American Postal Workers Union, Pittsburgh Metro Area Postal Workers Union, AFL–CIO (United States Postal Service) *and* Blair Gorczyca. Case 6–CB–7611(P)

September 28, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On January 3, 1989, Administrative Law Judge Elbert D. Gadsden issued the attached decision. The Respondent and the General Counsel each filed exceptions and a supporting brief. The Respondent filed an opposition to the General Counsel's exceptions, and the General Counsel filed an answering brief to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified.

1. The judge found that the Respondent violated Section 8(b)(1)(A) by refusing to meet with nonmember unit employees at the March 10, 1988 meeting at the union hall to discuss the planned changes in the Employer's special delivery section. We disagree and dismiss this allegation of the complaint.

The facts, as found by the judge, follow. Charging Party Gorczyca is a special delivery messenger represented by the Union, of which he is a not a member. On March 9, 1988, Gorczyca and other employees, both union members and nonmembers, engaged in a discussion in the workplace of changes in special delivery routing and speculated on the Union's position on the elimination of some routes. After a few minutes, they saw Union President Richards and Vice President Anthony, whom they approached with questions. Richards told them that he was busy, but that he would discuss their questions at another time. He scheduled a meeting at the union hall for the next day. As the meeting opened, Richards announced that union policy was not to conduct meetings on union premises with nonmembers present; that he did not intend to embarrass anyone, but any nonmembers in attendance should either join the Union or leave. Gorczyca left the room; another employee, Crawley, stated that he was not a union member but that he wished to ask a question. Richards told Crawley that ''before I answer any questions, I'm going to ask you to either sign this paper [a membership form] or leave.'' Crawley joined the Union and remained at the meeting. The union officials told the employees that the Union would stand behind the agreement. No grievances were filed as a result of the meeting. The judge found that the Respondent discriminatorily prevented nonmembers from presenting their views and receiving those of the Respondent and its members and that it failed in its statutory obligation to represent all employees in the unit fairly. As stated above, we disagree that the Respondent's mere exclusion of nonmembers from the meeting violated Section 8(b)(1)(A).

It is axiomatic that a collective-bargaining agent is required to represent all members of the bargaining unit, irrespective of their membership in the union. *Machinists Local 697 (Canfield Rubber)*, 223 NLRB 832, 834 (1976). Thus, the Act procribes as discriminatory union practices that effectively deny to unit members fundamental rights of union representation, such as access to grievance procedures[1] and exclusive union hiring halls.[2] In the case at hand, the judge concluded that a union's exclusion of nonmember unit employees from meetings at which possible reactions to job issues are discussed was tantamount to a denial of those employees' fundamental rights to union representation. We cannot agree.

Here, neither grievance representation nor any other right fundamental to union representation is at issue. Indeed, the record shows that no grievance was filed by the Respondent as an immediate result of the March 10 meeting, and there is no showing that any unit employee was denied the right to file a grievance over the changes or was denied proper assistance in filing a grievance.[3]

In this regard, we disagree with the judge's characterization of the employees' concern over the route changes as a ''grievance.'' Nowhere does the judge find that any employee approached union officers or stewards before March 10 to seek to file grievances over the changes or that the Union tied assistance in filing grievances to attendance at the March 10 meet-

[1] See, e.g., *Machinists Local 697*, supra, 223 NLRB 832, 834 and cases cited there.

[2] See, e.g., *Cell-Crete Corp*., 288 NLRB 262, 264 (1988).

[3] The present case is distinguishable from a pertinent aspect of *Oil Workers Local 5-114 (Colgate-Palmolive Co.)*, 295 NLRB 742, 743 (1989). In that case, the Board found that a union had violated Sec. 8(b)(1)(A) by refusing to permit a nonmember to attend a union meeting at which his pending grievance was to be discussed and passed on. In so finding, the Board noted in particular that the asserted ''substituted but equivalent procedure'' for presenting the nonmember's grievance was defective, where the respondent refused to read the grievant's statement to the membership and no one was present at the meeting to advocate the grievant's cause. In this case there is no evidence that grievances were at issue at the March 10 meeting. This case is also distinguishable from *Boilermakers Local 202 (Henders Boiler)*, 300 NLRB 28 (1990), in which the Board found that the union had violated Sec. 8(b)(1)(A) by conducting a members-only poll to choose the date of a floating holiday for the unit. In that case, the union used the poll as a ''substitute for negotiation'' in precisely the same manner as had the union in *Letter Carriers Branch 6000*, 232 NLRB 263 (1977), enfd. 595 F.2d 808 (D.C. Cir. 1979). By contrast, in this case, as discussed above, the Union did not substitute a procedure from which nonmembers were excluded from its ''representation process.'' 232 NLRB 263 at fn. 1.

ing.[4] Under the judge's analysis, virtually any discussion of any issue related to the contract would be a ''grievance'' and a union would risk an unfair labor practice if such discussions were held without the participation of all unit employees, whether members or not.

Further, in disagreement with the judge, we find that *Letter Carriers Branch 6000*, supra, supports a dismissal here. In that case the union had expressly delegated to unit employees the task of determining by majority vote whether a new collective-bargaining agreement should provide days off on a fixed or a rotating basis. The Board held that the union violated Section 8(b)(1)(A) by thereafter excluding employees who were not union members from attending the meeting at which the vote was taken. The Board reasoned that excluding them was unlawful because the union had essentially taken the decision on days off out of its internal domain as collective-bargaining representative and made the employee vote procedure into ''a substitute for negotiation.'' Id. at fn. 1. Having thereby ''eliminated from the situation the union representation element,'' the union also eliminated ''the propriety of limiting to union members a voice in the choice.'' Ibid.

Clearly, the decisive element that rendered the nonmembers' exclusion unlawful in *Letter Carriers*—the substitution of participation in the meeting for negotiation—is absent here. In the case at hand, the Respondent held the March 10 meeting to discuss changes which the Employer had made in special delivery routes, the relevance of the contract's provisions, and possible positions that the Respondent could take regarding the routing changes. The record shows that the Respondent ultimately met with the Employer in a labor/management committee meeting over the changes. There is no evidence that participation in the March 10 meeting was a substitute for negotiations over the scheduling or that the Respondent had turned over to the majority vote of members its decision-making power as the representative of all unit employees.[5] The March 10 meeting with its attendant discussion of the scheduling issue and possible union responses, then, was an ''integral part of the union's representation process,'' and thus was an ''internal union matter properly determinable by union members alone . . . .'' Ibid. For these reasons, we find that the Respondent's exclusion of nonmembers from its March 10 meeting was not improper and that this allegation should be dismissed.[6]

2. We agree with the judge's finding that the Respondent violated Section 8(b)(1)(A) of the Act by coercively refusing to answer nonmember unit employee Patrick Crawley's questions at the March 10, 1988 meeting at the union hall unless he agreed to join the Union on the spot. We find that the remarks by the Respondent's president, Richards, carry the implication of a rebuke of nonmember status and, under the circumstances, convey the impression that the Respondent intended to treat the nonmember disparately. See *Colgate-Palmolive*, supra at 743.[7] The General Counsel excepts to the judge's failure to provide as part of the remedy that the Respondent allow Patrick Crawley a reasonable opportunity to withdraw, without penalty, from membership in the Respondent; to notify Crawley of his right to do so; and if he elects to withdraw from membership, to make him whole, with interest, for dues, initiation fees, and other assessments that he was required to pay as a result of the Respondent's unlawful action. We find merit to this exception and shall amend the remedy accordingly.

REMEDY

Having found that the Respondent has violated Section 8(b)(1)(A) of the Act by coercing nonmember unit employee Patrick Crawley into becoming a member, we shall order the Respondent to allow Crawley a reasonable opportunity to withdraw, without penalty, from

[4] In fact, the Charging Party testified that, about 3 days after the March 10 meeting, he himself filed a grievance through his steward, i.e., he used the Respondent's normal practice. There is no allegation that this grievance was not processed in a proper manner.

[5] Because the Respondent retained its power to act as the representative of unit employees on an issue of interest to both member and nonmember employees, we fail to see the relevance of the facts, relied on particularly by our dissenting colleague, that nonmembers as well as members sought to meet with the Respondent about the changes and that the meeting was held at the union hall at the behest of the Respondent's president. Regardless of whose request resulted in the calling of the meeting, the fact remains that the meeting did not, either as announced or as held, operate as a substitute for the process of negotiating with or filing grievances with the Employer.

[6] We note that there is no evidence here that the Respondent ignored the interest of nonmember employees or that the position taken in the ensuing labor/management meeting treated their interests in a discriminatory or arbitrary fashion. In this respect, this case differs markedly from *Teamsters Local 671 (Airborne Freight)*, 199 NLRB 994, 999 (1972), cited by the General Counsel. In that case, exclusion of part-time employees from meetings was but one element in a course of discriminatory conduct that culminated in the discharge, at the union's behest, of the part-time employees. Without evidence of discriminatory or arbitrary treatment, we cannot find that the General Counsel has established a violation. Cf. *Letter Carriers*, supra, 595 F.2d at 812, 813 (suggesting that a bargaining representative's practice of polling only union members about proposed negotiating positions would not be unlawful so long as the union retains representational authority and there is no showing that the union has foreclosed ''communication access for employees with a divergent view''). There was no showing here that nonmembers could not have communicated their views to the Respondent's representatives after the meeting.

[7] We note in particular that President Richards did not simply refuse to answer Crawley's question, as clearly would have been his right. Rather, Richards conditioned answering the question of Crawley's remaining at the meeting on ''signing the paper'' or joining the Union. In our view, Richards' statement carries a clear implication of disparate treatment that a simple refusal would not. We find that this implication of disparate treatment crosses the line into unlawful coercion.

Member Cracraft agrees that in the circumstances of this case, President Richards' remarks carry the implication of rebuke of nonmember status and convey the impression that the Respondent intended to treat the nonmember disparately. Thus, unlike Vice President Starcher's remarks in *Colgate-Palmolive*, supra, which she found lawful, President Richard's remarks here not only fail to suggest that the Union is seeking a solution to the problems raised by Crawley's status, but occur, in Member Cracraft's view, in the context of an unlawful exclusion of nonmembers from a meeting.

membership in the Respondent; to notify Crawley of his right to do so; and if Crawley elects to withdraw from membership, to make him whole, with interest, for dues, initiation fees, and other assessments he was required to pay as a result of the Respondent's unlawful action.

Interest shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over United States Postal Service (Employer) by virtue of Section 1209 of the PRA.

2. Respondent (American Postal Workers Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent was, and acted at all times material as, the exclusive bargaining representative of the United States Postal Service's (Employer's) unit of special delivery messenger employees, including Blair Gorczyca, the Charging Party.

4. Respondent violated Section 8(b)(1)(A) of the Act by coercively refusing to answer a nonmember unit employee's question at the March 10, 1988 meeting at the union hall regarding the planned changes in the Employer's special delivery section unless he agreed to join the Respondent on the spot.

5. The aforedescribed unfair labor practice is an unfair labor practice affecting mail delivery and commerce within the meaning of Section 2(6) and (7) of the Act and Section 1209 of the PRA.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, American Postal Workers Union, Pittsburgh Metro Area Postal Workers Union, AFL–CIO, it officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 1(a) and (b) and delete paragraph 1(c).

''(a) Coercively refusing to answer nonmember unit employees questions regarding the Employer's changes in special delivery routes, which affect unit work and tenure, unless they join the Union.

''(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.''

2. Insert the following as paragraph 2(a) and reletter the succeeding paragraphs.

''(a) Allow Patrick Crawley a reasonable opportunity to withdraw, without penalty, from membership in the Union; notify Crawley of his right to do so; and if he elects to withdraw from membership, make him whole, with interest, for dues, initiation fees, and other assessments he was required to pay as a result of the Union's unlawful action.''

3. Substitute the attached notice for that of the administrative law judge.

CHAIRMAN STEPHENS, dissenting in part.

I agree with Member Devaney that the Union lawfully refused to allow nonmember unit employees to attend a union meeting concerning the Employer's planned changes in its special delivery section. Unlike Members Devaney and Cracraft, however, I also find that Union President Richards lawfully refused to answer a nonmember unit employee's questions at that meeting unless the nonmember first joined the Union. I therefore would dismiss the entire complaint.

The material facts are not in dispute. In response to unit employees' concerns over the Employer's planned changes in special delivery operations, a union meeting was held on March 10, 1988, at the union hall. Consistent with the Union's longstanding policy of barring nonmembers from union meetings, Richards asked any nonmembers in attendance either to join the Union or to leave the room. One employee, Pat Crawley, identified himself as a nonmember but said that he wanted to know what position the Union was going to take on the special delivery question before he decided whether to join the Union. Richards replied that he would not answer any questions unless Crawley first joined the Union; otherwise Crawley would have to leave the meeting. Crawley thereupon joined the Union and remained in the meeting.

My colleagues find that Richards' statements to Crawley were unlawful because they ''carry the implication of a rebuke of nonmember status, and . . . convey the impression that the [Union] intended to treat the nonmember disparately.''[1] I disagree. The Union, we have found, was privileged to exclude nonmembers from the March 10 meeting altogether, in accordance with its established practice. It follows inexorably that Crawley had no right to ask questions at that meeting because he had no right to attend the meeting in the first place. Richards' refusal to answer Crawley's questions unless Crawley joined the Union was simply part of the same transaction in which Richards lawfully informed the nonmembers, including Crawley, that they would have to leave the hall unless they joined the Union, and was equally lawful.

The majority's citation to *Colgate-Palmolive*, supra, is misplaced. That case concerned the handling of a grievance—a function that a collective-bargaining representative must perform for any unit employee, member or nonmember, in a manner that is not arbitrary or discriminatory. The union there had a rule requiring a

[1] See *Oil Workers Local 5-114 (Colgate-Palmolive Co.)*, 295 NLRB 742, 743 (1989).

vote of the membership for any decision to take a grievance to arbitration. The Board accordingly found unlawful the union's refusal to allow a nonmember to appear at a meeting of its members to seek their vote to arbitrate his grievance, where the union also refused to read the nonmember's statements to the members and there was no one to advocate arbitration of his grievance at the meeting. The Board also found that the union vice president's statement to the nonmember that, had he been a union member, ''we wouldn't have this problem,'' was unlawful because it conveyed the impression that the union intended to treat the nonmember in a disparate fashion. In this case, by contrast, no grievance was at stake on March 10. No grievance was filed by the Union as an immediate result of the meeting that day, and there is no evidence that any unit employee was denied the right to file a grievance over the changes in special delivery operations or was denied proper assistance in filing a grievance. Indeed, the Charging Party (also a nonmember) testified that he filed a grievance through his steward about 3 days after the March 10 meeting; there is no allegation that that grievance was not properly processed. Moreover, in further contrast with *Colgate-Palmolive*, there is no indication that Crawley was denied all opportunity to have his questions answered. The testimony clearly indicates that, on March 10, Richards was refusing to answer nonmembers' questions *at the meeting*, not at all times and under all circumstances. Accordingly, Richards' remarks did not carry the implication that the Union intended to treat Crawley disparately (apart from lawfully stating that he was not privileged to attend a meeting that was open only to union members), and thus were not unlawful.

MEMBER CRACRAFT, concurring in part and dissenting in part.

I join Member Devaney in finding that the Respondent violated Section 8(b)(1)(A) of the Act by coercively refusing to answer a nonmember unit employee's questions at the March 10, 1988 meeting at the union hall unless he agreed to join the Union on the spot. I also agree that the remedy for this violation urged by the General Counsel is appropriate. Contrary to my colleagues, however, I would find that the Respondent also violated Section 8(b)(1)(A) by refusing to permit nonmembers to attend the March 10, 1988 meeting in the Respondent's union hall.

In adopting the judge's finding of a violation in this matter, I particularly rely on the fact that the meeting was initiated by and held at the request of a group of nonmember and member unit employees. These employees, having heard of the Employer's plan to make changes in special delivery operations, encountered the Respondent's president, John Richards, and vice president, Joel Anthony, leaving the office of Gerald Cubrick, manager of the general mail facility, mail operations, and asked Richards questions about the changes. Richards told the employees he was very busy at the time but would be glad to talk with them at another time. He agreed to meet with them the following day at the Respondent's hall. However, when the group of employees who requested the meeting assembled at the union hall, Richards asked all nonmember unit employees to leave the meeting or take out immediate membership. Richards stated that it was the Respondent's policy not to allow nonmembers in its meetings.

In these circumstances, I agree with the judge's finding that the March 10 meeting was not an official internal union meeting from which nonmembers properly could be excluded. The meeting came about because the employees were questioning Richards about a grievance subject at the workplace and Richards did not have time to discuss the matter when first approached. The meeting was held at the union hall, rather than at the workplace, *at Richards' suggestion*. He made no mention of any matters being discussed at the meeting other than the employees' concerns over the changes in the special deliery unit and did not indicate to the employees that the meeting would be restricted to members only.

Having agreed to meet with members and nonmembers regarding their common concerns about the tenure of their employment as a consequence of planned changes in special delivery operations, the Respondent discriminated against nonmember employees in violation of Section 8(b)(1)(A) of the Act, by refusing to allow them to attend the meeting unless they became members. The Respondent's actions also coercively induced nonmembers to join the Union in further violation of Section 8(b)(1)(A).

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
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 the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT coercively refuse to answer nonmember unit employees' questions regarding the employer's changes in special delivery routes that affect unit work and tenure unless they join American Postal Workers Union, Pittsburgh Metro Area Postal Workers Union, AFL–CIO.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL allow Patrick Crawley a reasonable opportunity to withdraw without penalty from membership in the Union; notify Crawley of his right to do so; and if he elects to withdraw from membership, make him whole with interest for dues, initiation fees, and other assessments he was required to pay as a result of the Union's unlawful action.

AMERICAN POSTAL WORKERS UNION, PITTSBURGH METRO AREA POSTAL WORKERS UNION, AFL–CIO

Patricia J. Scott, Esq., for the General Counsel.
Stephen H. Jordan, Esq. (Rothman, Gordon, Foreman & Groudine, P.C.), of Pittsburgh, Pennsylvania, for the Respondent.

DECISION

STATEMENT OF THE CASE

ELBERT D. GADSEN, Administrative Law Judge. A charge of unfair labor practices was filed on March 14, 1988, by Blair Gorczyca (the Charging Party), against American Postal Workers Union, Pittsburgh Metro Area Postal Workers Union, AFL–CIO (United States Postal Service) (the Respondent). On behalf of the General Counsel, the Regional Director for Region 6 issued a complaint against the Respondent on April 11, 1988.

In essence, the complaint alleged that Respondent (the Union) failed to fairly represent unit employees by not meeting with them to discuss matters affecting their employment, because they were not members of Respondent; and by coercing nonmember employees to become members of Respondent, by asking them to leave a meeting Respondent held with unit members of Respondent, unless they join the Union, all in violation of Section 8(b)(1)(A) of the Act.

The Respondent filed an answer on May 5, 1988, denying that it has engaged in any unfair labor practices as set forth in the complaint.

A hearing in the above matter was held before me in Pittsburgh, Pennsylvania, on September 14, 1988. Briefs have been received from counsel for the General Counsel and counsel for the Respondent, respectively, which have been carefully considered.

On the entire record, including my observations of the demeanor of the witnesses, and my consideration of the briefs filed by the General Counsel and counsel for the Respondent, respectively, I make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleges, the answer admits, and I find that the United States Postal Service (the Employer), provides Postal Service for the United States of America and operates various facilities throughout the United States in the performance of that function, including its general mail center in Pittsburgh, Pennsylvania; and that the Board has jurisdiction over the Employer in this matter by virtue of Section 1209 of the PRA.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that American Postal Workers Union, Pittsburgh Metro Area Postal Workers Union, AFL–CIO (United States Postal Service) (the Union), is now and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

The parties stipulated that the American Postal Workers Union, Pittsburgh Metro Area, represents all special delivery employees and that Blair Gorczyca and Patrick N. Crawley are members of that unit.

The parties also stipulated for admission in evidence as Respondent's Exhibit 1, the agreement between the American Postal Workers Union and the United States Postal Service (the Employer), effective July 21, 1987, to November 20, 1990. They also stipulated that the 1987–1990 local agreement, entitled ''Memorandum of Understanding between Pittsburgh Metro Area Postal Workers Union, AFL–CIO and the United States Postal Service,'' is also admitted in evidence as Respondent's Exhibit 2.

In its answer to the complaint, Respondent admitted that John Richards occupied the position of president of the Respondent, and is now, and has been at all times material, an agent of the Respondent within the meaning of Section 2(13) of the Act.

Finally, the parties stipulated that the meeting scheduled for March 10, 1988, was not a regularly scheduled union meeting.

Union representatives met at the union hall at the request of unit employees on March 10, 1988, to discuss the Employer's adjustments and consolidation of special delivery routes. Before the meeting commenced Respondent's representatives asked all unit employees who were not members of the Union to leave the meeting, unless they took out immediate membership in the Union. Consequently, some of the nonunion member employees left the meeting, and some took out membership in the Union at that time.

Since Blair Gorczyca was not a member of the Union, he left the meeting as directed and filed a charge with the Board because he believed the Union was failing to represent him fairly by preventing him from participating in the August 10 meeting, unless he joined the Union.[1]

B. *Concerns of Unit Employees*

A composite of the essentially uncontroverted and credited evidence established that prior to March 1988, the America Postal Workers Union (APWU) had received a number of friendly leaks of information from officials of the Employer (United States Postal Service) about an ongoing audit of the special delivery operation of the Employer. The auditors made a preliminary finding that certain adjustments in the special delivery operations would be made soon.

Blair E. Gorczyca has been employed by the United States Postal Service for 20 years and currently serves as a special delivery messenger. He has never been a member of the

[1] The facts set forth above are not in conflict in the record.

American Postal Workers Union but on numerous occasions had been solicited to become a member, as recently as last year. At that time, David Sammel, became shop steward. Sammel knew Gorczyca had been a member of the National Association of Letter Carriers. Nevertheless, Sammel asked Gorczyca to join the APWU and Gorczyca told him ''no.'' Although, Gorczyca had joined the Association of Letter Carriers as early as 1968, he thereafter worked in a craft represented by APWU, which he had not joined.

At approximately 3 p.m. on March 9, 1988, Gorczyca and a group of special delivery messengers (Patrick Crawley, Gene Jones, Robert Joyce, David Sammel, and Gerald Goreman) had a discussion on the results of combining delivery routes and elimination of some routes in the special delivery section. They discussed what they thought the Union's position would be on the abolishment of special delivery jobs by combining routes and eliminating special delivery workers. After 5 or 6 minutes of their discussion, they saw APWU's president, John Richards, and Vice President Joel Anthony leaving Jerry Cubrick's office. The messengers approached Richards and asked him a few questions. He told them he was very busy at the time but he would be glad to sit down and talk with them at another time. He agreed and did in fact meet with them at the union hall on the next day, March 10, 1988.

Union President Richards acknowledged that he and his staff (Neurohr, Anthony, and Cruener) reviewed the Union's contract prior to the meeting regarding the matters to be discussed. He testified that at the beginning of the meeting, Neurohr advised him that there was at least one nonmember present. Since the Union had a longstanding policy in their local that nonmembers were not permitted to attend union meetings, he announced to the assembled employees that it was their policy not to conduct meetings on union premises with nonunion members in attendance; that it was not his intention to embarrass any one but only to enforce the policy, and he suggested, that if there was any one who is in this situation, they should either exit the room or join the Union.

According to Blair Gorczyca, Richards looked around the room and said, ''before we start this meeting, I guess there are people in here that do not belong to the American Postal Workers Union. Before I answer any questions, and before I proceed with the meeting, I would ask them either to join the APWU or kindly get up and leave.

Since he was not a member of the Union, Gorczyca said he stood up and proceeded to exit the room. At that time, he observed Pat Crawley stand up and said that he formally belonged to the APWU and had terminated his membership, but he would like to ask a question about the problem regarding the special delivery craft. Richards responded by handing what appeared to be an application for membership to the APWU to Crawley and said, ''before I answer any question, I'm going to ask you to either sign this paper or kindly leave.'' Gorczyca said he and nonmember Gene Jones left the room and Pat Crawley remained.

Twelve-year employee, Pat Crawley, testified that he told Richards he wanted to see the outcome of the meeting with respect to what position the Union was going to take before he decided to join or not join the APWU. However, he said he was told by Richards that he would have to join the Union before he could remain in the meeting. Thereupon, Crawley said he joined the APWU and remained. The Union informed the assembled employees that it would stand behind the written agreements but what specific language in the agreement would be enforced was not clear. The union members did not know whether they could file a grievance and no grievance was filed on that day (March 10).

President John P. Richards has been president of the Metropolitan Metro Area Postal Workers Union since October 1, 1974. He was formally director of industrial relations of the American Postal Workers Union from November 1980 to November 1983. Joel Anthony is vice president and chief grievance officer for the Union. When Richards was asked does the Union permit nonmembers to come to the offices of the Union for other purposes, he said it was the policy to provide representation and support for the processing of grievances for all employees in the bargaining unit. However, he said the policy of not allowing nonmembers to attend union meetings in the union hall was based on the belief that the dues of the members should not go towards providing services for nonmembers that are not required to be provided to them. He than proceeded to describe a number of things that the Union does for its members which it is not required to do for nonmembers. Example:

> Nonmembers don't participate in the bargaining activities of the local or National Union. They have no voice in the formation of bargaining policies, bargaining proposals, and no right to vote on the ratification of the contract. He also said they had no voice in the local bargaining preparation and demands in the actual negotiations or by contract of this provision on labor management committee meetings, which he said was ultimately held in this case.

Analysis and Conclusions

Issues

1. Did Respondent (APWU) violate Section 8(b)(1)(A) of the Act by informing special delivery employees it would not meet with nonmembers to discuss the Employer's consolidation of delivery routes, which would result in employees bumping employees and the elimination of some special delivery workers?

2. Did Respondent (APWU) coerce nonmember employees to join the Union by telling them it would not discuss their concerns about the Employer's consolidation of the delivery routes unless they were members of the Union, in violation of Section 8(b)(1)(A) of the Act?

3. Did Respondent (APWU) violate Section 8(b)(1)(A) of the Act by meeting with union members to discuss Employer's consolidation of delivery routes of special delivery messengers while, refusing to discuss the same subject with nonmembers?

The evidence of record is uncontroverted that on the request of the unit employees to discuss the Employer's consolidation of delivery routes, Respondent met with them on March 10, 1988. At that time however, Respondent informed the nonmember employees it would not discuss the unit's common concern (consolidating the delivery routes) with them unless they joined the Union. It is clear that the common concern of the unit employees about the tenure of their employment as a consequence of the consolidation of routes,

was a grievance subject for discussion by them and the Union.

It is well settled law that the grievance procedure resulting from the exclusive representation of employees by a union, is a vital element of the collective-bargaining process, and unit employees are entitled to grievance representation as a matter of right. *Machinists Local 697 (Canfield Rubber)*, 223 NLRB 832, 835 (1976); *Boilermakers Local 72 (Combustion Engineering)*, 260 NLRB 232, 233 (1982).

Pursuant to the above cited authority, all of the special delivery employees (members and nonmembers) in the unit represented by Respondent, were entitled to be present and allowed to participate in the March 10 discussion with the Respondent, concerning the consolidation of delivery routes.

In *Letter Carriers Branch 6000*, 232 NLRB 263 (1977), the Board held that ''where the matter at issue is of importance to all unit employees, a direct consequence of denying the right to participate to nonmembers is to encourage nonmember unit employees to join the union.'' The Board has further held that ''refusal to discuss or to informally assess'' the merits of a possible grievance until a condition precedent is met, is a violation of Section 8(b)(1)(A) of the Act. *Boilermakers*, supra at 233.

Since it is clear that the issue or the discussion of the Employer's plan of consolidating the special delivery routes was of importance to all unit employees, Respondent's refusal to allow the presence and participation of nonmembers in the March 10 discussion, was to encourage and did in fact encourage or forced members to join the Union. *Letter Carriers*, supra. Additionally, Respondent's refusal to discuss or assess the merits of the nonmembers' concerns on the March 10 subject of discussion, until or unless they joined the Union, was clearly coercive conduct constituting a breach of the duty of fair representation, in violation of Section 8(b)(1)(A) of the Act. Respondent's coercive conduct in this regard caused nonmembers Pat Crawley to join the Union in order to remain in the March 10 discussion meeting. *Boilermakers*, supra.

Respondent's Contended Reasons for Excluding Nonmembers from the March 10 Meeting do not Constitute a Valid Defense

Respondent explained that it was the Union's policy that nonmembers are not permitted to attend certain official internal union meetings held on union premises, or when the agenda includes internal policy decisions.

It is not clear from the testimony of Union President Richards what constitutes an official internal union meeting. He appeared to be testifying that the March 10 meeting was a meeting to discuss union policy. In support of this contention, he stated that he and the other union representatives present at the meeting had studied provisions of the collective-bargaining agreement, in preparation for discussion of the delivery routes in relationship to the provisions of the agreement. He does not deny that the purpose of the March 10 meeting was to determine what rights unit employees had under the agreement. He acknowledged the meeting was held for the purpose of trying to explain the Employer's route consolidation plan and actions, the reaction of the employees to that plan or action, and to determine whether such plan and action was consistent or inconsistent with the language of the collective-bargaining agreement.

However, the March 10 meeting was not a regularly scheduled meeting and there was no discussion of internal matters of the Local relating to establishing amount of dues or the expenditure of union funds. Neither President Richards nor any other witness testified about any union policy decisions. In any event, the evidence is consistently clear that the subject of discussion during the meeting was the consolidation of delivery routes, a subject in which member and nonmember unit employees considered important enough to request the meeting and attended it. Respondent's exclusion of nonmembers from that meeting (March 10), discriminatorily prevented them from presenting their views and receiving the benefit of the views of the Union and other unit employees (members and nonmembers). The Board has long held such conduct is discriminatory and unlawful.

The law is also well settled that as the exclusive bargaining representative of all the employees in the unit, a union assumes the statutory ''responsibility to act as genuine representatives of all the employees in the bargaining unit'' (*Miranda Fuel Co.*, 140 NLRB 181, 184–185 (1963)), that the Union was ''responsible to, and owned complete loyality to, the interests of all whom it represents,'' (*Ford Motor Co. v. Huffman*, 354 U.S. 330, 338), and that a breach of the duty of fair representation constitutes an unfair labor practice.'' *Rubber Workers Local 12 v. NLRB*, 368 F.2d 12, 24 (5th Cir. 1966). In the instant case, by refusing to permit nonmember employees to attend and participate in the March 10 meeting, Respondent failed to satisfy its statutory duty to represent all unit employees in a fair and impartial manner, in violation of Section 8(b)(1)(A) of the Act, as alleged.

REMEDY

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

Respondent having refused to meet with nonmember employees to discuss employer's actions affecting unit work, it violated Section 8(b)(1)(A) of the Act; that by refusing to discuss the job related subject with nonmember employees, unless or until they joined the Union, Respondent coerced nonmembers to join the Union, in violation of Section 8(b)(1)(A) of the Act; and that by meeting with union members and refusing to meet with nonmembers employees in the same unit, to discuss employer's action which affected their jobs, Respondent discriminated against nonmembers, in violation of Section 8(b)(1)(A) of the Act, the recommended Order will provide that Respondent cease and desist from engaging in such unlawful conduct; and that it refrain from engaging in such unlawful conduct.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over United States Postal Service (Employer) by virtue of Section 1209 of the PRA.

2. Respondent (American Postal Workers Union) is a labor organization within the meaning of Section 2(6) and (7) of the Act.

3. Respondent was and acted at all times material, as the exclusive bargaining representative of the United States Postal Service's (Employer's) unit of special delivery messenger employees, including Blair Gorczyca, the Charging Party.

4. The aforedescribed unfair labor practices are unfair labor practices affecting mail delivery and commerce, within the meaning of the Act and Section 1209 of the PRA.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The Respondent, American Postal Workers Union, Pittsburgh Metro Area Postal Workers Union, AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to meet with nonmember employees of the bargaining unit to discuss the Employer's changes which affect unit work.

(b) Coercing nonunion member employees to join the Union, by refusing to discuss the Employer's changes affecting unit work, unless or until they join the Union.

(c) Discriminating against nonmembers by meeting with members and refusing to meet with nonmember employees in the same unit.

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

(a) Post at business offices, meeting halls, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 6, 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 members 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.

(b) Mail or deliver additional signed copies of the notice to the Regional Director for Region 6, for posting by United States Postal Service, if willing, at locations where notices to its special delivery messengers are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] 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.

[3] If this Order is enforced by a judgment of a 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.''