

Transcript from hearing in *Lehman v. UAW* details arguments for extending UAW election deadlines

Marcus Day
28 November 2022

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Ballot counting is set to begin Tuesday, November 29 in the first-ever direct elections of the top leadership of the United Auto Workers (UAW). Vote-counting is proceeding despite serious concerns raised by workers over the way in which the UAW apparatus and a court-appointed monitor have conducted the election.

Last week, a federal judge dismissed a lawsuit requesting a 30-day extension of the election deadlines and measures to systematically inform UAW members that national elections are taking place. The suit, *Lehman v. UAW*, was brought by Will Lehman, a rank-and-file worker at Mack Trucks who is running for UAW president.

Substantiating the suit's claims that workers have not been properly informed of the elections is the abysmally low voter turnout, with ballots returned from barely 10 percent of the UAW's 980,000 active and retired members. As of 5 p.m. Eastern Time on November 28—the deadline for ballots to be received—the monitor's tally of votes which have been cast stood at only 106,790.

A transcript of the November 22 court hearing for the case, provided to the WSWs by Lehman, sheds further light on the arguments in favor of extending the election deadlines, and the indifference and even hostility of the UAW apparatus and court-appointed monitor to workers' democratic right to participate in a fair election.

At the hearing, Lehman's attorney, Eric Lee, refuted the claims by the UAW and the monitor that Lehman did not have "standing" to pursue a suit under Title I of the Labor Management Reporting and Disclosure Act, since he had personally received a ballot and been informed of the election, and thus supposedly had not experienced any harm.

Lee explained that Lehman, like other UAW members, "has a meaningful right to vote. The UAW and the monitor have denied this meaningful right to vote."

Elaborating further in response to a question from the judge, David Lawson, Lee continued, "Despite the fact that he did receive a ballot and despite the fact that he was able to vote, the law in this circuit and the law from the Supreme Court states that that right must be meaningful." The mere fact that Lehman himself received a ballot thus did not mean that the UAW and the monitor had conducted the election fairly.

Asked by Judge Lawson whether the suit should not "properly find its way to the Department of Labor first," as the UAW and the monitor asserted, Lee responded, "Not under conditions where the relief which a plaintiff is requesting is reasonable. Here all Mr. Lehman is asking for is a 30-day delay. He's asking for reasonable steps be taken to provide ballots."

Later, Lee took up the arguments of the UAW bureaucracy that the low turnout is merely a reflection of workers' "apathy," saying, "An election

does not have the aura of legitimacy if only 10 percent of the membership has voted. The reason why members are not voting is not because they don't care. It's because they don't know." As evidence, Lee pointed to the numerous statements by workers included in the suit, including four signed affidavits, detailing how they and other workers had not been informed of the election by the UAW.

Shortly thereafter, the judge, referring to the UAW and monitor's self-serving account of how they had informed UAW members of the elections, posed to Lee the question, "What more would you have them do?"

Replying at length, Lee said:

There's a number of very reasonable steps which they could take. They could, for example, distribute ballots at local union halls. They could distribute ballots at work sites, at lunch breaks, at shift changes. They could take any number of measures, which in the span of 30 days [...] this is an organization after all which has 1.5, 1.6 billion dollars in assets. It's able to draw dues out of its entire active membership on a monthly basis without a problem. And so we feel—Mr. Lehman feels very strongly that the reason why the local unions are not updating their information—

And, yes, in the monitor's response and in the UAW's response they couch their language about the steps that have been taken to provide notice very interestingly. They do not say that they can confirm that the local unions are actually taking steps according to the requests which they make. And the monitor has essentially delegated to the locals, and they're attempting in a way—and the UAW Defendants do the same thing, to put the blame on the locals and say, well, we can't help them update their voter list, we can't help the fact that only 10 percent of the UAW membership has an E-mail on record so that we can communicate with them.

But the UAW's locals are the UAW. They are the Defendants. And the monitor has an obligation under the rules and under the consent decree to take action beyond friendly requests to individuals who it has found already to have violated the federal laws in the course of this election, to have violated the rules of the election.

Significantly, Lee cited statements made by incumbent UAW President Ray Curry that a vote turnout of 14 or even 20 percent would be inadequate to decide "the future of our great union":

And, in fact, the incumbent president of the UAW in the UAW's submission, I believe it is at Exhibit 1, attachment 2, the current president of the UAW said in the *Detroit News*, "The right to vote is only meaningful if ballots get to members." And he said, "If turnout is at 14 percent, we must do better. No matter which candidate a member supports, we can all agree that the future of our great union is too important for just 20 percent of our membership to decide."

So I can't find a reason why Defendant UAW opposes this now. We're at half of 20 percent. And that's what the president of the union said, double that would not even be sufficient to conduct a meaningful election.

This is all taking place, as the court well knows, in the context of years of corruption in which the entire past leadership of the UAW, or a substantial portion of it rather, including two past presidents. Many people who placed the current leadership in power have been thrown in jail for robbing rank-and-file members like Will Lehman of his dues money, for accepting bribes from the corporations, for agreeing to collective bargaining agreements that are of highly dubious legal character in terms of contract law and their enforceability.

This court has requested that we address a question of how the election can be given an aura of integrity. There is no aura of integrity that can possibly take place under conditions where the monitor's own report says that they had and the Department of Justice had to threaten to criminally prosecute the current president of the United Auto Workers on the basis of the fact that they were systematically violating the consent decree, and at the same time to place them in charge of making sure that workers are aware that an election is taking place.

Lee concluded:

The UAW and the monitor in their responses to the TRO [temporary restraining order] and to the Complaint say it would violate the rights of UAW members if we extended the right to vote. That is a completely absurd position to take to say that allowing more workers to vote, to say that giving out more ballots would restrict the rights of UAW members to vote.

The fact of the matter is, your Honor, that that's an extremely concerning position. It should be the case that the Defendants and that the Government are helping to expand the right to vote or helping to ensure that as many workers as possible in this first election in the history of the UAW under conditions where an entrenched leadership has been in power 75 years without ever having to face a direct election vote.

The judge next heard oral arguments from the lawyers representing the UAW and the monitor, who showed themselves unable to deal with the substance of the democratic issues raised by Lehman's suit.

Asked by the judge, "What's the reason do you believe that the turnout is so low so far?" a UAW attorney, Richard Griffin, stated, "We don't necessarily have a good answer for that, your Honor," before proceeding to draw a comparison to the 14 percent turnout in the most recent Teamsters direct elections. The comparison, however, is disingenuous, since the first two direct elections for the Teamsters leadership in the 1990s saw far higher turnouts of 28 and 33 percent.

At a later point, the judge questioned Griffin more directly on the efforts of the union to inform workers of the elections.

THE COURT: Are you satisfied with the way the notice of the election was distributed?

MR. GRIFFIN: Yes, your Honor. There's about –

THE COURT: Let me ask you this. Could you have done better?

MR. GRIFFIN: It's theoretically possible that more efforts could have been made, your Honor, but –

THE COURT: Would you agree that there are some people that aren't aware of the election, some union members that aren't aware of the election?

MR. GRIFFIN: Well, there certainly — it's certainly possible, your Honor, that some members are not aware of the election.

Unable to deny that the UAW apparatus had not ensured that all members were informed of the election, Griffin proceeded to fall back on the narrow procedural arguments that 1) the court did not have jurisdiction over the suit, and that it could only be heard by the US labor secretary after the elections, and 2) Lehman did not have "standing," since he himself had received a ballot.

As the WSWS has explained, however, the second claim creates an impossible Catch-22 situation, where only those workers who have not been informed of the election can file suit, which they would not do since they did not know their rights had been violated.

Michael Ross, the attorney for the court-appointed UAW monitor—who is nominally charged with overseeing the UAW and its elections following a years-long corruption scandal—later evinced similar indifference to the low voter turnout, telling the judge there was no basis to conclude it was "a matter of concern."

In the course of the judge questioning Ross over the UAW's method of communicating about the election and sending ballots—using the Local Union Information System (LUIS) database—it emerged that the system had been developed for communication between the UAW International and the local leadership, i.e., within the union bureaucracy. This prompted the judge to reply, "I thought you had mentioned something about improving communication or facilitating communication between the International Union and the locals, which kind of cut out the membership."

Following this, the judge proceeded to pose a series of questions to the monitor's attorney about how LUIS was used, none of which Ross was able to immediately answer. Finally, the judge asked:

THE COURT: The other question that I'm sure you don't have the answer to is how was information distributed to membership for ratification votes? Do you have any idea about that?

MR. ROSS: Ratification vote specifically in –

THE COURT: Contract ratification.

MR. ROSS: Again, your Honor, I'd have to confer on that specific question with the union.

Turning to the UAW's lawyer, Judge Lawson asked:

THE COURT: Mr. Griffin, are you able to provide any information on that?

MR. GRIFFIN: Your Honor, I'm not at this point.

Later, Lawson asked Lee if he knew, who responded affirmatively, stating, "those tend to happen in large mass meetings where ballots are

distributed at union halls. That would be a very easy and reasonable remedy, which this court could adopt here.”

In his ruling the next day, Lawson acknowledged that Lehman’s “grievances certainly are serious and should cause concern that a less-than fulsome response from the membership may portend election results that are not genuinely representative of the will of the voters.”

However, the judge nevertheless dismissed the suit, siding with the absurd arguments of the UAW and the monitor that Lehman did not have “standing,” and that he could only bring his complaint after the election before US Labor Secretary Marty Walsh—an individual who appeared at the UAW convention this summer and thanked current UAW President Ray Curry for his “friendship.”

Viewed in light of Judge Lawson’s ruling, the transcript of the hearing provides further confirmation of the WSWS’s characterization of the decision as a judicial travesty. Despite making clear that he was well aware that the voting process overseen by the corrupt UAW apparatus “may portend election results that are not genuinely representative of the will of the voters,” Lawson ruled in the bureaucracy’s favor based on the narrowest legal-technical grounds, refusing to take the actions necessary to ensure workers’ democratic rights were respected.

As Joseph Kishore and David North wrote in a Perspective column following the decision:

The apparatus succeeded in preventing an extension of the deadline, but it will prove a pyrrhic victory. Ray Curry and his fellow apparatchiks will discover that convincing a capitalist judge to rule in their favor is not the same as overcoming the distrust and hostility of hundreds of thousands of workers.

Not only is there enormous support for Lehman among rank-and-file workers who were able to vote, but the election campaign has set into motion a process that the apparatus will be unable to control.



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