

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

ETHICAL PRACTICES COMPLAINT OF
ROBERTA GAINER, Member
LOCAL UNION 774, UAW
(Buffalo, New York)

Appellant

-vs-

CASE NO. 1635

UAW NATIONAL GENERAL MOTORS DEPARTMENT
REGION 9, UAW
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),

Appellee.

DECISION

(Issued June 1, 2010)

PANEL SITTING: Prof. Janice R. Bellace, Chairperson,
Prof. James J. Brudney, Prof. Fred
Feinstein, Dean Harry C. Katz,
Prof. Maria L. Ontiveros and Prof. Calvin
William Sharpe.

Roberta Gainer asserts that she was removed from her special assignment at the Center for Human Resources for a reason prohibited by the UAW's Ethical Practices Codes and that she should now be allowed to contest her replacement in 1999 as the Local 774 Human Resource Development Representative.

FACTS

Roberta Gainer is a member of UAW Local Union 774 which represents employees at General Motors Tonawanda Engine Plant in Buffalo, New York. Prior to April 5, 1999, Gainer worked as a Human Resource Development Representative in a joint program established pursuant to Document No. 46 of the UAW-GM National Agreement. On April 7, 1999, Gainer was given a special assignment at the UAW-GM Center for Human Resources (CHR) in Buffalo, New York.¹

¹ Record, p. 3.

In August 1999, Local 774 Shop Chairperson Jeffrey Pietrzyk informed Gainer that he wanted to fill the vacancy created by her assignment to the CHR, and he asked Gainer to decide whether she wanted to remain in her special assignment or else return to the Tonawanda Plant as a full-time Document 46 representative. Pietrzyk asked Gainer to give him her answer prior to October 1, 1999.² Gainer responded to Pietrzyk on September 29, 1999. She explained that she had had some anxiety about the security of her special assignment, but that she had been assured her anxieties were unwarranted. She therefore advised Pietrzyk that she intended to remain in her special assignment at the CHR Buffalo office. Her letter concludes:

“I believe that the membership deserves *full representation* in both areas. Since I have served the membership as HRD Representative for over 8 years, I feel it is time to move on and serve the membership in a different capacity. Therefore, my decision is to remain at the CHR Buffalo office as UAW Administrator.”³

On October 11, 1999, the UAW’s Director of Training, L. E. Bunch, sent a memorandum to GM Department Vice President and Director Richard Shoemaker recommending that Karen Ann Pietrzyk-McCoy be appointed to fill the vacancy created by Gainer’s assignment to the UAW-GM CHR in Buffalo.⁴ Shoemaker confirmed McCoy’s appointment as Human Resource Development Representative for Local Union 774 in a letter dated October 20, 1999.⁵ In a separate letter on October 20, Shoemaker also informed management at the GM Tonawanda Plant that Roberta Gainer would no longer function as Human Resource Development Representative at that location.⁶ Shoemaker’s letter to GM does not indicate that a copy was sent to Gainer.

Gainer’s job at the CHR in Buffalo was to conduct classes for the National Paid Educational Leave (PEL) Program.⁷ When the CHR facility in Buffalo closed in 2003, Gainer was assigned to the UAW Region 9 headquarters. From this point on, she

² Record, p. 17.

³ Record, p. 17.

⁴ Record, p. 20.

⁵ Record, p. 21.

⁶ Record, p. 22.

⁷ This program is described in Document No. 36 of the UAW-GM National Agreement as follows:

“During the term of the 1984 Agreement, the parties developed a National Paid Educational Leave (PEL) Program which provided selected employees with a unique educational opportunity to enhance their knowledge of the automobile industry. Sponsored candidates are approved in advance by the UAW-GM Center for Human Resources. Expenses and lost time for participants in the program are provided from National Joint Training Funds.” (2007 UAW-GM National Agreement, p. 417)

reported to and received her assignments from the Assistant Director over Training and Development at the UAW-GM CHR based in Detroit.⁸

On January 22, 2009, Gainer wrote to UAW Region 9 Director Joe Ashton regarding a meeting she had with Ashton on December 9, 2008. Gainer stated that Ashton had asked her some questions during the December meeting that she was not prepared to answer and they agreed that she could respond after the New Year. In her letter to Ashton, Gainer wrote:

“Since that time, I have responded to one of the questions (How could I love my Union and sue them?) in the form of a legal response to your motion to dismiss my complaint.

In my response, I presented facts that explained my claims of discrimination and what led me to present that claim in the court system.”⁹

Gainer also responded to a question presented on a UAW Special Assignment Survey. Question 4 on the survey asked the evaluator to rank the particular individual’s attitude toward the UAW.¹⁰ In response to this question, Gainer wrote:

“The other question was in reference to question #4 on the UAW Special Assign Survey. This question, I am not sure if I was supposed to answer it or you, but it had to do with how I feel about the UAW. I hold the same opinion today as I held on December 9. I love my union. My service over the last 28 years will acknowledge this. If you were to survey union members active or retired who know me, they will attest to my dedication to the UAW. If you take one step further and ask those people who know me outside the auto industry, you will likely receive the same response from them.”¹¹

On February 9, 2009, Director Ashton wrote to Gainer that he would take her answers under consideration.¹²

On February 10, 2009, representatives from the UAW-GM CHR advised management at the Tonawanda Plant that Roberta Gainer’s special assignment with the CHR was scheduled to conclude on February 20, 2009, and that she would report to the plant personnel office on February 23 at 8:00 a.m. CHR Assistant Director Ron Bieber

⁸ Record, pp. 130-131.

⁹ Record, p. 29.

¹⁰ Record, p. 126.

¹¹ Record, p. 29

¹² Record, p. 31.

faxed a copy of this notice to Gainer on February 10, 2009.¹³ The notice lists the following four options available to Gainer upon the termination of her special assignment:

“Return to the plant on February 23, 2009

I wish to take the week of February 23, 2009, as vacation returning to the plant on March 2, 2009.

Retire

Take buyout.”¹⁴

The notice indicates that the employee refused to sign it, but that R. Bieber checked the option of returning to the plant on February 23, 2009.

In an email addressed to Garry Bernath of the CHR, Bieber described meeting with four individuals whose special assignments had concluded. Bieber stated that the first three employees he spoke with took the information fairly well, but that Gainer challenged the decision. His email states:

“Roberta Gainer, on the other hand, asked if I minded if she tape recorded the conversation, which I told her I did mind. After I explained her options, she acted as if she had pre-scripted questions. She wanted to know what the criteria were. I told her I did not have that answer. How many? I told her I only had knowledge of those in my department, (and didn’t give her that number.) Did Cal Rapson make the decision? I told her that he was the only one who could appoint or remove special assigned.

I then told her that I needed the letter I faxed to her signed and faxed back to me after she checked the box to indicate her option choice. She told me that she needed to talk to Cal Rapson before she could sign anything. She said she has no union representation to answer her questions or advise her of her rights. This is a change of employment, impacts her income, and that she needs to talk to Cal Rapson before she can sign anything.”¹⁵

Bieber contacted Gainer again on February 12, 2009, in an attempt to get her to select one of the options presented in the notice he had faxed to her. He described his conversation with Gainer in an email to Garry Bernath. He stated:

¹³ Record, p. 32.

¹⁴ Record, p. 33.

¹⁵ Record, p. 34.

"I then asked her if she was planning to fax the letter back to me today, and she asked me, 'What do you want me to put on it?' I told her I needed her to indicate which choice she was going to make and sign and date the letter. She responded that she would only put on the letter that 'I'm going to fight for my job and fairness.' I asked her if she was going to sign the letter and she said, 'You, Joanna and Patti are management in this situation and I have no representation to advise me so I can't sign the letter.' I then asked if she was going to fax me back anything today, and she responded, 'There is no point.'"¹⁶

Bieber reported that he had advised Gainer that he would select the option to return to the plant on February 23, 2009. On February 20, 2009, GM sent Gainer a letter notifying her that she had been assigned to the L18 Assembly Line in Department 0601. The letter indicated that Gainer should report to her job on March 2, 2009, at 6:00 a.m.¹⁷

Gainer wrote to UAW-GM Department Vice President and Director Cal Rapson on February 23, 2009, and complained that she had been improperly removed from her Document 46 position at Local 774.¹⁸ She reported that after she received her special assignment to the CHR, Chairperson Jeff Pietrzyk asked her to resign from her Document 46 position so that he could appoint his daughter, Karen McCoy, to the position. Gainer wrote:

"Brother Pietrzyk continuously harassed me to resign. While serving as UAW-GM top negotiator, Brother Pietrzyk told me to resign or return to the plant. I informed Brother Pietrzyk that I would return to the plant. Shortly after that, Brother Monska telephoned me and asked me why I would not resign. I told Brother Monska that I worked too hard to get my job to lose it and that I will return to the plant. He said, 'That is ridiculous, why would you want to return to the plant?' I told Brother Monska that the assignment was not permanent and that I heard rumors that the Area Centers were closing. Brother Monska said, 'You do not have anything to worry about. I have never seen a Special Assigned returned to the plant. Just resign and don't be silly.'"¹⁹

Gainer reported that when the Buffalo CHR closed in 2003, she requested to be returned to her local Document 46 Human Resource Development position with her original date of entry. She stated that she learned in 2003 that Vice President Shoemaker was unaware that she had been pressured into resigning her position by Chairperson Pietrzyk and Administrative Assistant Dick Monska. She stated that she never received a letter from Vice President Shoemaker removing her from the

¹⁶ Record, p. 35.

¹⁷ Record, p. 37.

¹⁸ Record, p. 38.

¹⁹ Record, p. 38.

Document 46 position. Gainer claimed that Pietrzyk later told her that she still held the position. She wrote:

“Shortly after sending the letter to Brother Shoemaker, Brother Monska resigned or was fired. Also, Brother Pietrzyk personally called me and told me that I was still a Document 46 Representative as if he was innocent to the collaboration between himself and Brother Monska to remove me and appoint his daughter, Sister McCoy.”²⁰

Gainer asked Rapson for written notification of her employment status. She stated that she would continue to report to her special assignment until she heard from Rapson.

Ron Bieber sent Garry Bernath an email on March 2, 2009, reporting that he had once again explained to Gainer that her special assignment ended on February 23, 2009, and that she must return to the plant as instructed or risk terminating her employment as a voluntary quit pursuant to Paragraph (64)(c) of the National Agreement. Bieber also reported that Gainer asked who her union representatives were, and he replied that they were the representatives at her home plant, Local Union 774.²¹ On March 4, 2009, UAW General Motors Department Representative Tim Cobb also sent Gainer a letter explaining her status. Cobb advised Gainer that special assignments have never been considered a permanent job. He wrote:

“Unfortunately with the mass reduction of our membership, there had to be reductions of several Special Assigned positions. Your return date to the plant was February 23, 2009. Your seniority date at the plant put you on layoff until March 2, 2009. The UAW-GM National Agreement is very clear in Paragraph (64)(c) and Paragraph (64)(d) on reporting to work.”²²

On March 9, 2009, Gainer filed two appeals with the International Executive Board (IEB). In the first appeal, Gainer protested the termination of her special assignment to the CHR. She charged that her removal from the position violated the Democratic Practices section of the UAW Ethical Practices Codes and stated the following alleged violations:

“I was removed as retaliation for exercising my right as a member to freely criticize the policies and personalities of union officials.

The method used to remove me was not fairly and uniformly applied.

²⁰ Record, p. 39.

²¹ Record, p. 42.

²² Record, p. 45.

The procedure used to remove me was discriminatory, anti-democratic, and corrupt.”²³

In the second appeal, Gainer challenged the decision by the UAW-GM Department not to allow her to return to her position as Human Resource Development Representative at Local Union 774. Once again, Gainer asserted that her removal violated the Democratic Practices section of the UAW Ethical Practices Codes.²⁴

President Gettelfinger’s Administrative Assistant Dave Curson responded to Gainer’s appeals on March 18, 2009. Curson pointed out that Gainer had not identified who she was charging with violating the Ethical Practices Codes or what specific acts she was complaining about. In addition, Curson advised Gainer that if she wished to file an Ethical Practices Complaint against the operation of the International Union or any officer thereof, she must obtain membership approval of the complaint pursuant to Article 32, §5(b), of the International Constitution.²⁵ On March 26, 2009, Gainer received a letter from the Local 774 recording secretary certifying that the membership had adopted a motion during a meeting on March 15, 2009, to allow Gainer to file an Ethical Practices Complaint.²⁶ Gainer forwarded this letter with a statement of reasons in support of her Ethical Practices Complaint to President Gettelfinger on April 4, 2009.²⁷

Gainer addressed two additional letters to the Public Review Board (PRB) in care of the IEB on April 4. The first letter is a request for a waiver of the certification requirement stated in Article 32, §5(b), with respect to her appeal from the decision not to allow her to resume her Document 46 position when she returned to her home plant from the special assignment to the CHR. Gainer explained that she filed her appeal directly with the IEB because she believed that was the appropriate level. She pointed out that Article 33, §2(b), provides that appeals pertaining to the appointment or removal of special purpose representatives shall be directly to the IEB.²⁸ Gainer argued that if she had requested membership approval of this complaint, she would most likely have received it. She wrote:

“I am confident that the 201 members that were present at the meeting on March 15, 2009, who overwhelmingly certified my appeal against being removed as a Special Assigned, would also have certified my appeal against being removed as a Doc 46 because the Doc 46 issue hit closer to home. Many members are laid off with 30 years corporate seniority and are annoyed that Sister McCoy is still working as a Doc 46 with only 13

²³ Record, p. 49.

²⁴ Record, pp. 51-52.

²⁵ Record, p. 55.

²⁶ Record, p. 60.

²⁷ Record, pp. 80-96.

²⁸ Record, p. 61.

years seniority. The mere fact that they have always perceived her appointment as unfair would have been enough motivation for them to certify my appeal.”²⁹

Gainer’s second letter is a statement of reasons in support of her appeal from the decision of the Director of the UAW-GM Department not to allow her to return to her position as Human Resource Development Representative at Local Union 774. Gainer asserted that she first became aware that she had been permanently removed from the position on March 6, 2009. She explained that on that day, Shop Chairperson Bob Coleman handed her a copy of the October 20, 1999, letter from Vice President Shoemaker removing her from the Document 46 position.³⁰ In support of this appeal, Gainer argued that the representatives she consulted with in 1999 had assured her that she would not have to resign her Document 46 position in order to accept the special assignment at the Center for Human Resources. She said this was a primary reason she accepted the special assignment.³¹ Nevertheless, she reported that in September 1999, Chairperson Pietrzyk and Administrative Assistant Monska began pressuring her to resign. She wrote:

“September 23, 1999, I received a returned phone call from Brother Monska concerning being asked to resign by Brothers Pietrzyk and McCormick. I said to Brother Monska, ‘Why do I have to give up my permanent position if the position I hold at the Center is a temporary assignment? I thought I was on loan from the plant. Jeff should temporarily fill the HRD position.’ Brother Monska replied, ‘What are you so concerned about?’ I said, ‘It took me 20 years, a lot of hard work, a lot of abuse and God’s grace to get me to where I am today. If the Center closes, I am out in the cold.’”³²

Gainer stated that she subsequently had a conversation with UAW Region 9 Director Kevin Donovan about the local’s request that she resign her local appointment. She described that conversation as follows:

“...I told him that I did not think it was right that I should have to resign and that I have a gut feeling that something is not right. Brother Kevin said, ‘Roberta, you really should not be holding two positions. The membership deserves full representation. You should not worry about the Center closing. They have been saying that for years and everyone appointed to the Buffalo Area Center retired from there.’”³³

²⁹ Record, p. 63.

³⁰ Record, p. 65.

³¹ Record, pp. 66-67.

³² Record, p. 67.

³³ Record, p. 68.

Gainer stated that despite these assurances, when she sent the letter to Chairperson Pietrzyk on September 29, 1999, informing him that she intended to remain at the Buffalo Area Center, she specifically did not use the word resign or resignation to describe her action.

Gainer reported that when the Buffalo Center closed in 2003, she was initially told that she would have to report to the assembly line because her position as a benefits representative at the local had been filled. Gainer described the following conversation with Chairperson Pietrzyk around this time.

“December 2002, at the Region 9 CAP Christmas party, while talking to Velva Baylor, a union sister, Brother Pietrzyk interrupted the conversation. He informed me about his plans for me when I returned to the plant. He said, ‘I forced you to resign so I could give my daughter, Karen McCoy, a permanent position and I owe you. I will give you a local appointment in the Work Family office because we need a female in that office to handle women’s issues. When there is a Document 46 opening, it is yours.’ I never replied to his comments. I only remembered that I was filled with anger.”³⁴

Gainer stated that she wrote to Vice President Shoemaker asking to be returned to her Document 46 position and that she subsequently received a telephone call from Chairperson Pietrzyk informing her that she was still a Document 46 representative. She said that she assumed that Shoemaker had contacted Pietrzyk.³⁵ In any event, on February 28, 2003, Gainer was informed that her special assignment had been extended. She reported:

“February 28, 2003, I was notified by the Regional Director that my special assignment with UAW-GM CHR coordinating Regional 9 PEL developing training and instructing classes for the National CHR was extended. I moved to UAW Region 9 Headquarters to perform these tasks.”³⁶

Gainer argued that she was pressured into leaving her Document 46 position based on false information provided by Chairperson Pietrzyk and Administrative Assistant Monska. She argued that if the union had fairly and uniformly applied its rules, her position as a local representative would have been held open and filled with a temporary assignment while she was at the Center for Human Resources. She named several people whose positions were kept open while they were on special assignment.³⁷ Gainer stated that Chairperson Pietrzyk’s claim that he had an urgent need to fill the position was itself a misrepresentation. She wrote:

³⁴ Record, p. 69.

³⁵ Record, p. 69.

³⁶ Record, p. 70.

³⁷ Record, p. 74.

“The urgent need was that his daughter, Karen McCoy, an apprentice, was at risk of not satisfactorily completing her apprenticeship. Since she hired in the plant as an apprentice, she did not have any production time. If she was removed from the apprenticeship program due to unsatisfactory grades or unable to do the job, then she would probably have been laid off. Therefore, it was necessary for Pietrzyk to find a position for her. While there were others who were more qualified than Sister McCoy, Pietrzyk abused his power and manipulated her into a Document 46 position with a date of entry of October 20, 1999.”³⁸

Gainer asserted that resentment over the appointment of McCoy to the Document 46 representative position persists to this day.

Finally, Gainer argued that Pietrzyk and Monska must have misrepresented the circumstances of her alleged resignation to Vice President Shoemaker. She maintained that someone ought to have contacted her and investigated the reason for her removal from the position. She wrote:

“The fifth misrepresentation of the truth is that Brothers Pietrzyk and Monska must have presented something to Vice President Shoemaker that convinced him that I freely resigned. According to the UAW Doc 46 Removal Investigation Procedure, there are several steps to take before removing, replacing, redeploying or adding a Doc 46 representative.

One of the steps is to conduct an investigation. To my knowledge an investigation was never conducted. Also, it indicates in the Doc 46 Investigation Flowchart that the Document 46 representative is contacted. I never received any notification about me no longer functioning as the Human Resource Development Representative until March 6, 2009.”³⁹

Gainer asked for a thorough investigation into the circumstances leading to her removal as Human Resource Development Representative at Local Union 774.

President Gettelfinger denied Gainer’s request for a waiver of the certification requirements for her Ethical Practices Complaint challenging her removal as the Local 774 Human Resource Development Representative on May 6, 2009. He stated:

“You have failed to obtain the constitutionally required certification of your complaint by membership action. You have not provided any valid or compelling reasons why such certification should be waived. Membership certification of a complaint is an integral part of the process, put in place to keep the membership aware and involved in the ethical operations of the

³⁸ Record, p. 75.

³⁹ Record, p. 76.

union and to weed out frivolous and shallow complaints from diluting the important and serious nature of the procedure."⁴⁰

In her Ethical Practices Complaint dated April 4, 2009, Gainer charged that the joint decision by Vice President Cal Rapson and Region 9 Director Joe Ashton to remove her from her special assignment at the UAW-GM CHR violated the Ethical Practices Codes. She argued that the arrangement that allows the Vice President and Regional Director to treat people on special assignment as employees at will is contrary to the principles of conduct governing the UAW International Union. She pointed out that people on special assignment have no designated bargaining representative to protect their interests.⁴¹

Gainer asserted that her removal was in retaliation for her criticism of International Union policies and officers. She reported that she has been openly critical of Region 9 for failing to hire African-Americans. She stated that she had been interviewed for various positions during the period from 2002 through 2007, but that she was denied these positions mostly in favor of Caucasian males. In response to her perception that she was being passed over because of her race, Gainer reported that she initiated an action in the U.S. District Court. She wrote:

"After seven years of pleading with the leadership to address the diversity issue internally and of being discriminated against, I formally criticized the hiring practices of UAW Region 9. In my Title VII claim, (EEOC, No. 525-2007-00514, 525-2009-00449 and US District Court WNY 08-CV-0501S) I complained about the lack of hiring qualified African-American International Representatives for the past 18 years at the New York Branch of UAW Region 9; and never hiring any qualified African-American female International Representatives in its entire 55 years of existence in all of UAW Region 9, which includes New York, New Jersey, and Pennsylvania."⁴²

Gainer went on to describe her meeting with Region 9 Director Joe Ashton and their discussion of her attitude toward the UAW based on the Special Assigned Evaluation form. Gainer reported:

"Mr. Ashton told me that he did not understand how anyone could sue the UAW when the auto industry is in such turmoil. I replied that I filed charges with EEOC in 2007 because I was repeatedly discriminated against by my union."⁴³

⁴⁰ Record, p. 110.

⁴¹ Record, p. 85.

⁴² Record, p. 86.

⁴³ Record, p. 86.

Gainer reported that she was given no reason for the termination of her special assignment when she met with Ron Bieber on February 10, 2009. She asserted that she was the only member assigned to a Regional office whose assignment ended and that a white male with less seniority in the position was retained. She concluded:

“To retaliate against an individual who speaks against discrimination is a violation of our Ethical Practices Code, an unfair labor practice under the National Labor Relations Act, and unlawful under Title VII anti-retaliation provision.”⁴⁴

Gainer also argued that the procedure used to end her special assignment was not fairly and uniformly applied. She wrote:

“In the General Motors Department, in addition to the traditional bargaining unit, Document 46 and International Representatives both have written processes for removal, reductions, and recall rights. Also, there is language provided in Paragraph (140b) in the UAW-GM National Agreement that addresses the topic, “Reduction in Force (Unusual Circumstances).” Yet, when presented with an unusual circumstance (a 33% reduction across the board of UAW Special Assigned) no systematic, uniformly fair procedure was applied when reducing Special Assigned that was consistent with the rest of the organization.”⁴⁵

Gainer complained that she was given only 24 hours to select a life changing option in contrast to the consideration period given to employees who are offered retirement under the Special Attrition Program. Gainer stated that Ron Bieber completed the option form against her wishes without allowing her time to seek counsel from a union representative.⁴⁶ She reported that when she tried to speak with Vice President Cal Rapson about the decision to end her special assignment, she met with hostile interference from members of his staff.

Gainer argued that allowing the International Union to treat special assignees as employees at will while drastically reducing their numbers undermined the safeguards in the Ethical Practices Codes against corruption, discrimination, and anti-democratic procedures. Gainer explained that she had received training worth several hundred thousand dollars over the past ten years in order to become an expert in the Human Resource field. She stated that the arbitrary removal of highly trained personnel and retention of those with little skill or knowledge compromised the union.⁴⁷ She argued that she should have been given the opportunity to bid on openings in other

⁴⁴ Record, p. 88.

⁴⁵ Record, p. 89.

⁴⁶ Record, p. 90.

⁴⁷ Record, p. 92.

departments, but that these openings were awarded to political allies and family members. She wrote:

“To retain Special Assigned on the basis of subjective relationships rather than skills and qualifications during critical times when expertise is needed is corrupt, discriminatory, and puts the interest and welfare of the membership at risk. This practice works against the UAW Objects in Article 2 which states in part, “...to improve working conditions; maintain and protect the interest of UAW workers; and to develop and maintain an intelligent and dignified membership.”⁴⁸

In closing, Gainer argued that her removal was motivated by impermissible reasons on the part of both Vice President Rapson and Director Ashton. As a remedy, Gainer stated that she is seeking to have a system put in place to insure that UAW special assignees receive treatment that is ethical, fair and uniformly applied, democratic, and free from corruption and discrimination.⁴⁹ She also asked to be made whole for the monetary losses she suffered as a result of her removal.⁵⁰ Administrative Assistant Curson acknowledged Gainer’s Ethical Practices Complaint on April 15, 2009, and informed her that the matter would be referred to the International Executive Board (IEB) for investigation.

Rod Uhelski of the UAW General Motors Department responded to Roberta Gainer’s Ethical Practices Complaint in a memorandum addressed to President Ron Gettelfinger on April 27, 2009. Uhelski explained that the kind of special assignment Gainer held at the Center for Human Resources came about through of the establishment of jointly administered programs such as Health and Safety and Human Resource Development in the early 1980s. Union representatives involved in such programs at the national level are appointed and removed at the discretion of the Vice President and Director of the UAW-GM Department. A representative appointed by the Vice President to work on one of these jointly administered programs at the national level is considered to be on special assignment. Uhelski explained that in 2008, GM and the UAW had to reevaluate the number of people required to administer such programs. He wrote:

“...In late 2008 with the schedules for GM products dropping at record rates and the UAW-GM CHR missing its budget by millions of dollars, reductions of both hourly and salary employees were necessary. This generated the need to reduce Special Assigned throughout the CHR and Special Assigned at the divisional level as well.”⁵¹

⁴⁸ Record, p. 93.

⁴⁹ Record, p. 94.

⁵⁰ Record, p. 95.

⁵¹ Record, p. 103.

As a result of this reassessment, Uhelski stated that every department was asked to recommend how many people they could reduce and still provide the same level of service.

Uhelski reported that Vice President Rapson had to reduce 33 special assignees from the Center for Human Resources. Uhelski observed that the training area where Roberta Gainer worked was reduced by fifty percent. With respect to Gainer's particular assignment, Uhelski made the following comment:

"...It should be pointed out that the appellant was the only Special Assigned that was not working out of the UAW-GM CHR in Detroit. In 2003, when the Regional CHR was closed and consolidated into the new building in Detroit, Ms. Gainer was relocated to the Region 9 office. She was assigned to do predominately local PEL classes and other training or development work in Detroit. She reported to the assistant director of the UAW assigned to training, not the Regional office. In the past two years there have only been two local PELS run for the Region 9 office. That left little, if any, argument to keep a person assigned for that responsibility, and that was on input given to the vice president."⁵²

Uhelski stated that Vice President Rapson understood the hardship imposed on the special assignees who had to make the personal decision whether to return to the plant or retire, but Uhelski insisted that Rapson's selection of the 33 people was not in any way based on race or gender. He gave the following breakdown of the reductions to illustrate that no discrimination was involved:

"African-American Females	3
African-American Males	6
Hispanic Females	1
Hispanic Males	3
Caucasian Females	4
Caucasian Males	16
<u>Total</u>	<u>33</u> ⁵³

Uhelski denied that Gainer's EEOC complaint and Title VII lawsuit had any bearing on the decision to discontinue her special assignment. He wrote:

"According to the appellant she felt she was racially discriminated against by UAW Region 9 and filed a claim with the EEOC in 2007. Her claim was investigated by this authority and dismissed. There has been no retaliation against her for exercising the very rights which she claims have been denied her under the Ethical Practices Code of the UAW

⁵² Record, p. 103.

⁵³ Record, p. 104.

Constitution. The fact that she was able to take this allegation to her local union and with their support was able to appeal to the International UAW is further evidence of the UAW democratic process.”⁵⁴

Uhelski added that Gainer was well aware when she resigned from her local appointment in September 1999, that she would not flow back into that position if her special assignment ended.⁵⁵

In response to an inquiry from Administrative Assistant Curson, Jeff Pietrzyk explained the circumstances surrounding Gainer’s resignation from her local appointment in 1999 in an email dated June 11, 2009. Pietrzyk wrote:

“Back in August 1999, when I asked Roberta Gainer to make a decision whether to stay at the Region as a special assigned person handling (PEL) or return as a Document 46 person (Human Resource and Development), I made it clear to Roberta that if she chose to stay at the Region, she would be giving up her Document 46 position at the plant, and she would be replaced. There is no question in my mind that Roberta knew she would be removed from the Document 46 position. When Roberta did send me her letter of resignation, I called her and thanked her for her service and asked her if she was sure with her decision and told her that I would be filling the vacancy immediately with Karen McCoy. She told me she was fine with her decision. At no time did I ever go back and tell Roberta that she still was a Document 46, as she claimed.”⁵⁶

President Gettelfinger’s staff determined that a hearing was unnecessary on Gainer’s Ethical Practices Complaint. Acting on the International President’s behalf, Administrative Assistant Dave Curson prepared a report to the IEB on the complaint based on information provided by Gainer, Local Union 774, Region 9, and the UAW-GM Department.

Curson explained the status of an employee on special assignment to the CHR as follows:

“Specially assigned employees are ‘loaned’ to the CHR to perform various duties designated by the Center. They remain on the active seniority rolls of their employer and plant location, are paid by the employer and maintain seniority rights within the employee’s prevailing collective bargaining agreements. The plants are then reimbursed by the CHR for wages paid to employees while on special assignment. There is no Paragraph 109(a) union leave processed for employees specially

⁵⁴ Record, pp. 102-103.

⁵⁵ Record, p. 102.

⁵⁶ Record, p. 123.

assigned. Their union representation remains unchanged within their local union structure, as they remain on the rolls of the plant.”⁵⁷

Curson pointed out that the selection of employees for special assignments is not based on seniority and there are no contractual provisions applicable to the selection process. He explained that employees on special assignment are not employees of the UAW International Union. The special assignees continue to be employees of General Motors and serve at the will of the UAW-GM Department Director. When making such assignments, the Department Director considers the employee’s special skills, but also loyalty to the UAW. Curson’s report to the IEB described the factors considered by the Department Director when making special assignments as follows:

“Specially assigned employees are normally chosen to perform a certain task or because they possess certain skills sets. Beyond the necessary skill requirements, special assigned employees are chosen because they are considered loyal to the UAW and will always cast a good light on the UAW in the performance of their duties as special assigned as well as representing to others what good union members are.”⁵⁸

Curson’s report contains a copy of the evaluation form that Gainer referred to in her correspondence with Director Ashton following their meeting on December 9, 2008. Curson explained the function of the form as follows:

“Because of economic conditions plaguing the auto industry, including General Motors, and the resulting funding of the CHR operations, and the dramatic decline of UAW membership, the National Parties determined that a reduction in the utilization of special assigned employees was necessary. Vice President Cal Rapson, Director of the UAW’s National GM Department, requested that each Regional Director and UAW–GM Assistant Director evaluate each special assignment and each special assigned employee to assist in his decision on which special assignments to terminate. Accordingly, in November 2008, the following evaluation forms were sent to the relevant Directors and Assistant Directors.”⁵⁹

Question 4 on one of the forms asks the evaluator to rate the individual’s attitude toward the UAW. Curson reported that Director Ashton provided Gainer with a copy of the evaluation form during their meeting in December 2008 to let her know that her attitude would be a factor in his evaluation. He wrote:

“The appellant cites Director Joe Ashton’s meeting with her concerning the special assigned evaluation report that he was asked to complete by the

⁵⁷ Record, p. 131.

⁵⁸ Record, p. 131.

⁵⁹ Record, p. 132.

National GM Department. Director Ashton, in an effort to give the complainant an opportunity to know about the survey and insure that his responses were accurate, requested to meet and discuss the survey before he filled it out and returned it to the department. It should be noted that Ashton requested the meeting prior to the complainant's last legal action against the UAW. It appears that Ashton's intentions were to have a frank discussion with the complainant so that his responses on the evaluation were clear and undisputable. It is a credit to the Director to allow the complainant an opportunity to insure accuracy and transparency in his reply."⁶⁰

Curson reported that all the department directors and assistant directors completed such evaluations on all of the special assignees.⁶¹

Curson found no evidence to support Gainer's assertion that her removal from her special assignment was in retaliation for her criticism of the union or its policies. He noted that by her own account, Gainer had been openly critical of the union's hiring policies since 2000. He stated that the UAW respected Gainer's right to express her belief that the UAW failed to hire an adequate number of African-Americans in Region 9.⁶²

Curson refuted Gainer's claim that she was not afforded any union representation nor given adequate time to plan for her transition back to the plant. He wrote:

"Further, the claim that she only had one day to make a life decision is a distortion of the facts. First, the appellant was well aware that she could be returned to the plant at least by early December 2008, when Director Ashton advised her of the evaluation request. Rumors of possible reductions flew long before that. Assistant Director Bieber again directly advised her of the possibility of reduction on February 5, 2009. If she had not contemplated these same options prior to the February 10, 2009 notice that she was determined to be reduced from her special assignment, it can only be considered a fault of her own."⁶³

Curson maintained that the process used to select special assignees to be returned to the plant and the method used to notify them of the decision was applied in the same manner to all affected employees. He insisted that Gainer knew throughout her tenure as a special assignee that her assignment was subject to the discretion of the UAW-GM

⁶⁰ Record, pp. 155-156.

⁶¹ Record, p. 156.

⁶² Record, p. 155.

⁶³ Record, p. 156.

Department Director and that she was not a member of the International Union staff with contractual rights to retain her position.⁶⁴

Curson concluded that Vice President Cal Rapson and Region 9 Director Joe Ashton had not committed any acts in violation of the UAW Ethical Practices Codes in connection with Roberta Gainer's removal from her special assignment at the CHR. He dismissed Gainer's Ethical Practices Complaint.⁶⁵ The IEB adopted Curson's report as its decision on July 6, 2009.⁶⁶

Administrative Assistant Curson also prepared a report to the IEB on Gainer's appeal from her removal as a Human Resource Development Representative at Local Union 774. This report also addressed Gainer's appeal from President Gettelfinger's refusal to waive the certification requirements of Article 32 so that she could file an Ethical Practices Complaint protesting the UAW-GM Department's decision to remove her from that position.

Curson noted that Gainer's attempt to appeal the decision to remove her was submitted far beyond the time limits for appeals specified in Article 33, §4(b), of the International Constitution.⁶⁷ He rejected Gainer's assertion that her letter of September 29, 1999, resigning from the position should have launched an investigation into her motivations and commented:

"Her claims that she '...used several phrases that should have raised a red flag that I was not comfortable in writing the letter, ...' referring to her resignation letter, and her insinuation that some type of investigation was required to accept her resignation would almost be laughable if this was not such a serious allegation."⁶⁸

In any event, Curson maintained that Gainer should reasonably have been aware that she was removed from the Document 46 position shortly after she submitted her letter of resignation.

Curson found nothing improper in the procedures followed to remove Gainer and replace her with Local 774 member Karen McCoy. He reported that McCoy was recommended for the position by Local Union President Gerald McCormick, Local 774 Chairperson Jeff Pietrzyk, Region 9 Representative Kevin Donovan, Region 9 Director Geraldine Ochokinska, and UAW-General Motors Department Assistant Director Don Sarkesian. After the National UAW-GM Department reviewed McCoy's credentials,

⁶⁴ Record, p. 157.

⁶⁵ Record, p. 158.

⁶⁶ Record, p. 129.

⁶⁷ Record, p. 246.

⁶⁸ Record, p. 247.

Vice President Shoemaker accepted the recommendations and notified the company of her appointment.⁶⁹ Curson pointed out that there was nothing secret about these proceedings and that Gainer, who remained an active member of Local Union 774, must have interacted with McCoy on numerous occasions. He asserted that if Gainer did not know that she had been permanently replaced in 1999, she ought to have known.⁷⁰

Curson concluded that the record clearly established that Gainer resigned from her position as Human Resource Development Representative in 1999, so that her attempt to appeal the decision to appoint a permanent replacement was untimely. He found no valid or substantial reason to waive the certification requirements of Article 32, §5(b), of the Constitution with regard to Gainer's Ethical Practices Complaint concerning this matter.⁷¹

Curson denied Gainer's appeal and the IEB adopted his report as its decision on August 20, 2009.⁷² Gainer has now appealed the IEB's decision that no violation of the Ethical Practices Codes occurred in connection with her removal from her special assignment. She has also asked us to consider her appeal protesting her replacement as Local 774 Human Resource Development Representative.

ARGUMENT

A. Roberta Gainer:

The IEB decision states that employees on special assignment serve at the will of the Director of the UAW-GM Department. I believe that the concept of "at will" employment is inconsistent with the values of an organization designed to advocate for fairness in the workplace. In any event, the PRB has on a number of occasions assumed jurisdiction over appeals challenging decisions by the UAW-GM Department Director removing special purpose representatives. In *Gaston-Kelly v. UAW DaimlerChrysler Department*, PRB Case No. 1476 (2004), the PRB reaffirmed its position that Article 33, §2(b), of the UAW Constitution does not preclude the PRB from reviewing appeals from special purpose representatives claiming that they were removed for a reason prohibited by the UAW's Ethical Practices Codes.

In my particular case, principles of fairness were completely disregarded. Although I am the only appellant in this case and the actions taken against me violate the Democratic Practices section of the Ethical Practices Codes, there is a much greater issue at stake. My removal was part of a corporate-wide reduction in special assignments. The reason given for the reduction was the economic downturn in the

⁶⁹ Record, p. 248.

⁷⁰ Record, p. 248.

⁷¹ Record, p. 249.

⁷² Record, p. 222.

automobile industry. If the PRB investigates further, however, it will discover that anti-democratic and unethical methods were used by the UAW-GM Department Director to remove the employees on special assignment. This case has all of the characteristics calling for a special procedure to investigate claims of due process violations that were observed by members Brudney, Jones, and Weiler in their concurring opinion to the PRB's decision in *Gaston Kelley*.⁷³

In the *Gaston-Kelly* case, the PRB held that the appellant had not received a meaningful investigation of her Ethical Practices Complaint and the Board remanded the case to the IEB for the purpose of conducting such an investigation. I, too, was denied a meaningful investigation of my Ethical Practices Complaint. The IEB determined that a hearing on my Complaint was unnecessary. They based their decision on biased information received from Vice President Rapson and Director Ashton. I was never contacted or questioned by the person conducting the investigation on behalf of President Gettelfinger. I was never given the opportunity to question the motives of the people involved in my removal.

I had no union representation during the removal process. The IEB decision states that I continued to be represented by my local union and there is no indication that I sought counsel from my local representatives. In my nine year tenure at the CHR, there was never any written documentation or verbal communication that employees on special assignment continued to be represented by the local union. It is true that I did not seek counsel from Local Union 774, because I did not know that Local 774 was my union representative, but there is substantial evidence in the record that I sought union representation. I made four written inquiries about where I could obtain union representation and none of the responses I received clearly referred me to Local Union 774.

In addition, I was asked to make a life changing decision without being given adequate time to consider my options. I did not speak with Assistant Director Bieber until February 6, 2006, when he called me at Region 9 to tell me staff reductions would take place the following Monday or Tuesday. I informed Bieber that I had heard rumors that my name was on the list to be removed. Bieber responded that there was no such list and not to listen to rumors. Yet, in his report to the IEB, Administrative Assistant Curson suggests that I should have relied on rumors and that such rumors constituted adequate notice that my assignment was over. The IEB decision further suggests that I should have been contemplating the options available to me before I had been given any options to select. How illogical is that? On February 10, 2009, I was notified that my assignment would end and asked to make a life changing decision quickly without union representation.

My removal was an act of retaliation against me for exercising my right to freely criticize the policies and personalities of union officials. When the UAW-GM

⁷³ PRB Case No. 1476, at 15-16.

Department began closing CHR offices in 2002, I expressed interest in a permanent position as an International Representative for the UAW. I was told on more than one occasion that I was highly qualified and a strong candidate for future openings. I was interviewed four times for various positions. Each time, I was misled to believe that I would be hired as an International Representative once the hiring freeze was lifted. Whenever someone else was hired during the freeze, I was given a different story to explain why they were hired instead of me.

In 2006 and 2007, Region 9 promoted several people and hired people to new positions. The positions were all given to male candidates, primarily Caucasian males. The evidence was painfully clear that I was being discriminated against by my union. I was not given an equal employment opportunity nor was any other African-American in the New York branch of Region 9. Sadly, this is still the case. When I asked why no African-American had been hired by the New York branch of Region 9 in the past 16 years, I was told by my director that affirmative action no longer exists in Michigan and Ron Gettelfinger does not believe in quotas.

There is no internal process to grieve discrimination in the hiring of International representatives. Since the appointed Director of Human and Civil Rights did not want to make any waves, I initiated a Title VII claim. I was issued a right to sue letter and I filed a complaint in the US District Court on July 7, 2008. My lawsuit is still pending. When I discussed the Special Assigned Evaluation Form with Director Ashton on December 9, 2008, he said that filing a lawsuit against the UAW was a sign that I did not have a good attitude toward the union. He said that Vice President Rapson was also aware of my lawsuit. He informed me that my Title VII lawsuit had everything to do with the way he would respond to Question #4. He asked me to think seriously about our conversation over the Christmas holiday. In the meantime, I continued with my lawsuit in accordance with the schedule established by the Court. The chain of events from December 2008 to March 6, 2009 is closely aligned and incriminating. The evidence strongly suggests that I was removed for criticizing the hiring practices in Region 9. This is an impermissible reason as defined in the Ethical Practices Codes.

There is no evidence that an equitable process was used to select the people to be removed from special assignment in 2009. If the reduction was conducted fairly and consistent with the practice throughout the UAW-GM Department, I would have had no reason to suspect that I would be included in the 33 representatives selected to be removed, based on my training and assignments. The IEB provided the demographics of the people that were reduced to support their claim that no discrimination existed. These statistics are not valid. One would have to know the demographics of all UAW employees on special assignment to evaluate them. For example, if there are 100 Caucasian males on special assignment and 16 were reduced, that is a 16 percent reduction. If there are six African-American females and three were reduced, that is a 50 percent reduction. In the recent reduction, twenty percent of the Caucasians were removed as compared with sixty percent of the African-Americans and 50 percent of the females.

I presented two appeals at the local union meeting on March 15, 2009. The membership approved my Ethical Practices Complaint as required by Article 32, §5(b), of the International Constitution. My other appeal was from the decision of the UAW-GM Department not to allow me to return to my Document 46 position at Local Union 774. I did not seek membership certification of this appeal because I was told by the president of Local 774 and the shop chairperson that I did not need membership certification to appeal this decision. On March 20, 2009, I received a letter from Administrative Assistant Dave Curson stating that I was required to seek membership approval of this appeal. My request for a waiver of this step was denied on May 6, 2009.

This case provides an example of the sort of abuse of power that the PRB was created to address. The methods used to decide the facts of this case have been unjust. One individual, Dave Curson, has served in many roles throughout the inquiry. The UAW Constitution clearly intends that more than one individual will be involved in reviewing a case. Yet, Administrative Assistant Curson, who is not a member of the IEB, has been the sole investigator and hearing officer in this case. Not once has he questioned me or sought my input. He introduced the letter written by Jeff Pietrzyk into the record without providing me a copy or getting my response to it. The IEB decision refers to Pietrzyk's letter and asserts that it refutes my unsupported claims. My claims are not unsupported. I have presented facts to substantiate my claim that I was improperly removed from my Document 46 position. I have been denied the right to a hearing where I can effectively argue my case.

The IEB decision states that it is safe to assume that I was aware that I had been removed from my Document 46 position in 1999, when I sent the letter to Pietrzyk stating that I intended to remain at the CHR. It is not safe to assume that. The Director of the UAW-GM Department has the sole authority to appoint and remove. It is a well-established policy that an appointee receives written notification of the Director's decision. I never received any correspondence from the vice president's office that I was removed from my Document 46 position nor did I submit any correspondence to the UAW-GM Department resigning my position. When I inquired about my status in 2003, Vice President Shoemaker never indicated to me that I was no longer a Document 46 representative. During the same period, Jeff Pietrzyk verbally confirmed that I was indeed still a Document 46 representative. I first became aware that I no longer held the position as Human Resource Development Representative on March 6, 2009. That is the first time I saw Shoemaker's letter removing me from the position.

The IEB decision states that no specific rules or practices apply to filling vacancies in Document 46 positions created when the representative is placed on a special assignment, and that practices vary widely from appointment to appointment. To the contrary, UAW Local 774 has a well-established practice of not replacing an Internationally appointed representative who has been placed on special assignment. In my appeal, I gave specific examples of this practice.

The IEB has argued that I resigned from my position so that there was no need to investigate the reasons for my removal. Even where a representative resigns, there is a procedure to follow. There should have been some type of acknowledgment in a matter of this importance. At a minimum, I should have been copied on the letter to the company stating that I was no longer the Document 46 representative.

I have been retaliated against for speaking out about the Region's discrimination against African-Americans and females. The UAW blatantly removed an experienced member with seniority and skills from a Document 46 position in order to benefit less experienced family members and friends. I am asking this Board to preserve the original intent of the UAW Constitution to ensure that working people are treated fairly.

B. International Union, UAW:

On July 18, 2007, Gainer filed a charge with the EEOC alleging that the UAW International Union discriminated against her by not hiring her for a permanent staff position in July 2006 and again in February 2007. In response, the UAW pointed out that these positions required experience and ability in collective bargaining which Gainer lacked. The individuals who were hired had decades of collective bargaining experience between them. It is worth noting that members of the International Union staff encouraged Gainer's interest in collective bargaining and directed her how to gain the requisite experience in this field. Gainer did not follow through on this advice. Instead, she filed a charge with the EEOC which was subsequently dismissed. On July 7, 2008, Gainer sued the International Union making the same allegations that were dismissed by the EEOC.

In late 2008, the automotive industry faced a severe economic crisis. As a result of this crisis, the National Parties determined that a drastic reduction in the number of employees on special assignment was needed. As part of this effort, Vice President and Director of the UAW-GM Department Cal Rapson requested that each UAW regional director and assistant director evaluate every special assignment to determine which could be eliminated. Gainer was given several notices of the decision to end her special assignment in meetings with Assistant Director Bieber. Nevertheless, she continued to demand a letter from Vice President Cal Rapson about the status of her assignment. In addition, she made allegations about the conditions under which she resigned her Document 46 position nearly a decade previously. On March 4, 2009, International Representative Tim Cobb explained to Gainer that her assignment was terminated as a result of the extraordinary loss of membership in the UAW.

On April 4, 2009, Gainer submitted an Ethical Practices Complaint against Region 9 Director Ashton and Vice President Rapson to the IEB. Gainer contends that the UAW Ethical Practices Code was violated when her special assignment ended. She argues that she was removed in retaliation for criticizing union officers and that the method of ending her assignment was unfair and did not provide adequate notice.

Gainer's claims of retaliation are completely baseless. By her own account, Gainer has been critical of the union for hiring too few African-Americans since 2000. Her criticisms have had no effect on how the union has treated her. She has maintained her status as a special assignee for years. It was the economic crisis that precipitated the end of her assignment. Gainer first filed her charge with the EEOC in July 2007 and continued in her position for two years after that. The UAW leadership completely respected her right to make such allegations before the EEOC.

Furthermore, the process used to select those whose assignments would end was fair and rational. The process was applied equally to all employees. All of Gainer's allegations of discriminatory acts, favoritism and corruption are untrue and entirely unsupported by the record. The union's deliberations were well grounded and thoughtful. The IEB correctly decided to dismiss Gainer's unfounded Ethical Practices Complaint.

Gainer was assigned to the CHR on April 7, 1999. In a letter dated September 29, 1999, Gainer acknowledged the request of Local 774 Shop Chairperson Jeff Pietrzyk that she decide whether to remain at the CHR or return to her Document 46 position. She informed Pietrzyk that she intended to remain at the CHR and recognized that the union intended to permanently fill the vacancy created in the position of Human Resource Development Representative. A decade has passed since that action was taken. Even if her removal from this position was unfair, the time to challenge that decision through the appellate process described in Article 33 of the Constitution has long since passed.

In a letter dated March 9, 2009, Gainer alleged that the failure to return her to her Document 46 position constituted a violation of the Ethical Practices Code. She was advised by the president's staff that such a claim required membership approval under Article 32, §5(b) of the Constitution. At a local union membership meeting on March 15, 2009, Gainer obtained membership approval of her Ethical Practices Complaint concerning the termination of her special assignment, but she did not obtain membership approval of her complaint regarding the failure to return her to her Document 46 position.

President Gettelfinger's refusal to waive the certification requirements to allow Gainer to pursue this complaint was justified. The untimely nature of the claim is reason enough to dismiss it. Furthermore, her excuses for failing to obtain membership certification are baseless. She contends that she was confused at the meeting and suggests some deliberate strategy on the part of the International president's staff to confuse her. It does not make sense that people in the president's office would conspire to prevent her from pursuing such an untimely claim while allowing the other complaint to proceed.

C. Rebuttal by Roberta Gainer:

It is not surprising that the IEB took the position that my Ethical Practices Complaint was properly dismissed because the complaint was against two members of the IEB. The only way I could initiate the process of complaining about the unethical and unconstitutional acts of Vice President Cal Rapson and Director Joseph Ashton was to appeal to them to make a determination about their wrongdoing. Vice President Rapson and Director Ashton collaborated with President Gettelfinger to conclude that no investigation was necessary and the case had no merit. It is because of this grave conflict of interest that I am appealing to the PRB to hear this case. A hearing before this Board is my only chance for fairness and justice.

The International Union claims that I did not have an employer/employee relationship with the union. That is not entirely accurate. During my tenure as a special assignee, I was on leave from GM. I was paid by the UAW-GM CHR, which is a separate entity from General Motors. The national parties agreed to certain conditions of employment for special assignees in a memorandum of understanding attached to the UAW-GM Agreement. The UAW and GM share in the hiring, promotion, discharge, and discipline of UAW-GM CHR employees. Specifically, Vice President Cal Rapson exclusively manages UAW member employees. So, Vice President Rapson did have an employer/employee relationship with the employees under his direction at the CHR. Vice President Rapson was serving in a management capacity when he conspired with Director Ashton to remove me from my assignment for an impermissible reason. This case should be reviewed with that in mind. My *Weingarten* rights were violated by the manager of the UAW-GM CHR acting as the agent of Vice President Rapson.

The International Union claims that my charge of retaliation has no merit because I have been complaining about the hiring practices at Region 9 for years. As a member of the UAW Women and Civil and Human Rights Committee, our committees actively worked to implement diversity initiatives. I periodically advised the leadership about opportunities for inclusion and where we as a Region were lacking in terms of diversity. A push for diversity is a very different thing than filing a Title VII lawsuit. My Title VII action alleges employment discrimination. I applied for jobs that I was qualified to perform and I was consistently denied the positions in favor of Caucasian males. This was the reason that Rapson and Ashton worked together to remove me from my special assignment. My removal took place less than six months after the UAW Region 9 first received notification of my complaint.

The International Union claims that the method used to select employees to return to the plant were fair and uniformly applied. Yet, they have not produced any evidence to support this claim. There are no records of the results of their alleged evaluation of each special assignment. I have spoken with other special assignees who are willing to testify that they did not have any knowledge of an evaluation form. They also stated that they were never given any explanation for why they were removed.

DISCUSSION

We need not reach the jurisdictional issues raised by Gainer's attempt to perfect an Ethical Practices Complaint regarding her replacement as the Local 774 Human Resource Development Representative, because the matter is so clearly untimely. The events Gainer is challenging took place in 1999. While it is true that Gainer did not receive a copy of the letter removing her from the position until March 6, 2009, the UAW Constitution states unequivocally that the time limit applicable to appeals or Ethical Practices Complaints begins to run when the member first becomes aware of the action being challenged. Gainer has demonstrated by her own testimony that she knew in 1999 that the Human Resource Development Representative position was not going to be held open for her.

The letter Gainer wrote to Chairperson Pietrzyk in September 1999 acknowledged that she was relinquishing her claim to the position and that she had misgivings about doing that. The fact that Gainer did not use the word resign in her letter is of no consequence. She understood the operative effect of the letter and accepted it by stating that she had decided to move on and serve the membership in a different capacity. The conversations Gainer describes with Administrative Assistant Dick Monska and Region 9 Director Kevin Donovan prior to making this decision addressed the fact that she was giving up her local Document 46 assignment. Finally, the conversation Gainer had with Pietrzyk during the Christmas party in 2002 dealt with her removal and what other Document 46 positions might become available. The fact that Gainer was filled with anger, as she reports, demonstrates that she understood at the time that she was no longer the Human Resource Development Representative at Local Union 774, regardless of whatever Pietrzyk may have said to her in a subsequent telephone conversation about her status at the local union. If Gainer believed that it was improper for Pietrzyk, Monska and Donovan to pressure her to give up her Document 46 position, she should have brought her complaint to the membership of Local Union 774 in 1999.

The substantial issue presented by this appeal is whether Gainer has established that the termination of her special assignment to the CHR was in retaliation for her exercise of rights protected by the Ethical Practices Codes. Gainer has submitted evidence of her extensive training and the fact that her duties at the CHR were substantial.⁷⁴ Gainer's competence and commitment to her assignment are not in question here. In accordance with Article 33, §2(b), of the International Constitution, we have no jurisdiction to review decisions made by the Director of a National Department with regard to special assignments.⁷⁵ The PRB does have jurisdiction, however, to

⁷⁴ This evidence has been entered into the record as Volume 2.

⁷⁵ Article 33, §2(b) of the UAW Constitution imposes limitations on certain types of appeals. 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

consider a claim that a member appointed to a special assignment has been removed from the position for reasons which violate his or her rights as a member of the union.⁷⁶ Our decision in *Ward, et al. v. National UAW General Motors Department, supra*, articulated the following principle applicable to appeals from special purpose representatives:

“The appointing authority may not, however, retaliate against an appointed representative by removing him or her from the job by reason of the representative’s exercise of non-restricted political rights protected by the Ethical Practices Codes.”⁷⁷

Accordingly, we are not concerned here with whether Gainer’s removal was justified or in the best interests of the membership as a whole, but rather whether she has established the violation of some specifically protected right. We find that she has not made that case.

Gainer’s claim that the concept of at will employment violates the Ethical Practices Codes has no merit. There is nothing inherently unethical about employment at will. A Department Director need not demonstrate just cause for a decision to remove an appointee. We have frequently stated that the power to appoint a person to an appointive position necessarily comprehends the power to remove that person.⁷⁸ A special assignment provides benefits to the assignee in terms of compensation, prestige and satisfying work. These assignments reward members who have developed special skills and provided valuable services to the union as an institution. Such assignments do not create an employment relationship between the assignee and the International Union or the UAW-GM Department. Gainer’s argument that she was entitled to union representation during her interviews with Director Ashton and Assistant Director Bieber is mistaken. The process employed by the UAW-GM Department to reduce the number of special assignments was not a disciplinary action that she was entitled to challenge through some kind of grievance procedure. Her attempt to insert procedures applicable to disciplinary layoffs and discharges into this process has no Constitutional or contractual basis.

Gainer has asserted, however, that the process employed by the UAW-GM Department was itself unethical. Gainer has asserted that further investigation would

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.”

⁷⁶ *Robertson v. International Union, UAW*, 1 PRB 632 (1971); *Ward, et al. v. National UAW General Motors Department*, 8 PRB 228 (1994); *Badalamento v. UAW National Ford Department*, 11 PRB 511 (2002); and *Gaston-Kelly v. UAW DaimlerChrysler Department*, PRB Case No. 1476 (2004).

⁷⁷ 8 PRB 228, at 236.

⁷⁸ *Mejia v. Local 365, UAW*, 5 PRB 813 (1988); *Luksch v. Local 686 UAW*, 5 PRB 844, (1988); *McConaugh v. Local Union 1183, UAW*, 10 PRB 359 (1999); and *Kidd v. UAW International Executive Board*, PRB Case No. 1467 (2004).

reveal that the UAW-GM Department used the economic crisis in the automobile industry as a pretext to eliminate the assignments of a disproportionate number of African-Americans and women. Gainer has challenged the demographic analysis offered by Rod Uhelski to show that no discrimination was involved in the selection of positions to be eliminated. She points out that one would need to know the demographics of all UAW employees on special assignment to evaluate the claim that the selections were racially neutral. That is true, but the sample here is too small to permit a statistical analysis which would provide a basis for drawing any conclusions about a pattern of bias based on race or gender. Nevertheless, we do not believe the kind of further investigation requested by Gainer is warranted by this record. There can be no doubt about the reality of the economic crisis in the automobile industry during this period. The need to reduce the number of employees being compensated through the Center for Human Resources was evident. Gainer is essentially claiming that Vice President Rapson and Regional Directors around the country conspired to use this situation as an opportunity to reduce African-Americans and women from their special assignments. This accusation is as improbable as it is grave. Gainer has provided no concrete evidence that would shift the burden to the Union to produce a demographic analysis of its population of special assignees in order to refute her accusation that race or gender was a factor in Vice President Rapson's decision with respect to her assignment. The appointee challenging her removal has the burden to prove that an impermissible factor influenced the vice president's decision.⁷⁹

Gainer insists that if the process had been fair and consistent with the practice in the UAW-GM Department, her training and experience would have precluded her removal. She argues that only an impermissible reason could explain her removal. She concludes that the timing of the decision suggests that it must have been in retaliation for her Title VII complaint against the International Union alleging employment discrimination. She maintains that she was removed in retaliation for exercising her right to freely criticize the policies of the International Union, a right guaranteed to her by the UAW Ethical Practices Codes.

There are several aspects to Gainer's argument that we must keep separate. In the first place, she reports that she has been an outspoken critic of the hiring policies in Region 9 over the years and suggests that this may have had something to do with the decision to eliminate her position. In addition, she claims that her applications for employment as an International Representative were rejected based on her race and gender. She filed a complaint in the US District Court on July 7, 2008, asserting this claim. Finally, she maintains that she was removed from her special assignment to the CHR in retaliation for having filed this lawsuit.

Certainly, if Gainer's race and gender influenced decisions made with respect to her application for employment by the International Union that would be inconsistent with the objects stated in Article 2, §2, of the UAW Constitution and the guarantee of

⁷⁹ *Gaston-Kelly v. UAW DaimlerChrysler Department*, PRB Case No. 1476 II (2005) at 19.

fairness stated in the Democratic Practices section of the UAW Ethical Practices Codes. This issue is not before us, however; it is before the District Court. In response to Gainer's Ethical Practices Complaint, the International Union pointed out that Gainer has been actively critical of the Region and the International Union for hiring too few African-Americans since 2000 with no adverse effect on her special assignment. Gainer effectively concedes this point. She argues, however, that her push for diversity, which the union tolerated over the years, is significantly different from filing a Title VII lawsuit. She charges that the lawsuit prompted Vice President Rapson and Director Ashton to work together to insure her removal from her special assignment. So, Gainer's fundamental complaint here is that she was removed for filing the lawsuit, and the evidentiary basis for that complaint is the conversation she had with Director Ashton about the lawsuit in December 2008.

We have stated that Gainer has the burden of establishing that her removal was for an impermissible reason. That does not mean, however, that she must present an airtight case. In our initial review of Gwendolyn Gaston-Kelly's Ethical Practices Complaint, we determined that while the complainant had not firmly established that race or other impermissible factors led to her removal as Health and Safety Representative for Local Union 1248, she had raised a sufficient number of circumstances to require the union to investigate further.⁸⁰ We made clear that such an investigation would require interrogation of the principal parties involved in the decision. Our opinion states:

"If the Public Review Board sustained the action of the Union in this case, it would send a signal to the membership of the UAW that the processes engaged in here meet at least the minimal standard of due process guaranteed by the Constitution. They clearly do not. The International Union has argued in response to Gaston-Kelley's appeal that the actions taken by Gooden and Zappa are insulated from appeal beyond the IEB level unless the appellant can prove that Constitutional violations have occurred. Yet, the procedures followed by the International Union denied the appellant any meaningful opportunity to make that case. The appellant in this case made a claim cognizable under the Ethical Practices Codes and she was entitled to have her claim investigated. Instead of an investigation, the International Union conducted a hearing in which the appellant, although lacking any power to compel the attendance of witnesses or to require their testimony, carried the entire burden of establishing her claim of improper motivations."⁸¹

The conversation that Gainer had with Ashton does not compel a conclusion that Gainer's lawsuit was the reason for her removal, but it does link the two events. Consequently, one of the questions presented to us in our initial consideration of this

⁸⁰ *Gaston-Kelly v. UAW Daimler Chrysler Department*, PRB Case No. 1476 (2004), at 11.

⁸¹ PRB Case No. 1476, at 14.

complaint was whether the lawsuit would be an impermissible reason for terminating Gainer's assignment. If that were the case, further investigation of the connection between the lawsuit and the decision regarding Gainer's assignment would be necessary.

On January 6, 2010, therefore, we sent a letter to the International Union asking them to address the question whether filing the lawsuit would have been an impermissible reason for terminating Gainer's assignment. Administrative Assistant Curson responded that Gainer's lawsuit had nothing to do with the decision to end her special assignment, so he declined to speculate whether it would have been a permissible consideration. He suggested however that such litigation against the UAW might be a permissible reason for ending a special assignment depending on the circumstances. He wrote:

"In this specific instance we find Gainer's argument moot, as Regional Director Ashton did not consider the lawsuits filed by Gainer as justification for eliminating her special assignment, as he made no recommendation to eliminate her assignment. Director Ashton did not complete the survey on Gainer, nor did he return it to the GM Department for consideration.

International Union appointees, including UAW staff, have filed legal actions against the UAW without repercussion of any kind, as Gainer herself has experienced. That does not preclude the UAW from removing an appointee from a position who has initiated legal actions against the UAW with the intent to do harm to the organization or in violation of the UAW Constitution."⁸²

There is nothing in the Ethical Practices Codes that specifically protects a member's right to file civil actions against the International Union. Gainer has argued that her suit falls under the protection afforded members to freely criticize the policies and personalities of union officials, but we do not believe this protection extends to litigation. In fact, the UAW Constitution in Article 33, §5, imposes a specific obligation on union members to exhaust internal union remedies before resorting to litigation.⁸³ Gainer has asserted that there is no internal process to grieve discrimination in the hiring of International Representatives, but that is not correct. Article 26 of the UAW Constitution establishes a Civil and Human Rights Department of the International Union and invests the Director of that Department with authority for implementing the policies of the International Union dealing with discrimination. Gainer states that she

⁸² Record, p. 271.

⁸³ Article 33, §5, provides as follows:

OBLIGATION TO EXHAUST INTERNAL UNION REMEDIES. It shall be the duty of any individual or body, if aggrieved by any action, decision or penalty imposed, to exhaust fully the individual or body's remedy and all appeals under this Constitution and the rules of this Union before going to a civil court or governmental agency for redress.

filed her lawsuit because the Director of the Civil and Human Rights Department “did not want to make any waves.”⁸⁴ She has not provided any evidence of her efforts to address her concerns through the Department of Civil and Human Rights. Furthermore, any refusal to act on the part of the Department Director could have been appealed to the IEB as described in Article 33, §1, of the International Constitution. It does not appear, therefore, that Gainer has satisfied her Constitutional obligation to exhaust her internal remedies. Failure to meet such a clearly stated obligation might well be a consideration in evaluating the special assignment of a member to the CHR.

Once again, the merits of the lawsuit are not before us. If Gainer truly encountered racial discrimination, she was fully justified in bringing the matter to light and insisting that it be addressed. Nevertheless, members who enjoy the privilege of a special assignment to a jointly funded program are expected to work within the organization to address such problems when they occur. As a citizen, Gainer had the right to resort to litigation to address her problems. As a union member, however, particularly one who enjoyed the prestige and influence attendant on a special assignment, Gainer was expected to use less adversarial methods of persuasion when these methods are plainly available. Gainer’s claim that she was removed from her position in retaliation for her Title VII lawsuit states a claim within our jurisdiction to consider Ethical Practices Complaints because adverse action against a union member taken in direct retaliation for the member’s initiation of a complaint alleging discrimination would in itself be discrimination. We conclude that the protections afforded by the Ethical Practices Codes do not apply to Gainer’s Title VII lawsuit in the context of this case given the union’s undeniable need to reduce appointments such as Gainer’s and her failure to exhaust the remedies available to her under the UAW Constitution to address such complaints. It is unnecessary, therefore, for the union to conduct further investigation into the question whether the lawsuit played any part in the decision to eliminate Gainer’s assignment.

The decision of the IEB is affirmed.

DISSENTING OPINION OF MEMBER ONTIVEROS

I fully appreciate the minimal showing required of the International Union when facing challenges to the removal of a member from a special assignment such as that held by Gainer. These decisions are entirely within the discretion of the National Department Director and he or she does not have to justify them. The showing required to bring these decisions within the purview of our authority to address Ethical Practices Complaints must be substantial and significant. I am also cognizant of the union’s undeniable need to eliminate some of these appointments in the current economic climate. Nevertheless, I do not believe that the International Union has met the very minimal burden required to eliminate the need for further investigation under the

⁸⁴ Record, p. 175

standard established in *Gaston-Kelly v. UAW Daimler Chrysler Department*, PRB Case No. 1476 (2004).

Gainer's complaint is indeed substantial and significant. She is saying that discrimination based on race and sex influenced the selection of appointees for removal when economic circumstances forced the International Union to reduce a large number of these appointments. My colleagues' characterization of Gainer's argument in this respect, that further investigation would reveal that the union was using this situation as a pretext to remove a disproportionate number of African-Americans and women, sets up a straw man that is too easily toppled. I do not believe this is a fair representation of the problem Gainer is trying to address. Discrimination based on race or sex can and does operate in more subtle ways than we suggest on these pages. Gainer has apparently been raising issues of discrimination within the union for a number of years. In such a situation, the ability to participate in the legal process designed to eliminate discrimination takes on special significance. Retaliation for such participation becomes part of the discrimination itself.

While I agree that the contractual safeguards applicable to disciplinary layoffs do not apply here, I believe that there is merit to Gainer's argument that the principle reflected in Paragraph (140b) of the UAW-GM National Agreement can provide insight into the issue in this case. That paragraph requires the parties to formulate a mutually acceptable layoff and recall plan whenever there is a reduction in force due to unusual circumstances. Gainer makes the following point:

"In the General Motors Department, in addition to the traditional bargaining unit, Document 46 and International Representatives both have written processes for removal, reductions, and recall rights. Also there is language provided in Paragraph (140b) in the UAW-GM National Agreement that addresses the topic: Reduction of Skilled Workforce in Unusual Circumstances. Yet, when presented with an unusual circumstance (a 33% reduction across the board of UAW Special Assigned) no systematic, uniformly fair procedure was applied when reducing Special Assigned that was consistent with the rest of the organization."⁸⁵

I believe that impermissible factors may too easily taint a reduction in force of this magnitude absent a coherent plan.

In this case, in response to Gainer's Ethical Practices Complaint, the International Union claimed that the GM Department had put in place a process to determine which positions to eliminate. When we asked the Union to explain this process, however, they did not give a satisfactory answer. They provided us with examples of evaluation forms that were supposedly used in making these decisions as

⁸⁵ Record, p. 89

evidence of an objective process.⁸⁶ When we asked the International Union what part these evaluation forms played in the process, Administrative Assistant Curson responded that Regional Director Ashton did not complete the survey or return it to the GM Department for consideration. We gave the International an opportunity to explain its process and how Gainer's removal fit within its process. Just about any objective explanation would have sufficed, but I could not find a consistent, coherent response in the record.

Given the facts of this case, a process this opaque is too subject to abuse to be consistent with the standards of fairness articulated in the UAW Ethical Practices Codes. The union does not have to establish just cause to remove an assignee, but when a substantial number of appointees are removed and there has been a history of allegations of discrimination, there must be some objective reference points articulated to explain how people were selected for removal. These objective reference points might include level of training, the number of assignments, and indeed, loyalty and attitude. We have held that appointees may be removed because of incompatibility with other officers.⁸⁷ Failure to exhaust internal remedies might have been a permissible factor as my colleagues have argued, but the union has never argued that failure to exhaust internal remedies was the reason for this removal. Thus, although my colleagues have articulated a plausible reason for the removal, the union has still failed to articulate a reason for its action. Since motive is at issue here, the key question for me is not whether the PRB could determine a plausible reason but whether the reason actually used by the union was actionable or not. In response to Gainer's charge that her removal was in direct retaliation for her Title VII lawsuit, the International Union has taken the position that Gainer's lawsuit had no influence on Vice President Rapson's decision to remove Gainer from her special assignment. I do not believe the record before us is sufficiently developed to support the union's position on this point.

I would remand this appeal for further investigation into the factors used to select which appointees would be removed from special assignment and ask the International Union to identify the objective factors that resulted in Gainer's removal. Based on these findings, the IEB would then be able to reach a fully informed decision on the question whether Gainer was removed for a reason prohibited by the Ethical Practices Codes.

⁸⁶ Record, pp. 125-127

⁸⁷ *Northrup v. International Union*, 2 PRB 467, (1977); and *Piper v. International Union*, 2 PRB 541, (1977).