

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

**UNITED STATES POSTAL SERVICE**

**and**

**Cases 28-CA-068385  
28-CA-075708  
28-CA-077161  
28-CA-077164  
28-CA-078376**

**NATIONAL ASSOCIATION OF LETTER  
CARRIERS, SUNSHINE BRANCH 504,  
affiliated with NATIONAL ASSOCIATION  
OF LETTER CARRIERS, AFL-CIO**

**TO: Gary W. Shinnars, Executive Secretary  
Office of the Executive Secretary**

**GENERAL COUNSEL'S REPLY BRIEF**

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**GENERAL COUNSEL’S REPLY BRIEF**

Pursuant to Section 102.46(h) of the Board’s Rules and Regulations, Counsel for the General Counsel (General Counsel) files this Reply Brief to Respondent’s Answering Brief to General Counsel’s Cross Exceptions to the Decision (ALJD) of Administrative Law Judge John J. McCarrick (ALJ) in the captioned cases.

**I. INTRODUCTION**

In its Answering Brief, Respondent makes assertions about certain arguments contained in the General Counsel’s Brief-in-Support of Cross Exceptions.<sup>1</sup> Contrary to Respondent’s assertions, the facts and arguments set forth in the General Counsel’s Brief are supported by the record.

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<sup>1</sup> AB \_\_\_ refers to Respondent’s Answering Brief to General Counsel’s Cross Exceptions followed by the page number. ALJD\_\_ refers to JD-(SF)-45-13 issued by the ALJ on September 11, 2013, followed by the page number.

## II. ARGUMENT

### A. Respondent mischaracterizes the adverse action suffered by employee John Trujillo in being told his approved leave was revoked

In its Answering Brief to the General Counsel's Brief-in-Support of Cross Exceptions, Respondent takes issue with the General Counsel's argument that employee John Trujillo suffered adverse action when he was told his leave was revoked and the General Counsel arguing that such conduct by Respondent was in violation of Section 8(a)(3) and (4) of the Act. (AB at 3-4) Respondent characterizes the action associated with this revoked leave as being a "relatively minor inconveniences" or "to insignificant" to constitute an adverse employment action based on the fact that Trujillo eventually took the leave he had requested. (AB at 3) Respondent's counsel mischaracterizes the adverse nature of Respondent's conduct.

Specifically, Respondent's argument discounts the fact that there was a time period from when Trujillo was told his leave was revoked to a time later that same day when he was told he could take the leave. What Respondent fails to acknowledge is that as far as Trujillo was concerned, his previously approved leave was no longer granted, as a result, there was a time period for which he suffered an unfavorable work situation regarding his terms and conditions of employment, namely leave that previously available leave was no longer being made available for him. Such an action is not "insubstantial" or "insignificant" to an employee who has earned this bargained-for benefit and/or who has expectations that the approved leave would be honored by Respondent for which non-work plans can be made. Respondent's action has even more impact here as it was an action not previously taken with Trujillo or any other employees. (Tr. 101-102) Respondent's downplay of the adverse nature of the action directed toward Trujillo is without merit.

Respondent also makes the argument in its Answering Brief that any adverse action associated with Trujillo was lessened in effect by the fact that he had an already approved PS Form leave form in hand when he was confronted by Manager Lacy. (AB at 4) Respondent fails to recognize that Trujillo was told by Manager Lacy, a high-level manager who reported directly to the Postmaster, that his leave was revoked. The leave form that had been previously approved by his immediate supervisor had little value after being told by a person second in command in Respondent's managerial hierarchy that it was no longer approved.

More importantly, the rather clear directive coming from such a high level manager resulted in an adverse impact, albeit short term, to the terms and conditions of Trujillo's employment. This action has no less effect than an employee who was subject to other adverse employment decisions such as discharges or suspensions of short duration. The adverse action associated with those actions would be short lived but clearly felt by the recipient of the discipline. Notwithstanding Respondent's contentions to the contrary, such adverse consequences were experienced by Trujillo, as an employee, as a result of Respondent's unlawful actions. Accordingly, Respondent's argument that the General Counsel failed to establish there was any adverse action taken against Trujillo in violation of Section 8(a)(3) and (4) of the Act has no merit.

**Respondent's accusation that General Counsel is improperly attempting to convert a threat of leave from an 8(a)(1) violation to an 8(a)(3) is misguided**

Respondent contends in its Answering Brief that the General Counsel is improperly attempting to convert a threat of revocation of leave from a Section 8(a)(1) violation to a Section 8(a)(3) violation. (AB at 4) Respondent's argument is misguided. The evidence shows that Trujillo' was informed that his previously approved leave was revoked and no longer in effect. (Tr. 111) Respondent later reconsidered its actions and re-approved the leave but not

until after Trujillo experienced the coercive nature of the adverse action during the interim period. (Tr. 101-102) Respondent did not just threaten to revoke Trujillo's leave but in fact did so for a noted time period on March 1, 2012. Granted, the manager's comments, as alluded to by the ALJ in his decision, can be construed as being a unlawful threat in violation of Section 8(a)(1) of the Act, there is nothing in Board case law that precludes the same conduct from establishing another violation of the Act or, more importantly, constituting an element of that violation. (ALJD at 15) Accordingly, Respondent's contention is without merit.

### **III. CONCLUSION**

Respondent's Answering Brief to General Counsel's Cross Exceptions, as discussed above, lacks merit and is not supported by the record. It is respectfully requested that the Board grant the General Counsel's cross exceptions and otherwise affirm the decision of the ALJ.

Dated Albuquerque, New Mexico, this 21<sup>st</sup> day of November 2013.

Respectfully submitted,

*/s/ David T. Garza*

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of GENERAL COUNSEL'S REPLY BRIEF in, Cases 28-CA-068385, 28-CA-075708, 28-CA-077161, 28-CA-077164, and 28-CA-078376 was served by E-Gov, E-Filing, and E-Mail on this 21<sup>st</sup> day of November 2013, on the following:

***Via E-Gov, E-Filing:***

Gary W. Shinnars, Executive Secretary  
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