

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

APPEAL OF:

GWENDOLYN GASTON-KELLEY, Member
LOCAL UNION 1248, UAW,
Appellant

-vs-

CASE NO. 1476 II

UAW DAIMLERCHRYSLER DEPARTMENT
REGION 1
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued April 12, 2005)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson, Prof. Benjamin Aaron, Prof. Janice Bellace, Prof. James J. Brudney, Prof. James E. Jones, Jr., Prof. Maria L. Ontiveros, and Prof. Paul Weiler.

APPEARANCES: Gwendolyn Gaston-Kelley, Ellis Boal, and Lidija Merkouris on behalf of appellants; Leonard Page, Don Sarkesian and James Patton on behalf of International Union, UAW.

Gwendolyn Gaston-Kelly asserts that rights guaranteed to her by the Democratic Practices Section of the Union's Ethical Practices Codes were violated when she was removed from her position as the Local Joint Health and Safety Representative for Local Union 1248.

FACTS

Gwendolyn Gaston-Kelley was appointed to the position of Health and Safety Representative at the Center Line Parts Depot for UAW Local 1248 on January 28, 1998. On December 2, 2002, she accepted a special assignment to the UAW-DaimlerChrysler National Training Center (NTC). On April 15, 2003, James Davis of the NTC sent Gaston-Kelley a letter directing her to return to the Center Line Parts Depot effective April 22. Gaston-Kelley did return to the Plant on April 22 and on April 25,

Local 1248 President Dave Zappa informed her that she had been removed from her position as Health and Safety Representative for Local 1248.¹

On June 22, 2003, Gaston-Kelley attempted to present an appeal to the membership of Local Union 1248 challenging her removal as the Local Joint Health and Safety Representative. In her appeal, Gaston-Kelley argued that President Zappa had violated her right to due process as guaranteed by the Ethical Practices Codes when he caused her to be removed from her appointed position. President Zappa ruled the appeal out of order and adjourned the meeting.² Gaston-Kelley next presented her appeal to the International Executive Board (IEB), which ruled that no violation of the Ethical Practices Codes had occurred in connection with her removal. She then appealed the IEB's decision to the Public Review Board (PRB) and on September 15, 2004, the Board remanded her appeal back to the IEB and directed it to conduct a meaningful investigatory hearing into her Ethical Practices Complaint against UAW DaimlerChrysler Department Vice President and Director Nate Gooden and Local President Zappa.³

On October 4, 2004, International President Ron Gettelfinger advised the PRB that a hearing would be conducted on November 8, 2004, by a three member panel consisting of Administrative Assistants Don Sarkesian and James Patton, with Leonard Page, a retired General Counsel of the UAW, acting as Chairperson.⁴ The hearing took place in the presence of a court reporter who prepared a transcript of the proceedings and testimony.

Chairperson Page opened the hearing by explaining that its purpose was to determine if there were facts to support appellant's allegations that her removal was motivated by reasons that would violate the Ethical Practices Code. Page identified three allegations that he believed would constitute impermissible reasons for removal: political reprisal, race discrimination and sex discrimination.⁵ He asserted that there is no just cause standard in the case of the removal of a political appointment. He stated:

“We are in a democracy whether that be in this country or in a local union. And by and large elected representatives get to make appointments and change appointments. Of course, that is subject to the Letters of Agreement between

¹ *Gaston-Kelley v. UAW DaimlerChrysler Department*, PRB Case No. 1476 (September 15, 2004), pp. 1-2.

² PRB Case No. 1476, p. 5.

³ PRB Case No. 1476, p. 14.

⁴ Record, p. 1.

⁵ Record, p. 65; transcript, p. 7, lines 8-12.

Chrysler and the UAW and the UAW Constitution, specifically the Ethical Practices Code.”⁶

Gaston-Kelley was the first witness. She testified that DaimlerChrysler Department Assistant Director Decoris Glenn had asked her if she would be interested in the NTC assignment, and that he told her that if the assignment did not become permanent, she would return to the plant in her appointed position as Local Joint Health and Safety Rep.⁷ Glenn confirmed later in the hearing that he made this promise.⁸

The testimony given at the hearing reveals that Gaston-Kelley was given no reason for her dismissal on April 15 when James Davis advised her that she must report back to the plant. Davis testified that he did not know himself why she was dismissed.⁹ Gaston-Kelley testified that no one ever notified her that there was a problem with her performance while she was at the Center.¹⁰ After Gaston-Kelley appealed her removal as the Health and Safety Representative for Local 1248, her Supervisor, Arpatsy Oldham, produced a letter stating that on several occasions Gaston-Kelley did not follow proper protocol in accepting assignments.¹¹ Vice President Nate Gooden testified that he dismissed Gaston-Kelley from her position because he had been informed by Arpatsy Oldham that she was always going over her head and taking assignments from other people.¹² Gooden acknowledged that it was a mistake not to have informed

⁶ Record, p. 65; transcript, p. 8, lines 3-9.

⁷ Record, p. 67; transcript, p. 14, lines 2-7.

⁸ The following exchange took place between Chairperson Page and Glenn:

“Q: Did you tell her what would happen to her when the special assignment at the National Training Center came to an end?

A: Yes, I did. As past practice I said she would go back to her original job.

Q: Which was local benefit rep at 1248?

A: No.

Q: Is that what you told her? I’m sorry –

A. No.

Q. –Local Health and Safety Rep?

A. Yes. Based on past practice, yes, I did.” (Record, p. 99; transcript p. 142, line 25 and p. 143, lines 1-10)

⁹ Record, p. 98; transcript, p. 138, lines 22-25 and p. 139, lines 1-5.

¹⁰ Record, p. 70; transcript, p. 28, lines 9-17.

¹¹ Record, p. 100, transcript, pp. 146-149.

¹² Record, p. 94; transcript, p. 122, lines 8-14. Gooden subsequently stated that the only people over Arpatsy Oldham were James Davis and Decoris Glenn. (Record, p. 95; transcript, p. 95, lines 9-12) James Davis denied ever having given any assignments to Gaston-Kelley. (Record, p. 98; transcript, p. 139, lines 22-25 and p. 140, lines 1-2) Decoris Glenn could not recall any occasion when he gave Gaston-Kelley an assignment. (Record, p. 99; transcript, p. 143, lines 20-21)

Gaston-Kelley of the reason for her dismissal in the letter that was given to her on April 15.¹³

Gaston-Kelley testified that when she reported back to the plant on April 22, she simply went back to her office and functioned as the Health and Safety Representative. The following exchange took place between Page and Gaston-Kelley:

- “Q. So, what was the date you reported back to the plant then?
A. April the 22nd.
Q. And who did you report to?
A. I reported back as the Local Joint Health and Safety Rep.
Q. Who did you point yourself to, to say I’m back?
A. Nobody.
Q. Did you still have a badge and ID to get back into the plant?
A. Yes. And my office was still there. So I just reported back to my office and functioned as the Health and Safety Rep.”¹⁴

On April 25, Gaston-Kelley stated that President Zappa told her that she was no longer the Health and Safety Representative. Gaston-Kelley testified:

“...Zappa said Gwen, all I’m telling you is that Vice President Nate Gooden told me on the phone yesterday, concurring with our Regional Director, Ken Terry, if you have any questions Nate said for you to call down there. ...”¹⁵

Gaston-Kelley stated that she did try to contact Vice President Gooden after this and that she finally reached his secretary Yvonne Jackson on May 1. Gaston-Kelley testified:

“I was unsuccessful on the first two attempts. And on May the 1st, 2003, Mr. Gooden’s secretary relayed a message to me in regards to my removal.

He told Sister Jackson that Dave Zappa requested my removal. He is concurring with Zappa and Ken Terry in regards to my removal. And he is not going to adhere to past practice.”¹⁶

Page then asked Gaston-Kelley to describe what she believed the past practice to be. Gaston Kelley responded:

¹³ Record, p. 94; transcript, p. 124, lines 2-5.

¹⁴ Record, p. 71; transcript, p. 33, lines 5-18.

¹⁵ Record, p. 72; transcript, p. 36, lines 2-6.

¹⁶ Record, p. 73; transcript p. 40, lines 20-25 and p. 41, lines 1-2.

“Past practice is when—as far as a local appointee in the plant is assigned a temporary special assignment at the NTC or TTC or President’s Office, wherever, that they are—they cannot be replaced in the plant. Once that assignment is over with, that person will then go back to the plant and resume his responsibility and position that he left.”¹⁷

Gaston-Kelley stated that for most of the time that Zappa was President of the Local, she had had a good working relationship with him. She stated that in July an issue arose between them after Zappa requested all appointees to turn in their parking passes. She stated that she explained to Zappa that her parking pass had been lost, but he did not believe her. She said:

“...I showed Dave Zappa the documents where I had lost and paid for my pass. He did not believe me. He was enraged. And at that point that’s when he started trying to put me on second shift.”¹⁸

In response to further questioning on this point, Gaston-Kelley explained:

“Now, I’ve never done anything to Dave. We have always worked good together when he was a committeeperson. And I believe that the issue is the parking pass. He felt that since I didn’t turn my parking pass in, that I was defying him in some type of way. And he just started with the second shift.

And since I would not go to second shift because of the contractual language and the clarification we got from NTC, he said his next alternative was to get me removed. And that’s what he proceeded to do; get me removed.”¹⁹

Gaston-Kelley further testified that she did not park inside the plant with members of Management after Zappa issued his directive, but that Zappa may have believed that she continued to use the pass.²⁰

Lidija Merkouris was the next witness. She stated that she had supported Zappa’s presidency, but that she was upset by statements he made after he was

¹⁷ Record, p. 73; transcript p. 41, lines 7-13.

¹⁸ Record, p. 68; transcript, p. 18, lines 9-12.

¹⁹ Record, p. 69, transcript, p. 23, lines 13-23.

²⁰ Record, pp. 69-70; transcript, p. 25, lines. 20-25 and p. 26, lines 1-3.

elected. She explained that Zappa was really upset over the parking pass issue, and she described the following conversation:

“And he wasn’t going to have anybody parking in management parking lot. They will park with the rest of us. Like I guess that was to state that he wasn’t taking part with anything management had to do with, you know. It’s like he was strictly for the people, for the workers and that he wasn’t making deals with management.

But anyways the statement he made at that time as we were conversing he said that that black B, which I’m not even going to go there, say it, but she hasn’t turned in her badge. And I will find a way to get rid of her.

And I said – I said how could you do that? She – doesn’t she have an appointed position? And he says, listen, I will find a way to get rid of her because when Al was in office he put too many black people on the board. So he’s going to try and change things around.”²¹

Merkouris went on to testify that when she discovered that Zappa had removed Gaston-Kelley from her position, she signed a petition to have her reinstated.

Gaston-Kelley called the former president of the Local, Al Johnson, to testify on her behalf. Johnson stated:

“The only thing that I can testify to is the practice—the past practice on when an appointee went on temporary assignment, how they were returned to the local, to their former position.”²²

Chairperson Page indicated that further testimony on this point was not necessary because past practice at the Parts Depot was not in dispute. He stated:

“That’s fine. But as I’ve read the record, as I’ve seen the positions taken by the parties, no one disputes that the past practice is the person removed on a temporary assignment from the training center has gone back to their appointed position. And I haven’t heard anyone dispute that. So it

²¹ Record, p. 76; transcript p. 51, lines 19-25 and p. 52, lines 1-5 and 11-16.

²² Record, pp. 77-78; transcript p. 57, lines 24-25, and p. 58, lines 1-2.

would just save us some time. We accept that as the past practice or this panel does."²³

Chairperson Page called President Zappa to testify. In response to questioning, Zappa explained his irritation at Gaston-Kelley's failure to turn in her parking pass. He stated:

"...Not because she couldn't provide or she had lost the pass, but what was going on at the time was everybody was challenging my position that I took with the parking issue. So yeah, I got upset. Irate? I don't think so, you know. But it was just an argument. It didn't stop. The appointees grouped up together and it just turned into a very big issue which I saw it as kind of cut and dry. ..."²⁴

Subsequently, Zappa stated that he asked Gaston-Kelley to leave a meeting about moving a packaging operation, because she had not been invited. He stated that one half hour later one of his constituents said that he had been told that Gaston-Kelley had been thrown out of the meeting because she was a black female.²⁵ Zappa agreed that he had had a good working relationship with Gaston-Kelley in the beginning. He added:

"...But that was prior to the meeting that we had had. And after we had that meeting, different problems arose in different buildings, things were allegedly being said like Gwen was telling people I'm a racist."²⁶

He went on to explain that his problems with Gaston-Kelley started just prior to the meeting about the packaging operation. He testified:

"...You know, there was still a lot of controversy over these parking passes that nobody would let go. And things were done to impede things that I was trying to do. And it got to the point where I need somebody to be there who's going to work with me, not against me. And what I saw happening was Gwen working against me."²⁷

After Gaston-Kelley was given the assignment to the NTC, Zappa stated that he called the International Union to ask what steps he should take to fill the vacancy.

²³ Record, p. 78; transcript, p. 58, lines 14-21.

²⁴ Record, p. 80; transcript, p. 68, lines 12-19.

²⁵ Record, p. 81; transcript, p. 70, lines 11-19.

²⁶ Record, p. 81; transcript, p. 71, lines 3-6.

²⁷ Record, p. 81; transcript, p. 71, lines 18-24.

Zappa described the following conversation with President Gettelfinger's Administrative Assistant, General Holiefield:

"He said, well, you send in to replace the rep because they're gone on assignment; not knowing how long, they could be gone a year, six months, five years and the local couldn't go without a safety rep. So at that point in time I made it known that I'd be sending down names to the DaimlerChrysler department—UAW Daimler Chrysler department for an appointment to be made. So that's what I did and the appointments came back."²⁸

Zappa testified that he posted a notice in the plant and in the daily news that he was seeking a replacement for Gaston-Kelley, even prior to the time that she left the plant to report to the NTC.²⁹ He stated that when he learned that Gaston-Kelley had been directed to return to the Center Line Plant, he had already appointed Nancy Dlugokinski to replace her and filled the alternate positions.³⁰ Gaston-Kelley asked exactly when Dlugokinski had been appointed Health and Safety Representative. Zappa responded that he did not know. Gaston-Kelley asked if Dlugokinski was on medical leave at the time she was appointed. Zappa responded that she was on medical leave and the alternate stepped in and filled her position.³¹ Gaston Kelley then asked about the request Zappa made to have Dlugokinski appointed. The following exchange took place:

"MS. GASTON-KELLEY: Can you ask Dave what date he submitted the letter to have me replaced?"

BY MR. CHAIRPERSON:

Q. You know, there has been—there has been a number of references in the record. This is a question I would like to ask about some letter that supposedly you sent to the national department requesting either that Gwen be removed or that Nancy be appointed.

Do you recall any such—I have not seen that letter in this record. Do you recall any letter like that?

A. There is no letter. There—the only thing that was done was I sent resumes and applications in to fill the vacancy. That's it. There was no letter.

²⁸ Record, p. 83; transcript, p. 80, lines 6-14.

²⁹ Record, p. 83; transcript, pp. 80-81.

³⁰ Record, p. 84; transcript, p. 83, lines 22-25, and p. 84, lines 1-6.

³¹ Record, p. 87; transcript, pp. 94-96.

Q. The letter either requesting Gwen's removal or requesting Nancy's appointment, you're saying you just sent in the three resumes for the national department to look at?

A. Correct. Correct. And for the record, that rumor has traveled through my plants that there was a letter submitted by myself to have her removed. And it's untrue. It's untrue.

MR. CHAIRPERSON: Gwen, do you have another question?

MS. GASTON-KELLEY: Yes. If there was no letter to have me removed or to have me replaced, how did I get out of that position? I'm really confused now.

MR. CHAIRPERSON: Now, I think we're getting into some argument. As I understand the rules here, the vice president makes the decisions on replacement. As I have heard the testimony from this witness he said when you went to the training center we have an opening here. He sent three resumes to the vice president. The vice president picked one of those and selected Nancy as your replacement."³²

Ken Terry was called as a witness and questioned about the past practice of replacing appointees who are on special assignment. Terry explained the situation as follows:

"It's a rule of thumb—what I, you know, what you have to do is, I call the department and when they put Ms. Gaston in that position, I says, well, how long. And they said she'll probably be here indefinitely. They didn't give me any determination on that. Then when Zappa called and said I'd like to have a replacement, I called the department and they said that would be appropriate."³³

Nate Gooden was called as a witness and questioned about the past practice of returning appointees on special assignments to their appointed positions, Gooden stated:

"The practice is loose. The practice—some of it—some local unions when they go back, they put them on; some local unions don't. The practice was real loose.

³² Record, p. 87; transcript, p. 96, lines 12-25 and p. 97, lines 1-25.

³³ Record, p. 90; transcript, p. 106, lines 2-9.

I was the one who straightened the practice out after this situation came up because I said the number one—once a person go on special assignment, we train alternate people. So alternate person should be the one that goes in and fills that spot. Some local union presidents will not put the alternate person on. They will pick someone out and send a letter in to the regional director for politics or whatever. That person would come up.

I said we can't do that anymore. We're wasting X amount of money to train people. If we're training people, why not take the people who we're training and put them in that position."³⁴

Chairperson Page questioned Gooden about his communication to Gaston-Kelley, through his secretary, that he was not going to follow past practice. Gooden responded.

"Well, first, let me just say this: The information you're talking about is on page 95 in your thing that she said that my secretary—the letter was signed by Zappa and Ken Terry removing her. Ken Terry and Zappa did not sign a letter to remove her. My secretary did not tell her that it was a letter because my secretary doesn't have the privilege to be telling people that. When it comes to appointment and everything, that's totally handled by the AA, the AD or myself. Secretaries do not get into the appointment business or anything."³⁵

Later, Gaston-Kelly questioned Gooden about the past practice. The following exchange took place:

"MS. GASTON-KELLEY: I have one other question here. It's Nate's testimony that the alternate takes the person's place when they leave for special assignment.

MR. CHAIRPERSON: As I heard him testify he said that's the practice now. Maybe you should clarify this.

MR. GOODEN: Okay. When Ms. Gaston left the alternate replaced her and then he retired, as I recall it. And after he retired that's when Zappa submitted the three names for Nancy to be named a safety rep.

³⁴ Record, p. 92; transcript, p. 117, lines 7-23.

³⁵ Record, p. 94; transcript, p. 124, line 25 and p. 125, lines 1-10.

MR. CHAIRPERSON: I believe the question was is the practice.

MR. GOODEN: The practice have been changed. The practice now is that when a person leaves that position, the alternate person moves up to take that spot. And then I filled the alternate spot by the way we talked about later, about the three names being submitted to the regional director and for the name to be submitted to me.

MS. GASTON-KELLEY: Can you ask Brother Nate Gooden if Nancy Dlugokinski took my spot?

MR. CHAIRPERSON: I don't think that's in dispute.

MR. GOODEN: I don't know whose spot Nancy took.

MS. GASTON-KELLEY: Yes, it is in dispute.

MR. GOODEN: I don't know whose spot.

MS. GASTON-KELLEY: If his testimony is that the alternate or person that is replacing is the alternate then I'd like to know is it his understanding the Nancy Dlugokinski took my spot.

MR. GOODEN: That's not what I said. Here's what I said: I said the alternate took your spot. The alternate retired. Then the president submitted Nancy's name along with three other names. And Nancy was awarded that spot. Now if you think that was your spot, then you can think that was your spot, but that's the way it worked.

MS. GASTON-KELLEY: For the record, she did not take my spot.

MR. CHAIRPERSON: Well, that's argument on rebuttal."³⁶

After some discussion about the past practice and the position that was taken by Nancy Dlugokinski, Gooden continued:

"I want to make it emphatically clear, for the record, the filling of any appointment job is at the will of the vice president. Any appointment job is at the will of the vice president. A practice we use is not binding or required because that practice belonged to the vice president. He appoints and he removes at his discretion. Just that plain and simple.

³⁶ Record, p. 95; transcript, p. 126, lines 15-25, p. 127, lines 1-25, and p. 128, lines 1-10.

MR. CHAIRPERSON: All right. Our role here – we are not challenging that. However, the UAW Constitution and the PRB has directed us to look into these ethical practice claims.

MR. GOODEN: I truly understand what you're supposed to do but I just wanted to make it a part of the record that the PRB or anyone else is not going to take the duties away from me that have been given to me under the Constitution of the UAW."³⁷

Gaston-Kelley then remarked that one of the reasons her case was remanded was that there was no investigation into the reason why she was removed from her position as Health and Safety Representative at Local 1248. Chairperson Page responded:

"Now we're getting into argument. My perception of Nate's testimony is he didn't have anything to investigate. It was his observation and decision which formed the basis of this decision."³⁸

At the close of the hearing, Gaston-Kelley argued that Zappa and Gooden colluded to remove her from her position as Health and Safety Representative in a way that was impermissible under the Ethical Practices Code. She stated:

"If the IEB's decision is allowed to stand, this would be a slap in the face to the UAW members who came before us whose blood, sweat and tears has made a way for us to be here today. If this decision is allowed to stand the IEB is condoning the malicious undermining behavior and tactics of President Zappa. If this decision is allowed to stand it will say to all of the young people who look up to the UAW, this is how we treat our members."³⁹

Following the hearing, Gaston-Kelley submitted a statement in which she argued that the notices that President Zappa posted for a Health and Safety Representative prior to her departure to take the assignment at the NTC, were for an additional representative on the second shift, not for a replacement for the regular Local Joint Health and Safety Representative on the first shift. She wrote:

"...The notices Zappa posted was not to replace me, they were to add a 2nd shift Rep. and 2 alternates, one for days and one for 2nd shift. Therefore, leaving the Local Joint Health & Safety position open because when I came back

³⁷ Record, p. 96; transcript, p. 130, lines 9-25.

³⁸ Record, p. 96; transcript, p. 132, lines 21-25.

³⁹ Record, p. 104; transcript, p. 162, lines 11-19.

from NTC I went directly back into the Local Joint Health & Safety position until Zappa notified me on the 25th of April that I was no longer the Local Joint Health & Safety Rep.”⁴⁰

Gaston-Kelley pointed out that while Gooden claimed that she was removed from her appointment at the NTC for taking directions from Decoris Glenn and Jimmy Davis, neither Glenn nor Davis could recall any specific instance of having given her a direct assignment. She stated:

“Any impartial person can see that all of this is a botched up cover up and I was set up.”⁴¹

Gaston-Kelley asked that the IEB’s decision be reversed and that she be returned to the position of Local Joint Health and Safety Representative at Local 1248. She pointed out that no one would be displaced by this remedy since the Local has always had two Safety Representatives on the first shift, and that Nancy Dlugokinski is on the second shift.⁴²

The hearing panel prepared a report for the IEB based on the November 8 hearing. The report indicates that animosity developed between Gaston-Kelley and President Zappa shortly after his election in June 2002, but it found no credible evidence that this animosity was based on race or sex.⁴³ The hearing panel found that President Zappa followed standard procedure in filling the vacancy in the Local Health and Safety Representative position created when Gaston-Kelley accepted the assignment at NTC. The panel pointed out that Gaston-Kelley could have raised the issue of her right to return to her appointed position in the Local when her assignment to the NTC was announced to the membership, but that she did not do so.⁴⁴

The hearing panel wrote that despite Decoris Glenn’s assurance to Gaston-Kelley regarding that past practice of holding appointed positions open for appointees who accept special assignments, there does not appear to be a firm practice. The panel stated:

“Backfilling the Local Union position seems to depend on both the Local’s needs and the anticipated length of the special assignment. In addition, it was not as if the Appellant completed her NTC assignment or there was no longer any

⁴⁰ Record, p. 109-110.

⁴¹ Record, p. 111.

⁴² Record, pp. 114-115.

⁴³ Record, p. 126.

⁴⁴ Record, p. 129.

work for her. She was removed by Vice President Gooden based upon serious problems he had with her."⁴⁵

In any event, the hearing panel pointed out that Gaston-Kelley should have realized that she could not rely on Assistant Director Glenn's assurance on this point since he was not the final authority on who should be retained in an appointed position.

With regard to Vice President's Gooden's involvement in the situation, the hearing panel noted that there was no substantial claim that race or sex discrimination motivated his actions. It also found no basis for Gaston-Kelley's claim that her removal had anything to do with Zappa's support for Gooden against the wishes of the Local Union membership in 1998. Based on these findings, the hearing panel concluded that no violations of the Ethical Practices Code occurred in connection with Gaston-Kelley's removal from her assignment at the NTC and her return to Local 1248 and it denied her appeal. The IEB adopted the report of the hearing panel as its decision and notified Gaston Kelley on December 9, 2004. Gaston-Kelley once again appealed to the PRB to overturn the IEB's dismissal of her Ethical Practices Complaint and restore her to her position as the Local Union's Health and Safety Representative.

We heard the parties in oral argument on March 12, 2005.

ARGUMENT

A. Gwendolyn Gaston-Kelley, by her attorney, Ellis Boal:

The Public Review Board's Notice of Hearing asks the parties to comment on the nature and extent of the protections provided to Union members by the Democratic Practices Section of the Ethical Practices Codes. The preamble to the Codes indicates that the principles set forth therein have always governed the International Union and its Local Unions. Appellant Gaston-Kelley understands this to mean that the substantive and procedural guarantees stated in the Codes are inherent in Article 33 and any other articles that might apply to a decision to remove appointed representatives. Gaston-Kelley is not in a position to define those protections precisely, but one of the protections unequivocally guaranteed to union members in the Codes and throughout the Constitution is ethical treatment.

We believe the guarantee of ethical treatment includes the right to rely on promises made by agents of the International Union, such as the promise made to Gaston-Kelley by Decoris Glenn that she could return to her position as the Local Joint Health and Safety Representative if the NTC appointment she was accepting did not become permanent. Glenn was not only acting as an agent of the Union when he made this promise. In addition, his promise was supported by a longstanding past practice and an Administrative Letter stating a policy that Local Representatives will not be

⁴⁵ Record, pp. 129-130.

removed based solely on political considerations. Gaston-Kelley had a right to rely on Glenn's promise notwithstanding any finding by the IEB that the DaimlerChrysler Department's actions may have been free of impermissible considerations such as race, sex or political retaliation.

The IEB's decision focuses primarily on the extent to which the Ethical Practices Codes limit the power of the DaimlerChrysler Director to remove appointees to the NTC, but Gaston-Kelley is not appealing her removal from the NTC. We accept the finding of the IEB that Vice President Gooden's decision to remove Gaston-Kelley from the NTC position was not motivated by considerations of political reprisal or sex discrimination. Race discrimination may have been a factor to the extent that Local 1248 President Zappa had a role in her removal. We have offered the testimony of Lidija Merkouris to show that Zappa's desire to remove Gaston-Kelley from the Health and Safety Representative position may have been racially motivated. Our primary argument, however, is that Zappa accomplished his goal of removing Gaston-Kelley from her position at the Local Union in a manner that was inconsistent with the guarantee of ethical treatment that is stated explicitly in the Ethical Practices Codes and implicitly throughout the Constitution.

We believe that the PRB should order Gaston-Kelley returned to her position as the Local Joint Health and Safety Representative for Local Union 1248, notwithstanding the DaimlerChrysler Department's undoubted power to remove her the following day, subject to the restrictions of the Ethical Practices Codes. Whatever problems Gaston-Kelley may have had with Arpatsy Oldham at the NTC have no bearing on her performance as the Local Health and Safety Representative for Local Union 1248. Gaston-Kelley's performance history at the Local up to this date has been excellent, as all agree. The IEB acknowledged that despite the existence of some political tensions at the local level, President Zappa did not request Gaston-Kelley's removal. Although Zappa might request Gaston-Kelley's removal immediately upon her reinstatement, we do not believe he will. In any event, Gaston-Kelley is entitled to insist that the Union follow its own established processes in responding to such a request. She is also entitled to any back pay, overtime, or other benefits she might have had if the Union's promise to her had been honored.

B. Counselor Leonard Page on behalf of the International Union, UAW:

In PRB Case No. 1476, the Board concluded that an inadequate investigation had been conducted in response to Gaston-Kelley's Ethical Practices Complaint and it remanded the Complaint back to the IEB to correct that deficiency. Gaston-Kelley raised three matters that, if established, would constitute a violation of the Ethical Practices Codes; those were political reprisal, race discrimination and sex discrimination. Our obligation was to determine whether these allegations were supported by the facts. We believe that is the limit of what the Ethical Practices Codes requires. That is so because there is no other Constitutional restriction applicable to the removal of special-purpose representatives, such as Health and Safety Representatives, by a National Department. The situation is analogous to that of a

Presidential appointee in the United States Government. There is no basis, such as a just cause standard, for challenging the removal of such appointees.

After considering the testimony of all the witness, we concluded that there was no evidence that Gaston-Kelley's removal from her position at the NTC was motivated by any of the three alleged impermissible reasons. Furthermore, we found that there were no Ethical Practices Codes violations committed by President Zappa in connection with his replacement of Gaston-Kelley as the Local Health and Safety Representative for Local Union 1248. Zappa did nothing more than seek to have an open position filled by completing an assignment form which was first processed through Regional Director Ken Terry and then referred to Vice President Gooden's office. There the matter ends. The deficiencies in the record have been corrected and no Ethical Practices Codes violations have been established.

In response to Gaston-Kelley's appeal, the PRB has asked us to consider whether the Ethical Practices Codes create any substantive rights that would limit the Union's discretion in the removal of special-purpose representatives beyond the three impermissible motivations we considered during our investigation. To some extent, our being here is an affirmative answer to that question. We accept the fact that an appellant is entitled to an investigation into allegations that his or her rights as a member of the Union have been abused, and that the member is entitled to appeal the Union's denial of such a claim to the Public Review Board. However, the only process due to a member who has been removed is the kind of investigation and appeal process that has been accorded to Gaston-Kelley in this case. We do not believe that the Ethical Practices Codes create any general guarantee of fairness or consistent practice with respect to such removals. Beyond the kind of impermissible motivations we investigated in response to Gaston-Kelley's Complaint, the Ethical Practices Codes would only come into play in the case of outrageous conduct or the violation of some statutory right.

Gaston-Kelley's principal argument is that she was assured by Decoris Glenn of the National Training Center that she would return to her prior appointment at the plant as the first shift Health and Safety Representative when her special assignment ended. Glenn did not have the authority to give Gaston-Kelley such assurance and such verbal assurances could not bind the Department Director or limit his discretion in the appointment or removal of representatives. In any event, Glenn was wrong about the past practice. Some Local Unions do fill vacancies in Representative positions when people leave to take assignments in the National Department.

Finally, even assuming hypothetically that there was a specific promise to return Gaston-Kelley to her appointed position, and a well-established past practice, and taking into account the Union's policy that Representatives will not be replaced simply because there is a change in the Local Union's administration, that would still not be sufficient to justify an order to reinstate Gaston-Kelley to her position in opposition to the expressed will of the DaimlerChrysler Department Vice President. The Vice President must retain discretion in these appointments. His decisions must not be subject to

scrutiny based on oral assurances or other random circumstances. In order to trigger the authority of the Public Review Board to overrule a decision made by the Vice President in the matter of appointing or removing representatives as being in violation of the Ethical Practices Codes, the violation charged must be specific and involve clearly objectionable conduct.

Gaston-Kelley claims that Zappa and Gooden conspired to have her removed from the Local appointment. She characterizes the timing of her replacement as incriminating. We fail to see how the timing really matters. Gaston-Kelley could have been returned to her local appointment and removed later by Vice President Gooden for any reason other than a violation of the Ethical Practices Codes. The animosity between appellant and Local Union President Zappa was more than sufficient to justify her removal.

C. Gwendolyn Gaston-Kelley's rebuttal by her attorney, Ellis Boal:

Contrary to Vice President Gooden's testimony at the hearing conducted by the IEB, there has been no change in the past practice of returning appointed representatives on special assignment to their appointed positions. J. Wall from Trenton Engine returned to his plant after a three year special assignment, and he was returned to his appointed position. Ernestine King and Norm Rothwell, both from Local 1248, went on special assignment and returned to their appointed positions in the plant. As a matter of fact, King went on special assignment twice from Local 1248, before she was eventually hired permanently on the Health and Safety staff. Recently, another member of our plant, David Whitenight, went on special assignment. Zappa reported to the membership at the Union Meeting on December 19, 2004, that Whitenight had accepted a special assignment and that his position would not be filled. Gooden was well aware of this established procedure.

At the hearing conducted by Leonard Page, Zappa stated that he had sent some names and résumés of applicants for positions as Health and Safety Representative to the International and that the appointments came back. Zappa testified that when he received a copy of the April 15, 2003, letter directing Gaston-Kelley to return to her regular place of employment, he had already filled her position with the appointment of Nancy Dlugokinski. On further questioning, however, Zappa acknowledged that he never requested a replacement for Gaston-Kelley or sent any kind of letter along with the names of applicants for Health and Safety Representative positions. When Vice President Gooden testified, he stated that he did not know which position Nancy Dlugokinski was appointed to at the Local Union. So, the record establishes only that some applicants for Health and Safety Representatives were approved while Gaston-Kelley was on assignment to the NTC.

There are five Health and Safety Representative positions at Local Union 1248. There is one Representative appointed by the DaimlerChrysler Department who sits on the Local Joint Committee and serves on the first shift as the Health and Safety Representative. This was Gaston-Kelley's position. There is an alternate for this

position. There is a second shift Health and Safety Representative and an alternate for that position, and there is one additional Health and Safety Representative for the Local Union. When Gaston-Kelley went to the NTC, the alternate, Ann Jones, filled in for her as first shift Health and Safety Representative. Ann Jones retired on February 14, 2003, and the additional Health and Safety Representative, Norm Rothwell, took over the first shift alternate position and filled in for Gaston-Kelley in her absence. Nancy Dlugokinski was never appointed to fill the Local Joint Health and Safety Representative position. In fact, Dlugokinski has always worked on the second shift and the Local Joint Health and Safety Representative serves on the first shift in accordance with the Memorandum of Understanding on Health and Safety between the UAW and DaimlerChrysler Corporation.

When Gaston-Kelley returned to the plant on April 22, 2003, she resumed her duties as the Local Joint Health and Safety Representative and continued to function in that position until April 25, when she was told by President Zappa that she had been removed by Vice President Nate Gooden. It was not until Gaston-Kelley contacted the Regional Servicing Representative Ruben Turner that the International took the position that she had been replaced while she was on assignment to the NTC, but there is nothing in the record to show that this replacement ever occurred.

DISCUSSION

The peculiar way in which Gaston-Kelley's assignment to the NTC was summarily terminated without any explanation seems to have created a distraction from the actual substance of her appeal, so that the hearing panel investigating her Ethical Practices Complaint focused its attention to a large extent on that event and on the alleged impermissible motivations that might have influenced Gooden's decision. However, Gaston-Kelley's initial Ethical Practices Complaint did not mention race discrimination and referred only incidentally to the possibility of sex discrimination or political reprisal. Her primary argument at the hearing we conducted on June 19, 2004, was that the guarantee in paragraph 3 of the Democratic Practices Section of the UAW Ethical Practices Codes that union rules will be fairly and uniformly applied, taken together with the policy of the Union published in a series of Administrative Letters barring local union presidents from removing trained representatives solely to appoint their own supporters, should have given her some recourse to challenge Zappa's decision to remove her from her job.⁴⁶

⁴⁶ Our decision in PRB Case No. 1476 paraphrases Gaston-Kelley's argument on the effect of Paragraph 3 as follows:

"This language, by itself, does not limit the discretion of the Director. The record demonstrates, however, that the Department has adopted certain policies and procedures in connection with the appointment of representatives. The existence of an established policy or procedure regarding the appointment and removal of representatives by the Chrysler Department, together with the due process guarantee of the Ethical Practices Codes creates substantive rights for members which this Board can enforce." (PRB Case No. 1476 at p. 7)

Appellant has conceded that sex discrimination and political reprisal did not cause the loss of her appointment as the Health and Safety Representative for Local 1248. We also agree with the findings of the IEB that race discrimination played no meaningful role in the events giving rise to Gaston-Kelley's appeal. There is nothing in the record to suggest that Vice President Gooden's actions in regard to Gaston-Kelley were racially motivated. The only evidence of racial motivation on the part of President Zappa was the testimony of Lidija Merkouris concerning the comments he made to her in regard to what he perceived as Gaston-Kelley's refusal to turn in her parking pass. While we find Merkouris' testimony credible, we do not believe that a single inappropriate comment can be construed as sufficient evidence of a strategy based on racial prejudice.

We also accept the position of Counselor Page that beyond allegations of race and sex discrimination or political reprisal, a claim that an appointed representative was removed for reasons that violate the Ethical Practices Codes must be specific and describe conduct contrary to generally accepted moral or ethical principles. A claim that the action was simply unfair or unjustified would not be sufficient to confer jurisdiction on this Board to interfere with a Department Vice President's Constitutional discretion in the matter of appointments.

Applying these principles, the IEB correctly ruled that no impermissible reasons influenced Vice President Gooden's decision to terminate Gaston-Kelley's assignment at the NTC, even though the reason he ultimately gave for having terminated her could not be substantiated. This conclusion is not, however, responsive to Gaston-Kelley's appeal. Gaston-Kelley has never challenged her dismissal from the NTC assignment or questioned the extent of Vice President Gooden's discretion in regard to that decision. Gaston-Kelley is appealing the manner in which she was deprived of her job as the Joint Health and Safety Representative at the Center Line Parts Depot. Her only charge against Vice President Gooden is that he may have cooperated with Local President Zappa to accomplish her removal.

In *Anna Ward, et al. v. UAW General Motors Department*, 8 PRB 228, (1994), we summarized the principles established in prior cases applicable to Ethical Practices Complaints challenging the removal of special purpose representatives. We held that a special purpose representative serves at the will of the appointing authority and may be terminated for any reason, except a prohibited reason.⁴⁷ Our decision did not, however, limit the scope of the Ethical Practices Codes to a rigid formula of prohibited reasons such as invidious discrimination or political reprisal. The *Ward* decision recognized that the Ethical Practices Codes would protect an appointee from removal for exercising rights guaranteed by the UAW Constitution which had not been restricted by the appointing authority. It did not propose an itemized list of the rights so protected. We find that Counselor Page's investigation into Gaston-Kelley's Ethical Practice Complaint focused too narrowly on the impermissible reasons that were only incidental to her

⁴⁷ 8 PRB 228, at 236.

Complaint. When Gaston-Kelley was informed by President Zappa that she was no longer the Health and Safety Representative for Local 1248, she did not know what had happened to cause that result. She attempted to discover by what agency she had been removed, but the answers she received were at best ambiguous and inconsistent. We agree with Gaston-Kelley that the protection afforded by the Ethical Practices Codes goes beyond freedom from invidious discrimination or political reprisal. A UAW member does have the right to expect ethical treatment by the Union.

The testimony presented at the second hearing we conducted on this appeal has clarified the issues raised by Gaston-Kelley's Complaint by revealing what actually occurred following the termination of her assignment at the NTC. There is no dispute from any of the participants in these events that Vice President Gooden never removed Gaston-Kelley from her position at the Local Union. The only evidence that Gooden had any connection to her removal was the message conveyed to Gaston-Kelley by his secretary which he adamantly disavowed. President Zappa also vehemently denied ever having sent a letter to the DaimlerChrysler Department requesting Gaston-Kelley's removal. Gaston-Kelley never received anything from the DaimlerChrysler Department removing her from her appointed position as Local Health and Safety Representative. In fact, when Gaston-Kelley contacted her Regional Representative Ruben Turner about the status of her appointment, he confirmed that she had not been removed. He claimed she had been replaced while on special assignment to the NTC.

It is clear from the record, however, that this did not happen either. The position that Gaston-Kelley held was established pursuant to a Memorandum of Understanding on Health and Safety between DaimlerChrysler Corporation and the UAW.⁴⁸ Under the terms of that agreement, the Joint Health and Safety Representative must be appointed by the Director of the DaimlerChrysler Department.⁴⁹ Prior to the hearing on November 8, 2004, notices were sent to all of the parties involved, including President Zappa, Regional Director Ken Terry and Vice President Gooden asking them to review their files again on this matter and produce any documents pertaining to Gaston-Kelley's removal or replacement as the Health and Safety Representative for Local 1248.⁵⁰ No letter was produced appointing a replacement for Gaston-Kelley as the Joint Health and Safety Representative.

⁴⁸ The Memorandum states, in pertinent part, as follows:

“(A) Establishment of Local Committee and Representation

A Local Committee will be established in each plant, consisting of one (1) representative appointed by Plant Management and one (1) representative appointed by the Director of the Union's DaimlerChrysler Department. ...”

⁴⁹ When Gaston-Kelley was appointed on January 28, 1998, Chrysler Department Vice President and Director Jack Laskowski sent a letter to Chrysler Corporation Vice President Thomas Gallagher announcing her appointment pursuant to the Memorandum of Understanding on Health and Safety. This letter is on page 11 of the Record in PRB Case No. 1476

⁵⁰ Record, pp. 23, 25 and 26.

The International Union has argued that the replacement process started on January 28, 2003, three days after Gaston-Kelley started at NTC, and in support of this position it points to the *Center Line Daily News* edition of January 29, 2003, which contains the following notice:

“Attention all employees:

Anyone interested in an appointed position – please forward your resume to Dave Zappa.”⁵¹

This hardly amounts to an announcement that Zappa intended to replace Gaston-Kelley as the Local’s Joint Health and Safety Representative.⁵² Zappa claimed that he sent in résumés to the DaimlerChrysler Department and the appointments came back, but he could not produce any document appointing a replacement for Gaston-Kelley. He suggested that Nancy Dlugokinski was Gaston-Kelley’s replacement, but Dlugokinski worked on the second shift and the Joint Health and Safety Representative serves on the first shift.⁵³ Vice President Gooden admitted that he did not know who was supposed to have taken Gaston-Kelley’s place, despite the fact that he is the only person authorized to make the appointment. Finally, there is the simple fact that the position was still open when Gaston-Kelley returned to the plant on April 22 and that she returned to her office and functioned as the Health and Safety Representative from April 22 until April 25. We find, therefore, that no replacement occurred while Gaston-Kelley was on assignment at the NTC.

The International has argued that the timing of Gaston-Kelley’s removal does not really matter, because she might have been removed at any time by Vice President Gooden for any reason other than a violation of the Ethical Practices Codes. It points out that Zappa might have requested her removal on the grounds of incompatibility and contends that this alone would have been sufficient to justify her removal. The International’s position seems to be that because Gooden had the authority to remove Gaston-Kelley, and that her only grounds for challenging such removal would be a violation of the Ethical Practices Codes, there was no need for Zappa to go through the motions of requesting her removal or for Gooden to go through the motions of removing her. We find this position unacceptable under the principles embodied in the UAW’s Ethical Practices Codes.

⁵¹ Record, p. 148.

⁵² Such an announcement would likely have produced a response from Gaston-Kelley’s supporters. When Gaston-Kelley first attempted to present her appeal to the membership at the meeting on June 22, 2003, the members became so angry at Zappa’s refusal to allow the appeal that he had to adjourn the meeting and order everyone to leave the premises. (See the record in Case No. 1476, pp. 113-119.)

⁵³ The Memorandum of Understanding on Health and Safety States:

“(7) Working Hours

The Union member of a Local Committee shall be assigned to the first shift and shall be subject to the provisions of Section (19) of the National Production and Maintenance Agreement.”

The Introduction to the Democratic Practices Section of the Codes declares the following principle:

“...Moreover, individual rights as a UAW member are protected against infringement or abuse, for a member may appeal complaints concerning the administration of the Union, to the Local Union, the International Executive Board and the Constitutional Convention; and has the right to submit her/his appeal to the UAW Public Review Board, ...”

Zappa could have requested Gaston-Kelley's removal while she was at the NTC on the grounds that her appointment was indefinite and the Local needed a Health and Safety Representative. Had he done so, Gaston-Kelley might have challenged the request based on the promise made to her by Decoris Glenn and the well-established past practice. The Constitution and the Ethical Practices Codes grant to Gaston-Kelley the right as a member of the union to pursue that appeal. That right is not diminished by the circumstance that Gooden would likely have denied the appeal, and that his exercise of discretion in that regard could not be challenged unless impermissible reasons could be established. At the same time, the guarantee in paragraph 3 of the Democratic Practices section of the Ethical Practices Codes--that Union rules will be fairly and uniformly applied--might well have been found to constitute a reason that constrained the Director's discretion to remove Gaston-Kelley, in light of the existence of a substantial past practice at this Local which has not been credibly challenged.

Similarly, Zappa might now request Gaston-Kelley's removal based on the claim that he is unable to work with her. Once again, Gaston-Kelley would have a right as a union member to challenge that request on the basis of the evidence regarding their past positive interactions as well as the Union's policy stated in Gooden's Administrative Letter of November 8, 1999, that changes in local union administration will not presumptively justify the removal of Internationally-appointed Local Union Representatives.⁵⁴ While Gaston-Kelley might have an uphill battle persuading the Vice President to rule against his political ally, Gooden might be convinced—pursuant to his Administrative Letter--that the membership's interests would be best served by retaining a Representative with the training and skills acquired by Gaston-Kelley during her service to the Local as its Health and Safety Representative, despite her past differences with Zappa. In any event, the Constitution and the Ethical Practices Codes

⁵⁴ According to testimony given at the hearing, this letter has recently been reissued with the policy statement unchanged. The policy states:

“It is intended that Internationally-Appointed Local Union Representatives will become ‘experts’ in their respective field(s) and a valued asset to the local union. Therefore, it is not intended that changes in local union administration will also result in changes of Internationally-Appointed Local Union Representatives. We must always be mindful that the needs of our members should remain foremost in our concerns and efforts.” (This letter is in the Record of PRB Case No. 1476 at page 23.)

give Gaston-Kelley the right to have her arguments considered in the context of an actual personnel decision removing her from her appointed representative position.

Zappa may request Gaston-Kelley's removal and Gooden may remove her for reasons not inconsistent with the Ethical Practices Codes, but they may not accomplish her removal surreptitiously. She is entitled to notice of any action taken by the Union with respect to her job as Health and Safety Representative at Local 1248, so that she can present her arguments against the decision, and exercise her rights of appeal spelled out in Article 33 of the International Constitution. We acknowledge the broad discretion granted to Department Directors and Vice Presidents by the UAW Constitution, but there is no evidence of an exercise of that discretion by Vice President Gooden in this case.

At this time, therefore, we find that Gaston-Kelley still is the Local Joint Health and Safety Representative for Local Union 1248, for she has never been removed from that position in a manner consistent with the expectations for fairness and uniformity contained in the UAW Ethical Practices Codes and the Union's stated policy concerning the appointment and tenure of its special purpose representatives. Gaston-Kelley is entitled to be compensated by the Local Union for any monetary losses she suffered as a result of Zappa's wrongful refusal to allow her to resume her position as the Local's Joint Health and Safety Representative on the first shift. The decision of the IEB is reversed. The Local is directed to allow Gaston-Kelley to resume her duties as the Joint Health and Safety Representative. The case will be remanded to Local 1248 for the purposes of assessing what compensation, if any, is due to Gaston-Kelley. The PRB will retain jurisdiction until this process is complete.

It is so ordered.