

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO, CALIFORNIA**

**TEAMSTERS LOCAL NO. 886, affiliated with
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
(United Parcel Service)**

and

Case 17-CB-6356

MICHAEL D. REYNOLDS, An Individual

Charles T. Hoskin, Jr., Tulsa, Oklahoma, for the General Counsel.

George McCaffrey, Oklahoma City, Oklahoma for Respondent.

Michael D. Reynolds, Choctaw, Oklahoma, pro se

DECISION

Statement of the Case

JAMES M. KENNEDY, Administrative Law Judge: This case was tried in Oklahoma City, Oklahoma on July 22¹ and October 3, 2008² based upon a complaint issued May 29, by the Regional Director for Region 17 and amended at the hearing.³ The underlying unfair labor practice charge was filed by Michael D. Reynolds, an individual (Reynolds or the Charging Party), on February 28 and amended on April 29. As amended, the complaint alleges only that Teamsters Local No. 886, affiliated with International Brotherhood of Teamsters, (Respondent) made a threat in violation of §8(b)(1)(A) of the National Labor Relations Act. Respondent avers that the conduct never occurred or, if it did, it is not legally responsible, as the utterance was made by an individual who was not its employee, its agent or its apparent agent.

Issues

The first issue, one of credibility, is whether shop steward Wes Pruitt told Reynolds that Respondent had not processed certain grievances because Reynolds was a political opponent of Respondent's then newly elected officers and because the Employer did not like him. Only if

¹ On the hearing's first date, July 22, I approved a settlement agreement. After reconsideration, I withdrew my approval and permitted the matter to go forward.

² All dates are 2008 unless otherwise stated.

³ On October 3, upon the resumption of the hearing, the General Counsel amended the complaint by striking Paragraph 6 in its entirety. Thus, only the allegation found in Paragraph 5 remains.

one concludes that the utterance was made is it necessary to determine whether Respondent is legally responsible for it and obligated to remedy it, but even in that event, one must first determine whether the statement restrained or coerced Reynolds as defined in §8(b)(1)(A).⁴

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I. Jurisdiction

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Respondent admits that the employer, upon whose premises the alleged unfair labor occurred is United Parcel Service, an Ohio corporation, and that UPS is an interstate shipper which has operations in and around Oklahoma City. As the employer's operation in Oklahoma derives gross revenue in excess of \$50,000 for freight shipments sent directly out of Oklahoma Respondent admits that the employer is engaged in commerce within the meaning of §2(2), (6) and (7) of the Act. Additionally, Respondent admits it is a labor organization within the definition of §2(5) of the Act. Therefore, the Board has jurisdiction over this matter.

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II. The Unfair Labor Practice Evidence

A. The Testimony

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As amended the complaint now makes only one discrete allegation. Paragraph 5 alleges: "On or about January 29, 2008, Respondent, by Pruitt, at the Employer's Oklahoma City facility, told employee[] [Reynolds] that Respondent refused to process certain grievances because the employee involved [Reynolds] previously opposed the current officials of Respondent in an intra-union election and because the Employer's officials did not like the employee [Reynolds]."

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Respondent is the collective bargaining representative of United Parcel Service's employees employed in Oklahoma City. It has held that status for many years, certainly before its Bylaws were amended in 1977. UPS's Oklahoma City operation employs about 1000 represented employees in eight different locations. Altogether, Respondent serves its membership there through 20 to 25 working stewards. At one of those locations alone, the Oklahoma City hub, there are about 12 to 13 stewards. Both the Charging Party and Pruitt work at the Oklahoma City hub on nighttime shifts, although their workstations are not very close.

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Reynolds has worked for UPS about 5 years, currently working as a loader/unloader and pre-loader. Reynolds had been a union steward or alternate steward at UPS for roughly the same amount of time. He has been a member of Local 886 for 23 years, covering earlier employment by Leeway Motor Freight/Consolidated Freightways. He had served as a steward at that employer as well. His total experience as a steward is approximately 6 years. In June 2007, he resigned his steward status as a condition of settling a grievance which arose after he lost his job over the manner in which he had handled a fellow employee's grievance. UPS had accused him of dishonest conduct in the manner in which he had performed that task. The

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⁴ The pertinent portions of the statute: *Section 8(b)* It shall be an unfair labor practice for a labor organization or its agents—(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7:

Section 7 states: "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3)."

Company offered reinstatement without backpay if he agreed to no longer serve as a steward. Both Reynolds and the Union accepted the condition.

5 In November 2007, an internal union election took place. Reynolds chose to support the so-called Stetson slate, seeking membership on the executive board as a trustee. That slate was defeated by the Loewenkamp slate, which currently holds office. The incumbents at that time were part of a third slate, known as the Robert Young group. Although the Loewenkamp winners were to take office in January 2008, there was a transition period during which the Loewenkamp group served as interim officials when the Young group declined to remain in office. Although the dates are not entirely clear, it seems that changes began taking place as early as December as interim assistant business agents began replacing the previous business agents. These interim (assistant) business agents included Steve St. Cyr and Tommy Kitchens, who later became the actual assistant business agents. St. Cyr had had previous experience as a business agent while Kitchens had been a steward for 27 years. The head of the slate, Randy Loewenkamp, became president and business agent.

Reynolds's Stetson slate, at least, harbored serious concerns over its loss and it eventually filed a protest with the United States Department of Labor challenging the results of the election. Hard feelings were/are no doubt involved. At the time of the instant hearing that challenge remained unresolved.

On November 18, 2007 Reynolds filed a grievance which has been variously styled as a "job bid grievance" or the "small sort grievance." In this grievance Reynolds contended that he was entitled, due to seniority, to a job in the small sort department which had been held for about 3 years by Wes Pruitt. Pruitt, it will be recalled, is a union steward and had been for about 8 years. Pruitt had also been a part of the Loewenkamp slate. If successful, Reynolds would have displaced Pruitt in the small sort department, a job Reynolds described as "cushy."

There are a number of problems with this grievance visible at first glance. The first is timeliness. It targeted a job another employee had held for 3 years without complaint; Pruitt had obtained it through the normal bid process which was open for all to see. And, if successful, where would the incumbent, Pruitt, go? St. Cyr said that if Pruitt had been ousted, he would have suffered a severe financial reverse. Second, both the timing and the target of the grievance suggest that it was filed in retaliation over the intra-union election, since Reynolds had campaigned for the loser and Pruitt for the winner. In addition, Reynolds well knew Pruitt was a Loewenkamp supporter because he had asked for Pruitt's vote and Pruitt had declined, saying he was voting for the Loewenkamp slate.

Reynolds filed the grievance by physically handing the completed form to the union steward responsible for his area, an individual named Tim Deckard. Because it was not a grievance which related to something which had happened on the floor, Deckard, following procedure, turned it into the union office where it would be handled by one of the assistant business agents.⁵

Then, on November 25, 2007, Reynolds filed a second grievance. This one concerned the assignment of work to a more junior employee, alleging that the work should have been assigned to him. Again, he gave the grievance form to Deckard. Since this was something which had occurred on the floor, Deckard took it to one of the company managers, Chris

⁵ Deckard, at the time, expressed doubt about remaining a steward under Loewenkamp. Later, after resolving whatever concerns bothered him, he decided to remain in the position.

Blessington. Blessington considered it without merit and told Deckard to "go ahead and process it." As a result Deckard, as before, turned it in to the Union's office for processing in the usual manner.

5 Under the collective bargaining agreement, this placed both grievances into the Local Level Hearing stage. This stage is sometimes called the Pre-Hearing. At this stage, twice a month Respondent's business agents -- now St. Cyr and Kitchens -- would meet with the UPS Labor Relations Manager, Matt Hoffman, to resolve the grievances which had not been resolved on the floor. St. Cyr testified that both of Reynolds's grievances were scheduled to be
10 processed on January 4, but due to the large number being presented that evening, only Reynolds's first grievance was processed. St. Cyr testified that Hoffman asserted that the grievance was untimely (being 3 years late) and in any event did not amount to a breach of the collective bargaining agreement. Both St. Cyr and Kitchens said, after consulting, they agreed that no contract violation had been made out. They chose to drop the grievance at that stage.
15 Kitchens did not recall Hoffman making the timeliness argument.

20 Three days later, on January 7, according to Reynolds, he and Pruitt had a conversation in the break room. Pruitt denies the conversation ever occurred. Reynolds says Pruitt initiated it, telling him that he was being appointed the 'chief steward.' He went to on to say that he was the "new sheriff in town," given the fact that Loewenkamp had won the election, and he would be taking over the investigation of Reynolds's grievances. Reynolds says he responded by saying that Deckard had already tried to settle them and he did not know what else could be investigated.

25 Reynolds's testimony here is somewhat odd. First, we know that the small sort grievance involving Pruitt's job had actually been dropped two days before. Presumably, the new 'chief steward' would know that he had not been assigned a dropped case, so why would he be pursuing it? Second, Reynolds did not protest that Pruitt had a conflict of interest and should not be processing Reynolds's grievance at all since it sought to oust Pruitt from his job.
30 The conflict was manifest. Why didn't Reynolds protest? Third, the union officials and Pruitt, as well as Reynolds, all testified that there had never been a chief steward position, that all the stewards were essentially the same and worked as a team. Reynolds, former steward that he was, and a political activist, did not question the creation of a 'chief' steward position. He knew the collective bargaining contract didn't provide for it, so what role would it play on the floor?
35 Yet he did not ask Pruitt about the scope of this strange new union position. Reynolds's later testimony about the nature of the steward's duties demonstrated rather clearly that he knew stewards had limited authority. Did the new chief steward have greater authority in grievance processing than ordinary stewards? Would regular stewards report to Pruitt in some manner? Despite these obvious changes, Reynolds was incurious about all of them and asked Pruitt no
40 questions.

45 On cross examination, Reynolds added that Pruitt told him that he had the power to remove stewards from their job and that shortly afterwards two were. Reynolds says that Pruitt explained that they would be removed because he "didn't like them."⁶

As noted, Pruitt denied that this conversation occurred. He said he had no conversations with Reynolds on January 7. In addition, he gave the following testimony:

⁶ Apparently two stewards were relieved of their duties during this time frame, but the evidence is that the decision to remove them was made by a business agent, not Pruitt.

Q (By Mr. McCaffrey) Now, I'm going to ask you some other things that he said that you said. Mr. Reynolds said that on January the 7th or thereabout that you came up to him and told him that you were the new Sheriff, that you were going to be the chief Steward. Did you ever say that to anybody, Mr. Reynolds or anybody else?

5 A (Witness PRUITT) No. We don't have a chief Steward. Every Steward is equal.

Q But did you ever say anything like that?

A No.

Q I'm going to be the head-knocker Steward or anything like that?

A No.

10 Q Did you tell him that you were going to be the new Sheriff or the new Police Officer?

A No.

Q Or anything like that?

A No. No, I did not, would not have.

15 Q Did you ever tell him or anybody else that you were going to take over? This was in January of '07. You were going to take over the investigation of his two Grievances.

A No.

Q Okay. Had you had anything to do -- from the time the Grievance was filed to the time the Grievances were dropped in January of 2008 did you have anything whatsoever to do with the handling of either one of those two Grievances?

20 A No, I've never had possession of the Grievances and never saw the Grievances.

Aside from Reynolds's testimony, there is no evidence that the Union ever created the position of chief steward. Certainly there is no evidence that Pruitt was ever appointed to such a position. Indeed, the steward structure remained the same as it had been before.

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Reynolds also contends that a few days later Pruitt spoke to him in the break room and told him that he had spoken to Chris Blessington about the second grievance and that Blessington had told him that since everyone had appeared for work on the night in question, he didn't believe he had to pay anyone else. As noted before, however, Pruitt denies any involvement whatsoever in either of the two grievances Reynolds had filed. Furthermore, it appears odd that Pruitt, rather than Deckard would be reporting back the results of a conversation with Blessington. Since Deckard had taken the grievance initially, in all likelihood the only steward who spoke to Reynolds about it would have been Deckard. Deckard had remained in his steward's role despite his initial thought of resigning. I believe Reynolds to be mistaken about Pruitt's involvement here.

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On January 25, another Local Level Hearing occurred. Once again the participants were assistant business agents Kitchens and St. Cyr for the Union and Hoffman for UPS. During the session, Reynolds's second grievance was discussed. During the conference, the Union withdrew it convinced that what had occurred was not in violation of the collective bargaining agreement.

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According to Reynolds, on January 23 he had a conversation with Kitchens at the union hall about the status of his grievances. He says Kitchens informed him that the first grievance had been dropped and that there was 'no grievance' with respect to the second. This conversation would appear to have occurred, not on January 23, but sometime after the January 25 Local Level Hearing. In any event, Reynolds asserts that when he protested, Kitchens agreed to investigate the matter further. Kitchens does not concur.

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Kitchens testified that Reynolds asked him on January 28 about the status of both grievances. He says he told Reynolds that both had been dropped as there had been no contract violations. In fact, both grievance forms contain Kitchens's initialed note "NCV" ("no

contract violation") at the bottom dated January 4 and January 25 respectively. He said that when he told Reynolds both grievances had been dropped, Reynolds responded he didn't have a problem with one of them, but he would file [unfair labor practice] charges over the other. When Reynolds then observed that he had not received any notification, Kitchens told him that the letters were being processed and would be sent out shortly. The Reynolds grievances were part of a large group of grievances and apparently about 70 letters needed to be prepared.

On January 31 Reynolds sent a certified letter to Respondent demanding to know the status of his two grievances. That letter appears to have crossed in the mail with the Union's letter to him that same day advising that the grievances had been heard and had been determined not to constitute a contract violation.

Meanwhile, on January 29 about 3 a.m., according to Reynolds, he was once again in the breakroom. While there he encountered Pruitt. Sitting with Pruitt at the same table was Thomas Hawkins who gave testimony regarding what he overheard ⁷ and another individual who may or may not have heard, Aaron Veasey. Veasey was not called to testify.

Saying he was aware that Pruitt had been involved in some 'intent to term[inate]' grievances, Reynolds opened his conversation with Pruitt by saying, "I hope you didn't get fucked like I did." Pruitt responded that all of them had been reduced to a final warning. Then, according to Reynolds,

[Pruitt] said -- as to my Grievances he said -- as to the one about him working in a cush job over me he said that his bid said other duties as assigned.

I responded to Mr. Pruitt, said 'no, that's bullshit. All bids say other duties as assigned.' I moved forward to him and he looked at me and said 'You lost your Grievances because the Company doesn't like you and you ran against them.'

The transition from the discussion about what success Pruitt had had in dealing with other grievances to Pruitt's comment about the lack of merit in Reynolds's grievance which sought to take Pruitt's job is ill-explained. By that date, Reynolds knew his grievance involving Pruitt's job had failed. Moreover, despite Reynolds's testimony that Pruitt had somehow become involved in that grievance as a steward, there is really no credible evidence that Pruitt ever had. Both St. Cyr and Kitchens testified that to their knowledge Pruitt played no role in the processing of either of Reynolds's grievances. Pruitt does acknowledge that at some point he learned that Reynolds had filed a grievance which if successful would have caused him to lose his job. ⁸ He also acknowledges that he does not "particularly like" Reynolds. Therefore, it is entirely possible that Pruitt could have raised the subject of the grievance with Reynolds.

Pruitt's seatmate in the breakroom, Hawkins, corroborates Reynolds. Hawkins's testimony:

A . . . I was in the break room at UPS. It was a few days later. I was talking with Wes about some things that were going on at work and Mr. Reynolds did walk into the break room and started talking to Wes and about these Grievances.

Q Did you recall what Mr. Reynolds said?

⁷ Hawkins had also been present during the January 28 conversation which occurred between Kitchens and Reynolds.

⁸ Q Were you aware, in fact, he tried to get your job?

A [Witness Pruitt] I was informed of that, yes, through a Grievance.

A Not exactly. I do know he asked him why the union dumped his Grievances.

Q And did Mr. Pruitt respond to that?

A He said that they had dumped them because he ran against them and the Company didn't like him.

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Each of the witnesses who had knowledge about the manner in which stewards perform their duties said that stewards were obligated to accept and to take at least some preliminary steps to address every grievance filed on the floor, usually by taking it up with a manager. This was the accepted procedure even if the steward believed that the grievance was without merit.

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Once that step failed or received a rejection, the steward was to transmit the grievance to the union office where it would be assigned to an assistant business agent. At that point, the steward's duties were over. Thus, it would appear that there is a well-ensconced culture that stewards accept every grievance which an employee insists upon filing. This is done without regard to personal likes or dislikes, without regard to race, gender or union membership and

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without regard to the steward's personal opinion of the validity of the grievance. In that context, Pruitt denied making the statement attributed to him by Reynolds as supported by Hawkins. Pruitt testified:

Q [By Mr. McCAFFREY] Mr. Pruitt, Mr. Reynolds is saying that you said a bunch of things and I want to ask you. He basically said that on January the 28th or 29th, somewhere along in there that you told him that his Grievances had been dropped because the Company didn't like him and because he ran against them.

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I want to ask you. I want you to turn to the Judge. Just look him in the eye and tell him. Did you ever have a conversation with Mr. Reynolds or anyone else in which statements like that were made?

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A [Witness PRUITT] At any time I never made a statement like that to Mr. Reynolds. That would be detrimental on my part. Never would I make a statement like that. First off is that would be damaging the Local Union and that's against every -- everything that a Steward is doing. We're supposed to support the Local Union. I wouldn't make a statement like that towards him.

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Standing by itself, I find Pruitt's response to be eminently reasonable and perfectly credible. It is consistent with the culture of the Employer's workplace insofar as stewards are concerned. Had Hawkins not corroborated Reynolds, I would have no difficulty crediting Pruitt over Reynolds. However, Hawkins did so. Furthermore, there is no evidence that Hawkins is in league with Reynolds. His presence that evening discussing matters with Pruitt was unrelated to anything that Reynolds had done previously, although it is true that Hawkins happened to be present at the union office the day before when Reynolds asked Kitchens about the status of his grievances. Hawkins therefore might have had an inkling of Reynolds's purpose.

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Nevertheless, the record does not permit an outright rejection of Reynolds's testimony about what Pruitt told him. Given the fact that Reynolds's small-sort grievance was designed to oust Pruitt from his job, it is not unreasonable that Pruitt would harbor some sort of animosity toward Reynolds. That animosity did not arise from the fact that Pruitt was the steward, but from the fact that he perceived Reynolds was trying to steal his job; furthermore from Pruitt's point of view Reynolds was abusing the grievance procedures. Pruitt no doubt believed, rightly, that his 3-year incumbency warranted no inquiry into the bid process at that late date. Given such concerns, it does appear likely that Pruitt made the remark attributed to him by Reynolds and Hawkins.

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Accepting as a fact that Pruitt told Reynolds that he had lost his grievances because he had run against the current union administration and because the Company didn't like him, we

must now make an inquiry concerning whether the Union is legally responsible for his statement. I have already, in passing, discussed the general manner in which stewards perform their duties. Additional facts relating to union responsibility requires a discussion of not only those already-adduced facts, but an inquiry into the Union's Bylaws and the collective bargaining contract, because both of those documents delineate the extent of a steward's authority.

B. The Union's By-Laws and Collective Bargaining Contract Provisions
Concerning the Agency Status of its Stewards

In 1977, Respondent was found to have committed an unfair labor practice in almost the same circumstances as those alleged here. The case is *Teamsters Local 886 (Lee Way Motor Freight)*, 229 NLRB 832 (1977), *enfd.* 589 F.2d 1116 (D.C. Cir. 1978). Judge Henry L. Jallette had recommended that the complaint be dismissed on the grounds that the steward who had made the threats in question was acting outside the scope of his authority. The Board, applying agency law, reversed and found a violation of §8(b)(1)(A) of the Act. Among other things, the Board reviewed Respondent's Bylaws and the applicable collective bargaining contract where the authority of stewards was described. The Board found that there were no real limitations on a steward's authority, and applied ordinary principles of agency, including the familiar implied and apparent authority concepts.

The Union's general counsel then was George McCaffrey. McCaffrey served as its general counsel from 1967 to 2002. Indeed, it is Mr. McCaffrey who represents Respondent here. He called himself as a witness and gave testimony concerning the modifications made to the Bylaws as a result of the decision in the *Lee Way* case. The purpose of the changes, he said, were to clearly specify that stewards were not union agents and to ensure that the Union would not be held liable for unauthorized statements uttered by its stewards. In 1977, he said, the Union took steps to change its Bylaws to more clearly demonstrate the limited authority stewards actually have. As of the date of the instant alleged unfair labor practice, January 2008, the amended Bylaws had been in effect for over 30 years. Indeed, it appears that Reynolds has been a member of the Union for 23 of those years, six as steward (one for Consolidated Freightways and five for UPS).

Section 13 of the Bylaws describes the authority and duties of business agents and stewards. Subparagraph B focuses on stewards. Under that section the steward can either be elected or appointed. He has responsibility for the union membership of the people with whom he works as determined by the collective bargaining contract, but is not authorized to collect dues or handle funds. He is to post on the bulletin board notices and information received by him from the Local. More specifically, the paragraph goes on to say "job stewards have no authority to take strike action or any other action interrupting the employer's business, except as official action authorized by the Local Union. A steward may take action to represent an aggrieved member by presenting the member's grievance to the Employer's designated representative. If this does not result in an answer that is satisfactory to the member, the member may request for the representation by his business agent or the President. A steward shall have his dues paid as compensation for performing the duties outlined herein. *Any other action of a steward by oral or written communication shall not be authorized by this Local Union nor shall this Local Union be liable for any such written or oral communications. . . .*" (Italics supplied.)

Similarly, the collective bargaining contract between Respondent and UPS also delineates a steward's authority. Article 4, entitled "Stewards" is slightly different but still to the same general tenor. In pertinent part it reads:

The Employer recognizes the right of the Local Union to designate Job Stewards and alternates from the Employer's seniority list. The authority of Job Stewards and alternates so designated by the Local Union shall be limited to, and shall not exceed, the following duties and activities:

- 5 (a) The investigation and presentation of grievances with the Employer or the designated company representative in accordance with the provisions of the collective bargaining agreement:
- (b) The collection of dues when authorized by appropriate Local Union action; and
- 10 (c) The transmission of such messages and information, which shall originate with, and are authorized by the Local Union or its officers, provided such messages and information:
- (1) *have been reduced to writing; or*
- (2) *if not reduced to writing, are of a routine nature and do not involve work stoppages, slowdowns, refusal to handled goods, or any other interference with the Employer's business. . . . (Italics supplied.)*
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The upshot of these two sources is that union stewards are obligated to carry out representational functions relating to grievances, but their authority is very limited. If they cannot resolve an issue on the floor, they must turn the matter over to the business agents. Clearly they have no authority to make oral or written communications on behalf of the Union; furthermore, they may not carry messages for the Union unless it has originated or been authorized by the union's officers and are also in writing. The only exception is that routine matters may be transmitted so long as they do not involve interference with the employer's business.

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Initially, Reynolds asserted that he was familiar with Respondent's Bylaws. Yet, he also said that he was unfamiliar with that portion of the Bylaws dealing with the powers and duties of stewards. He even went so far as to say that he had never seen a copy of the Bylaws. He claimed ignorance regarding the language imposing limitations on the authority of job stewards. He was more familiar with the language found in Article 4 of the collective bargaining contract. Curiously, that is the language which imposes the strongest limitation. There, a steward may not speak for the Union and may not even transmit messages unless they are in writing or are of a routine nature.

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I find that Reynolds's testimony concerning his knowledge of the duties and powers of a union steward to be either disingenuous or the product of true indifference toward an institution which he has sought to help govern. I find the latter to be unlikely. Based on McCaffrey's testimony, it is quite clear that stewards are regularly trained by the Union hierarchy and that mandatory classes are given regularly to bring stewards up to speed; not only does the Union encourage its stewards to attend, but it pays them for their time in doing so. Given his high interest and his reasonably lengthy steward experience and the mandatory nature of the training, I am confident the Charging Party has attended those classes and read the Bylaws.

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Reynolds does agree that based on the Bylaws, stewards are not officers of the Union. With that amount of understanding, his claim of ignorance concerning those provisions of the Bylaws describing the steward's duties and authority seems insincere. I find, therefore, despite his protestations to the contrary, that he knows exactly what limitations the Bylaws and the collective bargaining agreement impose on stewards.

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III. Legal Analysis

Having found, as the General Counsel has alleged, that Pruitt made the statement attributed to him by Reynolds, and corroborated by Hawkins, the next question is whether it had a reasonable tendency to restrain or coerce the employee to whom the remark was directed.

First, I am of the view that the remark was not truly perceived by Reynolds as something the Union actually did. In fact, because Reynolds well knew that Pruitt had been the target of Reynolds's small sort grievance, he must have known that Pruitt knew what Reynolds had been attempting to do. Any minimal understanding of human nature would lead one to understand that the acknowledged victim of such a move would harbor some resentment toward the individual responsible. That would be true whether the target of the grievance was a rank-and-file employee or a union steward. Furthermore, there is no evidence whatsoever that Pruitt participated in Reynolds's grievances at any stage or in any way. Plus, Reynolds was fully aware that the steward on the floor did not normally participate in that upper-level of the decision-making process. He had never done so when he was a steward and he knew Pruitt would not have done so, either.

Second, I find that Pruitt, when he made the statement, was speaking only for himself, not the Union and that Reynolds knew it. It was certainly not something of a routine nature which a steward might say. Pruitt was responding to what he perceived as, probably correctly, Reynolds's unbrotherly (in a union sense) behavior. At the same time, Reynolds was going through a bitter calculus of his own. He was still resentful over losing his stewardship and losing his bid for election to union office. Pruitt, conveniently, was a symbol of both – part of the Loewenkamp group and a steward. And, just the day before, he had learned from Kitchens that his grievances had been found to be without merit, prompting him to protest that he would file charges. The next day, when the equally-provoked Pruitt made his remark, it gave Reynolds grounds to retaliate. He realized he could spank the Union with Pruitt's words. To do that, however, he had to characterize Pruitt as a union agent, so that the Union would become vicariously liable for what Pruitt had said.⁹

The simple way to do that was to claim that stewards are agents of the Union for whom they provide service, but he needed to conceal what he actually knew about their authority to make himself more appealing as an innocent victim. Reynolds therefore claimed ignorance of any union rules concerning whether stewards are agents whose acts may be imputed to the Union.

But, it will be recalled, there is more to Reynolds's claim. At this point, it is appropriate to recall Reynolds's testimony that Pruitt had declared himself to be in a special status -- that of "chief steward." As before, I find this assertion to be part of Reynolds's carefully thought-out calculus. To make his story more credible, he had to suggest that Pruitt was not just a regular steward whose duties were circumscribed by both the Bylaws and the collective bargaining contract. He had to inflate Pruitt's authority. He accomplished that by claiming, falsely, that Pruitt had told him that he was going to be the chief steward who had so much power he could relieve stewards of their duty. But, this was a job which had never existed before, was not

⁹ Although in the abstract this sounds improbable for someone of Reynolds's background, he should not be underestimated. I note that he is reasonably steeped in Local 886 lore. As a trained steward he undoubtedly knew of the 1977 case against the Union where a steward was found to be an agent for statements he made and the Union liable therefor. It was an easy script to replicate.

created, and does not exist now except as part of Reynolds's plan to get even. He also pointed out (for he had lost the benefit) that stewards receive an emolument for their services in the form of credit for union dues. That fact made it appear as if the stewards have special status, one that approaches being an employee of the Local. More likely, it is only an inducement to encourage members to perform this time-consuming task.

In reality, Reynolds was under no illusions that Pruitt was speaking for the Union. He knew Pruitt was speaking only for himself. It is true that Pruitt pretended to have inside information concerning why Reynolds's grievances had been denied. And it is no doubt true that Pruitt wanted to harshly chastise Reynolds. But that does not help the General Counsel's case. To paraphrase §§ 2.03 and 3.03 of the RESTATEMENT OF LAW (THIRD) — AGENCY (2006), describing the concept of apparent authority and the creation of apparent authority, one must show a manifestation by the principal, here Respondent, that the putative agent has the authority to act on the principal's behalf and the third party (Reynolds) reasonably believes the actor (putative agent, here Pruitt) is authorized and the third party's belief is traceable to the manifestation. Reuschlein and Gregory on AGENCY AND PARTNERSHIP (1978), §97, p. 163, say the same thing, slightly differently: Where a third party has actual knowledge that the agent is not authorized, the principal will not be liable * * * If the third party is aware of the principal's specific directions to his agent (here, the Bylaw rules and the collective bargaining contract's limitations), he cannot recover.

Therefore, the mere fact that Pruitt utilized his status to make his remark sting the harder is not evidence that he was speaking on behalf of the Union. In a way, this is nothing more than an application of the old black letter rule in law that one cannot prove agency out of the mouth of the putative agent.¹⁰

As I have found, Reynolds already knew the truth. Kitchens had informed him of the reasons his grievances were found to be without merit. Kitchens was a source of accurate information. He was a business agent; he participated in the local area hearing; and it was he, together with St. Cyr, who decided that the Employer's responses to the grievance were valid. Reynolds knew, or should have known, that Kitchens could be relied upon for accuracy. But he was mad at Kitchens and he wanted Kitchens (and the new union officers) to feel his anger, too. Whatever Pruitt had said, Reynolds knew it came from an individual who had no knowledge whatsoever about the reasons for the Union's decision; he also knew Pruitt had no actual authority to speak. Finally, Reynolds did not in any way believe that the Union had given any sort of manifestation that Pruitt was authorized to speak for the Union; certainly there was none for him to rely on.

Moreover, Reynolds knew Pruitt had said nothing which would actually have an impact on his exercise of the rights guaranteed him by §7 of the Act. I find that it is not reasonable, in these unusual circumstances, to conclude that Pruitt's statements somehow interfered with and restrained Reynolds in the exercise of his §7 right to file grievances.

Accordingly, the contention that the Union is responsible under a vicarious liability theory of Pruitt's agency does not hold water. On the most basic level, the Union never authorized Pruitt to make such a statement to Reynolds. It had no idea that he would do so. In that regard, it is unlikely that anyone, aside from persons connected to Reynolds, would perceive that Reynolds's grievance would provoke Pruitt in the manner that it did. In addition, no one could

¹⁰ See, for example, Judge Thomas A. Ricci's statement in *Gilberton Coal Co.*, 291 NLRB 344, 357 (1988) and his similar statement in *Corry Contract, Inc.*, 289 NLRB 396, 403 (1988).

reasonably anticipate that Reynolds would take advantage of that in order to deliver his own blow which combined elements of vengeful animosity aimed in several directions. First, Reynolds was unhappy about the loss of his campaign slate, costing him an opportunity to be a union trustee. Second, this was followed by the Union, through Kitchens, finding no merit in either of his grievances, one of which was his effort to obtain Pruitt's job. Third, he was unhappy with Pruitt generally, because Pruitt held the job that Reynolds believed he should hold and because Pruitt was part of the winning group and was a steward having the winners' support. All of these factors conflated themselves into a scheme whereby he could regain some measure of self-worth. If he couldn't have Pruitt's job, at least he could slap Pruitt and Union simultaneously with one accusation.

As Pruitt was acting only for himself and since Reynolds knew it, the General Counsel's implied/apparent authority argument relating to Pruitt's purported agency status is not viable. Reynolds was not misled about Pruitt's apparent authority by virtue of his stewardship. Instead, he took advantage and manipulated the facts to make it appear he had no knowledge of Pruitt's lack of authority.

I find that the evidence supplied by Reynolds in support of the General Counsel's case is made of whole cloth. I shall recommend that the complaint be dismissed.

Based upon the foregoing findings of fact, legal analysis, and the record as a whole I hereby make the following

Conclusions of Law

1. United Parcel Service is an employer engaged in commerce and in an industry affecting commerce within the meaning of §2(2), (6) and (7) of the Act.
2. Respondent is a labor organization within the meaning of §2(5) of the Act.
3. The General Counsel has failed to prove that the statement Pruitt made to the Charging Party had the reasonable tendency to restrain or coerce him in the exercise of his rights guaranteed by §7 of the Act and therefore the statement cannot constitute a violation of §8(b)(1)(A) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended ¹¹

ORDER

The complaint is dismissed.

James M. Kennedy
Administrative Law Judge

Dated, Washington, D.C. December 18, 2008

¹¹ If no exceptions are filed as provided by §102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in §102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.