

**THE PUBLIC REVIEW BOARD
INTERNATIONAL UNION, UAW**

APPEAL OF:

GLORIA KIDD, MEMBER
UAW LOCAL UNION 1264
(Sterling Heights, Michigan),
REGION 1,

Appellant

-vs-

CASE NO. 1467

UAW INTERNATIONAL EXECUTIVE BOARD
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF ARMERCA),
Appellee.

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DECISION

(Issued March 19, 2004)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson,
Prof. Benjamin Aaron, Prof. Janice R. Bellace,
Professor James J. Brudney, Prof. James E.
Jones, Jr., Prof. Paul Weiler and Prof. Marilyn
V. Yarbrough

Gloria Kidd argues that her removal from the position of Ergonomic Analyst for the Sterling Stamping plant by the UAW's DaimlerChrysler Department was unjustified, politically motivated, and violated her right to due process as guaranteed by the UAW Ethical Practices Codes.

FACTS

Gloria Kidd was appointed to the position of Ergonomic Trainer and Analyst for Local Union 1264 at the Chrysler Sterling Stamping Plant in 1987. On March 27, 2002, Decoris Glenn, the Health and Safety Coordinator for the UAW DaimlerChrysler National Training Center (NTC), sent a memorandum to the Department's Vice President and Director, Nate Gooden, regarding Kidd's performance as an Ergonomic Trainer and Analyst. Glenn reported that Kidd had not analyzed a minimum of 40 jobs per month in compliance with the new ergonomic requirements that became effective on January 7, 2002. This requirement had been communicated at a training session held in

November 2001, and in a written memorandum dated December 17, 2001.¹ The December 17 memorandum states that if an analyst cannot meet the new requirements, he or she must submit an explanation to the joint health and safety representatives and the Local Union President.²

Glenn reported that an audit showed that Kidd had completed only 25 ergonomic briefs during the entire year 2001 and trained only 26 people. Glenn stated that a second audit conducted on February 7, 2002, showed little improvement. Glenn concluded that Kidd was not serving in the best interest of the Union and ought to be removed from her position.³ On April 9, 2002, Vice President and Director Nate Gooden removed Kidd as the ergonomic analyst at the Sterling Stamping Plant. Gooden informed Kidd that she was being removed because her performance was unacceptable.⁴

Kidd appealed her removal to the International Executive Board (IEB) on April 28, 2002. In support of her appeal, Kidd argued that the requirement that she complete 40 ergonomic reports per month was unreasonable. She asserted that the requirement was a device being used by certain International officials to remove appointed representatives who had not supported Vice President Nate Gooden as Regional Director during the 32nd Constitutional Convention Delegate elections in 1998.⁵

Kidd acknowledged that she had not met the recently established requirements, but stated that she was not the only ergonomic analyst who failed to comply with the "40 briefs per month" requirement. Kidd stated that the Company's lack of commitment to the Ergonomic Analysis and Training program at the Sterling Stamping plant contributed to the problem. She wrote:

"My monthly training reports that [were] submitted to the NTC had indicated that for months on end ...management

¹ The memorandum states, in pertinent part:

"Effective January 7, 2002, all full-time ergonomic analyst[s] will be required to analyze a minimum of 40 jobs per month and part-time analyst[s] will be required to analyze a minimum of 10 jobs per month. All jobs analyzed must have a brief and a copy of the brief must be maintained in your files." (Record, p. 5)

² The relevant language of the memorandum states:

"If you cannot meet these requirements, you must submit a written explanation to my office signed by the local joint health and safety representatives and the local union president. The report form distributed during the training session, held in Detroit during the week of November 5, 2001, must be completed each month and forwarded to this office no later than the 5th of the following month." (Record, p. 5)

³ Record, p. 4.

⁴ Record, p. 10.

⁵ Record, p. 11.

was not complying [with] its contractual commitment at our plant location. I informed my Local President, and our UAW safety representative was aware of the lack of management commitment, and nothing was done in the way of helping us to get management to do their share of commitment to the contract. However, as soon as the 40 brief requirement placed all the responsibility on the Ergonomic Trainer and Analyst, and the analyst was unable to comply, the analyst is removed within the second month of its establishment.”⁶

Furthermore, Kidd explained that the Sterling Stamping Plant did not have a great number of ergonomic problems or concerns, so that there were not 40 jobs per month to analyze. She pointed out that the Department’s insistence on the “40 brief per month” requirement would only lead to the elimination of the Ergonomic Trainer and Analyst position. She wrote:

“...It stands to common reasoning that a continuation of 40 briefs monthly (if possible/or force pushed) would soon come to a 40 brief a month end. Once a plant location is in compliance ergonomically, surely 40 briefs a month will either cease or decrease with the potential loss of a contractual job....”⁷

Kidd asserted that she was the only ergonomic analyst audited within the two month period following the announcement of the “40 brief per month requirement” and that she was the only analyst who was removed for failure to comply with it. Kidd charged that her removal violated the UAW Ethical Practices Codes which guarantee due process to each member and require that all union rules and laws be fairly and uniformly applied.⁸ Minutes of a General Membership Meeting of UAW Local 1264 held on May 19, 2002, indicate that the following motion carried.

“Motion was made by Sister Gloria Kidd for Local 1264 membership to support her protest for her removal as Ergonomics Analyst. Motion seconded by Brother Charles Boulton.”⁹

⁶ Record, p. 11.

⁷ Record, p. 11.

⁸ Record, p. 12.

⁹ Record, p. 13.

In a memorandum responding to Kidd's protest of her removal, NTC Coordinator Decoris Glenn explained the reason why the December 17, 2001, guidelines were adopted. Glenn wrote:

"The guidelines were established during negotiations because the Union argued the need for full-time ergonomic representatives. The Company argued that our representatives were not analyzing the jobs. The Union investigated and discovered the Company was correct. For the entire length of the 1996 Agreement, there were less than 200 jobs analyzed throughout the entire corporation by UAW analysts. Therefore, guidelines had to be established."¹⁰

The International President's staff determined that a hearing was unnecessary on Kidd's appeal and decided the case based on the information provided by Kidd and the Local Union. The President's Administrative Assistant Eunice Stokes-Wilson prepared a report on the appeal for the International Executive Board. Stokes-Wilson reported that an audit of Kidd's records showed that she was not in compliance with the guidelines established by the UAW-DaimlerChrysler National Training Center and that she failed to offer any explanation for her noncompliance. She held that there was no legitimate basis for challenging the Vice President's determination that Kidd's performance was unacceptable. Stokes-Wilson held that the decision of the Vice President was within his discretion and that under Article 33, §2(b), no further appeals would be considered.¹¹

The International Executive Board adopted Stokes-Wilson's report as its decision and notified Kidd on June 28, 2002. Kidd attempted to appeal the IEB's decision to the Public Review Board on June 29, 2002. Kidd stated that the IEB had failed to address her Ethical Practices Complaint. She argued that a pattern had been established of allegations and charges being made against union representatives who opposed Nate Gooden's candidacy for Regional Director in order to create a pretext for removing them from office. On August 21, 2002, Presidential Assistant Stokes-Wilson advised the Public Review Board that the President's office would conduct a hearing to determine whether Kidd had perfected an Ethical Practices Complaint and advise the PRB of its determination on that issue.

In preparation for the hearing, Kidd requested that the Union make the following documents available at her hearing: training reports, ergonomic briefs and audits at other DaimlerChrysler locations, as well as any documents relied on by the International Union to support her removal. In January 2003, attorney William M. Hatchett requested information on Kidd's appeal from Stokes-Wilson. In a letter dated March 29, 2003,

¹⁰ Record, p. 14.

¹¹ Record, p. 19.

Hatchett also made a request for documents concerning other ergonomic analysts who were removed for failing to meet the guidelines described in the December 17, 2001, memorandum. In addition, he asked for information regarding analysts who failed to meet the guidelines but who were not removed.¹²

On September 17, 2003, Stokes-Wilson advised attorney Hatchett that his request for documents would be entertained at the hearing on Kidd's appeal. Hatchett responded that the hearing would serve no useful purpose until the Union furnished the information he had been requesting. Nevertheless, President Gettelfinger's response to Kidd's appeal indicates that Hatchett and Kidd did attend a hearing conducted by the President's office on September 22, 2003.¹³ On October 2, 2003, Hatchett advised the International Union that he would not be presenting any further evidence on behalf of his client, Gloria Kidd.¹⁴ President Gettelfinger issued a decision based on the September 22 hearing on October 6, 2003.

In his October 6 letter, Gettelfinger reports that Kidd abandoned the claim that her removal was part of a vendetta flowing from the 1998 Constitutional Convention elections. Furthermore, Gettelfinger concluded that Kidd had not perfected an Ethical Practices Complaint pursuant to the requirements of Article 32, §5(b), of the Constitution, because she did not take her Ethical Practices Complaint to the Local 1264 membership. He noted that the motion that was passed by the membership on May 19, 2002, merely supported her protest of her removal.¹⁵ Nevertheless Gettelfinger did address the merits of Kidd's claim. He reported that Kidd had not been able to identify any UAW ergonomic analyst who failed to follow the guidelines established by the DaimlerChrysler Department. He pointed out that Kidd was not entitled to challenge the reasonableness of the directive that ergonomic analysts complete 40 briefs per month. He wrote:

“...Vice President Gooden provided a clear blueprint of what was expected of you and you believed it to be unreasonable. Vice President Gooden is not obligated to debate or bargain with an International Appointee over the conditions under which an appointee will follow directives...”¹⁶

¹² Record, pp. 42-43. Hatchett made a second request for these documents on July 2, 2003, and a third request on September 15, 2003. (Record, pp. 44-45, 52-53)

¹³ Record, p. 60.

¹⁴ Record, p. 59.

¹⁵ Record, pp. 60-61.

¹⁶ Record, p. 60.

Kidd appealed President Gettelfinger's October 6 ruling to the Public Review Board on October 30, 2003.

ARGUMENT

A. Gloria Kidd:

The “forty brief per month” job requirement that was communicated to me could not have been met, because our plant was ninety-eight percent in compliance ergonomically. I have enclosed a letter from the former UAW Safety Representative, Art Cibor, confirming this. I have also enclosed correspondence I sent to the Local Union President, Ed Dombrowski, concerning the fact that I was not getting employees to train, which was an ongoing concern. I made Mr. Glenn aware of management’s lack of cooperation at ergonomic conferences on more than one occasion. Mr. Glenn was aware of the high turnover of management safety administrators at our plant, and ergonomic matters were always on the back burner with every new safety administrator. All ergonomic issues and concerns within the Sterling Stamping Plant were addressed even though there were not forty briefs presented monthly.

I believe that I was treated unfairly and that my removal was politically motivated. Other ergonomic analysts failed to meet the “forty briefs per month” requirement, but I was the only one removed, which violates the UAW Ethical Practices Codes.

B. International Union, UAW:

Appellant has not perfected an Ethical Practices Complaint. Article 32, §5(b), requires that such a Complaint be approved by membership action. Appellant did not comply with this requirement. She merely made a motion at a Local Union meeting to support her protest of her removal as ergonomics analyst. This motion contains no reference to the Ethical Practices Codes.

Furthermore, even if appellant had complied with Article 32, §5(b), it is well-established that an appointed special-purpose representative can be removed from employment without any cause as long as the removal is not for reasons which violate rights guaranteed by the Union’s Ethical Practices Codes. *Ward v. GM Department*, 8 PRB 228 (1994).

There is no evidence that appellant’s removal was politically motivated and her attorney abandoned this claim at the IEB hearing. All that remains of Appellant’s appeal is her claim that other DaimlerChrysler ergonomics analysts performed poorly but retained their appointed positions. This claim is insufficient to confer jurisdiction on the PRB. The Board has no jurisdiction to review the DaimlerChrysler Department’s reasons for removing appellant as long as her removal did not violate the Ethical Practices Codes.

In any event, the appellant has produced no evidence that other DaimlerChrysler Ergonomic Analysts did not follow the ergonomic analyst guidelines. She was given additional time after the hearing to provide such evidence, but her attorney advised the International that no further evidence would be submitted.

The IEB asks the PRB to deny this appeal and uphold the IEB's decisions.

C. Gloria Kidd, rebuttal:

I asked the membership to support my appeal and they gave me their support. My appeal makes reference to the Ethical Practices Codes. Therefore, I submit that I have complied with Article 32, §5(b), of the International Constitution.

I still maintain that I was treated differently from other ergonomic analysts within the DaimlerChrysler Corporation because of my political affiliations. I am not questioning Mr. Gooden's authority as far as removing appointed representatives, but in my case it was a violation of the Ethical Practices Codes because other ergonomic analysts did not fulfill the requirements, but I was the only one removed.

I did not abandon the claim that my removal was politically motivated at the hearing on September 23, 2002. I did say at that hearing that individuals would not come forward as witnesses because of fear of retaliation.

Since my removal, the Department has abandoned the "40 briefs per month" requirement. This shows that compliance with it was not possible. I conclude that because of my support for the prior Regional administrative leadership, I was removed.

DISCUSSION

There is a question whether the membership's vote of support for Kidd's protest of her removal as ergonomics analyst at the meeting on May 19, 2002, qualified as approval of an Ethical Practices Complaint within the meaning of Article 32, §5(b), of the International Constitution. The record contains only an excerpt from the minutes of the May membership meeting, and it is not clear to what extent the membership had been informed of the content of Kidd's April 28, 2002, letter to President Yokich appealing her removal. Although the International Union argues that Kidd did not perfect an Ethical Practices Complaint in the manner required by Article 32, §5(b), of the Constitution, it has also addressed the merits of her claim that her removal violated the Ethical Practices Codes.

Since there is some ambiguity about the Article 32, §5(b), compliance issue on the basis of this record, we think it is preferable to reach the substance of Kidd's appeal, because her Ethical Practices Complaint is clearly without merit. The Public Review Board has no jurisdiction over appeals from representatives appointed by the International Union who are removed by the appointing authority. Article 33, §2(b), of the International Constitution precludes any appeal from the IEB's decision on an

appeal pertaining to the removal of a special purpose representative such as an Ergonomic Trainer and Analyst.¹⁷ Furthermore, the DaimlerChrysler Department Director need not establish just cause for his decision to remove Kidd or demonstrate that it was fair. We have frequently stated that the power to appoint a person to an appointive position necessarily comprehends the power to remove that person.¹⁸ In *Badalamento vs. Ford Department*, PRB Case No 1394, (2002), we stated that the PRB will intervene in the removal of an appointed representative only when it concludes that a department such as the DaimlerChrysler Department has used its discretion unreasonably or for an impermissible purpose.

In *Ward, et. al. v. GM Department*, 8 PRB 228 (1994), we reinstated appointees who had been removed for supporting a different candidate for Regional Director than the candidate backed by the GM Department. Because the appointees had not been barred from engaging in Regional politics, we held that their removal penalized them for exercising rights guaranteed by the Ethical Practices Codes. Kidd has attempted to invoke the Ethical Practices Codes to challenge her removal by claiming that it was in retaliation for her support for a candidate opposed to Nate Gooden for Regional Director during the 32nd Constitutional Convention Delegate elections in 1998; however, there is nothing in the record to support this claim. In contrast to the situation in *Ward*, where the appellants had been candidates for Convention Delegate on a slate pledged to support an opponent of the GM Department's candidate for Regional Director, there is no evidence that Kidd openly or actively supported any candidate for Regional Director in 1998 or that Vice President Gooden was aware of her political preferences.

On the other hand, there is no dispute that Kidd's performance as an ergonomic analyst fell far short of the standards established by the DaimlerChrysler Department. Kidd has not been able to produce any evidence to support her claim that other ergonomic analysts who retained their positions also failed to meet the standard. It is true that the International Union did not provide the documents relative to this point that were requested by Kidd and her attorney; however, that request amounted to a demand that the International prove that it had not treated other ergonomic analysts more leniently than Kidd. The appellate procedures provided for under the International Constitution do not subject the International Union to the same rules of discovery that would be applicable in a court of law. The Union had the right to refuse Kidd's general request for documents absent any specific allegations concerning the treatment of other

¹⁷ The relevant language of Article 33, §2(b), provides:

"...For any action or decision pertaining to the appointment or removal of special-purpose representatives, such as Benefit Representatives or Health and Safety Committeepersons by a National Department under the provisions of a collective bargaining agreement, the appeal shall be directly to the International Executive Board. There shall be no further appeal from the decision of the International Executive Board."

¹⁸ *Mejia v. Local 365, UAW*, 5 PRB 813 (1988); *Luksch v. Local 686 UAW*, 5 PRB 844, (1988).

ergonomic analysts.¹⁹ Furthermore, even if Kidd had been able to demonstrate that other analysts failed to meet the Department's new guidelines, this circumstance by itself would be insufficient to establish that the Department's decision to remove Kidd was politically motivated, or that her removal violated the due process guaranteed by the UAW Ethical Practices Codes. Kidd must have been familiar with many if not all of her fellow ergonomic trainers after 15 years in the position, yet she failed to produce any evidence of disparate treatment, or even to identify a single colleague who was treated differently than she was.

Finally, Kidd has argued that the "40 brief per month" rule was so unreasonable that its enforcement constituted a violation of due process. In support of this argument, Kidd has submitted evidence that her plant was in compliance ergonomically, so that there was no need to analyze forty jobs per month. She argued that meeting the standard would quickly eliminate any need for a full-time ergonomic analyst at the Sterling Stamping Plant. This was exactly the Company's position that caused the Union to investigate the activities of its full-time ergonomic representatives and to establish guidelines to ensure that the representatives were, in fact, performing a valuable service for the Union's members. NTC Coordinator Decoris Glenn convincingly explained the Union's rationale for adopting the guidelines.

The decision of the IEB is affirmed.

¹⁹ In his letter of October 6, 2003, President Gettelfinger responded to Kidd's efforts to have the International Union supply documents to support her claim of disparate treatment as follows:

"In pressing your claim, you individually and through your attorney, Mr. William Hatchett, requested information from all the DaimlerChrysler locations to make a case of disparate treatment. You were advised that your request for information would be taken up at the hearing. You were asked to present evidence in support of your claim. You had none. Your attorney asked for additional time to present such evidence. The request was granted. As of this writing, you have failed to cite one UAW DaimlerChrysler Ergonomic Analyst that did not follow Vice President Nate Gooden's directive." (Record, p. 60)