

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

NATIONAL ASSOCIATION
OF LETTER CARRIERS,
BRANCH 44, AFL-CIO
(United States Postal Service)

and

Case 1-CB-11247

MARK M. TURCOTTE, an Individual

Joseph F. Griffin, Esq.,
for the General Counsel.
Peter Herman, Esq.,
(*Cohen, Weiss and Simon*)
New York, New York,
for the Respondent.

DECISION

Statement of the Case

PAUL BOGAS, Administrative Law Judge. This case was tried in Boston, Massachusetts, on February 16, 2011. Mark M. Turcotte, an individual, filed the original charge on August 5, 2010, and an amended charge on November 15, 2010. The Regional Director of Region 1 of the National Labor Relations Board (the NLRB or the Board) issued the Complaint and Notice of Hearing on November 30, 2010. The Complaint alleges that the National Association of Letter Carriers, Branch 44, AFL-CIO, (the Union or the Respondent) breached its duty of fair representation and violated Sections 8(b)(1)(A) and 8(b)(2) of the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq. (the Act), when an agent of the Union complained to management about Turcotte's conduct at work. The Respondent filed a timely Answer in which it denied committing any violation of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following findings of fact and conclusions of law.

Findings of Fact

I. Jurisdiction

The United States Postal Service (the Postal Service or the Employer) provides postal services throughout the United States and operates a post office facility in Laconia, New Hampshire. The Respondent admits, and I find, that the Board has jurisdiction over this Employer pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209,

and that the Respondent is a labor organization within the meaning of Section 2(5) of the National Labor Relations Act.

II. Alleged Unfair Labor Practices

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A. Facts

10 The Respondent, an affiliate of the National Association of Letter Carriers, is the collective bargaining representative for city letter carriers at 21 Postal Service facilities, including a post office in Laconia, New Hampshire. Among the employees that the Respondent represents is Turcotte, the charging party in this case. Turcotte is a part-time flexible city letter carrier who has worked at the Laconia facility for 4½ years. Prior to his employment at the Laconia facility, Turcotte worked at another post office for approximately 10 years.

15 City letter carriers spend a portion of their work day at the post office organizing the mail before leaving to make deliveries to customers. During their time at the post office, the letter carriers sequence the mail at work stations known as “cases.” The cases are open in the back but have partitions in the front and on the two sides. The partitions are approximately six feet high and include metal-backed shelving. Numerous cases are situated in close proximity to one another on the facility’s work floor and each case abuts at least one other case. The sound of what one letter carrier does or says in his or her case can often be heard by the letter carriers working in nearby cases.

25 On July 22, 2010, Ellen Fortgang, a letter carrier who serves as the union steward at the Laconia facility, met with Pierre Tremblay, the facility’s officer-in-charge, to complain that Joy St. Pierre, the supervisor at the facility, had not been responding appropriately to threatening and disruptive conduct by Turcotte. The credible testimony showed that, from about January 2010 onwards, Turcotte engaged in angry and/or loud behavior on a recurring basis at the Laconia facility. Turcotte’s behavior included mumbling to himself, glaring at co-workers, yelling, and engaging in loud arguments with co-workers and supervisors. He would also drop metal trays and throw mail against the metal shelving – creating noise that witnesses described as sounding like gunshots. Although other letter carriers at the Laconia facility also spoke loudly or angrily, and would, from time-to-time, drop a tray or throw mail against a shelf, the evidence shows that Turcotte’s behavior was particularly extreme. Lura Riggs, who has been a letter carrier at the Laconia facility for 25 years, testified that Turcotte’s yelling was “very loud and very threatening” and that no other carrier’s behavior was as severe. She stated that she had never heard another employee engage in conduct comparable to Turcotte’s workplace tantrums. Riggs also stated that while some other carriers would occasionally become angry and bang mail into their cases, they would only do this for a few seconds or a minute at a time, whereas Turcotte would “keep this up for 10 or 15 minutes.” Riggs testified that she felt personally threatened by Turcotte’s behavior. Indeed, in late July 2010, Riggs met with Tremblay to tell him that “a lot of people were afraid of Mr. Turcotte and what his actions might be.” Transcript at Page(s) (Tr.) 159-60. In addition to complaining to Tremblay, Riggs discussed Turcotte’s behavior with Fortgang, the union steward. I found Riggs a very credible witness regarding the severity of Turcotte’s angry and loud behavior. Riggs was not shown to have any personal bias against Turcotte or in favor of the Respondent, and the fact that she went so far as to discuss her concern over Turcotte’s conduct with Tremblay and Fortgang lends credence to her testimony that Turcotte’s behavior was unusually disturbing.

50 Another letter carrier, Kevin Murphy, gave testimony that was consistent with that of Riggs. Murphy has been at the Laconia facility for 26 years and stated that because of his seniority other letter carriers discussed their workplace problems with him. He testified that

several letter carriers had complained to him about Turcotte's behavior, and that one had said he was worried that Turcotte might kill someone. According to Tremblay, who testified as a witness for the General Counsel, Murphy is generally a "pretty quiet" letter carrier who "tends to his job." I give Murphy's testimony somewhat less weight than Riggs' since, as is discussed
 5 below, Murphy and Turcotte once had a heated argument at the Laconia facility. Nevertheless, Murphy's testimony lends credence to the other evidence that Turcotte's behavior was unusually problematic.

Fortgang, the union steward at the Laconia facility, also testified that Turcotte's
 10 workplace behavior was worse than that of other letter carriers. She stated that he engaged in loud or abusive conduct "fairly regularly" and yelled and threw trays more than other letter carriers. Fortgang stated that about half of the letter carriers in the bargaining unit had complained to her that they felt intimidated or frightened by Turcotte's behavior. She identified by name a number of the individuals who she believed made complaints of one type or another
 15 involving Turcotte, and that testimony was, in the main, uncontradicted. I recognize that Fortgang, as the union official whose actions are at the center of the complaint allegations, has an interest in the outcome of this matter. On the other hand, her testimony was quite detailed and internally consistent. Based on her demeanor and testimony, I find that Fortgang was generally credible and that her account provides support for finding that Turcotte's loud and
 20 hostile behavior was a serious problem at the Laconia facility.

The General Counsel presented credible testimony that Turcotte was not the only letter carrier who yelled, got into arguments, or made loud noises. However, the General Counsel failed to rebut the evidence showing that Turcotte's conduct was more extreme than that of
 25 other letter carriers. For example, the General Counsel called Ryan Gaudette to testify, inter alia, that Turcotte was neither the only letter carrier who raised his voice to supervisors nor the only one about whom other letter carriers complained. However, Gaudette did not contradict the testimony that Turcotte's behavior was more extreme and persistent than that of others. Moreover, when asked whether Turcotte intimidated other letter carriers, even Gaudette said
 30 that while he could not be "100 percent sure" he believed that "people are . . . intimidated by [Turcotte]." For his part, Turcotte testified that other letter carriers raised their voices with each other "all the time" and banged trays or mail "every day." However, even Turcotte did not contradict the testimony that his own conduct was more extreme than that of those other carriers. When asked whether his relationships with co-workers were "cordial," Turcotte
 35 conceded that the answer was "no" with respect to half of his co-workers.¹

Since the beginning of 2010, Fortgang received complaints about Turcotte from other letter carriers. Some of those complaints concerned Turcotte's hostile behavior and some

40 ¹ I found Turcotte a less than fully credible witness regarding disputed matters based on his demeanor, testimony, and the record as a whole. I note that his testimony was impeached in significant respects. For example, Turcotte testified that he had never received a letter of warning or other discipline. Tr. 61, 66, 68. However, the Respondent introduced a letter of
 45 warning that the Employer had issued to Turcotte on December 15, 2010, only 2 months before the time of his testimony. Respondent's Exhibit Number (R Exh.) 1. That letter charged that Turcotte had engaged in unacceptable conduct by leaving his work station and responding inappropriately when his supervisor confronted him about this. The Respondent filed a grievance on Turcotte's behalf to contest this discipline. In addition, Turcotte gave testimony that was implausible and self-serving on its face. For example, Turcotte testified that
 50 supervisors and management had called him to the office regarding complaints that he was "working too fast, working too hard" and had directed him to work slower. Tr. 63 lines 9-18.

concerned the perception that Turcotte was inconveniencing other carriers by failing to appear for work on a consistent schedule. Initially, Fortgang attempted to discuss these issues with Turcotte, but he rebuffed her. Then Fortgang discussed the issues with Buddy Witts, the Laconia postmaster, and with Tremblay while Tremblay was filling-in for Witts from July 2010 to November 2010. Fortgang complained that St. Pierre, the supervisor, was not exercising her supervisory authority appropriately in response to Turcotte's conduct. Tremblay found that there was a basis for concern about the quality of the supervision St. Pierre was providing. He repeatedly talked to St. Pierre about improving her supervision of employees. Indeed, the record indicates that when Turcotte argued with co-workers or became inappropriately loud, St. Pierre would typically respond by leaving the room or otherwise avoiding the situation.

The Events of July 21 and 22

On July 21, 2010, Turcotte had an argument in the workplace with another letter carrier, Diane Delucca. Fortgang was out of the office on July 21, but when she returned on July 22 several letter carriers complained to her about incidents involving Turcotte the prior day. Gaudette told her about the argument between Turcotte and Delucca and during the same conversation stated that he was stressed out at work due to an assignment his supervisor had given him. In the past Gaudette had complained about the special schedule flexibility that he believed Turcotte was permitted.

On July 22, Fortgang went to talk to Tremblay about the complaints she had received. Tremblay was new to the facility at this time, having arrived earlier that month. Fortgang told Tremblay that he "had to do something" about St. Pierre because there was a lot of yelling going on, employees were unhappy, and St. Pierre "won't say anything, so you need to do something." Fortgang discussed the antagonism between Turcotte and other employees as a problem that St. Pierre was not addressing satisfactorily. Fortgang told Tremblay that Turcotte was bothering Gaudette, and opined that "it's got to be pretty bad out there if even Ryan Gaudette is complaining because Ryan doesn't complain." During this conversation, and her other conversations with management, Fortgang never asked that Turcotte be terminated or otherwise disciplined. In addition, Fortgang credibly testified that she was not trying to instigate discipline against Turcotte, but rather was attempting to persuade the Respondent's officials to make an effort to address the stressful work environment.

After Fortgang spoke to him, Tremblay interviewed Turcotte. Tremblay told Turcotte someone had complained that he was bothering Gaudette. Turcotte denied that he had bothered Gaudette and said that he had been helping Gaudette. Tremblay also spoke with Gaudette. Gaudette said that Turcotte had not been bothering him and that he had "no problem" with Turcotte. Gaudette stated that if he ever had a problem with another employee he would bring the matter to Tremblay's attention. Tremblay did not discipline Turcotte in any way as a result of the concerns voiced by Fortgang on July 22. However, Tremblay did advise Turcotte that, in the future, he should obtain supervisory approval before leaving his work area to talk to another carrier.

Subsequently, on July 26, Tremblay gave Fortgang an "official discussion" for, in his view, falsely reporting that Turcotte had been bothering Gaudette. An "official discussion" is an expression of disapproval, but it is not a form of discipline, carries no consequences, and cannot be grieved under the contract covering the bargaining unit at the Laconia facility.

The Events of July 24 and 26

On July 24, 2010 – a Saturday – Turcotte had arguments with Fortgang and Murphy. Fortgang was near the case at which Turcotte was working and Turcotte told her that "the post

office pays [the post master] to screw us and I pay the Union for you to screw me.” When Fortgang asked how she “screwed” him, Turcotte responded “every time you walk in the office trying to get me in trouble, you’re screwing me,” and “you just done it yesterday.” He told Fortgang that he did not want her representing him and complained that she spent too much time assisting non-union employees.

Murphy, who was working in a case adjacent to the one where Turcotte was stationed, interrupted and said “that’s enough.” Turcotte responded, “[I]t’s not enough.” Murphy said that when “somebody asks you to stop, they don’t want to hear what you’re saying, you stop.” Turcotte complained that Fortgang was trying to get him in trouble, and Murphy said, “I don’t care, that is enough.” Turcotte responded, “Yeah, I know, the truth hurts, and I know some people cannot handle the truth.” Murphy answered, “I can handle you, boy.” Turcotte said “how can you handle me,” and made reference to medical restrictions that Murphy was working under at that time. Murphy said “that’s it, boy, you are done.” Around this time Gaudette came over, put his hand on Turcotte’s shoulder and said, “That’s enough.” Turcotte said “[Y]ou are right . . . I am done,” and started out of the building. On his way out, Turcotte told Murphy that “if you can handle anything, maybe you can handle doing part [of my assignment] today.” I credit Murphy’s testimony that, during this argument, he and Turcotte both came to the rear of their cases in order to face one another, but that neither entered the other’s case.

While the arguments recounted immediately above were taking place, the supervisor, St. Pierre, was nearby, but she was on the telephone, and resisted getting involved. At least three employees alerted St. Pierre that her help was needed, but St. Pierre responded by putting her finger in her free ear and continuing her telephone conversation. Eventually Fortgang yelled at St. Pierre to end the phone call. St. Pierre did so and was walking towards Turcotte when he left his work station.

After Turcotte abandoned his work station, other carriers fell into a disagreement about how to complete Turcotte’s unfinished assignments for the day. St. Pierre retreated to her office. At Fortgang’s urging, St. Pierre came out of her office briefly, but did not resolve the employees’ dispute. After Turcotte exited the building, he called St. Pierre by phone and said that he had left the facility to avoid the stressful situation there, but would return to work as soon as Fortgang and Murphy had gone out to deliver their routes.

Tremblay was not present on July 24. The following Monday, July 26, he came to work and was approached by Dan Cormier, a clerk who witnessed the incident on July 24. Cormier told Tremblay that there had been a “big fight, argument,” between Turcotte and Murphy. Cormier stated that St. Pierre had been on the phone trying to avoid the problem and “didn’t do a thing.” Subsequently, Fortgang approached Tremblay about the July 24 incident. Tremblay criticized Fortgang for complaining about St. Pierre again, and also gave Fortgang the previously referenced “official discussion” based on her report regarding the prior, July 21, incident. Fortgang told Tremblay that she was going to file a grievance against St. Pierre for failing to meet her responsibility to maintain workplace decorum. Later, Murphy initiated a discussion with Tremblay about the July 24 incident. Tremblay told Murphy that management “blew it” with respect to the episode.

Tremblay gave both Murphy and Turcotte “official discussions” about their conduct on July 24. He also told St. Pierre that she had “handled” the July 24 incident “all wrong.”

*Policies and Statements Regarding
Violence and Inappropriate Behavior*

5 As found above, Fortgang did not ask that the Employer discharge or otherwise discipline Turcotte. Moreover, in light of Fortgang's demeanor and testimony, and the record as a whole, I credit her statement that she was not trying to instigate disciplinary action against Turcotte when she spoke with Tremblay on July 22 and 26. Nevertheless, the General Counsel argues that in light of certain Postal Service policies, Fortgang's comments to Tremblay amounted to an attempt to cause the Employer to discharge or otherwise discipline Turcotte.

10 The record shows that, in response to episodes of violence involving postal service workers, a statement on violence and behavior was issued jointly by the Postal Service, unions representing postal service employees, and groups of post masters and postal supervisors. That statement, entitled the "Joint Statement on Violence and Behavior in the Workplace," is dated February 14, 1992, and states that "there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone." Respondent's Exhibit Number (R Exh. 4, Page 3). The document further states that "[t]hose who do not treat others with dignity and respect will not be rewarded or promoted," and "[t]hose whose unacceptable behavior continues will be removed from their positions." Id. A contract administration manual issued jointly by the Employer and the National Association of Letter Carriers in April 2009 provides that the Joint Statement on Violence and Behavior is "a contractually enforceable agreement . . . and that the union has access to the grievance procedure to resolve disputes arising under it." R Exh. 2 at Article 15.1. That manual also states that it is management's responsibility to provide safe working conditions and the union's responsibility to help management to meet that responsibility. Id. at Article 14.1.

30 In addition to these joint issuances, a "Zero Tolerance Policy," dated November 2009, was issued by the Postal Service's Northern New England District. That policy states that "there is no excuse for and will be no tolerance of violence or any threats of violence . . . harassment, intimidation, threats, or bullying." The policy also provides that:

35 [E]ach and every act or threat of violence from this day forward, regardless of the persons involved and/or circumstances, will elicit a prompt investigation of facts and an appropriate response to those findings. While certain behaviors can lead to discipline or removal, our emphasis is on providing a safe and healthful workplace environment.

40 General Counsel's Exhibit Number (GC Exh. 2). The Postal Service included similar language in the Labor Relations Manual that it issued in November 2010. See R Exh. 3, Section 665.24.

B. Complaint Allegations

45 The Complaint alleges that on or about July 22 the Respondent, by its agent Fortgang, attempted, for arbitrary reasons, to cause the Employer to discriminate against Turcotte and thereby breached the fiduciary duty it owes to Turcotte in violation of Section 8(b)(2) of the Act. The Complaint further alleges that Fortgang's conduct coerced Turcotte in the exercise of his Section 7 rights in violation of Section 8(b)(1)(A).

III. Discussion

According to the General Counsel, the Respondent breached its duty of fair representation in violation of Section 8(b)(1)(A) and (b)(2) ² when Fortgang discussed Turcotte's workplace conduct with Tremblay on July 22, 2010.³ In *Vaca v. Sipes*, the U.S. Supreme Court stated that "[a] breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." 386 U.S. 171, 190 (1967). In this case, the General Counsel is not contending that the Respondent's conduct toward Turcotte was discriminatory or in bad faith, but only that it was arbitrary. Tr. 10; Complaint at Paragraph 8.⁴ To establish a violation under the arbitrary prong of the *Vaca* test, the General Counsel must show that the Union's behavior was "so far outside 'a wide range of reasonableness' . . . as to be irrational." *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 67 (1991); see also *Roadway Express, Inc.*, 355 NLRB No. 23, slip op. at 6 fn. 22 (2010) (same).

The General Counsel has fallen far short of showing that Fortgang's conduct in discussing Turcotte with Tremblay was "so far outside a wide range of reasonableness" as to constitute a violation. Indeed, on the record here, Fortgang's conduct was a manifestly reasonable and appropriate attempt to remedy the hostile work environment to which members of the bargaining unit were being subjected. Approximately half of the letter carriers represented by the Respondent at the Laconia facility had complained to Fortgang about Turcotte's behavior. The evidence showed that during the period leading up to Fortgang's action, Turcotte had, on a recurring basis, engaged in unusually hostile, loud, and disruptive conduct on the work floor. Even the General Counsel's witnesses indicated that other employees felt intimidated by Turcotte and that Turcotte's relationships with half of his co-workers were not cordial. I note, moreover, that the General Counsel did not attempt to identify any other unit members who engaged in recurring conduct comparable to Turcotte's without generating a similar response from the Respondent. Indeed, the evidence showed that no other employees engaged in hostile and loud behavior that was as extreme as Turcotte's.

In addition, the measured nature of Fortgang's response places that response well within the "wide range of reasonableness." Fortgang did not ask Tremblay to discharge Turcotte, or discipline him in any way. Rather the thrust of Fortgang's discussion with Tremblay was that St. Pierre was failing to exercise her supervisory authority effectively and that something had to be

² Section 8(b)(1)(A) provides in relevant part: "It shall be an unfair labor practice for a labor organization or its agents to restrain or coerce employees in the exercise of the rights guaranteed in section 7." Section 8(b)(2) provides in relevant part: "It shall be an unfair labor practice for a labor organization or its agents to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) [of this section]."

³ Although the Complaint, which references Fortgang's actions "on or about" July 22, is arguably broad enough to cover Fortgang's July 26 conversation with Tremblay, the General Counsel is only alleging a violation based on the July 22 conversation. Brief of the General Counsel at Page 2 fn.2.

⁴ Moreover, I find that the record does not raise an issue as to whether Respondent, acting through Fortgang, had a discriminatory or bad faith motivation for the conduct towards Turcotte. The evidence does not show that Turcotte was a rival of Fortgang in matters of union politics, or was engaged in meaningful dissident activities. In its brief, the General Counsel stipulates that it is not asserting that the Union's allegedly unlawful conduct was a response to any protected activity by Turcotte. Brief of General Counsel at Page 11 fn.9.

done to create a more hospitable work environment for the unit employees. Even this step was taken only after Turcotte rebuffed Fortgang's effort to talk to him directly about his behavior.

5 I reject the General Counsel's contention that, in light of the Respondent's Zero
Tolerance policy, Fortgang was implicitly asking the Postal Service to discipline Turcotte when
she raised his behavior with Tremblay. The Zero Tolerance Policy provides that not all improper
behavior will "lead to discipline or removal," and that the "emphasis is on providing a safe and
healthful workplace environment" through "an appropriate response." Similarly, the Joint
10 Statement on Violence and Behavior in the Workplace does not provide that all employees who
engage in unacceptable behavior will be disciplined, but rather that "those whose unacceptable
behavior *continues* will be removed from their positions." (Emphasis Added). Under these
policies, the Employer could have addressed Fortgang's concerns with an "appropriate
response" that did not involve discipline.

15 In reaching the conclusion that Fortgang's conduct was not arbitrary for purposes of the
Vaca v. Sipes test, I considered the fact that, on July 22, Fortgang inaccurately reported to
Tremblay that Gaudette had complained that Turcotte was disturbing him. However, this
misstatement does not render Fortgang's conduct in discussing the need for improved
supervision of Turcotte unreasonable, much less "so far outside a wide range of
20 reasonableness" as to constitute a violation. Based on my consideration of the record as a
whole, I consider Fortgang's misstatement to be relatively minor and in no way invidious.
Fortgang was not present at the facility on July 21 and when she met with Tremblay on July 22
she was basing her description of the events of July 21 on the complaints she had received
from several letter carriers. It is neither suspect nor particularly surprising that her account of
25 one of those complaints contained an inaccuracy. In addition, although on July 22 Gaudette
had not told Fortgang that Turcotte was bothering him, the evidence showed that Gaudette had
told Fortgang that he was "stressed out" and that Turcotte and Delucca had an argument the
previous day. Moreover, in the past Gaudette had complained that Turcotte was being allowed
to work an inconsistent schedule. The evidence shows that, for months, the Respondent had
30 reasonable concerns about the supervisory response to the antagonism between Turcotte and
others in the workplace. Numerous letter carriers complained about the situation, including
about conflict on July 21. Thus, Gaudette's statements to Fortgang on July 22 were only one of
many sources of information justifying Fortgang's actions. Given the substantial evidence of
ongoing problems involving the supervisory response to the antagonism between Turcotte and
35 others, Fortgang acted reasonably by approaching Tremblay to request better management of
the situation. That reasonableness is not negated by the fact that Fortgang inaccurately
described one the employee complaints she received.

40 The General Counsel also asserts that Fortgang's conduct must have been arbitrary
because she did not conduct an investigation before complaining to Tremblay about St. Pierre's
response to Turcotte's conduct. I disagree. Fortgang was not taking, or even recommending,
disciplinary action against Turcotte. Rather, she was communicating the employees' distress
over the stressful work environment and the inadequacy of St. Pierre's response. Responsibility
45 for investigating that situation rested with the Employer, who had the power to take action about
it, not with Fortgang. Even assuming that Fortgang had some responsibility to assess the
validity of the unit members' concerns before communicating those concerns to the Employer,
that responsibility was met here because Fortgang was herself a letter carrier who had
observed St. Pierre's and Turcotte's patterns of behavior firsthand, and also because she had
received mutually corroborative complaints about Turcotte from approximately half of all the
50 letter carriers at the Laconia facility. Lastly, Fortgang attempted to talk to Turcotte about his
conflicts with co-workers, but Turcotte rebuffed her. Thus even assuming that Fortgang had

some responsibility to offer Turcotte an opportunity to tell his side of the story before raising the matter with management, Fortgang had done so, and Turcotte had declined that offer.

5 Finally, even if I had found that Fortgang acted arbitrarily, the General Counsel would still have failed to prove a violation of Section 8(b)(2) because that section requires a showing that the Union "cause[d] or attempt[ed] to cause an employer to discriminate against an employee in violation of subsection (a)(3)" of the Act – i.e., "in regard to hire or tenure of employment or any term or conditions of employment." In this case, Fortgang did not request that the Postal Service take disciplinary action of any kind against Turcotte. The General
10 Counsel recognizes this deficiency, but argues that Section 8(b)(2) does not require a showing that the union made an *explicit* request that the employer discipline a unit member as long as the union made an "efficacious request," *Graphic Communications Local 1-M (Bang Printing)*, 337 NLRB 662, 663 (2002), quoting *San Jose Stereotypers (Dow Jones & Co.)*, 175 NLRB 1066 fn.3 (1969), or some other "inducing communication," *Ibid.*, citing *NLRB v. Jarka Corp. of Philadelphia*, 198 F.2d 618, 621 (3d Cir. 1952). See also *Avon Roofing & Sheet Metal Company*, 312 NLRB 499 (1993). In the instant case, however, Fortgang not only
15 made no explicit request that Turcotte be disciplined, but, as was discussed above, was not shown to have made any non-explicit communication designed to induce discipline. Rather her complaint was that St. Pierre had failed to exercise supervisory authority in a meaningful way to address the antagonism between Turcotte and his co-workers. There are any number of appropriate actions the Employer could have taken to try to remedy that situation without resorting to disciplinary action against Turcotte. At any rate, I credit Fortgang's testimony that it was not her intention to induce the Employer to discipline
20 Turcotte.
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For the reasons discussed above, I conclude that the General Counsel has failed to demonstrate that the Respondent violated Section 8(b)(1)(A) or Section 8(b)(2) when, on or about July 22, 2010, Fortgang discussed Turcotte with Tremblay. Therefore, the complaint in
30 this case should be dismissed.

Conclusions of Law

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

2. The Board has jurisdiction over the Employer (United States Postal Service) pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209.

40 3. The Respondent was not shown to have committed any of the violations alleged in the Complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended order.⁵
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50 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.

ORDER

The complaint is dismissed.

5 Dated, Washington, D.C. April 1, 2011

PAUL BOGAS
Administrative Law Judge

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