

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

APPEAL OF:

ZIANNE RAY-BARNETT AND
ERNESTINE SANDERS,
Appellants,

-vs-

CASE NO. 1496

UAW LOCAL UNION 652
(Lansing, Michigan)
REGION 1C
(THE UNITED AUTOMOBILE, AEROSPACE
AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA),
Appellee.

DECISION

(Issued February 11, 2005)

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

Zianne Ray-Barnett and Ernestine Sanders argue that the Local Committeeperson's settlement of their grievances protesting General Motors' refusal to transfer them to its new plant was motivated by discrimination or lacked a rational basis.

FACTS

In 2002, Ernestine Sanders and Zianne Ray-Barnett were assigned to the Inspector Classification at General Motors' Lansing Cadillac Assembly Plant (LCA) in a bargaining unit represented by UAW Local 652. Sanders has a plant seniority date of March 1, 1976, and Ray-Barnett has a plant seniority date of March 24, 1981.

The LCA building is scheduled to be phased out by 2006 and replaced by the Lansing Grand River (LGR) building. In May 2002, Sanders and Ray-Barnett applied for transfers to the new building. According to Ray-Barnett, they were originally

scheduled to transfer to the LGR building in October 2002, but were subsequently told that there were no jobs available at LGR for people with certain medical restrictions.¹

In November, District Committeeperson Don VanLoon spoke with Local 652 Shop Committeeperson Steve Wren concerning the Company's refusal to transfer Sanders and Ray-Barnett to the LGR Plant. Wren interviewed the appellants in December 2002, and advised them that he would investigate their claims. Wren described his investigation in a report the Local Union submitted to President Gettelfinger on August 4, 2003, in response to Ray-Barnett's appeal.²

Wren stated that he contacted the UAW placement representatives for the LCA and LGR Plants who advised him that Ray-Barnett and Sanders were bypassed because the work available was not within their restrictions. Wren attached to his report a restriction list for Ernestine Sanders showing that she had the following restrictions in October 2002:

"Description	Start	End
No lifting over 25 lbs	05/14/02	12/14/06
Limit bending at the waist	12/14/01	12/14/06
Limited twisting of waist	12/14/01	12/14/06
No use of vibrating tools	03/31/99	03/31/04
Limited forceful gripping	03/31/99	03/31/04" ³

A restriction list for Zianne Ray-Barnett indicated that the following restrictions were in place in October 2002:

"Description	Start	End
No use of vibrating tools	10/04/99	10/04/04
No use of torque guns, high	10/04/99	10/04/04
No use of torque guns, low	10/04/99	02/05/03
Limited forceful gripping	10/04/99	10/04/04
No lifting over 10 lbs	10/04/99	10/04/04" ⁴

According to Wren, Sanders and Ray-Barnett asserted that employees with similar restrictions and less seniority had been permitted to transfer to the LGR building. Wren reported that he investigated records of four employees named by Sanders and

¹ Record, p. 20.

² Record, pp. 24-25.

³ Record, p. 35.

⁴ Record, p. 36.

Ray-Barnett, but that they did not have restrictions similar to Sanders' and Ray-Barnett's. He wrote:

“After investigating the names provided to me I found that three of the four names given to me transferred to LGR with no restrictions, the fourth member, Lynette Oberlin, transferred to LGR with only one restriction, not numerous restrictions as stated by Zianne & Ernestine. Lynette was transferred to the LGR Paint Plant in line with her seniority.”⁵

Wren stated that when he presented the results of his investigation to Sanders and Ray-Barnett, they gave him additional names to check. He reported that he filed a grievance at this point to keep the case open while he conducted his investigation.

Local Union 652 filed Grievances 998309 and 998310 on behalf of Sanders and Ray-Barnett on April 24, 2003. The grievances charge Management with a violation of Paragraph M-60 of the Local Agreement. Paragraph M-60 of the 1996-1999 Local Agreement between Local 652 and NAO Lansing General Motors Corporation provides as follows:

“Transfer of Restricted Employees: It is recognized by the parties that restricted employees are not always capable of performing all elements of work in certain job classifications. However, restricted employees will be given the same consideration for transfer as other employees, taking into account the individual restriction as it relates to the content of the job for which the restricted employee has applied.”⁶

Management denied the grievances on May 1, 2003, stating that restricted employees are transferred when they are able to perform the operation. On the Grievance Fact Sheet prepared in connection with the two grievances, the Committeeperson commented:

“LGR is being selective in the transfers to their area. Rotation is 100%. In the last bunch of people to be transferred to LGR, the transfer committee went through 100 people to get 30 people capable of rotating 100%. Employees with multiple restrictions are being denied.”⁷

⁵ Record, p. 24.

⁶ Record, p. 2.

⁷ Record, p. 7.

Local 652 settled Grievances 998309 and 998310 on June 4, 2003, based on the following disposition by Management:

“Management will abide by M-60 of L. A. provided employees can perform all jobs in question within employees’ restriction.”⁸

Committeeperson Wren explained that he accepted this settlement because his investigation convinced him that there were no jobs available at the LGR plant that were suited to the grievants’ health and restrictions. Wren pointed out that Sanders and Ray-Barnett were production employees who were placed in the inspection division at the LCA plant because they were unable to perform production related work. He reported that the positions that they had applied for at the LGR plant were in the production division.⁹

Sanders and Ray-Barnett appealed the settlement of their grievances to the Local 652 Executive Board on June 5, 2003. In support of their appeals, they argued that Paragraph (6a) of the National Agreement prohibits discrimination against restricted employees.¹⁰ They both claimed that there were jobs they could do at the Grand River building being performed by lower seniority employees. Both Sanders and Ray-Barnett pointed out that when the LCA building closes, they will be transferred to the LGR building. They argued that their seniority should permit them to transfer to the more desirable location now. Sanders wrote:

“Closing of Plants I will be moved to bump out low person in Grand River. Why not now?”¹¹

Ray-Barnett wrote:

“When plant closes are you going to let me sit at home and collect comp? “NO,” when I can work.”¹²

⁸ Record, pp. 5 and 8.

⁹ Record, p. 25.

¹⁰ The relevant portion of Paragraph (6a) of the 1999 National Agreement between General Motors Corporation and the UAW provides as follows:

“It is the policy of General Motors and the UAW that the provisions of this Agreement be applied to all employees covered by this Agreement without discrimination based on age, race, color, sex, religion, national origin, disability or sexual orientation as required by appropriate state and federal law. Any claims of violation of this policy, claims of sexual harassment or of any laws regarding discrimination or harassment on account of disability may be taken up as a grievance.”

¹¹ Record, p. 11.

¹² Record, p. 12.

The Local 652 membership considered the two appeals at a meeting on June 8, 2003, and passed a motion to deny them. The Local informed Ray-Barnett and Sanders of the membership's decision on June 10, 2003. Ray-Barnett appealed the membership's decision to the International Executive Board (IEB) on June 24, 2003.

Toffie Abbasse and Jack Campbell conducted a hearing on Sanders' and Ray-Barnett's appeal on behalf of International President Ron Gettelfinger on March 22, 2004. The hearing officers prepared a report on the appeal for the IEB based on materials supplied by the Local Union and testimony given at the hearing. The hearing officers reported that appellants stated that they applied for the same jobs at the LGR plant that they are currently doing at the LCA plant. They argued that some of the employees who were permitted to transfer to the LCA plant had restrictions similar to theirs but less seniority. They insisted that if some employees with restrictions could transfer, then all of the restricted employees should be allowed the same rights.¹³

According to the hearing officers' report, Local 652 Chairperson Art Baker testified that some of the employees who were permitted to transfer to the LGR building had had their restrictions lifted by their personal physicians. Baker stated that Committeeperson Wren checked all of the names provided by appellants and found that none of them had multiple restrictions. Baker explained that the LGR plant operates on the Team Concept which requires that each member of the team have the ability to perform all jobs within the team proficiently.¹⁴ Baker stated that Sanders and Ray-Barnett could not be placed at the LGR building now but that they would be transferred before the LCA building was phased out.¹⁵ Baker concluded by reporting that over 100 members have open transfer applications to the LGR building and that the Local was working to accommodate all of its members' requests.¹⁶

In the conclusion to their report, the hearing officers found that the evidence did not support appellants' claim that employees with restrictions similar to theirs had been transferred to the LGR plant. They wrote:

“...Of the ten (10) employees that have been named by the appellants, six (6) were transferred with absolutely no restrictions, one employee was transferred with only one restriction to a job opening where no tools were needed, one employee was transferred to a housekeeping job that he could perform with his restriction. Another employee was given a temporary job assignment in a Union Appointment

¹³ Record, p. 57.

¹⁴ Record, p. 58.

¹⁵ Record, p. 59.

¹⁶ Record, p. 60.

(Shelter Well Center), and the last of the ten (10) employees was transferred when there was a window opening for Inspection.”¹⁷

The hearing officers noted that transfers at the LGR plant are governed by the 1999-2003 Local Agreement between Local 652 and General Motors, which states as follows:

“Transfer Procedure

After full implementation of the Team Concept System, Team to Team movement within and between departments in a division will be addressed through the provisions of 63b (to openings in the Team Member classification, provided they are physically capable of doing the work.)”¹⁸

The hearing officers also referred to a letter they received from Adapt Representative Mick Kaiser on February 12, 2004, in which he explained that Sanders and Ray-Barnett could not be transferred to the LGR plant until they could be placed in teams where they could fully rotate.¹⁹ He reported that there were no openings on teams that Sanders or Ray-Barnett could fill. He wrote:

“Most teams have at least one job where they use a torque gun, vibrating tool, or have a bend/twist or some forceful gripping/grasping. Both of these individuals (Ernestine and Zianne) have some restrictions preventing them from rotating throughout the team. In the very near future we should be able to look at team openings and place some restricted people in teams where they can fully rotate.”²⁰

The hearing officers denied Ray-Barnett’s and Sanders’ appeal based on their conclusion that the Local Union’s decision to withdraw Grievances 998309 and 998310 was based on all of the evidence and not lacking a rational basis.²¹ The IEB adopted the report of the hearing officers as its decision and notified the appellants on August 27, 2004. Sanders and Ray-Barnett have now appealed the IEB’s decision to the Public Review Board (PRB).

¹⁷ Record, p. 60.

¹⁸ Record, p. 4.

¹⁹ Record, p. 54.

²⁰ Record, p. 54.

²¹ Record, p. 61.

ARGUMENT

A. Ernestine Sanders and Zianne Ray-Barnett:

The IEB's factual summary is totally inaccurate. Employees with many or more restrictions and less seniority were given the opportunity to transfer to LGR. Art Baker's claim that these employees had had their restrictions lifted is not true. We asked the Company's doctor in the Medical Department if he had lifted the restrictions on these employees and he said he had not.

Seniority is the major concern here. We have been told that the LCA plant will be closing in January 2005, and that our transfers will be made at that time. Why are we missing the opportunity to transfer now? Our seniority was never considered. Our seniority rights are established by the contract, but our Union is fighting against what has been established and will not enforce the agreement.

B. Zianne Ray-Barnett:

Paragraph (6a) of the National Agreement provides that you cannot discriminate against employees with disabilities. I filed a grievance alleging a violation of this paragraph, yet I was not interviewed by the Civil Rights Department as I had requested. I am now working at the LGR plant and I can see for myself that violations have occurred. Others with lower seniority are being placed on jobs that I can do.

There are people at this plant from my old department who were sent here with restrictions. Lynette Oberlin has a "No Air Tool" restriction and transferred here after I had been denied the chance to go. I have met people who transferred here from other states with restrictions who have a January 7, 1985, seniority date. As a result of these violations, I have lost out on overtime and have been struggling to pay my daughter's college tuition while raising my grandson, working two weeks off and on. This is not adequate when bills are due.

C. Ernestine Sanders:

As of this date, November 11, 2004, I have still not been transferred to the LGR plant. My co-worker, Zianne Ray-Barnett, is now working at LGR and she has observed that there are jobs that fall within both of our restrictions. There are other jobs in the Paint Department that I am qualified to perform.

Despite my high seniority, I have still not been offered a move. This has been a two year process. This has caused me great financial and emotional hardship. Looking at the hours I have now and the hours I could have worked in those two years, it frustrates me to know that some of my burdens would have been easier to manage if I had been given the opportunity to work the hours available at the new plant.

D. International Union, UAW:

The Local Union conducted a complete investigation of the appellants' complaints. The Union investigated the circumstances surrounding each individual name supplied by appellants and found that the transfers were in compliance with the provisions of the Local Agreement. Finding no violation of the contract, the Local settled the grievances.

There is no evidence in the record that the appellants were discriminated against on the basis of their disabilities. They have not claimed or offered any evidence that the settlement of their grievances was motivated by fraud, discrimination or collusion with management. Furthermore, the withdrawal of the grievances was rational and based on the Local's investigation.

DISCUSSION

We commend the Local Union representatives for the very thorough investigation they conducted in response to Sanders' and Ray-Barnett's concerns. Committeeperson Wren's report demonstrates that he investigated each of the names supplied by the appellants and evaluated the reasons why those employees were transferred to the new plant ahead of Sanders and Ray-Barnett. Wren was satisfied that in each case the employee either did not have significant restrictions at the time he or she was transferred, or that the employee who was transferred had sufficient seniority to transfer ahead of the appellants. In addition, after Sanders and Ray-Barnett appealed to the IEB, the Adapt Representative Mick Kaiser checked the status of their transfer requests once again and determined that there were no openings that they could fill with their restrictions.

Appellants have observed that there are employees with less seniority than theirs doing work that they could do at the new plant. They insist that they should have been transferred in line with their seniority and placed in jobs they could perform such as the inspection jobs they were placed on at the LCA plant. The new LGR plant is organized differently than the appellants' old plant, however. The LGR plant uses a system of teams whose members must be able to perform each of the tasks assigned to the team. Appellants did not have the contractual right to insist that General Motors create individual job assignments specifically designed to accommodate their restrictions, and there were simply no openings available on any teams that did not include at least one job that was outside of their restrictions. The Adapt representative has indicated, however, that this situation is temporary and that both appellants will eventually be placed at the new facility. Indeed, appellant Ray-Barnett has advised us that her transfer to the new plant has now taken place.

Appellants do not claim that Committeeperson Wren's decision to settle their grievances was influenced by discrimination. Furthermore, there is no evidence that the Company discriminated against the appellants, although it does appear that the team

concept is less adaptable to employees with disabilities than an arrangement where each employee has only one job to perform. Appellants' primary claim is that their seniority rights have been ignored. Committeeperson Wren's investigation of this claim convinced him that it had no merit and this conclusion provided a rational basis for his decision to settle their grievances.

The decision of the IEB is affirmed.