

**American Postal Workers Union Local 4193, AFL-CIO (United States Postal Service) and William Scott.** Case 12-CB-1640(P)

November 17, 1976

**DECISION AND ORDER**

BY CHAIRMAN MURPHY AND MEMBERS JENKINS  
AND WALTHER

On June 23, 1976, Administrative Law Judge John F. Corbley issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief. The Respondent filed a brief in answer to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

**ORDER**

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

**DECISION**

**STATEMENT OF THE CASE**

JOHN F. CORBLEY, Administrative Law Judge: A hearing was held in this case on March 25, 1976, at Naples, Florida, pursuant to a charge filed by William Scott, an individual (hereinafter referred to as Scott or the Charging Party) on October 28, 1975, a copy of which was served on Respondent by registered mail on or about the same date and on a complaint and notice of hearing issued by the Regional Director for Region 12 of the National Labor Relations Board on January 7, 1976, which was also thereafter duly served on Respondent. The complaint alleges that Respondent violated Section 8(b)(1)(A) of the Act by not fulfilling its duty of fair representation to Scott in that Respondent failed or refused on some four occasions in September and October 1975 to process an overtime grievance by him. In its answer to the complaint, also duly filed, the Respondent denied the commission of any unfair labor practices.

For reasons which will appear, I find and conclude that

Respondent has not violated the Act, as alleged in the complaint, and I shall, accordingly, recommend that the complaint be dismissed in its entirety.

At the hearing the General Counsel and Respondent were represented by counsel. All parties were given full opportunity to examine and cross-examine witnesses, to introduce evidence, and to file briefs. The General Counsel and counsel for Respondent presented oral argument at the conclusion of the hearing. Briefs have subsequently been received from the General Counsel and Respondent and have been considered.

Upon the entire record in this case, including the briefs, and from my observation of the witnesses, I make the following:

**FINDINGS OF FACT**

**I. THE BUSINESS OF THE UNITED STATES POSTAL SERVICE**

The United States Postal Service (herein called the Employer) is an independent establishment of the Executive Branch of the Government of the United States and operates various facilities throughout the United States in the performance of its basic function to provide postal services to this Nation.

In furtherance of its basic function the Employer, at all times material herein, has been and is operating a facility for the processing of mail and the furnishing of postal services at 1200 Goodlette Road in Naples, Florida (herein called the Naples facility).

The complaint alleges, the answer admits, and I find that the Employer is now, and has been at all times material herein, subject to the jurisdiction of the National Labor Relations Board by virtue of the provisions of the Postal Reorganization Act.

**II. RESPONDENT; THE LABOR ORGANIZATION INVOLVED**

The Respondent is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES**

**A. Respondent's Relevant Hierarchy**

On or about September 25, 1975, and at all times material herein, the following named persons occupied the positions set forth, and were agents of Respondent, acting on its behalf within the meaning of Section 2(13) of the Act: Joseph Chipullo—shop steward; John Rimes—president.

**B. Background**

The Employer and Respondent's International Union are parties to a nationwide collective-bargaining contract effective July 21, 1975, to July 20, 1978, covering postal clerks. Respondent is the local union which represents the postal clerks at the Employer's Naples facility. Respondent has processed grievances on behalf of these clerks both before and after the events in question here.

The Charging Party, Scott, is a distribution clerk at the Naples facility where he has been employed since January 1975. He is a member of Respondent and indeed was a Respondent steward for the first 5 months of 1975. His wife is also employed at this facility and is a member of Respondent.

The Scotts have a reputation for being litigious. Rimes testified that the number of grievances filed by Scott was much greater than the number filed by any other employee. Both Scotts filed grievances in 1975 prior to the one filed in September, which gave rise to this proceeding, and Scott has filed at least one since. The only grievance of the Scotts which Respondent has been accused of refusing to process is Scott's September 1975 grievance.

This litigious tendency of the Scotts has caused resentment among Respondent's officialdom—particularly Rimes.<sup>1</sup> Scott's September grievance also angered Chipullo, Respondent's steward at the time—so much so that Chipullo resigned his post. Mischung, Respondent's chief steward until June 1975, stepped down from his stewardship at that time in part because of criticism by the Scotts of the way Mischung was handling grievances.

As with most labor organizations, Respondent's stewards are responsible for handling grievances at the early stages of the grievance procedure. However, any officers of Respondent may also carry out this function. To ease the burden on its stewards and to screen out nonmeritorious grievances, Respondent, at its July 1975 membership meeting, also established an informal grievance advisory committee. This committee consisted of Respondent's president, Rimes, as well as some other present and former officers.<sup>2</sup> The committee did not meet from July until the time Scott's September grievance herein developed.

The grievance procedure is set forth in the contract between Respondent's International and the Employer. The procedure is elaborate, involves some four major steps (with substeps), and may be followed by arbitration. The burden of the complaint here, however, is that Respondent did not fulfill its duty of fair representation to Scott by assisting him at step 1 and step 2 (substep A).

At step 1 the Employer is required to discuss an employee's grievance within 14 days of the time he or the Union has learned of, or could reasonably be expected to have learned of, the matter to be aggrieved. The employee "may" be accompanied by his steward at this step. The supervisor must render a decision within 5 days thereafter. The Union is entitled to appeal an adverse decision by the supervisor within the 10 days following the supervisor's decision. The agreement is silent in respect to the right of an employee to appeal.

At step 2 (substep A) the employee must be represented by a steward or union representative. In view of the manner in which the procedure is written, as noted above, to specify only that the Union has a right of appeal, I construe this to mean that the employee must be represented

by a steward or union representative when an appeal is made by the Union itself. The Employer's installation head must meet with the steward or representative within 7 days of the appeal and render a decision within 10 days after the matter has been appealed.

The Employer maintains an "Overtime Desired" list for each calendar quarter. Employees voluntarily place their names on this list and may be selected for overtime from it on the basis of their order of seniority as permanent regular employees of the Employer.

To understand how overtime opportunities come about for employees whose names are on this list, it is first necessary to appreciate what work is available to be performed on an overtime basis.

There are at least two categories of such work.

One such category involves the handling of 3579's which are change-of-address forms for customers of publishers. At the time in question here, in late September 1975, there was such work available.<sup>3</sup>

Another category of overtime work is work on unsorted mail. Incoming mail begins to arrive at the Naples facility at 3:30 or 4 a.m. There is, of course, no way to predict what the volume of it will be.

In handling this incoming mail, it is sometimes ascertained by 7 or 8 a.m. that more employees are needed than are already at work on the first shift which runs from 4 a.m. to 12:30 p.m. In this situation employees scheduled to begin work on the second shift on that day may be called to come into work 2 hours early at 9 a.m. The employees selected for such calls are selected from the "Overtime Desired" list in order of their seniority. When the list is exhausted, unlisted employees may be called.

On the other hand, when it is not ascertained until after 9 a.m. that additional help is needed, it is too late to call employees scheduled for the next shift to come in early. There have been occasions where the decision that more help is necessary is not made until as late as 11:30 a.m.

When a late decision is made after 9 a.m. that more help is needed to handle incoming mail, the Employer has asked qualified employees already on duty on the first shift to work overtime—taking, if necessary, employees whose names are not on the "Overtime Desired" list.

In yet other variations of overtime assignments, the Employer has ascertained, the night before, that second shift employees then working will be needed to help the first shift the next morning. In these instances the second shift employee will be asked before he leaves his shift at 7:30 p.m. to come in 2 hours early the next morning. Second shift employees may also be asked to work overtime after 7:30 p.m. in the evening.

The foregoing flexible arrangements based on the exigencies of business at a given time are recognized in the collective-bargaining agreement between the Employer and Respondent's International. Thus, article VIII, section 5D, of that agreement states:

If the voluntary "Overtime Desired" list does not provide sufficient qualified people, qualified full time reg-

<sup>1</sup> See C.P. Exh. 1—Rimes' letter to the Regional Office explaining Respondent's position in this case. Also see Rimes' testimony on cross-examination.

<sup>2</sup> Mischung testified that the committee was to consist of himself, former President Harris, and Rimes. Mischung did not, however, deny that other officers could serve, as credibly testified to by Rimes and Usher, Respondent's secretary-treasurer.

<sup>3</sup> Scott so mentioned to his supervisor, McClure, on September 23, and Fager, manager of mail processing at the Naples facility, testified that such work regularly goes on.

ular employees not on the list may be required to work overtime on a rotating basis with the first opportunity assigned to the junior employee.<sup>4</sup>

### C. Sequence of Events

The Charging Party's name was on the "Overtime Desired" list at the Naples facility from the July through September quarter of 1975. The name of the union steward, Chipullo, was not on that list at least as of September 24, 1975, although, as will appear, he worked overtime on that date.

In September 1975, the Charging Party was employed on the 11 a.m.-to-7:30 p.m. shift at the Naples facility. His supervisor was Roy McClure.

On the evening of September 23, Scott asked McClure if he could work overtime the following day, i.e., come in 2 hours early at 9 a.m. on September 24. McClure told Scott just to come in at the regular time.

Scott reported for work at 11 a.m. on September 24 and worked 8 hours. That day Scott observed Chipullo, then Respondent's steward, working 2 hours overtime.

That evening Scott again asked McClure if he could work overtime on the following day. McClure refused. Scott then told McClure that there were people working overtime who were not on the "Overtime Desired" list, whereas he, Scott, was on that list. Scott added that this gave him grounds for a grievance.

McClure again demurred, stating that he, McClure, could not help it but there was no mail there and consequently no work for Scott to do on an overtime basis. McClure stated that he had not been told to ask Scott to report early hence could not direct Scott to work overtime on the following day.

Scott pressed the argument, pointing out to McClure that there were plenty of 3579's to be cut which was work in Scott's job description. Scott went on to claim that people were working overtime on that job, but Scott was not offered any overtime.

McClure insisted that he had no instructions to have Scott report early the next day so he could not direct him so to do.

On the way to work on September 25, Scott stopped at a local restaurant for breakfast and saw Chipullo eating lunch. Scott reminded Chipullo that the latter had worked 2 hours overtime on the previous day but that Scott had not. Scott told Chipullo that he felt like he should file a grievance for 2 hours' pay because he was on the overtime desired list and Chipullo was not.

Chipullo became angry when he heard this and asked Scott if 2 hours' pay meant that much to him. Chipullo also inquired if Scott expected him to file a grievance against himself (Chipullo). Scott replied that it was not the pay but the principle of the thing because, Scott stated, he felt that he had been passed over on the "Overtime Desired" list and wanted to put a stop to it. Scott added that any grievance would not be a personal attack on Chipullo.

Chipullo stated that he would not file a grievance against himself.<sup>5</sup>

Scott reported for work on September 25 at 11 a.m. and worked for 8 hours. Chipullo worked 2 hours overtime that day as he had the day before.

On September 26 Scott again ran into Chipullo at the same local restaurant. Scott told Chipullo that he wanted to file a grievance and Chipullo refused to handle a grievance against himself. This confrontation was otherwise a repeat of the one the day before with another addition being that Chipullo stated that, if Scott pursued the matter, he would turn it over to Rimes and he would resign.<sup>6</sup> In any event Chipullo did not take up Scott's grievance.

Chipullo then left the restaurant and returned to the Naples facility where he spoke to the morning supervisor, Mullins. Chipullo asked Mullins if he, Chipullo, could be placed on the "Overtime Desired" list for the remaining days of the third quarter. Mullins agreed to take care of this request.

Chipullo also resigned as shop steward on or about the same day.

Some time between September 26 and 29 Rimes learned of Scott's intentions to file a grievance over Chipullo's overtime.<sup>7</sup> Rimes, accordingly, spoke to Mullins, the morning supervisor, and inquired about the matter. Mullins informed Rimes that he had made the decision to call in Chipullo to work overtime. Mullins continued that he made his decision too late in the morning to call in anyone off duty who was on the "Overtime Desired" list. Mullins had therefore used Chipullo because the latter was already there on duty.

Rimes then researched the collective-bargaining agreement and was satisfied that the Employer was within its rights to take the action it took.<sup>8</sup>

<sup>5</sup> The findings as to this incident are based, essentially, on the credible testimony of Scott in this regard. Chipullo's testimony did not dispute these findings. Chipullo testified in substance that all Scott said was that what had happened would be grounds for a grievance. However, based upon Chipullo's testimony, the general import of Scott's testimony and the logic of events, which I will analyze in my "Concluding Findings," I hold that Scott did not actually request Chipullo to file a grievance on this occasion but instead merely discussed that possibility with him.

<sup>6</sup> The testimony of Chipullo as compared with that of Scott does not essentially differ as to what occurred at this meeting except that Chipullo credibly testified without dispute by Scott that he would turn the matter over to Rimes if Scott persisted.

<sup>7</sup> In view of Chipullo's resignation at the time, I conclude that Chipullo told Rimes of the matter when Chipullo resigned from his stewardship. The matter was also aired publicly at the Naples facility on or about September 26 when Chipullo and Mrs. Scott had a confrontation over it.

<sup>8</sup> See art. VIII, sec. 5D, previously described in this Decision.

These findings as to Rimes' investigation of the matter are based on his credible testimony to this effect. My findings as to the dates of his investigation are based on Rimes' acknowledgment to Scott when Scott and he first discussed Scott's grievance on September 29, which will appear, that he had already looked into the matter before the latter date. I do not credit Rimes' testimony that he spoke to Scott for the first time on September 25 and investigated the matter thereafter because Rimes appeared to be less certain of dates and the sequence of events than was Scott, whom I have credited in respect to both these areas. Further, as will appear, Rimes' own version of his first meeting with Scott on the grievance suggests that Rimes had already gathered some facts in regard to the grievance. Finally, I do not credit Rimes' testimony that he spoke to Scott on September 25 because, as of that date, Scott had not yet had his second meeting with Chipullo on Scott's proposed grievance—at which meeting, as I have found, Chipullo suggested referring the matter to Rimes.

<sup>4</sup> G C Exh 2

On September 29, the following Monday, Scott did not work overtime but Chipullo did.

That same day Scott spoke to Rimes at the Naples facility about filing a grievance in respect to the overtime matter.<sup>9</sup>

Scott told Rimes that the gist of his grievance was that Chipullo had worked overtime even though not on the "Overtime Desired" list whereas Scott, who was not offered overtime, was on that list. Rimes informed Scott that he had already discussed the matter with the supervisor, that the supervisor said Scott was on the wrong hours, and that the work was not there for him at the right time. Rimes went on to state that he agreed with the supervisor's assessment of the situation. Rimes added that the men were going to have to stop filing grievances against each other.

Scott rejoined that he was concerned with the principle of the thing and over his feeling that he was being bypassed on the "Overtime Desired" list. Rimes continued to advise against the grievance.

Scott then said he would try to get someone else to help him with his grievance. Scott did, however, ask Rimes to discuss the matter with the grievance advisory committee and Rimes agreed to do so.<sup>10</sup>

Within the next day or so, after September 29, Rimes discussed the proposed grievance over lunch with Harris, Respondent's former president, and Shirely, its former secretary-treasurer. The discussion dealt with the consideration that Chipullo was on the job when selected to perform the overtime work Scott felt he should have been called in for and with Rimes' aforementioned interpretation of the contract. All present agreed that the grievance had no merit.<sup>11</sup>

On October 1, Scott filed his own grievance with his supervisor, McClure. Specifically, Scott grieved that he was not scheduled to work overtime or called in early to work overtime on September 24, 25, and 29 because an employee not on the overtime list—Joe Chipullo—was used instead.

On October 6, 1976, McClure denied Scott's grievance. In support of his denial of the grievance, McClure wrote in his "Supervisor's Report of Grievance" the following:

<sup>9</sup> Scott understood that Chipullo had already resigned as steward

<sup>10</sup> The findings as to this incident are based on the credible and fairly certain testimony of Scott in this regard. I have already observed that Rimes was not as certain as to dates or the sequence of events. Rimes' version of his first meeting with Scott on the matter of the grievance (i.e., this meeting of September 29) does not essentially dispute that of Scott except that Rimes was left with the impression that Scott was only seeking advice in regard to whether the grievance should be filed. Rimes admitted that he discouraged it. Rimes also admitted that he pointed out to Scott, in connection with the grievance, that Chipullo was already on the job when he was assigned the overtime. This, of course, suggests that Rimes had already investigated the matter when he discussed it with Scott for the first time.

<sup>11</sup> Rimes also discussed the grievance separately with Usher, Respondent's current secretary-treasurer, who took the same position.

The findings as to Rimes' actions during this period are based on his credible testimony to this effect as corroborated by Usher in part.

I have not credited Rimes' testimony that he discussed the matter with Harris, Shirely, and Usher on or about September 26, because, as I have said previously, Rimes did not appear as certain as to dates and the sequence of events as was Scott, whom I have credited. Further, it is clear from Rimes' own testimony that he discussed the grievance with Harris, Shirely, and Usher (all members of the informal grievance advisory committee) after Rimes' first meeting with Scott on the grievance, a meeting at which, as I have found, Rimes promised Scott that he would have that very discussion.

It was explained to Mr. Scott that no early schedule could be made, because no 3rd class mail was in the office at the time and that the determination if overtime was needed could not be made in time to call him in early. Third class mail does not arrive in the office until 0750 daily. In order to determine volume received mail must be dumped and culled. And this cannot be done until service standards on FLM and P.P. are obtained. After the above standards were met and the third class dumped and culled it was determined that the overtime desired list did not produce sufficient help to obtain local 3rd class goals and available qualified clerk was used. It should also be pointed out that Mr. Chipullo requested that his name be placed on the overtime desired list on approximately 9-25-75.

In the same supervisor's report, McClure noted that the position of the Employer was as follows:

No violation has occurred. Overtime list is strictly followed in this office. Due to service standards it was necessary to invoke Art. VIII, Sec. 5-D and use an employee not on the "Overtime Desired" list on 9-24-75. On the other days in question the same applies but again Mr. Chipullo had requested his name be added.

Late on the same day on which his grievance was denied Scott spoke to Rimes. Scott advised Rimes that his grievance was being denied and he asked Rimes to take the grievance to step 2. Rimes refused saying that "we've" decided that your grievance doesn't have any merit and that the same "we" would not take it any further. When Scott asked who the "we" referred to, Rimes said the advisory committee. Scott then threatened to take the matter to the NLRB but Rimes did not relent.<sup>12</sup>

On October 9 Scott drew up the appropriate papers for appeal and again approached Rimes. Scott told Rimes that he had been instructed by a representative of the NLRB to ask Rimes for the third time to handle his grievance and that all he needed from Rimes was a yes or no answer. Rimes responded that "we've" decided that he, Scott, did not have a grievance and Rimes refused to process it. Scott told Rimes that he had the papers ready and that Rimes need only sign them so they could be put in the mail to the postmaster. Scott continued that if Rimes refused he was going to take the matter to the NLRB. Rimes again refused.<sup>13</sup>

Respondent, apparently, did not thereafter press Scott's appeal.

### Concluding Findings

In contending that Respondent has violated its duty of fair representation to Scott, the General Counsel argues that Scott's grievance was not processed on its own merits; that Rimes had a great deal of hostility toward Scott; that the Union treated the grievance perfunctorily and was not

<sup>12</sup> These findings are based on the credible testimony of Scott in this regard as essentially corroborated by Rimes.

<sup>13</sup> These findings are based on the credible testimony of Scott in this regard as partly corroborated or not disputed by Rimes.

an advocate for Scott; that the Union accepted Mullins' statement of what had occurred knowing that there would be a conflict of interest between the Employer and the grievant; and that there was no full meeting of the grievance committee nor a face-to-face confrontation between Respondent and management on the subject of the grievance.

While some of these arguments are, in part, factually correct, I am not satisfied in all the circumstances of the case that the General Counsel has established that Respondent has violated its duty of fair representation towards Scott.

But before I consider these factual contentions and their relationship to Respondent's obligations in respect to Scott, some understanding of Respondent's representative responsibilities must first be outlined.

As a general statement it may be said that an exclusive bargaining representative's duty of fair representation has not yet been precisely defined but is being developed on a case-by-case basis.<sup>14</sup> This absence of precision is especially true in respect to the parameters of a union's function in assisting or representing its members in the filing of grievances. At one end of the spectrum it is clear that a union is not automatically required to present every grievance advanced by a unit employee.<sup>15</sup> At the opposite extreme it is equally clear that a union violates its duty if, in refusing to handle a grievance, it does so in bad faith or out of hostility or even, simply, arbitrarily or capriciously.<sup>16</sup> And in deciding whether a union has acted arbitrarily or capriciously in the handling of grievances, the Board has laid stress on the union's responsibility at least to investigate the grievance in more than a perfunctory fashion<sup>17</sup> and to submit its findings for examination by its grievance committee, if it has one.<sup>18</sup>

In the present case it is true, as I have found, that Scott was personally resented by both Rimes and Chipullo. However, it is not the fact of this personal resentment which is of moment but rather whether that hostility caused Respondent to give Scott less than his just due.<sup>19</sup>

Turning now to case at bar I will initially consider the conduct of Chipullo—who, the complaint alleges, refused to accept or process a grievance on two occasions, September 25 and on or about September 27 (the second incident, I have found, occurred on September 26).

In their first meeting Chipullo made known to Scott his hostility towards him. However, crucially, Scott did not ask Chipullo to file a grievance for him at this time. Scott only discussed the possibility of a grievance over what had occurred. This is apparent from the testimony of Scott from which my findings as to the incident have primarily been made and also from the testimony of Chipullo. It is also evident from the fact that Scott approached Chipullo the next day and specifically requested Chipullo to file a grievance.

Hence I conclude that, regardless of his personal feelings toward Scott, Chipullo did not actually refuse to accept or process a proffered grievance in the September 25 incident.

In this second meeting a day later Scott did ask Chipullo to file a grievance. But here again Chipullo did not, in behalf of Respondent, reject Respondent's obligation to consider that grievance. Chipullo, in effect, merely refused because of his own interest in the matter, which was opposed to that of Scott. In disqualifying himself Chipullo referred Scott to Rimes—a referral which Scott indeed accepted.

I, accordingly, conclude that Chipullo, on behalf of Respondent, did not refuse to accept or process a grievance either on September 25 or 26, and that Respondent did not violate Section 8(a)(1)(A) of the Act by Chipullo's conduct in either instance. I am further constrained to observe that in withdrawing himself from the grievance Chipullo acted wisely if only to protect himself and Respondent from a charge that a steward had mishandled a grievance to satisfy the steward's own personal feelings in the matter.<sup>20</sup>

This brings us to Rimes for whose conduct Respondent is charged with having unlawfully refused to accept or process a grievance on September 29 and October 9.

It is true that Rimes harbored ill feelings towards Scott and that he refused to accept Scott's grievance on September 29 and to handle the appeal from its denial on October 9. However, when Rimes refused to process Scott's grievance on September 29, Rimes, regardless of his personal opinion of Scott, had already investigated the matter and learned that Chipullo had been assigned overtime on September 24 and 25 at a time too late to call in Scott. Management's action in this instance was consistent with its normal practice in such situations and that practice, as Rimes had learned from examining the collective-bargaining agreement, was not inconsistent with the relevant provisions of that instrument. Hence, when Rimes declined to accept Scott's grievance, Rimes had already investigated it objectively and concluded that it was without merit. In investigating it Rimes had gone directly to the supervisor who had made the determination to assign Chipullo, i.e., Mullins. While Rimes also told Scott on September 29 that members should not be filing grievances against each other (*viz.*, Scott against Chipullo) this was an afterthought which followed Rimes' recitation of the results of his inquiry.<sup>21</sup>

Respondent has no formal internal grievance processing organization. It has only a loosely organized group who may be called to pass upon the merits of grievances.<sup>22</sup> At least a majority of this group (Rimes, Harris, Usher, and Shirely) were consulted and felt that the grievance was without merit.<sup>23</sup>

<sup>20</sup> See *Allen L. Griffin v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW*, 469 F.2d 181 (C.A. 4, 1972).

<sup>21</sup> As is obvious from my findings as to this incident which are based primarily on Scott's own testimony.

<sup>22</sup> This loose arrangement is thus substantially different from the contract requirements for a formal grievance committee procedure, i.e., is unlike *E. L. Mustee & Sons Inc.*, *supra*, wherein the Board attached considerable weight to the failure of the respondent union to comply with such procedure in that case.

<sup>23</sup> Only Mischung was shown not to have been consulted.

<sup>14</sup> *General Truckdrivers, Warehousemen, Helpers and Automotive Employees, Local 315, etc. (Rhodes & Jamieson, Ltd)*, 217 NLRB 616 (1975).

<sup>15</sup> *Carpenters, Local Union #1104 (The Law Company, Inc.)*, 215 NLRB 537 (1974).

<sup>16</sup> *General Truckdrivers Local 315 (Rhodes & Jamieson, Ltd)*, *supra*.

<sup>17</sup> *E. L. Mustee & Sons, Inc.*, 215 NLRB 203 (1974).

<sup>18</sup> *Id.*

<sup>19</sup> *Carpenters, Local Union #1104, supra*.

When Scott came in to see Rimes with Scott's appeal on October 9, Rimes had not only investigated the subject matter of the grievance, but had also consulted other union officials who had agreed with him that the grievance was without merit.

From the foregoing it is manifest that Rimes did handle Scott's grievance to the extent of investigating it and consulting with other union officials but did not thereafter process it because Rimes concluded that it was without basis. Rimes' conclusion was not unreasonable nor did it rest substantially upon any desire to protect Chipullo, who had already resigned from his union position by September 29. Rimes' conclusion was also concurred in by most of the members of Respondent's grievance committee. Further, significantly, no evidence was presented at the hearing which would raise a question as to the correctness of the facts on which this conclusion was based.<sup>24</sup>

This leaves us with only two loose ends—Chipullo's overtime work on September 29 and Afternoon Supervisor McClure's failure to assign Scott overtime to work on the 3579's on any of the 3 days in question.

It does not appear that Rimes investigated that aspect of the grievance which dealt with Chipullo's overtime work on September 29. However, I conclude in all the circumstances that such an investigation would have added nothing, because what Rimes would have learned as to the incident on September 29 is the same as he had already learned as to the incidents of September 24 and 25—to wit, that Chipullo was chosen for overtime too late in the morning of September 29 to call in any second shift employee, like Scott, 2 hours earlier than the would-be callee's normal shift time.<sup>25</sup> Rimes would have further learned that Chipullo by this time had his name on the "Overtime Desired" list. Hence, the facts as to the incident of September 29 were essentially the same as the earlier incidents complained of except that there was even greater justification for the Employer's selection of Chipullo to work than there had been on the two prior occasions.

It likewise does not appear that Rimes spoke with McClure, Scott's supervisor, in respect to his grievance—this despite the fact that there was work to be performed on the 3579's which could have been assigned to Scott at that time.

However, I find no dereliction on the part of Rimes in failing to speak with McClure or to investigate how much 3579 work was available for Scott. I reach this conclusion

<sup>24</sup> While Scott offered the opinion that a supervisor should know that overtime is necessary by 7:30 a m., this does not disprove that on the days in question the flow of incoming mail was such that no judgment as to overtime could be made until a time too late to call in employees from the second shift to come in early.

<sup>25</sup> I make this finding on the basis of the Employer's findings in connection with the investigation of the grievance (Resp. Exh 4, received in evidence without objection).

on the basis that Scott never informed Rimes (or Chipullo either) that he sought to grieve over McClure's failure to offer Scott overtime on the 3579's—nor indeed is such a matter mentioned in any of the grievance papers.<sup>26</sup> Scott only grieved over Chipullo's selection to work overtime. And Chipullo, I find, worked on all three occasions sorting third class incoming mail.<sup>27</sup> Hence the thrust of the investigation which Rimes was required to—and did—conduct was to ascertain what work Chipullo did on the aforementioned date—which Scott claimed he should have been assigned to do—and to learn the circumstances of Chipullo's assignment. Chipullo was selected to work overtime by Mullins in order to finish the sorting of mail. Rimes went to see Mullins and established from him these facts. Rimes had no obligation to investigate whether Scott had grounds for any other grievance, i.e., any grievance that he had not been assigned to handle the 3579's on an overtime basis.

On the basis of all the foregoing I conclude that by Rimes' failure to prosecute Scott's grievance on and after September 29 and Rimes' refusal to appeal the denial of that grievance on and after October 9, Respondent did not violate Section 8(b)(1)(A).<sup>28</sup>

Having found that Respondent has committed no unfair labor practice on the basis of the foregoing objected-to conduct of Chipullo and Rimes, I shall recommend that the complaint be dismissed in its entirety.

#### CONCLUSIONS OF LAW

1. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Respondent is labor organization within the meaning of Section 2(5) of the Act.
3. By not prosecuting the grievance of the Charging Party, William Scott, or to appeal from its denial, variously, on September 25, 26, and 29, and October 9, 1975, Respondent has not violated Section 8(b)(1)(A) of the Act.

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issued the following recommended:

#### ORDER <sup>29</sup>

It is hereby ordered that the complaint be, and it hereby is, dismissed in its entirety.

<sup>26</sup> If there was a grievance in this regard, Scott never sought Respondent's assistance in respect to it.

<sup>27</sup> See Resp Exh 4

<sup>28</sup> *Carpenters, Local Union #1104, supra*

<sup>29</sup> In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.