

**Pittsburgh Metro Area Postal Workers Union a/w
American Postal Workers Union, AFL-CIO
(United States Postal Service) and Vicki Austin,
Case 6-CB-6862(P)**

24 April 1987

DECISION AND ORDER

BY MEMBERS JOHANSEN, BABSON, AND
STEPHENS

On 23 September 1986 Administrative Law Judge Robert T. Wallace issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent filed exceptions, a supporting brief, and a brief in reply to the General Counsel's exceptions.¹

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,² and conclusions and to adopt the recommended Order as modified.

ORDER

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

1. Substitute the following for paragraph 1(b).

"(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."

¹ On 2 January 1987 the Respondent filed a motion to dismiss the General Counsel's exceptions on the basis of untimeliness and mootness. On 20 January 1987 the Board granted the Respondent's motion to withdraw that portion of its motion to dismiss that relates to untimeliness. The General Counsel filed an opposition to the Respondent's motion on 27 January 1987. The Board, having duly considered the matter, denies the Respondent's motion to dismiss the General Counsel's exceptions.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's finding that the Respondent did not violate Sec. 8(b)(1)(A) and (2) of the Act by refusing to endorse personal convenience requests submitted by employee Austin, we necessarily also find that there is no violation with respect to the Respondent's refusal to endorse similar requests submitted by employees Taylor and Wurm.

We note that the judge twice inadvertently referred to Wurm as Warren and incorrectly cited *Steelworkers Local 1397 (U.S. Steel Corp)*, 240 NLRB 848 (1979), as *United Steelworkers of America, Local 397*.

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

APPENDIX

**NOTICE TO 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 attempt to punish anyone for not conforming with the Union's policy on noncooperation with USPS-sponsored drives for contribution to causes such as Combined Federal Campaign, the Blood Drive, and the Savings Bond Drive, and for filing charges against the Union with this Board.

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.

**PITTSBURGH METRO AREA POSTAL
WORKERS UNION A/W AMERICAN
POSTAL WORKERS UNION, AFL-CIO**

Thomas R. Davies, Esq., for the General Counsel.
Anton G. Hajjar, Esq. (O'Connell, Schwartz & Anderson),
of Washington, D.C., for the Respondent.

DECISION

ROBERT T. WALLACE, Administrative Law Judge. On a charge filed by Vicki Austin, an individual, on 19 July 1985, a complaint was issued on 30 August 1985. Hearing was held on 14 January 1986.

The complaint,¹ as amended both prior to and at the hearing, alleges that the Pittsburgh Metro Area Postal Workers Union a/w American Postal Workers Union, AFL-CIO (an admitted labor organization within the meaning of Sec. 2(5) of the National Labor Relations Act) violated Section 8(b)(1)(A) and (b)(2) of the Act by failing fairly to represent and attempting to cause the United States Postal Service (USPS) unlawfully to discriminate against Austin and two other employees (Tina Taylor and Chuck Warren) at the Bulk Mail Center (BMC) in Warrendale, PA.

Based on the entire record, including by observation of the witnesses and after due consideration of briefs filed by the General Counsel and the Union, I make the following findings, conclusions, and recommended order.

Jurisdiction is established by Section 1209 of the Postal Reorganization Act, 39 USC 101 et seq. (1970).

¹ This proceeding had been consolidated for hearing with a complaint against the United States Postal Service in Case 6-CA-18524(P). In the latter case, I granted the above-named Union's request to withdraw its charges, and the complaint therein was severed and subsequently dismissed.

For many years prior to April 1985,² the Union and USPS jointly sponsored a number of charitable and community-oriented activities at the BMC including solicitation of contributions for the Blood Bank, Savings Bond Drive, and for the Federal Government's counterpart of the United Way which is called the Combined Federal Campaign (CFC). As to the latter, USPS typically allowed training of solicitors and solicitation to occur on BMC premises during working hours. For its part the Union, among other things, assisted in distributing promotional literature and pledge cards, nominated volunteer rank and file employees to serve as solicitors, and endorsed their written requests for temporary changes in work schedules to permit attendance at training sessions and solicitation at propitious times. Union endorsement enabled USPS to approve the requests without having to pay time and one-half for work performed "out of schedule."³ This is so because of an exception⁴ in the applicable collective-bargaining agreement releasing USPS from its obligation to pay premium rates when variances are temporary and granted to accommodate written "personal convenience" requests of employees. Such requests, however, must bear the endorsement of a union representative before being presented for supervisory approval.

About 1 April, however, newly appointed management at the BMC began to implement a program perceived by the Union as impinging on long-established local practices and seniority rules in areas such as leave, overtime, and holiday scheduling;⁵ and at a general meeting held on 20 April the membership of the Union unanimously approved a resolution opposing the "take-back" effort and adopting a policy of noncooperation with management in regard to the Blood Bank, Savings Bond Drive, CFC, and similar activities. The resolution also instructed union officers to provide and promote union-led counterpart programs; and this was done.

The dispute continued through 31 October. During that period an unprecedented number of seniority based grievances (over 2000) were filed. Management sharply limited the amount of on-duty time which stewards could spend investigating and processing grievances. The approval ratio of union endorsed employee personal convenience requests for changes in schedules to permit attendance at events such as family reunions, sporting meets, picnics, and union meetings went from about 9 out of 10 to about 1 out of 10.

On 6 June, Austin—a clerk and union member with relatively little (6 years) seniority—presented two personal convenience requests to Joseph Miller, the Union's

chief grievance officer at the BMC. In one she sought Saturday off in lieu of Wednesday during workweek ending on 5 July in order to serve as a coordinator of the management sponsored Blood Drive. In the other she asked for the same change but during the following week so that she could attend a meeting of safety captains.⁶ She avers that her goal was to aid worthwhile programs and at the same time also obtain a day off on weekends.

Both requests were promptly endorsed by Miller and approved by management. He states that requests to attend safety meetings were and continue to be routinely endorsed by the Union because cooperation in matters of plant safety benefits labor as well as management and is provided for in the collective-bargaining agreement.⁷ Concerning the request to aid in the Blood Drive he explains that he signed because at the time he was unclear as to whether the Union's policy of noncooperation applied to endorsement of schedule changes sought for that purpose.

On 10 July Austin presented two more requests to Miller. Together the requests, if endorsed by the Union and subsequently approved by management, would have given her weekends off in place of her normal layoff days (Tuesday and Wednesday) during a 4-week period extending from 9 August through 6 September. Her purpose, as stated on the request form, was to receive training and to serve as a canvasser for the management-sponsored CFC.

This time Miller sought instructions from the president of the Union before taking any action on the requests. The latter told him that the policy did indeed apply to requests of the type submitted by Austin. Miller so advised Austin and declined to endorse her requests. His failure to do so constitutes the violation of a duty of fair representation alleged in the complaint.

I find no violation.

In exercising its right under the bargaining agreement not to waive (by endorsement) premium pay for out-of-schedule work that bargaining unit members wish to perform for "personal convenience," the Union's duty of fair representation requires that it not act arbitrarily, or in a discriminatory manner, or with bad faith.⁸

Austin's request to participate in the management-sponsored CFC ran counter to the Union's policy of noncooperation in drives of that type. That policy, unlike the situation in a case involving postal workers in St. Louis, Missouri,⁹ was not an ad hoc creation of a

² Unless otherwise indicated all dates hereinafter cited are in 1985.

³ Each permanent position at the BMC consists of a job description together with a schedule of working times and days off (layoff days) applicable thereto. Positions are awarded on the basis of bids with seniority being the determinative factor. Temporary details to same-level jobs also are awarded on the basis of seniority. Positions entailing weekends off are preferred and so are held by employees with the most seniority.

⁴ The exception derives from an arbitrator's interpretation (the so-called Ganser Award, issued in 1975—G.C. Exh. 14) now reflected in sec. 233.23 of a time and attendance manual published by USPS (G.C. Exh. 3) which is made part of the agreement (G.C. Exh. 2) by sec. 19 thereof.

⁵ The complaint does not allege, nor does the Union contend here, that management breached its duty to bargain in making the changes

⁶ Safety captains' meetings are held only on weekdays; and as to the Blood Drive and other campaigns for voluntary contributions, Austin explains that because of differing mailflow and manning situations weekends vs. weekdays, the latter are more favorable for solicitations. In her words: "It made the job easier and took less man-hours [on weekdays]."

⁷ On 11 July Austin sought and received Miller's endorsement on another request to attend a safety meeting by substituting Saturday for Wednesday as her day off, this time during the workweek ending on 9 August.

⁸ *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); *Miranda Fuel Co.*, 140 NLRB 181 (1962).

⁹ *Postal Service*, 240 NLRB 1198 (1979), enf'd in relevant part 618 F.2d 1249 (8th Cir. 1980).

single union official. Rather, the policy was duly and unanimously adopted at a general meeting of union members; and despite unfortunate potential adverse affect on worthwhile charitable endeavors, the policy itself, as well as its application to the Union's contractual right to waive or not to waive premium pay,¹⁰ have a legitimate union-related object, i.e., to leverage management into abating or rescinding actions perceived as unfair to labor. Accordingly, I find no arbitrary action or abuse of discretion. Further, there is no evidence that in applying the policy the Union discriminated against Austin¹¹ or otherwise acted in bad faith.¹²

As noted, Austin filed her charge with the Board on 19 July. On 16 August she filled in for the general clerk in the superintendent's office. Temporary assignments to that job normally went to the most senior qualified clerk on a list of volunteers. But in this instance management did not follow that procedure by first offering the assignment to all employees on the list having greater seniority than Austin. One of those (Ethel Daily) asked Miller to investigate and grieve the matter on her behalf; and he did so. Arlyn Parrish, another clerk with more seniority than Austin, claims that Miller approached her on 16 August and asked whether she had been offered the job. After she responded: "Yes," he urged her to bump Austin because "we don't want her in there." She declined. Austin continued to work in the superintendent's office throughout the day. The grievance was settled in Daily's favor when, in a letter to Miller dated 10 October (R. Exh. 5), USPS acknowledged its mistake and agreed to adhere to the practice of choosing temporary clerks from the list on the basis of seniority.

Although I credit Parrish's testimony and find that Miller harbored a personal reason for not wanting Austin "in there" (i.e., he resented her dissident attitude and the fact that she had filed a charge against the Union), I see no reason to conclude that bias played any significant role in his initiation and conduct of the investigation and subsequent filing of the grievance. Miller was acting in his capacity as steward on request of a clerk (Daily) having more seniority than Austin and he had reason to believe that a grievable issue arose from failure to offer her the assignment to the superintendent's office. However, he did not confine his efforts solely to investigating the grievance. He went further and sought to persuade Parrish to change her mind and exercise her seniority to oust Austin from the temporary office job, and I find that in doing so he attempted unlawfully to retaliate against Austin for cooperating with management con-

trary to union policy¹³ and for filing charges under the Act.¹⁴

CONCLUSIONS OF LAW

1. Respondent Union violated Section 8(b)(1)(A) of the Act by attempting to punish a member of the bargaining unit for not conforming with union policy of noncooperation with USPS-sponsored campaigns for voluntary contributions and for filing charges against the Union with the Board.

2. It is not shown to have violated the Act in any other respect.

THE REMEDY

Austin incurred no financial detriment as a result of the unlawful conduct of the Union found above. Accordingly, an appropriate remedy here is a cease-and-desist order as well as a requirement for notice posting. There is no need for a special "visitatorial" clause for discovery purposes as requested in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommendation¹⁵

ORDER

The Respondent, Pittsburgh Metro Area Postal Workers Union-a/w American Postal Workers Union, AFL-CIO, Pittsburgh, Pennsylvania, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Attempting to retaliate against employees for not conforming with union policy of noncooperation in USPS-sponsored drives for contributions to causes such as the Combined Federal Campaign, the Blood Drive, and the Savings Bond Drive, and for filing charges against the Union under the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act.

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

(a) Post at its headquarters and at the USPS Pittsburgh Bulk Mail Center in Warrendale, Pennsylvania, copies of the attached notice marked "Appendix."¹⁶ 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

¹⁰ The General Counsel contends that the Union erred in not announcing that the policy of noncooperation extended to endorsements of personal convenience requests. I find no fault. The policy clearly contemplated application to actions which involve exercise of discretionary power by the Union.

¹¹ Indeed, the Union is shown to have declined to endorse subsequently submitted requests for schedule changes to permit Taylor to obtain CFC training, and Warren to participate in CPR classes held under management auspices.

¹² Compare *American Postal Workers*, 250 NLRB 761 (1980), in which endorsement of a requested schedule change to permit an employee to attend Naval Reserve meetings was found to have been unlawfully conditioned on his joining the Union

¹³ See *Steelworkers Local 397*, 240 NLRB 848, 849 (1979); *Operating Engineers Local 139 (AGC of Wisconsin)*, 273 NLRB 992 (1984).

¹⁴ See *Oil Workers Local 2-947 (Cotter Corp.)*, 270 NLRB 1311 (1984); *Teamsters Local 79 (Carl Subler Trucking)*, 269 NLRB 1132 (1984).

¹⁵ 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.

¹⁶ 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."

immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

IT IS FURTHER ORDERED that the complaint be dismissed insofar as it alleges violations of the Act not found herein.