Delphi/Delco East Local 651, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, (General Motors Corporation) ***and*** **Corretha Montague** ***and*** **Troy Alexander Jr.** Cases 7–CB–10955 and 7–CB–10964

June 26, 2000

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On March 24, 1997, Administrative Law Judge Wallace H. Nations issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed an answering brief to the Respondent's exceptions and cross-exceptions with a supporting brief. The Respondent filed an answering brief to the General Counsel's cross-exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions,[1] except as discussed below, and to adopt the recommended Order as modified.

The judge found that the Respondent breached its duty of fair representation in violation of Section 8(b)(1)(A) of the Act by failing and refusing to file a grievance on behalf of Charging Party Corretha Montague concerning the Company's alleged harassment for her dissident union activity. The Respondent contends that the judge erred because there is no evidence that its conduct toward Montague was arbitrary, discriminatory, or in bad faith. We find merit in the Respondent's contention. For the reasons set forth below, we find that the General Counsel has not established by a preponderance of the evidence that the Respondent failed to file a grievance in bad faith or for discriminatory reasons in breach of its duty of fair representation.

Facts

A general election for UAW Local 651 was held on March 19, 1996.[2] Candidates for president included incumbent President Danny Thetford, employee Shufelt, and Charging Party Montague. On April 20, a runoff election was conducted between Shufelt and Thetford who had received the highest number of votes on March 19. Before the runoff election, a campaign leaflet was drafted and signed by members of the Local Union, including Montague. The leaflet expressed concerns about certain racial slurs allegedly made by Thetford such as "porch monkeys" and "voodoo sisters." It was distributed by various members, including Montague, to employees arriving for work on April 8.

On April 11 Montague was called into an interview with the Company's labor relations representative, Bob Krug, General Superintendent Tom Laviolette, and Montague's immediate supervisor, Vicky Trudeau. The interview was called under paragraph (76a) of the national collective-bargaining agreement (the agreement) which provides that when discipline is contemplated, an employee will be offered an interview for the opportunity of answering the charges for which discipline is contemplated. District Committeeperson Jack Massimino appeared on Montague's behalf for the Union. At Montague's request, the Union provided an additional representative to act on her behalf: District Committeeperson Kenny Kruse. On joining Montague and Massimino before the interview, Kruse told Montague that she had been called into the interview because of the union election campaign leaflet and could be fired for it.

At the beginning of the interview, Montague was questioned about the leaflet and did not admit to her signature on it. Kruse told the management representatives that Montague was simply informing employees. When Krug told Montague that she was charged with gross misconduct, Kruse asserted that under the constitution of the UAW, individuals were free to criticize elected officers of the Union. The meeting was then adjourned to the next day.

On April 12 the meeting was reconvened with Kruse and Massimino again present on Montague's behalf. Krug told Montague that the Company did not condone activity such as the campaign leaflet. After Montague admitted to her signature on a change of address form, Krug said that the Company would consult handwriting experts to compare the signature on the change of address form with that on the leaflet. The meeting ended with Krug stating that he would get back to Montague in the next week.

On April 18 Supervisor Trudeau told Montague that the charge against her had been dropped. On the following day, Montague told Massimino that she felt the Company had harassed her and violated her civil rights by conducting the (76a) interview. She told him that she wanted the Civil Rights Committee to investigate a civil rights grievance. Massimino then called Shopcommitteeperson Lane. Massimino later told Montague that Lane had refused to do anything because there was no grievance filed and she would not put in a call for a civil rights investigation "for this." Massimino told Montague that Lane would see her sometime. Lane never contacted Montague and Montague took no further action.

Discussion

It is well settled that a union breaches its duty of fair representation toward employees it represents when it engages in conduct affecting those employees' employ-

[1] The Board adopts the judge's finding that the Respondent violated Sec. 8(b)(1)(A) by threatening members with a lawsuit for engaging in activities protected by Sec. 7 of the Act.

[2] All dates are in 1996 unless otherwise indicated.

ment conditions which is arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes,* 386 U.S. 171 (1967). The judge found that the Respondent's failure to file a grievance on Montague's behalf concerning the two (76a) interviews breached its duty of fair representation under each aspect of the *Vaca* test. First, he found that when Montague asked Massimino to file a civil rights complaint, she necessarily requested the filing of a grievance over harassment for union activity. The Union's failure to initiate an investigation of the Civil Rights Committee, therefore, amounted to a refusal to file a grievance over Montague's harassment. The judge concluded that there was no valid reason why a grievance would not have been filed, given the facts that the interviews were over Montague's involvement with dissident campaign literature pursuant to her rights under the agreement and the Act, the Union recognized that she had a right to criticize union officials under the Union constitution, and the Union did not usually tolerate Company interference into internal union affairs.

Second, the judge found that the Respondent's failure to file a grievance was discriminatory and in bad faith because there is sufficient evidence of animus over Montague's attack on the Respondent's leadership and her support of an opposition slate of officers. He pointed to testimony that the Respondent's President Thetford rejected Montague's application for a union position because she "badmouthed" Thetford and the contract. He also relied on Montague's testimony that she had heard from another employee that Thetford had referred to her as a "voodoo sister."

Contrary to the judge, we find the General Counsel has not adduced sufficient evidence to conclude that there was no reasonable basis for the Respondent's conduct in the circumstances of this case. Nor do we find that there is sufficient evidence of hostility toward Montague to support the conclusion that the Respondent's failure to file a grievance was discriminatory and in bad faith.

1. The allegation that there was no reasonable basis for the Respondent's conduct

It has long been established that a union, as the employees' bargaining representative, must necessarily be afforded a "wide range of reasonableness" in serving the unit it represents. See *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). In the exercise of that discretion, a union must act in "good faith, with honesty of purpose, and free from reliance on impermissible considerations." *P.P.G. Industries*, 229 NLRB 713 (1977), enf. denied 579 F.2d 1057 (7th Cir. 1978). However, it is well settled that a union's refusal to process a grievance does not violate the duty of fair representation where the union acted pursuant to a reasonable interpretation of the collective-bargaining agreement and/or a good-faith evaluation regarding the merits of the complaint. *Teamsters Local 815 (Beth Israel Medical),* 281 NLRB 1130, 1146 (1986) (citing cases). In evaluating whether the union's conduct in such cases breached the duty of fair representation, the Board's responsibility "is not to interpret the pertinent contract provisions and determine whether the Union's interpretation [of the contract] was correct. Rather, our responsibility is to determine whether the Union made a reasonable interpretation . . . or whether it acted in an arbitrary manner." *General Motors Corp.,* 297 NLRB 31 (1989). Applying that standard to the record in this case, we find that the General Counsel has failed to show that the Union's interpretation of the contract as it applied to Montague's situation was unreasonable.

There is no allegation and no evidence that the Respondent played any part in causing the Company to threaten Montague with disciplinary action, or that the Respondent acquiesced in the Company's threat to take action against her. The record reflects that during her two interviews with the Company regarding the threatened discipline, the Respondent defended Montague against the disciplinary threat and asserted her right under the Union's constitution to criticize elected union officers. Montague testified that she was satisfied with the Respondent's representation of her during the interviews. After the interviews had taken place, the Company dropped the threat of discipline, and no further action was taken against her, by the Company or by the Respondent. The only question thus presented is whether the Respondent acted arbitrarily when it refused Montague's request that the Civil Rights Committee be called in to investigate her complaint that the company had harassed her by conducting the paragraph 76(a) interviews.

As an initial matter, paragraph 76(a) of the collective-bargaining agreement is an employee-protective provision which requires that whenever the employer is contemplating discipline of an employee, an interview must be afforded to allow the employee to respond to the charges before discipline is actually imposed. Because the employer was in fact contemplating disciplinary action against Montague, the holding of the interviews would appear to have been required by the contract. It was therefore not unreasonable for the Respondent to tell Montague that the holding of a paragraph (76a) interview was not the kind of matter over which it would file a grievance.

Contrary to the judge, we find that it was not unreasonable for the Respondent to decline Montague's request for a Civil Rights Committee investigation based on its construction of the collective-bargaining agreement as not providing for such committee investigations of alleged discrimination on the basis of union activity. The agreement contains separate clauses addressing discrimination for union activity and discrimination for other proscribed reasons. Discrimination, interference with, restraint, or coercion of employees because of union activity is addressed in paragraph (6) of the agree-

ment. The paragraph, however, makes no reference to the Civil Rights Committee. (GC Exh. 2, p. 12.) The Civil Rights Committee is mentioned only in paragraph (6a), which prohibits discrimination on the basis of race, color, religion, age, sex, national origin, or disability. Under the agreement, claims of a violation of paragraph (6a) may be referred to the Civil Rights Committee for a factual investigation and report. Paragraph (6a), however, makes no reference to union activity. (GC Exh. 2, p. 12–13.) Thus, under the plain language of the agreement, a grievance on Montague's behalf alleging discrimination on the basis of union activity would not be subject to referral to the Civil Rights Committee.

We note finally that there is nothing in the record to indicate that by filing a grievance or by otherwise referring Montague's complaint to the Civil Rights Committee, Respondent could have obtained any further relief for her. Through its representation of Montague during the paragraph (76a) interviews, the Respondent had already been successful in persuading the employer to drop its charges against her. There is no evidence that the collective-bargaining agreement between the Company and the Respondent authorized any remedy for employees unjustly threatened with disciplinary action beyond the relief which the Respondent obtained for Montague—the withdrawal of the threat of discipline.[3] For all these reasons, we conclude the General Counsel has failed to establish that the Respondent's failure to pursue the matter further, after it had represented Montague and charges against her had been dropped, was arbitrary and therefore, in breach of the duty of fair representation.

2. The allegation that the Respondent acted in bad faith or for discriminatory reasons

Montague testified that employee Stan Kubik told her that Kubik heard Thetford call Montague a "voodoo sister." The judge found that this was evidence of hostility and personal animosity toward Montague. Kubik did not testify, and there was no other corroboration of Thetford's remark about Montague. Contrary to the judge, we find Montague's uncorroborated testimony is unreliable hearsay, which does not support a finding that Thetford was, in fact, hostile to Montague. See *Ohmite Mfg. Co.,* 290 NLRB 1036, 1037 (1988) (the Board approved the judge's rejection of similarly uncorroborated testimony as unreliable hearsay and adopted the judge's dismissal of an allegation of a threat of plant closure supported solely by such hearsay).

Montague also testified that she had been told that the Respondent's president, Thetford, would not approve her application for appointment to a union post because she was "badmouthing" Thetford and the contract. The judge found that this was additional evidence of hostility and personal animosity toward Montague. Under Board precedent, however, a union has a legitimate interest in demanding loyalty from persons whom it designates to serve in an appointive position. *Shenango Inc.,* 237 NLRB 1355 (1978). See also *General Motors Corp.,* 313 NLRB 998 at fn. 2 (1994), and *Teamsters Local 282 (General Contractors),* 280 NLRB 733, 734 (1986). Thus, the Respondent had a lawful institutional reason for refusing to appoint Montague to a union position because of her negative comments about Thetford and the contract. Accordingly, we find the refusal to appoint Montague to a union position because of her opposition is insufficient evidence to establish that the Respondent is hostile toward Montague in matters where it has no legitimate interest in her opposition, or that its conduct toward Montague was discriminatory and in bad faith.

Conclusion

Having found that there is insufficient evidence to establish that the Respondent's failure to file a grievance on Montague's behalf was arbitrary, discriminatory, or in bad faith, we conclude that the Respondent did not breach its duty of fair representation in violation of Section 8 (b)(1)(A) of the Act. Accordingly, we dismiss this allegation of the complaint.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Delphi/Delco East Local 651, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Flint, Michigan, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(b) and reletter the remaining paragraph.

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[3] Member Liebman notes that the judge found that there was no valid reason for the Respondent's failure to file a grievance protesting the use of a 76(a) interview to investigate internal union conduct, which he asserted was part of the harassment of Montague. She disagrees with this finding. Even if the contract arguably permitted a remedy for the Employer's asserted harassment of Montague by using the interview in this fashion (e.g., some form of cease-and-desist order or declaratory judgment ruling), the Respondent's failure to pursue this avenue cannot be considered unreasonable, unjustified, or arbitrary. The duty of fair representation does not require that every possible option be exercised. It requires, instead, that the union deal fairly in discharging its obligations. *Teamsters Local 355,* 229 NLRB 1319 (1977), enfd. 597 F.2d 388 (4th Cir. 1979). The Respondent clearly met that standard here by accomplishing the withdrawal of charges against Montague.

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten members with a lawsuit for engaging in activities protected by Section 7 of the Act.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify all employees who received the April 12, 1996 letter from Union President Danny Thetford that we are withdrawing the letter and any threat to sue contained in that letter.

DELPHI/DELCO EAST LOCAL 651, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL–CIO

Gary Saltzgiver, Esq., of Detroit, Michigan, for the General Counsel.

Ellen F. Moss, Esq., of Southfield, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge. This case was tried in Flint, Michigan, on December 18, 1996. The charge in Case 7–CB–10955 was filed on May 31, 1996, and the charge in Case 7–CB–10964 was filed on June 7.[1] Complaint issued in both cases and an order consolidating complaints issued on August 14. The complaint alleges that Delphi/Delco East Local 651, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (Local Union or Respondent) has engaged in conduct in violation of Section 8(b)(1)(A) of the National Labor Relations Act (the Act). Respondent filed timely answer to the complaints. Hearing was held in these matters in Flint, Michigan, on December 18, and briefs were filed by the General Counsel and the Respondent on or about January 27, 1997.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, General Motors Corporation, a corporation, engages in the manufacture, nonretail sale, and distribution of automobiles and related automotive parts at its facility in Flint, Michigan. It is admitted, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent Local Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

In the context of an internal union election held in the spring of 1996, the Respondent is alleged to have violated the Act in two ways:

1. About April 12, by its agent and president, Danny Thetford, in writing, threatened Charging Party Troy Alexander Jr. and others with a lawsuit.

2. Since about April 19, by its admitted agents Don Beauchamp, Nancy Lane, and Butch Massimino, refused to file a grievance on behalf of Charging Party Corretha Montague regarding the Employer's threat to discipline her on about April 11 to April 18.

A. Background to the Alleged Unfair Labor Practices

Respondent, a labor organization with an office and place of business in Flint, Michigan, represents a unit of employees at the General Motors Delphi/Delco East plant, including the Charging Parties. Local Union officers are selected by periodic election. A general election for UAW Local 651 officers was conducted on March 19, 1996. Within UAW Local 651 exist factions organized as caucuses, offering different agenda and slates of candidates. Candidates for president included incumbent President Danny Thetford of the United for Progress (UP) slate, Denny Shufelt of the United Alliance of Workers slate, and Corretha Montague, who ran as an independent. Montague campaigned and passed out her own campaign literature. Shufelt and Thetford received the two highest vote totals on March 19,[2] and there was a runoff election on April 20. Thetford was elected president of UAW Local 651 that day.

Some time before the runoff election, a group of members met to discuss Thetford and the campaign. The result was a campaign leaflet drafted by member Leland Jones and others. Montague, one of the drafters of the campaign leaflet, indicated the intent of the leaflet was to support candidate Shufelt over Thetford. The leaflet expressed concerns of minority members of the Local Union as to racial insensitivity by Thetford manifested by certain ethnic remarks alleged to have been made by him at one time or another. These remarks as set out in the leaflet were "tokens," "porch monkeys" and "voodoo sisters." With the exception of the word "token," which Montague heard Thetford state in a caucus years before, the other racial slurs alleged to have been muttered by Thetford came to the attention of the leaflet writers from agents of the Local Union including Larry Cochrane, then district committeeman, Gary Rowe, then assistant Civil Rights Committee chairperson, and Stan Kubic, financial secretary.[3] The leaflet was signed by six members of

[1] All dates are in 1996 unless otherwise indicated.

[2] Other witnesses recalled the runoff date as April 16.

[3] Thetford vigorously denies using the demeaning terms "porch monkeys" and "voodoo sisters." Indeed there is nothing other than hearsay evidence to suggest he has used these terms. On the other hand, there is nothing to cast doubt on the testimony of the General Counsel's witnesses that they heard from one or more of the above named individuals that Thetford had used these terms. Thetford admitted using the term "token," but testified that he used it in the context that minority candidates should not be token, but should be candidates that could get elected and could be supported by the UP caucus. The UP caucus did run minority candidates on its slate.

the Local Union, including Montague and Alexander. None of the signatories belonged to the UP caucus. The leaflet gave the impression that it was also sponsored by UP caucus members and members of the Civil Rights Committee, an impression which was not true. This leaflet was distributed by various members, including Montague, to employees arriving for work at the plant on or about April 8.

B. Union President Danny Thetford's Response to the Leaflet

On learning of the campaign leaflet critical of him, Thetford was upset because he contends he has not used the racist terms attributed to him, and because the leaflet implied that it was supported by the Civil Rights Committee and other members of the UP caucus, an implication that was not true. Therefore, on April 12, before the runoff election, he caused to be prepared by his then personal attorney (GC Exh. 7), a letter demanding retraction of the allegations against him in the leaflet. This letter, written on official union stationary naming Thetford as president, was to be delivered to each of the signatories to the campaign leaflet.[4] The letter, which was signed by Thetford, after demanding retraction states, inter alia:

> "Pursuant to MCLA 600.2911, et seq, you are required to issue your retractions in the same form and manner in which you published your defamatory remarks. Further, you are granted a reasonable time in which to make retraction. . . ." I am in the process of retaining counsel to prosecute my claims against you to full conclusions.[5]

Although Thetford testified that he later learned that he should not have sent these letters on official union stationary, he admitted that he never wrote any member to retract the purported involvement of the Local Union.[6] Thetford testified that after he won the runoff election, he decided not to pursue a lawsuit, noting its cost, that "the election was over" and that it was time to "move on about the business of the Local Union."

A threat by a union to resort to civil courts as a tactic calculated to restrain employees in the exercise of rights guaranteed by Section 7 of the Act constitutes a violation of Section 8(b)(1)(A). *Electrical Workers IBEW Local 11 (Electrical Contractors),* 258 NLRB 374, 375 (1981). The activities of the employees, including Alexander, in connection with the campaign leaflet to oust the incumbent union leadership and elect new union officials are concerted activities protected by Section 7 of the Act. *Plumbers Local 137 (Hames Construction Co.),* 207 NLRB 359, 365 (1973). A threat to sue, whether by a union or an employer, by its nature is harassing and intimidating, and violates 8(b)(1)(A) where made in connection with the protected concerted activities of the threatened dissidents. *Utility Workers Local 1–2 (Consolidated Edison),* 312 NLRB 1143, fn. 2 (1993). I do not question Thetford's personal distress over the allegations of the campaign leaflet and his personal desire to seek a retraction. I do not question his personal right to demand retraction and/or file a personal defamation lawsuit against the leaflet's authors. On the other hand, the letters which Local Union President Thetford cause to be delivered were signed on official union stationery. These letters thus gave the clear impression that the Local Union, not Thetford alone, was demanding a retraction of the allegations of the campaign leaflet and threatening a lawsuit if this demand was not met. As Thetford was the incumbent president of the Local Union he was clearly an agent of the Union and the Union must take responsibility for his actions in this regard. As a threat from the Local Union, the letter could have no legitimate purpose and is clearly an attempt to interfere with, restrain, and coerce the leaflet's signers in the exercise of their protected Section 7 rights. Under the factual circumstances of this case, the threat, by its timing and delivery on official UAW Local Union stationary, was connected with and objectively calculated to restrain dissident members protected campaign activity, in violation of the Act. Id. *Laborers Local 423 (Dugan & Meyers),* 308 NLRB 635, 639 (1992); *Consolidated Edison Co.,* 286 NLRB 1031 (1987); *S. E. Nichols Marcy Corp.,* 229 NLRB 75 (1977); *Clyde Taylor Co.,* 127 NLRB 103, 108 (1960).

C. The Employer's Response to the Leaflet and the Respondent's Response to that Action

On April 11, 1996, Montague was called by supervision into a meeting in the office of Bob Krug, the Employer's labor relations representative, pursuant to paragraph (76a) of the national contract, called a "(76a)" interview. Paragraph (76a) provides, in pertinent part, that whenever discipline, including discharge, is contemplated, an employee will be offered an interview to allow for answering the charges for which discipline is contemplated. Initially, one district committeeperson Jack "Butch" Massimino, appeared on Montague's behalf for the Union. Montague had no idea at this point why she had been called into the interview, but noted with concern that there were three management representatives in Krug's office, they being Krug, General Superintendent Tom Laviolette, and Montague's immediate supervisor, Vicky Trudeau. According to Montague, she requested Massimino contact and request the presence of her shop committeeperson, Nancy Lane, and her shop chairperson, Don Beauchamp. Massimino testified Montague did not ask for additional representation, but that he knew that this meeting was a serious matter which could result in Montague's discharge and without being asked, proceeded to call Lane. He was told that she was in a meeting and was too busy to attend. According to Massamino, Lane sent District Committeeman Kenny Kruse in her place.[7] Massimino, Lane, and Beauchamp are members of the UP caucus.

Union Representative Kenny Kruse then appeared at the (76a) interview and he, Massimino and Montague caucused. Kruse then informed Montague that she had been called into the disciplinary meeting because of the campaign flyer and could be fired over it. Montague inquired of Kruse and Massimino as to what business their internal politics was to General Motors. Montague also asserted that Kruse recommended that she not admit to having signed the flyer. Kruse did not testify,

[4] The record is not clear whether each such signatory did receive the letter, though it is certain that Charging Party Troy Alexander Jr. was served with one. Alexander testified that the letter was hand delivered to his home by a stranger, who flashed a special deputy badge. The manner of delivery caused Alexander to believe at least initially that he had been served with a document through the court system. He later learned this was not the case.

[5] The cited Michigan statute requires, inter alia, a written demand for retraction before a damage suit may be brought for defamation.

[6] Thetford also sought to excuse this error by saying he did not sign the letter in his official capacity as president as his office is not typed after his signature as was his normal practice. How the recipients of the letter were supposed to know of this practice is unknown and I find that this excuse does *not* absolve the obvious violation of the Act.

[7] I credit Montague's version of this interchange. Lane was not called and I found Montague to be the more credible of the witnesses testifying about the events surrounding the (76a) interview.

but Massimino testified that Kruse told Montague that it would be better not to bring up the fact that she had signed the leaflet. Massimino disputed Montague's testimony that Kruse advised her to lie about signing the leaflet. I credit Montague in this regard for two reasons. First, the author of the advice in question, Kenny Kruse was not called to testify. Second, it was obvious from the subject matter of the interview that Montague was going to be asked if she signed the leaflet. Simply telling her not to bring the matter up is meaningless unless he advised her how to answer.

In any event she did not admit to her signature once the meeting began, and she was questioned by management about the campaign flyer. Montague testified that at the meeting, Kruse indicated that Montague was just informing employees, but Krug informed Montague that she was charged with gross misconduct. According to Massamino, Kruse advised her that according to the constitution of the UAW, individuals were free to criticize elected officers of the Union. The meeting was adjourned to the following day.

At about 1 p.m. on April 12, 1996, management reconvened its meeting with Montague. Kruse and Massimino were again present with Montague. Montague admitted to her signature on a change of address form, and Krug informed Montague that the Company did not condone this type of activity. Krug indicated to Montague and the union representatives that the Company would be in touch with handwriting experts to check signatures and he would get back with Montague some time the next week. The meeting ended.

Montague testified that on April 18, Trudeau informed her that the charges against her had been dropped. Montague indicated that she then asked for Massimino and he came to see her the next morning. Montague testified that she informed Massimino that she felt that the Company had harassed her by conducting the (76a) interview and had violated her civil rights. According to Montague, she told Massimino that she wanted to talk to Nancy Lane and to get the Civil Rights Committee down there to investigate a civil rights grievance. Again, according to Montague, Massimino then called Lane who refused to do anything, informing Massimino that there was no paragraph (6) or (6a) grievance filed, and that she would not put in a civil rights call "for this." Montague recalled that Massimino then told her that Lane would be down to see her some time, but did not know when. Lane never came.

On this point, Massimino's testimony varies somewhat from that of Montague. According to Massimino's testimony, Montague asked to have the Civil Rights Committee brought in because she was being harassed by the Employer. He told Montague that he would talk to Lane who would decide whether or not to call in the Civil Rights Committee. According to Massimino, he approached Lane who told him that she did not feel it was appropriate to call in the Committee and did not feel that there was a grievance to be filed. Massimino testified that he did not feel that there was a meritorious claim here. He testified that he told Montague that Lane did not feel that the Civil Rights Committee needed to be called in under the circumstances and that the Employer had a right to conduct an investigatory interview. Massimino testified that Montague never indicated that she wanted to file a grievance and later added that even if she had asked, he would have refused to file one as he did not feel that there was harassment by the Employer.

Under the collective-bargaining agreement, section 6a, the Civil Rights Committee is called in for violations of the agreement concerning race, sex, disability, or like discrimination. The filing of a grievance and an appeal of the grievance to the shop committee is a condition precedent to any factual investigation by the Civil Rights Committee, a fact of which Massimino was aware. Massimino's notes taken from his calendar book reveal that Montague first asked Massimino for the Civil Rights Committee back on April 12, at a time when she was still on notice of discipline. I find Massimino's testimony disingenuous. Lane was not called to testify and I will never know what she was told or what she really knew about the situation. However, Massimino was privy to a number of facts which in my opinion should have led to the filing of a grievance if he, and the Union, were attempting to represent Montague in good faith. First, the interview was over her involvement with a union election campaign flyer prepared pursuant to a right expressed in section (6) of the national contract, as well as a fundamental right under Section 7 of the Act. Second, there is no evidence that any other signatory to the involved campaign flyer was similarly interrogated by the Employer. Third, in his testimony, Massimino admitted that his fellow representative Kruse told the Employer that Montague was free under the UAW constitution to criticize elected union officials. Thetford himself testified that the Union does not usually tolerate Employer interference in internal union elections. Contrary to the position taken by Massimino and the Union, I cannot find a valid reason why a grievance would not have been filed.[8]

It is settled law that the activities of employees to oust incumbent union leadership and elect new union officials in an internal union election are concerted activities protected by Section 7 of the Act. Section 8(b)(1)(A) of the Act makes it an unfair labor practice for a union to restrain or coerce an employee in the exercise of his or her Section 7 rights. *Utility Workers Local 1–2 (Consolidated Edison),* supra; *Plumbers Local 137,* supra; *Rust Engineering Co. v. NLRB,* 445 F.2d 172 (6th Cir. 1971); *Operating Engineers Local 18 (Earl G. Creager, Inc.),* 141 NLRB 512, 518 (1963).

Freedom of speech is a basic tenet of federal labor policy. The U.S. Supreme Court has recognized that a "broad tolerance" for campaign rhetoric favoring "uninhibited, robust and wide-open debate" in furtherance of union democracy is embedded in federal policy and has essentially adopted a "public figure" standard as to defamation suits, requiring that to be actionable a campaign statement must be made with knowledge of its falsity or a reckless disregard for its truth. *Letter Carriers v. Austin,* 418 U.S. 264 (1974); *Linn v. United Plant Guard Workers Local 114,* 383 U.S. 53 (1966). Indeed, union materials which are inflammatory or otherwise defamatory are protected under Section 7 of the Act by this standard. As stated by the Court in *Letter Carriers,* supra, "*Linn* recognized that federal law gives a union license to use intemperate, abusive, or insulting language without fear of restraint or penalty if it believes such rhetoric to be an effective means to make its points." Under this standard, repulsive speech is tolerated as long as it falls short of deliberate or reckless untruth. *Letter Carriers,* supra. The evidence amply supports a finding that those minority members who promulgated (GC Exh. 6) had reason to believe that the allegations against candidate Thetford contained within their campaign leaflet were true.

[8] Montague filed unfair labor practice charges against General Motors and Respondent over this incident. General Motors settled the case against it.

This democratic principle is also recognized by the UAW. As expressed in its Constitution, "Each member shall have full freedom of speech . . . Each member shall have the right freely to criticize the policies and personalities of Union officials." UAW constitution at page 140.

The (76a) disciplinary interview of Montague was an incident the likes of which apparently had never before occurred. Respondent's agents certainly knew that it was an unwarranted intrusion into a matter related to union political literature and its internal elections. As Thetford admitted, this intrusion into union politics is something the Union usually does not tolerate. However, it not only tolerated this harassment of Montague, its agents seemed determined to let it continue.[9] As noted above, Massimino determined on his own that he would not file a grievance if asked. Whether or not Montague directly asked him to file a grievance, by admittedly asking him to file a civil rights complaint, she necessarily asked for a grievance filing. Massimino's notes indicate that such a request was made on April 12. Lane, if in fact contacted by Massimino, did not initiate an investigation to see if a civil rights violation had occurred and it is clear that no investigation of the matter was conducted by the Civil Rights Committee. As Thetford acknowledged in his testimony, under paragraphs 6 and (6a) of the national contract, such factual investigations are conducted by the Civil Rights Committee, which then determines if there is just cause to proceed with the grievance or withdraw it.

Under the circumstances, I do not believe any good faith defense can be claimed by Respondent. Montague, a candidate herself in the main election, is the only signatory to the leaflet investigated by the Employer. Her actions in signing and distributing the leaflet are protected activities as noted above. Absent any credible justification by the Respondent, I will find that Respondent violated the act by not filing a grievance on Montague's behalf over the Employer's section (76a) interview. There is sufficient evidence in this record to find that Respondent failed to act in Montague's behalf because of its animus over Montague's attack on its leadership and her support of an opposition slate of officers. Respondent would have me find that the Act could not be violated because Montague did not repeatedly seek to have a grievance filed or alternatively, hunt down Lane to force her to take action on the civil rights complaint. Perhaps this argument of failure to exercise due diligence on the part of Montague would have merit if nothing else was going on at the same time. However, as found above, Montague and the other signers of the leaflet in question were being threatened with a lawsuit, as far as they knew, by the same union officials who would process her grievance. She chose to go to the Board to remedy her complaints and under the circumstances, this appears to me to be fully justified.

As the exclusive bargaining representative, UAW Local 651 has the statutory obligation to represent fairly, impartially, and in good faith the interests of all members of the bargaining unit, including those in the minority, without hostility or discrimination. *Vaca v. Sipes,* 386 U.S. 171 (1967). Under the instant circumstances of political opposition, apparent personal animosities, the dissident campaign literature which was at the heart of the harassment by the Employer, and the absence of any civil rights investigation into the merits of the situation, Respondent's failure or refusal, without legitimate reasons advanced therefor, to take steps on Montague's behalf regarding her request for invocation of the Civil Rights Committee, which implicitly requires the filing of a grievance, was arbitrary, hostile, discriminatory, and in bad faith, in violation of Section 8(b)(1)(A) of the Act. *Auto Workers Local 417 (Falcon Industries),* 245 NLRB 527, 534–535 (1979); *Service Employees Local 579,* 229 NLRB 692, 695–696 (1977).[10]

CONCLUSIONS OF LAW

1. General Motors Corporation is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent Union violated Section 8(b)(1)(A) of the Act by

(a) About April 12, 1996, by its agent, Danny Thetford, in writing, threatening members with a lawsuit for engaging in activities protected by Section 7 of the Act.

(b) Since about April 19, 1996, failing and/or refusing to file a grievance on behalf of member Corretha Montague regarding the Employer's threat to discipline Montague because she engaged in activities protected by Section 7 of the Act.

4. The unfair labor practices committed by Respondent Union are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has violated the Act, I shall recommend that it cease and desist therefrom and from engaging in any like or related conduct, and take the following affirmative action to effectuate the policies of the Act.

It is recommended that Respondent be ordered, within 14 days of the date of the Board's Order, to notify all employees who received the April 12, 1996 letter from Union President Danny Thetford that it is withdrawing the letter and any threat to sue contained in that letter. It is further recommended that Respondent, within 14 days of the Board's Order, post notice that it will cease and desist from its unlawful conduct.[11]

[9] Even prior to the preparation and distribution of the campaign leaflet at issue here, there is evidence that friction existed between Thetford and Montague. Shortly after Thetford's appointment to the position of union president in 1995, Montague applied for appointment to a union post, but she learned from another union official, Don Beauchamp that while he had no problem, Thetford would not approve her appointment because she was allegedly bad-mouthing Thetford and the contract. Thetford's hostility toward Montague is also apparent by the characterization attributed to Thetford that Montague is one of the "voodoo sisters."

[10] The General Counsel asserts that assuring Montague that Lane would contact her and presumably take care of the matter, as Montague testified, when Lane had no such intent, and then abandoning further effort with explanation or notice to Montague is a further violation of the Act. I hesitate to so find because the record is so undeveloped with respect to what knowledge Lane had about the matter, if anything. I believe the purposes of the Act are best served by the findings I have made which are supported by demonstrable facts and not just inferences.

[11] The General Counsel asserts that Respondent should be ordered to file and process to arbitration, if necessary, a grievance over the Employer's threat to discipline Charging Party Montague. I do not agree. The Employer was also charged with a violation of the Act over its actions in this regard and that matter has ended in a settlement, presumably satisfactory to the Charging Party and to the Region. To pursue a grievance, which in all likelihood is now time barred, and for which the ultimate remedy has been secured through Board processes seems to me to be a meaningless act. I believe the purposes of the Act and the rights of the Charging Party, under the circumstances, will be

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Delphi/Delco East Local 651, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Flint, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening members with a lawsuit for engaging in activities protected by Section 7 of the Act.

(b) Failing and/or refusing to file a grievance on behalf of represented employees because they engaged in activities protected by Section 7 of the Act.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action deemed necessary to effectuate the policies of the Act

(a) Within 14 days of the date of this Order, notify all employees who received the April 12, 1996 letter from Union President Danny Thetford that it is withdrawing the letter and any threat to sue contained in that letter.

(b) Within 14 days after service by the Region, post at its union office in Flint, Michigan, and on any union bulletin boards at the Employer's Flint, Michigan facility, copies of the attached notice marked "Appendix."[13] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to union members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or the Employer has closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by General Motors Corporation at its Delphi/Delco East Plant in Flint, Michigan, since May 31, 1996.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

best served by the notice posting, which sets forth the unlawful conduct of the Respondent and includes a requirement that it cease and desist from such conduct or any like or related conduct in the future.

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

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."