

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

APPEAL OF:

TYRONE WILSON,
Appellant

-vs-

CASE NO. 1573

LOCAL UNION 1976, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued September 6, 2007)

PANEL SITTING: Prof. Theodore J. St. Antoine, Chairperson,
Prof. Benjamin Aaron, Prof. Janice R.
Bellace, Prof. James J. Brudney, Prof. James
E. Jones, Jr., Dean Harry C. Katz, and
Prof. Maria L. Ontiveros.

Tyrone Wilson argues that the decision of the Local 1976 Bargaining Chairperson not to file a grievance protesting the University's requirement that he work for thirty days in the Academic Advising Center lacked a rational basis.

FACTS

Tyrone Wilson is an Academic Advisor in the Academic Advising Center (AAC) at Eastern Michigan University (EMU) in a bargaining unit represented by UAW Local Union 1976.¹ In March 2005, the Manager of the Athlete Student Support Services Center (SASS) contacted Wilson and asked if he would be willing to advise student athletes. According to Wilson, Manager Melody Reifel explained that SASS was in need of additional assistance as a result of severe budget cuts.² Wilson agreed to take on the responsibility for advising student athletes, but he informed the University that any changes in his job description would have to be approved by the Local Union. Wilson prepared a Memorandum of Understanding dated June 23, 2005, describing his new responsibilities and submitted it to the University for approval.³ Wilson later

¹ His official title is Academic Advisor II. (Record, p. 8)

² Record, p. 12.

³ Record, pp. 12-13.

reported that the University did not respond to this proposed Memorandum of Understanding.⁴

In January 2006, Director Patricia Williams of the AAC sent an email to SASS Manager Reifel informing her that Wilson's services would be required in the AAC on specified days during the period from March through June. Williams' email states:

"Melody – We are fast approaching Fast Track for the fall 2006 class. Our capacity for each day will depend on the number of academic advisors available. All staff is expected to work 8 am – 5 pm. As per our agreement with Tyrone's transition to your department, I am requesting his participation on each of the FT dates listed below. Thanks."⁵

Reifel forwarded Williams' email to Wilson and asked him to contact Erin Burdis to make arrangements for someone to take over his responsibilities at SASS while he was working at AAC.⁶ Wilson told Reifel that he would contact Burdis, but he commented:

"As you may remember, my registration access to Banner was revoked last summer. To my knowledge, there was no official investigation to substantiate the reasons. Nevertheless, I want to help the University any way I can. Without reinstatement, however, I am unsure how I can be of service."⁷

On February 9, 2006, Burdis wrote to Wilson to confirm the dates that he would be working at AAC. Burdis' email informed Wilson that he would be required to work 30 days in the AAC based on a prior agreement.⁸ Wilson responded to Burdis:

"Respectfully, I would like a copy of the signed document from the Academic Advising Center outlining 'the prior agreement and the 30-day requirement for Fast Track.' I am not opposed to assisting, but I would like a copy for my records and UAW Local 1976."⁹

Wilson went on to ask a series of questions about how he was supposed to perform his duties at SASS while also working 8 a.m. to 5 p.m. for thirty days at AAC. Wilson

⁴ Record, p. 50.

⁵ Record, p. 20.

⁶ Record, pp. 21-22.

⁷ While he was working at SASS, Wilson was reprimanded by Associate Director Robert Salisbury for registering two students for courses that they were ineligible to take. Wilson explained to Salisbury that he overrode the restriction on the two students' registration because he thought it was a computer error. (Record, pp. 15-19) Nevertheless, Wilson's access to the University's registration program (Banner) was revoked. (Record, p. 21)

⁸ Record, p. 24.

⁹ Record, p. 25.

informed Burdis that he did not think he should be required to work with the Fast Track Program until May and June. He stated:

“In conclusion, it was my understanding from the outset of my transfer July 1, 2005, that I would be available to assist the Academic Advising Center in May and June with Fast Track, after final exams, during the time when registration is most challenging. This would be a logical agreement considering all the crucial work needed to be completed in the SASS office during March and April.”¹⁰

On March 13, 2006, Wilson asked the Local 1976 Bargaining Chairperson Kimberly Frederick-Brown to file a grievance on his behalf. In his email to Frederick-Brown, Wilson asserted that the University had changed his job description without prior written approval or negotiation with the Union. Wilson claimed that the University’s action took place on February 28, 2006, although he does not indicate exactly what took place on that date to trigger the grievance request. He states only that the University failed to respond to an email.¹¹ Frederick-Brown answered Wilson in an email on the same day asking when would be a good time to meet. Wilson replied that he could meet after work on March 16, but that the deadline for filing the grievance was March 15.¹² Frederick-Brown and Wilson therefore arranged to meet in the afternoon on March 13. On April 6, Frederick-Brown advised Wilson that she was going to schedule a special conference with representatives of the University to deal with his schedule at AAC and other issues.¹³

Tyrone Wilson and members of the Local 1976 Bargaining Committee met with representatives of the University on April 11, 2006. As a result of that meeting, the University presented the following provisions in a Memorandum of Understanding:

“Mr. Tyrone Wilson when originally transferred to Student Athlete Support Services (SASS) would retain his responsibility to the Fast Track Program in Academic Advising which runs from March through June every calendar year as was conducive to the schedule of Student Athlete Support Services and Academic Advising.

The parties agree that the advance scheduling of Mr. Wilson’s work time with the Fast Track Program be determined as soon as practicable by both Academic Advising and Student Athlete Support Services.

¹⁰ Record, p. 26.

¹¹ Record, p. 29.

¹² The Grievance Procedure in the collective bargaining agreement between EMU and UAW/TOP Local 1976, dated November 19, 2002, requires that grievances be filed within fifteen working days from the date the employee or the Union became aware, or reasonably should have become aware, of the action complained of. (Record, p. 4)

¹³ Record, p. 34.

During the time in which Mr. Wilson is supporting Academic Advising for the Fast Track Program, he will have the Banner access necessary to do the job duties required of the program. However, once returned to Student Athlete Support Services, he will retain the general restricted access to Banner as needed.”¹⁴

Wilson wrote to Frederick-Brown and thanked her for setting up the conference on April 11. He asked that the Union refrain from signing any agreement with the University, however, until he had a chance to review it. Wilson met with the Local 1976 Bargaining Committee on May 16, 2006, to work out the terms of a revised Memorandum of Understanding regarding his duties at SASS and AAC. Subsequently, the Local presented the following Memorandum of Understanding regarding Wilson’s duties to the University:

“It is understood that the Student-Athletic Support Services Office (SASS) was absorbed by the Division of Enrollment Services from the Academic Affairs Division. Mr. Tyrone Wilson was presented an offer by the Athletics and Compliance Office to transfer to Student-Athlete Support Services (SASS). It is understood by both parties that this was a lateral transfer and no new position was created for the SASS office.

The parties agree that Mr. Wilson would retain his responsibility to the Fast Track Program in Academic Advising. He will not be required to advise new transfer students, nor be responsible to service other special registration/advising programs.

The parties agree that the advance scheduling of Mr. Wilson’s work time with the Fast Track Program be determined by both the Academic Advising Center and SASS office in September of each year.

During the time in which Mr. Wilson is supporting the Academic Advising Center for the Fast Track Program, he will have access to Banner necessary to do the job duties required of the program. However, once returned to SASS, he will retain the general restricted access to Banner as needed.

It is agreed by both parties that Ms. Melody Reifel-Warner and/or Ms. Erin Burdis will conduct Mr. Wilson’s annual performance evaluation.

It is understood by both parties that Mr. Wilson is a practicing Seventh-Day Adventist Christian. It is agreed that he will not be expected to work from sundown Friday to sundown Saturday.”¹⁵

¹⁴ Record, p. 35.

¹⁵ Record, p. 40.

On May 19, 2006, Human Resources Consultant Jacqueline Wiley responded to the Union's Memorandum of Understanding concerning Tyrone Wilson in an email to Kimberly Frederick-Brown. Wiley informed Frederick-Brown that the conference on April 11 was intended solely to clarify Wilson's involvement with Fast Track. She maintained that Wilson would still be required to perform all of his assigned duties as outlined in his current job classification for Academic Advisor II.¹⁶ On May 24, 2006, Wilson sent an email to Frederick-Brown once again requesting a grievance. He stated:

"The special conference strategy has not worked—as I predicted. Their response was to put forth the same MOU the Union stated was insufficient."¹⁷

Wilson went on to argue that the University had combined the job duties of the Academic Advising position with the Athletic Academic Support Counselor position without proper notification to the Union. He maintained that the University's refusal to provide a detailed description of his job after he transferred to SASS violated Article XV, §B, of the collective bargaining agreement.¹⁸

On July 26, 2006, Wilson sent an email to Frederick-Brown asking if a grievance had ever been filed on his behalf concerning his job description.¹⁹ Frederick-Brown responded on August 8 that a grievance had not been filed. She informed Wilson that the Bargaining Committee had decided not to file a grievance.²⁰ On August 25, 2006, Wilson appealed Frederick-Brown's decision not to file a grievance on his behalf to the Local Union membership. In support of his request for a grievance, Wilson stated:

"...I was forced to work two separate jobs simultaneously. My work responsibilities in SASS did not cease while I worked at the Academic Advising Center. I was expected to complete all work assignments and meet all deadlines. Needless to say, this was a great burden. It caused tremendous personal stress. I had to work through lunch periods, breaks, after and before work and weekends, all in an attempt to keep up with the

¹⁶ Record, p. 43.

¹⁷ Record, p. 45.

¹⁸ Article XV, §B, of the Collective Bargaining Agreement between EMU and UAW/TOP Local 1976, dated November 19, 2002, states in pertinent part as follows:

"REVISED JOBS AND NEW JOBS

In the event the Employer changes a classification description or creates a new job in the Bargaining Unit which is not covered by an existing classification, the Employer shall notify the Union and provide a copy of the classification description of the new or revised job and pay grade prior to posting. ..." (Record, p. 5)

¹⁹ Record, p. 47.

²⁰ Record, p. 49.

work load in the SASS office. Yet, equally important is the fact that the University was in clear violation of the Union contract...²¹

Wilson reported that he had requested a grievance on three occasions, but that Bargaining Chairperson Frederick-Brown had refused or failed to file one.

In her response to Wilson's appeal, Frederick-Brown pointed out that he brought this situation to the attention of the Bargaining Committee on March 13, 2006, and then informed the Committee that they had only two days in which to file a grievance. Frederick-Brown observed that Tyrone Wilson was President of the Local Union when he started working at SASS. She said that if Wilson's job description had changed at that time, he could have filed a grievance himself.²² In any event, Frederick-Brown reported that the Bargaining Committee's investigation of Wilson's complaint found no violation of the collective bargaining agreement, so a special conference was scheduled to address Wilson's concerns. She explained that after the University rejected Wilson's revised Memorandum of Understanding, she told him that the Union was not going to file a grievance based on the job description. Frederick-Brown stated that the reason the Union did not file a grievance was that Wilson's job description had not changed.²³

The 1976 Local Executive Board denied Wilson's appeal on September 15, but ruled that he could present his case to the membership.²⁴ The membership considered the appeal on September 20, 2006. Local President Dave Wilcox asked for a vote on the following question:

"Should Ms. Frederick-Brown have filed a grievance on Mr. Tyrone Wilson's behalf?"²⁵

The minutes of the September 20 General Membership Meeting report the following result of the vote:

"8 No
7 Yes
3 Abstained
3 Did not vote."²⁶

²¹ Record, p. 51.

²² Record, p. 66.

²³ Record, p. 57.

²⁴ Record, p. 63.

²⁵ Record, p. 73.

²⁶ Record, p. 73.

President Wilcox advised Wilson of this result by email on September 21, 2006. Wilson appealed the membership's decision to the International Executive Board (IEB) on October 13, 2006.

President Gettelfinger's staff determined that a hearing was unnecessary on Wilson's appeal and they prepared a report to the IEB on the President's behalf based on information provided by the appellant, the Region, and Local Union 1976. Staff observed that the University clearly did not agree with Wilson's belief that his assignment to SASS required a modification of his job description. They pointed out that Wilson knew in June 2005 that the University had not modified his job description after he agreed to take on counseling responsibilities at SASS, yet he did not grieve the issue at that time.²⁷ Staff remarked that it was not clear why Wilson raised this issue in March 2006, but that when he did so, the Bargaining Chairperson met with him and set up a meeting with the University to discuss the issue.

Staff agreed with the conclusion of the Bargaining Chairperson that Wilson's work assignments did not violate the collective bargaining agreement, so that her decision not to file a grievance did not lack a rational basis. They stated that there is no obligation for a union official to file a grievance merely because a member requests one.²⁸ Staff found no evidence that Frederick-Brown's handling of Wilson's request for a grievance was influenced by hostility, discrimination, or arbitrariness.²⁹

Based on these conclusions, staff denied Wilson's appeal. The IEB adopted staff's report as its decision on February 20, 2007. Wilson has now appealed the IEB's decision to the Public Review Board (PRB).

ARGUMENT

A. Tyrone Wilson:

There was a change in the description of the job I was doing after I transferred to SASS. The fact that my job title remained the same is irrelevant. The Employer did not notify me or the Union of the change in my job description as required by the collective bargaining agreement. The Bargaining Chairperson does have an obligation to process legitimate grievances on behalf of a member. I cited the contract sections that were violated and provided evidence of the violations.

When I contacted the Chairperson about filing a grievance, she did not respond until after the time limits had expired. Therefore, even if I had a meritorious grievance, my contractual right to pursue the matter was denied. Frederick-Brown could have filed the grievance and held it in abeyance pending the Bargaining Committee's

²⁷ Record, p. 120.

²⁸ Record, p. 122.

²⁹ Record, p. 125.

investigation. She has done this in the past. Frederick-Brown never conducted an adequate investigation of my allegations. She never requested documents under the Freedom of Information Act, as I did. She did not interview crucial witnesses. She told the membership that she had filed a grievance on my behalf when in fact she had not done so.

When I met with the Bargaining Committee to discuss strategy, no one told me that my claims were frivolous or lacked merit. The Bargaining Committee agreed to pursue the strategy that I recommended. Why would the Bargaining Committee agree to pursue my case in this way if they believed it had no merit? Furthermore, Frederick-Brown states that she thought she told me that the case had no merit. There is no evidence of that. There is no evidence that she told me a grievance would not be filed. The IEB accepted her statement without evidence, but then asked why I did not produce evidence to the contrary. The spirit of fairness demands consistency.

Frederick-Brown failed to conduct a basic grievance investigation. She relied solely on administration and personnel records, which are almost never accurate. Regardless of what the administration produces, I was clearly working in a different location and performing different jobs that were not reflected in my job description. The current description was changed in April 2005, without notification to the Union. This change was suspicious. Frederick-Brown should have discovered that this description had been changed. I made three requests for legitimate grievances and each time Frederick-Brown allowed the time limits for filing to expire, without communicating to me any problems with the evidence that I had presented. This is sheer negligence.

B. International Union, UAW:

The Union is not required to satisfy completely every member who requests a grievance. The Local Bargaining Committee listened to Wilson's concerns, but concluded that there was no violation of the collective bargaining agreement. Furthermore, the Bargaining Committee in this case did not arbitrarily walk away from Wilson and his complaints. Instead, they met with the University's managers and exchanged proposed memoranda regarding Wilson's issues. Nevertheless, the University refused to relieve Wilson of what it took to be his continuing duties to participate in the Fast Track Program.

Wilson held the position of Senior Academic Advisor II. That brought with it a set of job elements that included participation in the Fast Track Program. Wilson's work in SASS may have included additional, specialized job elements, but the University convinced the Local that nothing had erased the basic requirement that Academic Advisors participate in the Fast Track Program. As for overload, the University indicated a credible willingness to work out schedules as needed. There was nothing to be gained by further crusading, because the University was simply right.

DISCUSSION

When Wilson agreed to provide academic advising services at SASS in June 2005, he attempted to convince the University that this created a new job that was not covered by an existing job description, so that Article XV, §B, required the University to develop a new job description and provide a copy to the Union. The University ignored this argument, and Wilson did not request a grievance at that time. In any event, it is clear from this record that Wilson's job description had not changed in June 2005. A job description need not describe each of the duties of the classification in precise detail. Providing assistance to SASS was consistent with the essential duties of an Academic Advisor II as provided in the job description for that classification. Furthermore, the two Memoranda that Wilson presented to the University in June 2005 and May 2006 concerning his role at SASS were not job descriptions, but a special set of work rules to be applied solely to him. The Union would have had no grounds for insisting that the University adopt such a Memorandum, and it would have been unreasonable for it to attempt to do so.

Wilson's request for a grievance in March 2006 was triggered by the University's requirement that he provide services to the ACC's Fast Track Program during the months of March and April, rather than any change to his job description. Wilson believed that it would make more sense for him to devote all of his time to SASS in March and April, and participate in Fast Track only in May and June. The University did not agree with Wilson's assessment of its needs, and the Union had no contractual basis for challenging the University's insistence that Wilson perform tasks clearly contemplated by the job description for an Academic Advisor II. In fact, Wilson never denied that his job description required him to participate in the Fast Track Program at ACC. Even his own proposed Memoranda regarding his work at SASS acknowledge a continuing responsibility to the Fast Track Program.³⁰

The Local Bargaining Committee did address the only legitimate issues raised by Wilson in March 2006. The Memorandum of Understanding developed as a result of the conference on April 11, 2006, temporarily restored his access to the Banner program so that he could do his job at ACC. It also provided for the establishment of a schedule that would allow him to fulfill his duties at SASS while meeting the requirement that he work thirty days at ACC on the Fast Track Program during the months of March through June. There was no remedy that could have been obtained for Wilson through the grievance procedure, because there had been no violation of the collective bargaining agreement. The Bargaining Committee's decision not to file a grievance for Wilson did not, therefore, lack a rational basis. Furthermore, there is no evidence that the Bargaining Committee's response to Wilson's complaints was improperly motivated. Under the circumstances, it did not matter when Wilson was finally made to understand

³⁰ Paragraph 6 of the June 24, 2005, Memorandum states that Wilson will remain responsible for participating in Fast Track. (Record, p. 13) The Memorandum proposed in May 2006 also contains an agreement that Wilson would retain his responsibility to Fast Track. (Record, p. 40)

the Bargaining Committee's position. He had no right to insist that the Union file a meritless grievance.

The decision of the IEB is affirmed.