

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

APPEAL OF:

GWENDOLYN GASTON-KELLEY, Member
LOCAL UNION 1248, UAW
(WARREN, MICHIGAN), REGION 1
Appellant

-vs-

CASE NO. 1476

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

DECISION

(Issued September 15, 2004)

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

APPEARANCES: Gwendolyn Gaston-Kelley, William M.
Hatchett, Bonita L. Hatchett and Elliot B. Allen
on behalf of appellants; Eunice Stokes-Wilson
on behalf of International Union, UAW.

Gwendolyn Gaston-Kelly argues that she was denied the due process guaranteed to her by the UAW Ethical Practices Codes in connection with her removal as Health and Safety Representative for UAW Local 1248.

FACTS

UAW Chrysler Department Vice President and Director Jack Laskowski appointed Gwendolyn Gaston-Kelley¹ to the position of Health and Safety Representative for the Center Line Parts Depot, UAW Local 1248, on January 28, 1998;

¹ Gaston-Kelley's surname at the time she was appointed was Gaston. She subsequently married and adopted the name Gaston-Kelley. We refer to her as Gaston-Kelley throughout this opinion.

she had served as Alternate Health and Safety Representative since October 24, 1996.² On December 2, 2002, Gaston-Kelly accepted a special assignment to the UAW-DaimlerChrysler National Training Center (NTC). According to Gaston-Kelley, when she accepted the assignment to the NTC, she was assured by Safety Coordinator Decoris Glenn that if her assignment to the NTC did not become permanent, she would return to her position as the Local Joint Health and Safety Representative for Local 1248.³

On April 15, 2003, Gaston-Kelley received a notice from James Davis of the NTC directing her to return to the Center Line Parts Depot effective April 22, 2003.⁴ When Gaston-Kelley reported to work on April 22, she was not returned to her position as the Local Joint Health and Safety Representative for Local 1248. In an email addressed to Coordinator Arpatsy Oldham of the NTC, Gaston-Kelley reported that when she returned to the plant on April 22, Local 1248 President Dave Zappa informed her that she was no longer the Local Joint Health and Safety Representative, and that she should report to the second shift as Safety Representative.⁵ In her appeal to the Local, Gaston-Kelley reported that Zappa told her on April 25 that she had been removed from her position as Local Joint Health and Safety Representative by Director Nate Gooden because she had accepted the assignment to the NTC.⁶

Gaston-Kelley appealed her removal as the Local Joint Health and Safety Representative to the Local Union and to the International Executive Board (IEB) on May 9, 2003. In her appeal to the Local Union, Gaston-Kelley stated that Zappa told her to contact Director Nate Gooden if she had any questions about her removal. Gaston-Kelley wrote that she spoke with Gooden's secretary, Yvonne Jackson, on May 1. According to Gaston-Kelley, Jackson gave her the following message:

"The Local President, Dave Zappa and the Regional Director, Ken Terry signed the paper to have you removed from your position. Their decision was binding and he was standing by their decision and he was not going to adhere to past practice."⁷

Gaston-Kelley argued that this procedure was improper. She wrote:

"...Past practice has always been with 'Special Assignments' you would return to the position you left unless you were

² Record, pp. 10-11.

³ Record, p. 150.

⁴ Record, p. 75.

⁵ Record, p. 76.

⁶ Record, p. 98.

⁷ Record, p. 95.

hired as full-time staff and you then would have to turn in your resignation allowing the President to submit resumes to fill that appointed position and Brother Zappa was well aware of this procedure when he submitted the letter to get me removed. But Brother Zappa's vindictive, undermining behavior along with his promise he made to get me removed, allowed him to submit the letter anyway, without just cause. I never received any written notification that I was removed. I was never confronted with any charges. I was never investigated. I was just removed—just like that.”⁸

In regard to her acceptance of the special assignment to the NTC in January 2003, Gaston-Kelly wrote:

“Brother Decoris Glenn, Administrative Director of the NTC, stated that it may or may not be permanent and if it wasn't permanent, I would return to the plant and resume my position as Local Joint Health & Safety Rep. It was this assurance that heavily influenced my decision to accept the 'Special Assignment' at NTC. ...”⁹

Gaston-Kelly stated that when she learned that Zappa had submitted a letter to have her replaced, she went to the Region for an explanation. She reported that the Regional Servicing Representative advised her that she was replaced because she had accepted the assignment to the NTC, and that she should seek her answers from the NTC. She wrote, “I knew at that point something was not right.”¹⁰ Gaston-Kelly stated that had she known she would not be permitted to return to her position as Health and Safety Representative after accepting the temporary assignment at NTC, she never would have resigned from it in the first place.

Gaston-Kelly charged that President Zappa had a personal grudge against her and that he used his influence with Nate Gooden to have her removed from her appointed position. She explained that when Zappa was elected convention delegate in 1998, he voted in support of Nate Gooden as Regional Director in opposition to the Local Union's wishes. She asserted that Gooden had rewarded this act of loyalty by sending International Representatives to the Local to intimidate those opposed to Zappa's policies. She stated further:

“I feel my removal from the appointed position is also in retaliation from Nate Gooden because Local 1248 voted not to support Brother Gooden as Regional Director when he ran

⁸ Record, p. 98.

⁹ Record, pp. 96-97.

¹⁰ Record, p. 98.

against Leon Matthews. I feel I am a victim of circumstances because as an appointee then and now, I cannot and did not get involved in local politics. Brother Zappa's action to have me removed without just cause was another act to show further support of loyalty and collusion with Brother Gooden."¹¹

Gaston-Kelly reported that she had received certification from Ferris State University as a Health and Safety Specialist and that she was currently working on an Associates Degree in Health and Safety from Ferris State at the NTC. She pointed out that her removal violated the following principle set forth in the International Union's Administrative Letter regarding Internationally-appointed Representatives that was signed by Nate Gooden on November 8, 1999:

"It is intended that Internationally-appointed Local Union Representatives will become 'experts' in their respective field(s) and a valued asset to the local union. Therefore, it is not intended that changes in local union administration will also result in changes of Internationally-appointed Local Union Representative. We must always be mindful that the needs of our members should remain foremost in our concerns and efforts."¹²

In her conclusion, Gaston-Kelley argued that President Zappa violated her right to due process guaranteed by the Ethical Practices Codes when he caused her to be removed from her position. She wrote:

"Where is the due process under the UAW Constitution when it comes to removing a person? I have done my job; I stay away from local politics. I attend union meetings regularly. I am a very good Safety Rep., and I am a person of integrity. As I stated before, I believe there are still some good people in the UAW with a good heart, open mind and a willingness to stand up for the rank and file. I have been treated unfairly."¹³

Gaston-Kelley attempted to present her appeal to the membership at a Local membership meeting on June 22. The minutes of that meeting state that Gaston-Kelley addressed the membership under "New Business" and thanked all those members who had signed petitions protesting President Zappa's request to have her removed as Health and Safety Representative. Zappa stated that Gaston-Kelley was "out of order"

¹¹ Record, p. 99

¹² Record, p. 23.

¹³ Record, p. 101

and that he had not had her removed.¹⁴ The minutes indicate that member Garrison stated: "At this time we cannot talk about your case."¹⁵ Following a discussion of other matters, member Leonard took the floor and stated: "I just want to let this membership to know that Sister Kelley did not receive any letter letting her know that she was removed, nor the Executive Board."¹⁶ Member Perkins then asked why Gaston-Kelley was removed from her position. President Zappa replied that he did not have anything to do with Gaston-Kelley's removal, and he referred member Perkins to Solidarity House.¹⁷

Another member then asked why the Local did not inform the membership when positions such as the Health and Safety Representative became open. Member Yvonne stated: "Why don't you let people know about them, when I found out, and I'm just as qualified, you had already appointed everybody. Now that, I think, is unfair to this membership."¹⁸ Zappa stated that he had announced the opening in the Local paper and received resumes. The minutes reflect that Gaston-Kelley took the floor at this point and explained how Representatives had been selected in the past. She then began to read her appeal to the membership, but President Zappa ruled her out of order and eventually adjourned the meeting and instructed everyone to leave the premises.¹⁹

Gaston-Kelley's appeal to the IEB is essentially the same as her appeal to the Local membership.²⁰ James Davis of the DaimlerChrysler NTC prepared a memorandum for President Gettelfinger in response to Gaston-Kelley's appeal to the IEB on July 9, 2003. He stated:

"While it's true that past practice has been to not officially appoint permanent replacements for those who serve on special assignment staff, there is no documented policy stating such. Brother Glenn's statements to Sister Gaston-Kelley were based on past practice and not intended to mislead her."²¹

Davis referred to Gooden's Administrative Letter of November 8, 1999, which states that the appointment and removal of Internationally-appointed Representatives is the responsibility of the Director of the UAW DaimlerChrysler Department. Similarly, Davis

¹⁴ Record, p. 115.

¹⁵ Record, p. 115.

¹⁶ Record, p. 117.

¹⁷ Record, p. 118.

¹⁸ Record, p. 119.

¹⁹ Record, p. 119.

²⁰ Record, pp. 102-108.

²¹ Record, p. 122

stated that the appointment and removal of staff from special assignments is within the discretion of the Director.

Presidential Administrative Assistant Eunice Stokes-Wilson conducted a hearing on Gaston-Kelley's appeal on behalf of the International President on October 27, 2003, and prepared a report for the IEB based on that hearing. Stokes-Wilson acknowledged that President Zappa had not allowed Gaston-Kelley to present her Ethical Practices Complaint to the membership of Local 1248, and she stated that Gaston-Kelley would not be "prejudiced by the President's error."²² Stokes-Wilson indicated that she would examine the issue whether the Ethical Practices Codes were violated.

In her statement of the facts, Stokes-Wilson wrote that it was clear from the record that the relationship between Gaston-Kelley and Local 1248 President Zappa was strained. She reported:

"While the record is silent, it is apparent that the Local Union President asked both Regional Director Ken Terry and Vice President Nate Gooden to appoint someone to the Local Union Health and Safety position whom he could establish a working relationship with...."²³

In summarizing her conclusions, Stokes-Wilson remarked that the Director of the DaimlerChrysler Department is not obligated to debate or bargain with an appointed representative over his or her tenure. She found no evidence that any impermissible reason influenced the decision to remove Gaston-Kelley. In closing, Stokes-Wilson quoted a portion of our opinion in *Northrup v. International Union*, 2 PRB 467, (1977), in which we upheld the removal of an official appointed by the International Union where it was determined that due to political differences with the incumbent local administration, the officer could no longer function effectively.²⁴ Stokes-Wilson held that there was no violation of the Ethical Practices Codes, and she denied Gaston-Kelley's appeal.²⁵

The IEB adopted Stokes-Wilson's report as its decision and notified Gaston-Kelley on January 30, 2004. Gaston-Kelley appealed to the Public Review Board (PRB) on February 16, 2004.

²² Record, p. 141

²³ Record, p. 141.

²⁴ Record, p. 144.

²⁵ Record, p. 145.

ARGUMENT**A. Gwendolyn Gaston-Kelley, by her attorney, William M. Hatchett:**

We accept the International Union's position that the power to appoint and remove the Health and Safety Representative for Local Union 1248 under the Memorandum on Health and Safety between DaimlerChrysler Corporation and the UAW is vested entirely in the discretion of the Director of the DaimlerChrysler Department. At the same time, the Democratic Practices section of the UAW Ethical Practices Codes provides in paragraph 3 as follows:

"All Union rules and laws must be fairly and uniformly applied and disciplinary procedures, including adequate notice, full rights of the accused and the right to appeal, shall be fair and afford full due process to each member."

This language, by itself, does not limit the discretion of the Director. The record demonstrates, however, that the Department has adopted certain policies and procedures in connection with the appointment of representatives. The existence of an established policy or procedure regarding the appointment and removal of representatives by the Chrysler Department, together with the due process guarantee of the Ethical Practices Codes creates substantive rights for members which this Board can enforce.

It is not necessary, therefore, for appellant to prove that Director Nate Gooden abused his discretion in removing her. The charge of an abuse of discretion creates a difficult burden of proof to sustain, but that is not the standard here. We can show that the Director's action in this case deviated from a well-established past practice, and violated the Union's written policies with regard to the removal of appointed representatives.

No letter of removal was ever issued to Gaston-Kelley. She still has received no notice from the Department of her removal. It appears that no such document exists. There is some question in Gaston-Kelley's mind even as to when the removal took place. The International Union states that Director Gooden appointed Nancy Dlugokinski to replace Gaston-Kelley on April 15, 2003, while Gaston-Kelley was on assignment at the NTC. In fact, Dlugokinski was on medical leave at this time and did not return to the plant until late June. When Gaston-Kelley returned to the plant on April 22, she continued to function as Health and Safety Representative until April 25, when Zappa advised her that she had been removed by Director Gooden.

Gaston-Kelley had every reason to believe that she was still the Health and Safety Representative for Local 1248 when she returned to the plant on April 22, because the past practice of returning representatives to their positions was well-established. No one has challenged the past practice. Even Director Gooden acknowledged his deviation from the past practice in the message he communicated to

Gaston-Kelley through his secretary. We maintain that the established practice in the Department created an obligation on the part of the Director to provide Gaston-Kelley with some kind of process for reviewing or appealing his decision.

In addition, the DaimlerChrysler Department has adopted written guidelines in the form of Administrative Letters which Gaston-Kelley had a right to rely on. The Administrative Letter issued by Director Jack Laskowski on August 20, 1996, and the letter issued by Director Nate Gooden on November 8, 1999, specifically provide that changes in local union administrations will not result in the replacement of a local union's appointed representatives.²⁶ Not only the appointed representatives, but also the membership had a right to rely on the policies established by these letters, because these policies are specifically adopted for their benefit. The final sentence in the stated policy confirms its purpose to protect the rights of members to receive the most expert representation. It states: "We must always be mindful that the needs of our members should remain foremost in our concerns and efforts."

This pronouncement creates a limitation on a newly elected president's ability to replace appointed representatives simply because he wants his own allies and team members in these positions. The International has referred to prior PRB cases that upheld removal on the basis of political incompatibility. There is no "bright line" test on the question of compatibility, but the cases cited by the International Union generally involve political activity on the part of the appointee. This case is distinguishable from those referred to by the International Union because Gaston-Kelley did not involve herself in the politics of the Local Union in any way. She was the victim of a political crossfire that she had nothing to do with. At the same time, the record shows that she was an excellent Health and Safety Representative. She had taken advantage of the training offered to such representatives in order to provide the best possible service to the membership.

The language in the Union's Administrative Letters was added specifically to prevent newly elected local union officers from having trained representatives such as Gaston-Kelley removed based on whimsical likes or dislikes. If the process followed in this case is allowed to stand it will undermine entirely the policies stated in the Administrative Letter, and will subvert the purpose of the Union itself, which is to benefit the membership.

In any event, there is no substance to the claim that Zappa could not work with Gaston-Kelley. This justification for her removal was raised for the first time in the decision issued by the IEB. Zappa never claimed that he had Gaston-Kelley removed because he could not work with her; he maintained publicly that he had nothing to do with her removal. The Local Union membership meeting minutes report that Zappa told

²⁶ The actual text of the relevant language in the administrative letter reads:

"Therefore, it is not intended that changes in local union administration will also result in changes of Internationally-Appointed Local Union Representatives." (Record, p. 23)

the membership that Director Gooden replaced Gaston-Kelley when she accepted the assignment to the NTC.

B. International Union, UAW:

The PRB explained the application of the Ethical Practices Codes in appeals challenging a decision by a Department Director to remove an appointed representative in *Ward v. UAW General Motors Department*, 8 PRB 228, (1994). In that case the Board held that the Union did not need to establish “just cause” for the removal of special purpose representatives, but that members could not be removed for “reasons which violate rights guaranteed by the Union’s Ethical Practices Codes.”²⁷ Gaston-Kelley has not established that any rights guaranteed to her as a member of the Union by the Ethical Practices Codes have been violated by the Director’s decision to replace her while she was on special assignment. She had no Constitutional right to hold the appointed position. All representatives appointed by the DaimlerChrysler Department hold their appointments at the will of the Director and they may be removed by the Director at any time.

The Administrative Letters issued by the DaimlerChrysler Department do not constrain the discretion of the Department Director in any way. The identification of possible reasons for removal is offered as a guideline for appointed representatives, but this is not intended to be an exhaustive list. Similarly, the language recommending that new administrations retain Internationally-appointed representatives who have attained expertise in their fields is only a recommendation. The language does not in any way guarantee that Internationally-appointed representatives will retain their positions.

The past practice relied on by the appellant also did not restrict the power of the Director to remove the representatives that he appointed. It is true that those accepting such assignments are usually returned to their appointed positions when the assignments end. Decoris Glenn’s statement to Gaston-Kelley that she would be returned to her appointed position if the assignment at the NTC ended reflected this practice. Nevertheless, Director Gooden could have replaced Gaston-Kelley at any time. Her acceptance of the assignment to the NTC did not alter the scope of his discretion in the matter of appointing and removing representatives.

There is no dispute that Vice President Gooden appointed someone else as Local Union Health and Safety Representative while Gaston-Kelley was on special assignment at the DaimlerChrysler NTC. It was permissible for Zappa to request Gaston-Kelley’s removal simply because he did not have a good working relationship with her under the PRB’s decision in *Northrup v. International Union*, 2 PRB 467, (1977), as well as *Piper v. International Union*, 2 PRB 541, (1977). These cases upheld the removal of an appointed representative on the basis of political incompatibility with the local administration even though there was no claim of any dereliction of duty.

²⁷ 8 PRB 228, at 232.

Therefore, the documents submitted by Gaston-Kelley to show that she had attained expertise in the health and safety field, and that she had done a good job are not relevant to the issues raised by her appeal.

We do not actually know why Zappa requested Gaston-Kelley's removal, but there is no evidence that it was for an impermissible reason. If, for instance, there were evidence that the removal was racially motivated, the UAW would not allow that. No such assertion was made at the hearing conducted on behalf of the International President for the IEB. Appellant had plenty of opportunity to present any evidence she had to support her claims that her removal violated the Ethical Practices Codes, and she failed to meet her burden of proof on this issue. In *Adams v. National Ford Department*, 6 PRB 444, (1992), the PRB held that investigative hearings conducted by an appeals committee of the IEB, and a hearing conducted by the PRB offered the appellant sufficient opportunity to prove his claim that he had been removed from an appointed position for reasons which violated the Ethical Practices Codes. That principle applies to this appeal as well. Gaston-Kelley has had her arguments considered by the IEB and now by the PRB. She has, therefore, received all of the process due to her under the Constitution.

C. Gwendolyn Gaston-Kelley's rebuttal, by her attorney, William M. Hatchett:

The International admits that no investigative hearing was conducted by the DaimlerChrysler Department to ensure that Zappa's request to replace Gaston-Kelley was not motivated by reasons which would violate the Ethical Practices Codes. We have affidavits to support a claim that the request may have been racially motivated and we request permission to supplement the record. The letter Zappa is alleged to have written to Director Gooden requesting Gaston-Kelley's removal has never been produced. Furthermore Director Gooden has never notified Gaston-Kelley in writing of his decision to remove her. All of these circumstances are highly unusual.

The Director's power to appoint and remove is subject to review by the PRB where it is claimed that the removal was for reasons that would violate the Union's Democratic Practices Code. *Luksch v. Local Union 686, UAW*, 5 PRB 590 (1988). The reason that there is nothing in this record to show that Gaston-Kelley's removal was for an impermissible reason is because the Union was careful not to make a record. The irregular procedures attending Gaston-Kelley's removal call for further scrutiny by this Board.

DISCUSSION

The Public Review Board is precluded by Article 33, §2(b), of the International Constitution from considering appeals from decisions of the IEB pertaining to the appointment or removal of special purpose representatives such as Health and Safety representatives. At the same time, we have consistently held that the limitation imposed by Article 33, §2(b), does not preclude our review of a claim by a special

purpose representative, presented in accordance with the provisions of Article 32 of the Constitution, that he or she was removed for a reason prohibited by the UAW's Ethical Practices Codes. We have on a number of occasions assumed jurisdiction over appeals from special purpose representatives to consider whether their removal involved Ethical Practices Codes violations.²⁸

In this case, there is no dispute that Gaston-Kelley's removal was contrary to the settled practice, contrary to assurances from an International official on which she relied, and contrary to an International policy statement that frowned upon using local politics as a basis for changing appointed representatives. Yet, the International has insisted that it may summarily remove Gaston-Kelley over her objection, without any investigation or findings, ostensibly to serve the political preference of a Local Union President. We find that these circumstances are sufficient to raise the question whether Gaston-Kelley's removal violated the Ethical Practices Codes, and that the Union has not conducted a sufficient investigation to make a conclusion on the matter.

The DaimlerChrysler Department's published policies with respect to Internationally-appointed representatives disfavor removal of trained and experienced representatives based on a change in the local union's administration. The Union's Administrative Letters state explicitly that this policy was promulgated for the members' benefit.²⁹ It benefits the membership by encouraging consistency in performance over time, preserving expertise developed by an International staff, and maintaining appointed representatives as something other than pure patronage positions.

The record demonstrates that Gaston-Kelley was a skilled and experienced Health and Safety Representative and her competence has never been disputed. The decision issued by the IEB suggests that the Local Union President may have requested her removal because he was unable to establish a working relationship with her. The record tells us nothing about the nature of Gaston-Kelley's alleged incompatibility with Zappa. It may have been due to personal chemistry, to Zappa's desire to bring in his own political team, or to some more invidious factor. Based on this theory of incompatibility, Stokes-Wilson argued during oral argument that Gaston-Kelley's removal was consistent with this Board's decisions in *Northrup v. International Union* and *Piper v. International Union*, both cited previously.

Those two cases considered appeals from representatives who had been removed on the basis of an alleged inability to work with Local leadership. We concluded that such grounds were not precluded by the Ethical Practices Codes and declined to interfere with the decision to remove. In contrast to the situation presented here, however, the opinions issued in *Piper* and *Northrup* demonstrate that the

²⁸ *Robertson v. International Union, UAW*, 1 PRB 632 (1971); *Mejia v. Local 365, UAW*, 5 PRB 813 (1988); *Ward, et. al. v. National UAW General Motors Department*, 8 PRB 228 (1994); and *Badalamento v. UAW National Ford Department*, PRB Case No. 1394 (2002)

²⁹ Record, pp. 7, 23.

International Union made its decision to remove the representative only after investigating the circumstances leading to the Local's request for removal.

In *Piper*, the Local President had sent the GM Department Director, Irving Bluestone, a detailed description of his conflicts with the Local insurance representative. Our decision indicates that Bluestone responded by sending an International Representative to the Local who reported back to the GM Department on each of the allegations made by the Local President with a recommendation that the insurance representative be removed. Director Bluestone removed the representative only after reviewing the report and recommendations of the UAW investigator. Similarly in *Northrup*, removal on the grounds of political incompatibility took place following an investigation by representatives of the International Union. In our decision upholding the International's determination that the appointed representative could no longer function effectively, we stated:

“...Here, as in *Piper*, the judgment was reached after an investigation of the circumstances leading to the request of the Local officials to remove the representative and replace him with another person. Also, as in *Piper*, there is no evidence in the record that any impermissible reason occasioned the Union's action. ...”³⁰

By contrast, there was no investigation at all here, and no findings of any kind. This omission is especially puzzling given the International Union's policy against removal for purely political reasons, and the oral assurance Gaston-Kelley received that she would be able to resume her appointed representative position if the special assignment she was offered turned out to be temporary.

It has not been clearly established, in fact, why Gaston-Kelley was removed. The record reveals that on two occasions, President Zappa denied having anything to do with her removal.³¹ He told the Local Executive Board that she was removed by Director Gooden because she had accepted the temporary assignment to the NTC.³² This was also the reason advanced by Administrative Assistant General Holiefield at the hearing conducted by Stokes-Wilson on behalf of the International President.³³ In order to determine whether impermissible reasons were present, the International should have conducted an investigation and identified clearly what considerations led to Gaston-Kelley's removal.

Stokes-Wilson maintained during oral argument that Gaston-Kelley received all of the process due to her under the Constitution in the hearing conducted on her

³⁰ 2PRB 467, at 470.

³¹ Record, pp. 110-111, 118.

³² Record, pp. 110-111.

³³ Record, p. 143.

appeal, and she pointed to our decision in *Adams*, cited previously, to support this claim. While we declined in *Adams* to decide precisely what process is due in an administrative proceeding to consider whether an appointed representative should be removed, we have never suggested that due process protections do not apply at all during such removals. Our decision in *Adams* was based, in part, on our finding that the National Ford director did conduct an adequate hearing to investigate Adams' claim that he was the victim of political reprisal.³⁴ The problem with the hearing conducted by Stokes-Wilson in this case at the IEB level is that it did not address the appropriate issues.

In her report to the IEB, Stokes-Wilson noted that Zappa had refused to allow Gaston-Kelley to present her Ethical Practices Complaint to the membership of Local 1248, and she stated that Gaston-Kelley's position would not be prejudiced by the error. She then reported that the issues presented by Gaston-Kelley's appeal were: 1) whether Gaston-Kelley's rights as a member were violated, or 2) whether Director Gooden abused his discretion by appointing a permanent replacement for Gaston-Kelley while she was on temporary assignment to the NTC.³⁵ President Gettelfinger adopted this same statement of the issues in his response to Gaston-Kelley's appeal to the PRB.³⁶

Those would have been the issues had Gaston-Kelley been filing an appeal from her removal under Article 33 of the Constitution. They were not the issues raised by her Ethical Practices Complaint. The issue raised by Gaston-Kelley's Ethical Practices Complaint was whether the decision to remove her was motivated by impermissible reasons on the part of either Director Gooden or President Zappa. However, nothing in the IEB's opinion or in the International Union's response to Gaston-Kelley's appeal suggests any investigation by the IEB into the motivations behind the decision to remove her from her appointed position. During oral argument, Stokes-Wilson frankly acknowledged that it had never been established why Zappa wanted Gaston-Kelley removed, but she claimed that Gaston-Kelley had not produced evidence sufficient to establish that it was for an impermissible reason.

The conclusion that there is insufficient evidence of an impermissible reason for Gaston-Kelley's removal is true because the reasons for her removal were never investigated. Although Gaston-Kelley has not established that an impermissible reason led to her replacement, she has identified a sufficient number of irregularities in the actions taken by the Local Union and the DaimlerChrysler Department to require further inquiry on the part of the International Union. At a minimum, the hearing officer acting on behalf of the International President should have required the attendance of the parties responsible for the decision being scrutinized, that is, Director Gooden and President Zappa, so they could be questioned for the record regarding their motivations

³⁴ 6 PRB 444, at 450.

³⁵ Record, p. 141

³⁶ Record, p. 172.

before she reached the conclusion that no impermissible influences were present. The failure to conduct a hearing and compel testimony of the principal actors left the hearing officer with no basis for her conclusions.

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.

We find that the procedures followed in this case were entirely inadequate and denied appellant Gaston-Kelley the due process guaranteed to her by the UAW's Ethical Practices Codes. We, therefore, remand this case to the IEB for the purpose of conducting a meaningful investigatory hearing into Gaston-Kelley's Ethical Practices Complaint against President Zappa and Director Gooden. We further direct the IEB to follow the procedures stated in Article 32, §5, of the Constitution by advising the Chairperson of the PRB and appellant Gaston-Kelley regarding the progress of the investigation and the disposition of the case.

Concurring Opinion of Members Brudney, Jones, and Weiler

We concur in the conclusion of our colleagues that this appeal requires further scrutiny under the provisions of Article 32, §5(a) and (b), to determine whether impermissible reasons influenced the decision to replace Gaston-Kelley while she was on a temporary assignment, but we believe that the PRB should go further and identify the necessary standards of due process in ethical practices cases.

The Ethical Practices Codes address the obligations of UAW members regarding Democratic Practices; Financial Practices; Health, Welfare and Retirement Funds; and Business and Financial Activities of Union Officials. The emphasis in the majority of these Codes is on the obligation of Union officials, but the Codes also impose obligations on members. Paragraph one of the Democratic Practices Code grants members the right to criticize the policies and personalities of Union officials balanced by a prohibition on activities which would undermine the Union or vilify its members. Paragraph two of this Code imposes an obligation on Local Unions to conduct regular membership meetings in an atmosphere of fairness. Paragraph three of this Code provides for the fair and uniform application of disciplinary procedures with full due

process afforded to each member. Finally, Paragraph four of the Democratic Practices Code states:

“Each Local Union shall maintain adequate safeguards so that all of its operations shall be conducted in a democratic and fair manner. No corruption, discrimination or anti-democratic procedure shall ever be permitted under any circumstances.”

A reading of the record in this case, particularly of the accounts of the Local Union membership meetings under President Zappa, raises grave questions regarding compliance with these mandates. Other allegations sprinkled throughout that record cry out for careful investigation by those in authority at the IEB level.

The PRB should not be insensitive to the fact that members of the staff in the International Union office are appointed. While it is likely they must have political support from somewhere, they are not likely to have a sense of independence to go after vice presidents of the International Union, or presidents of local unions which are part of the vice president's or the president's political support group. It is all the more important that the special procedures governing Ethical Practice Codes complaints be followed when the accused are persons of substantial political power and in leadership positions. A failure to adhere to the very specific mandates of Article 32 when investigating such complaints is, in the judgment of these members, a prescription for stonewalling and whitewashing the actions of officials with sufficient power.

Sensitive to the possibility that the Ethical Practices Codes, particularly the Democratic Practices provision, could be misused, Article 32, §§4 and 5, of the Constitution set forth specific practices to facilitate the orderly handling of ethical practices complaints and Article 32, §7, authorizes the PRB to punish accusers who press complaints in bad faith, with malicious intent, or in a willful effort to divide and disrupt the Union. This careful balance of rights and responsibilities cannot be maintained if the special procedures for addressing these issues are ignored. It is even more important when the accused are Union officials who can exercise administrative and political power. This UAW Constitution seeks to prevent executive imperialism and relies on special procedures, and the extraordinary jurisdiction of the PRB to protect this balance.

With the lack of evidence of due process, with the absence of any explanation for the bizarre, one could say arbitrary and capricious, removal of the appellant from a position she has held over a long period of time with impeccable credentials and reputation, this case cannot withstand any ethical practices review – procedural or substantive.

This case cries out for the PRB and the International Union leadership to seize the opportunity to spell out in greater detail more adequate rules of procedure for the conduct of investigations and IEB hearings of Ethical Practices Codes claims. It may

well be time for the International to conclude that when one of their own or a political power player in the structure of the Union's governance is a target for ethical practices accusations, a special procedure should be instituted, something akin to a special prosecutor, which is fair, not only in appearance but in fact. It would not be such a novel experiment. In the past, special provisions have been made to empower the PRB to take over the investigation of an entire region. It is clear, in any event, that the usual methods for processing appeals under Article 33 are inadequate to address serious allegations of corruption and anti-democratic practices on the part of powerful Union officials. I am confident that working together, the PRB and the International Union could fashion a system that would allow the President's staff to refer complaints such as this one to an investigator with sufficient independence and power to conduct a thorough investigation of the issues.