

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES¹**

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

Respondent

Case 07-CB-210547

and

AMEER A. HANNA, AN INDIVIDUAL

Charging Party

**COUNSEL FOR THE GENERAL COUNSEL'S BRIEF TO THE
ADMINISTRATIVE LAW JUDGE**

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¹ Throughout this brief the following references will be used:
Transcript: Tr (followed by page number)
General Counsel Exhibit: GC (followed by exhibit number)
Respondent Exhibit: R (followed by exhibit number)

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COUNSEL FOR THE GENERAL COUNSEL'S BRIEF TO THE
ADMINISTRATIVE LAW JUDGE

Now comes Counsel for the General Counsel Robert A. Drzyzga who respectfully submits this brief to Administrative Law Judge Charles Muhl, who heard this matter on December 10 and 11, 2019, in Detroit, Michigan.²

I. ISSUES

The issues presented are:

(1) Whether Respondent, since about November 17, 2017, willfully misrepresented and deliberately misinformed the Charging Party regarding the status and settlement of his grievance by informing him it would accept a two-week grievance settlement, by subsequently failing to accept the grievance settlement, and by dropping his grievance, in violation of Section 8(b) (1) (A), in the manner set forth in complaint paragraphs 9 through 11.

(2) Whether Respondent, as of November 17, 2017, handled the Charging Party's grievance in a perfunctory manner by performing little or no investigation before making its intentional misrepresentation it was accepting a two week grievance settlement and thereafter dropping the grievance and failing to accept any grievance settlement, in violation of Section 8(b) (1) (A), in the manner set forth in complaint paragraphs 9 through 11.

² All dates are 2017 unless indicated otherwise.

Counsel for the General Counsel respectfully requests that the honorable Administrative Law Judge Muhl answer the above questions in the affirmative.

II. FACTS³

A. Collective Bargaining History

Charging Party Ameer Hanna (hereafter Hanna) began working for Faurecia Interior Systems, Inc. (hereafter Faurecia) on July 10, 2006 (R 24, p 1) at Faurecia's facility located at 42555 Merrill Road in Sterling Heights, Michigan. Prior to March 26, 2013, Faurecia and SAS Automotive USA, Inc. (hereafter SAS) entered into a joint operation to manufacture cockpit systems at the Merrill Road facility. On March 26, 2013, Faurecia and SAS entered into a collective bargaining agreement with Respondent at its Merrill Road facility effective by its terms from July 1, 2013 to July 1, 2017. (GC 2, p 22). The bargaining Unit in that agreement is defined as follows:

All full-time production, maintenance, shipping, quality control, GAP leader employees employed by the Employer at its facility located at 42555 Merrill Road, Sterling Heights, Michigan; but excluding office clerical employees, technical employees, paraprofessional employees, professional employees, and guards and supervisors under the Act.

(GC 1 (c), para 7; GC 2, Article 2, p 2)

³ The facts contained herein are a summary of those that Counsel for the General Counsel contends should be credited.

The collective bargaining agreement for the above Unit contained the following provision, in relevant part, regarding employee recall rights after layoffs:

**ARTICLE 11
RECALL**

11.01 Displaced and laid off employees will be recalled in seniority order. However, in the event an employee does not have the seniority to be recalled to the classification which he/she formerly held, the employee will be recalled to fill an open job within the plant. In the event there are no open jobs within the plant, the employee will be allowed to bump the lesser seniority employee, provided they have the ability to perform the job.

11.02 Any employee who refuses a recall to any available job shall lose his seniority, and his employment with the Company will be terminated, subject to Clause 9.04 (e)(i) and (ii).

(GC 2, p 11)

The collective bargaining agreement also contains separate grievance and arbitration provisions. (GC 2, Article 7, Grievance Procedure pp 6-8; and Article 8, Arbitration, pp 8-9).

On October 5, 2016, Faurecia sent Respondent a notice that it was ceasing its operations effective December 2, 2016, and that employees at the Merrill Road facility would be laid off. (R 1). On November 28, 2016, SAS sent the Respondent a Request for Negotiations acknowledging Faurecia's plans to discontinue production on December 2, 2016, and SAS's intent to restart production in January of 2018. SAS requested that Respondent bargain a new agreement. (R 2). On January 20, SAS and Respondent entered into a bridge "Agreement," which provides, in part:

WHEREAS, the Company and the Union are parties to a collective bargaining agreement (“CBA”) dated March 26, 2013, attached hereto as Appendix A;

WHEREAS, the Company intends to reopen production at the Facility in or around late 2017;

WHEREAS, in order to reopen production at the Facility, the Company would like to recall approximately (6) bargaining unit employees (“Employees”) on an as-needed basis, subject to the terms and conditions of this Agreement.

NOW THEREFORE, the parties agree as follows

1. Unless modified by this Agreement, all terms and conditions of the CBA 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.

(GC 2 A)

This bridge agreement maintained certain terms and conditions of employment from the prior agreement (GC 2) including but not limited to the grievance, arbitration and recall procedures. The Bridge Agreement required employees to be recalled in

seniority order by classification. There is no record evidence as to when a *subsequent* collective bargaining agreement was ratified between SAS and the Respondent⁴.

B. Events Leading to the Charging Party's Recall to SAS and Recall Grievance

Sometime before May 26, 2016, Hanna started training as a GAP leader⁵ for Faurecia in the UAP IP GAP 2 area he was assigned to in the plant. Hanna was trained by Paul Hamilton, his Faurecia supervisor. Hamilton utilized a Production Gap Leader Development Guide to track Hanna's training progression. Hamilton evaluated Hanna on May 26 and July 13, 2016 (GC 4 and 5). Faurecia officially promoted Hanna to a GAP leader position effective August 15, 2016. (GC 20). Hanna's Associate Action Form (GC 20) indicates he was filling a new position as a GAP leader and was permanently receiving a \$1.00 per hour wage increase to \$17.25 per hour as a GAP leader. Hanna's promotion to GAP leader was approved by Faurecia's Human Resource Director Jermaine Scott. (GC 20 and 21; R 4⁶)

⁴ The parties stipulated that the *new* contract between SAS and the Respondent was effective by its terms on November 26, 2017. There is no evidence in the record on when this agreement was ratified. Counsel for the General Counsel does not concede that this agreement governed Hanna's recall grievance, since Hanna was recalled under the terms of the bridge agreement on September 11, not the November 26 agreement.

⁵ Faurecia designated its lead employees as GAP leaders. SAS referred to them as ACT leaders.

⁶ Respondent Exhibit 4 indicates Hanna was receiving GAP leader pay of \$17.25 per hour for the pay period ending August 28, 2016, through the period ending December 4, 2016, consistent with his promotion paperwork. (GC 20 and 21).

Hanna's responsibilities as GAP leader included overseeing the daily duties of seven operators assigned to his work area. The operators' names were Phillip Braxton, Diarra Herring, Fred Hicks, Michael Regan, Onita Hutchins, Damisia Bufkin and Darnell Stroud. (GC 3). Hanna was responsible for rotating operator work assignments, tracking scrap, updating performance charts, reporting operator absences, updating the safety board, ensuring operators were wearing safety glasses and directing operators in their daily assignments, amongst other duties. Hanna was required to fill out GAP Leader Routine and Polyvalence Matrix reports tracking his responsibilities. (Tr 96-109; GC 6 - 8). On December 2, 2016 Hanna worked his last day for Faurecia and was laid off.

In early May, Hanna spoke to a former co-worker named Jasminka ⁷ who informed him that she was recalled back to work by SAS at the Merrill Road facility and inquired if Hanna was recalled as well. (Tr 109). Commencing on April 17, SAS recalled four ACT leaders with less seniority than Hanna as listed below:

<u>Name</u>	<u>Seniority Date</u>	<u>Recall Date</u>
Jasminka Besirevic	August 7, 2006	May 1, 2017
Halida Besirevic	August 14, 2006	May 1, 2017
Bahij Wallace	September 28, 2006	April 17, 2017
Philip Braxton	July 11, 2011	May 1, 2017

(R 24, p 1, L 11, 15 and 29; p 2, L 8)

⁷ The employee in question appears to be Jasminka Besirevic. See R 24, p 1, L 11.

After Hanna received information that his former co-workers were being recalled by SAS, commencing on May 10 and through September 11, Hanna made approximately 25 outgoing phone calls to either the Respondent or the International Union attempting to get the Respondent to assist him in getting recalled back to work by SAS, pursuant to the terms of the January 20, 2017 bridge agreement. (Tr 114-132; GC 9-12). In addition, on August 7, Hanna visited the Respondent's union offices attempting to get assistance from Respondent President King (GC 28). Hanna also made two other visits to either Respondent's or the International Union hall during this time frame. (Tr 110-111). On August 23, Hanna filled out his own grievance, number LP 048452, and provided it to Respondent's steward Langford who accepted and forwarded the grievance to SAS. SAS acknowledged receipt of the grievance on September 5. (GC 13).

On August 24, Respondent President King sent an email to Molly Wise, SAS's Human Resource Director at the time. In summary, King argued Hanna was a GAP leader at the time of layoff and that SAS was required to meet on the grievance under the grievance procedure. King specifically stated in her email, in part:

“Our CBA is an extension. This agreement was with Faurecia Merrill and SAS. Article 10 of the CBA states how employees are supposed to be returned to work off layoff. There is no opportunity for you to take someone out of their previous classification and place them in a new during a layoff. Article 12 speaks about job postings...you can't give someone a position without them applying for it. Ameer was a GAP leader before he was laid off. The lower senior employee working was not.

Because you were a partner with Faurecia and is named in this contract, the burden of proof is on you. You have to prove Ameer was not a GAP leader to make the statement you made in the email...just saying it is not enough. We filed

a grievance, you must meet on it according to the grievance procedure...email will not replace that.

...you bought the business and assumed the CBA.”

Wise responded that same day indicating that Respondent King and steward Langford agreed to the order of the GAP leaders recalled in a prior meeting. This alleged agreement occurred before any investigation into Hanna’s grievance was ever made. (R 5)

Finally, on September 11, Hanna was recalled to SAS as an operator. (Tr 133, R 6). After Hanna was recalled, he continued to argue that he was recalled out of order and was entitled to backpay from May until September 11. Hanna subsequently provided payroll records to Respondent steward Langford indicating he was working as a GAP leader for Faurecia. (Tr 156, R 4) Sometime after September 11, Respondent steward Langford and Hanna met with SAS Human Resource Manager Wise and Manager Nick Rock. Wise stated that there was no evidence Hanna performed duties as a GAP leader for Faurecia. (Tr 243-244)

In November, Respondent President King met with SAS Plant Manager McDowell at the International Union’s Region 1 union hall. The parties were in the process of negotiating a new collective bargaining agreement and had a side-bar discussion during a recess in bargaining. King informed McDowell that she was not happy with the way SAS Human Resource Director Wise used a five-day letter to recall employees and used employees’ failures to respond to these letters as a justification to

skip over employees. King indicated that Wise's actions could slow or hold up the ratification vote for the new agreement. McDowell informed her he would speak to Wise and make sure this matter was taken care of. King informed McDowell that Hanna had a grievance claiming that he was recalled inappropriately and was asking for backpay. McDowell proposed offering Hanna two weeks of backpay to resolve his grievance⁸. (Tr 86-90, 181, 192-193).

On about November 17, Hanna spoke to Respondent President King on the phone while he was at work. King informed Hanna that the Employer proposed two weeks of backpay to resolve his grievance. Hanna told King he would not accept the offer because it did not include all the backpay he was owed⁹. King informed Hanna that there was nothing else she could do; there was no evidence he was a leader at Faurecia; and that she would accept the offer whether he wanted it or not. (Tr 133-137) Hanna informed King that he had additional payroll records, witnesses and other documents¹⁰ proving he was a leader. King said it did not matter, she would accept the offer anyways. Hanna further testified that he never requested that his grievance be placed on hold for any reason. (Tr 133-136, 151-155).

⁸ McDowell testified that he only offered two weeks of backpay to resolve Hanna's grievance, and makes no mention of an offer to promote him to a team leader position as asserted by Respondent King.

⁹ Hanna's refusal of the offer was not unreasonable. Based upon a review of R 4, Hanna made \$17.25 per hour or approximately \$690.00 per week excluding any overtime hours. The first leader recalled was Wallace on April 17. Accordingly, Hanna was owed at least 21 weeks of backpay at \$690.00 per week, or a total of \$14,490.00 *excluding* any overtime hours worked, increases in ACT leader wage rates, and interest. The offer presented was for two weeks of backpay which equated to approximately \$1,380.00.

¹⁰ These "other documents" included an organization chart (GC 3), Polyvalence Matrix (GC 6), Production Gap Leader Development Guide (GC 4-5) and Gap 2- Gap Leader Routine checklist (GC 7 -8).

Hanna testified that he never received any backpay for his grievance. (Tr 136, 156-157) McDowell testified that neither King nor any other Respondent official ever accepted McDowell's settlement offer for Hanna's grievance, or got back to him on Hanna's grievance at any time. McDowell further testified that he never processed any paperwork authorizing two weeks of backpay to be paid to Hanna to resolve his grievance. (Tr 90-92). SAS's Director of Human Resources, Leah Hobbs a/k/a Leah Mitchell, testified that SAS's investigative file on the Hanna grievance consisted of only one document, the grievance. (Tr 46) She further testified that no Respondent official ever contacted her to process the grievance; she never paid Hanna two weeks of backpay to resolve his recall grievance; and that the only pay adjustment Hanna received was a .25 cent per hour increase on January 24, 2018 for ACT leader training he received while working for Faurecia, and this increase was unrelated to his recall grievance. (Tr 46, 58-60, 78; GC 24) Finally, Hobbs also testified that based upon her review of employee records, Hanna was the highest seniority leader in his classification and should have been the first leader to be recalled. (Tr 55; GC 22-23; R 24¹¹)

Respondent President King testified that Hanna's grievance investigation file did not contain a grievance, any witness statements, Employer answers, settlement offers or documents indicating that a grievance, had it existed, was put on hold. (Tr 188-192)

¹¹ Hobbs' assertion on Hanna's seniority is corroborated by Respondent's own exhibit R 24.

III. RESPONDENT'S UNFAIR LABOR PRACTICES

A. Legal Standards

It is well settled that a union which enjoys the status of exclusive collective-bargaining representative has an obligation to represent employees fairly, in good faith, and without discrimination against any of them on the basis of arbitrary, irrelevant, or invidious distinctions. *Vaca v. Sipes*, 386 U.S. 171 (1967); *Miranda Fuel Company, Inc.*, 140 NLRB 181 (1962). A union breaches this duty when it arbitrarily ignores a meritorious grievance or processes it in a perfunctory fashion. *Vaca v. Sipes*, supra at 191, 194; *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554 (1976); *Teamsters and Chauffeurs Local Union No. 729 (Penntruck Co., Inc.)*, 189 NLRB 696, 702 (1971). Correspondingly, so long as it exercises its discretion in good faith and with honesty of purpose, a collective-bargaining representative is endowed with a wide range of reasonableness in the performance of its duties for the unit it represents. Mere negligence, poor judgment, or ineptitude in grievance handling are insufficient to establish a breach of the duty of fair representation. *Ford Motor Company v. Huffman*, 345 U.S. 330 (1953); *King Soopers, Inc.*, 222 NLRB 1011 (1976); *Truck Drivers, Oil Drivers and Filling Station and Platform Workers, Local No. 705 (Associated Transport, Inc.)*, 209 NLRB 292, 304 (1974); *Maxam Dayton, Inc.*, 142 NLRB 396, 418 (1963). There comes a point however, when a union's action or its failure to take action is so unreasonable as to be arbitrary and thus contrary to its fiduciary obligations. *Allen L. Griffin v.*

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, 469 F.2d 181 (C.A. 4, 1972); *United Steelworkers of America, Local 8093, AFL- CIO-CLC (Kennecott Copper Corporation, Ray Miner Division)*, 225 NLRB 802 (1976); *King Soopers, supra*; *General Truck Drivers, Warehousemen, Helpers and Automotive Employees, Local 315 (Rhodes & Jamieson, Ltd)*, 217 NLRB 616 (1975).

In *Service Employees International Union, Local 579 (Convacare of Decatur)*, 229 NLRB 692 (1977), the Board found the union engaged in perfunctory grievance handling in violation of Section 8(b)(1)(A) when the union conducted little or no investigation on an employee's discharge grievance. By affirming the Administrative Law Judge the Board found:

“...When Miller reviewed Evans' personnel file in Wolfe's office, she undertook, intentionally or otherwise, to represent Evans at step one of the grievance procedure. Having undertaken that responsibility, Miller became obligated to represent Evans fully and fairly and to function as her advocate. *United Steelworkers of America, AFL--CIO (Interroyal Corp.)*, 223 NLRB 1184 (1976); *Associated Transport, Inc., supra*. Miller failed to fulfill this obligation when, after reviewing the file, she agreed with Wolfe that there were a lot of problems with Evans. More importantly, I believe, Miller and Masson essentially abdicated their responsibilities toward Evans by failing to question, or even consider, the validity of the reason assigned for Evans' discharge. Evans was discharged for allegedly switching shifts without permission, not for her past derelictions. If, in fact, permission had been granted, the immediate cause for the discharge would have been removed and the discharge action would, in all likelihood, not have withstood the arbitral process. Miller did not seek Evans' side of the story; she did not raise the question with Wolfe and she did not question either Director of Nursing Kampten or Price, the nurse who made the switch with Evans. In evaluating the grievance, neither Miller nor Masson gave any consideration to the alleged precipitating event. Had they done so, Evans might have convinced them of the merits of her claim. But whether they, or the Employer, would have been convinced is, at this point, irrelevant. As the Board stated in *Interroyal Corp.*,

supra 1185, wherein the union president peremptorily refused the grievant's explanation and attempt at proof:

[I]t is patently irrelevant that the proof Beshears had in hand on March 24 might not have fully satisfied the Employer-it was not even considered by the Respondents.

This failure to inquire into the validity of the stated reason for the discharge, and willingness to evaluate the worth of an employee solely through the eyes of the employer, is more than mere negligence or ineptitude. It is perfunctory grievance handling and so unreasonable as to be arbitrary”.

Service Employees International Union, Local 579 at 695-696.

Likewise, in *Newport News Shipbuilding and Dry Dock Company*, 236 NLRB 1470, 1471 (1978), enf. granted in part 631 F. 2d 263 (4th Cir. 1980), the Board found perfunctory grievance handling where the union relied solely on an employer's investigation of a grievance:

“The record is clear that that Respondent Union's agent Linhart agreed to permit the Respondent Employer to discharge South and to reprimand the other employees based almost solely on the Employer's explanation of the February 16 incident. Linhart's entire investigation of the February 16 incident consisted of a brief conversation with two employees who worked on the 9-1 /2 platen and who had participated in the work stoppage. It was not until just prior to the discharge interview on February 17, after Linhart had agreed to the discharge of South, that Linhart heard South's explanation of what had occurred on February 16. In addition, the Respondent Union later refused to appeal South's discharge to step two of the grievance procedure, and indeed failed even to respond to South's request that it do so. Clearly, the Respondent Union's handling of South's discharge was arbitrary and perfunctory and thus violative of Section 8(b) (1) (A) of the Act.”

In addition, the Board has found intentional misrepresentation regarding the status of a grievance unlawful; *Retail Clerks Local 324 (Fed Mart Stores)*, 261 NLRB 1086

(1982) (purposefully misinforming, or keeping uninformed, a grievant regarding status of grievance after commitment to seek arbitration); *Service Employees Local 3036 (Linden Maintenance)*, 280 NLRB 995 (1986) (assuring employee union would take care of grievance, but then abandoning it without explanation and without informing grievant); *Maritime Union District 1 (Mormac Marine Transport)*, 312 NLRB 944 (1993) (9-month delay between filing grievance and investigation by union where twice falsely assured grievant his grievance was being looked into and handled).

B. Credibility Resolutions

A credibility analysis relies upon a variety of factors, including, but not limited to, the witness's demeanor, the context of the witness testimony, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. See *Double D Construction Group*, 339 NLRB 303, 303–305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), *enfd.* 56 Fed. Appx. 516 (D.C. Cir. 2003).

1. Duana King.

Respondent's witness Duana King should not be credited. King provided testimony that conflicted with other credible record evidence. For example, King's testimony that she met with Hanna in her office in November and agreed to place

Hanna's recall grievance on hold at Hanna's request should not be credited. (Compare Tr 181 to 133-137). King testified that she never pursued Hanna's grievance because there was no grievance procedure to follow and the grievance was not filed on the proper grievance form. She also testified that during an August 24, 2017 meeting with Wise, she raised the issue of Hanna's *grievance* to Wise and instructed Wise as to the proper form in which to answer Hanna's *grievance*: "You just can't verbally tell me what's the answer to the grievance; you have to put it in writing; you have to schedule a meeting, you have to give me all the documents." (Tr 174-177, 188-192).

King's testimony regarding the lack of a grievance procedure is also contradicted by her own prior assertions in her August 24 correspondence to SAS Human Resource Manager Wise, where again she argues that SAS had to follow the grievance procedure because SAS assumed the prior agreement (R 5); and also the bridge agreement which incorporated the terms of the prior agreement including layoff, recall, grievance and arbitration provisions. (GC 2 and 2a). In addition, International Representative Rashon Byrd confirmed that the bridge agreement (GC 2a) carried over the grievance procedure from the prior agreement (Tr 238-239, GC 2), and Respondent steward Langford testified that she processed Hanna's grievance and did not ask him to rewrite it, confirming it was written properly on a valid grievance form. (Tr 253-254). In summary, there was a valid grievance procedure in place that could have been used and Hanna wrote a valid grievance that Langford attempted to process. King simply chose not to process the

grievance and dropped it, claiming after-the-fact there was no valid grievance process or grievance.

In addition, Respondent's position statement filed on August 1, 2018 with the NLRB contradicts King's assertion that she placed the grievance on hold per Hanna's request. The statement, prepared by King, states, in part:

"I was told by Ms. Mitchell that the company had moved Mr. Hanna to an ACT leader position and agreed on settlement pay for the time he was not coded as an ACT leader. When this charge was filed, the company contacted me and asked me what to do because this case should have been closed. I told them to present the documents (agreements and pay given) to the board agent and explain what was done. I assumed that it was done because I was not contacted by anyone to state this case was still open.

Mr. Hanna is currently working as an ACT leader and receiving ACT leader wage. He was compensated for time missed at those ACT leader wages and time missed for him being called back to work later."
(GC 26)

The position statement was filed nine months after King's alleged meeting with Hanna in her office putting his grievance on hold. There is no mention in this position statement of Hanna's grievance being put on hold so that Hanna could pursue an NLRB charge. To the contrary, King indicated the matter was resolved and instructed SAS to forward the settlement documents to the NLRB. Likewise, in Respondent's second position statement dated August 17, 2018, forwarded by its legal counsel, there is no mention of Hanna's grievance ever being placed on hold at any time. (GC 27).

Moreover, Hanna contradicts King on this critical issue. Hanna was a persistent grievant. From May to September 11, Hanna made approximately 25 outgoing phone

calls over a six-month period to the Respondent and International Union attempting to secure his recall to work at SAS. Neither Respondent nor the International Union bothered to return a single phone call. After his reinstatement, Hanna continued to protest the timing of his recall, claiming he was not recalled in proper seniority order. Hanna offered to provide additional payroll records, documents and witnesses to Respondent to support his claim. Given Hanna's established persistence in this matter, it is inconceivable to conclude that if Hanna actually met with King in her office in November as she testified, he would not have presented her with the evidence he had to support his grievance. Equally dubitable is the notion that Hanna would ask King to put his grievance on hold while possessing incontrovertible proof he was a leader. Surely he would cooperate with the Respondent when his grievance could net him a monetary settlement of approximately \$14,490.00 excluding overtime hours worked and interest. For all these reasons, King's assertion that Hanna met with her at her office and requested his recall grievance to be placed on hold should be discredited.

Finally, King was disruptive and argumentative during the entire course of the proceedings, which further establishes her overall lack of credibility. On approximately 21 separate occasions, and possibly more, King made various comments during the hearing that became part of the record. These comments were made *while King was not testifying as a witness or being addressed by the administrative law judge and were so loud that they became part of the record.* (Tr 49, 55-58 (4x), 57-58, 83, 88, 101 (2x), 141, 144 (2x), 145, 149 (2x), 153, 155-158 (4x)). Almost all of King's comments were made

while Counsel for the General Counsel's witnesses were testifying, including 11 separate comments while Hanna was testifying. (Tr 141, 144 (2x), 145, 149 (2x), 153, 155-158 (4x)). Indeed, she even made one objection claiming Counsel for the General Counsel was leading and asserted Hanna's testimony was a lie. (Tr 155)

For all the above reasons, including but not limited to King's overall demeanor, the content of her testimony, the weight of the respective evidence, established and/or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record, King should be discredited on all accounts.

2. Sharon Langford

Respondent's witness Sharon Langford should not be credited regarding her testimony on the scope of her grievance investigation. Langford provided conclusory, ambiguous and uncorroborated testimony related to her grievance investigation. Langford asserts that she spoke to 15 unnamed witnesses, dates and times unknown, who worked with Hanna and who indicated he was a temporary leader. When asked where these statements were, Langford said she did not have them. (Tr 256) She further stated that she did not directly work with Hanna at Faurecia, did not speak to any supervisors about Hanna's job responsibilities, and never relayed this information to anyone else in the union. (Tr 254-256).

Langford's testimony is self-serving and conclusory. She provides no foundation for her interviews of her alleged witnesses. She provided no witness names, no date, time, or place of the interviews, and no specifics on what was said or by whom; rather,

she merely provided conclusory testimony regarding what she was allegedly told.

Further, the record evidence establishes that Hanna was assigned to a specific line with a total of seven operators who worked under his watch. There is no record evidence that Hanna ever worked with 15 other employees when assigned as a GAP leader on his line prior to his layoff, or that any of the asserted witnesses interviewed were assigned to his line.

In addition, Langford's explanation for loss of the witness statements is self-serving. Langford offered her explanation about losing the witness statements after the Respondent was questioned on why the witness statements she assertedly took were not produced in response to Counsel for the General Counsel's subpoena. After assertedly performing a detailed investigation of 15 witnesses with apparent knowledge of Hanna's job responsibilities, Langford never forwarded the results of her investigation to anyone in the Union, which itself is perfunctory. Lastly, Langford's testimony is uncorroborated. Neither King or Byrd testified that any witnesses were contacted during the alleged processing of Hanna's grievance.

An adverse inference should be drawn under these circumstances. The rule is applied to witnesses who would reasonably be expected to favor a party. See *Equinox Holding, Inc.*, 364 NLRB No. 103, slip op. at 1 n. 1 (2016) (employer's failure to call the employees who allegedly reported the purported objectionable pre-election conduct to a manager warranted an adverse inference); and *Desert Springs Hospital*, 363 NLRB No. 185, slip op. at 6 (2016) (employer's failure to call an employee warranted an adverse

inference where the employee's purported complaint to management was one of the reasons the alleged discriminatee was terminated), and cases cited there.

The original complaint in this proceeding issued on August 28, 2018. Respondent had approximately 16 months to prepare for this hearing. The asserted 15 witnesses apparently cooperated with Langford when she questioned them. These witnesses would support the Respondent's position that it conducted an investigation and that Hanna was not a full-time leader; however, not one witness was called. An adverse inference under these circumstances is warranted.

C. Respondent Engaged in Perfunctory Grievance Handling and Intentionally Misrepresented it Would Accept a Two-Week Settlement Offer

In Service Employees International Union, Local 579 (Convacare of Decatur), 229 NLRB 692 (1977), the Board found the union engaged in perfunctory grievance handling in violation of Section 8(b)(1)(A) when the union conducted little or no investigation on an employee's discharge grievance.

Respondent's reliance on SAS's position that Hanna was not a leader, based on Faurecia's third-party hearsay assertion that he was not coded as an operator in its payroll system, establishes perfunctory conduct. The record evidence establishes that Respondent King first informed SAS that it had to follow the grievance procedure and that Hanna was classified as a leader and should be reinstated as a leader. (R 5). After that initial correspondence, the filing of the grievance by the steward, and a brief meeting

between the steward with SAS, the Respondent did nothing else to pursue the grievance. To the contrary, it dropped the grievance as discussed above, claiming it had no valid grievance procedure by which to pursue it, and later asserted that there was no evidence to support Hanna's claim that he was a leader. Respondent's investigative file contains no settlement proposals, no documentation that the parties ever met, no summaries of evidence, no witness statements, no employer grievance answers, and most importantly, no documentation indicating that the grievance was resolved or placed on hold, as Respondent King asserted in her testimony. Respondent's entire investigation consisted of a review of hearsay evidence provided by Faurecia, a third party, indicating that the payroll system owned by Faurecia had Hanna listed as an operator.

The Respondent further engaged in perfunctory conduct when it refused to accept or review Hanna's additional evidence. Hanna attempted to provide King with additional payroll records, documents and witnesses, and King refused his offer indicating that there was nothing else she could do. King never accepted Hanna's additional evidence. As noted in *Service Employees International Union, Local 579 (Convacare of Decatur)*, *supra*:

“[I]t is patently irrelevant that the proof Beshears had might not have fully satisfied the Employer-it was not even considered by the Respondent.”

Likewise, Hanna's additional proof was not even considered. In addition, Respondent never engaged in any additional investigation. To that end, Respondent never contacted Faurecia to confirm the assertions made to SAS regarding Hanna's job status prior to November. Pam Scovill, Faurecia's Human Resource Manager, testified she was

never contacted by the Respondent regarding Hanna's recall grievance, and stated if requested she would have forwarded Hanna's personnel file information to the Respondent. (Tr 19-20, 40). As in *Newport News Shipbuilding and Dry Dock Company*, 236 NLRB 1470 (1978), Respondent relied solely on SAS' second hand investigation of Hanna's grievance without considering Hanna's additional evidence and/or contacting Faurecia to confirm its accuracy.

Any arguments that Respondent was burdened by its unique responsibilities and heavy workload, or that it had no basis to discredit what it was being told by SAS regarding Hanna's job classification, lack merit as well. The Respondent owes a duty of fair representation to all its members. The volume and complexity of the work the Respondent performs does not absolve it from acting in a perfunctory manner with respect to its grievance processing responsibilities. Nor can the Respondent simply rely on the assertions of its collective bargaining partner, provided by a third party. It is the Respondent's duty to its members to investigate and represent them in a non-perfunctory manner, and that duty requires them to act in a reasonable manner and not solely rely on any Employer's assertions. Accordingly, any such arguments that the Respondent was a unique local with unique organizing and servicing duties, was burdened by the recent contract negotiations and trusted its bargaining partner, do not absolve it of its misconduct. This is especially true in this situation where there is record testimony that Respondent King knew there were other employee complaints besides Hanna's regarding the recall process. (Tr 88-90, 192-193). This should have sounded an alarm that

Respondent's members were contesting the recall process and problems existed with employees being passed over in the recall process. Respondent should not just simply trust a third party's assertions regarding its members work duties.

In addition, the Board has found intentional misrepresentation regarding the status of a grievance unlawful; *Retail Clerks Local 324 (Fed Mart Stores)*, 261 NLRB 1086 (1982) (purposefully misinforming, or keeping uninformed, a grievant regarding status of grievance after commitment to seek arbitration); *Service Employees Local 3036 (Linden Maintenance)* 280 NLRB 995 (1986) (assuring employee union would take care of grievance, but then abandoning it without explanation and without informing grievant).

Under any scenario the Respondent misrepresented the status of Hanna's grievance. First, crediting Hanna, which should be done, Respondent misrepresented that it would resolve Hanna's grievance by accepting two-weeks of backpay for the grievance. As clearly demonstrated, there is no evidence that the Respondent ever accepted a settlement from SAS, that SAS ever paid a settlement to resolve Hanna's recall grievance or that Hanna received a recall grievance settlement. Second, assuming arguendo that Hanna is not credited, a concept that Counsel for the General Counsel wholly rejects, Respondent misrepresented to Hanna in November that it was placing his grievance on hold. Respondent King testified that she never processed Hanna's grievance because there was no grievance procedure or a valid grievance to process. King never notified Hanna his grievance was dropped after agreeing, pursuant to Hanna's request, to place it on hold as she asserts. Third, in the alternative, King misrepresented

to Hanna that his grievance was placed on hold and subsequently determined it was settled, as indicated in Respondent's position statement, without notifying Hanna of the resolution of his grievance. Under any of the circumstances discussed above, the Respondent failed to properly inform Hanna of the status of his grievance in violation of the Act.

In summary, Respondent's actions constitute perfunctory grievance handling and misrepresentation regardless of which version Respondent postulates. Respondent's shifting defenses support the logical conclusion that its stated actions are incredulous. To believe Respondent's version that Hanna's grievance was placed on hold in November, one must accept Respondent's contradictory claim that a grievance was never filed or processed because there was no grievance procedure or valid grievance to process vis-à-vis that the Union put Hanna's grievance in abeyance pursuant to his request. Conversely, Hanna's testimony is free of self-contradictory statements and is supported by other testimony and documentary evidence. In all the above scenarios, one is left with but one conclusion: Respondent acted in a perfunctory manner and misrepresented to Hanna the status of his grievance, costing him over \$14,000.00 of backpay.

IV. CONCLUSION

Based on the above and the record as a whole, Counsel for the General Counsel respectfully requests that Administrative Law Judge Muhl find that Respondent violated

Sections 8(b)(1) (A) of the Act as alleged in the Amended Complaint and recommend the appropriate order to remedy the said violations, as noted in the attached addendum.

Respectfully submitted this 31st day of January 2020.

/s/Robert A. Drzyzga
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**V. ADDENDUMS TO COUNSEL FOR THE GENERAL
COUNSEL'S TRIAL BRIEF**

**ADDENDUM I
PROPOSED ORDER**

1. Cease and desist from: engaging in the conduct described in paragraphs 9 through 11, or in any like or related manner restraining or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action:

(a) Request that the Employer continue to process the recall rights grievance of the Charging Party, and represent him in good faith, including pursuing the grievance to arbitration if warranted, and allow him to have counsel or another representative of his choosing present at any grievance-arbitration proceedings and pay reasonable legal fees of such counsel. If it is no longer possible to further process the recall rights grievance with the Employer(s) on behalf of the Charging Party because of our unlawful conduct, we will, if found obligated to do so by the National Labor Relations Board, make the Charging Party whole for the loss of earnings and other benefits suffered as a result of our failure to further process the grievance.

(b) Post appropriate notices.

The General Counsel further prays for such other relief as may be just and proper to remedy the unfair labor practices herein alleged.

ADDENDUM II
NOTICE POSTING

(To be printed and posted on official Board notice form)

SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT, A FEDERAL LAW, GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us 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 restrain or coerce you in the exercise of the above rights.

WE WILL NOT arbitrarily, discriminatorily, or in bad faith misrepresent a grievance settlement regarding grievances sought to be processed by employees to whom we owe a duty of fair representation, employed by Faurecia Interior Systems, Inc. and SAS Automotive USA, Inc. (the Employers), in the following unit:

All full-time production, maintenance, shipping, quality control, GAP leader employees employed by the Employers at their facility located at 42555 Merrill Road, Sterling Heights, Michigan; but excluding office clerical employees, technical employees, paraprofessional employees, professional employees, and guards and supervisors under the Act.

WE WILL NOT deliberately misinform or mislead you about the manner in which we process, or the status of, your grievances.

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

WE WILL request the Employers to accept and process the recall rights grievance of Ameer Hanna, and if it agrees, **WE WILL** process the grievance and represent him in good faith, including pursuing the grievance to arbitration if warranted, and allow him to have counsel or another representative of his choosing present at any grievance-arbitration proceedings and will pay reasonable legal fees of such counsel. If it is no longer possible to file or process a recall rights grievance with the Employers on behalf of Ameer Hanna because of our unlawful conduct, **WE WILL**, if found obligated to do so by the National Labor Relations Board, make Ameer Hanna whole for the loss of earnings and other benefits suffered as a result of our failure to process his grievance.

CERTIFICATE OF SERVICE

**LOCAL 155, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (UAW), AFL-CIO
(SAS AUTOMOTIVE USA, INC.) and AMEER A. HANNA, an Individual
Case 07-CB-210547**

I certify that on the 31st day of January 2020, I e-filed a **COUNSEL FOR THE
GENERAL COUNSEL'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE**, and
served a copy electronically on the following parties of record:

Via E-Mail:

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