

1                   BEFORE THE STATE OF INDIANA  
2                   CIVIL RIGHTS COMMISSION

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PUBLIC MEETING OF APRIL 20, 2018

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PROCEEDINGS

10 in the above-captioned matter, before the Indiana  
11 Civil Rights Commission, Alpha Blackburn,  
12 Chairperson, taken before me, Lindy L. Meyer,  
13 Jr., a Notary Public in and for the State of  
14 Indiana, County of Shelby, at the Indiana  
15 Government Center South, Room N300, 402 West  
16 Washington Street, Indianapolis, Indiana, on  
17 Friday, April 20, 2018 at 1:01 o'clock p.m.

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William F. Daniels, RPR/CP CM d/b/a  
ACCURATE REPORTING OF INDIANA  
12922 Brighton Avenue  
Carmel, Indiana 46032  
(317) 848-0088

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1 APPEARANCES:

2 COMMISSION MEMBERS:

- 3 Alpha Blackburn, Chairperson
- 4 weilin Long
- 4 Sheryl Edwards
- 5 Steven A. Ramos
- 5 Adrianna L. Slash
- 6 Holly Harrington
- 6 James W. Jackson

7  
 8 INDIANA CIVIL RIGHTS COMMISSION  
 8 By Doneisha Posey, Deputy Director  
 9 Indiana Government Center North  
 9 100 North Senate Avenue, Room N300  
 10 Indianapolis, Indiana 46204  
 10 on behalf of the Commission.

11 OTHER COMMISSION STAFF PRESENT:

- 12 John Burkhardt
- 13 Michael C. Healy
- 14 Lesley Gordon
- 14 Anehitia Eromosele

15 ALSO PRESENT:

- 16 Robert Hicks
- 17 Terry Lymon

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1 1:01 o'clock p.m.  
 2 April 20, 2018

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3 CHAIRPERSON BLACKBURN: The Indiana  
 4 Civil Rights Commission is now in public session.  
 5 You have within your packet an agenda for today.  
 6 We have indeed a quorum for today's meeting, and

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7 I will ask if there are any announcements  
8 regarding the agenda that the ALJ would like to  
9 make.

10 JUDGE BURKHARDT: Thank you, Chair,  
11 and thank you, Commissioners.

12 of special note today, in addition to the  
13 usual business of addressing new and old appeals,  
14 are oral arguments, as you are aware of. They're  
15 on page two of your agenda, in one employment  
16 case. There's also one final order for your  
17 review and decision, as well in an employment  
18 case, followed by elections, and then our  
19 training at 3:00.

20 Thank you.

21 CHAIRPERSON BLACKBURN: Thank you  
22 very much. I heard what sounded like a briefing  
23 for -- from the Director for the Director's

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1 Report, so if you would like to make that.

2 MS. POSEY: Sure. Good afternoon,  
3 Commissioners.

4 CHAIRPERSON BLACKBURN: Good  
5 afternoon.

6 COMM. SLASH: Good afternoon.

7 COMM. LONG: Good afternoon.

8 MS. POSEY: I hope everyone is  
9 enjoying this weather today.

10 CHAIRPERSON BLACKBURN: Yes.

11 COMM. SLASH: Yes.

12 MS. POSEY: So, I wanted to just  
13 speak briefly about the Agency at a Glance that  
14 you have in front of you or you may have  
15 received. So, I will start on the far right,  
16 with the different colors, the red and green  
17 column. Just to give you an update on what's  
18 going on in operations with the agency. So --  
19 and we look at a month behind when we're looking  
20 at our data.

21 So, number of calls that we received in  
22 the agency, 734. We were down eight from the  
23 month before, so we're pretty steady. Typically

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1 we're between 700 and up to 900 calls a month,  
2 and those calls could be people just calling to,  
3 you know, speak to someone else in the agency, or  
4 someone calling to actually file a complaint, or  
5 a host of other things, so we like to keep that  
6 number -- we like to know that number each month  
7 so we can determine: Do we need extra support  
8 staff? Is there something else that we need to  
9 be doing perhaps in the community to let folks  
10 know what we do here?

11 Number of inquiries. So, out of the 734  
12 calls, 171 of those were folks who were inquiring  
13 to file a complaint with us. And for one reason  
14 or another, people may decide not to file a  
15 complaint, but we still keep them in that number,  
16 because if they come to ask for information, we

17 want to make sure that we are giving folks  
18 information and letting them decide on their own  
19 if they want to file a complaint.

20 Number of complaints. This is the number  
21 of complaints that we received back, so after  
22 someone calls us to help them file a complaint,  
23 we draft the complaint we send is out it to them,

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1 they send it back to us signed. So, my job is to  
2 make sure that number keeps going up, so I need  
3 to figure out what we need to be doing as an  
4 agency to make sure the number of complaints that  
5 we have is up to par with the number of inquiries  
6 that we have; right?

7 So, it's not necessarily going to be  
8 equal, because people -- like I said, people will  
9 call and inquire about, "Oh, how do I do this?  
10 How do I do that?" But when it comes down to  
11 filing a complaint, they decide not to, for a  
12 host of reasons. But if I have 171 inquiries, my  
13 number of complaints that we receive back should  
14 be higher than what it is now, and we're actually  
15 down 16 from the month before. And obviously  
16 there -- it's not -- there's nothing we can do to  
17 make people sign; right?

18 COMM. SLASH: Uh-huh.

19 MS. POSEY: But we do need to be  
20 following back up with people, seeing if they  
21 need us to submit back to them again, seeing if

22 they want to e-mail it to us or fax it. There's  
23 different ways that we can get people to sign the

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1 complaints to get them back to us, so that is  
2 what I'm working on.

3 I'm thinking of even changing how our  
4 complaints look, so there are a couple of things  
5 that I'm considering in trying to get our numbers  
6 up. So -- and if anyone has any suggestions or  
7 thoughts on that, I would welcome anything that  
8 you have.

9 Probable cause cases, we had seven for the  
10 month of March. No probable cause cases, 29.  
11 We've closed, in total, 52 cases in the month of  
12 March, so whether they were cause, no causes,  
13 they were settled, there was a final order, all  
14 of those are including in the number of closings.

15 Six appeals for the month of March. The  
16 ALJ has an open docket of 84 cases, and in terms  
17 of settlements and conciliation agreements, we're  
18 at about 44,000 in monetary dam -- or in monetary  
19 settlements for the month of March, and we  
20 actually have held steady there for the past  
21 couple of months. Our typical number is around  
22 20,000 a month.

23 So, in all of our cases that go to

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1 settlement or go to mediation, when we add up,  
2 you know, the three or the four for that month,  
3 it's typically around twenty, twenty-five  
4 thousand dollars, but in these past couple of  
5 months, it's been up in the 40's.

6 So, that's great for complainants, that's  
7 great for our agency that we're able to  
8 conciliate the cases without having to go through  
9 the time and the cost of litigation, and it's  
10 good for the public interest.

11 Looking at our events, as you know, April  
12 is Fair Housing Month. We have been very busy,  
13 and I will let Leslie go through more details in  
14 terms of that. I will say right now, as we  
15 speak, we have our staff attorney, Caroline  
16 Riker, in Terre Haute doing a continuing legal  
17 education on the foundations of fair housing in  
18 the State of Indiana.

19 If we look in the middle at the bottom,  
20 the Complaints by Enforcement Area, looking at  
21 that number of inquiries, so 171 inquiries for  
22 the month of March, this is what this number  
23 reflects in terms of employment, we had 100

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1 inquiries for employment, 35 housing, 25 public  
2 accommodation, seven education, and one credit.

3 So, good numbers for us to be looking at  
4 to see where people are calling from, what are  
5 the enforcement areas that have a big focus, you

6 know, each month, and we also -- not only for the  
7 entire state, but looking regionally, looking by  
8 county, we do all of that.

9           Back on the left side, complaints by the  
10 five biggest counties, Marion County, we had 60  
11 inquiries; Lake County, 12; Allen, eight;  
12 Hamilton, five, St. Joseph, five. And the  
13 leading protected class for the month of March  
14 was disability.

15           So, I also wanted to introduce Natasha  
16 Jefferson. She is the new Executive Assistant to  
17 the Executive Director, so if you start receiving  
18 any information or e-mails or phone calls from  
19 Natasha, she is our newest addition, and she is  
20 great.

21           From the last Commission meeting, I  
22 believe I told you all that we were getting some  
23 new staff. We did get a new intake specialist,

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1 so now our Intake Department is up to four, and  
2 that is the most that this agency has had in  
3 several, several, several years.

4           And I am in the process right now of  
5 interviewing for a front desk receptionist. So,  
6 at this moment, our intake staff has been  
7 rotating on the front desk, which does affect our  
8 numbers, because if they're at the front desk,  
9 they're not going to have that much time to draft  
10 all of the complaints that they need to draft.

11           So, we need to make sure that we have a  
12 steady -- one person at the front desk to handle  
13 all of the 734 calls that we're getting each  
14 month and being able to help us truly see where  
15 folks are calling from, what are they calling  
16 about, and in one manner and not kind of all over  
17 the place.

18           So, any questions for me?

19           CHAIRPERSON BLACKBURN: The monetary  
20 settlements --

21           MS. POSEY: Uh-huh.

22           CHAIRPERSON BLACKBURN: -- those all  
23 occur in the case where you have negotiated the

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1 settlements; right?

2           MS. POSEY: Yes. So, we only -- we  
3 only look at the cases that we --

4           CHAIRPERSON BLACKBURN: So, none of  
5 that money goes to outside counsel? This goes  
6 directly to --

7           MS. POSEY: To the complainant.

8           CHAIRPERSON BLACKBURN: -- the  
9 complainant --

10          MS. POSEY: Yes.

11          CHAIRPERSON BLACKBURN: -- which is a  
12 wonderful thing.

13          MS. POSEY: Yes. So, our mediation  
14 group, they have been tremendous in these past  
15 few months at getting cases settled, both

16 precause cases and post-cause cases. So, yes,  
17 this number is a reflection of how much  
18 complainants received in monetary settlement.  
19 We don't put everything on here, because  
20 what Indiana Civil Rights Commission is concerned  
21 about is the affirmative relief for the State of  
22 Indiana, so we want to make sure, if it's an  
23 employment matter, that policies are changed,

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1 that they have notices and signs up, you know,  
2 that the person can be transferred or, you know,  
3 whatever the case may be. And that is what we're  
4 focused on, but we do want the public to know  
5 that with these settlements, people are being  
6 able to be as whole as they can be, as the law  
7 will allow.

8 So, any other questions?

9 (Comm. Ramos arrived.)

10 COMM. LONG: Yeah. I'm just very  
11 impressed by how many events that you put  
12 together. So, sometimes you may be able to share  
13 with us the number of the people who --

14 MS. POSEY: Oh.

15 COMM. LONG: -- participate? I  
16 think -- yeah. I know usually you do have some  
17 big groups; right?

18 MS. POSEY: Yes, yes, yes.

19 COMM. LONG: Thank you.

20 COMM. JACKSON: You were asking about

21 how to get the word out. Would it be against any  
22 statute or law to Facebook Live our meetings?

23 MS. POSEY: This meeting? I don't

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1 believe so. I mean this is a public meeting. I  
2 don't think there is any law against it.

3 Have you looked into that, or --

4 JUDGE BURKHARDT: As far as the ICRC  
5 itself doing that on its page --

6 MS. POSEY: Uh-huh.

7 JUDGE BURKHARDT: -- is that what you  
8 mean?

9 COMM. JACKSON: On my page, ICR,  
10 anybody.

11 JUDGE BURKHARDT: I'm not aware of  
12 any conflict with the public access law in that  
13 regard.

14 MS. POSEY: Yeah, I don't think so  
15 either, but yeah, I think that's a great idea.

16 JUDGE BURKHARDT: I think he wants --

17 COMM. JACKSON: I wasn't aware that  
18 this forum existed --

19 JUDGE BURKHARDT: Right.

20 COMM. JACKSON: -- until I became a  
21 part of it --

22 JUDGE BURKHARDT: Uh-huh.

23 COMM. JACKSON: -- so, I think that

1 using social media in that way would at least  
2 raise the awareness, and if different ones of us  
3 would work to do it live --

4 JUDGE BURKHARDT: Uh-huh.

5 COMM. JACKSON: -- or the IRC --

6 MS. POSEY: ICRC.

7 COMM. JACKSON: -- ICRC were to do  
8 it --

9 JUDGE BURKHARDT: Uh-huh.

10 COMM. JACKSON: -- because the City  
11 Council is on the public channel --

12 MS. POSEY: Right.

13 COMM. JACKSON: -- so, people get to  
14 see that. We don't have that here. And it's a  
15 save-money issue, so, for me, which is sometimes  
16 better than television.

17 COMM. SLASH: I was going to say, I  
18 don't know if I'm stealing Lesley's thunder, but  
19 you all did -- you did some library hours last  
20 month.

21 MS. POSEY: Uh-huh.

22 COMM. SLASH: And I wanted to know if  
23 like -- if --

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1 MS. POSEY: If there was --

2 COMM. SLASH: -- there were any  
3 complaints from that.

4 MS. POSEY: No.  
5 MS. GORDON: We had -- we got  
6 complaints from --  
7 MS. POSEY: We got complaints --  
8 MS. GORDON: -- some people who --  
9 MS. POSEY: -- from the same -- the  
10 same number from the month before; right, three?  
11 MS. GORDON: We had three, yes,  
12 uh-huh.  
13 MS. POSEY: Okay. Which --  
14 CHAIRPERSON BLACKBURN: Sometimes it  
15 takes time.  
16 MS. POSEY: Yeah. And -- yeah, we do  
17 need to focus more on getting that -- the word  
18 out there for that, but we're going -- we're  
19 trying to go into the communities, and more than  
20 just getting the complaints, we're getting people  
21 to come to our table and asking us questions and  
22 getting information --  
23 COMM. SLASH: Uh-huh.

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1 MS. POSEY: -- so they can go back  
2 and tell someone else who needs to file a  
3 complaint. So.  
4 MS. GORDON: We're averaging about 50  
5 touches in conversation at each place, so --  
6 COMM. JACKSON: On that social media  
7 piece, if you could prepare a very simple script  
8 where we can do an introduction, if I were to

9 read it or any one of us were to read it prior to  
10 the meeting, so people could know what they were  
11 watching and listening to --

12 MS. POSEY: Uh-huh.

13 COMM. JACKSON: -- and, "If you have  
14 a complaint, this is what this is all about."

15 MS. POSEY: Or even have you guys do  
16 like quick legal PSA's like that anyway, and we  
17 could share it in other places, whether it's with  
18 the Commission or just a standalone, I think  
19 that's a great idea.

20 MS. GORDON: We can get that.

21 MS. POSEY: But yeah, I'll leave that  
22 up to Lesley.

23 Thank you.

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1 CHAIRPERSON BLACKBURN: Thank you  
2 very much.

3 MS. GORDON: Good afternoon.

4 CHAIRPERSON BLACKBURN: Good  
5 afternoon.

6 COMM. SLASH: Good afternoon.

7 MS. GORDON: I'm Lesley Gordon,  
8 Deputy Director of External Affairs. I love that  
9 you guys are already moving toward my area. So,  
10 as you said, we've done a lot of events with Fair  
11 Housing Month that we're really excited about.  
12 We are -- we have a full team. That's been the  
13 priority for External Affairs right now.

14           So, we have two new directors for the  
15 Cultural Commissions. I believe you met Elia  
16 James for the Latino and Hispanic Affairs  
17 Commission last meeting. And then we have  
18 Melissa Williams, with the Native American and  
19 Indian Affairs Commission. She just started at  
20 the end of March. So, we are happy to be all  
21 staffed and fully functional for those other  
22 Commissions, as well as Tyler and John have been  
23 great in outreach.

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1           We have been utilizing social media for  
2 Fair Housing Month. I hope you're all getting  
3 those e-mail blasts that have kind of encompassed  
4 what's upcoming, how you can engage on social  
5 media, and we'll continue to expand that as we  
6 kind of go into our general campaign of education  
7 and public meetings.

8           One of the Fair Housing Month activities  
9 was a panel discussion, where we view the Seven  
10 Days documentary, which documented the seven days  
11 right after Dr. King's assassination, which led  
12 to the passing of the Fair Housing Act, and we  
13 streamed that on Facebook Live and got some  
14 engagement there, as well as had an intimate  
15 audience at the venue. So, we are continuing to  
16 grow what those outreach efforts are, and as you  
17 all get more familiar in your roles, we are  
18 excited to utilize you in that area.

19           So, we take remote intakes, so we are  
20   seeing more touches with that, we are seeing some  
21   complaints, so just continually engaging the  
22   community ahead of time with those events. So,  
23   this next one will be May 14th, the week of

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1   May 14th, at the 38th Street branch, and there  
2   are social media events, and if you're on social,  
3   feel free to share that date. We have hashtags  
4   to go with it, so to help spread that message  
5   would be great.

6           We do have a fliers that we're putting up  
7   in the other branches as well as local community  
8   churches and gathering places in that area, so  
9   we're excited for that upcoming remote intake.

10           Let's see. And as far as our numbers for  
11   outreach, we do track that. There's just more  
12   space and understanding, but we vary from smaller  
13   CLE's or other things to -- like our World  
14   Civility Day had, I believe, like almost near --  
15   like 500 or so people, so we try to make sure  
16   we're balancing the intimate events as well as  
17   the bigger luncheons, broader reach around the  
18   state. So, that was up in the Merrillville area,  
19   we're in Terre Haute. Yeah, we're trying to  
20   reach as many places as possible.

21           So, again -- oh, so coming up that I would  
22   love for you to see, which is on here as well,  
23   the Fair Housing Press Conference Announcement

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1 and Game Release. We are going to do an official  
2 celebration of Fair Housing Month at the  
3 Statehouse. You should have gotten that invite  
4 today, actually, in your inboxes with all of the  
5 details, 11:30 to 12:30.

6 And we're going to launch --

7 CHAIRPERSON BLACKBURN: When?

8 MS. GORDON: Next Thursday, the 26th,  
9 11:30 to 12:30.

10 And then we're going to launch our  
11 Interactive Fair Housing Game. So, I know you  
12 all are familiar with the books, the first person  
13 kind of reader, where you read a little scenario  
14 and make a decision based on that information.  
15 So, we're going to roll that into discrimination,  
16 so you'll get a scenario on employee status,  
17 disability, and racial discrimination, where you  
18 kind of go through a real-life -- yeah, real-life  
19 scenario of what's happened. So, you kind of  
20 choose it, and we're hoping that'll enhance our  
21 audience. We're going to take it to some schools  
22 and use that as a training tool to engage the  
23 community.

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1 CHAIRPERSON BLACKBURN: Okay.

2 MS. GORDON: Any other questions I  
Page 17

3 can answer?

4 (No response.)

5 MS. GORDON: All right.

6 CHAIRPERSON BLACKBURN: Exciting.

7 MS. GORDON: We try. We're trying.

8 Thank you very much.

9 CHAIRPERSON BLACKBURN: Very good.

10 Next, Old Business, and the Report on  
11 Determinations by Commissioners having reviewed  
12 the appeals. Those first listed is --

13 COMM. JACKSON: Mrs. Chairman, before  
14 we move on, I may have missed it, No. III, the  
15 Approval of previous meeting minutes.

16 CHAIRPERSON BLACKBURN: No, you're  
17 right; I missed it completely. I skipped to the  
18 Director's Report. So, I would entertain a  
19 motion to accept the minutes.

20 COMM. RAMOS: So moved.

21 CHAIRPERSON BLACKBURN: And a second?

22 COMM. LONG: Second.

23 COMM. EDWARDS: Second.

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1 CHAIRPERSON BLACKBURN: And all in  
2 favor?

3 COMM. JACKSON: Aye.

4 COMM. EDWARDS: Aye.

5 COMM. SLASH: Aye.

6 COMM. RAMOS: Aye.

7 COMM. LONG: Aye.

8 CHAIRPERSON BLACKBURN: Aye. Thank  
9 you very much. Thank you.

10 (Comm. Harrington arrived.)

11 CHAIRPERSON BLACKBURN: Next, Casey  
12 Baker versus Resource Property Management Group,  
13 Comm. Harrington.

14 COMM. HARRINGTON: How are you?

15 CHAIRPERSON BLACKBURN: I'll give you  
16 a chance to catch your breath, Commissioner, and  
17 we will start with Comm. Slash.

18 COMM. SLASH: In the case of Thomas  
19 Hajduch versus ITR America LLC, I move that we  
20 uphold the no probable cause finding.

21 CHAIRPERSON BLACKBURN: May I have a  
22 motion to accept that determination?

23 COMM. EDWARDS: So moved.

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1 COMM. RAMOS: Second.

2 CHAIRPERSON BLACKBURN: All in favor?

3 COMM. JACKSON: Aye.

4 COMM. HARRINGTON: Aye.

5 COMM. EDWARDS: Aye.

6 COMM. SLASH: Aye.

7 COMM. RAMOS: Aye.

8 COMM. LONG: Aye.

9 CHAIRPERSON BLACKBURN: Aye.

10 Anyone opposed?

11 (No response.)

12 CHAIRPERSON BLACKBURN: Thank you,

13 Comm. Slash.

14 Comm. Long?

15 COMM. LONG: Oh, so move to the third  
16 one; right? Okay. So, in the case of Olusegun  
17 Adeyemo versus La Rue Carter Memorial Hospital, I  
18 recommend upholding the finding that there's no  
19 probable cause of any unlawful discrimination.

20 CHAIRPERSON BLACKBURN: Thank you for  
21 that.

22 May I have a motion to accept that?

23 COMM. EDWARDS: So moved.

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1 CHAIRPERSON BLACKBURN: And a second?

2 COMM. SLASH: Second.

3 CHAIRPERSON BLACKBURN: And all in  
4 favor?

5 COMM. JACKSON: Aye.

6 COMM. HARRINGTON: Aye.

7 COMM. EDWARDS: Aye.

8 COMM. SLASH: Aye.

9 COMM. RAMOS: Aye.

10 COMM. LONG: Aye.

11 CHAIRPERSON BLACKBURN: Aye.

12 Anyone opposed?

13 (No response.)

14 CHAIRPERSON BLACKBURN: Thank you.

15 Comm. Ramos?

16 COMM. RAMOS: Madam Chair, in the  
17 case of Scheree Robinson versus Woods of Eagle

18 Creek, this case is an extensive case. I request  
19 a reversal of a previous decision of no probable  
20 cause. It is taking time to go through that.

21 CHAIRPERSON BLACKBURN: Testy.

22 COMM. RAMOS: It is, so I am going to  
23 request additional time to continue that.

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1 CHAIRPERSON BLACKBURN: Thank you  
2 very much.

3 We'll go on to New Business, and appoint  
4 Commissioners to the complaints.

5 COMM. JACKSON: Madam Chair, before  
6 we move on, it appears one case was left off the  
7 agenda. That's the one that was --

8 CHAIRPERSON BLACKBURN: I think that  
9 was intentional.

10 COMM. JACKSON: Why?

11 MS. POSEY: Yeah.

12 JUDGE BURKHARDT: Thank you.

13 COMM. JACKSON: I didn't get the --

14 CHAIRPERSON BLACKBURN: It will be  
15 reported on at a later time, if we need more time  
16 to review it.

17 COMM. JACKSON: In the future, can I  
18 get an e-mail when something like that happens?  
19 Because I spent time going through it.

20 MS. POSEY: Which you should. I  
21 would love to speak to you about this after the  
22 meeting.

♀ 23 COMM. JACKSON: Yeah, I have no

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1 problem with that. Just in the way of  
2 communication, if there's one being delayed or  
3 anything, that the Commissioners should get some  
4 kind of alert --

5 MS. POSEY: Yes, sir.

6 COMM. JACKSON: -- that there should  
7 be a conversation afterward about it.

8 MS. POSEY: Yes, sir.

9 CHAIRPERSON BLACKBURN: The New  
10 Business --

11 COMM. HARRINGTON: Did you want me  
12 to -- I'm sorry.

13 CHAIRPERSON BLACKBURN: Yes,  
14 Ms. Harrington.

15 COMM. HARRINGTON: Did you want to  
16 come back to the one that you passed up?

17 CHAIRPERSON BLACKBURN: Are you  
18 ready?

19 COMM. HARRINGTON: Yes.

20 CHAIRPERSON BLACKBURN: All right.  
21 Comm. Harrington.

22 COMM. HARRINGTON: Thank you.

♀ 23 In the case -- and bear with me, this is

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1 my first -- with Casey Baker versus Resource  
2 Property Management Group, I would recommend that  
3 we uphold the notice of finding and issue as no  
4 charge.

5 CHAIRPERSON BLACKBURN: May I have a  
6 motion to accept the no probable cause?

7 COMM. EDWARDS: So moved.

8 COMM. SLASH: Second.

9 CHAIRPERSON BLACKBURN: All in favor?

10 COMM. JACKSON: Aye.

11 COMM. HARRINGTON: Aye.

12 COMM. EDWARDS: Aye.

13 COMM. SLASH: Aye.

14 COMM. RAMOS: Aye.

15 COMM. LONG: Aye.

16 CHAIRPERSON BLACKBURN: Aye.

17 Anyone opposed?

18 (No response.)

19 CHAIRPERSON BLACKBURN: Thank you  
20 very much. I want to now assign for appeal the  
21 cases. Terry Bias versus Mill [sic] Monroe Music  
22 Park to Comm. Ramos, please; Elwood [sic] Bigot  
23 versus Federal Express, Comm. Edwards.

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28

1 COMM. EDWARDS: Okay.

2 CHAIRPERSON BLACKBURN: Jeff Hager  
3 versus Muncie Housing, Comm. Slash; Tina Halupka  
4 versus Hsd/Jim Deer, Comm. Jackson; Robert O'Dell  
5 versus Applebee's, Comm. Long; Denise Perez

6 versus Windsor Park, Comm. Harrington; Tionia  
7 Richardson versus Athena Real, Comm. Ramos;  
8 Tamika Riggs versus DolGenCorp, LLC,  
9 Comm. Edwards; Cecelia Shelby versus Willow  
10 Trace, Comm. Slash; Jacquelyn Thompson versus  
11 Kohl's Department Stores, Inc., Comm. Jackson;  
12 and Marck Vachon versus Parkview Hospital,  
13 Comm. Long.

14 Under Final Orders, the next item on your  
15 agenda, I would ask the ALJ if he would like to  
16 introduce the Order, the Final Order, before we  
17 vote. Thank you.

18 JUDGE BURKHARDT: Yes. Thank you  
19 very much. As you see by the docket number, this  
20 is an employment case in which sex discrimination  
21 was alleged. So, when the Complainant selected  
22 to have the ICRC staff attorneys litigate the  
23 complaint rather than obtain their own counsel,

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1 ICRC staff counsel worked with Respondent's  
2 counsel to transact a mutually agreeable  
3 settlement. So, this is a simple Final Order  
4 based on conciliation of this case and my noting  
5 that it should therefore be dismissed.

6 Thank you.

7 CHAIRPERSON BLACKBURN: I would  
8 entertain a motion to affirm the dismissal of the  
9 case with the Final Order.

10 COMM. EDWARDS: So moved.

CRC 4-20-18

11 CHAIRPERSON BLACKBURN: And a second?  
12 COMM. RAMOS: Second.  
13 CHAIRPERSON BLACKBURN: All in favor?  
14 COMM. JACKSON: Aye.  
15 COMM. HARRINGTON: Aye.  
16 COMM. EDWARDS: Aye.  
17 COMM. SLASH: Aye.  
18 COMM. RAMOS: Aye.  
19 COMM. LONG: Aye.  
20 CHAIRPERSON BLACKBURN: Aye.  
21 Anyone opposed?  
22 (No response.)  
23 CHAIRPERSON BLACKBURN: Thank you,

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1 John.  
2 I would like now for those participating  
3 in the oral argument today to move forward to the  
4 seats up front, if you would like, anyone  
5 participating in the oral argument.  
6 (Pause in proceedings.)  
7 CHAIRPERSON BLACKBURN: welcome.  
8 MR. HICKS: Thank you.  
9 MR. HEALY: Thank you.  
10 CHAIRPERSON BLACKBURN: As a result  
11 of objections to the proposed findings of fact  
12 and conclusions of order -- conclusions and law  
13 and order that were in the case of Terry Lymon,  
14 complainant, versus UAW Local Union 2209,  
15 Respondent, we are here to hold oral argument in

16 that case.

17 And I want to lay a few ground rules  
18 before we begin. In that the case was brought to  
19 our attention by the Respondent, I would like  
20 them to begin the presentation. I would like to  
21 allow 15 minutes for each side, allowing for ten  
22 minutes max for some questions and answers with  
23 the Commissioners regarding the issues raised in

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1 the complaint and any other questions that  
2 Commissioners may have, if that's agreeable.

3 MR. LYMON: Yes, ma'am.

4 CHAIRPERSON BLACKBURN: Does anyone  
5 need to be sworn in?

6 MR. HICKS: Just a point of  
7 clarification, Commissioner. The Complainant had  
8 actually filed the objections. I'm happy to go  
9 first as the Respondent, but I just wanted -- I  
10 didn't quite -- I just wanted to make that point  
11 clear.

12 CHAIRPERSON BLACKBURN: Oh, you're  
13 absolutely right. So, Mr. Healy would begin, but  
14 in the other instructions, are you all clear?

15 MR. HEALY: The time constraint is 15  
16 minutes per side, and then what? Then it's over?

17 CHAIRPERSON BLACKBURN: And ten  
18 minutes -- ten minutes of rebuttal --

19 MR. HEALY: Of rebuttal.

20 CHAIRPERSON BLACKBURN: -- or Q & A

21 to follow that. Are you comfortable --

22 MR. HICKS: Yeah, that's fine.

23 CHAIRPERSON BLACKBURN: -- with that?

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1 MR. HICKS: Thank you.

2 CHAIRPERSON BLACKBURN: Okay. Then  
3 Mr. Healy, if you would like to start.

4 MR. HEALY: Here you go. Could you  
5 pass these down?

6 Thank you for the courtesy.

7 MR. HICKS: Uh-huh.

8 MR. HEALY: Good afternoon. Can  
9 everybody hear me?

10 COMM. LONG: Yes.

11 COMM. HARRINGTON: Yes.

12 CHAIRPERSON BLACKBURN: Yes.

13 MR. HEALY: Ladies and gentlemen, I  
14 want to say at the outset that this matter that  
15 is before you is not a trial on the merits. It  
16 is a motion for summary judgment, which is akin  
17 to a motion to dismiss that was filed by  
18 Respondent.

19 In summary judgment, the moving party,  
20 that is, Respondent, is required to show that  
21 there is no genuine issue of material fact in  
22 dispute before the Administrative Law Judge, and  
23 therefore, the case is subject to dismiss because

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1 there is no genuine issue of material fact.

2           It's not necessary for the Complainant at  
3 this juncture to prove necessarily his entire  
4 case using the preponderance-of-evidence  
5 standard. All that is necessary to do is for us,  
6 that is, the Complainant, to show in response  
7 that there really is still a genuine issue of  
8 material fact that is still in dispute.

9           In other words, it's not sufficient for  
10 the Respondent to say that the evidence  
11 preponderates in his favor. It's not sufficient  
12 for them to, in essence, kick a field goal. They  
13 have to score a touchdown. They have to say  
14 overwhelmingly that there is no issue whatsoever  
15 in this case, and this case does not merit trial  
16 because the evidence doesn't suggest it.

17           We stated in our response to this that the  
18 Complainant did show that there is a genuine  
19 issue of fact. In fact, he rightly met his prima  
20 facie case of discrimination. He is a member of  
21 a protected class of persons; he's an  
22 African-American.

23           He was terminated from his position with

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34

1 his employer, General Motors Corporation, back  
2 in 2004. He filed a grievance with the  
3 Respondent Union, UAW Local 2209. He was at all  
4 times very nearly the only African-American

5 within a group of persons whose grievances were  
6 settled on the same day at the third step.

7           You have the document in your possession.  
8 There is a document there. It's a two-page  
9 document which shows the list of individuals  
10 whose grievances were settled at the third step  
11 on the same day. The only ones whose names are  
12 listed there as Black or African-American are  
13 Bond and Lymon.

14           Mr. Lymon was not notified either by mail  
15 or by telephone of his appeal rights. All  
16 grievants are supposed to be notified by  
17 certified mail to preserve those rights.  
18 According to the union committeeman handling  
19 Mr. Lymon's grievances, all are supposed to be  
20 contacted by him, and only by telephone.

21           Nevertheless, Joe Watkins, who was himself  
22 a grievant -- a committeeman for many years, stated  
23 under oath in his statement that if a person's

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1 grievance is denied at the third step, as was  
2 Lymon's case, the shop chairman's duty is to  
3 always notify the grievant by Certified Mail.  
4 And you have that document here, CX-5.

5           This would enable the grievant to file a  
6 timely appeal of the decision. Unlike Lymon,  
7 none of the other Caucasian employees was at risk  
8 for termination from the job. That statement  
9 came directly from Dave Matthews, who was

10 Mr. Lymon's committeeman. Mr. Matthews, knowing  
11 full well of the uniqueness of Lymon's case and  
12 his perilous situation, could not ensure that his  
13 appeal rights were made safe.

14 The statement of Amy Richardson, the union  
15 recording secretary, was that she was the one who  
16 began the process of sending grievance  
17 notifications by mail in 2011, too late to assist  
18 Lymon. The evidence reveals that this practice  
19 was actually done before her, by other  
20 committeemen. You have that document, too, by  
21 March 4, several months prior to Richardson  
22 assuming that post.

23 The grievance file belonging to a

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1 similarly situated Caucasian employee, or union  
2 member, Jonathan Burget, demonstrates just how  
3 the union quickly sprang into action using  
4 service by Certified Mail when a terminated  
5 employee was a Caucasian.

6 Respondent said that Burget and Lymon were  
7 not similarly situated because Matthews didn't  
8 participate in Burget's grievance and Burget's  
9 matter was handled by Mike Klepper. Still  
10 remember, it's the Local Union that is the  
11 Respondent, not the individuals.

12 Klepper notified Burget by regular and  
13 certified mail of his appeal rights when he  
14 affixed and signed his name on stationery to him,

15 and you have that document under what is called  
16 "Confidential File of Jonathan Burget."

17 And the upshot of all of this is that  
18 Complainant, who had not been notified by anyone,  
19 finally confronted Mr. Matthews in 2011.  
20 Matthews then told Lymon for the first time that  
21 his grievance had been withdrawn. From that  
22 moment on, Mr. Lymon made -- did not sit on his  
23 rights, but he made numerous heroic but fruitless

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1 efforts to have the grievance reinstated.

2 He was turned down at each step because he  
3 was informed the grievance had been untimely  
4 filed. But it wasn't his fault. He was supposed  
5 to have been given notice. Lymon was terminated  
6 by his employer, GM. Nevertheless, the only  
7 other African-American grievant in the pool as  
8 Lymon was a person by the name of Ron Bond.

9 Ron Bond had stated in his statement that  
10 he had filed a grievance about the same time as a  
11 Caucasian co-worker that he complained about,  
12 when he was subjected to being use -- using the  
13 "N" word and was called "boy." To his knowledge,  
14 GM did nothing about it. The Caucasian co-worker  
15 that he complained about had his -- had his  
16 grievance processed, but Mr. Bond, the black  
17 person, did not have his grievance filed. He was  
18 still -- it has still not been taken to  
19 arbitration.

20           There are examples of discriminatory  
21 actions being taken place. Some may be  
22 anecdotal, but the point is that this is part of  
23 a pattern and practice. Matthews was -- admitted

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1 to being aware of the factors of the -- of Lymon  
2 being the only African-American beside Bond whose  
3 grievances were settled on the same day.

4           The ALJ made an incorrect statement,  
5 stating that the Local, through Matthews, did not  
6 deny Lymon equal representation on the basis of  
7 race. She stated that Matthews' actions had not  
8 been shown to deny Lymon his right to equal  
9 representation. Well, we are not suing Matthews,  
10 per se. We are suing the union.

11           The ALJ uses a very narrow lens in regard  
12 to the Local Union's actions by looking at only  
13 one person's actions on one particular day. The  
14 Complainant -- the Complainant, as I said,  
15 received a phone call in 2011 from Mr. Orr  
16 advising him that the grievance was withdrawn  
17 in 2007.

18           This brings us to the issue that  
19 Respondent brings up here, saying not only was  
20 there no discrimination, they're also saying that  
21 there is a timeliness issue. We say that there  
22 is no timeliness issue, because under the time  
23 limits issued by the UAW Constitution, a member

‡

1 has 60 days to initiate an appeal to the Local  
2 membership.

3           The time begins to run when the appellant  
4 first becomes aware or should have become aware  
5 of the alleged action or decision appealed.  
6 Well, within 60 days of being aware the  
7 withdrawal, Complainant did file an internal  
8 appeal challenging Respondent's withdrawal on  
9 behalf of Complainant's loss of seniority.

10           On June 29th, 2011, Respondent, this  
11 Respondent, the Local Union, held a meeting to  
12 address the internal UAW appeal of the withdrawal  
13 of the grievance.

14           January 4th, 2012, Complainant filed with  
15 the NLRB an unfair labor practice against this  
16 Respondent, 2209. The Respondent opposed the  
17 Complainant, and the NLRB adopted Respondent's  
18 arguments and dismissed the charge.

19           Then in March of 2012, a hearing was held  
20 by the International appeal. Mr. Matthews and  
21 Ms. Richardson were both present at the hearing.  
22 The complainant contended that the International  
23 also discriminated against him, and that he filed

‡

1 his ICRC complaint against Respondent alleging  
2 discrimination on the basis of race.

3           This is a timely filed complaint. It was  
4 within the statutory period prescribed. The  
5 undisputed record is that the Respondent never  
6 mentioned the applicable statute of limitations.  
7 In a deferral state such as Indiana, according to  
8 the Seventh Circuit, a charge must be filed  
9 within 300 days of the occurrence of the act that  
10 is the basis of the complaint.

11           Under a continuing violation theory,  
12 however, a plaintiff may get relief for a  
13 time-barred act by linking it with an act that's  
14 within the limitations, period. The complaint of  
15 discrimination was filed on April 23rd, 2012, one  
16 month after the last act that he complains of,  
17 that the Respondent denied his rights to equal  
18 representation.

19           We've stated in our briefs over a lengthy  
20 number of paragraphs that these are systemic  
21 violations involving repeated incidents, and that  
22 the Congress has issued various rulings regarding  
23 how these should be held.

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1           systemic violations -- excuse me. It's  
2 not necessary that the incidents on their own be  
3 discrete violations of Title VII. The unlawful  
4 practice cannot be said to occur on any  
5 particular day, it occurs over a series of days  
6 or perhaps years. And in contrast to discrete  
7 acts, single acts of harassment may not be

8 actionable on their own.

9 We believe that there was a systemic  
10 violation consisting of the repeated incidents,  
11 going back as far as 2004, when the Respondent  
12 jointly selected with General Motors a partial  
13 doctor preferred by and associated with GM.

14 July of 2004, the Respondent refused to  
15 write a grievance for the Complainant concerning  
16 a Rule 64(d) violation. In August of 2004,  
17 Respondent refused to write a grievance for  
18 Complainant concerning selection of the physician  
19 to perform a 43(b) independent medical opinion.

20 2004, in August, they refused to write a  
21 grievance about being terminated prior to the  
22 IMO. 2004, in November, Respondent refused to  
23 address the handling of Complainant's grievance

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1 and Respondent's recommendation of no validity at  
2 the Executive Board meeting.

3 2007, Respondent note -- Respondent states  
4 that it issued a withdraw of Complainant's  
5 grievance, but for four years Respondent failed  
6 to notify the complainant. Then in 2011, at the  
7 Respondent's internal appeal hearing at the union  
8 hall, the Respondent denied the internal appeal,  
9 July 6th.

10 Respondent allegedly advocated to the  
11 International against the Complainant via  
12 submission of a physician statement. And then in

13 March of 2012, the Respondent opposed Complainant  
14 and alleged testimony at the International  
15 hearing.

16 It is stated that even if many of the acts  
17 occurred outside the 300-day filing period, it  
18 cannot be said they're not part of the same  
19 actionable unlawful employment practice, which  
20 continued into a timely filing period. The  
21 timely filing provision only requires that a  
22 Title VII plaintiff file a charge within a  
23 certain number of days after the unlawful

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1 practice happened.

2 It does not matter that some of the acts  
3 of the hostile work environment fall outside the  
4 statutory time period. Provided an act  
5 contributing to the claim occurs within the  
6 filing period, the entire period of a hostile  
7 environment may be considered by a court for the  
8 purpose of determining liability.

9 We believe that all of the evidence put  
10 together shows that there is reasonable doubt,  
11 there is reasonable discussion, and there is room  
12 to have a basis for Mr. Lymon to have his day in  
13 court. We are not stating at this stage of the  
14 proceeding that the Respondent actually did  
15 commit a discriminate -- a discriminatory act  
16 against him, although we think he did.

17 We are saying that there are genuine

18 issues of fact in dispute. There are genuine  
19 triable issues that are here, and that the  
20 individual, Mr. Lymon, is entitled to a judgment  
21 in this stage simply because he has shown  
22 numerous acts of discrimination over a long  
23 period of time.

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1 Note I'm saying that he has alleged those  
2 discriminatory acts. He does not have to prove  
3 them, he has to show there's a genuine issue. We  
4 believe that he has done that, and we are asking  
5 that Respondent's motion for summary judgment be  
6 denied for those reasons.

7 Thank you.

8 CHAIRPERSON BLACKBURN: Thank you,  
9 Mr. Healy.

10 Will you please introduce yourself at the  
11 microphone?

12 MR. HICKS: Thank you, Commissioner.

13 My name is Robert Hicks, and I am the  
14 attorney for UAW Local 2209, and we're here today  
15 because Mr. Lymon filed an ICRC complaint on  
16 April 23rd, 2012, and he alleged essentially that  
17 the Local Union had done two things. He alleged  
18 that they had discriminated against him on the  
19 basis of his race in connection with not  
20 notifying him properly in connection with a  
21 grievance that they filed to challenge his  
22 termination.

23 And then he said because he was not

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1 notified in a timely manner of the withdrawal of  
2 the grievance, he could not challenge that  
3 grievance withdrawal determination pursuant to  
4 the UAW Constitution appeals procedure.

5 There -- and he also lists March 22nd,  
6 2012 as the date of discrimination in his ICRC  
7 complaint. There are at least three reasons why  
8 the Commission should uphold the ALJ's proposed  
9 findings of fact and conclusions of law, in which  
10 she found that there was no evidence of race  
11 discrimination and in which she recommended  
12 dismissal.

13 Number one, as Mr. Healy alluded to in his  
14 opening statement, Mr. Lymon's complaint, his  
15 ICRC complaint, is untimely by any measure, by  
16 the most lenient measures. And we know this  
17 because -- and I'll actually refer you to the  
18 documents that Mr. Healy provided you. The first  
19 page shows that Mr. Lymon was notified on  
20 April 19th, 2011 that his grievance had been  
21 withdrawn after he had followed up in that time  
22 period about his grievance.

23 And on the third page, he was notified

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1 that the Local Union was not taking any

2 additional action on the appeal he filed of the  
3 withdrawal of that grievance. Mr. Lymon  
4 testified under oath that he knew the Local Union  
5 wasn't doing anything more with his grievance in  
6 April of 2011. That's in the record. It's  
7 clear.

8 He also testified under oath that he knew  
9 no later than early July 2011 that the Local  
10 Union wasn't taking any additional action on his  
11 appeal. The law is clear. He only had 180 days  
12 to file his ICRC complaint. Mr. Healy is  
13 unfortunately mistaking the extension for an EEOC  
14 charge and a 300-day time period, but the law is  
15 clear, and I'll return back to this argument  
16 later.

17 The second reason that Mr. Lymon's  
18 complaint should be dismissed is that there is no  
19 genuine issue of material fact that shows that he  
20 was discriminated on the basis of his race. And  
21 quite frankly, there's no evidence that the Local  
22 Union handled his grievance differently than it  
23 would have handled it for any other employee,

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1 regardless of race or his appeal.

2 And the third reason that's significant  
3 and that shows that Mr. Lymon's complaint should  
4 be dismissed is Mr. Lymon wasn't denied anything.  
5 He was terminated. The union filed a grievance.  
6 It fought for three years to get the company to

7 sustain that grievance. The company wouldn't  
8 return him back to work. It withdrew the  
9 grievance.

10 Mr. Lymon did appeal that grievance  
11 through the UAW Constitution appeals procedure,  
12 and the appeal was denied on substantive grounds.  
13 In other words, an independent body that didn't  
14 have Local or International Union officials on it  
15 said that the Local Union didn't do anything  
16 wrong. So, for that reason, Mr. Lymon's suffered  
17 no damages or harm based on any of the alleged  
18 actions.

19 I'd like to just delve a little bit deeper  
20 into the facts before I return to my arguments.  
21 It is true that Mr. Lymon worked at the GM  
22 facility in Fort Wayne. In the summer of 2004,  
23 he got into a dispute with GM about whether he

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1 could perform a disputed job assignment.

2 On July 28th, 2004, he went home after  
3 indicating that he didn't think he was medically  
4 able to perform the job that he had been  
5 assigned. He did not return to work ever, at any  
6 point, after that date. So, GM, per the union  
7 contract, took the position that Mr. Lymon had  
8 relinquished his seniority because he didn't  
9 return to work within five days of being told  
10 that he needed to work.

11 The Local Union, through Steward Keith

12 Gay, invoked a contractual procedure that allowed  
13 for Mr. Lymon to have an independent medical  
14 exam. The purpose of that is so that employees  
15 such as Mr. Lymon could challenge GM when they  
16 said that they weren't medically able to perform  
17 a job.

18 The contract between the company and the  
19 union said that the independent medical  
20 examiner's determination was final and binding on  
21 GM, the union and the employee. Mr. Gay set that  
22 exam up for Mr. Lymon, Mr. Lymon had the exam,  
23 Mr. Lymon -- unfortunately for Mr. Lymon, the

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1 independent medical examiner said that he was  
2 medically able to perform the job that GM said he  
3 was able to perform.

4 So, at that point, there really wasn't  
5 anything for the union to do. They had invoked a  
6 procedure that allowed Mr. Lymon to make his  
7 argument. But nonetheless, at Mr. Lymon's  
8 request, and because it was the only way that  
9 they could try to save his job, they filed a  
10 grievance. The grievance was filed by Dave  
11 Matthews in October of 2004, October 11th, 2004.  
12 The grievance requested Mr. Lymon's reinstatement  
13 and it requested make-whole relief.

14 For three years the Local Union, on  
15 numerous occasions, tried to get the company to  
16 relent from its position, but the company

17 wouldn't do it. It said, "Look, we have this  
18 independent process. The doctor said that  
19 Mr. Lymon could return to work. Mr. Lymon did  
20 not return to work. There's nothing to do."

21 So, in June of 2007, Matthews, who's the  
22 individual that filed Mr. Lymon's grievance and  
23 one of the two Local Union officials that he

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1 accuses of discrimination, had ascended to shop  
2 chair. It was his job to resolve all grievances  
3 that were pending at the third step, including  
4 Mr. Lymon's.

5 At that time, Mr. Ly -- Mr. Matthews  
6 decided there was nothing else to do. The  
7 company wasn't going to relent, and the grievance  
8 had no merit under the contract. So, he withdrew  
9 the grievance. He withdrew the grievance on  
10 June 15th, 2007.

11 On that date -- and this is another  
12 exhibit that Mr. Healy actually pointed out to  
13 you. It's in this chart that's about four pages  
14 in. You'll see that Matthews, whose signature is  
15 at the bottom of the page -- this is, I think,  
16 the fifth page in -- Matthews resolved 20 other  
17 grievances.

18 Most of these grievants were Caucasian.  
19 And in many cases, you'll see a "WWP," as it says  
20 with Lymon. That's the AA-14. That means  
21 withdrawn without precedent. So, Matthews

22 withdrew a number of grievances at that time.  
23 Matthews did not provide any written notification

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1 to any of those grievants to tell them about the  
2 resolution of their grievances. And contrary to  
3 what Mr. Healy asserted, there is no -- he can't  
4 point you to one single document that shows that  
5 an individual had to receive written notification  
6 of the withdrawal of their grievance.

7           So, a couple of days after Matthews  
8 withdrew the grievance, he says that he talked to  
9 Mr. Lymon on the telephone and he told Mr. Lymon  
10 that the grievance had been withdrawn. Mr. Lymon  
11 said that that's not true; it didn't happen.  
12 Okay. But critically, Mr. Lymon, when asked in  
13 his deposition, couldn't identify one time  
14 between 2005 and April of 2011 when he contacted  
15 the Local Union to ask about his job. Not one  
16 time.

17           So, in April of 2011, after he has a  
18 chance encounter with this Joe Watkins, who had  
19 stopped serving as a Local Union officer in 2003,  
20 well before Mr. Lymon's grievance had been filed,  
21 Mr. Lymon followed up with the Local Union. He  
22 said, "Hey, what happened to my grievance?"

23           Mr. Lymon was advised over the phone and

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1 in writing on page 1 of the exhibit that  
2 Mr. Healy gave you, that his grievance had been  
3 withdrawn in 2007 and that the Local Union was  
4 not taking additional action on his grievance.  
5 And again, he's testified under oath that he knew  
6 at that point the Local Union wasn't doing  
7 anything more on his grievance.

8 So, as Mr. Healy indicated, Mr. Lymon did  
9 file an appeal. The UAW Constitution has an  
10 appeals process. It allows members to challenge  
11 the actions of Local Unions with respects to  
12 grievances. Mr. Lymon filed that appeal, the  
13 Local Union initially processed the appeal, it  
14 denied the appeal.

15 And that's the third page of this package.  
16 July 6th, 2011, Mr. Lymon's appeal was denied,  
17 and the Local Union issued that notice.  
18 Mr. Lymon testified under oath that he received  
19 that notice within days after it was sent, and  
20 Mr. Lymon testified under oath critically that he  
21 knew at that point the Local Union wasn't doing  
22 anything else on the appeal of the withdrawal of  
23 his grievance.

♀

1 So, by early July of 2011, Mr. Lymon knew  
2 that the Local Union wasn't doing anything more  
3 for him, period; not on his grievance, not on the  
4 appeal. So, he filed an appeal to the

5 International Union. Now, Mr. Healy touched on  
6 that meeting. The International Union, which is  
7 separate from the Local Union.

8 And the International Union, which is not  
9 named in Mr. Lymon's complaint -- Mr. Lymon  
10 understood the difference between those two -- it  
11 held a hearing on March 22nd, 2012, and that's,  
12 again, the date of discrimination in Mr. Lymon's  
13 ICRC complaint. Mr. Lymon testified under oath  
14 that this meeting was held exclusively by the  
15 International Union and that no Local Union  
16 officers discriminated against him that day.

17 So, the International Union also denied  
18 Mr. Lymon's appeal, and then he appealed to the  
19 inter -- the Public Review Board. So, let me  
20 tell you about the Public Review Board. The  
21 Public Review Board is an outside entity of the  
22 UAW. It doesn't have any International Union  
23 officer, it doesn't have any Local Union

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1 officers.

2 Mr. Lymon submitted all of his documents  
3 to the Public Review Board. He said, "I wasn't  
4 notified about the withdrawal of my grievance."  
5 He said, "The grievance shouldn't have been  
6 withdrawn." And the Public Review Board in fact  
7 credited Mr. Lymon's statement, that he wasn't  
8 told in 2007 that his grievance was withdrawn.

9 They couldn't decide whether Matthews or

10 Lymon was telling the truth on that point, so  
11 they credited him. They said, "Well, okay. You  
12 weren't told in 2007. You still didn't follow up  
13 for almost four years, or more, on that  
14 grievance, so effectively, you abandoned your  
15 job."

16 But more importantly, they found that the  
17 Local Union didn't do anything wrong. They found  
18 that the grievance was properly withdrawn because  
19 Mr. Lymon had not gone back to work after an  
20 independent medical examiner said that he could  
21 work. So, at that point, there were no appeal  
22 rights under the UAW Constitution. That was the  
23 end of the line.

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1 As you all know, we filed a summary  
2 judgment in the ICRC matter, the Local did, and  
3 Judge Posey granted the summary judgment and  
4 found that there was no issue of material fact,  
5 and that Mr. Lymon was not denied equal  
6 representation, and she ordered that his  
7 complaint be dismissed.

8 So, again, three reasons why the  
9 Commission should affirm her -- or uphold her --  
10 excuse me. Number one, by any measure, even the  
11 most lenient of all measures, Mr. Lymon's  
12 complaint is untimely. Even if we forgive him  
13 for not following up on his grievance for up to  
14 six years, he knew in April of 2011 and in July

15 of 2011 that the Local Union was done with his  
16 grievance and done with his internal appeal. He  
17 didn't file his complaint until more than 180  
18 days later. Under the ICRC, under the state  
19 civil rights statute, he only had 180 days.

20 Again, Mr. Healy is improperly arguing  
21 that the statute of limitations is 300 days.  
22 That's just -- I work with Mike. I know him  
23 well. That's just wrong. He doesn't cite any

♀

56

1 cases to support his argument, number one, and  
2 number two, the 300-day limitation only comes in  
3 for the purposes of the EEOC filing. You guys  
4 are here to interpret and apply the state law.  
5 The state law clearly applies at 180 days.

6 And in fact, the argument that Mr. Healy  
7 has made was rejected, made and rejected, by the  
8 Third Circuit, in the case of Mandel v. M&Q  
9 Packing, 706 F. 3rd, 157. That case came out of  
10 Pennsylvania. Pennsylvania, like Indiana, is a  
11 deferral state. It has its own -- it has its own  
12 state discrimination agency.

13 The plaintiff, as Mr. Healy is arguing,  
14 argued that an untimely state filing could be  
15 rendered timely by the 300-day per period for the  
16 EEOC, and the Third -- first a District Judge and  
17 then the Third Circuit Court of Appeals said,  
18 "No, there's no way. The state statute of  
19 limitations applies."

20           The other thing that Mr. Healy has  
21 mentioned with respect to the statute of  
22 limitations argument is this notion of a  
23 continuing violation. Well, the Supreme Court

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1 has said that -- in the Morgan case,  
2 536 US 101 -- the continuing violation theory  
3 doesn't apply when an individual is complaining  
4 about discrete events.

5           In this case, Mr. Lymon is clearly  
6 complaining about discrete events. He listed  
7 them in his complaint: The withdrawal of the  
8 grievance and the denial of the appeal  
9 challenging that withdrawal of the grievance.  
10 Again, he recognized that those things happened  
11 before July of 2011, and discrete events can't be  
12 linked to any other events within the statute of  
13 limitations period to render a matter timely.  
14 So, there is no continuing violation legitimate  
15 argument.

16           Okay. And so, to close, then, on the  
17 merits -- and then some of this I can save for  
18 rebuttal, but with respect to -- with respect to  
19 the merits, as the Judge found, there is no race  
20 discrimination, and then -- and there's no race  
21 discrimination because, for one, there's no  
22 evidence that anybody, any of these other people  
23 on this list, received written notification that

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1 Mr. Lymon says that he was denied.

2 And for two, there's no --

3 CHAIRPERSON BLACKBURN: Mr. Hicks,  
4 please don't reiterate those things.

5 MR. HICKS: Sure.

6 CHAIRPERSON BLACKBURN: Your time is  
7 up.

8 MR. HICKS: Up? Okay. All right.  
9 Then thank you.

10 CHAIRPERSON BLACKBURN: Thank you  
11 very much.

12 MR. HICKS: Thank you.

13 CHAIRPERSON BLACKBURN: I would guess  
14 that Mr. Healy, you have some rebuttal.

15 (Discussion off the record.)

16 CHAIRPERSON BLACKBURN: All right.  
17 Thank you. We'll resume now that we have a new  
18 tape in the recorder's machine.

19 Mr. Healy, if -- your rebuttal.

20 MR. HEALY: Thank you. Ladies and  
21 gentlemen, I will be brief.

22 First, there is more to this case than  
23 just the April 19th, 2011 letter that Mr. Hicks

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1 says triggered this event. That is the letter  
2 from Mark Orr, Shop Chairman. It should be  
3 pointed out there were other letters that were

4 given to Terry Lymon after that time, giving  
5 Mr. Lymon at least the specter of hope that he  
6 would have his grievance fairly adjudicated.

7 Another letter came in from Amy Richardson  
8 on July 6, 2011. A letter came from Amy  
9 Richardson on June 24th, 2011. Mr. Lymon was  
10 told that he would be given an opportunity to  
11 have his grievance heard by the Public Review  
12 Board, and it eventually was.

13 But to nobody's surprise, the only issue  
14 that was discussed had nothing to do with his  
15 grievance against the union -- against GM. It  
16 had to do only with the timeliness of his  
17 original decision, of the original grievance that  
18 was filed.

19 The Public Review Board made a decision  
20 December 17th, 2012, which was actually after the  
21 day -- after the time that the complaint of  
22 discrimination was filed by Lymon, which says  
23 that, frankly, Lymon was guilty of not filing his

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1 grievance on time. There was no statement, there  
2 was no adjudication as to anything that happened  
3 between himself and the union and GM. That's all  
4 he wanted. He wanted to have a fair adjudication  
5 of that.

6 Instead, what -- everything that the union  
7 did, everything that the International did, was  
8 to stop him from having his day in court. The

9 inquiry, according to the Public Review Board,  
10 was not sufficient to restart the clock on  
11 Lymon's appeal rights after seven years of  
12 silence. In other words, they're blaming Terry  
13 Lymon for the failure of the Local Union to  
14 notify Mr. Lymon of his appeal rights.

15 This is patently unfair. Mr. Lymon should  
16 not be punished because he took steps with the  
17 Local Union to get his grievance reinstated. He  
18 wanted to get a hearing on the merits. You'll  
19 note that the Public Review International Union  
20 calls this the Appeal of Terry Lymon, Appellant,  
21 versus Local Union 2209, UAW Roanoke.

22 We believe that the -- although the  
23 International Union is not a party to this

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1 matter, they pretty much were sleeping in the  
2 same bed, because all of the other letters to  
3 Mr. Lymon dismissing his appeals came from the  
4 Local Union.

5 As late as October 10th, 2011, we have a  
6 letter, which is given to the Local from the  
7 International, saying, "You're requesting to  
8 appeal the Local Union's decision to deny your  
9 appeal due to finding it untimely. You'll be  
10 notified of your appeal."

11 We then have -- we then have a letter  
12 December 15th, 2011 from the International,  
13 "...to inform you that this has been assigned to

14 the Appeals Committee." Nowhere in any of these  
15 documents do we find any evidence that he was  
16 able to have his day in court, if you will, on  
17 the issue of his wrongful termination by General  
18 Motors. That's what he wanted.

19 The Respondent supports its claim that the  
20 allegations relate exclusively to the conduct of  
21 the union by arguing it didn't engage in  
22 discriminatory practices. They attempt to  
23 distance themselves from one of the incidents

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1 contributing to the alleged unlawful practice.

2 First, it's assumed that their acts  
3 occurred on the -- March 22nd, 2012 are the only  
4 potential discriminatory incident in question,  
5 even though their actions are incremental and  
6 they are contributing to a systemic unlawful  
7 employment practice. It's stated that the courts  
8 found that systemic violations are actionable  
9 under Title 7, and that this was in fact a  
10 systemic action.

11 The Respondent also implies against  
12 complainant's complaint that its actions related  
13 to the International don't constitute actionable  
14 discrimination, but the local was consistently  
15 involved in these incidents comprising the  
16 unlawful practice.

17 They were consistently involved and  
18 actively opposing to Lymon in denial of

19 representation at every stage possible. So, it  
20 is properly named as a Respondent subject to  
21 complaints, complaint of discrimination. And  
22 under the relevant case law that I have cited,  
23 the courts have held a liberal view of systemic

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1 violations. They have allowed these acts to go  
2 back beyond a period of 180 days, or even 300  
3 days, to see where the origins of the  
4 discrimination took place.

5           But Terry Lymon did not do anything,  
6 anything, that would be considered to be untimely  
7 after the time that he found out that  
8 discrimination had taken place, after the time  
9 that he finally found out, after several years,  
10 that the union did not notify him of his  
11 grievance being withdrawn.

12           Any doubt as to the existence of a genuine  
13 issue of material fact needs to be gone, ruled  
14 upon against the moving party, in this case, the  
15 Respondent. It is the Complainant who should  
16 prevail on this particular motion.

17           Thank you.

18           CHAIRPERSON BLACKBURN: Thank you,  
19 Mr. Healy.

20           Mr. Hicks, do you have a rebuttal  
21 statement?

22           MR. HICKS: Yeah, and I'll try to  
23 make it as quick as possible, just as Mr. Healy

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1 did.

2           With respect to Mr. Healy's contention  
3 that the Local Union acted after early July 2011,  
4 again, that's just inconsistent with the record.  
5 Mr. Healy -- Mr. Lymon testified under oath that  
6 he knew that the Local Union wasn't taking any  
7 other action on his appeal after July 20 -- after  
8 early July 2011 at the latest, and he knew before  
9 that on his grievance.

10           Now, with respect to the Public Review  
11 Board, Mr. Healy acknowledged in his summary  
12 judgment brief that Mr. Lymon's appeal was denied  
13 on both procedural and substantive grounds by the  
14 Public Review Board. And I alluded to this  
15 earlier, but specifically the Public Review Board  
16 noted in its decision that Lymon insisted that  
17 there was no contact in 2007, and nothing in the  
18 record contradicts that assertion.

19           However, it was still not necessary to  
20 form -- to verify a formal notification date, the  
21 Public Review Board read, and that's because the  
22 time limits of the UAW appeals process begin to  
23 run from the time that the appellant reasonably

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1 should have become aware of the decision, and

2 they said on procedural grounds, Lymon knew or  
3 reasonably should have known that the Local Union  
4 was not pursuing his grievance before he made his  
5 inquiry in 2011.

6 They said in fact it's difficult to  
7 understand what relief Lymon is seeking. By his  
8 own account, his inquiry to Local 2209 about his  
9 grievance was triggered by a chance encounter  
10 with a former committee person, rather than a  
11 desire to be reinstated. The Public Review Board  
12 wrote, by 2011, Lymon had long since abandoned  
13 his employment at GM.

14 But more importantly, on substantive  
15 grounds, the Public Review Board found that  
16 nothing in the record supported a conclusion that  
17 Matthews or any other officer of the Local Union  
18 harbored any hostility towards Mr. Lymon or that  
19 it deliberately misled him about his right to  
20 appeal. In fact, Mr. Lymon, before his grievance  
21 was filed, had filed an internal appeal, in 2004.  
22 He was aware of the internal appeals process. He  
23 had already processed one at the time that his

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1 grievance was filed, well before it was  
2 withdrawn.

3 And going back to the Public Review Board  
4 decision, they said that "Nothing would be gained  
5 by reactivating his grievance," which is what he  
6 was seeking through the appeal. "We have

7 repeatedly upheld the union's conclusion that it  
8 could not achieve reinstatement of any employee  
9 through arbitration where the employee failed to  
10 respond to a five-day letter pursuant to  
11 paragraph 64(d) of the UAW-GM National Agreement  
12 or similar provisions."

13 And that's what Mr. Lymon did. The IME  
14 came in, it said that he could work, he never  
15 returned to work. There was nothing for the  
16 Local Union to do, and the independent Public  
17 Review Board upheld that. So, Mr. Lymon got his  
18 day in court, both procedurally and  
19 substantively.

20 And then just to close, you know, I had  
21 started going through the packet that Mr. Healy  
22 gave you. He cited -- he cited an individual  
23 named Mr. Ron Bond. Ron Bond has no knowledge of

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1 the facts underlying Mr. Lymon's complaint,  
2 number one.

3 Number two, Ron Bond never alleged that  
4 the Local Union discriminated against him. You  
5 can read his affidavit. It doesn't say that. It  
6 says that he had a grievance pending with a  
7 co-worker who he accused of discrimination, and  
8 the co-worker's grievance had been resolved and  
9 his was still pending. In fact, the Local Union  
10 had to represent both of those employees.

11 And I will add that the employee who was

12 accused of the vile racism that Mr. Bond accused  
13 him of was not a Local Union officer. Mr. Bond  
14 in fact sued that individual and GM in Federal  
15 Court, and the case number -- this is available  
16 in the public court -- public records, but he  
17 sued GM and the Local Union -- and he did not sue  
18 the Local Union on account of race.

19 MR. HEALY: Point of order. Is this  
20 a document that was put into the materials on  
21 your summary judgment?

22 MR. HICKS: No, the complaint is  
23 public record, and you're accusing --

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1 I mean if he's going to ask me, he's  
2 accusing the Local Union of discriminating  
3 against Mr. Bond, and I'm just telling you  
4 there's a public document out there that we can  
5 all access that says Mr. Bond sued GM and he sued  
6 the individual, and he didn't sue the Local  
7 Union.

8 MR. HEALY: That shouldn't be  
9 considered though, if it's outside of the scope  
10 of the pleadings that have been submitted.

11 MR. HICKS: Again, I ask that the  
12 Commission would take judicial notice if it needs  
13 to, but I can -- I'm happy to give the case  
14 number.

15 COMM. JACKSON: Madam Chair.

16 If we don't have it, it would be

17 considered hearsay, and we just -- it would just  
18 be your opinion. The same thing with --

19 MR. HICKS: Well, it's a public  
20 filing, so that's why I would ask that it be --

21 COMM. JACKSON: It may be a public  
22 filing, but we don't have it.

23 MR. HICKS: Okay. So, then I'll just

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1 rely on what Mr. Bond said. You can read his  
2 affidavit. He doesn't accuse the Local Union of  
3 committing discrimination, and he doesn't know  
4 anything about the facts underlying Mr. Lymon's  
5 complaint.

6 So, at the end of the day, they've cited  
7 one individual, one Caucasian individual, who  
8 they say got notice of the withdrawal of his  
9 grievance, and I just want to point out it's  
10 undisputed, the record is undisputed, that the  
11 individual who sent the notice was not a Local  
12 Union officer, it was an International Union  
13 officer. I'm specifically referring to the  
14 September 16th, 2011 letter.

15 In addition, this grievance not only was  
16 resolved by the International Union and not the  
17 Local Union, it was resolved some four years  
18 after Mr. Lymon's grievance was withdrawn. So,  
19 this Mr. Burget is not similarly situated at all  
20 to Mr. Lymon, and this one instance of the  
21 alleged notification does not show discrimination

22 by Mr. Matthews. Again, as the ALJ properly  
23 found, Mr. Matthews didn't notify anybody in

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1 writing about the resolution of grievances.

2 So, with that being said, I'll end my  
3 rebuttal. Thank you.

4 CHAIRPERSON BLACKBURN: Thank you,  
5 Mr. Hicks.

6 Commissioners, any questions that you have  
7 now that you want to address relative to your  
8 understanding of the issues presented, you may  
9 now ask the -- either attorney.

10 COMM. JACKSON: I have a question.  
11 You provided a Certified Mail receipt on  
12 Mr. Burget's issue. Is there a Certified Mail  
13 receipt on Mr. Lymon's case?

14 MR. HEALY: Not that I'm aware of --

15 MR. HICKS: No.

16 MR. HEALY: -- no.

17 COMM. JACKSON: And you say it was  
18 not filed in a timely manner?

19 MR. HICKS: Mr. Lymon's ICRC  
20 complaint we do contend was not filed in a timely  
21 manner, and it's undisputed that Mr. Lymon  
22 received the letter that's attached on --

23 COMM. JACKSON: So, you -- your --

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1 the Local Union sent the notification by  
2 Certified Mail?

3 MR. HICKS: To --

4 COMM. JACKSON: Mr. Lymon.

5 MR. HICKS: Can you just point out to  
6 me which document you're referring to,  
7 Commissioner?

8 COMM. JACKSON: I was just comparing  
9 Mr. Burget's information here. It looks like he  
10 got a Certified Mail receipt here.

11 MR. HICKS: Yeah, Mr. Lymon was  
12 notified in early July of 2011 by -- by Certified  
13 Mail, by Amy Richardson, and that's undisputed.  
14 That's in the record. That's in the transcript.

15 COMM. JACKSON: Where do you see it?

16 COMM. SLASH: Just a minute. I'm --

17 MR. HEALY: I didn't see that. I see  
18 a regular mail for July 6th.

19 MR. HICKS: He testified to it under  
20 oath. I mean I can pull the transcript if you  
21 guys would like.

22 COMM. SLASH: I just want to ask a  
23 question, Mr. Healy, in regard to the 180 and 300

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1 days. Can you give us a little bit more clarity  
2 around where you find that that's -- that that  
3 time is an acceptable time, or the variance?  
4 Because he is contesting that we are far beyond  
5 that and there's no way that the 300 is

6 acceptable. Can you give us any more clarity?

7 MR. HEALY: Well, he is correct  
8 regarding federal cases with it being 300 days,  
9 and under ICRC, the ICRL, the time period is 180  
10 days. What we are saying here is that regardless  
11 of what day you use, Mr. Lymon cannot be said to  
12 have an untimely complaint based upon the  
13 chronology of events that took place.

14 In the brief that I showed to you, there  
15 are cases, case after case after case, which says  
16 that there has to be a liberal interpretation as  
17 to what the proper statute of limitations is.  
18 You don't just look at one particular event, as  
19 Mr. Hicks has pointed out. You have to look at  
20 this holistically and see that although this  
21 began in 2004, there were still discriminatory  
22 acts taking place, we believe, by the Respondent  
23 as late as 2012.

‡

1 The Respondent opposed the Complainant's  
2 reinstatement at the Public Review Board hearing  
3 as late as 2012, which is the same year that the  
4 complaint was filed. There was a position  
5 statement to the International Union against the  
6 Complainant and evidence submitted on  
7 October 26th, 2011, which is certainly within the  
8 180-day window.

9 All we're saying is you can't just  
10 cherry-pick and decide which is a discriminatory

11 act and which isn't. You have to look at the  
12 entire panoply of events, of the unfortunate  
13 events, that occurred to Mr. Lymon.

14 The very fact that he didn't hear anything  
15 for four years from the Respondent Union should  
16 abrogate any arguments that the Respondent is  
17 making now that Mr. Lymon is untimely. It wasn't  
18 his fault. It was their fault that he did not  
19 get notification. He was supposed to get  
20 notified by Certified Mail.

21 If there was an error made, as he states,  
22 he also needs to know that Mr. Lymon was one of  
23 the very few African-Americans on that list, and

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1 the only one who was in danger of losing his job.  
2 So, this had a disparate impact upon an  
3 African-American such as this individual.

4 MR. LYMON: May I answer? I'm sorry.

5 CHAIRPERSON BLACKBURN: Do you have a  
6 question?

7 MR. LYMON: I wanted to answer  
8 Mr. Jackson's question regarding the Certified  
9 Letter that Jonathan Burget received. The letter  
10 that Jonathan Burget received was -- he received  
11 during the year that he was terminated, in  
12 October of 2011.

13 I was terminated July 28th, 2004. In 2004  
14 when I received the termination and they withdraw  
15 my grievance, I did not receive anything by --

16 via mail, Certified Mail or voice, telling me  
17 that it was withdrawn. When I learned about the  
18 procedure after speaking with one of the  
19 gentlemen that worked there, he explained to me  
20 about the process.

21 And then I called, and when I did call  
22 Mark Orr, he did go check to look for it, the  
23 Certified letter, and there was none. It wasn't

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1 sent, and that is when he sent me notification of  
2 the right -- my rights to appeal, which is what  
3 you have with -- which is Jonathan Burget's, and  
4 which he got right after he was terminated, and  
5 which I received four years later, and that was  
6 only after the remonstrations to Mark Orr in  
7 regards to what happened to it.

8 And as far as the grievance when it was  
9 written, it was written, and they just put my  
10 name on it and refused to put any information as  
11 to what it was, so I didn't know what -- if there  
12 was a grievance in place or not at the time.  
13 When I went to General Motors to try to inquire,  
14 I was marched off of the property by the  
15 security. When I went to the UAW Hall, they  
16 refused to talk with me.

17 So -- and the only time they wrote the  
18 grievance, three months, October 11th, I was  
19 terminated July 28th, they wrote the grievance  
20 for a 64(d) violation on October 11th, three

21 months after I was terminated, and that was only  
22 because I had vehemently protested to the  
23 International Union, and the International Union

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1 ordered them to write this grievance.

2 And that's when they called me in to the  
3 Union Hall and asked me to sign the grievance.  
4 And I asked them, "well, what is it going to be  
5 written for?" The refused to tell me. And so,  
6 that's -- later on I find out that it was written  
7 for paragraph violation of 64(d), in which I did  
8 go to work. I answered the five-day letter.

9 And the 43(b) letter, I was terminated  
10 based on 43(b), which is the IMO decision. well,  
11 the IMO said yes, that I could do the job. I was  
12 already terminated. I went to see the IMO on  
13 August 4th, and I was terminated August 2nd.

14 If you will look at the letter dated  
15 August 2nd, it shows -- it says that "You are --  
16 you violated your seniority by not showing up,"  
17 and it's based on my -- the paragraph 43(b), in  
18 which the management, if you look at the  
19 management statement on unadjusted grievances,  
20 they say that they upheld my termination based on  
21 paragraph 43, which is the IMO decision.

22 well, the IMO decision in the  
23 paragraph 43(b)(c) says that the IMO decision is

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1 binding by the GM, by the union, and by the  
2 Grievant, which was myself. If that was the  
3 case, then I was supposed to be sent a letter  
4 ordering me to come back to work. They never  
5 sent me a letter, because it's binding according  
6 to paragraph 43(b). It's binding.

7 So, General Motors violated paragraph 43  
8 of the National Agreement, and the UAW 2209  
9 allowed them to do that for refusing to send me a  
10 letter informing me to come back to work. They  
11 upheld the termination. If you will look at --

12 MR. HEALY: These.

13 MR. LYMON: -- management's statement  
14 of unadjusted grievance, it says that I was -- my  
15 termination was upheld based on paragraph 43(b).  
16 Second page, it says that "The outcome of the IMO  
17 found the Grievant able to perform his previously  
18 assigned operation. On August 2nd, the Grievant  
19 was sent a second 64(d) letter advising him that  
20 his seniority had been broken and instructing him  
21 to return to his badge."

22 Well, how could I be terminated based on  
23 43(b) and I hadn't seen these before -- the IMO

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1 until August 4th?

2 CHAIRPERSON BLACKBURN: I need to  
3 interrupt you --

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MR. LYMON: Sure.

CHAIRPERSON BLACKBURN: -- please,  
Mr. Lymon.

MR. LYMON: Yes, ma'am. I'm sorry.

CHAIRPERSON BLACKBURN: I have a  
concern that even though you have not cited or  
presented during your statements any new  
information regarding the case, I want to be sure  
that your comments will be taken in as being  
legitimate, and I think we should swear him in --

MR. LYMON: Yes, ma'am.

CHAIRPERSON BLACKBURN: -- so that  
these comments will be --

MR. LYMON: Yes, ma'am.

CHAIRPERSON BLACKBURN: -- included  
in the record.

MR. LYMON: Yes, ma'am.

CHAIRPERSON BLACKBURN: I do  
declare -- your name?

MR. LYMON: Terry Lymon.

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CHAIRPERSON BLACKBURN: I do declare.

MR. LYMON: I do declare.

CHAIRPERSON BLACKBURN: That the  
statements that I have made and am making.

MR. LYMON: The statements that I  
have made and are making.

CHAIRPERSON BLACKBURN: Are the  
truth.

9 MR. LYMON: Are the truth.  
10 CHAIRPERSON BLACKBURN: And the whole  
11 truth.  
12 MR. LYMON: And the whole truth.  
13 CHAIRPERSON BLACKBURN: Thank you.  
14 MR. LYMON: Thank you, ma'am.  
15 MR. HEALY: I think that what we're  
16 getting at here is that there was never a hearing  
17 on the merits of these claims. There was a  
18 hearing on the issue of whether his grievance was  
19 timely or not. That much we know.  
20 CHAIRPERSON BLACKBURN: Right.  
21 MR. HEALY: But we never got a  
22 decision rightly on the claim that he was  
23 grieving against in the first place.

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1 MR. HICKS: Can I just say two brief  
2 points?  
3 CHAIRPERSON BLACKBURN: Yes.  
4 MR. HICKS: Comm. Jackson, to your  
5 point, I just wanted to make it clear that  
6 page 75 and 76 of Mr. Lymon's deposition  
7 transcript, which should be in my tender of  
8 evidence, somewhere in those documents, he did in  
9 fact admit that the Richardson letter from  
10 July 2011, to your earlier question, came by  
11 certified mail. So, again, that should be in  
12 there. That is an undisputed fact.  
13 CHAIRPERSON BLACKBURN: That was

14 several years later; right?

15 MR. HICKS: That was -- well --

16 COMM. SLASH: Yeah.

17 MR. HICKS: -- yeah, that was under  
18 Richardson several years later.

19 And the second point I just wanted to  
20 make, I mean we -- you know, I've said this a  
21 couple of times, but I adamantly disagree that  
22 there was no substantive determination on  
23 Mr. Lymon's internal appeal. I made my point

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1 during the discussion, so I won't belabor it, but  
2 even in Mr. Healy's summary judgment response  
3 brief, he admits that Mr. Lymon's internal appeal  
4 was denied by the Public Review Board on  
5 procedural and substantive grounds.

6 So, he did get his -- he did get his day,  
7 and it may have been longer than maybe even it  
8 should have been, but he did get his day, and  
9 there isn't anything else to do.

10 MR. LYMON: Ma'am, ladies and  
11 gentlemen, there seems to be some -- it's being  
12 alleged that there is a dis -- that the UAW, the  
13 Local, and the International UAW is being  
14 bifurcated, they're being split. The  
15 International Agreement between General Motors  
16 and the International UAW is signed by the  
17 International Union.

18 Now, the Local Union is not incorporated.

19 The incorporation is the International Union, so  
20 they are all subsidiaries -- subsidiaries -- that  
21 operate under the umbrella of the International  
22 Union, which their laws, bylaws and the UAW  
23 Constitution they all are subject to.

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1 So, it was all constant, and that's why it  
2 was worded when I appealed to the Public Review  
3 Board that it was an incident with the Local  
4 Union and myself, because they are duly  
5 responsible.

6 And so, I just want to clarify that there  
7 is not a difference between the Local Union and  
8 the International Union, because the Local Union  
9 can't -- it's just like Wishard Hospital saying  
10 that the Cardiology Department and the Neurology  
11 Department are totally different. If that was  
12 the case, it would tie up our court system  
13 forever, because you would be suing the  
14 Cardiology Department, suing the Neurology  
15 Department, instead of just suing Wishard  
16 Hospital. And they are not incorporated;  
17 therefore, they can't be sued.

18 So, the umbrella, the corporation which  
19 they're operating under, is the entity which  
20 should be sued and which should be addressed with  
21 the issues, because they are a part of -- they're  
22 all the subsidiaries of that organization. And  
23 that's the point that I make. So, as to my

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1 continuing to appeal and appeal and appeal was  
2 all a part of the union. It was all one union.

3 CHAIRPERSON BLACKBURN: Are there  
4 other questions by --

5 MR. HICKS: If I may --

6 MR. HEALY: I need to say something,  
7 too. You mentioned the fact that this was  
8 decided on procedural and substantive grounds.  
9 There was no decision made on the grounds of his  
10 unlawful termination by GM. There may have been,  
11 and there was, a decision regarding the substance  
12 of the timeliness issue.

13 There was no decision from the Public  
14 Review Board, although Rick Isaacson says  
15 differently. He says that the PBR -- PRB decided  
16 his appeal on procedural and substantive grounds.  
17 That's only with respect to the timeliness issue,  
18 but it never got to any substantive issue  
19 regarding his original determination. That's the  
20 point I'm making.

21 MR. HICKS: Could I just make just  
22 two -- I'm sorry -- just two quick follow-up  
23 points?

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1 Number one, that's patently false, and I'm  
2 happy to give the Public Review Board decision to  
Page 70

3 you all to make copies. It's in the record. The  
4 Public Review Board decided substantively that  
5 the Local Union didn't do anything wrong with  
6 respect to Mr. Lymon's grievance, because there  
7 was no contractual merit to bring the grievance.

8 So, I wholeheartedly disagree with that.  
9 And again, Mr. Healy acknowledged it in his  
10 response brief. That's in this Public Review  
11 Board decision December 17th, 2012. It's at the  
12 very end, the last couple of pages.

13 And with respect to Mr. Lymon's contention  
14 that the International Union and the Local Union  
15 are all the same, well, I mean, number one, he  
16 testified otherwise during his deposition.  
17 During his deposition, he testified that he knew  
18 that they were separate entities, and he didn't  
19 name the International Union.

20 And his allegations are really only about  
21 the Local Union, because it's what the Local  
22 Union did on his grievance that the independent  
23 Public Review Board found. We argued this in our

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1 summary judgment brief. The Local Union has its  
2 own offices, it has its own address. Mr. Lymon  
3 knew that.

4 And the International Union has a separate  
5 office. They conduct their affairs separately.  
6 They are two separate entities. And quite  
7 frankly, at the end of the day it doesn't matter,

8 because Mr. Lymon's allegations are really all at  
9 the Local Union.

10 COMM. RAMOS: Madam Chair?

11 CHAIRPERSON BLACKBURN: Yes.

12 COMM. RAMOS: Our position is not to  
13 make a decision here who's right or wrong in this  
14 situation. Our position is to determine whether  
15 we want to approve or decline the request for  
16 summary judgment. I motion to decline the  
17 Respondent's request for summary judgment.

18 CHAIRPERSON BLACKBURN: Right.

19 COMM. RAMOS: We need a second to  
20 that.

21 CHAIRPERSON BLACKBURN: Any other  
22 questions or comments from Commissioners?

23 COMM. RAMOS: So, I will formally

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1 make the motion.

2 CHAIRPERSON BLACKBURN: Okay.

3 COMM. SLASH: I was going to say, can  
4 we hear a little bit more on -- can we hear a  
5 little bit more background on why you want to go  
6 that way?

7 COMM. RAMOS: Sure. Absolutely. I  
8 mean there's a lot of discussion on this or that.  
9 I mean I don't see anything that's conclusive on  
10 either side. They both seem to be foggy, and  
11 with the discussion between the two, on both  
12 parties, you know, both have positions that are,

13 you know, relatively clear on some sides, but  
14 together, I can't -- I couldn't come to a  
15 determination that either is right or wrong.

16 And that isn't our role as well. Is there  
17 fire? I don't know that there's fire, but I  
18 think there is smoke on Mr. Lymon's position that  
19 is enough for my side, anyway, to say that he at  
20 least deserves due justice or due process of law,  
21 to further the discussions, anyway, versus the  
22 summary judgment.

23 COMM. JACKSON: I second the motion.

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1 CHAIRPERSON BLACKBURN: Any other  
2 questions or comments?

3 COMM. HARRINGTON: Madam Chairman?

4 CHAIRPERSON BLACKBURN: Yes.

5 COMM. HARRINGTON: I have one  
6 question on the time line that I'm really  
7 struggling with. So, there's a date of 2004  
8 where a grievance was -- or a Certified letter.  
9 There was nothing until 2011 from -- from the  
10 Local Union to Mr. Lymon. Is that valid, that  
11 there -- because you said there was a letter, but  
12 it was not until seven years later.

13 MR. HICKS: The only written  
14 correspondence came in April of 2011.

15 COMM. HARRINGTON: And can you help  
16 me understand, for process -- from a processing  
17 point, should there have been some kind of

18 communication?

19 MR. HICKS: There's no -- there's  
20 no -- contrary to what Mr. Healy has argued,  
21 there's no policy that says that anyone has to  
22 get a written notice; okay? So, there is no  
23 rule.

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1 The undisputed record, which is what  
2 Judge Posey found in her decision, was that  
3 Mr. Matthews, who withdrew Mr. Lymon's grievance,  
4 did not provide anybody written notification of  
5 the resolution of their grievances. And he left  
6 in April of 2008, so at that time, he contends  
7 they talked, Mr. Lymon contends they didn't, and  
8 that's --

9 COMM. HARRINGTON: And that's still  
10 four years later?

11 MR. HICKS: Right.

12 COMM. HARRINGTON: But I'm -- so, the  
13 other examples that were brought forward, based  
14 on when individuals had issues that 180 days is  
15 the actual occurrence, we're dealing with a  
16 minimum of four-plus years later before there was  
17 any communication; correct?

18 MR. HICKS: (Nodded head yes.)

19 COMM. HARRINGTON: Okay. I just want  
20 to make sure I wasn't missing anything.

21 CHAIRPERSON BLACKBURN: Are you ready  
22 now, Commissioners?

23

COMM. LONG: I actually echo what I

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1 just heard, and from the administrative level,  
2 I'm also wondering when someone or -- yeah, what  
3 you say, someone complained about a pain or an  
4 injury at work and then cannot come to work. So,  
5 do we usually have -- or do you usually have more  
6 consistent kind of forum for finding of the  
7 problems, more talking, other than just the five  
8 days after, and then termination; right? And  
9 that's just something --

10 MR. HEALY: I'm sorry; who --

11 COMM. LONG: -- that I don't quite  
12 understand.

13 MR. HEALY: -- who are you addressing  
14 the question to?

15 MR. HICKS: Well, I'll answer it,  
16 because I know the answer. I mean Mr. Lymon was  
17 advised of the results of the independent medical  
18 exam. So, he was consulted in connection with  
19 GM's position that GM was terminating him because  
20 he had not returned to work. The Local Union  
21 invoked the procedure under the contract that  
22 allowed for the independent medical exam.

23 The independent medical examiner

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1 determined that Mr. Lymon could not -- was able  
2 to perform the job. The Local officer told  
3 Mr. Lymon this, and Mr. Lymon acknowledged in his  
4 deposition he knew that that was the last  
5 decision with respect to whether he was medically  
6 able to perform the job that he disputed with GM.

7 MR. LYMON: That's not accurate.  
8 That's not accurate. The --

9 COMM. JACKSON: There's a motion on  
10 the floor, Madam Chair.

11 MR. LYMON: Oh, I'm sorry.

12 CHAIRPERSON BLACKBURN: Are there any  
13 other questions?

14 (No response.)

15 CHAIRPERSON BLACKBURN: Do you feel  
16 satisfied with your answer?

17 COMM. LONG: I would want to hear  
18 from you. I mean what happened after that, after  
19 you were not subjected -- okay.

20 MR. LYMON: As far as the 60 --  
21 paragraph 64(d) letter, when I sent -- I was sent  
22 the paragraph 64(d) letter July 21st, 2004. You  
23 have five business days to report to work. I

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1 reported to work July 28th, the fifth business  
2 day.

3 And the two ramifications for  
4 paragraph 64(d) under the International Agreement  
5 between General Motors and International is you

6 have two -- two ramifications set in the 64(d) to  
7 be satisfied when you come back. One is you go  
8 to the Personnel Department, and you must have a  
9 letter or a doctor's excuse that's legitimate for  
10 why you were gone; and two, you have to show up.

11           Once you meet these two ramifications of  
12 paragraph 64(d), it is settled. So, as far as  
13 the counsel saying that I did not satisfy  
14 paragraph 64(d) within the five days, I did.

15           Secondly, after I was -- my excuse was  
16 accepted by Personnel, I went to the Medical  
17 Department. That's where they refused to accept  
18 my doctor's restraints, and they put me on the  
19 same job. And then from there -- so, I was put  
20 on the same job, so that there proves that I  
21 satisfied paragraph 64(d), because I came to  
22 work. The problem came is when I -- I could not  
23 do the job. I was on the job for two and a half

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1 hours --

2           MR. HEALY: Excuse me.

3           MR. LYMON: I'm sorry.

4           MR. HEALY: May I also point out that  
5 the Respondent and General Motors jointly  
6 selected a physician. Mr. Lymon didn't select  
7 the physician. This was a physician that we  
8 believe was partial, not impartial, was already  
9 preferred by and associated with General Motors,  
10 and already predisposed regarding Complainant's

11 medical conditions, since Dr. Schreere previously  
12 examined Mr. Lymon regarding the same condition  
13 and judged him fit for work prior to the IMO.

14 Mr. Lymon was challenging that, and that  
15 is part and parcel of everything, the reason why  
16 he wanted to get the grievance stated, but the  
17 Respondent refused to write a grievance for  
18 complainant concerning the selection of the  
19 physician. This was in August of 2004, so this  
20 really does go back quite a distance.

21 CHAIRPERSON BLACKBURN: Thank you,  
22 Mr. Healy.

23 I think that our -- I would ask for a vote

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1 on the motion on the floor.

2 JUDGE BURKHARDT: Excuse me, and  
3 thank you so much. I would ask that -- because  
4 on the record in this case is a dispositive  
5 order, a granting of the motion for summary  
6 judgment. For our record, I would ask it be  
7 clear that what this vote is -- what disposition  
8 this vote represents; for example, whether this  
9 is a dissolving of the ALJ's order or an  
10 affirmation of it.

11 MR. HEALY: I think Mr. Ramos made  
12 that remark, that he was proposing that the  
13 summary judgment motion be denied.

14 COMM. RAMOS: Correct.

15 JUDGE BURKHARDT: which would be a

16 dissolving, to my understanding, of the ALJ's  
17 decision.

18 MR. HEALY: That's --

19 JUDGE BURKHARDT: I only ask that it  
20 be made clear whether this is a remand, a  
21 dissolve or an affirmation.

22 MR. HEALY: It should be remand.

23 COMM. RAMOS: The request is for a

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1 summary judgment, which ultimately dismisses the  
2 elements. And so, my formal motion is to decline  
3 that, so that it can be returned back to the  
4 process for due process. That is the intent of  
5 the motion.

6 CHAIRPERSON BLACKBURN: And we --

7 COMM. RAMOS: Now, whether I  
8 clarified that, I'm not sure.

9 JUDGE BURKHARDT: I understood.

10 CHAIRPERSON BLACKBURN: And we have a  
11 second. All in favor of that motion, please, can  
12 I hear by the sign of aye?

13 COMM. JACKSON: Aye.

14 COMM. HARRINGTON: Aye.

15 COMM. EDWARDS: Aye.

16 COMM. RAMOS: Aye.

17 COMM. LONG: Aye.

18 CHAIRPERSON BLACKBURN: Aye.

19 Anyone opposed?

20 COMM. SLASH: I'm going to oppose,

21 just because I hear it a little differently, and  
22 I just want to go on the record with that.

23 CHAIRPERSON BLACKBURN: All right. I

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1 think the motion carries. Thank you very much.  
2 I want to thank all of you for participating in  
3 the hearing. You will certainly be apprised of  
4 any actions moving forward.

5 MR. HICKS: Thank you.

6 MR. HEALY: Thank you.

7 JUDGE BURKHARDT: So, in preparation  
8 for the order to reflect the vote, should that  
9 order state that this dissolves the granting of  
10 the motion for summary judgment? Is that what  
11 this vote was about?

12 COMM. RAMOS: Yes.

13 JUDGE BURKHARDT: Thank you.

14 MR. HICKS: Thank you.

15 CHAIRPERSON BLACKBURN: Thank you.

16 (Discussion off the record.)

17 JUDGE BURKHARDT: It looks like we  
18 will make the 3:00 o'clock if we --

19 COMM. JACKSON: If we go ahead?

20 JUDGE BURKHARDT: Yes.

21 CHAIRPERSON BLACKBURN: Okay.

22 Returning to business, ladies and gentlemen, you  
23 have the Nominations Report, and how do you want

1 us to handle it?

2 JUDGE BURKHARDT: Sure. So, Anehita,  
3 I believe, will be back to take care of this as  
4 Docket Clerk, but I will step in just until she  
5 returns. So, as you have the nominations, a  
6 consolidation of the nominations she received  
7 from Commissioners, please constitute that in the  
8 announcement of the nominations.

9 And then beginning with the election of  
10 Chair, as you'll see the nominations there, I  
11 would ask that any other nominations you would  
12 like added on your sheet to be made orally, and  
13 then we can notate that before the vote. So, are  
14 there any other nominations anyone would like to  
15 submit now for the Chair?

16 COMM. JACKSON: I would like to  
17 submit a withdrawal, and that is my name. I  
18 appreciate the nomination, I really appreciate  
19 it, but I have so many different things that I'm  
20 responsible for that I wouldn't be able to  
21 efficiently serve in that capacity.

22 Case in point, I got here a few hours  
23 early, because I thought we were supposed to

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1 meet, and I'm in the midst of having an  
2 administrative change at my ministry and school,  
3 and so, I was here three hours early. So, I  
4 wouldn't want to accept that responsibility and

5 add something else to what I already have with my  
6 responsibilities.

7 And again, I really appreciate it, but I  
8 have a radio -- a weekly radio show, a television  
9 show, I'm lead pastor, father, grandfather.

10 COMM. SLASH: Might be busy going  
11 into the weekends?

12 COMM. JACKSON: Yeah. So -- and this  
13 responsibility requires -- just in the time I've  
14 been here, it requires not just a brief brushing  
15 of things, you have to really be involved.

16 JUDGE BURKHARDT: Then please note on  
17 your nomination form the declination of  
18 Comm. Jackson's nomination. So, are there any  
19 other nominations, any more you would like to add  
20 to your list for chair?

21 (No response.)

22 JUDGE BURKHARDT: If not, then now  
23 would be the opportunity for any other remaining

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1 nominees to accept or decline as they wish, so --  
2 or provide any comment to supplement their own  
3 nomination. So, anyone wish to accept or decline  
4 their nomination for chair?

5 COMM. SLASH: I'd just say, you know,  
6 whoever did this to me, I appreciate your vote of  
7 confidence is my only statement.

8 JUDGE BURKHARDT: All right. I take  
9 that as an acceptance.

10 COMM. SLASH: That's an acceptance --

11 JUDGE BURKHARDT: Okay.

12 COMM. SLASH: -- and an appreciation  
13 of a vote of confidence.

14 JUDGE BURKHARDT: Understood. All  
15 right.

16 Are there any other declinations of  
17 nomination to note?

18 (No response.)

19 JUDGE BURKHARDT: If not, then before  
20 the vote, then, it's your opportunity for  
21 discussion or Q&A as to --

22 COMM. HARRINGTON: And I called in  
23 and I asked -- and I'm the new person. Is

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1 there -- is it possible to talk about what the  
2 responsibilities are for the Chair, just so we  
3 know. I know we provided resumes, but is there a  
4 way to get clarity on what's the responsi -- we  
5 can see what takes place here, but I just don't  
6 know what all is involved. It would just be a  
7 bit helpful to better understand that, so --

8 COMM. JACKSON: Job description.

9 COMM. HARRINGTON: Uh-huh, that's  
10 what I asked for.

11 JUDGE BURKHARDT: Yeah. Well, yeah.

12 I know you have capable voices to answer that  
13 question, so I will defer, other than to point  
14 out that there's duties listed in the statute, so

15 as to the job description, essentially. But --

16 CHAIRPERSON BLACKBURN: Well, the  
17 duties vary from time to time. It's not so  
18 onerous that you probably couldn't do it, in  
19 light of the diligence that you've shown so far,  
20 and I didn't see your resume, but I know that you  
21 could do it. You know, I think that it's not so  
22 complicated and onerous that any one of us  
23 couldn't perform as Chair.

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1 From time to time it becomes necessary to  
2 sign subpoenas, a whole big stack of them,  
3 perhaps, but those kinds of things are not  
4 routine. Conducting the meetings and having a  
5 good communication with John and Doneisha and the  
6 staff is helpful.

7 You have -- most of you've been here long  
8 enough to see that we do on occasion have the  
9 public here, who want, deserve, and should have  
10 an opportunity for public comment. Dealing with  
11 them in a polite and professional way is helpful.  
12 But all of you know how to do that. Everybody  
13 knows how to do that. I think that it's not that  
14 hard or that deep.

15 MS. POSEY: If I may just add a  
16 little bit. If there are oral arguments or if  
17 the Commission is conducting a hearing instead of  
18 the Administrative Law Judge, then the Chair  
19 would -- could swear in the witness, or you could

20 even have the court reporter swear in the  
21 witness. You would, like she said, conduct the  
22 hearings and conduct the meetings that we have.

23 If I call and say, "Hey, we have a

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1 precause matter that needs the Commission's  
2 attention," we need an answer today, that perhaps  
3 the attorney on the respondent's side wants an  
4 extension of time, and that is a precause matter  
5 that the Administrative Law Judge has not been  
6 appointed to deal with, so I would call you up  
7 and say, "Hey, I need an answer. You know, they  
8 asked for an extension. Today's the last day."  
9 You know, you would have to be able to step up  
10 for those types of things. That doesn't happen  
11 often, but, you know, that is something that  
12 could happen, and represent, you know, the agency  
13 as you all do as Commissioners.

14 COMM. RAMOS: When I --

15 CHAIRPERSON BLACKBURN: I would, too.

16 COMM. RAMOS: If I could add, Madam  
17 Chair.

18 CHAIRPERSON BLACKBURN: Please.

19 COMM. RAMOS: I mean we have a  
20 responsibility as the Commission that impacts the  
21 events of the day, and so if there are issues  
22 that we need to move forward from a legislative  
23 standpoint, that's a part of our responsibility.

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1 CHAIRPERSON BLACKBURN: Right.

2 COMM. RAMOS: And then -- and that we  
3 don't take lightly at all. And you briefly  
4 touched on it, but there are opportunities in the  
5 community where they do request the presence of  
6 the head of the Indiana Civil Rights Commission,  
7 and I know that, Alpha, you've been very active  
8 and very vocal and an excellent representative of  
9 this Commission.

10 CHAIRPERSON BLACKBURN: Thank you.

11 well, I think that -- thank you for that.  
12 Those of you new to the Commission may not know  
13 that I have been appointed by not one Governor,  
14 but six. I think it speaks to my ability to not  
15 put my partisan interests, whatever they are,  
16 ahead of the interests of the people.

17 JUDGE BURKHARDT: All right. Unless  
18 there's any other discussion, you have your  
19 little election form to use. If you'd pass that  
20 down, then that'll itself just become the record.

21 COMM. JACKSON: This thing?

22 JUDGE BURKHARDT: That. So, that --  
23 those are your nominations. That itself will be

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1 the ballot, so if you would please put your  
2 initials next to your selection, then by the time

3 it gets to the end, then we'll have the vote.

4                   COMM. JACKSON: I do have a question.  
5 When we have public people in here like that, why  
6 don't we have security?

7                   JUDGE BURKHARDT: That's absolutely  
8 within the discretion of the Commission to --

9                   COMM. JACKSON: Huh?

10                  JUDGE BURKHARDT: I've not heard the  
11 Commission mention that before. I would say it's  
12 absolutely within your discretion to bring that  
13 up and we can tend to that.

14                  COMM. JACKSON: Yeah. I mean, you  
15 know, had the decision gone a different way, and  
16 you've got a lot of passion, you know, I would  
17 just say that when we have public testimony, that  
18 we could have somebody, with the mood of the  
19 country and, you know, I'm just --

20                  JUDGE BURKHARDT: I appreciate that.

21                  COMM. JACKSON: You know, we don't  
22 have any exits here.

23                  JUDGE BURKHARDT: Point taken.

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1                   COMM. SLASH: I mean it's a great  
2 question, because the man that we had here a  
3 couple of months ago, I did call ahead, because  
4 based off of the documents I had, I felt like  
5 that could have gone another way.

6                   JUDGE BURKHARDT: So good to hear.

7                   COMM. JACKSON: It's just a matter of

8 responsibility. You don't think about it until  
9 you need to think about it.

10 JUDGE BURKHARDT: Thank you. Duly  
11 noted as a first priority.

12 COMM. SLASH: What happened to your  
13 pen? I was going to say, you had a pen.

14 COMM. JACKSON: It's right here.

15 JUDGE BURKHARDT: Thank you.

16 COMM. HARRINGTON: And, you know, I'm  
17 a nerve process person. Just -- you know, we  
18 went through a quick orientation. Is there any  
19 kind of guidelines just for us for meetings, or  
20 is it just best that I sit with someone just to  
21 kind of better understand? And, you know,  
22 looking at the case, you look at a lot.

23 I looked at some of the other ones, but to

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1 even have the opportunity to talk to somebody  
2 else as they're going through, because this is a  
3 pretty serious matter. Are we open to that? You  
4 know, the case I had was one with -- that still  
5 was going to move forward, and they found a  
6 reason to do that, but when we're just doing the  
7 opposite, it's kind of nice to maybe be able to  
8 talk to someone about it. And is everybody  
9 reading all of the cases? That's -- I mean  
10 there's just a lot I don't --

11 COMM. EDWARDS: Yes, we're supposed  
12 to.

13 CHAIRPERSON BLACKBURN: We're  
14 supposed to read all of the cases, which is why  
15 they are on-line and included in your booklet, so  
16 if you would want to arrive early or come down  
17 here to actually read through them, you can do  
18 that.

19 I think over the years we have kind of  
20 relied on the Commissioners to carry their own  
21 weight, so to speak, and I ask for the acceptance  
22 of your recommendation when you have reached a  
23 conclusion on appeals, for example, but actually,

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1 each one of us has a responsibility for their  
2 own, primarily.

3 COMM. HARRINGTON: Uh-huh.

4 CHAIRPERSON BLACKBURN: And then to  
5 familiarize yourself with the rest of the cases.

6 COMM. SLASH: And I would like to  
7 ask: Isn't this a conversation for the --

8 MS. GORDON: And we're going to have  
9 training.

10 COMM. SLASH: -- training we're  
11 having right after this?

12 MS. GORDON: Right.

13 CHAIRPERSON BLACKBURN: I think  
14 you'll feel more comfortable after the training.

15 COMM. HARRINGTON: Well, prior to  
16 then going through elections, just understanding  
17 what's all -- this is very awkward for me to vote

18 when you don't know who's doing what. You don't  
19 know who's interested and who's, you know, not.  
20 You give people an opportunity to accept or  
21 decline, but I'd like to know: Do you want to do  
22 this, and if so, why?

23 So, I kind of have an understanding. So,

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1 that's -- just seeking some dialogue, because for  
2 some of you, I know, and for others, I've never  
3 seen you before, so just -- I take matters of  
4 that kind of seriously, and understanding and --

5 But on that, I know we'll probably get it  
6 in the training. It is fair if I read someone  
7 else's -- someone else's case and I have an issue  
8 with it that I don't get or I don't understand,  
9 it's okay to call and just say, "When I was going  
10 through it, this hit me a certain way," or to  
11 have dialogue about it?

12 JUDGE BURKHARDT: In fact, the law  
13 speaks specifically to your point, stating that  
14 in the event that a reviewing Commissioner makes  
15 a recommendation of upholding no cause, quote,  
16 the Commission shall consider only evidence  
17 submitted to that reviewing Commissioner in  
18 ruling on an appeal. So, it explicitly mentions  
19 that that appeal packet given to the reviewing  
20 Commissioner is also your resource when you make  
21 your vote, so --

22 COMM. HARRINGTON: Okay.

1 thing is that we don't have to do the  
2 investigation.

3 COMM. HARRINGTON: Uh-huh.

4 CHAIRPERSON BLACKBURN: But where you  
5 see it may be lacking, where you see it may have  
6 been done too hastily, in your opinion, or  
7 anything of that nature, you have an opportunity  
8 to send it back for further investigation.

9 COMM. HARRINGTON: Okay.

10 COMM. LONG: And I --

11 COMM. RAMOS: You can also contact  
12 the Deputy Director or the --

13 MS. POSEY: Right.

14 COMM. RAMOS: -- Executive Director  
15 with questions that you have any time, because  
16 they're very helpful and very knowledgeable,  
17 and --

18 COMM. SLASH: I call them often.

19 COMM. RAMOS: -- you shouldn't  
20 hesitate.

21 COMM. HARRINGTON: You call them? I  
22 call John often.

23 COMM. SLASH: As I say, I call them

1 often.

2 MS. POSEY: Well, I mean if I may,  
3 the notice of appeal -- or I'm sorry -- the  
4 notice of findings are all of the appeals that  
5 you guys are given, and those are all my  
6 decisions to find no probable cause or no  
7 reasonable cause in each of those situations.

8 So -- and we'll talk about this during the  
9 training, but so that you can see the life cycle  
10 of a case to see how it got to where it is and  
11 who is the person making those decisions so that  
12 you can have a better idea of who to contact and  
13 kind of why the decision was made either way.  
14 So --

15 JUDGE BURKHARDT: Okay. So, we have  
16 your results here. We have three votes for  
17 Chairperson Blackburn and four for Adrienne  
18 slash, so --

19 CHAIRPERSON BLACKBURN: Adrienne.

20 COMM. EDWARDS: Congratulations.

21 MS. POSEY: Congratulations. Wow.

22 COMM. LONG: Congratulations.

23 JUDGE BURKHARDT: And then for the

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1 election of Vice-Chair we'll do the same process,  
2 so any other nominations that you'd like to add  
3 to your list?

4 (No response.)

5 JUDGE BURKHARDT: If not, then now  
6 would be the opportunity for our current

7 nominees, which you have listed on your report,  
8 to accept or decline or make any other comment  
9 that they please.

10           COMM. RAMOS: I accept the position,  
11 and, you know, will look to serve it to the best  
12 interests of the State of Indiana.

13           COMM. HARRINGTON: Similar, I -- I  
14 don't know what I don't know, so I'm just being  
15 transparent. I accept, but I would need a lot of  
16 help, because I would want to represent well.  
17 So, I don't know who did it, but again, I  
18 appreciate the vote of confidence, but I'm also  
19 very honest, and I'm learning, so --

20           JUDGE BURKHARDT: Okay.

21           COMM. JACKSON: All of us are.

22           JUDGE BURKHARDT: Is there one more  
23 candidate out there?

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1           (No response.)

2           JUDGE BURKHARDT: Okay. All right.  
3 So, if there's no further discussion or Q&A for  
4 each other, I'll just pass this around, as I did  
5 previously, and have your votes, and then after  
6 that, everybody's -- we've had some robust  
7 discussion, and I think that'll lead really well  
8 into the training.

9           (Discussion off the record.)

10           COMM. EDWARDS: You know, after the  
11 vote, may we have a stretch?

12 JUDGE BURKHARDT: Absolutely.

13 COMM. EDWARDS: Okay.

14 JUDGE BURKHARDT: All right. Cool.

15 So, it looks like we have, for Holly Harrington,  
16 one, two -- not everybody's handwriting is that  
17 great, I'll say -- one, two, three, four votes.  
18 For Vice-Chair Ramos, one, two, three votes. So,  
19 Holly Harrington, then. Okay. We have that on  
20 record.

21 As far as the conclusion of this meeting  
22 moving into our break, there were a couple of  
23 quick announcements to make with respect to cases

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1 you have already touched, and in fact, they --  
2 let's see where I have those. Where's my files?  
3 We have for you the -- I'm sorry.

4 MS. POSEY: Can we adjourn for the  
5 court reporter to be done so we can -- adjourn  
6 the business, the public meeting?

7 JUDGE BURKHARDT: Can we what?

8 MS. POSEY: Adjourn the business.

9 JUDGE BURKHARDT: Well, I  
10 contemplated the court reporter -- for training.

11 (Discussion off the record.)

12 CHAIRPERSON BLACKBURN: Is there  
13 something you need to --

14 JUDGE BURKHARDT: I will report  
15 directly to you. So, it's not an urgent matter,  
16 but I did want to report that in two cases you've

17 touched, the Court of Appeals has returned a  
18 decision. In the Baker v. Roman Marblene case,  
19 which you'll recall, and then just recently, this  
20 week, I believe, in the Cope Davis v. KCARC case,  
21 and most recently, Attorney Healy was assigned to  
22 both of those cases.

23 And in the Cope Davis case, with its

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1 recent opinion, the Court of Appeals noted that  
2 it agreed with the Commission in liability, did  
3 not seek to overturn that or remand the issue of  
4 liability in favor of Complainant, but then did  
5 reduce the amount of damages awarded, and did  
6 remand that issue back to the Civil Rights  
7 Commission to issue its order of a recalculated  
8 amount of damages, which the agency is in the  
9 process of addressing for your vote at the next  
10 meeting.

11 CHAIRPERSON BLACKBURN: Okay.

12 MS. POSEY: So, if I may just give  
13 you a brief synopsis --

14 CHAIRPERSON BLACKBURN: Yes.

15 MS. POSEY: -- of this case, Melissa  
16 Cope Davis -- it's an employment case based on  
17 disability. Melissa Cope Davis worked for the  
18 Respondent. She had -- she fainted at work. She  
19 was unconscious at work. She ended up going to  
20 the doctor. The doctor diagnosed her with  
21 something called syncope disorder. She goes back

22 to work. They say, "You're not coming back yet,"  
23 they go through that ordeal.

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1 At the end, she was terminated. She filed  
2 a complaint, it went through litigation. The ALJ  
3 in the matter proposed that Ms. Cope Davis should  
4 prevail on the discrimination claim, and that  
5 when deciding her back wages, so if she was  
6 terminated on Day 1, it wasn't until Day -- well,  
7 I'll just say 400 that she received a new job  
8 that was comparable in salary.

9 So, what -- and then in between that time,  
10 she had two or three other jobs that she worked,  
11 whether she was terminated or she left those  
12 jobs, so in the calculation, it was the total  
13 amount of time minus those two or three jobs that  
14 she had in between, how much she made during  
15 those jobs.

16 And so, the ALJ found there was about  
17 \$25,000 in back wages that she should receive,  
18 plus the compounded interest, that came up to  
19 about 35,000 after it was said and done.

20 So, the Court of Appeals affirmed the  
21 Commission's decision that syncope is a  
22 disability contemplated under the law, which was  
23 the issue going up to the Court of Appeals, that

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1 she was not disabled, but the Court of Appeals  
2 said at that first job that she got that she was  
3 terminated from, that should be where her damages  
4 end.

5 Therefore, when we calculate, instead of  
6 about 25,000, it's about \$6200 in back pay, and  
7 that ICRC needs to recalculate that compounded  
8 interest at that \$6200 level and not the \$25,000  
9 level.

10 So, what this means is it comes back to  
11 you to only recalculate the compounded interest,  
12 so at the next Commission meeting, I will have  
13 for you the recalculation and a new order for you  
14 all to vote on at the new -- calculated at the  
15 \$6200.

16 CHAIRPERSON BLACKBURN: Everybody  
17 understand?

18 COMM. RAMOS: Yeah. A question for  
19 Judge Burkhardt.

20 The timeliness, is that effective  
21 immediately on the change -- because you didn't  
22 really discuss that -- or is that finished at a  
23 year? When is the effectiveness of the new

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1 appointees?

2 JUDGE BURKHARDT: Oh, yes. So, on  
3 the election, that is contemplated to be today.

4 COMM. RAMOS: Okay.

5 JUDGE BURKHARDT: Organizing upon the  
6 election of the Chair and Vice-Chair at its  
7 annual April meeting, so that would be today.

8 COMM. RAMOS: Okay.

9 CHAIRPERSON BLACKBURN: Well, I want  
10 to congratulate our new Chair and Vice-Chair, and  
11 thank you for making it through a long, grueling  
12 meeting today, and hearing. And are there any  
13 announcements?

14 COMM. RAMOS: Yes. In light of the  
15 Chair Blackburn's outstanding contributions to  
16 this Commission, I would recommend that a  
17 subsequent event or a special event be held in  
18 her honor, because her service has just been  
19 phenomenal and it should not go unnoticed or  
20 unnoted. I mean I would invite the Governor, but  
21 I'm biased, because it really is -- you know, six  
22 Governors, that's really great, my opinion.

23 COMM. SLASH: I would agree with

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1 that.

2 COMM. JACKSON: I second that.

3 CHAIRPERSON BLACKBURN: Thank you.

4 COMM. RAMOS: You're welcome.

5 JUDGE BURKHARDT: We can go into  
6 break.

7 CHAIRPERSON BLACKBURN: The meeting  
8 is adjourned.

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CRC 4-20-18  
April 20, 2018 were concluded  
at 3:13 o'clock p.m.  
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CERTIFICATE

I, Lindy L. Meyer, Jr., the undersigned  
Court Reporter and Notary Public residing in the  
City of Shelbyville, Shelby County, Indiana, do  
hereby certify that the foregoing is a true and  
correct transcript of the proceedings taken by me  
on Friday, April 20, 2018 in this matter and  
transcribed by me.

\_\_\_\_\_  
Lindy L. Meyer, Jr.,  
Notary Public in and  
for the State of Indiana.

CRC 4-20-18

15 My Commission expires August 26, 2024.

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