

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**NATIONAL POSTAL MAIL HANDLERS UNION
LOCAL 306 (U.S. POSTAL SERVICE)**

and

ANITA HATCHER, An Individual

**Case Nos. 13-CB-19292-P
13-CB-19414-P
13-CB-19471-P**

and

KENNY REED, An Individual

Helen Gutierrez, Esq., Counsel for the General Counsel.

Barry Bennett, Esq., Dowd, Bloch & Bennett, Counsel for the Respondent.

Empress Queen Akefe Muzari:El, for Charging Party Reed.

Kenny Reed, for Charging Party Hatcher.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me in Chicago, Illinois on October 12, 2010. The Consolidated Amended Complaint herein, which issued on September 13, 2010, was based upon unfair labor practice charges, as well as an amended charge, that were filed by Anita Hatcher and Kenny Reed on October 9, 2009¹, March 15, 2010, April 12, 2010, and June 11, 2010. The Complaint alleges, and National Postal Mail Handlers Union Local 306, herein called the Respondent or the Union, admits that the Respondent has been the exclusive collective bargaining representative of all full-time and regular part-time mail handlers within the Respondent's jurisdiction employed by the U.S. Postal Service, herein called the Employer, but excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act. The Respondent further admits that the collective bargaining agreement covering the unit contains a grievance and arbitration procedure and that Charging Parties Hatcher and Reed, as well as DeAnne Kindle, have been employed in the unit and have been members of the Union, and that in 2007, 2008 and 2009, Hatcher, Reed and Kindle filed grievances against the Employer, that they requested that the Union provide them with copies of their grievances and the documents and/or attachments related to the grievances, but that the Union failed and refused to provide them with these requested documents, in violation of Section 8(b)(1)(A) of the Act. The Union denies each of these latter allegations.

I. Jurisdiction

The Employer provides postal services throughout the United States, including its facility in Palatine, Illinois, the only facility involved herein, and the Board has jurisdiction over the Employer by virtue of Section 1209 of the Postal Reform Act of 1970. The Respondent admits,

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2009.

and I find that the Employer is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. Labor Organization Status

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The Respondent admits, and I find, that it has been a labor organization within the meaning of Section 2(5) of the Act.

III. The Facts

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Jefferson Peppers is the president of the Respondent and Yulande Robinson is the president of the Palatine branch; Manuella Clay and Sandra Toney are stewards at the Palatine branch location, although the Complaint does not allege Toney to be an agent of the Union. Kindle testified that she filed a grievance against the Employer in about March 2010. She went to the Union office at the facility, told Toney about the situation that she was complaining about, Toney gave her a form, and she filled out the grievance and returned it to Toney. About two weeks later she returned to the Union room at the facility and saw Toney and Clay and told them that she needed a copy of the attachment to the grievance. She testified that Toney said that she didn't know what grievance she was referring to, and Kindle said that she was referring to the grievance that she filed with her about two weeks earlier. Toney said that she should check with Union steward Joslyn Cole², who might know about it, but when she spoke to her, Cole told Kindle that she wasn't aware of the grievance. Kindle testified that she never received the attachments to the grievance that she requested, and never repeated her requests for the documents. Toney testified that when employees file grievances with the Union together with witness statements or other documents attached to the grievance, they are entitled to copies of these documents simply by asking for them. However, Ms. Kindle never asked her for documents related to any of her grievances. Clay also testified that employees who file grievances through the Union are entitled to copies of their statements or decisions in the matter by asking her for them; other documents must be requested from Peppers at Union headquarters. Clay further testified that Kindle never asked her for copies of documents from her grievances. Robinson similarly testified that if a member wanted witness statements that they provided in a grievance, or a denial decision by the Employer, he/she would be entitled to that information, and if the member simply wanted to look at the file, the member would be entitled to do so. If they wanted other items, they would have to request it from Peppers at headquarters. She also testified that Kindle never asked her for copies of grievance documents or for an opportunity to look at her grievance documents. Peppers testified that he has never spoken to Kindle about any request to obtain grievance related documents.

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Reed filed a grievance with the Union in about July 2008 in the presence of Hatcher and some other employees. He filed it in the Union office and gave it to Toney, Clay and Robinson. When he did not hear anything from the Union about the status of the grievance he began asking for the result of the grievance, but received no response from the Union. He then asked for attachments from the grievance, but the Union never gave him those documents. In the Fall of 2009 Robinson told he and Hatcher to come to the Union office at the facility and she told Clay to show them the documents that they were requesting, and Clay showed them a document dated November 17, 2008, signed by Virdell Head, a labor relations specialist for the Employer, entitled Step 2 Decision, stating that the grievance was denied. He and Hatcher asked for a copy of that Decision, but Robinson refused, saying that they would have to get it from Head, and Reed called Head and asked if she could give him a copy of the Decision. Reed

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² Cole is not named in the Complaint and did not testify at the hearing.

gave two affidavits to the Board about this matter, one in late 2009, and the other in about September 2010; the first affidavit does not refer to Ms. Head, and the affidavits do not say that the Union told them to contact Head; they say that he and Hatcher decided to do so on their own. The affidavit also states that after they asked for the Decision, Clay said that they would
 5 have to call Peppers, Reed called him, but he was not in the office, and she then gave them the Decision to read.³ Toney, Clay and Robinson each testified that Reed has never asked them for any documents related to any grievances. Peppers testified that he has never spoken to Reed about any request to obtain documents.

10 Hatcher ran for the branch president against Robinson in 2004 and 2007, losing the election on both occasions. In addition, she was running against Robinson, again, for branch president in October 2010. She was a Union steward for one year beginning in September 2000. She testified that she filed grievances in May 2007 with Robinson, Clay and Toney, but
 15 she was never informed of the result of these grievances and never received anything from the Union regarding the grievances. She never even received copies of the grievances themselves, even though she requested copies. She testified further that, in July 2008, she went to the Union office with Reed to file grievances. The testimony regarding the July 2008 grievances is difficult to follow. She testified that she was never given a copy of the grievance, but when
 20 asked whether she ever learned the outcome of the grievance, she testified: “Yes, I believe I did.” She testified that she learned of the outcome in the Union office at the facility, but it is unclear if this occurred a month later or a year later. She also testified that she and Reed went to the Union office in the Fall of 2009 where they met with Robinson, Toney and Clay. Hatcher asked where were her grievances and they responded: “what grievances?” After Hatcher identified the grievances, Toney said that they didn’t have anything. Hatcher said that she
 25 wanted to get a copy, and Clay said that Step 1 was denied. Hatcher asked to get a copy of the Step 2, and she said that they could read it, and they gave her Head’s November 17, 2008 Step 2 Decision discussed above. She asked for a copy of this Decision, but they said that she would have to get it from Head. A few days later, she and Reed again went to the Union office and, again, asked for the Decision. Robinson and Clay told her that she would have to talk to
 30 Peppers, and tried to call him, but they told Hatcher that he was not in the office. Hatcher tried to call Peppers several times and left messages for him with his secretary, but he never returned her calls.⁴ The only document that she received from the Union pursuant to these requests was Head’s November 17, 2008 Step 2 Decision.

35 More troubling, is Hatcher’s testimony regarding her cross craft grievance. Counsel for the Union showed her a letter dated April 6, 2010 that Peppers wrote to her. The subject of the letter is stated as “Cross Craft” and the letter states:

40 This is to advise that the following action has been taken in regards to the above cited grievance.

The Postal Service has rendered an unfavorable decision at Step 3 and the Union is

45 ³ Although Reed’s affidavit also states that he never campaigned for or against anyone running for Union office, he has campaigned for Hatcher when she ran for branch office president.

50 ⁴ On cross examination, Hatcher again testified that she never spoke to Peppers. However, in her affidavit to the Board, she states: “...I called headquarters for Local 306 and talked to Jefferson Peppers the president of the local’s secretary and he ultimately gave the okay to release it.” Eventually, she testified that “for that one particular grievance,” she spoke to Pepper’s secretary, and received Head’s Decision.

reviewing the grievance for possible arbitration. Although all cases are reviewed for possible arbitration, additional documentation and/or consultation must be made to thoroughly review all aspects of this instant grievance.

5 If you have any questions, please contact this office.

She was shown the letter and was asked:

Q. Is this a letter you received from the Union?

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A. No, sir.

Q. You never received that letter?

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A. No.

She was then shown her affidavit that states that the Employer denied the grievance, but the Union sent her a letter stating that it was reviewing the grievance for possible arbitration. Upon her request, she was shown her affidavit and, again, was asked:

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Q. Now, with that in mind, I would like you to look again at Exhibit 1 and is that the letter you're referring to in that affidavit?

A. No.

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Q. Okay, what letter were you referring to? What type of letter were you referring to in your affidavit?

A. I would have to see my affidavit.

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Hatcher was then asked what other letter she could have received from the Union that referred to the arbitration, and she testified: "That could possibly be it."

Q. And I'm saying you first said that you never got any such letter.

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A. I remember. I remember now.

Q. You remember seeing his letter?

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A. Yes, yes.

Toney testified that in about early 2009 Hatcher asked her if there was any final determination in the scanning grievance that she filed and Toney told her that the Union did not have jurisdiction over scanning; clerks and mail handlers can both scan, but the Union was thinking of taking the issue to the national level for more clarity on the issue. Hatcher asked for a copy of the settlement and Toney gave it to Clay, the chief steward, who gave it to Hatcher. Toney testified that was the only occasion that Hatcher asked for any documents regarding her scanning grievance. Clay testified that on one occasion Hatcher called her while she was in the Union office and asked her for a copy of a denial of an outsourcing grievance that she had filed; Clay told her to come to the Union office and she would give her a copy, which she did. On another occasion, Hatcher and Reed came into the Union office and asked for a copy of a denial of a 2008 grievance involving the alleged outsourcing of mail handler's work, denying

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5 them overtime. Clay obtained the denial dated November 17, 2008, and gave it to Hatcher. She testified that she never refused to give Hatcher a grievance document that she requested. Sometime after these events, she received a telephone call from Hatcher saying that she needed a copy of the denial letter referred to above. Clay told her that she already gave her a copy of it and Hatcher said that she lost it, and Clay gave her another copy of the denial.

10 Robinson testified that in about 2007 Hatcher was discharged by the Employer and filed a grievance with the Union challenging the discharge. (The grievance was successful and she was returned to work.) Hatcher asked Robinson for a copy of the case file and Robinson told her that she would have to call the then Union President, Hardy Williams at the Union headquarters. While Hatcher was in the office, Robinson called Williams and told him of Hatcher's request and asked if she could give Hatcher the case file. Williams asked if Hatcher provided a statement and Robinson said that she had, and Williams said that she could give her a copy of the statement. Williams then asked if there was a decision on the grievance, and 15 Robinson said that there was, and Williams said that Hatcher could be given the decision, but that Hatcher would have to call him for any other documents from the file.

20 Peppers testified to the procedure employed by the Union when employees request grievance documents from the Union. The Union has approximately four thousand members and about one hundred stewards in the facilities that it covers. In a typical year, the Union has approximately one thousand grievances that reach Step 2, and each of those grievances generate from ten to thirty documents. Among the documents generated by these grievances are some that Peppers referred to as "sensitive." Examples of such documents or information are employees' medical records, social security numbers, addresses and telephone numbers, 25 statements by fellow employees or stewards with an unfavorable opinion of the grievant's work record or, on the other hand, something positive about the employee from a supervisor who wouldn't want the Employer to learn of what he/she said. Peppers testified that rather than leave it to the one hundred stewards to decide subjectively which documents can be released, the Union has maintained a rule that other than the grievance itself, statements provided by the grievant, or decisions regarding the grievance, all other information has to be requested from 30 him at the Union's headquarters in order for there to be some uniformity in providing documents to grievants and other members:

35 I got 100 and some odd stewards out there. You have some stewards who may...give stuff away that's sensitive. There are some stewards who may not want to give any information that I'd be willing to release. So, it's just a matter of...being consistent and being able to release what we think...they're entitled to...We try to train people and we try to give them enough knowledge to have some discretion and be able to look at things and make some common sense discussions [sic].

40 Peppers testified further that this policy is not in writing and has never been communicated to the Union membership. He testified that neither Kindle, Reed, nor Hatcher has spoken to him about releasing grievance documents to them.

45 IV. Analysis

50 The Consolidated Complaint alleges that since about November 2009, the Union failed and refused to provide Hatcher with copies of her grievances and other grievance related documents that she requested, since about September 2009, failed and refused to provide Reed with copies of his grievances and other grievance related documents that he requested, and since about April or May 2009, failed and refused to provide Kindle with documents or attachments related to grievances that she filed, in violation of Section 8(b)(1)(A) of the Act.

Although the Union’s policy that has Peppers “vetting” what appears to be sensitive information has never been communicated to the Union membership, that is not alleged herein to violate the Act, although it would certainly be preferable if the membership were aware of it.

5 In *Branch 529, National Association of Letter Carriers, AFL-CIO*, 319 NLRB 879 (1995), the Board found that the Respondent violated Section 8(b)(1)(A) of the Act by refusing to provide the charging party with copies of her grievance forms that she had requested. In making this finding, the Board (at p. 881) specifically found that (1) the requested grievance documents specifically pertained to her grievance; (2) her interest in obtaining these documents was self
10 evident; (3) her legitimate interest in obtaining copies of these documents was effectively and reasonably communicated to the union; (4) the union raised no substantial countervailing interest in refusing to give her the documents; and (5) the number of documents requested was extremely limited and would not have placed a heavy burden upon the union. In *National Association of Letter Carriers, AFL-CIO*, 328 NLRB 952 (1999), and *Local 1657, United Food & Commercial Workers, AFL-CIO*, 340 NLRB 329 (2003), the Board also found that the
15 respondent unions violated the Act by refusing to provide the employees with the requested grievance documents. What is present in the instant matter, but was lacking in the above cited cases, is credibility issues.

20 I found Hatcher and Reed to be lacking in credibility. It is not because Hatcher (with Reed’s assistance) may have had an “agenda” here of embarrassing the Union to assist her candidacy against Robinson for branch president. She has an absolute right to run for any union office that she wishes without compromising her right to obtain relevant information from the Union. Rather, I find that, at times, her testimony, as well as that of Reed, was not believable
25 and conflicted with statements that she, as well as Reed, made in affidavits that they gave to the Board. On the other hand, I found Toney, Clay, Robinson and Peppers to be credible witnesses whose testimony was straightforward and believable. They testified that Reed never requested any documents from them, and whatever documents Hatcher requested, she was given, and I credit that testimony. Because I do not credit the testimony of Reed and Hatcher when it
30 conflicts with the Respondent’s witnesses, I find it unnecessary to determine whether their requests comply with the factors enumerated in *Local 529, supra*. I therefore recommend that the allegations regarding Hatcher and Reed be dismissed.

35 The situation is different with Kindle who, like Toney, Clay, Robinson and Peppers, appeared to be testifying in a direct and truthful manner. She testified that about two weeks after filing her grievance with Toney, she asked Toney and Clay for a copy of the grievance, and Toney said that she didn’t know what grievance she was referring to, but that Kindle should speak to steward Cole, who might know about it. When she asked Cole about it, she told Kindle that she was not aware of the grievance that she was referring to. Kindle never obtained the
40 documents that she requested, and never repeated her request to Toney, Clay or Robinson, who each testified that Kindle never requested grievance documents from them. I recommend that the Complaint allegation regarding Kindle be dismissed, not because she was lacking in credibility, but because I find that the evidence fails to establish that they were aware of the documents that she was requesting. I therefore recommend that the allegation regarding Kindle
45 also be dismissed.

Conclusions of Law

50 1. The Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Respondent has been a labor organization within the meaning of Section 2(5) of

the Act.

3. The Respondent did not violate Section 8(b)(1)(A) of the Act as alleged in the Consolidated Amended Complaint.

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On these findings of fact, conclusions of law and based upon the entire record, I hereby issue the following recommended⁵

ORDER

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It is recommended that the Complaint be dismissed in its entirety.

Dated, Washington, D.C., December 3, 2010.

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Joel P. Biblowitz
Administrative Law Judge

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⁵ 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.

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