

**United States Postal Service and Craig Hull. Case
7-CA-17346(P)**

June 19, 1981

DECISION AND ORDER

On December 29, 1980, Administrative Law Judge David G. Heilbrun issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief and Respondent filed an answering brief.

The Board has considered the record and the Administrative Law Judge's Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The violations alleged here center on the conduct of Craig Hull, an employee in the Madison Heights branch of the Postal Service's Royal Oaks, Michigan, sectional center, and Supervisor Neal McQuinn, Hull's immediate supervisor. Hull is a union steward and McQuinn is one of the persons to whom Hull presented contractual grievances on behalf of employees in the bargaining unit. Between October 1978, when he became steward, and January 1980, when he was suspended for reasons that are in issue here, Hull filed approximately 150 grievances. At step one, these grievances were heard by McQuinn or another supervisor, resulting in a satisfactory resolution of the dispute in the approximate range of 40 to 50 percent of the cases. Cases that Hull found necessary to take to step two went before a labor relations official at the Royal Oaks sectional center. Hull's total "success rate" after steps one and two was 90 to 95 percent.

In February 1979, all employees were advised to adhere to their starting times. Shortly thereafter, McQuinn told Hull that his attendance was slipping and that more care should be shown. In June 1979 Hull received a disciplinary warning for tardiness which the postmaster agreed to expunge from his record if his attendance improved substantially within the next 6 months. On August 3, 1979, he received a 7-day suspension for being absent without providing "acceptable medical evidence of total disability."¹ At this time Hull was in a temporary restricted sick leave status because of past excessive use of sick leave, and was required to provide medical documentation in order to have any absence charged to sick leave.

In late August 1979, Hull presented several new grievances to McQuinn. During the ensuing discussion, McQuinn conceded that he told Hull "some-

thing to the effect that . . . if a number of grievances continued, and a number of actions continued in Madison Heights, that someday somebody was going to have corrective action taken, and it was going to lead to a dismissal, or a removal."² Meanwhile Hull's attendance record improved sufficiently to cause his removal from restricted sick leave status. Between August 1979 and January 1980 Hull presented approximately 20 stepone grievances to McQuinn. One or two were resolved at the stepone level and the rest went beyond McQuinn to step two, where substantially all of them were settled.

In early January 1980 Hull came across a letter from a high-level official at the sectional center directing all supervisors to give weekly safety talks to their employees and stating that their failure to do so would subject them to disciplinary action. Hull filed six grievances on January 10, one of which involved McQuinn's failure to conduct any safety talks for the past 4 or 5 weeks. McQuinn denied all the grievances. Concerning the safety talk grievance, he told Hull that it was moot because he had received said letter, and he then ripped up and threw away the grievance form Hull had presented on this subject. McQuinn explained that he could be disciplined for not giving the talks. Hull nevertheless presented that grievance, along with the other January 10 grievances which McQuinn had denied, at step two, where, on the morning of January 18, all were resolved to Hull's satisfaction. The safety talk grievance was resolved by a decision, stated orally to Hull on January 18 and rendered officially later, that the employees would receive safety talks on a weekly basis. On the afternoon of January 18, McQuinn gave Hull written notice, dated the previous day and signed by McQuinn, stating that Hull was to be suspended for 10 days because of:

Irregular Attendance: Since August 29, 1979 through the present you have used approximately twenty-seven (27) hours of unscheduled absences. These absences included instances of sick leave usage and AWOL. Also during this period of time you have been late on eleven (11) occasions. Part 666.8 of the Employee and Labor Relations Manual requires employees to be regular in their attendance and to report to work on time. You have failed to meet this requirement.

Elements of your past record have been taken into consideration in the issuance of this suspension. A recurrence of this irregularity will

¹ This suspension was reduced to 3 days pursuant to a grievance settlement.

² This is McQuinn's credited testimonial recollection of his own remarks.

result in further discipline up to, and including removal from the Postal Service.

McQuinn testified that he reached the decision to suspend Hull on Monday, January 14, because Hull had taken sick leave on Saturday, January 12, had used sick leave "in conjunction with a day off" three times within a month, had been tardy four times, and had been cautioned by McQuinn to be careful about his attendance. McQuinn recommended suspending Hull on January 16 in an informal note to a superior. In explanation of the reasons stated on the formal suspension notice, McQuinn testified that his superior advised him to make a determination based on the entire period since Hull's prior suspension.

Discussion and Conclusions

The Administrative Law Judge found that McQuinn's August 1979 remark regarding the consequences if the "number of grievances continued" was made as a "casual" comment uttered "unperturbedly . . . on how a large number of grievances reflected brisk disciplinary activity, which in turn would associate to job removals in a statistical if not practical sense." The Administrative Law Judge reached that conclusion by crediting McQuinn's recollection that his remark was "casual" in nature, or uttered "unperturbedly." However, McQuinn never gave such testimony. Moreover, even if such characterizations were attributable to McQuinn, they would merely be self-serving impressions. Contrary to the Administrative Law Judge, we find that McQuinn's admonition to Hull that heavy grievance activity was going to lead to "corrective action" and "dismissal" or "removal" is far from an innocuous, philosophical reflection on the nature of the discipline-grievance cycle. Considering the steward-supervisor relationship of the parties involved and the plain content of the statement, we have no hesitancy in finding that the statement contains a clear threat of retaliation against employees if they persist in filing grievances with a frequency that is unacceptable to management. Consequently, the statement interferes with and restrains employees in the exercise of the protected activity of presenting grievances, in violation of Section 8(a)(1) of the Act.

That McQuinn exhibited some degree of hostility toward the grievance process forms part of the background against which the suspension of Hull was played out. Further, as the Administrative Law Judge notes, although McQuinn continued to hear grievances presented by Hull during the months between McQuinn's remarks and Hull's suspension, McQuinn conceded that he settled only 5

to 10 percent of those grievances. Meanwhile, Hull retained his 90-95 percent "success rate" at step two. In any event, matters came to a head in January 1980 with Hull's filing of the grievance against McQuinn which was directly critical of McQuinn's performance of his supervisory functions and had the potential of adversely affecting his employment status.

Meanwhile, Hull's total attendance record had improved for the last half of 1979. His third-quarter record was such that he was removed from restricted sick leave. In the fourth quarter, the record compiled by the Postal Service showed that Hull took a total of 18-1/2 hours of sick leave and was tardy for a cumulative total of just under 4 hours. On the other hand, during the first 2 weeks of 1980, taking us up to the date McQuinn decided to recommend suspension, Hull took another 8 hours of sick leave and was tardy for 59 minutes. McQuinn's testimony in explanation of his decision emphasized Hull's attendance record for the month immediately preceding the recommendation, which period McQuinn associated with the busy pre-Christmas to first-of-year season. Nevertheless, McQuinn did not decide to discipline Hull until immediately after Hull's filing of the grievance which could have resulted in McQuinn being disciplined. Such conduct raises the persuasive inference, and we draw it, that the motivation for McQuinn's decision to investigate Hull's record and to recommend suspension was McQuinn's displeasure over Hull's grievance activities in general and his safety talk grievance in particular. The timing of McQuinn's decision, immediately after Hull's presentation of the safety talk grievance, taken together with McQuinn's actions, supports this inference.

Hull's total attendance record, especially with respect to tardiness, was not an exemplary one and we would not question the reasonableness of a business judgment that it might warrant discipline. But McQuinn's testimony, in attempting to depict Hull as being seriously delinquent during the Christmas period does not stand up well under scrutiny. For the month of December, Hull's compiled attendance record shows 1 day of sick leave, "in conjunction with a day off," and two late arrivals at work. Hull was late again, once in the first week and once in the second week of January, and took sick leave on January 12, "in conjunction with a day off." McQuinn sought to put this record in the worst possible light, by carving out an artificial 1-month period spanning the last half of December and the first half of January, and labeling it the Christmas to first-of-year rush season. Moreover, apparently because he was not satisfied that Hull's record looked sufficiently bad at the time he

reached his decision to discipline, McQuinn testified to another day of sick leave in December which, he later admitted, was unknown to him until after imposition of the suspension. Thus, he attempted to create the impression that he was confronted with a record of three suspicious looking sick days during the "heavy mail volume" period.

The persuasiveness of Respondent's asserted reason for disciplining Hull, therefore, is diminished to the extent that McQuinn lacked confidence in the evidence supporting the ground asserted. McQuinn's distortion and exaggeration of Hull's deficiencies, as they appeared when McQuinn acted, casts a deep shadow over the assertion that his decision was a business judgment that happened to coincide with Hull's safety talk grievance. Even if Hull's attendance record were a contributing factor therefor, Respondent has not shown persuasively that, absent the unlawful motivation, it would have become the focus for disciplinary proceedings at that time. Accordingly, we find, contrary to the Administrative Law Judge, that Hull's suspension violated Section 8(a)(3) and (1) of the Act. *Wright Line, A Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Craig Hull was unlawfully suspended, we shall order Respondent to reimburse him and make him whole for any loss of earnings for the period of his suspension. Backpay shall be computed with interest as set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).³

In accordance with his partial dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, United States Postal Service, Madison Heights, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with retaliation for filing grievances.

(b) Suspending or otherwise discriminating against employees because they present grievances.

³ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them in Section 7 of the Act.

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

(a) Reimburse Craig Hull for the pay he lost during his period of suspension, with interest, in the manner set forth herein in "The Remedy."

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Rescind the notice of disciplinary suspension issued to Craig Hull for the period set forth in this Decision, and expunge any reference to this suspension from his personnel file.

(d) Post at its Madison Heights, Michigan, branch office copies of the attached notice marked "Appendix."⁴ Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁴ In the event that 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."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT threaten employees with retaliation for filing grievances.

WE WILL NOT suspend or otherwise discriminate against employees because they present grievances.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed

them in Section 7 of the National Labor Relations Act, as amended.

WE WILL reimburse Craig Hull, with interest, for the pay he lost during his period of suspension in January and February 1980, rescind the notice of disciplinary suspension issued to him for that period, and expunge any reference to this suspension from his personnel file.

UNITED STATES POSTAL SERVICE

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge: This case was heard at Detroit, Michigan, on October 14, 1980, based on a complaint alleging that the United States Postal Service (Respondent) had violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, by threatening employee Craig Hull with retaliation against employees if he continued to file grievances and later suspending him for 10 days because of his activities on behalf of National Association of Letter Carriers, AFL-CIO (the Union).

Upon the entire record, my observation of witnesses and consideration of post-hearing briefs, I make the following:

FINDINGS OF FACT AND RESULTANT CONCLUSION OF LAW

The Royal Oak, Michigan, Postal Service is part of a larger sectional center, and itself has branches including one in adjoining Madison Heights. A comprehensive collective-bargaining agreement, national in scope and to which the Union is party along with other labor organizations, is currently, and at all material times has been, applicable.¹

Craig Hull is union steward for the Madison Heights office, where he has worked as a letter carrier for more than 7 years. Hull had functioned actively as steward over the recent past, estimating that he filed an average of 10 grievances per month during the period October 1978 to mid-January 1980. As contractually required these were discussed with him at step one by affected supervisors, and unresolved grievances advanced for processing with the area labor relations designee, Thomas Hopper. Hull testified that he prevailed better than 90 percent of the time.

Respondent administers its attendance policy and progressive discipline relating thereto in accordance with an employee and labor relations manual that itself is express-

¹ Respondent exists as an independent establishment of the Federal Government's executive branch, pursuant to the Postal Reorganization Act. That statute provides in sec. 1209 that, to the extent not inconsistent, the entity's employee-management relations shall be subject to jurisdiction of the National Labor Relations Board. I find that Respondent is an employer within the meaning of Sec. 2(6) and (7) of the Act, and otherwise that the Union is a labor organization within the meaning of Sec. 2(5). The Postal Service's facility at Madison Heights (plus such superintending and staff functions as pertain to its operations) is the sole one involved in this proceeding.

ly incorporated by reference in the collective-bargaining agreement. As pertaining to this case the earliest manifestation was a memorandum dated February 27, 1979, signed by Station Operations Manager Neal McQuinn, in which all employees were advised to adhere with assigned starting time.² Shortly thereafter McQuinn remarked to Hull that his attendance was slipping and more care should be shown. On June 9 Delivery Foreman Edward Reynolds issued Hull a disciplinary letter of warning based on 16 minutes of lateness that was recorded as absence without leave (AWOL). Hull grieved this action and by letter dated June 29 Postmaster James Miller settled by agreeing to expunge the reprimand if substantial improvement in attendance were to be shown after 6 months. However, Hull was again recorded as AWOL in July and on August 3 Madison Heights Branch Manager David Johnson suspended him for 7 days. This too was grieved with a resulting reduction of penalty to 3 days as confirmed by Miller's letter dated August 31.

At this point in time Hull was on sick leave restriction, meaning that under written criteria of the employee manual he was required to support all sick leave by medical documentation or other acceptable evidence.³ This burden was discontinued by McQuinn's letter dated December 4, furnished to Hull later that month and characterizing "improvement" in unscheduled absences during the year's third calendar quarter. Subsequently, on January 16, 1980, McQuinn sent an informal note to Stan West, manager of collection and delivery for the sectional center, recommending a 10-day suspension of Hull "because he has not shown an improvement with his time & attendance since his last suspension." This was immediately approved and West's personnel office provided McQuinn with a formalized suspension notice dated January 17, 1980, based on irregular attendance as reflected in 27 hours of unscheduled absences since August 29. McQuinn delivered this to Hull on the afternoon of January 18, 1980, and the charge on which this proceeding is based promptly ensued.

Hull testified that in late August he had met with McQuinn for routine discussion of new grievances. As this progressed, Hull recalled that McQuinn suddenly "lost his composure, and he started getting very angry," saying, "I am sick and tired of all these d— grievances the Union is filing, and if it don't stop, I am going to start taking retaliation against people and there is going to be written warnings, suspensions, and removals . . ." Hull countered these remarks by saying he was only doing his job and he observed to both McQuinn and Johnson who were also present that the former seemed incapable of conducting himself as a gentleman. The antagonists subdued themselves somewhat with extolment of gentlemanly virtues; however McQuinn then spotted the nonregulation brown belt being worn by

² All dates and named months hereafter are in 1979 unless shown otherwise.

³ The manual states in part:

Supervisors (or the official in charge of the installation) who have evidence indicating that an employee is abusing sick leave privileges may place an employee on the restricted sick leave list . . .

Hull and successfully directed him to return home immediately (on paid time) and replace it with a black one. Hull's testimony is next relevant to the issue of assertedly unlawful motivation in connection with another step-one grievance meeting occurring on January 10, 1980. On this occasion six grievances were up for discussion, including one about safety and health based on Hull's alert observation that a written directive from West obligating supervisors to give weekly safety talks had for some time been ignored. When the subject was reached McQuinn termed it moot, ripping up and discarding the grievance document. As he did so McQuinn explained that he himself could be disciplined for not giving the talks as ordered from higher up. Each of the remaining five grievances were denied by McQuinn and accordingly groomed for step two consideration. This took place on the morning of January 18, 1980, with Hopper as the usual representative of management. Each of the six grievances was favorably settled in Hull's view, and to his knowledge Hopper immediately conveyed such dispositions to McQuinn and Johnson. In the course of this meeting Hopper had not had a copy of the safety and health grievance; however Hull provided the explanation of McQuinn having torn up management's copy the prior week. Hopper needed to know only essentials of the grievance (Hull having his own copy as a basis for discussion) to say that it could be settled "right here" by Hopper's assurance that henceforth safety talks would take place weekly. Upon completing this meeting Hull proceeded to pull down his route for delivery and as he did so McQuinn and Johnson were closeted in the superintendent's office with Hopper for approximately one-half hour. Hull delivered his route, arriving back in late afternoon at which point McQuinn called him in and delivered the suspension notice described above. Its complete statement of reasons read:

Irregular Attendance: Since August 29, 1979 through the present you have used approximately twenty-seven (27) hours of unscheduled absences. These absences included instances of sick leave usage and AWOL. Also during this period of time you have been late on eleven (11) occasions. Part 666.8 of the Employee and Labor Relations Manual requires employees to be regular in their attendance and to report to work on time. You have failed to meet this requirement.

Elements of your past record have been taken into consideration in the issuance of this suspension. A recurrence of this irregularity will result in further discipline up to, and including removal from the Postal Service.

This largely frames the essential issue; however, some refinement through credibility resolutions must precede treatment of what the parties respectively contend. This relates chiefly to happenings in August because other salient aspects of case background are concededly true. Hull agrees that he was reminded of attendance requirements in April and he does not dispute the factual basis of progressive discipline as applied to him in June and August. Further, he recalled that Johnson cautioned him

about attendance in November and that in the following month McQuinn referred pointedly to a newly transferred superior official known as a "stickler" on the subject. Hull does not dispute that a flurry of sick leave usage and tardiness occurred during the period before this challenged suspension, nor does he contradict McQuinn's testimony that supervisory discussion of a specific lateness occurring on December 20 had taken place. On the other hand McQuinn concedes that he was angry in August when he returned from vacation to face numerous pending grievances, and that at the described first step meeting of January 10, 1980, he "destroyed" the safety grievance in the course of discussion.

But dissimilarity exists regarding what the pertinent events and utterances of August actually were, even insofar as how many episodes occurred in the process. Hull recalled only one discussion late in the month at which McQuinn vented all his threatening remarks and petulantly enforced the uniform dress code. McQuinn's reconstruction of that month is that on or about August 9 he performed first-step grievance review while gripped with disgust, and that this was probably the occasion when he sent Hull home to change belts. He believes it was only later in the month that he made judgmental-type remarks about the grievance procedure saying that disciplinary action, grievances, management interests, and a steward's function are all interrelated to the point that "disciplinary action causes grievances" and the essential phenomenon of disciplinary action "could lead to removal." Respecting the disparity of testimony that results I cannot generally credit Hull because he displayed a rigidity of thought and manner that would distort true events and experiences. This characteristic couples with a puzzling outlook on his former relationship with Supervisor Reynolds, a person with whom his grievance settlement rate was a mere fraction of that with the McQuinn-Johnson duo, yet a person whose departure left Hull oddly "despondent and emotionally drained." I am convinced that Hull is unable to recall accurately actual happenings, and I buttress this conviction with a favorable evaluation of McQuinn's demeanor and seeming candor in the course of testimony. I thus credit McQuinn in full to the effect that in late August while discussing grievances he unperturbedly commented on how a large number of grievances reflected brisk disciplinary activity, which in turn would associate to job removals in a statistical if not practical sense. Finally, I credit McQuinn in recalling that what he did say was casual in nature as discussants passed out through a door.

What devolves is the question of whether the General Counsel has presented a *prima facie* case relative to allegations of actionably threatening utterances and retaliatory motivation as asserted in paragraphs 7 and 8(b) of the complaint. I conclude not. McQuinn's remarks of late August were unartful, but no more than that. It was commentary on the lamentable discord that is reflected in a discipline-grievance cycle, but by no fair meaning constituted the spectre of punishment for Hull if he continued to file grievances. Not only were the words devoid of true basis for such interpretation, but events over a critical 4-month period that followed bore out

Hull's insulation from such untoward punishment. During such time he was free of job adversity, benefited from a lifting of the past restriction on his use of sick leave, and continued to file and press grievances at his customary rate. As late as January 1980 McQuinn was still meeting equanimously with Hull on grievance matters, and Johnson, who was allegedly also possessed of unlawful intent, is not shown to have any noteworthy outlook at all with respect to Hull's functioning as steward. It is true that McQuinn discarded a grievance document at the January 10, 1980, meeting; however, this act, regardless of any unbusinesslike or provocative characteristics, is not, without more, persuasive proof that discrimination was soon to follow. The final element of the General Counsel's case is nothing more than advancing how McQuinn and Johnson met privately with Hopper on January 18, 1980, to assimilate and comply with a half dozen step-two grievance dispositions not known to be other than routine in character. Significantly, McQuinn's recommendation for a 10-day suspension had already been acted upon at this point in time with all that remained being formal delivery over to Hull.

Nor is there any reason to find intrinsic defect in the discipline imposed. It must first be emphasized that Hull was disciplined for excessive unscheduled absences, a larger subject than mere sick leave usage and the prospect of restriction relative thereto. The lifting of restriction that had applied to Hull in the more distant past was accomplished by a review focusing only on and through 1979's third quarter and I find no suspicious overtone to the fact that written notification of discipline was not processed for over 2 months. A change benefiting employees would not carry the urgency of one setting in motion a managerial stricture, and the scale of operations (1,100 employees for the Royal Oak Post Office itself; approximately 4,000 throughout the sectional center) at least explains if not justifies the pace of such processing. What is important is that both McQuinn and Johnson were consciously attuned to *unscheduled absences* as the larger and more critical problem in terms of orderly fulfillment of mission. Here Hull was shown to be singularly deficient when traced back to August, and particularly so during the vital holiday period of December.⁴ When

⁴ Hull sought to minimize the importance of postal operations around Christmas, a perplexing characterization at odds with both common knowledge and McQuinn's solidly persuasive testimony to the contrary.

finally imposed the suspension at issue was a predictable, untainted manifestation of management's responsibility to seek improved employee performance through edifying pressure of sound, progressive, and disciplinary policy. To hold otherwise would be to believe that McQuinn harbored iniquitous plans for over one-third of a year, reflected this by imperiously trashing Hull's safety grievance, and divined Hopper's settlement of all grievances previously denied by Madison Heights supervision so as to be ready with spurious disciplinary action. I decline to sanction such ethereal reasoning, believing instead that we have seen no more than direct treatment of an obvious problem.

I have considered the General Counsel's success in developing inconsistency in the internal workings of disciplinary policy, preparation of documents relating thereto, and sick leave administration. I find such instances to be no more than customary departure from routine in a large structured organization on the one hand, and the equally customary effect of subjectivity in the management process on the other. Finally, I have considered the testimony of letter carrier David Blasco that he was neither placed on sick leave restriction nor reprimanded for taking 54 hours' total sick leave during the early months of 1979 and having perhaps 25 latenesses through the year. While this may seem excessive in the abstract, Blasco was counseled about it by McQuinn in April and had markedly less sick leave usage the balance of the year showing 56 more hours, with 32 of these concentrated in early December when hospitalized. Both Johnson and McQuinn testified to the standard notion that patterns and circumstances of sick leave usage are the paramount factors in assessing whether abuse is apparently taking place. It is in this vein that Hull was vulnerable to the action of McQuinn, a course quite balanced in impact and implementation.

Accordingly, I render a conclusion of law that Respondent has not violated Section 8(a)(1) and (3) of the Act as alleged.

[Recommended Order for dismissal omitted from publication.]