

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

CARAVAN KNIGHT FACILITIES MANAGEMENT, INC.

Respondent Employer

and

CASE 07-CA-081195

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO,
AND ITS LOCAL 1700**

Respondent Unions

and

CASE 07-CB-082391

ARETHA A. POWELL, an Individual

Charging Party

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S REPLY BRIEF TO
RESPONDENT EMPLOYER'S AND RESPONDENT UNIONS' ANSWERING BRIEFS
TO COUNSEL FOR THE ACTING GENERAL COUNSEL'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE DECISION**

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Counsel for the Acting General Counsel (CAGC), pursuant to Section 102.46 of the Board's Rules and Regulations, respectfully submits the following Reply Brief.

I. Procedural History

On April 3, 2013¹, Administrative Law Judge Michael A. Rosas issued his decision and dismissed the Consolidated Complaint in these matters in its entirety. On May 31, CAGC filed a number of exceptions to the ALJ's Decision. On June 14, Respondent Employer filed cross-exceptions and a brief in support. On June 27, CAGC filed an Answering Brief in Response to Respondent Employer's Cross-Exceptions. On July 15, Respondent Employer and Respondent Unions filed an Answering Brief in response to CAGC's exceptions. CAGC responds to Respondents' Answering briefs as follows:

II. Respondent Unions' Answering Brief.

(a) Respondent Union, on page 15 of its brief, FN 17, asserts that CAGC mischaracterizes the record testimony regarding complaints associated with assignment of overtime work, and whether those complaints were similar to Charging Party Powell's complaints about the posting of the overtime list. Powell testified that Respondent Local Union's steward Margaret Faircloth told her the overtime list was not posted because second and third shift employees were writing grievances due to lack of overtime and the first shift working all of the overtime. (Tr 278-279)² The ALJ credited this testimony stating "The weight of the

¹ All dates are 2013 unless noted otherwise.

² The available evidence indicates employees on first shift were receiving a lion's share of the overtime. Other employees were complaining. Employee Morris Johnson complained about Respondent Local Union chairman LeVaughn Davis working overtime on third shift (Tr 693, 721, GC 24); on one sign-up sheet overtime canvassing

credible evidence supports Faircloth's remarks that most overtime opportunities were going to first shift employees and that other employees were complaining. [Respondent Local Union chairman] Davis in particular worked most weekends". (ALJD P 4, L 25; P 5, L 1-2, FN `17 Tr 693, 721, 1019-1021; GC Ex 11, 24, 28; RE Ex 20) Likewise, the ALJ credited Powell's testimony that (Respondent Employer site manager Shoun) Walle stated lists were not posted because employees on first and second shift were complaining about not getting enough overtime. (ALJD P 5, L 25-26; P 6, L 1-2 FN 20.) In addition, employees Marquitta Harris, Morris Johnson, and others made complaints about overtime equalization, and/or the posting of the overtime lists. (Tr 693, 721, GC 24) What Respondent Union fails to acknowledge is that overtime equalization was an issue in the unit, whether it was the posting of overtime hours or the assignment of the overtime hours. Walle testified that in about mid-April he was contacted by Davis and was informed there were a number of employee complaints about the posting and maintenance of the overtime equalization list. Walle testified that he heard rumblings in the plant that employees Powell, Williams and Harris requested the posting. (Tr 111-112, 146-147, 200, 215)

The record evidence establishes that there were multiple employees who made complaints about overtime equalization in general, and the posting of the overtime equalization lists. Based on the record as a whole, the preponderance of all the relevant evidence clearly supports the ALJ's credibility resolution in this matter, and it should not be overturned.

Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951).

was limited to first shift employees only by the Respondent Employer (See RE 20 bolded language fourth line 1st Shift Only); and Davis worked overtime almost every week from January 1 through May 31, with three other first shift employees, including a stretch of Davis working 47 of 48 days from April 9 through May 26, (See Tr 1019-1021; GC 28 overtime worked almost every week by Davis: GC 11, 18 weekends of working in the body wash, a task specifically limited to weekend overtime hours.). Powell further credibly testified that employees Pringle and Witherspoon made complaints and filed grievances. (Tr 278-279)

(b) Respondent Union, on page 17 of its brief, FN 19, again asserts that CAGC mischaracterizes the record testimony regarding complaints Charging Party Powell made at the meeting on April 16. As the ALJ noted, Charging Party Powell expressed her displeasure with the Union's representation and wanted to leave the bargaining unit. (ALJD P 6, L 8-9) Powell complained to Respondent Union vice president Sean Dean about how her request to have the equalization list posted was handled by Respondent Union chairman Davis and steward Margaret Faircloth. Dean testified that Faircloth and Powell did not respect each other. Powell testified Davis refused to speak to her, and that both Faircloth and Davis treated her badly. (Tr 77-82, 95-96, 292-293, 387; 408-415, 505-506 RU 2) Powell again contacted the local after she was written up on May 10, informing the Respondent Union vice president Dean she felt she was being harassed because she was recently written up for moving around in the meeting, and another attendance issue. Powell reminded Dean how Davis treated her in the April 16 meeting and asked for Dean's help. Dean, nonetheless, sent Powell back to Davis. (Tr 304-307, 423-424, 449, 484-485, 529).

Charging Party Powell had additional representation issues as well. Powell testified she was not represented properly in grievance meetings and was subject to disparate treatment in the grievance process (Tr 398-399); was the recipient of an inadequate grievance investigation regarding her suspension and discharge grievance³; was represented in the grievance procedure by a steward who had written a statement adverse to her interests, and had not disclosed that to Powell; and had her shop chairman, who was hostile towards her as evidenced by their argument

³ The ALJ found Respondent Union chairman LeVaughn Davis entirely passive in his role as Powell's Union representative. (ALJD P 8, L 16-17, fn 38) Respondent Union claims this is a mischaracterization. (Respondent Union Brief, P 25, fn 25) CAGC respectfully submits that investigating grievances is one of the union representative's most important roles. Such investigation includes interviewing eye witnesses properly, and not allowing individuals who were not present when an incident occurred, to provide so called "eye witness" accounts of conversations and events they did not, in fact, witness.

on April 16, drop her grievance without any effort to investigate it properly. (Tr 334-335, 1002-1004, 1029-1031, 1081)

(c) Respondent Union in its brief argues that there was no evidence that Respondent Union steward Margaret Faircloth “mishandled, botched or sabotaged the grievance” (P 21), and “even accepting Faircloth not being present when the threat was made, Faircloth’s statement reflects Tanner’s statement and contradicts Powell’s statement”, thereby denying Charging Party Powell a defense to the alleged threat. (P 23) CAGC respectfully submits that Faircloth did sabotage the grievance. Faircloth, who was not present when the threat was made, gave a false corroborating statement supporting Tanner. Faircloth then represented Powell in the grievance procedure even though she was an adverse witness against Powell. Respondent Union argues that there is no record evidence of any hostility in these proceedings directed toward Powell, but how much more hostile can you get than filing a false statement against a co-worker and constituent unit employee, and then representing that unit co-worker as a union representative without her knowledge of the false testimony. Finally, Respondent Unions’ argument that Powell was not denied a defense because Faircloth’s (false) statement corroborates Tanner’s statement is ludicrous. Faircloth’s statement exerted undue influence in the decision making process. Respondent Employer site manager Walle relied on Faircloth’s statement claiming he had worked with her for years and had no reason to doubt her. (TR 162) Faircloth’s statement corroborated Tanner’s statement, and led to the discharge of Powell.⁴ Without Faircloth’s

⁴ Regarding hostility, it is interesting to note that Respondent Employer site manager Shoun Walle testified that he learned of all these other threats assertedly made by Powell by speaking to Tanner and Faircloth, and relied on their oral assertions without any documentation, statements or further investigation into these incidents. (Tr 162) There is no record evidence that Walle ever investigated these incidents, took statements regarding these additional incidents, or gave Powell an opportunity to reply to these additional allegations that he assertedly relied on in making his recommendation to discharge Powell. As noted by the ALJ, Respondent Employer’s Human Resource Director Ruth Ann Little had no knowledge of any other misconduct Powell committed at the time she made her discharge decision. (ALJD P 9, FN 42) If Walle truly relied on these other alleged incidents why would he not tell

statement the Employer had a one on one account of the events that arguably could have led to no discipline being issued at all.

(d) Respondent Union argues in its brief on page 27 that there was no record evidence that Respondent Union steward Margaret Faircloth sat “in silence as Powell begged for her job.” The ALJ found that neither Respondent Union chairman Davis nor Faircloth disputed Powell’s testimony that they were silent during the May 12 meeting with Respondent Employer site manager Shoun Walle. (ALJD P 9, L 8, FN 43) Nor is there any record evidence disputing Powell’s testimony that she was begging for her job in the May 12 meeting while *Faircloth and Davis stood mute*. (Tr 327-328, 398)

(e) Respondent Union argues in its brief on page 32 that Respondent Union steward Margaret Faircloth was acting as an employee when she gave her (false) statement. Faircloth, as noted by the ALJ, was not present when the threat was made. (ALJD P 8, fn 35) Accordingly, Faircloth could not give an employee eyewitness account of the alleged threat because she was not present. Faircloth was contacted by Tanner in her steward capacity to resolve a dispute between two employees. Faircloth was pulled into this situation because of her role as a steward.

III. Respondent Employer’s Answering Brief.

(a) Respondent Employer argues in its brief on page 6 that employee Shantell Thomas and Respondent Union alternate chairman Derrick Hamlett also worked in the body wash for the first time after April 1. There is no record evidence supporting this contention except GC 11. As noted by the ALJ, a number of credible witnesses testified that they had never worked in the body wash as indicated on GC 11. (ALJD P 4, L 9-10, fn 13) Neither Thomas nor

Little about them? In theory, they support his discharge recommendation. However, it’s apparent they were not relied upon by Little in her discharge decision because she never knew about them.

Hamlett testified in the proceedings so the Respondent Employer's assertion that GC 11 is accurate in this regard is not corroborated. This evidence should be weighted accordingly, and found unreliable. Further, as noted by the Respondent Employer, there is no record evidence any other employee was required to be retrained for these duties except Powell. If true, both Hamlett and Thomas must have previously worked in the body wash because they required no training or retraining.

(b) Respondent Employer asserts on pages 7, 8 and 24, of its brief that Chrysler production was running six days at the time Charging Party Powell was assigned to work the body wash. Respondent Employer is mistaken. Respondent Employer site manager Shoun Walle testified that "it was right about the time" Chrysler was running six days, not that Chrysler actually was running six days production. (Tr 142) Respondent Union local chairman Davis testified he could not recall if Chrysler was running six days production during this time period. Walle did not testify with certainty that production was running 6 days, and his generalizations were not corroborated by any other witness.

(c) Respondent Employer asserts on page 14 of its brief that Charging Party Powell was overheard calling an employee a "whore". The transcript citation does not support this assertion, and in any event this incident if true involves a collateral matter unrelated to these proceedings.

(d) Respondent Employer asserts in its brief on page 15 that given the evidence that Charging Party Powell wanted out of the union no inference can be made that Powell was a union sympathizer. Respondent Employer is mistaken. Respondent Employer fails to recognize that employees can participate in dissident union activity (such as complaining about the quality of their representation and the way their workplace complaints are being handled by their union

representatives), and protected concerted and union activity simultaneously (the actual filing of workplace grievances and complaints regarding terms and conditions of employment), and these are not mutually exclusive concepts. Actually it's quite logical. When a union fails to address its unit employees' workplace grievances and concerns, it fosters its members dissatisfaction with their union representation, and is a precursor to the unit employees' determination that they want to resign their union membership for lack of representation.

(e) Respondent Employer argues in its brief on page 21, that Charging Party Powell's work assignment change was not more burdensome, undesirable, or unpleasant. Respondent Employer refuses to recognize that Powell was required to complete her assigned 8 hour route in four hours, half the time she was allowed previously to complete the route since being assigned to the first shift, and then take on extra duties for the remaining four hours of her shift. Clearly under these circumstances her assignment was more burdensome, undesirable and unpleasant. Her 8-hour shift workload was doubled, and her pay was not.

(f) Respondent Employer argues in its brief on page 26 that Charging Party Powell was the only employee to leave a meeting after Richie's announcement to the whole group regarding employee conduct in meetings and Respondent Union chairman Davis's testimony regarding this matter stands un rebutted. Davis' testimony in this matter was in response to leading questions from Respondent Employer's Counsel that were objected to by CAGC. It should further be noted that Davis initially testified that no other employee left any meeting after the alleged directive was given, and then changed his answer only after he was again led by Respondent Employer's counsel to the Respondents' preferred answer. (Tr 1040) Accordingly, this evidence should not be given any weight at all.

Respondent Employer also argues that no other employee was engaged in similar misconduct. Respondent Employer is again mistaken because as it admits, Hudson engaged in similar misconduct, walking away to the bulletin board during a meeting, and was never written up. This conduct, and the absence of discipline is not disputed. (Respondent Employer brief P 28). Hudson was not disciplined because this type of conduct was common in the morning meeting, and no one, except Powell, was ever disciplined for such conduct.

Finally, Respondent Employer asserts on page 28 of its brief that Respondent Union chairman LeVaughn Davis was excused from the morning meetings as the union chairperson so his presence outside the cage area during the meetings is not evidence of disparate treatment. Davis again was led by Respondent Union's counsel to this conclusion through the use of leading questions that were objected to by CAGC. (Tr 1038-1039) Accordingly, this evidence should not be given any weight at all.

(g) Respondent Employer argues in its brief on page 36 that neither employee Morris Johnson nor Respondent Union chairman LeVaughn Davis indicated that a threat of physical harm had been made, and Johnson only indicated Davis was engaged in aggressive behavior toward him. The record evidence indicates otherwise. Respondent Employer's supervisor Vanessa Heimer reported that "He (Johnson) said that he wanted something to be done, because he felt he had been personally threatened. (GC 24, P 3, last paragraph, last sentence) Johnson further corroborated Heimer's report when he stated in his "Personal Note":

I, Morris Johnson truly believe Mr. Davis wanted to physically hurt me by his action; vulgar language, expression, invading my space and putting his hands in my face when I tried to avoid at the time of the matter. I even tried to calm things down.

(GC 24, P 14, first paragraph)

The record evidence clearly establishes that not only did Johnson feel threatened by Davis, but that Davis was engaged in aggressive and threatening behavior.⁵

IV. Conclusion

For the reasons advanced above, CAGC respectfully asks that Respondent Employer's and Respondent Union's arguments be denied in their entirety, and that the relief requested in CAGC's Consolidated Complaint, Brief, Exceptions, and Reply Briefs be granted in their entirety.

Dated at Detroit, Michigan this 29th day of July, 2013.

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⁵ CAGC concedes that Tanner did not testify that she did not feel threatened by Powell. (Respondent Employer brief p 45; Tr 1138-1140) CAGC notes that Tanner *acted* as if she did not feel threatened when in response to the alleged threat she stated she laughed and smiled. This supports CAGC's argument that if in fact a threat was made, Tanner did not consider it viable based upon her response. She laughed, smiled and continued to work throughout the day. Clearly, Tanner was not shaken at all by the alleged threat. Further, it should be noted that CAGC has not conceded that a threat was made by Powell. CAGC only concedes that the ALJ made a credibility resolution determining a threat was made. Nevertheless, the Respondents' actions post threat clearly establish hostility toward Powell, and violations of the Act, as proven by CAGC's brief, exceptions, reply briefs, and other record evidence.

CERTIFICATE OF SERVICE

I certify that on the 29th day of July, 2013, I electronically served copies of Counsel for the Acting General Counsel's Reply Brief to Respondent Employer's and Respondent Unions' Answering Briefs to Counsel for the Acting General Counsel's Exceptions to the Administrative Law Judge Decision to the following parties of record:

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