

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE

and

Case 28-CA-20249(P)

**NATIONAL ASSOCIATION OF LETTER
CARRIERS, BRANCH 504, AFL-CIO**

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Albuquerque, New Mexico

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DECISION

I. Statement of the Case

LANA H. PARKE, Administrative Law Judge. This matter was tried in Albuquerque, New Mexico on September 26 and 27, 2006 upon an Amended Complaint and Notice of Hearing (the Complaint) issued July 27, 2006¹ by the Regional Director of Region 28 of the National Labor Relations Board (the Board) based upon charges filed by National Association of Letter Carriers, Branch 504, AFL-CIO (the Union.) The Complaint alleges that the United States Postal Service (Respondent) violated Section 8(a)(1) of the National Labor Relations Act (the Act) by denying an employee's request for and otherwise restricting union representation at an investigatory interview the employee reasonably believed might result in disciplinary action.² Respondent has essentially denied all allegations of unlawful conduct.

II. Issues

1. Whether, by the following conduct, Respondent unlawfully denied the request of its employee, Joe P. Lopez, for union representation during an investigatory interview held March 1, which he reasonably believed might result in disciplinary action:

¹ All dates herein are 2005 unless otherwise specified.

² At the hearing, Respondent amended its answer to admit paragraph 5(b) of the Complaint, thereby acknowledging that employee Joe P. Lopez reasonably believed the investigatory interview of March 1 might result in disciplinary action.

- a. Denying the request of Joe P. Lopez to be represented by the Union representative of his choice.
- b. Ordering union representative John Metz not to speak.
- c. Ordering employee Joe P. Lopez not to look at or speak to union representative John Metz.

2. Whether a broad remedial order to be posted area-wide is appropriate herein.

III. Jurisdiction

Respondent has at all relevant times provided postal services for the United States of America, operating various facilities throughout the United States, including a facility in Albuquerque, New Mexico, its Highland Postal Station facility (Respondent's facility).³ Respondent admits, and I find, that the Board has jurisdiction over the Respondent in this matter by virtue of Section 1209 of the Postal Reorganization Act (PRA), and the Union is a labor organization within the meaning of Section 2(5) of the Act.

IV. The Facts

At all times relevant, Respondent has recognized the Union as a constituent local of the National Association of Letter Carriers, AFL-CIO (the National Association), and as the collective-bargaining representative of, inter alia, the letter carriers at the Albuquerque, New Mexico Highland Postal Station (the Highland Station). This recognition has been embodied in successive collective-bargaining agreements, the relevant one of which was effective from November 21, 2000, through November 20, 2003 and extended by mutual agreement of the parties until November 20, 2005 (the Agreement).⁴

At all times relevant, Richard Trujillo (Supervisor Trujillo) and Robert Wolffbrandt (Supervisor Wolffbrandt) were customer services supervisors of Respondent at the Highland Station (collectively, the Supervisors).⁵ During the same relevant period, John Metz (Steward Metz) and John Trujillo (Chief Steward Trujillo) were, respectively, union steward and chief union steward for the Highland Station (collectively, the Stewards).

On February 28, 2005, Joe P. Lopez (Mr. Lopez), letter carrier at the Highland Station and a member of the bargaining unit set forth in the Agreement, had a confrontation with Supervisor Trujillo, resulting in Mr. Lopez' immediate suspension.⁶ Thereafter, Supervisor Wolffbrandt notified Mr. Lopez that on March 1 the Respondent would hold an investigative interview called a "fact-finding" (fact-finding) regarding the incident. Mr. Lopez had reasonable cause to believe that the interview would result in disciplinary action being taken against him.

³ Unless otherwise explained, findings of fact herein are based on party admissions, stipulations, and uncontroverted testimony.

⁴ The Agreement is described in *United States Postal Service*, 345 NLRB No. 26 (2005).

⁵ Supervisors are frequently interchanged and/or transferred among various postal stations and facilities in the Albuquerque area.

⁶ The details of the contretemps are not material to the issues herein.

Supervisor Trujillo, Supervisor Wolffbrandt, Mr. Lopez, Steward Metz, and Chief Steward Trujillo all testified of the circumstances surrounding the fact-finding. Of the five witnesses, I find Steward Metz and Chief Steward Trujillo demonstrated the clearest and most consistent recall.⁷ Where the various versions are in disagreement, I give weight to those of Steward Metz and Chief Steward Trujillo, and the following account is based primarily on their testimony.

On the afternoon of March 1, the Supervisors told Steward Metz that a fact-finding was to be held later that day regarding Mr. Lopez. Supervisor Trujillo altered Steward Metz' work assignments so that he could be present as Mr. Lopez' union steward. Later, Supervisor Wolffbrandt told Steward Metz that he (Supervisor Wolffbrandt) would be representing Supervisor Trujillo in the fact-finding. As such a procedure was unusual, Steward Metz telephoned David Pratt (Mr. Pratt), union president about the situation. Mr. Pratt said he would send Chief Steward Trujillo to take charge. Shortly thereafter, the supervisors called Steward Metz and Mr. Lopez into the station manager's office for the fact-finding. Steward Metz asked for some time to talk to Mr. Lopez, and the two adjourned to the parking lot where Chief Steward Trujillo met them. After speaking briefly together, the Stewards and Mr. Lopez went to the station manager's office.

When Mr. Lopez returned to the manager's office accompanied by both Steward Metz and Chief Steward Trujillo, the group discussed the propriety of Mr. Lopez having two stewards at the fact-finding. Chief Steward Trujillo urged the managers to permit both to remain in the interest of parity, and the Supervisors agreed.⁸

After briefly informing Mr. Lopez of the purpose and potential disciplinary consequences of the fact-finding, Supervisor Trujillo questioned Mr. Lopez from a typewritten list, which read:

1. Did you receive a copy of the M-41 Responsibilities of a carrier?
2. According to the M-41 Chapter 1 under general information/responsibilities of carrier 112.21 are you aware you are to follow the instructions of your supervisor or manager?
3. Are you aware of 112.25 in the M-41 under Responsibilities of a carrier you are to be prompt, courteous and obliging in the performance of duties. Attend quietly and diligently to work and refrain from loud talking and the use of profane language?
4. In the M-41 under safety 112.4 are you aware that you are to conduct yourself in a safe manner not as [sic] to endanger yourself or others?

⁷ Examples of inconsistencies in the Supervisors' testimony are detailed below.

⁸ Supervisor Trujillo testified that Chief Steward Trujillo arrived after the questioning had commenced and that he refused to permit him to stay, saying Mr. Lopez already had representation. Supervisor Trujillo also testified that Chief Steward Trujillo was loud and obnoxious and "trying to control me," as shown by the Chief Steward's wanting to speak when he was not invited to the meeting. I do not accept Supervisor Trujillo's testimony of the timing of Chief Steward Trujillo's arrival or his testimony that Chief Steward Trujillo's conduct was inappropriate. By Supervisor Trujillo's account, Chief Steward Trujillo merely wanted to speak, which, without more, could not reasonably be described as "loud and obnoxious."

5. Did you receive a copy of a portion of the ELM 660 Conduct under 666.2 Behavior and personal habits?
6. Are you aware that [sic] of the policy of violence in the work place though [sic] safety talks and handouts as well as posters on the bulletin board?
7. Are you aware that the use of profanity is unacceptable in the work place?
8. Why did you find it necessary to use profanity at me on the work room?
9. Can you explain why you chose to have unacceptable conduct on the workroom floor?
10. Can you explain why you yelled calling me a “fucking dumb ass” twice?
11. Can you explain why you told me to “shove it up my ass”?
12. Can you explain why you chose to conduct yourself inappropriately by throwing your key at me on the workroom floor?
13. Are there any mitigating issues that you would like to add to this fact finding?

When Supervisor Trujillo asked the first question, either Chief Steward Trujillo or Mr. Lopez asked to confer, and Mr. Lopez and the Stewards repaired to the parking lot where they spoke briefly. Upon their return to the manager’s office, Supervisor Trujillo told Chief Steward Trujillo that he would have to leave, as the Union could have only one steward present.

Steward Metz objected, saying that he (Steward Metz) would leave, as Chief Steward Trujillo had more experience in such matters. Mr. Lopez said that he wanted Chief Steward Trujillo to be his representative. The Supervisors refused to permit Chief Steward Trujillo to remain, saying they had arranged for Steward Metz to represent Mr. Lopez and that Chief Steward Trujillo was to leave immediately. Chief Steward Trujillo complied.⁹

After Chief Steward Trujillo left, Supervisor Trujillo said they would start again. Giving Mr. Lopez a photocopied portion of the Carriers Methods Handbook, he asked him to read highlighted areas and repeated the first question from the typewritten list. Steward Metz recommended that Mr. Lopez ask to confer with him, which Mr. Lopez did. Steward Metz and Mr. Lopez left the manager’s office, and Steward Metz suggested that when he answered the question, Mr. Lopez should point out that the printed material had just then been given to him, and he cautioned Mr. Lopez to watch out for trick questions. When Steward Metz and Mr. Lopez returned to the manager’s office, the questioning resumed. Mr. Lopez again asked to confer, but Supervisor Trujillo told Steward Metz and Mr. Lopez there was to be no more conferring.¹⁰ At some point during the fact-finding, Supervisor Trujillo also instructed Steward Metz that he was not to say anything and that Mr. Lopez was not to look at Steward Metz when questions were asked, as the questions were for Mr. Lopez and not for his representative.¹¹ Steward Metz objected, saying the managers were denying Mr. Lopez his Weingarten rights. As

⁹ Supervisor Trujillo denied that Mr. Lopez wanted Chief Steward Trujillo to serve as his representative. I do not accept his denial.

¹⁰ Supervisor Trujillo testified that Steward Metz and Mr. Lopez held more than three 20-minute conferrals during the course of the fact-finding. He also testified that the fact-finding lasted only an hour. The logistical impossibility of the testimony further detracts from Supervisor Trujillo’s credibility.

¹¹ Supervisor Trujillo initially testified that Steward Metz answered for Mr. Lopez but could not recall any specifics. He later testified that it was “only the first two questions when [Steward Metz] started to answer for [Mr. Lopez].”

the questioning proceeded, Mr. Lopez complained that the stress of the fact-finding was making him ill and asked if the meeting could be continued the following day. The two managers told Mr. Lopez that he would “suffer the consequences” if he left but permitted Mr. Lopez and Steward Metz to confer again in order to decide if they would continue to participate in the fact-finding, which they did. Thereafter, following each question, Mr. Lopez asked to confer with his union representative, but the two managers ignored his requests and proceeded with the fact-finding until all questions had been asked.¹²

V. Discussion

In *NLRB v. Weingarten, Inc.*, 420 U.S. 251 (1975), the Supreme Court approved the Board’s holding that Section 7 of the Act protects an employee’s right to have union representation at an investigatory interview that the employee reasonably believes might eventually result in disciplinary action.¹³ The Respondent has admitted that its employee, Mr. Lopez, had reasonable cause to believe the fact-finding interview it held with him on March 1 might result in discipline. Consequently, *Weingarten* protections apply to the Respondent’s March 1 fact-finding.

The complaint alleges that the Respondent three-fold denied Mr. Lopez his right to the presence of a union representative during the March 1 fact-finding: (1) by refusing to allow Mr. Lopez to be represented by Chief Steward Trujillo; (2) by ordering Steward Metz not to speak during the fact-finding, and (3) by ordering Mr. Lopez not to look at or speak to Steward Metz.

The credible evidence establishes that Supervisors Trujillo and Wolffbrandt denied Mr. Lopez’ request to be represented at the fact-finding by Chief Steward Trujillo and directed Chief Steward Trujillo to leave the meeting. The Respondent offers no justification for precluding Chief Steward Trujillo from representing Mr. Lopez, but rather denies it did so, asserting that The Respondent merely rejected Chief Steward Trujillo’s contention that two stewards should be allowed to represent Mr. Lopez, which *Weingarten* does not require.¹⁴ I cannot accept the Respondent’s argument. Credible evidence establishes that when Supervisors Trujillo and Wolffbrandt limited Mr. Lopez’ representation to only one steward, Mr. Lopez

¹² Supervisor Trujillo testified that the two managers never told Mr. Lopez he could not confer with his representative. According to Supervisor Trujillo, at some point Steward Metz declined to confer further (“Steward Metz stopped [me and Supervisor Wolffbrandt from leaving the manager’s office]...and said they weren’t going to confer.”) Yet he also testified that Mr. Lopez continued to ask to confer. Supervisor Wolffbrandt, on the other hand, testified that Mr. Lopez and Steward Metz left the manager’s office to confer after just about every question. Further, Supervisor Wolffbrandt did not recall, as did Supervisor Trujillo, that Supervisor Trujillo ever had to leave the manager’s office to call Mr. Lopez and Steward Metz back from conferring. The testimonies of the two managers on this issue are too inconsistent to be relied upon.

¹³ It is the Board’s responsibility to develop “the contours and limits of the statutory right.” 420 U.S. at 256.

¹⁴ I note that the Board has stated, “Neither *Weingarten* nor its progeny provide [an employee] the right to two representatives...,” *Barnard College*, 340 NLRB 934, 936 (2003).

requested that Chief Steward Trujillo be the one to remain, and Steward Metz ceded representational duties to Chief Steward Trujillo. It is the consequent refusal by Supervisors Trujillo and Wolffbrandt to permit Chief Steward Trujillo to serve as representative that the General Counsel condemns. “The selection of an employee’s representative belongs to the employee and the union, in the absence of extenuating circumstances...” *Barnard College*, 340 NLRB 934, 935 (2003), citing *Anheuser-Busch, Inc.*, 337 NLRB 3 (2001), enfd. 338 F.3d 267 (4th Cir. 2003) and *Pacific Gas & Electric Co.*, 253 NLRB 1143 (1981). The Respondent has presented no extenuating circumstances that would permit Supervisors Trujillo and Wolffbrandt to prohibit Mr. Lopez from choosing Chief Steward Trujillo as his representative. Accordingly, the Respondent’s refusal to permit Chief Steward Trujillo to represent Mr. Lopez in the March 1 fact-finding violated Section 8(a)(1) of the Act.

The credible evidence also establishes that at some point following the Respondent’s dismissal of Chief Steward Trujillo from the fact-finding, Supervisor Trujillo prohibited Steward Metz from speaking and Mr. Lopez from looking at Steward Metz during the interview.¹⁵ An employer violates Section 8(a)(1) of the Act by inappropriately limiting a union representative’s participation in a Weingarten interview.¹⁶ A union representative may not turn a meeting into an adversarial proceeding and may not interfere with legitimate employer prerogatives, including questioning an employee.¹⁷ However, an employer may not “limit the union representative’s role to that of an observer” by prohibiting the representative from speaking. *United States Postal Service*, 347 NLRB No. 89, FN 1, citing *Barnard College*, at 935. Moreover, the representative may provide “advice and active assistance” to the employee being interviewed. *Washoe Medical Center, Inc.*, 348 NLRB No. 22 at slip op. 1 (2006), citing *Barnard College*, at 934. The Respondent’s restrictions on Steward Metz’ speaking and on Mr. Lopez’ looking at his representative during the fact-finding were unwarranted interferences with Mr. Lopez’ Weingarten rights. Accordingly, Respondent further violated Section 8(a)(1) of the Act by preventing Steward Metz from assisting Mr. Lopez and/or participating in the fact-finding.

Conclusions of Law

1. The Respondent is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section (1) of the Act on March 1 by denying Joe P. Lopez’ request to be represented by union steward John Trujillo at an interview that he reasonably believed might result in discipline.
4. The Respondent violated Section (1) of the Act on March 1 by refusing to permit union steward John Metz to assist Joe P. Lopez and/or to participate in an interview that he reasonably believed might result in discipline.

¹⁵ Respondent contends that Supervisors Trujillo and Wolffbrandt did not constrain Steward Metz from speaking but merely insisted on having Mr. Lopez respond. As detailed earlier, I have accepted Steward Metz’ account of what occurred.

¹⁶ *Weingarten*, at 260; *Barnard College*, at 936.

¹⁷ *Barnard College*, at 936, citing *Weingarten*, at 263; *Yellow Freight System*, 317 NLRB 115, 123-124 (1995); *New Jersey Bell Telephone Co.*, 308 NLRB 277, 279 (1992); *Roadway Express, Inc.*, 246 NLRB 1127, 1128 (1978).

5. The unfair labor practices set forth above affect commerce within the meaning of Section (1) and Section 2(6) and (7) of the Act.

Remedy

5 Having found that the Respondent has engaged in certain unfair labor practices, I find it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

10 Because the Respondent has a proclivity for violating the Act (see e.g., *United States Postal Service*, 345 NLRB No. 26 (2005); *United States Postal Service*, 345 NLRB No. 25 (2005); *United States Postal Service*, 339 NLRB 1162 (2003)), I recommend issuance of a broad Order requiring the Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act.

15 The General Counsel further requests that the Respondent be ordered to post notices at all of its facilities in Albuquerque, New Mexico because of the Respondent's proclivity for violating the Act and because a high rate of transfer and interchange of managers and supervisors exists among the Albuquerque postal stations and facilities. The Board has found broader posting appropriate for situations in which an employer repeatedly violates the Act. *United States Postal Service*, 339 NLRB 1162 (2003). Moreover, in circumstances where managers and supervisors are frequently interchanged in a particular district, area-wide posting is also appropriate. Accordingly, I recommend that any Order herein be posted at all of the Respondent's Albuquerque facilities.

25 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁸

ORDER

30 The Respondent, United States Postal Service, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- 35 (a) Denying employees' requests to be represented by the union representative of their choice at interviews they reasonably believe might result in discipline.
- (b) Refusing to permit union representatives to assist employees and/or to participate in interviews that employees reasonably believe might result in discipline.
- 40 (c) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

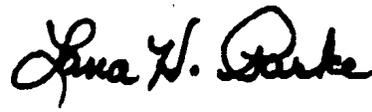
45 ¹⁸ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

5 (a) Within 14 days after service by the Region, post at its Albuquerque, New Mexico facilities copies of the attached notice marked "Appendix."¹⁹ Copies of the notice, on forms provided by the Regional Director for Region 28 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since March 1, 2005.

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15 (b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

20 Dated: Washington, DC, November 20, 2006.



25 Lana H. Parke
Administrative Law Judge

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45 ¹⁹ If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX
NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT do anything that interferes with these rights. More particularly,
WE WILL NOT deny our employees the rights of union representation during an investigatory interview that the employee reasonably believes may result in disciplinary action.
WE WILL NOT refuse to permit union representatives to assist employees and/or to participate in investigatory interviews that employees reasonably believe might result in discipline.
WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

UNITED STATES POSTAL SERVICE

(Employer)

Dated _____ By _____
 (Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

2600 North Central Avenue, Suite 1800
 Phoenix, Arizona 85004-3099
 Hours: 8:15 a.m. to 4:45 p.m.
 602-640-2160.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 602-640-2146.