AMERICA
before the
NATIONAL LABOR RELATIONS BOARD
ADMINISTRATIVE LAW JUDGE

LOCAL 155, UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA
(UAW), AFL-CIO (SAS AUTOMOTIVE USA, INC)

Case No: 07-CB-210547

Respondent

And

AMEER A. HANNA, an Individual

Charging Party.

Hon. Charles J. Muhl
Administrative Law Judge

POST HEARING BRIEF OF UAW LOCAL 155

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INTRODUCTION

The General Counsel's Complaint should be dismissed because Local 155 acted consistently with its duty as exclusive representative of employees at the SAS Automotive USA, Inc. When Ameer Hanna filed his grievance, it investigated his claims, met with the company, which included Mr. Hanna, and, after it determined that no more could be done to advance Mr. Hanna's grievance, in part because Mr. Hanna refused to provide additional information, it secured a settlement offer for Mr. Hanna. Mr. Hanna's rejection of this settlement offer is what caused his grievance to lay dormant.

Contrary to the General Counsel's position, Local 155 did not mislead or misinform Mr. Hanna about the status of his grievance. What the General Counsel terms as misleading is actually a correct restatement of the Union's rights and responsibilities under the law. There is no breach.

Even assuming, without conceding, there was a breach, the General Counsel cannot satisfy the burden of proving that Mr. Hanna's grievance would have prevailed at arbitration because the evidence shows that SAS acted consistently with its hiring rights under Paragraph 3 of the Bridge Agreement. For the reasons that follow, the General Counsel's Complaint should be dismissed.

STATEMENT OF FACTS

Respondent UAW Local 155 (“Local 155”) is the exclusive representative for employees at the former Faurecia manufacturing facility located in Sterling Heights, MI on Merrill Road. In or about November 2017, Local 155 finalized a contract with Faurecia’s successor company, SAS Automotive USA, Inc. (“SAS”) after SAS assumed operations at the Merrill Rd. facility in January of 2017. At all relevant times, Local 155 has maintained a collective bargaining agreement with either Faurecia or SAS at the Merrill Rd. facility. See General Counsel Exhibits 2 and 2(a).

Faurecia at Merrill Road Begins Winding Down Operations

In early October 2016, Faurecia Human Resources Manager Jerome Scott issued a WARN Act Letter to Local 155 President Duana King for the Merrill Rd. facility notifying UAW Local 155 that it intended to permanently lay off all employees at the Merrill Rd. facility no later than December 2, 2016. Respondent Exhibit 1. Prior to receiving the WARN Act letter, as early as July 2016, Ms. King had been in contact with Mr. Scott regarding Faurecia’s decision to not put in any new work in the Merrill Rd. facility. Tr. p. 167 (D. King)¹. Mr. Scott had indicated that if the company was not able to find a buyer, the facility would close. *Id.* Eventually, SAS stepped in and notified Local 155 that it intended to assume operations at the Merrill Rd. facility and begin production at that facility beginning in January 2018. R. Ex. 2, Letter from Keith Rochon to D. King; see also, tr. pp. 170-171 (D. King).

¹ References to the transcript will be notated as Tr. p. ____, and where appropriate, the witness to whom the evidence is attributed.

The Merrill Rd. facility included persons working as operators and GAP/ACT leaders (hereafter referred to as “leaders”). Because employees were uncertain about whether work would return to the Merrill Rd facility, employees began quitting, including those holding leader positions. Tr. p. 241 (S. Langford). At some time beginning in May 2016, Mr. Hanna began filling in as a leader, though he retained his operator position. R. Ex. 20, Scovill e-mail of September 12, 2017 (“you will also see he has instances starting in May [2016] where there was a top rate added of group leader pay. That is if someone is filling in temporarily); tr. p. 26 (Scovill). Eventually, Faurecia completed a payroll action form that purported to make Mr. Hanna a full time GAP leader. GC Ex. 20, Associate Action Form.²

Local 155 and SAS Negotiate a ‘Bridge Agreement’

After Faurecia shut down the Merrill Rd. facility, Local 155 and SAS entered into a Bridge Agreement, which adopted the Faurecia contract in most respects, except for certain aspects related to SAS’s ability to recall workers. That agreement provides in relevant part:

1. Unless modified by this Agreement, all terms and conditions of the [Local 155/Faurecia] CBA [dated March 26, 2013] remain in full force and effect.
2. This Agreement shall be effective as of January 16, 2017 and shall terminate when the Parties have ratified a new collective bargaining agreement. The Parties agree to make all reasonable efforts to negotiate and ratify a new three-to four-year collective bargaining agreement as soon as possible.
3. The Company may recall up to ten (10) employees (“Recalled Employees”) for the purpose of cleaning the Facility and completing a “Pilot Build” for the new DT Program. The Company may determine which classifications of employees to recall. Individual Employees will then be recalled based upon their seniority, as defined within the CBA, within each classification.

² This document was not produced to SAS’s Molly Wise in September 2017, the time frame in which Ms. Wise was attempting to confirm that Mr. Hanna was in fact a leader when he was laid off from Faurecia. Tr. p. 31 (Scovill).

4. If the Company recalls (7) or more employees, the Company must also recall a designated Union Committeeperson. The recalled Committeeperson must have the skills required to perform as a GAP/ACT leader/trainer.

GC Ex. 2A. Consistent with paragraph 3 of the Bridge Agreement, in about May 2017, SAS began calling former Faurecia employees to prepare the facility to reopen.³ At the time SAS began calling former Faurecia employees, SAS and UAW Local 155 were actively negotiating a new agreement. Tr. p. 93 (M. McDowell).

Mr. Hanna Begins to Inquire about SAS Recalls

After SAS had hired eight people in May to begin the facility start-up, Mr. Hanna heard from a Faurecia co-worker that she had been recalled with other persons who were leaders at Faurecia. Tr. p. 109. Between May and August, Mr. Hanna attempted to contact Ms. King at Local 155 and Rashon Byrd, a UAW Region 1 International Representative. See, generally, Tr. pp. 110-122; GC Exs. 19-12. When making these phone calls, if he did not reach Ms. King or Ms. Byrd, he believes he left messages. See, e.g., tr. p. 116 (Hanna). Mr. Hanna did recall reaching Ms. Byrd in August 2017 and recalls discussing why he was not recalled. At some point in August, Ms. Byrd assured Charging Party that SAS would recall him in September.⁴ Tr. p. 126. Mr. Hanna did not testify that he requested Ms. Byrd or Ms. King to file a grievance at any point before he filed the grievance on August 23.

³ Robert Diegel (ACT Leader), Jesminka Beserevic (ACT Leader), Halida Beserevic (ACT Leader), Sharon Langford (UAW Steward), Bahij Wallace, Steven Titchnell (Maintenance), James Globke (Maintenance), and Phil Braxton (ACT Leader) were recalled by May 2017. Respondent Exhibit 24; tr. pp. 66-70 (L. Hobbs). Of the 8 persons recalled in May of 2017, only Robert Diegel had more seniority than the Charging Party.

⁴ Mr. Hanna was in fact hired on September 11, 2017. R. Ex. 24.

Mr. Hanna Writes and Delivers Grievance No. LP 048452

On August 23, 2017, Mr. Hanna delivered a handwritten grievance to former Faurecia union steward Sharon Langford. GC Ex. 13. According to the grievance prepared by Mr. Hanna, he had an oral discussion with someone at SAS in April of 2017 who told him that not all gap leaders were called by SAS.⁵ *Id.* In response, Mr. Hanna wrote “this was not true – according to what he heard from other gap leaders.” GC Ex. 13.⁶ In the detail section of the grievance, Mr. Hanna wrote that “Faurecia violated [his] seniority rights” when it recalled a less senior employee. *Id.* Mr. Hanna’s grievance also wrote that “they [Faurecia] violated [his] classification as a GAP leader (Team Leader) by promoting another employee to the position . . . which took [his] position from [him] during the layoff. . . .” *Id.* Mr. Hanna requested as a remedy that “Faurecia Co . . . adhere to the contract,” call him back to work as a GAP leader. *Id.* He also requested that Faurecia pay him for lost time when another employee was called before him. *Id.*

Local 155 Advanced Mr. Hanna’s Grievance, Obtained Information, and Secured a Settlement Offer

Almost immediately after Mr. Hanna filed the written grievance, Ms. King discussed Mr. Hanna’s grievance with SAS management while the parties were still negotiating a new contract. Tr. p. 174. (D. King). Specifically, she discussed the issue with Molly Wise who initially told her that Mr. Hanna was an operator at Faurecia and not a leader. *Id.* at 176. Ms. King was not satisfied with this verbal answer and demanded that Ms. Wise put her conclusions in writing. *Id.* She also

⁵ The identity of the person Mr. Hanna may have spoken to did not come out during his testimony.

⁶ Despite Mr. Hanna’s belief that all former Faurecia leaders were recalled in May, Ms. Hobbs acknowledged that there were other leaders who were recalled after May 2017. Tr. p. 66 (L. Hobbs). In fact, there were leaders who were recalled to leader positions after Mr. Hanna was recalled in September 2017. See R. Ex. 24.

demanded that Ms. Wise contact Faurecia to obtain and provide information confirming her conclusions that Mr. Hanna was an operator, and not a leader, when Faurecia laid him off. *Id.*

Ms. King's advocacy prompted Ms. Wise to produce more information. On August 24, 2017,⁷ Ms. Wise produced a seniority list she obtained from Faurecia that listed Mr. Hanna as an operator. R. Ex. 5. After she received this information from Ms. Wise, Ms. King contacted Mr. Hanna and informed him of SAS's position on his grievance. Tr. p. 180 (D. King). She also requested that Mr. Hanna provide more information to rebut the company's position. *Id.* Mr. Hanna's response was to provide check stubs which purported to show that he had received leader pay. *Id.*; see also R. Ex. 4, Hanna Pay Stubs, printed on October 17, 2017.

In addition to the efforts made by Ms. King, Sharon Langford also attempted to resolve Mr. Hanna's grievance in early September 2017. In a meeting between herself, Mr. Hanna, and SAS management, Ms. Langford inquired with Ms. Wise about why Mr. Hanna was not hired in May 2017 when some other leaders had been recalled. Tr. p. 243 (S. Langford). According to Ms. Langford, Ms. Wise maintained, consistent with what she had told Ms. King, that the documentation she received from Faurecia showed that Mr. Hanna filled in as a leader and never actually held that position.⁸ *Id.* at 244. Ms. Wise also maintained that the company's position was that SAS was running a new operation and SAS was not obligated contractually to hire Mr. Hanna at SAS simply because he was a leader at Faurecia. *Id.*

⁷ On that same day, in response to an e-mail from Rashon Byrd, Ms. Wise indicated to Ms. Byrd that SAS would recall Mr. Hanna as an operator.

⁸ Leah Hobbs maintained this position in her response to the when she responded to questions investigating Mr. Hanna's charge. R. Ex. 8.

Both Ms. Langford and Ms. King attempted to independently verify whether Mr. Hanna was a leader at Faurecia. Ms. Langford recalled speaking to “about 15 people” who all told her that they could only remember Mr. Hanna filling in as a leader at Faurecia. *Id.* at p. 252. Ms. Langford shared her findings with Mr. Hanna. *Id.* Ms. King also asked Ms. Langford and Bahij Wallace, a former UAW steward at Faurecia, whether they remembered Mr. Hanna being a leader. Tr. p. 182 (D. King). Neither could confirm that Mr. Hanna had actually held a leader position. *Id.*

By November 2017, Ms. King was still advocating on Mr. Hanna’s behalf. Her advocacy prompted then Operations Manager Mark McDowell to offer a two-week settlement for Mr. Hanna’s grievance. According to Mr. McDowell, Ms. King expressed frustration at how Ms. Wise was handling the recalls. Tr. p. 89 (M. McDowell). In order to maintain good working negotiations going into contract ratification and into a new contract, even though he did not believe that Mr. Hanna’s grievance had any merit,⁹ Mr. McDowell offered to pay Mr. Hanna two weeks back pay, and to put him in the next available GAP leader position. Tr. p. 216 (D. King). Ms. King responded that she could not accept the offer without speaking to Mr. Hanna first. Tr. p. 181 (D. King). At that time, neither Mr. McDowell nor Ms. King knew that Mr. Hanna had already been placed in a leader position. Tr. p. 93 (M. McDowell); tr. p. 186 (D. King).

Around November 17, 2017, Ms. King relayed Mr. McDowell’s offer to Mr. Hanna. During their conversation, Ms. King reiterated that she did not have any additional proof that he was a

⁹ At the hearing, Ms. King could not recall Mr. McDowell’s reasons for how he arrived at the two-week pay settlement. Tr. p. 216. However, Ms. King told Mr. Hanna that that McDowell offered the two-week settlement because Mr. McDowell did not believe that Mr. Hanna should have been recalled in May 2017. Tr. p. 153-154 (A. Hanna).

leader at Faurecia. Tr. p. 152-153 (A. Hanna); tr. p. 181-182 (D. King). When she asked for that additional proof, Mr. Hanna indicated that his check stubs should be enough to prove that he was a leader when he was laid off at Faurecia. Tr. p. 145. As noted at note 9, supra, Ms. King also told Mr. Hanna that Mr. McDowell had argued that SAS was not obligated to return Mr. Hanna to work in May 2017. Tr. p. 153-154 (A. Hanna). Understanding that Mr. Hanna was either unable or unwilling to provide additional information to support that he was a leader when he was laid off, Ms. King told him that she could settle his grievance, even without his consent, because the Union “owned” the grievance. Tr. p. 181 (D. King). Mr. Hanna responded that he did not want her to settle the grievance, that he objected to such settlement, and asked Ms. King to allow him to seek his own remedy. Tr. p. 153 (A. Hanna); tr. p. 182 (D. King).¹⁰ Ms. King did not further pursue Mr. Hanna’s grievance because she understood that Mr. Hanna would not accept the settlement offer and that Mr. Hanna wanted to pursue a remedy on his own. Tr. p. 183.

PROCEDURAL HISTORY

On November 24, 2017, Mr. Hanna filed the instant charge alleging that UAW Local 155 failed or refused to represent him with respect to his grievance for unlawful reasons. GC Ex. 1(a). On August 28, 2018, the Regional Director issued a Complaint alleging that Local 155 had violated Section 8(b)(1)(a) of the Act by willfully misrepresenting and misinforming the Charging Party about the status and settlement of his grievance. GC Ex. 1(c), p. 2. Local 155 filed an Answer denying the allegations on September 10, 2018. GC Ex. 1(g). On December 11, 2018, the General

¹⁰ Ms. King testified that Mr. Hanna said he was going to file a Labor Board charge against the company. Tr. p. 182. Although Mr. Hanna did not file a charge against Faurecia or SAS, it is noteworthy that he did file his charge against Local 155 about a week later November 24, 2017.

Counsel filed an Amended Complaint, adding, in addition to its willful misrepresentation allegation, that Local 155 had processed Charging Party's grievance in a perfunctory manner. GC Ex. 1(h), p. 2, paragraphs 9-12. On December 3, 2018, Local 155 filed its First Amended Answer, denying the substantive allegations that have formed the basis of the General Counsel's Complaint. GC Ex. 1(j).

ARGUMENT

I. LOCAL 155 PROCESSED MR. HANNA'S GRIEVANCE IN A FAIR, REASONABLE AND VIGOROUS MANNER.

The General Counsel alleges that Local 155 engaged in perfunctory grievance processing by failing to investigate, by not speaking to any witnesses, and by taking the company's position as truth. See Tr. p. 15, GC Opening Statement. There is no evidence to support the General Counsel's assertions.

The duty of fair representation requires a union to "serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca v. Sipes*, 386 U.S. 171, 190, 87 S.Ct. 903, 910 (1967). A Union breaches the duty of fair representation "only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or bad faith." *Vaca*, 386 U.S. at 190; see also, *Airline Pilots Ass'n v. O'Neill*, 499 U.S. 65, 66, 111 S.Ct 1127, 1130 (1991). A labor organization violates its duty when it arbitrarily ignores a meritorious grievance or processes it in a perfunctory fashion. *Hines v. Anchor Motor Freight*, 424 U.S. 554, 569, 96 S.Ct. 1048, 1058 (1976). A Union's actions are considered arbitrary only if the union has acted "so far outside 'a wide range of reasonableness' as to be irrational." *Airline Pilots Ass'n*, *supra* at 66.

As it relates to investigations, “a union is not required to carry out an investigation of the same scope and rigor as the one the Region might carry out or to follow any particular procedures in processing an employee’s grievance.” *H&M International Transportation, Inc.*, 363 NLRB No. 139, *44 (2016). Further, absent discrimination or bad faith, unions have broad discretion in deciding which grievance to pursue and how to handle them. See *Service Employees Local 3036 (Linden Maintenance)*, 280 NLRB 995, 996 (1986); see also, *Auto Workers Local 651 (General Motors Corp.)*, 331 NLRB 479, 480 (2000). Mere negligence is not sufficient to establish arbitrary conduct. See *H&M International Transportation, Inc.*, *supra*.

Local 155 conducted a proper investigation. As soon as Mr. Hanna filed his grievance, Ms. King immediately began discussing his issue at the bargaining table with Ms. Wise. Tr. p. 174. In fact, Ms. King was so unsatisfied with Ms. Wise’s initial response, that she admonished her that she had to provide proof for her position that Mr. Hanna was not a GAP leader when Faurecia laid him off. Tr. p 176. Ms. King reminded Ms. Wise of her statutory duty to respond to Mr. Hanna’s issue, argued that certain provisions in the Faurecia CBA contradicted Ms. Wise’s position, and further cajoled Ms. Wise to obtain more information from Faurecia. R. Ex. 5. Unfortunately, the information available at the time from Faurecia was that Mr. Hanna was not a leader when he was laid off by Faurecia. *Id.* (E-mail from Ms. Wise, attaching information from Faurecia, and indicating that Hanna was never an “official” GAP leader).

Though the General Counsel will argue that Local 155 should have attempted to contact Faurecia directly, it is immaterial that Ms. King, Ms. Langford or Ms. Byrd did not contact Pam Scovill directly. As Ms. Scovill testified, she was not the human resources person responsible for the Merrill Rd. facility when it was in operation. Tr. p. 18. She further testified that at the time

she searched the Faurecia payroll system, Mr. Hanna was reflected as an operator, not a leader. Tr. p. 35. Finally, and most crucially, Ms. Scovill testified that the information she provided to SAS would have been the same as that she would have provided to Local 155 if they had asked directly. Tr. p. 39.

Local 155 agents also spoke to former Faurecia employees to verify if Mr. Hanna was a leader when he was laid off at Faurecia. Sharon Langford was told by “at least fifteen” employees that he had only filled in as a leader, but never officially held that position. Tr. p. 252 (S. Langford). Ms. King also investigated Hanna’s job status. She spoke to Ms. Langford and Bahij Wallace, both former stewards at Faurecia. Tr. p. 182. Neither could confirm that Mr. Hanna was a leader at the time he was laid off. *Id.*

Most crucially, Ms. King requested that Mr. Hanna himself provide information beyond the pay stubs he had produced. Mr. Hanna refused because, according to his thinking, the pay stubs should have been enough to prove his status at the time Faurecia laid him off. Tr. p. 145 (A. Hanna). Mr. Hanna refused to provide this documentation despite having first been told orally, according to his grievance, that SAS did not hire all former Faurecia leaders. GC Ex. 13. By the time he refused to provide additional information, Mr. Hanna also knew that SAS was arguing, as told to him at the September 2017 grievance meeting, that it was not obligated to recall him. Tr. pp. 243-244 (Ms. Wise reiterated to Hanna that SAS was not contractually obligated to bring Hanna back as a leader). Mr. Hanna also knew of SAS position that it could not verify from its Faurecia records that he was awarded a leader position while at Faurecia. *Id.* As Mr. Hanna testified, he did not send Ms. King the additional information from his “GAP book” until February 2019, well after he had directed her to put a hold on his grievance. Tr. p. 138. Thus, although Mr.

Hanna provided an impressive array of documents from his GAP book at the hearing, those documents are irrelevant to the question of whether Local 155 fairly represented him because he refused to produce them at the time his grievance was active from August through November 2017.

Similarly, in *H&M International Transport Inc.*, the Board adopted the ALJ's position that a grievant's failure to cooperate with the Union "can form the reasoned basis of a union's decision to withdraw a grievance." 363 NLRB at *46, citing *Teamsters Local 901 (Interstate Air Service Corp.)*, 167 NLRB 135, 140 (1967). Absent cooperation from the grievants, the ALJ in *H&M International* found that "the Union was then obligated to rely on the representations of H&M management and whatever information it could glean from other employees." 363 NLRB at *46.

The decision concludes:

Based upon that information, [the union agent] concluded that there was an insufficient basis to process the grievances further. While one may disagree with that conclusion . . . such a disagreement is insufficient to establish a breach of the duty of fair representation.

Id.

In *Local Union No. 195, (Stone & Webster Engineering Corp.)*, 240 NLRB 504 (1979), the Board adopted the ALJ's conclusions that the union did not breach its duty of fair representation where it relied upon the company's explanation about why it discharged several unit members. Although the ALJ characterized the Union's investigation as not "overwhelming," the ALJ still found that the union conducted its own investigation by speaking to the employer and also by eliminating the one explanation that would have fully exonerated the grievants from wrongdoing. 240 NLRB at 508-509. The ALJ concluded that "[r]espondent *did* investigate the grievance and, whether (assuming *arguendo* there was negligence or bad judgment) or not it might have

done more – or should have done more –its behavior, in any event, comes within a rational decision making process.” *Id.* at 509 (emphasis in original)(citations and quotations omitted) see also, *Douglas Aircraft Co.*, 307 NLRB 536, 557 (1992)(union did not violate the Act, although it failed to speak to some witnesses and failed to speak to charging parties before withdrawing grievances).

Here, under the rationale articulated in *H&M International, Inc.*, it was reasonable for Local 155 to convey the offer from SAS based on Mr. Hanna’s unwillingness to provide additional information. It is simply incomprehensible that Mr. Hanna would have had the evidence contained in his “GAP book” at the time he filed the grievance, while simultaneously refusing to provide that information to Ms. King. Also, as in *Local Union No. 195*, Local 155 investigated the crucial claims that underlay Mr. Hanna’s grievance. Ms. King and Ms. Langford checked with former Faurecia employees to see if he was a leader at Faurecia. They could not verify. They also sought information from Faurecia, through SAS, about whether Mr. Hanna had obtained a leader position. SAS answered that it did not have any evidence that Mr. Hanna did more than fill in as a leader at the time he was laid off. Demanding documents from the company, holding grievance meetings with management and the grievant, and securing a settlement offer, is anything but perfunctory or arbitrary and the ALJ should therefore dismiss this allegation.

Responding the General Counsel’s likely arguments, it is expected that the Government will argue that the lack of a formal grievance is evidence of arbitrary conduct.¹¹ However, under

¹¹ Local 155 acknowledges that Ms. King stated that the parties did not have a “grievance procedure” even though the parties had adopted the Faurecia agreement, which did contain a grievance procedure. See e.g., tr. p. 175. However, Ms. King clarified those remarks by saying that, during bargaining, the parties had not yet developed a formal grievance form. *Id.* Ms. King also stated that she had issues with receiving written answers from SAS Human Resources manager Molly Wise. *Id.*

the circumstances, it was not unreasonable for Local 155 to attempt to resolve Mr. Hanna's grievance at the bargaining table. Mr. McDowell and Ms. King testified that this was a routine practice. Tr. p. 93 (M. McDowell); tr. p. 175 (D. King). Further, the General Counsel may also play up Mr. Hanna's initial call attempts to show that it handled Mr. Hanna's grievance in an arbitrary fashion. This position is unsupported by the facts. The General Counsel did not bring forth any evidence that Mr. Hanna requested that any union official file a grievance, or otherwise pursue his issue between May and August 2017. As such, the proper starting point in determining whether Local 155 engaged in arbitrary conduct is what it did after Mr. Hanna submitted his written grievance on August 23, 2017. Once Mr. Hanna filed the written grievance on August 23, 2017, the Union acted promptly, reasonably, responsibly, fairly, and in Mr. Hanna's best interest.

II. LOCAL 155 CORRECTLY INFORMED MR. HANNA ABOUT THE SAS OFFER AND ALSO CORRECTLY STATED IT COULD ACCEPT THE OFFER ON HIS BEHALF.

A union may not purposely keep employees uninformed or misinformed concerning their grievances, *Groves-Granite*, 229 NLRB No. 15 (1997). Also, a total lack of logical explanation or justification for abandoning a grievance may constitute arbitrary conduct. See *Office Employees Local 2*, 268 NLRB No. 208 (1984). However, it is also true that a union may accept a settlement over a grievant's objection. See *BCI Coca-Cola Bottling Co. of Los Angeles*, 361 NLRB 839, 841 (2014) ("A union can approve a settlement agreement despite a grievant's express objection").

Here, there is no evidence that Local 155 misinformed or kept Hanna uninformed about his grievance. Further, Local 155 provided a logical explanation about why it both did not pursue the settlement SAS offered Mr. Hanna (he unequivocally refused it), and why it did not further process Mr. Hanna's grievance (Hanna asked for time to pursue a better remedy on his own).

First, the General Counsel is incorrect that Local 155 informed Mr. Hanna that it *would* accept SAS's settlement offer. GC Ex. 1(h), paragraph 9. As the record makes clear, Ms. King told Mr. Hanna that it *could* accept the settlement offer because the Union "owns" the grievance. Tr. p. 182. This is simply a correct restatement of the law. It is well settled that a Union, in exercising its discretion, may accept a settlement offer over the objection of an individual grievant. See *BCI Coca-Cola, supra*. Importantly, Ms. King told Mr. Hanna that the Union could accept the SAS offer because Mr. Hanna refused to provide more evidence other than his pay stubs that he was a leader.

Second, the General Counsel is also incorrect that Local 155 agreed to accept the offer with "little or no investigation." See GC Ex. 1(h), paragraph 9. As discussed, by the time SAS had made the two week offer, Ms. King and Ms. Langford had investigated whether or not Mr. Hanna was a leader at Faurecia, Ms. King had obtained records from Faurecia indicating that he was not a leader (that he had only filled in) and all parties were aware of SAS's position that it did not have to recall him in May 2017 because it was not contractually obligated to do so. It is also evident, from Mr. McDowell's November 2017 settlement offer, that Ms. King continued to press Mr. Hanna's issue during bargaining for a new contract.¹² Indeed, it is reasonable to conclude that no offer would have been made at all if Ms. King had not continued to press the issue. With this backdrop, Ms. King correctly relayed the settlement offer, and told him that without more

¹² It is noteworthy that Ms. Wise continued to press Ms. Scovill for more clarification about Mr. Hanna's status. See R. Ex. 20. This is further evidence rebutting the General Counsel's claim that the union treated Mr. Hanna's grievance in a perfunctory manner, since it is evident the Union continued to press his issue for several months.

evidence, the Union could accept that offer. However, Ms. King relented at Mr. Hanna's request. He was not misled.

Thus, in *In Re American Federation of Musicians*, 333 NLRB 1108 (2001), the Board agreed with the ALJ that a misunderstanding between a union and a grievant about a key piece of evidence, a written admission the orchestra conductor, did not amount to a willful misrepresentation. 333 NLRB at 1114. The ALJ found that, even though there may have been some miscommunication about what the parties intended during their meeting, the union had no intention of misleading the unit member about whether or not it would take his grievance to arbitration if he secured the writing in question. *Id.*

If *In re Federation of Musicians* stands for the proposition that a miscommunication between representative and grievant cannot be actionable as a breach of the duty of fair representation, Mr. Hanna's claims are on even more perilous grounds because there was no miscommunication about whether or not Mr. Hanna was interested in accepting the SAS settlement offer. As the transcript shows, he was adamant that he would not accept the offer from SAS. Mr. Hanna testified:

Q: Okay, tell me how the conversation started?

A: Well, she told me that as far as grievance, he was offering me 2 weeks of back pay to solve the case, to solve the grievance.

Q: Okay, when King told you that did you respond to her?

A: I said, no, I don't accept that.

Q: And what, did you say anything else to her?

A: I said no, I told her no, I don't accept that, why would I accept that?

...

Q: Did she say anything else?

A: Well, she forced me. She said, if you don't take it, I'm going to go ahead and take it. And I said, well, if you do that, you're going to do it on your own.

Tr. pp. 135-136. Ms. King testified that Mr. Hanna's adamant refusal to accept the settlement, along with Mr. Hanna's plea that he be allowed to seek a remedy on his own, including filing an NLRB charge, prompted her to allow the grievance to lay dormant and to not notify SAS that Mr. Hanna had either accepted or rejected the settlement offer. Tr. p. 182. (D. King). Under these circumstances, it was reasonable for Ms. King to wait for direction from Mr. Hanna before taking further action. Tr. pp. 182-183 (D. King). In this case, Mr. Hanna did not contact Ms. King to further pursue the grievance. Tr. p. 200; see also, GC Exhibit 26, Position Statement of D. King.

Here, the ALJ should reject the General Counsel's attempt to contort an accurate restatement of a settlement offer from SAS, and an accurate statement that Local 155 could settle Mr. Hanna's grievance over his objection into a breach of the duty of fair representation. For this reason, this allegation should be dismissed.

III. LOCAL 155 DID NOT KEEP MR. HANNA UNINFORMED ABOUT THE STATUS OF HIS GRIEVANCE AND THEREFORE GC MEMO 19-01 HAS NO BEARING ON THIS MATTER.

The General Counsel has not alleged, and has not proven, that Local 155 failed to communicate its decision about Mr. Hanna's grievance, the only factor from GC Memorandum 19-01 relevant here. Therefore, the ALJ should decline to extend the rationale in GC Memo 19-01, and as clarified in GC Memo 19-05, to this case.

In GC Memo 19-01, *General Counsel's Instructions Regarding Section 8(b)(1)(A) Duty of Fair Representation Charges* (October 24, 2018), the General Counsel directs that Regions

prosecute unions for any “failure to communicate decisions related to a grievance or to respond to inquiries for information or documents by the charging party.” *Id.* at 2. GC Memo 19-05, *General Counsel’s Clarification Regarding Section 8(b)(1)(A) Duty of Fair Representation Charges* (March 25, 2019), further clarified the earlier GC Memo 19-01 and specifically answered questions about “whether the memorandum’s case handling instructions apply to union decisions as to whether to pursue a grievance and the extent to which the Regions need to analyze unions’ justification for not pursuing a grievance.” *Id.* There, the General Counsel clarified that “GC 19-01 did *not* alter the analysis concerning a union’s decision whether or not to pursue a grievance violated the duty of fair representation.” *Id.* (emphasis in original). Further, the memorandum instructs that a union need not be required “to present a detailed defense of its decision not to pursue a grievance, or its decision to abandon a grievance, as long as the union is acting reasonably.” *Id.* at 2. GC Memo 19-05 concludes that:

Regions need not look behind a union’s assertion of a reasonable decision not to pursue a grievance unless there is evidence that those decisions were made in bad faith or involved gross negligence, or where there could be no reasonable basis for the union’s decision.

Id.

Here, the ALJ should follow the instructions as clarified in GC Memo 19-05 and not look beyond Local 155’s reasonable explanation that it no longer pursued Mr. Hanna’s grievance because he asked Ms. King to (1) not accept the settlement, and (2) allow him more time to figure out a better remedy on his own. See Tr. p. 182; see also, tr. p. 154. The General Counsel has not brought forth any evidence that Local 155’s decision was made in bad faith, or that it was the product of gross negligence, or otherwise unreasonable. In fact, this scenario was contemplated

by GC Memo 19-01 as an example of conduct that would *not* constitute a breach of the duty of fair representation. In GC Memo 19-01, the General Counsel gave the example that “where a union has responded to a grievant’s inquiry, but where the grievant is dissatisfied with the response, the union’s subsequent failure to provide additional explanation to arguments already considered would not, in and of itself, rise to the level of a violation.” GC Memo 19-01, n. 2.

Here, Mr. Hanna was informed of his options for settlement and Mr. Hanna decided to chart his own course. Under these circumstances, it was reasonable for Local 155 to not provide Mr. Hanna with additional information about his grievance because he chose to not pursue the SAS settlement offer any further. The Union acted reasonably in honoring Mr. Hanna’s wishes and this portion of the General Counsel’s complaint should be dismissed.

IV. THE ALJ SHOULD REJECT ANY REMEDY REQUIRING LOCAL 155 TO PROCESS MR. HANNA’S GRIEVANCE OR TO PAY BACKPAY BECAUSE THE GENERAL COUNSEL CANNOT CARRY ITS BURDEN THAT MR. HANNA’S GRIEVANCE WOULD PREVAIL AT ARBITRATION.

Without conceding liability in this matter, it is evident that, even assuming Local 155 did breach its fair representation duty, Counsel for the General Counsel cannot satisfy its burden of proving that Mr. Hanna’s grievance would be successful at arbitration and therefore its proposed remedy should be rejected. The Board’s burden shifting formulation in *Iron Workers Local Union 377*, 326 NLRB 375 (1998) requires the General Counsel to prove that Mr. Hanna “would have prevailed if the grievance had been properly processed by the union.” 326 NLRB at 377. The proper application of this standard requires the ALJ to assess the merits the grievance in the same way that an arbitrator would have. *Id.* In this case, since the grievance would have been one of contractual interpretation, Local 155 would have borne the burden of proving that SAS breached

the Bridge Agreement (GC Ex. 2(a)) when it failed to recall Mr. Hanna. See Elkouri & Elkouri, How Arbitration Works, 8-104 (BNA 8th Ed.)(In general, the party asserting the claim has the burden of proving it). The General Counsel cannot meet this burden.

As noted, the Bridge Agreement allowed SAS to call “up to ten” employees for the purposes of reopening the Merrill Rd. facility. GC Ex. 2(a), paragraph 3. Ms. Langford testified that SAS relied upon this provision during a September 2017 grievance meeting when it rejected Local 155’s argument that Mr. Hanna should have been called in May 2017. Tr. p. 243-244. Ms. Langford also testified that SAS’s initial hiring in May 2017 was not inconsistent with paragraph 3 of the Bridge Agreement. *Id.* at 250.

In contrast, though the Bridge Agreement was fully ratified by the membership, (tr. p. 246 (S. Langford)), Mr. Hanna did not seem to fully grasp that SAS was a new company and that the Faurecia agreement had been modified in certain key respects by the Bridge Agreement between Local 155 and SAS. It is evident from Mr. Hanna’s written grievance that he thought Faurecia, and not SAS, was still the employer. See GC Ex. 13 (multiple mentions of “Faurecia’s” violation of the Agreement). Further, Mr. Hanna admitted that he did not understand that SAS had assumed the operations at the Merrill Rd. facility and, at the time they began hiring in May 2017, Local 155 and SAS were operating under new circumstances. Tr. pp. 148-149 (A. Hanna). In fact, Mr. Hanna admitted he was not aware of the Bridge Agreement at all. *Id.* at p. 149.

Where Local 155 would have borne the burden of proof of proving a contract violation, Mr. Hanna’s ignorance about the changed circumstances between the changeover from Faurecia to SAS would likely have proved fatal. Juxtaposed to a straight-forward reading of the Bridge

Agreement, coupled with SAS hiring consistent with paragraph 3 of the contract, it is highly likely that Mr. Hanna would not have “won on the merits” and therefore would not be entitled to any remedy. *Iron Workers Local Union 377, 326 NLRB at 380*. Therefore, the General Counsel’s proposed remedy should be rejected.

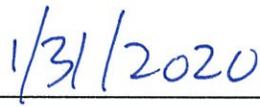
CONCLUSION

For the reasons stated herein, UAW Local 155 requests that the General Counsel’s Complaint be DISMISSED.

Respectfully Submitted,



James A. Britton
Associate General Counsel
International Union, UAW



Date

January 31, 2020
JAB/syw
opeiu494afl-cio

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LOCAL 155, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW),
AFL-CIO (SAS AUTOMOTIVE USA, INC.)

Respondent

and

CASE 07-CB-210547

AMEER A. HANNA, an Individual

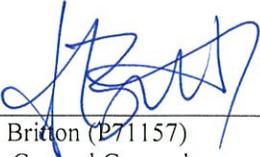
Charging Party

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Post Hearing Brief of UAW Local 155 was filed electronically using the NLRB's electronic service, and a copy was also served on the following parties via first class mail:

Ameer Hanna, Charging Party
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Dated this 31st day of January 2020



James A. Britton (271157)
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