

VOLUNTARY LABOR ARBITRATION

IN THE MATTER OF THE ARBITRATION BETWEEN:

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA – UAW

RE: UAW/FORD EQUITY OF
SACRIFICE GRIEVANCE

AND

FORD MOTOR COMPANY

ARBITRATION OPINION AND AWARD

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July 19, 2012

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This Arbitration took place on the dates of November 17, 18 and 25, 2011 and March 9 and April 5, 2012 at the UAW-FORD National Program Center on West Jefferson Avenue, Detroit, Michigan. The UAW was represented by General Counsel Michael Nicholson, Attorney Samuel C. McKnight and Associate General Counsel William Karges. Union witnesses: Mr. Bob King, President, International Union, UAW, Mr. Jeff Bokho, UAW CPA, Mr. Charles Browning, Administrative Assistant to Mr. King, Ms. Wendy Fields, Executive Assistant to Mr. King and Mr. Robert Sciotti, International Union, UAW Financial Analyst, CPA. Ford Motor Company was represented by Attorney Thomas G. Kienbaum, Ford Counsel Steve Kulp and Attorney Theodore R. Opperwall. Ford witnesses: Mr. Joseph R. Hinrichs, President, Ford Asia, Pacific and Africa and Mr. Marty Mulloy, Vice President, Labor Affairs. The Hearing was concluded on April 5, 2012.

Pursuant to the receipt of the Transcript and Post-Hearing Briefs, this Arbitration Opinion and Award is rendered.

FACTS

THE GRIEVANCE

On February 12, 2010, the International Union, UAW filed the instant Policy grievance alleging that Ford Motor Company violated the “Equality of Sacrifice” statement embodied in the 2007 collective bargaining Agreement between the parties (Volume IV, page 438) and the “Equity of Sacrifice” commitments contained in the 2009 modifications to the 2007 CBA (Union Exhibit #14). The UAW asserts in this grievance that these alleged violations occurred because Ford granted merit increases and a partial 401K match to its salaried employees in 2010 (see Union Statement of Facts – Joint Exhibit #3).

The grievance requests that Ford retroactively reinstate compensation and benefit modifications to the 2007 CBA for all UAW hourly bargaining unit members at all UAW-Ford represented facilities “comparable to the announced compensation and benefits restored to non-represented salaried employees or immediately rescind merit incenses, 401K matching contributions and any other increases restored to salaried employees . . . and make hourly employees whole. . . .” This requested Remedy is delineated in the UAW’s Pre-Hearing Brief which was further expanded upon at pages 25–27 of its Post-Hearing Brief.

The grievance was denied at the early steps of the Grievance Procedure. Ford's Arbitration Director John Wright affirmed the denial on September 17, 2010 (see Company Statement of Fact and Position – Joint Exhibit #3).

The UAW appealed and this case was brought on for Arbitration on November 17, 2011.

BACKGROUND

By the end of 2008, the American auto industry was in dire straits. In the face of the pending global banking and financial crisis, Chrysler and GM applied to the Government for bailouts in order to survive “the catastrophic circumstances never seen before in the industry” (Employer Exhibit #14). Ford was able to obtain a \$25 billion credit line from private markets and decided to embark upon its own restructuring plan towards renewed profitability without a Government loan. The plan involved sacrifices by all stakeholders – senior management, the salaried workforce, bond holders and creditors, Dealers, suppliers and the UAW hourly membership. To this end, Ford's Group Vice-President of Global Manufacturing and Labor Relations Joe Hinrichs on January 24, 2009, wrote to the UAW's leadership with a proposal to negotiate hourly workforce concessions (Employer Exhibit #1).

In the above referenced e-mail, Mr. Hinrichs advised that Ford was currently working on its debt restructuring which included reducing costs; the number of Dealerships and was studying its supply base. Then this: “And we have taken very decisive and

difficult actions in regards to our salaried employees, including many takeaways and involuntary separations.” Mr. Hinrichs therein enumerated cost-savings restructuring plans on VEBA, on manufacturing; the Job Security Program/SUB, Relief Time, COLA, Life Insurance and Vacation and in other areas, stating that there would be no salaried merit increases in 2009. *Id.*

In a follow-up e-mail to UAW President Ron Gettelfinger and then Vice-President Bob King, Mr. Hinrichs stated that it would benefit the UAW and Ford to be the first to reach agreement on concessions that Washington was recommending for GM and Chrysler thereby setting a pattern for successful negotiations for all three (3) companies. He indicted that such a course could reduce pressure from Washington on the UAW and place it on GM and Chrysler in the event those companies balked at the concessions Ford had negotiated with the UAW. *Id.* (TR. 271–272).

The UAW was at this time cognizant that for mutual survival, it would be necessary to make significant concessions to Ford, GM and Chrysler as denoted in its December 2008/January 2009 internal negotiations work sheet (Union Exhibit #4). In that document under the caption of “*Quid Pro Quo – the Company Must*”, the UAW listed a number of bargaining requirements including “Establish measurable equity of sacrifices of all stakeholders.” Further, there was a February 17, 2009 Congressional deadline for the Union to agree to concessions with GM and Chrysler both of which were demanding give-backs far in excess of those proposed by Congress (TR. 264–268; 271–272). In these circumstances, the UAW decided to pursue negotiations with Ford as opposed to

GM and/or Chrysler and therefore agreed on February 6, 2009 to commence restructuring negotiations on February 9, 2009 consistent with a responsive e-mail on that date from Messrs. Gettelfinger and King (Employer Exhibit #1, page 862; TR. 275).

In this e-mail, Mr. King pointed out that the UAW membership had already made concessions in 2005 and 2007 and that another round of sacrifices would be challenging to say the least – denoting that there would be an emotional reaction from the membership, particularly in the area of health care. Mr. King then listed the modifications necessary for ratification including a “Senior Executives Compensation LOU.” He confirmed that negotiations were to begin on February 9, 2009 (Employer Exhibit #1).

**NEGOTIATIONS – FEBRUARY 9–15, 2009/
MODIFICATIONS TO THE 2007 CBA**

Prior to the commencement of negotiations, the parties met at Solidarity House – Messrs. Gettelfinger, King, Hinrichs and Ford’s Vice-President of Labor Affairs Marty Mulloy. Mr. Hinrichs explained the give-back actions Ford had already taken with its salaried workforce. The Union leadership responded that in terms of “Equity of Sacrifice”, all stakeholders needed to be involved and that included Executives’ compensation. At this meeting, there were no specific discussions regarding “sacrifices” for Ford’s non-represented salaried employees (TR. 273–277). The UAW has not asserted to the contrary. Negotiations proceeded as planned on February 9, 2009 at Ford’s World Headquarters in Dearborn, Michigan.

As the February 9–15, 2009 negotiations are described, it will be necessary to refer to certain unrebutted testimony presented by Mr. Hinrichs as it relates to communications between the parties and to specific documents which resulted from these negotiations. The disposition in this case however, will be predicated on the totality of the evidence comprehending UAW testimony, all pertinent Ford testimony and the key documents in this record.

It has been established that two (2) days into negotiations, Mr. Hinrichs met with Ford's Board of Directors for the purpose of securing approval for reductions in CEO Alan Mulally's and the Board's compensation. UAW President Gettelfinger was adamant that concessions had to attach in these areas (TR. 151–152, 154; 273). Mr. Hinrichs testified that while the Board members addressed other cost-savings measures, they did not discuss the general salaried workforce; that he did not ask for nor did he have authority to make commitments regarding 2010 salaried compensation (TR. 273; 288–289; 301–302; 476). On February 13, 2009, the parties continued negotiations with not much progress.

On February 13, 2009, Mr. Hinrichs presented the UAW with a one (1) page confidential document entitled "Stakeholders Shared Sacrifices – BOD Plan", a document he had put together on his computer from internal information at his disposal (Union Exhibit #8; Employer Exhibit #22). This sheet was produced to demonstrate that Ford had a plan for profitability that could be achieved if all stakeholders sacrificed (TR. 289–295; 300–304). The categories enumerated in this BOD Plan were as follows: Salaried

Personnel/Compensation; Manufacturing, UAW Contract and Suppliers and Dealers calculated in millions/billions of dollars with total cost-savings figures for the years 2009, 2010, 2011, 2012 and 2013. Under the Heading of "Salaried Personnel/Compensation" the BOD Plan listed • Involuntary separation • No merits/401K/bonus • Health care/life insurance.

The BOD Plan comprehended target savings which Ford projected would be gleaned from these sacrifices. The above specified sacrifices by salaried personnel had already taken place. Other concessions listed were those Ford was hoping to obtain from stakeholders including the UAW (TR. 295–291; 451–452;486). Ford's Finance Department had not made Mr. Hinrichs privy to the underlying components or assumptions in these target numbers (TR. 301, 395–399; 491–497). Mr. King retained a copy of this document.

Mr. Hinrichs testified that when he presented the BOD Plan to the UAW bargaining team on February 13, 2009, no questions were raised or discussions broached relative to merit increases or a 401K match for Ford's salaried workforce in 2010; nor did he make any remarks about same for 2011 and that in any event, he lacked the authority to do so (TR. 296–301).

NEGOTIATIONS ARE CONCLUDED/AGREEMENTS

By Sunday, February 15, 2009, the "Equity of Sacrifice" language for the modifications to the 2007 CBA had been completed. That Saturday night into Sunday the

15th, Mr. King and Mr. Gettelfinger agreed to accept the salary reductions CEO Mulally and the Board of Directors had confirmed that they would undertake. The parties thereupon initialed an unpublished letter to that affect (Union Exhibit #11). This letter stated that the Board of Directors “has volunteered to take \$1 in cash compensation in 2009”; that “The Company’s CEO has volunteered to take a 30% salary reduction in 2009 and 2010.” Commensurately, the parties initialed another unpublished letter entitled “Executive Compensation and Benefits Letter” which enumerated actions Ford had already taken regarding the salaried workforce including involuntary terminations and health care cost-sharing. This document stated that Ford had (past tense emphasized) “Eliminated 2009 merit increases” and “Cancelled all bonuses to be paid in 2009 for all salaried employees.” Further, that Ford had “Suspended 401K match, tuition assistance and dependent scholarships” (Union Exhibit #9, V6) (TR. 66–68; 164–165; 433–434; 609–610). The document stated nothing regarding the year 2010.

On February 23, 2009, the parties signed another document entitled “Agreement between Ford Motor Company and the UAW” under the cover caption: Modifications to the UAW Ford 2007 National Agreement (Union Exhibit #14). This document constituted a collection of previously executed letters and a compilation of documents on a variety of subjects such as the VEBA Term Sheet. It also contained the “Equity of Sacrifice” V4 letter (page 13) initialed by Mr. King and Mr. Hinrichs on February 15, 2009 and the “Executive Compensation and Benefits Letter” initialed by the parties on the same date (V6, page IU). The February 23, 2010 Agreement language also confirmed

that the suspension of hourly compensation and benefits and other amendments as set forth in four (4) "Memorandums of Understanding", would remain in effect until the 2007 CBA expired in 2011.

UAW TESTIMONY

Mr. King was queried on all pertinent negotiations-related documents , to wit: the UAW's "Tracking" sheets, a UAW listing of negotiations objectives dated February 11, 2009, a document reciting UAW/Ford Proposals, the Executive Compensation and Benefits Letter dated February 15, 2009 (V6), the Equity of Sacrifice Letter dated February 14, 2009 (V4), the CEO and BOD Shared Sacrifice Letter dated February 15, 2009 (V2), the VEBA Agreement publication, the Agreement between Ford and the UAW dated February 23, 2009, the Ford Business Plan Submitted to the Senate Banking Committee dated December 2, 2008 and other material (Union Exhibits #5, 6, 7, 9, 10, 11, 13, 14, 18). Mr. King was not able to identify any language in these documents which stated that Ford had committed to forgo awarding merit increases and/or a 401K match to its salaried workforce in 2010.

Mr. King testified that he felt that Ford's Board of Directors' decision to award CEO Mulally bonuses in 2010 amounting to \$9,450,000.00 was unfair in the face of prior membership concessions (Union Exhibit #20); that while the bonuses did not violate the Equity of Sacrifice agreement(s), the Board of Directors' decision was a moral issue and usurped the "spirit" of the commitments which became the subject of many angry

complaints from the membership (TR. 151–154, 155, 156). Mr. King suggested that he had a verbal promise from Ford that it would suspend merit increases and a 401K match for its salaried workforce in 2010. However, this purported verbal promise was predicted upon his own assumptions (TR. 63–64; 164–167).

Mr. King acknowledged that the “highlights” message distributed to the UAW membership dated February 24, 2009 entitled “UAW Ford Modifications to 2007 Agreement and Addendum to VEBA Agreement” made no reference to merit increases and/or a 401K match for salaried employees (Employer Exhibit #14) (TR. 191–192).

RATIFICATION

Subsequently in March 2009, the UAW membership ratified the concessions after being provided the “highlights” bulletin (Union Exhibit #14, page 21). As denoted, these “highlights” did not mention anything about a Ford commitment to forego 2010 merit increases and/or a 401K match for its salaried workforce in 2010. During the ratification process, certain Union leadership members raised questions to Mr. King as to why there was no reference in the document to salaried employees’ 2010 benefits. According to Mr. King, he called Mr. Hinrichs on the spot to ask him to state his commitment that the 2009 salaried concessions also applied to 2010. Mr. King testified that Mr. Hinrichs replied that he had no authority to do that. Mr. Hinrichs could not recall receiving such a communication.

FORD'S COMPENSATION DECISIONS FOR 2010

About two (2) weeks after ratification, Ford's Board of Directors approved a bonus and "non-equity incentive plan compensation" for CEO Mullaly for 2010 to be paid in March 2011. The package equated to \$9,450,000.00 (Union Exhibit #20).

In December 2009, Ford's Executive Personnel Committee approved a 2010 partial 401K match and merit increases for its salaried workforce to take affect on January 1, 2010 and April 1, 2010 respectively (Union Exhibit #25) (TR. 444-447). Mr. Hinrichs communicated this to Mr. Mulloy on December 7, 2009. Mr. Mulloy informed Mr. King that same day. Mr. King became quite upset, said it was a terrible decision by Ford and that there was anger in the plants about CEO Mullaly's compensation. According to Mr. Mulloy, Mr. King told him that now the membership will want back all that it had given up in concessions and that Ford had postured itself for difficult negotiations in 2011. Mr. Mulloy testified that Mr. King however, did not say that Mr. Mullaly's 2010 compensation had violated the Equity of Sacrifice agreements (TR. 566-569; 516-579).

The decision by Ford to grant 2010 merit increases and a partial 401K match to its salaried employees followed an announcement by GM that it was reinstating the same benefits to its salaried personnel in 2010. Mr. Mulloy testified that Ford had conducted a compensation survey on its salaried workforce and determined that it had fallen 7% below the market; that GM was awarding 3% merit increases and 4% 401K matches and that no contractual impediment existed which precluded Ford from moving ahead in 2010 with salaried benefits (TR. 577-579). At the UAW Christmas party, Mr.

King reiterated to Mr. Mulloy that the EPC had made a “horrible” decision which served to undercut the Union’s prior concessions. According to Mr. Mulloy, Mr. King however, did not assert that Ford’s action on merit increases and the 401K match for 2010, violated the Equity of Sacrifice agreements. Mr. Gettelfinger did not contact Mr. Hinrichs to assert that these two (2) 2010 awards to salaried employees constituted a breach of any contractual commitment (TR. 260–262; 284; 351–353).

THE GRIEVANCE IS FILED

Thereafter on February 12, 2010, the instant Policy grievance was filed alleging that Ford had violated the 2007 “Equality of Sacrifice” letter and the “Equity of Sacrifice” commitments contained in the 2009 modifications to the 2007 CBA (Joint Exhibit #3). The Union filed a similar grievance against GM but that grievance “languished” while the Ford grievance was aggressively pursued particularly because of Ford’s award of the 2010 compensation to CEO Mr. Mullaly, action that Mr. King said generated great emotion on the part of the UAW membership (TR. 153–154).

ADDITIONAL FORD TESTIMONY

Mr. Hinrichs testified that the parties were sophisticated bargainers and that all agreements are reduced to writing; that the only written agreement relating to 2010 was on CEO Mullaly’s 30% salary reduction (TR. 500). Mr. Hinrichs testified that the major consideration in reinstating the merit increases and partial 401K match for Ford’s salaried workforce for 2010 was GM’s announcement of its intention to award these benefits to its

salaried employees (TR. 511). Mr. Hinrichs testified that there was no written or verbal agreement with the UAW on merit increases or a 401K match in 2010 and that he never promised, committed or otherwise verbalized to the UAW that Ford would not reinstate these benefits in 2010. Further, that no one on the negotiations team had the authority to suspend benefits (TR. 517–520). Mr. Hinrichs testified that during negotiations, he never said anything about Ford “reserving” the right to make compensation changes beyond 2009 and did not talk to Mr. King about the subject between February 23, 2009 and December 9, 2009 (TR. 525–528).

Mr. Mulloy corroborated Mr. Hinrichs’ testimony by stating that in negotiations meetings with the UAW, the subject of merit increases and/or a 401K match for Ford’s salaried workforce in 2010, was never discussed (TR. 553–554).

PERTINENT DOCUMENTS

2007 EQUITY OF SACRIFICE LETTER – 2007/2011 CBA, PAGE 438 (JOINT EXHIBIT #2)

November 3, 2007

Mr. Bob King
Vice President and Director
UAW, National Ford Department
8000 East Jefferson Avenue
Detroit, Michigan 48214

Dear Mr. King:

Subject: Equality of Sacrifice

During 2007 negotiations the parties had numerous discussions pertaining to the principle of "Equality of Sacrifice" and the Company's management principle of "One Company, One Plan". The Union also expressed concern that the salaried workforce contribute equally to those wage and benefit adjustments necessary to achieve mutual growth and job security. The Company is committed to both of these principles and recognized that all employees should share in the contributions necessary during this difficult period. While the Company does not negotiate the wages and benefits for non-represented employees, it has assured the Union that sacrifices by the UAW represented employees are reflected in the pay and benefit practices of all non-represented employees.

Very truly yours,

BILL DIRKSEN,
Executive Director
U.S. LABOR Affairs

Concur: Bob King

**E-MAIL CHAIN BETWEEN FORD AND UAW –
JANUARY 24–FEBRUARY 9, 2009 (see Employer Exhibit #1)**

**EQUITY OF SACRIFICE LETTER – FEBRUARY 14, 2009
(Union Exhibit #10)**

Mr. Bob King
Vice President and Director
UAW, National Ford Department
8000 East Jefferson Avenue
Detroit, Michigan 48214

Dear Mr. King:

Subject: Equity of Sacrifices

The Company presented and is committed to fulfilling a plan where all stakeholders contribute to and share this necessary sacrifices to preserve the long-term viability of the Company.

Very truly yours,

Bill Dirksen
Executive Director
U.S. Labor Affairs

Concur: _____
Bob King

**2009 EQUITY OF SACRIFICE LETTER – FEBRUARY 15, 2009
(Union Exhibit #14, page 13)**

Mr. Bob King
Vice President and Director
UAW, National Ford Department
8000 East Jefferson Avenue
Detroit, Michigan 48214

Dear Mr. King:

Subject: Equity of Sacrifice

The Company presented to the UAW a business plan that returns the North American business unit to sustained profitability. In the Board of Directors stakeholders shared sacrifice plan the specifics of each stakeholder's planned sacrifices were outlined. The Company committed to the UAW to share the status of the relevant contributions of each of the stakeholders to the business plan commitments to ensure equity of sacrifice. The Company and the Union will meet quarterly to review the status.

Very truly yours,

Joe Hinrichs
Group Vice President
Global Manufacturing and
Labor Affairs

Concur: _____
Bob King

**EXECUTIVE COMPENSATION AND BENEFITS LETTER –
FEBRUARY 15, 2009 (Union Exhibit #14, page IU)**

Mr. Bob King
Vice President and Director
UAW, National Ford Department
8000 East Jefferson Avenue
Detroit, Michigan 48214

Dear Mr. King:

Subject: Executive Compensation and Benefits Letter

During these challenging times, the Company has taken significant actions to preserve the long-term viability of the business and understands the need for equity of sacrifice among all stakeholders. Actions taken that affect the Company Executives and salaried workforce include the following:

- Eliminated 2009 merit increases
- Canceled all bonuses to be paid in 2009 for all salaried employees
- Suspended 401K match, tuition assistance and dependent scholarships
- Increased employee healthcare cost-share for active salaried employees to approximately 30%
- Required annual Personal Health Assessment (PHA) and annual physical to qualify for the top tier health benefits in 2009
- Capped retirees life insurance at \$25,000
- Reduced salaried personnel by 36% and contract personnel by 50% over the past three years
- Reduced salaried severance payments to a maximum of 9 months
- Closed Airport Operations and in the process of selling five corporate aircraft

In order to return to profitability and create a viable business structure, we will continue to partner with and enlist all of our stakeholders to help us execute our Plan to address our business realities.

Very truly yours,

Bill Dirksen
Executive Director
U.S. Labor Affairs

**STAKEHOLDER SHARED SACRIFICES – BOD PLAN SHEET
FEBRUARY 13, 2009 (see Union Exhibit #8)**

**CEO AND BOARD OF DIRECTORS SHARED SACRIFICE LETTER –
FEBRUARY 15, 2009 (Union Exhibit #11)**

Mr. Bob King
Vice President and Director
UAW, National Ford Department
8000 East Jefferson Avenue
Detroit, Michigan 48214

Dear Mr. King:

Subject: CEO and Board of Directors Shared Sacrifice

During our recent discussions, both the Company and the Union have acknowledged the importance of shared sacrifice by all stakeholders as we work collectively to manage through these challenging times. As a demonstration of commitment to shared sacrifice the following actions are being taken:

- The Company's Board of Directors has volunteered to take \$1 in cash compensation in 2009.
- The Company's CEO has volunteered to take a 30% salary reduction in 2009 and 2010.

We believe that through our continued joint efforts we will successfully meet the challenges ahead and return our Company to profitability.

Very truly yours,

Joe Hinrichs
Group Vice President
Global Manufacturing and
Labor Affairs

**AGREEMENT BETWEEN FORD MOTOR COMPANY
AND THE UAW – FEBRUARY 23, 2009 (Union Exhibit #14, page 2)**

Agreement between Ford Motor Company and the UAW

FEBRUARY 23, 2009

This Agreement (including its attachments is being entered into with the understanding and commitment that all major stakeholders of Ford Motor Company (senior management, general salary, bondholders and creditors, dealers, supplier, and UAW Ford employees) are sharing in the sacrifices necessary to return Ford's North American business unit to sustained profitability.

1. The UAW and Ford have agreed to the terms set forth in this Agreement (including its attachments). This Agreement shall constitute an Addendum to the 2007 Ford/UAW National Agreement.
2. With respect to the terms of the attached Memorandums of Understanding calling for suspensions of compensation or benefits, or other amendments to existing contractual provisions, the amendments and/or suspensions will last until the expiration of the 2007 UAW-Ford National Agreement unless otherwise modified or terminated by the mutual Agreement of the parties.
3. The changes to the 2007 Collective Bargaining Agreement and related agreements shall become effective on the first Monday following the date of receipt by the Company from the Union of written notice that any proper ratification procedure required by the Union has been completed, and shall be executed and dated as of such date (herein referred to as the "Effective Date"), and shall continue in full force and effect thereafter in accordance with their respective terms.

For the International Union, UAW:

For Ford Motor Company:

/s/ Bob King

/s/ Marty Mulloy

/s/ Wendy Fields-Jacobs

/s/ Bill Dirksen

UAW HIGHLIGHTS MESSAGE TO UAW FORD WORKERS – “UAW FORD MODIFICATIONS TO 2007 AGREEMENT AND ADDENDUM TO VEBA AGREEMENT” – FEBRUARY 24, 2009 FROM RON GETTLEFINGER AND BOB KING (see Employer Exhibit #14)

ISSUE

Whether Ford’s reinstatement of merit increases and a partial 401K match in 2010 for its salaried workforce violated the “Equality of Sacrifice” statement in the 2007 collective bargaining Agreement and/or the Equity of Sacrifice commitments contained in the 2009 modifications of the 2007 CBA?

DISCUSSION

An indispensable notation is in order at the outset of this discussion. In Contract interpretation cases, the burden is upon the Union to establish by the preponderance of the evidence that the Employer has violated the collective bargaining

Agreement, Vickers, Inc., 43 LA 1256, 1262 (Bothwell, 1964); Shell Oil Co., 44 LA 1219, 1224 (Turkus, 1965); French Paper Co., 106 LA 737, 739 (House, 1996); Graphic Packaging International, 120 LA 140, 150 (Gaba, 2004). In the instant case involving the UAW's claim that Ford breached the "Equality of Sacrifice" commitment stated in the 2007 CBA and the 2009 "Equity of Sacrifice" modifications to the 2007 Contract, the UAW has been unable to meet its burden of proof by a considerable margin.

**NEGOTIATIONS AGREEMENTS/NO WRITTEN COMMITMENT
BY FORD TO FORGO 2010 MERIT INCREASES OR A 401K MATCH
FOR ITS SALARIED WORKFORCE**

The February 9–15, 2009 negotiations between the parties on cost-saving restructuring and "Equity of Sacrifice" by all stakeholders, has been recounted in detail at pages 5–13 of this Award. This reiteration which comprehended the testimony presented by the UAW and Ford, clearly established that no written agreements resulted from negotiations or otherwise which precluded Ford from providing 2010 merit increases and a partial 401K match to its salaried workforce. The 2009 documents in the form of executed Letters which modified the 2007 CBA, only make reference to 2009 merit increases/401Ks. All of these written agreements have been set forth herein at the preceding pages. There is no language in the documents which suggests a bar to the 2010 benefits. Nor does the 2007 Equality of Sacrifice Letter indicate that merit increases and/or a 401K match would be suspended by Ford – even in 2009 much less 2010 (Joint Exhibit #2, page 438).

Specifically: (1) The BOD Shared Sacrifice Plan (Union Exhibit "#8 – February 13, 2009) is a target savings sheet. In presenting these figures to the UAW, Mr. Hinrichs pointed out that merit increases, 401Ks and bonuses had already been suspended. On the evidence, he did not discuss the salaried employees' target number. (2) The February 14, 2009 Equity of Sacrifice Letter constitutes a general statement regarding the involvement of all stakeholders and the necessity of sacrifices for Ford's preservation of long-term viability (Union Exhibit #10). (3) The Equity of Sacrifice Letter dated February 15, 2009 (Union Exhibit #14, page 13), acknowledges that Ford had presented a business plan for sustained profitability to the UAW with the repeat recognition that all stakeholders would be committed to "Equity of Sacrifice." (4) The Executive Compensation and Benefits Letter dated February 15, 2009 (Union Exhibit #14, page IU), states that Ford had already eliminated 2009 merit increases, cancelled all bonuses to be paid in 2009 to all salaried employees and suspended 401K matches, tuition assistance and dependent scholarships among other cuts and reductions. Like the above cited documents, there is no mention of merit increases or a 401K match in 2010. Clearly, based on the specificity of this language (2009) and the absence of any reference to 2010, there was no preclusion in this Letter against Ford reinstating merit increases and/or a 401K match in 2010 for its salaried workforce.

Other agreements resulting from Equity of Sacrifice negotiations: (5) In the CEO and Board of Directors Shared Sacrifice Letter dated February 15, 2009 (Union Exhibit #11), the shared sacrifice of all stakeholders is again acknowledged with the

agreement that the Board of Directors “has volunteered to take \$1 in cash compensation in 2009” and that Ford’s CEO “has volunteered to take a 30% salary reduction in 2009 and 2010.” That is all. This Letter did not prevent Ford from providing stock options in the form of a cash bonus to CEO Mulally in 2010 (to be paid in March 2011). (6) The Agreement between Ford Motor Company and the UAW dated February 23, 2009, recognizes that it constitutes (with attachments) an Addendum to the 2007 CBA. In Paragraph 2, the parties state that suspensions of compensation or benefits will last until the expiration of the 2007 Contract “unless modified or terminated by mutual agreement of the parties.” This language did not restrict Ford from awarding merit increases and/or a 401K match to its salaried employees because in the Executive Compensation and Benefits Letter, the elimination of these benefits is specifically confined to 2009 with absolutely no mention of 2010 (Union Exhibit #14, page IU). More on this later. (7) Further, the UAW “highlights” document distributed to the membership on or about February 24, 2009, is bereft of any statement regarding 2010 or 2009 merit increases/401Ks for salaried employees (Employer Exhibit #14).

Additionally, the UAW has not asserted that the January 24, 2009–February 9, 2009 pre-negotiation e-mail chain between the parties, was other than a discussion of past hourly and salaried sacrifices (Employer Exhibit #1).

On the evidence, the UAW cannot viably rely on any of the above referenced Equity of Sacrifice-related documents for the proposition that Ford breached a written agreement or commitment not to award 2010 merit increases or a 401K match to its

salaried employees. Language in support of such a claim is simply not there.¹

NO VERBAL PROMISE

The UAW has proffered that Ford made a verbal promise to forego 2010 merit increases and/or a 401K match for its salaried workforce. The evidence establishes that no such promise was made. But even if some form of a verbal/oral commitment came from a Ford negotiator with the authority to do so (which, again did not occur), that alleged promise would run counter to the Parol Evidence Rule not to mention the patent implausibility of experienced negotiators leaving a subject of such indispensable importance (merit increases/401Ks for 2010) to words or even the proverbial “handshake.” Frankly, this notion is near preposterous.

Mr. King testified that he “assumed” that Ford would not approve merit increases or a 401K match in 2010 for its salaried employees; that Mr. Hinrichs had told him that there was a possibility of such benefits being awarded in 2011 and that he took this to mean that there would be no merit increases or a 401K match in 2009 and 2010 (TR, 63–64; 164–167). Mr. Gettelfinger was not called as a witness for the UAW to provide testimony on this subject or related matters.

¹ UAW Counsel carried many coals to Newcastle in exigent attempts to get two (2) Ford documents admitted into the record – proposed Exhibits 38 and 39. The undersigned Arbitrator ruled repeatedly that these BOD Plan sheets were not admissible for lack of witness identification and authentication. Finally, the documents became Exhibits on the limited grounds that UAW Financial Analyst Sciotti had received them in the document production process – admitted not for substance, not for content. Ultimately, the purported significance of the documents was not pursued by the UAW. Union Exhibits 38 and 39 came to naught.

As denoted earlier, Mr. Hinrichs testified as follows: As sophisticated bargainers, the parties put all agreements in writing (TR. 500); he never committed Ford in writing not to award merit increases or a 401K match in 2010 to salaried employees and he never verbally promised anyone on the UAW side that Ford would not reinstate these benefits in 2010. Further, no one on the Ford negotiations team had the authority to commit to any 2010 salaried compensation decisions and did not do so (TR. 302, 332, 436–437; 445–447; 517–510; 517–520). Mr. Hinrichs testified that those decisions would not be made until December 2009.

In Contract law, only certain and definite promises, whether written or oral, can formulate enforceable contracts, Farnsworth On Contracts 3.28 (3rd Ed. 2004); Williston On Contracts §4.21 (4th Ed. 2007); Corbin On Contracts §2.8 (Rev. Ed. 1993). Mr. King was unable to attest that in actuality, Mr. Hinrichs made a verbal promise, much less a specific and definite promise concerning 2010 salaried compensation. At most, Mr. King's assumption in this regard constituted a subjective conclusion based on Mr. Hinrichs' speculation about what might occur in 2011. In circumstances where the alleged promisee (the UAW) seeks to rely on the absence of an express statement (concerning 2010 benefits), "it must meet a higher standard than a promisee who relies on express language, Rowe v. Montgomery Ward, 437 Mich. 627, 644; 73 N.W. 2d 268 (1991). Also see Digital 2000, Inc. v. Bear Communications, Inc., 130 Fed. Appx. 12, 18 (6th Cir. 2005) where it was held that mere discussions and negotiations cannot be a substitute for the formal requirements of a contract. In this connection, Mr. King was constrained to

acknowledge that there was no express commitment from Ford concerning 2010 salaried compensation (TR. 63–64; 134–137). It is determined that his subjective conclusion stemming from Mr. Hinrichs' purported comment about possibilities in 2011, was wholly insufficient to establish the definite and specific promise essential to form an enforceable contract.

LACK OF AUTHORITY

Regarding Mr. Hinrichs' lack of authority to make commitments on compensation for the salaried workforce in 2010 and thereafter, an important observation is in order. Mr. Hinrichs confirmed that he had no such authority and did not ask the Board of Directors to give it to him (TR. 288; 301–302; 476). Correspondingly, pertaining to the call Mr. King purportedly made during the ratification process – to ask him to add the 2010 commitment, Mr. King acknowledged that Mr. Hinrichs did not comply with his request and that he knew Mr. Hinrichs lacked the authority to do so (TR. 136–139).

AGREEMENT BETWEEN FORD AND THE UAW, PARAGRAPH 2

The UAW has made an argument that the “Agreement Between Ford Motor Company and the UAW” (Union Exhibit #14, Page 2), constituted a commitment not to award 2010 merit increases or a 401K match to its salaried workforce at least until after the 2007 Contract expired in 2011. The UAW points to Paragraph 2 referenced earlier in this Award, to wit:

With respect to the terms of the attached Memorandums of Understanding calling for suspensions of compensation or benefits, or other amendments to existing contractual provisions, the amendments and/or suspensions will last until the expiration of the 2007 UAW-Ford National Agreement (September 2011) unless otherwise modified or terminated by the mutual Agreement of the parties.

The UAW's contention must fail. First, in the totality of the evidence, the reasonable conclusion is that Paragraph 2 applies only to UAW-represented hourly employees. Not salaried employees. On this score, Mr. Hinrichs and Mr. Mulloy testified that the UAW asked for this language in order to solidify its position that the concessions by UAW members did not eliminate any hourly benefits from the 2007 CBA but merely suspended them until the next round of negotiations in September 2011 (TR. 325–326; 560–561). It is determined that the Paragraph 2 language does not support the UAW's assertion that the suspension of salaried benefits in 2009 would continue for 2010, though Ford could reinstate such benefits in 2011. Ford's counter-argument underlying this Finding is set forth below.

As confirmed by Mr. Hinrichs, Ford makes decisions on all salaried compensation including merit increases and 401K matches annually in December to take effect the next year. As such, Ford would be making 2011 salaried compensation decisions in December 2010, almost a year before the 2007 CBA expired in September 2011 (TR. 436–437; 444–447; 507–510). Further, the Paragraph 2 language does not say what the UAW has implied. Instead, it states only that the "Memorandums (Memoranda) of Understanding ... will last until" September 2011 (Contract expiration). There were four

(4) Memorandums of Understanding attached to Union Exhibit #14, only one (1) of which expressly referred to the “suspensions of compensation and benefits.” That document applied only to UAW-represented employees (Union Exhibit #14, page 10). The other three (3) Memorandums of Understanding spoke to “other amendments to existing contractual provisions”, to wit: (1) Amendments to the CBA, Section 5 – Future Product Sourcing (Union Exhibit #14, page 4) (2) 2009 Targeted Special Programs and Special Incentives for UAW – represented hourly employees (Union Exhibit #14, page 5) (3) Changes to the Job Security Program (Union Exhibit #14, page 5). No Memorandum of Understanding addressed Ford’s salaried workforce which would not be governed by any “existing contractual provisions” under which UAW-represented employees are governed (TR. 561).

Ford argues that the structure of the sentence makes it clear that the phrase “other amendments to existing contractual provisions” applies to “Memorandums” referenced in the preceding clause or at most, other documents amending existing CBA provisions, United States v. Phillips, 543 F.3d 1197, 1206 (10th Cir. 2008). There, the court held that “Under the venerable interpretive canons *noscitur a sociis* and *ejusden generis*, the meaning of a catch-all phrase is given precise content by the specific terms that precede it.” Ford asserts that the only documents that amended existing CBA provisions dealt exclusively with the UAW-represented workforce.

PAROL EVIDENCE RULE

Ford avers in the alternative that even if Paragraph 2 of the February 23,

2009 document is read to have created an ambiguity, the undersigned Arbitrator would be bound to “look to parol evidence to construe any ambiguity as long as the evidence is not inconsistent with the written words”, United Rentals, North America, Inc. v. Keizer, 355 F.3d 399, 409 (6th Cir. 2004). Testimony is permitted to explain ambiguity, Accord Certified Restoration Dry Cleaning Network, LLC v. Tenke Corp., 511 F.3d 535, 544 (6th Cir. 2007). Ford asserts throughout its argument that as specified, the timing of salaried compensation decisions and the sentence structure at issue, renders the UAW’s reading of Paragraph 2 to be illogical. Ford observes that no UAW witness in these proceedings testified in support of the meaning the UAW attributes to the language; that on the other hand, Mr. Mulloy testified that the suspension language was intended to address only hourly commitments, thereby solidifying the proposition that parol evidence confirms Ford’s position.

The undersigned Arbitrator has carefully digested the respective positions of the UAW and Ford regarding Paragraph 2 of the “Agreement Between Ford Motor Company and the UAW” (Union Exhibit #14, page 2). For the reasons stated in Ford’s interpretation and underlying argument, the undersigned Arbitrator adopts Ford’s position and finds that the UAW’s contention is without merit.

NO VERBAL PROMISE REINFORCED

Revisiting matters pertaining to Mr. King’s subjective conclusion that a verbal promise was made by Ford to forego merit increases and a 401K match in 2010 for its

salaried workforce, the following Finding is made: On the evidence, there was no such promise but even if arguably, such a verbal statement came from Mr. Hinrichs (which it did not) that could be characterized as an implied verbal/oral commitment, it would be unenforceable. It has long been held that dangers abide in permitting oral modifications to written labor agreements and that “national labor policy” disfavors verbal “side” agreements, Gatliff Coal Co. v. Cox, 152 F.2d 52, 56 (6th Cir. 1945); see also Merk v. Jewel Foods Stores, 945 F.2d 889, 894 (7th Cir. 1991). The variation of written labor contracts by evidence of prior or contemporaneous oral agreements is contrary to national labor policy, Lewis v. Owens, 338 F.2d 740, 742–743 (6th Cir. 1964).

These citations by Ford are indispensably instructive but are squarely not necessary to disposition in the instant dispute. That is because on clear and convincing evidence, a verbal commitment by Ford to the UAW not to provide merit increases and/or a 401K match in 2010 for its salaried workforce, was never given by Ford.

For the reasons heretofore stated, it is determined that the merit increases and partial 401K match awarded to Ford’s salaried employees in 2010, did not violate or otherwise breach the Equality of Sacrifice statement embodied in Volume IV of the 2007 CBA or the Equity of Sacrifice commitments contained in the 2009 modifications to the 2007 Agreement. Nor did Ford’s award of CEO Mulally’s 2010 bonuses violate any Equity of Sacrifice agreement. No violations are found. The grievance is denied.

AWARD

Ford Motor Company did not violate or breach the Equality of Sacrifice Letter in the 2007 collective bargaining Agreement or the Equity of Sacrifice commitments in the 2009 modifications to the 2007 CBA by granting 2010 merit increases and a partial 401K match for its salaried workforce. The grievance is denied.

/S/ David W. Grissom
Arbitrator
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July 19, 2012