

**United States Postal Service and Robert E. Lofgreen
Arizona Rural Letter Carriers' Association affiliated
with National Rural Letter Carriers' Association
(United States Postal Service) and Robert
E. Lofgreen. Cases 28-CA-7393(P) and 28-
CB-2103(P)**

18 September 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

On 30 March 1984 Administrative Law Judge William L. Schmidt issued the attached decision. The Respondent Employer and the Respondent Union each filed exceptions and a supporting brief, and the General Counsel filed an answering brief to the Respondents' exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.²

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that Respondent United States Postal Service, its officers, agents, successors, and assigns, and Respondent Arizona Rural Letter Carriers' Association affiliated with National Rural Letter Carriers' Association, its officers, agents, and representatives, shall take the action set forth in the Order.

¹ The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950) enf'd 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's findings of violations here, we find it unnecessary to rely on the discussion in fn. 6 of the judge's decision concerning whether the establishment of a "substitute carrier seniority roster" was a secondary objective in the Union's pursuit of Ellen A. (Toni) Bryce's 1981 grievance.

Additionally, we note that in setting out the facts here the judge inadvertently and incorrectly stated that Charging Party Robert Lofgreen and Toni Bryce became substitute rural carriers on 22 September 1981, when in fact the correct date is 22 September 1979. In other parts of his decision, however, he referred to the correct date. Thus, we do not find that this inadvertent error has any effect on the judge's ultimate conclusions.

² We modify the judge's remedy so that the Respondent Union's back-pay liability is terminated 5 days after it notifies the Respondent Employer that it has no objection to the employment of the Charging Party as the regular rural carrier for rural route 1. See *C. B. Display Service*, 260 NLRB 1102 (1982).

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. This matter was heard on October 4, 5, and 6, 1983, at Pinetop, Arizona. The charge in Case 28-CB-2103(P) was filed by Robert E. Lofgreen (Lofgreen), an individual, on February 2, 1983, against the Arizona Rural Letter Carriers' Association and was amended by Lofgreen on March 17, 1983. On March 18, 1983, the Regional Director for Region 28 of the National Labor Relations Board (Board or NLRB) issued a complaint on behalf of the General Counsel of the Board alleging that Arizona Rural Letter Carriers' Association (ARLCA or Union) affiliated with National Rural Letter Carriers' Association (NRLCA) had engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (Act). On March 28, 1983, Lofgreen filed a charge in Case 28-CA-7393(P) against the United States Postal Service (USPS). On May 11, 1983, the Regional Director for Region 28 issued a complaint on behalf of the General Counsel of the Board alleging that the USPS had engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act. By an order dated May 20, 1983, the two cases were consolidated for hearing.

The Union and USPS filed timely answers to the respective complaints denying that they had engaged in the unfair labor practices alleged.

On the entire record, my observation of the demeanor of the witnesses, and my careful consideration of the posthearing briefs filed by the General Counsel, the Union, and the USPS, I make the following

FINDINGS OF FACT

I JURISDICTION

The USPS provides postal services for the United States of America and operates various facilities throughout the United States in the performance of that function, including a facility located in Lakeside, Arizona, the only facility involved in this proceeding. By virtue of Section 1209 of the Postal Reorganization Act (the Postal Act), the Board is vested with jurisdiction over this consolidated matter.

II THE LABOR ORGANIZATION INVOLVED

It is admitted that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III THE ALLEGED UNFAIR LABOR PRACTICES

A The Complaint Allegations

The complaint in Case 28-CB-2103(P) charges that the ARLCA refused to fairly represent Lofgreen in his efforts to retain his position of employment with the USPS as a regular rural carrier, that it unfairly aided Ellen A. (Toni) Bryce in her efforts to replace Lofgreen in that position, and that it accorded Lofgreen "mere perfunctory representation" with respect to a grievance he filed in December 1982, seeking to be restored to the

regular rural carrier's position. The complaint further charges that the ARLCA engaged in the foregoing conduct because Toni Bryce was a relative of the ARLCA local representative and because Lofgreen opposed the policies and administration of the ARLCA. By engaging in such conduct for the motives specified, the complaint alleges that the ARLCA violated Section 8(b)(1)(A) and (2) of the Act.

The essence of the complaint in Case 28-CA-7393(P) is that the USPS acquiesced in the alleged unlawful conduct of ARLCA, removed Lofgreen from the regular rural carrier's position to which he had been appointed, and thereafter refused to reinstate Lofgreen to his former regular rural carrier position. The General Counsel alleges that the USPS's conduct in the Lofgreen matter violated Section 8(a)(1) and (3) of the Act.

B The Evidence

1 Background

The situs of the dispute is the Lakeside, Arizona Post Office located in the White Mountain area of eastern Arizona. That office is an associate office of the USPS Flagstaff, Arizona Management Sectional Center (MSC). The Flagstaff MSC is, in turn, a component of the USPS Sunland District headquartered in Phoenix, Arizona, and the Sunland District is one of several districts in the 13-state USPS Western Region headquartered at San Bruno, California.

Management of the Lakeside Post Office is vested in Norman Massey, the postmaster. At the times relevant here there were nine employees at Lakeside who were classed as distribution clerks and rural letter carriers. For a number of years preceding September 1979, the area surrounding Lakeside was served by one regular rural route and one auxiliary route as defined by USPS standards. The latter was, in layman's terms, simply a route which was not large enough to qualify as a regular route.

Under the 1981-1984 USPS-NRLCA collective-bargaining agreement (Agreement) rural letter carriers are divided into four classifications: (1) regular, (2) substitute, (3) auxiliary, and (4) relief. The first three are pertinent in this case. Under the USPS personnel codes regular rural carriers are assigned the numerical designation 71, substitutes are assigned 73, and auxiliaries are assigned 77. More often than not, rural carriers are referred to in-house by their numerical designation.

The Agreement defines regular rural carriers as persons assigned "established rural routes" for specified periods in a "service week." Substitute rural carriers are defined as persons "with an appointment without time limitation hired prior to July 21, 1981, [who] are assigned to serve as a substitute on established rural routes in the absence of a regular rural carrier [and who serve] as a leave replacement and/or [cover] a vacant route pending the selection of a regular rural carrier or to provide auxiliary assistance." The agreement defines auxiliary rural carriers as "[p]ersons selected to serve an auxiliary rural route." It is undisputed that for each regular route, only one individual may be designated as a regular rural carrier and one other individual may be designated as the

route's substitute rural carrier. With respect to auxiliary routes, an individual may be designated as the "primary" carrier but substitutes are not designated for auxiliary routes. Indeed, the pecking order of rural letter carriers proceeds downward from regular rural carriers, to substitutes, to auxiliaries.

The central problem giving rise to this case was the appointment of a substitute carrier to fill a regular rural carrier vacancy which occurred at the Lakeside Post Office. When a vacancy occurs on a regular rural route, the Agreement requires that the vacancy be posted for bid. In the event no regular rural carriers bid on the position, the agreement requires that the position be filled from among the substitute rural carriers who bid. Specifically, article 12,3,B,3,b of the Agreement provides:

The residual vacancy shall be awarded to a substitute rural carrier at the post office where the vacancy exists. The vacancy shall be awarded to the *substitute applicant having accrued the longest period of continuous service as a substitute rural carrier and auxiliary rural carrier in that office*, unless another substitute rural carrier is deemed to be substantially better qualified. Such continuous service is that which occurred immediately prior to the appointment [Emphasis added].

A 1979 memorandum of understanding (1979 Memorandum) seeking to clarify the above provision was entered into by USPS and NRLCA. At the times relevant here, the 1979 Memorandum remained in effect. It provides that auxiliary service is creditable under article 12,3,B,3,b "only if the auxiliary rural carrier was assigned as the primary auxiliary carrier on an auxiliary rural route on the day before appointment as a substitute rural letter carrier and only for the period of time during which the employee was continuously assigned as the primary carrier on specific auxiliary rural routes." The 1979 Memorandum also provides that "two or more auxiliary rural letter carriers cannot be concurrently assigned as the primary carrier on the same auxiliary rural route" and that for any given period of time only one auxiliary carrier can be credited with the auxiliary carrier service.

2 Rural carrier assignments at Lakeside

Between August 1975 and May 1978 there were three rural carriers employed at the Lakeside Post Office. Dorman J. Bryce was classified as a regular rural carrier and served the regular route, Clarence (Doug) Curry was the designated substitute rural carrier for the regular route. Curry also served the Lakeside Post Office as a distribution clerk. Toni Bryce, who is D. J. Bryce's daughter-in-law, commenced her employment in 1975 as an auxiliary rural carrier.

In his testimony, Massey explained that when Toni Bryce was originally hired in 1975 there was no coded auxiliary rural carrier classification so an informal hiring procedure was utilized which was generally referred to as "hiring by memo." Simply stated, Massey accomplished the hiring of Toni Bryce by sending a buck slip to the USPS Data Center in San Bruno advising that office to include a timecard for her and eventually time-

cards for Toni Bryce began to arrive. Since that time, it appears that a more formal personnel recordkeeping has evolved primarily as a result of computerization. Under the new scheme, when employees are hired, a USPS Form 50, the basic USPS personnel form, is prepared at the MSC level based on information either telephoned or forwarded on buck slip by the local postmaster. Thereafter, specified personnel and pay action result in the generation of a new Form 50 which is incorporated in the employee's official personnel folder (OPE).

In this record, it is uncontradicted that effective May 19, 1978, Toni Bryce resigned her position at the Lakeside Post Office. Postmaster Massey credibly testified that Toni Bryce told him in advance that she was resigning and that she also tendered a letter of resignation saying that she was quitting her Lakeside job. Unfortunately, the letter could not be located when the events involved here began to unfold and it had not been located as of the time of the hearing in these cases. However, three Lakeside employees corroborated Massey on this point by testifying that Toni Bryce talked openly in the period immediately before May 19, 1978, about quitting her job at Lakeside and moving permanently to Kingman with her husband.¹

When Massey received Toni Bryce's resignation letter, he consulted with a personnel assistant at the Flagstaff MSC who regularly advised him on personnel procedures concerning the method to be used to separate Toni Bryce from the USPS rolls. Massey was informed that if Toni Bryce had been hired by memo (as was the case), then she should be separated by memo. Following this advice, Massey sent a buck slip to the San Bruno Data Center where payroll records are prepared stating that Toni Bryce had resigned. This buck slip is not in evidence nor is there evidence that anyone ever searched for it. However, three of Toni Bryce's payroll cards signed by Massey are in evidence and they bear notations supporting Massey's testimony that Toni Bryce quit her job about the time he said she did in 1978. Thus, the May 19, 1978 payroll card bears Massey's notation "Final Check—Pay All Annual Leave."² The payroll card of June 2, 1978, bears his notation "Carrier left Cancel card & pay all A L." The June 16, 1978, payroll card bears Massey's note in bold print "Please pay all A L & discontinue card Hired by memo & now separated." Massey forwarded these cards to the data center in San Bruno where they were apparently processed. Notwithstanding his efforts, Massey continued to receive payroll cards for Toni Bryce. When Massey continued to receive additional cards, he simply began throwing them in his wastebasket.

Toni Bryce did not testify in this proceeding nor was her failure to do so explained in any manner. I infer from her nonappearance that had she testified her testimony

¹ Those employees were Clarence Curry, Nella Frost and Mary Thomas.

² This card also contains the cursive letters 'E A B' in the box entitled carrier's initials. I have carefully compared those initials with the signature of Toni Bryce contained on Jt Exh 3, p 52, and have concluded that the initials on the May 19, 1978 payroll card are those of Toni Bryce. (See F R E 901(b)(3))

on the vital question of her 1978 resignation would have been adverse to the Union and the USPS.

Following Toni Bryce's resignation, Lofgreen was hired as a rural carrier effective August 12, 1978. At the time of his hire, it appears that his official personnel record reflected an improper dual designation as a substitute and an auxiliary rural carrier. However, the evidence shows that Lofgreen functioned as an auxiliary carrier until approximately Christmastime 1978, when like Curry—the substitute carrier at Lakeside—he also began performing work as a part-time flexible clerk.

Toni Bryce returned to the Lakeside Post Office effective March 29, 1979, as an auxiliary carrier. Massey testified that he "rehired" her at this time and that she acknowledged that she was now the least senior rural carrier. From this time until September 22, 1981, both Lofgreen and Toni Bryce were classified and functioned as auxiliary carriers. The time records in evidence for the period from April 21 through May 18, 1979, lists Lofgreen as the "carrier" and Toni Bryce as the "substitute" for the Lakeside auxiliary route but this improper designation appears to be more the result of the nature of the form than any formal assignment. It appears clear that Curry, the only correctly designated substitute carrier, was entitled to be deemed as the "primary" carrier for the auxiliary route at this time.³

The assignments of the rural carrier work force remained relatively constant between the time Toni Bryce returned to Lakeside and September 22, 1981. Effective September 22, 1981, the Lakeside auxiliary route was designated as a regular route. When that occurred, Curry, the second most senior rural carrier, became a regular rural carrier on the Lakeside rural route 2 without any dispute. At the same time, Lofgreen was designated as the substitute rural carrier of record on rural route 1 and Toni Bryce was designated as the substitute rural carrier of record on rural route 2. Hence, for seniority purposes, both Lofgreen and Toni Bryce became substitute rural carriers on the same day.⁴ A few days after these personnel actions, Postmaster Massey met with all four of the rural carriers. In the course of this meeting, Massey opined that Lofgreen would be entitled to the next regular rural carrier vacancy because he was the most senior of the two substitute carriers. Toni Bryce openly agreed with Massey's assessment but D J Bryce commented, "We'll see."

3 The posturing preceding D J Bryce's retirement

It is evident that in 1981 D J Bryce was contemplating retirement. This eventuality, of course, would mean that there would be a vacancy for a regular rural carrier at Lakeside. D J Bryce clearly intended to do what he could to assure that his daughter-in-law would be awarded the route. D J Bryce was clearly influential. In 1981, he was completing a term as the Union's president. He also served as the local steward and as the area steward.

³ There is no evidence that a time record for auxiliary routes was ever designed to reflect the 'primary' rural carrier designation under the 1979 Memorandum.

⁴ This finding disregards Lofgreen's incorrect designation as a substitute when he was hired which is discussed in more detail below.

It is noteworthy here that D. J. Bryce was not called as a witness in this proceeding and, hence, none of the statements and conduct attributed to him by those who did testify are contradicted or explained. As his failure to testify was not explained, I have inferred that had D. J. Bryce testified his testimony would have been adverse to the party obliged to call him or suffer the consequence of failing to do so.

In pursuit of this end, Toni Bryce ostensibly filed a grievance in March 1981 (hereafter the 1981 grievance), complaining that Lofgreen's dual classification as a substitute/auxiliary when he was initially hired was erroneous. The relief sought the correction of Lofgreen's personnel records to reflect that September 22, 1979, was the correct date of his substitute rural carrier appointment. At step 1 and step 2 of the grievance procedure, the Union was represented by D. J. Bryce in his capacity as local steward and area steward, respectively.

Toni Bryce's 1981 grievance was denied at step 1 by Massey and his action was upheld at step 2 by John Toasperm, the management official at the Flagstaff MSC responsible for employee and labor relations. Following Toasperm's unfavorable decision, the Union, acting through its state grievance chairman, appealed the grievance to step 3 where Ronald Lowe, manager of the Arbitration Branch at the San Bruno USPS Data Center, sustained the grievance on the ground that, as there was only one regular route when Lofgreen was hired, only one individual could be credited with substitute carrier service. Accordingly, as Curry had previously been appointed the substitute and as only one substitute could be appointed in August 1978 when Lofgreen was hired, an "administrative error occurred when Lofgreen was appointed to the position of substitute rural carrier . . . since [that] position . . . was [already] encumbered by C. D. Curry." The final two paragraphs of Lowe's determination reads:

Accordingly, Mr. R. Lofgreen's *period of continuous service shall begin on September 22, 1979 instead of August 12, 1978.*

It should be noted by the parties that this decision is limited for administrative purposes as noted herein. Nothing in this decision is to be construed in this case as precedent setting to the position of the Postal Service. [Emphasis added.]

Lowe's determination was implemented literally on Lofgreen's official personnel record (Form 50) so that he was effectively stripped of 13 months of service with USPS, an action having clear implications for Lofgreen's competitive standing among rural carriers. Thus, the plain terms of article 12,3,B,3,b, quoted above, and Lowe's own determination in November 1982, discussed below, amply demonstrate that this error was of considerable significance.⁶ Hence, the 1981 grievance determination intended to correct one administrative error appears to have resulted in an administrative error of a different stripe.

Notwithstanding this significant error, after Lowe rendered his decision in September 1981, D. J. Bryce refused to process a grievance on Lofgreen's behalf seeking the restoration of his USPS service time from the date of his hire in August 1978 through September 1979.

There is other evidence concerning the processing of the 1981 grievance which discloses D. J. Bryce's ulterior motives and knowledge of those motives by officials of both the ARLCA and USPS, who were to play leading roles in subsequent events of significance in this case. Thus, it is clear that Toni Bryce's 1981 grievance was personally and vigorously pursued by D. J. Bryce. By contrast, prior to the commencement of the grievance, D. J. Bryce never conferred or consulted in any manner with Lofgreen, the unit employee most directly and immediately affected by the 1981 grievance. Indeed, Lofgreen first learned of the grievance from Massey after it had been filed.

After learning of the 1981 grievance, Lofgreen acted to protect his position by requesting that D. J. Bryce process a similar grievance on his behalf seeking to have Toni Bryce's records corrected to clearly reflect her break in service from May 20, 1978, to March 29, 1979. D. J. Bryce refused claiming that there was no basis for such a grievance.

In the course of making an oral presentation to John Toasperm, the step 2 management designee, D. J. Bryce candidly told Toasperm that the only reason he was pursuing the grievance was because Toni Bryce wanted his job when he retired. This statement served to explain the purpose of the grievance to Toasperm, who regarded the grievance by one employee seeking to correct the personnel record of another employee to be highly unusual on the basis of his experience.⁶

In addition, D. J. Bryce stated openly and repeatedly in the period during and immediately after the processing of the 1981 grievance to, or in the presence of, Lofgreen, Massey, Curry, and Frost words to the effect that "blood is thicker than water" and that he was going to do everything in his power to see that Toni Bryce got his job when he retired.

Other officials of ARLCA were soon made aware of D. J. Bryce's conduct. Lofgreen wrote Roger Moreland, D. J. Bryce's successor as the Union's president, on October 13, 1981, complaining of D. J. Bryce's recent activities. Among other things, Lofgreen: (1) called attention to the relationship of the Bryces, (2) told of D. J. Bryce's several statements to the effect that he would do everything in his power to see that Toni Bryce got his job when he retired; (3) mentioned the 1981 grievance and D. J. Bryce's failure to notify him of such action; (4) told of D. J. Bryce's refusal to share information with him which might be pertinent to the developing competition for route 1 when it was vacated; (5) requested that

⁶ Although I find Toasperm's testimony on both this and other matters to be very credible, it is noted that the 1981 grievance sought also to establish a substitute carrier seniority roster. Clearly, relief of this nature would be of a salutary consequence to the Lakeside group and from a labor relations perspective such a roster could not be considered that unusual. However, there is no evidence that relief in the form of the establishment of a roster was addressed or considered in the entire course of the grievance.

⁶ In addition, the error also appears significant with respect to leave and retirement benefits.

Pete Whipple, the Union's state chaplain, be appointed to act as his representative until D J Bryce no longer held any union office, and (6) requested that the state and national officers "take any appropriate action concerning Mr Bryce's position on the State Executive Board." The NLRCA president and the manager of the USPS MSC in Flagstaff were sent copies of the October 13 letter. Accordingly to Lofgreen, the only response he received was from Moreland, who telephoned to tell him that if he wanted another steward to represent him the Lakeside rural carriers would have to elect someone else. Lofgreen regarded that with faint hope because two of the four Lakeside rural carriers were D J and Toni Bryce.

In addition to the first-hand knowledge of Massey and Toasperm and the copy of the October 13 letter sent to the MSC manager, other evidence shows that USPS officials up to and including Lowe were sufficiently apprised of Lofgreen's dispute with the Bryces so as to make any reasonable person wary in future dealings. Specifically, when the 1981 grievance was appealed to step 3, Toasperm advised Lowe by memorandum dated May 13, 1981 (Jt Exh 4, p 9)

Furthermore, it should be brought to your attention that the aggrieved [sic] is the daughter-in-law of local steward and state president, Dorman J Bryce. He said to me that his only reason he is grieving this, so his daughter-in-law could get his route when he retires. It was told to me by the Postmaster that R Lofgreen, the other party in this action may go to the NLRB because of Mr Bryce's actions.

Lowe deemed this information as merely mind clutter.

Finally, Massey testified that on one occasion in the months immediately preceding D J Bryce's retirement the elder Bryce told Massey that a mistake on Lofgreen's personnel records concerning his appointment as a substitute carrier would be worth a "couple hundred." When Massey dismissed the notion, D J Bryce upped the ante to "three hundred" and then to "five hundred." According to Massey, D J Bryce expressed the belief that the appointment of his successor at that time was a "toss-up." Massey did not report this incident to any superior but he did inform Lofgreen and other local employees of this approach.

4 Toni Bryce's 1982 grievance about Lofgreen's appointment as a regular carrier

At some unspecified time in 1982, D J Bryce announced that he was retiring effective April 30, 1982. Accordingly, Massey posted the impending vacancy. Both Lofgreen and Toni Bryce bid for the soon-to-be vacant position. By letter dated April 6, 1982, Massey notified Lofgreen that he had been selected to fill the regular rural carrier vacancy on Lakeside rural route 1. Massey's letter continued:

This appointment is in accordance with article 12, section 3, subsection B, paragraph 3b of the agree-

ment between the United States Postal Service and the National Letter Carriers' Association [sic]

This action will become effective May 1, 1982. This will be your first day in service on route one as a Des 71 (regular rural carrier).

Massey's letter was posted the same date and copies were provided to D J Bryce in his capacity as the local steward and to the Flagstaff MSC personnel office.

Toni Bryce grieved the appointment of Lofgreen the same day it was announced. Her grievance was processed at step 1 of the procedure by D J Bryce. Management was represented at this step by Postmaster Massey. As neither D J Bryce nor Toni Bryce testified, there is no evidence as to the nature of an investigation by the Union concerning the basis for her grievance. Lofgreen testified that he was not consulted at all by D J Bryce or any other official of the Union concerning a potential grievance over his appointment.

Massey denied the grievance at step 1. At the hearing, Massey explained that, as both Toni Bryce and Lofgreen had identical seniority dates as substitute carriers (September 22, 1979), he relied on two other criteria under the Agreement to break the tie. First, Massey noted that Lofgreen received the higher rating on the employment examination given by the USPS. Second, Massey concluded that as Toni Bryce had resigned effective May 20, 1978, and was not reemployed until March 29, 1979, and as Lofgreen had been employed continuously since August 12, 1978, Lofgreen had the longest continuous service as a substitute and auxiliary carrier in the Lakeside Post office. It was this latter basis which Massey cited in his appointment letter.

On April 16, 1982, D J Bryce hand-delivered a written step 2 grievance to John Toasperm at the Flagstaff MSC. Toasperm served as the management designee at the second step. The written grievance submitted by D J Bryce at step 2 alleges the identical substitute seniority described above and asserts, "managements position is that Mr Lofgreen is Senior due to a higher test score." Part 2 of the grievance form provides space for the grievant to describe the contract violation. The paragraph inserted recites:

Violation of but not limited to Article 12, Section 3 B, Number 3 B, and the Memorandum of understanding between the US Postal Service and the NLRCA dated April 11, 1979, signed by Mr James Gliden and Mr Clifford Edwards.

The corrective action requested by the grievance was that Toni Bryce "be awarded the route and be compensated for any loss of wages and benefits."

D J Bryce and Toasperm discussed the grievance briefly when it was delivered. According to Toasperm's uncontradicted account, D J Bryce alluded to the fact that the USPS could not prove that Toni Bryce had ever been separated from service for the May 1978-March 1979 period because there was no Form 50 which reflected that separation. Toasperm told Bryce that he had already begun to retrieve information on the matter and Bryce inquired if there was any information. Toasperm

was withholding from him as Toasperm was supposed to share all information during the grievance process.⁷ Toasperm told Bryce that he had not yet received the information alluded to but told Bryce "it's my understanding that a document does exist proving that [Toni Bryce] did work in Kingman." Toasperm testified that he told Bryce that he expected it shortly, that Bryce knew where he was, and that he would be glad to share "anything with you." Bryce responded by saying that the USPS could not prove that Toni Bryce had worked in Kingman and, even if she did, she was paid in cash and there were no records of her employment. After this brief meeting concluded, Toasperm never heard further from D. J. Bryce.

Toasperm testified that when he first learned of the grievance and the potential difficulty posed by the fact that there was no Form 50 reflecting Toni Bryce's separation from service, he consulted with his district director of employee and labor relations. This unnamed individual told Toasperm that the Form 50 "was not carved in granite" and that he should investigate whether or not Toni Bryce "was out of the [Lakeside] area and could not be employed by the Lakeside Post Office." Toasperm explained that Form 50's are often corrected to reflect oversights and administrative errors. Sometimes, Toasperm said, the corrections occur many years after the fact especially where the employee is about to retire. Toasperm's assertion that employees' Form 50 records are routinely corrected administratively was never contradicted.

When Toasperm was ready to conduct his own investigation of the Toni Bryce grievance, he had before him a letter dated April 15, 1982, from Postmaster Massey. The body of that letter, in evidence as General Counsel's Exhibit 10, recites:⁸

Ellen A. Bryce, an employee of this office, did approach me prior to the end of pay period 11-78 and stated that she was quitting to move to Kingman, Arizona with her husband who had been transferred there by the bank where he was employed.

She did not at that time, or at any time since, request approved leave of any type, other than annual or sick leave. I asked her at that time for a written resignation. After a second request she submitted a signed note giving her reasons for her resignation. At no time did she state that she would be available or on-call. This would have been an untimely situation with her domiciled some 300 miles distance. I filed her resignation with the personnel records. I have been unable to locate that document to date.

I contacted my MSC and they informed me that a designation 77 had no status and would be separated by a memo to the PDC. I sent a memo to the PDC, and if my memory serves me correctly, I sent a second memo in this matter. I wrote on a final form 1314 for the PDC to pay all annual leave due

as she had requested. The PDC continued to send forms 1314.

Upon Ellens' return some ten months later, I was in need of a designation 77 and since the PDC had continued to send 1314s, I contacted the MSC for an O.K. to rehire and I simply started sending in her time on the 1314s.

Before I rehired Mrs. Bryce, I talked to her and explained that she would be starting over and that Robert L. Lofgreen would have seniority over her. She agreed that this was only fair.

During the time in question I did not recognize the importance of keeping records as I should have and I knew nothing of being grieved. However, I do certify that Ellen A. Bryce did indeed resign in 1978 for a period of about ten months, and was rehired at the end of that time, thus breaking service time. The forms 1314 on file in this office will bear out the time period involved.

Toasperm telephoned Massey and instructed him to go through his office with a "fine tooth comb" to see if he could locate the letter of resignation. As noted, it was never located. During this conversation, Massey informed Toasperm that several of the Lakeside employees would attest to statements by Toni Bryce about leaving permanently to move to Kingman but Toasperm made no request for such statements at that time. Thereafter, Toasperm telephoned the postmistress in Kingman and requested that she search her records for any evidence that Toni Bryce had been employed there during her 10-month absence from the Lakeside Post Office.

At the conclusion of his investigation, Toasperm said that he was 100 percent convinced that Toni Bryce did have a break in service from May 1978 to March 1979. He based his conclusion on the following information:

1. A USPS Form 2591 application for employment form dated in May 9, 1979, and bearing Toni Bryce's signature (Jt. Exh 3, p. 50) showing the applicant had left her Lakeside employment in June 1978 to move to Kingman. This document also reflected that Toni Bryce had been employed as a postal clerk in Kingman.

2. A USPS Form 1421-B (Jt. Exh 3, p. 48) furnished to Toasperm by the postmistress at Kingman which bore the signature of "T. Bryce." This form is a cash and stamp accountability form apparently used by window clerks at postal facilities. According to Toasperm's uncontradicted testimony, the form shows that Toni Bryce was employed at a postal substation in Kingman operated by a private contractor and demonstrates that during the period of her Lakeside absence she had private sector employment which is not authorized by USPS regulations if an employee is on a personal leave of absence.⁹

⁹ Toasperm was prompted to inquire into the leave-of-absence question by an earlier letter from Toni Bryce to U.S. Senator Dennis DeConcini of Arizona wherein she referred to her absence from Lakeside as a "leave of absence." The letter had been referred to Toasperm for a response. Toasperm testified that for a leave of absence beyond 30 days postal regulations require the submission of a written request on a USPS Form 3971 and an approval of such a leave.

⁷ The reference to sharing information alludes to the parties' practice under the Agreement to make full information disclosures when grievances are processed.

⁸ The "pay period 11-78" referred to in the letter appears to refer to a USPS pay period which occurred in May 1978.

3 USPS Forms 4240 (trip reports and time records) from the Lakeside Post Office showing that Toni Bryce was not on duty at the Lakeside Post Office during the period in question

4 Massey's written statement of April 15 which he trusted as well as oral statements from Massey that he had separated Bryce by memo because she had been hired by memo and that she had not applied for any type of leave

5 Massey's report that other employees at the Lakeside Post Office would attest to statements openly made by Toni Bryce that she was leaving Lakeside permanently to move to Kingman because of her husband's transfer

On April 20, 1982, Toaspern denied the grievance in a letter to D J Bryce Toaspern initially noted that the description of the grievance and the contract violation cited in the grievance were not compatible and were deemed irrelevant Toaspern observed that the test score consideration applied only in establishing seniority among regular carriers His grievance decision then continues

It has been determined by previous decision that Mr Robert Lofgreen has established the longest continuous service as a substitute rural carrier and auxiliary rural carrier and was rightfully awarded Rural Route 1 No violation of Article 12, Sec 3B,3b exists Furthermore, as Ms Bryce was not in a duty status for approximately 10 months, and an auxiliary carrier (77) was hired to replace her, which is a matter of record, there is clearly no violation of the cited "Memorandum of Understanding" It is stated in this memo that only one auxiliary rural letter carrier may be credited with being the auxiliary rural letter carrier on any one auxiliary rural route for a given period of time During this given period of time the credited auxiliary carrier is clearly not E A Bryce

By letter dated May 2, 1982, the Union appealed the grievance to step 3 of the grievance procedure It noted that the issue was the appointment of Lofgreen as the regular rural carrier on the Lakeside route 1 Thereafter, the appeal letter tracks the step 2 grievance word for word The appeal letter was signed by Richard Feckner in his capacity as the Union's state steward

In the meantime, Lofgreen again acted to protect his own position by individually pursuing two grievances immediately after Toni Bryce's grievance was filed One grievance sought a correction in his Form 50 to reflect his auxiliary carrier service between August 1978 and September 22, 1979 The other grievance sought to correct Toni Bryce's official record to reflect a break in service when she left Lakeside and moved to Kingman Massey refused to initiate this action and denied both grievances Lofgreen, still acting without official union representation, appealed both grievances to step 2 where they were considered by Toaspern Toaspern, consistent with the decision he made on Toni Bryce's 1982 grievance, sustained both of Lofgreen's grievances However, shortly after Toaspern issued decision letters on Lof-

green's grievances, he received a telephone call from Lowe, who admonished him that the Lofgreen grievances were not properly before him because the grievances had not been brought to step 2 by anyone in an official union capacity Lowe asserted that Toaspern's consideration of Lofgreen's grievances under such conditions could subject the USPS to an unfair labor practice charge Toaspern agreed with Lowe's analysis and, on May 8, he issued a letter rescinding his prior decisions on the grievances, informing the parties that they were not properly before him under the contractual grievance procedure Lowe explained that he did not have an exact recollection of what prompted him to intervene in the Lofgreen grievances but he thought it might have been a call from the Union

After Toaspern rescinded his action on Lofgreen's grievances, Lofgreen telephoned Moreland to complain of his inability to obtain union representation to pursue his claims Moreland denied Lofgreen for filing grievances on outdated grievance forms and told him that in any event he did not have a grievance Lofgreen explained that the grievances were filed on forms provided to him by D J Bryce Lofgreen also complained again of the lack of representation he was receiving from D J Bryce and of Bryce's bias Lofgreen requested that Pete Whipple, a rural carrier at the nearby Show Low, Arizona Post Office, be designated to represent him, but Moreland declined this request saying that Lofgreen did not yet have a grievance Moreland advised Lofgreen to have a grievance prepared in the event Toni Bryce's grievance was successful

Not content to await the outcome of Toni Bryce's grievance, Lofgreen refiled his prior grievance on May 13 By this time, Curry had been elected the local steward at the Lakeside Post Office and Curry agreed to sponsor Lofgreen's grievances They were promptly denied by Massey and Curry appealed them to step 2 Lofgreen's grievances languished at this point without any action ever being taken by Toaspern Toaspern explained that, although the grievances had been appealed to him, the Union never made a formal presentation of the grievances and he did not act on them for this reason

There were other complaints about the union representation afforded to Lofgreen during this period Show Low rural carrier David Stepp recalled that he telephoned Moreland on at least two occasions after he learned of the grievance over the rural carrier vacancy in Lakeside Stepp told Moreland that it was his opinion that Lofgreen was getting a "raw deal" and that Moreland should send someone to Lakeside to investigate the matter Moreland told Stepp that he would turn the matter over to Feckner to find out what was going on

In May 1982, Show Low carriers Stepp, Ward, and Whipple attended the Union's state meeting in Apache Junction, Arizona During this meeting, the three Show Low carriers met with Moreland and Feckner At this time, Whipple again requested that an investigation be conducted concerning union representation at the Lakeside Post Office because it was believed that D J Bryce was zealously favoring his daughter-in-law Moreland

agreed to Whipple's request that Feckner and he go to Lakeside to investigate their complaint but, as it developed, this promise was not kept. During the same meeting, Moreland agreed to appoint Whipple as the area steward to replace the retired Bryce. In doing so, Moreland reserved the handling of Toni Bryce's grievance to D. J. Bryce ostensibly because it had commenced under his stewardship.

The Show Low carriers also complained to the officers of the NRLCA. Stepp recalled telephoning Wilbur Wood, then president of NRLCA. Stepp claimed that he told Wood the same thing that he told Moreland, namely, that the representation at the Lakeside Post Office was not right and that "something should be done about it." Wood told Stepp that Tom Griffiths, another national officer, was handling the Toni Bryce grievance and that Stepp should speak to either Griffiths or the regional representative, Vernon Meier. Stepp followed up by talking with Meier on at least two occasions while the Toni Bryce grievance was pending at step 3 where it was being personally handled by Meier. Stepp recalled telling Meier that the Union's representation in the Lakeside rural carrier dispute was "one-sided." In one of their conversations, Stepp told Meier that the whole affair was a "big mix-up and a big mess and that he should look into it since he was handling the grievance at step 3 at the time." Stepp asserted that Lofgreen was entitled to the position because of Toni Bryce's 1978 break in service. Stepp said that in one of their conversations Meier told him "that as far as the form 50's were concerned that Toni Bryce never did quit her job and that that was the basis that the Union was pursuing their line of thought with." Meier also told Stepp that the Union could not represent both sides of the matter. Stepp said that, when he complained that the union position was based on favoritism which D. J. Bryce was showing his daughter-in-law, Meier repeatedly asserted that the Union's position nevertheless was based on the Form 50 argument.

Whipple also asserted that he spoke to Meier on three or four occasions while the Toni Bryce grievance was pending at step 3. He too, argued on behalf of Lofgreen and complained that the Union was refusing to represent Lofgreen while it sided with Toni Bryce notwithstanding the conflict of interest resulting from D. J. Bryce's representation of her. Whipple reported to Meier statements made by D. J. Bryce to the effect that he would do everything in his power to see that Toni Bryce succeeded him.

Meier testified that he had no recollection of calls from either Stepp or Whipple.

At step 3 the USPS again was represented by Ronald Lowe. At the request of Lowe's office, Toaspern forwarded the grievance file which he had accumulated during the period he had considered the grievance. In addition, Toaspern forwarded a covering memorandum dated June 13, wherein he noted that the grievance appeared defective under article 17.2, section B(2), because D. J. Bryce had never been certified to him as a local steward. Toaspern also called attention to the inconsistent assertions in the grievance and recited his conclusion that Toni Bryce had quit her USPS appointment for ap-

proximately 10 months. In support of that conclusion, Toaspern's memorandum set forth the following as supporting evidence:

Proof—Evidence

- A. Statements of Lakeside Post Office employees.
- B. Signature of E. A. Bryce on PS-Form 1412-B submitted by private contractor in Kingman, AZ on 12-20-78, proving that Ms. Bryce was gainfully employed in the private sector during the time in question
- C. PS-Form 2591 filled out by Ms. Bryce in her own handwriting indicating she left the Postal Service & moved out of the area therefore validating a break in service
- D. Notes of Lakeside Postmaster on PS-Forms 1314.
- E. No PS-Form 3971 to support Leave-of-absence.
- F. No letter requesting leave from Bryce.

Thereafter, Toaspern noted his conclusion that, as Lofgreen's date of continuous service commenced on August 12, 1978, and Toni Bryce's continuous service dated from March 29, 1979, Massey properly awarded the route to Lofgreen. Although Toaspern observed that the postmaster had made an administrative error, not specified in the memorandum, he also noted that the "service records" had been properly corrected. In fact, Toaspern had initiated personnel action to amend the service record (as reflected on USPS Form 50) of Lofgreen to correctly reflect that he entered on duty as an auxiliary carrier on August 12, 1978, rather than September 22, 1979, the error which resulted directly from the 1981 Lowe grievance decision previously discussed. At the same time, Toaspern initiated personnel action to correct the service record of Toni Bryce shown on her USPS Form 50 to reflect a break in service when she moved to Kingman.¹⁰

Lowe said that shortly after he received Toaspern's grievance file he telephoned Toaspern to request that the employee statements alluded to in Toaspern's cover memorandum be forwarded to him. Lowe also testified that Toaspern informed him during this conversation of Massey's claim that Toni Bryce had submitted a letter of resignation but that it could not be located. Lowe said that he requested an added search but was convinced after this conversation that no letter of resignation "was to be had." At the hearing, Lowe testified that he had never seen Massey's letter of April 15 (quoted above) until the week of the hearing. Although Toaspern had no specific recollection of sending that particular document to Lowe, he testified that it was a part of his grievance file and that it was his recollection that he sent his entire grievance file to Lowe.

Lowe and Meier met concerning the Bryce grievance on August 30 and October 15. Lowe's recollection of what occurred at both meetings was minimal. It is clear

¹⁰ In both instances, the change has ramifications other than for job-bidding purposes. Thus, time was added to Lofgreen's service for retirement purposes while Toni Bryce's service time for this purpose was reduced.

that at the first meeting there was agreement to postpone consideration of the grievance until Lowe could obtain the official personnel files of the two disputants

Lowe explained that the official personnel files of Lofgreen and Tom Bryce were furnished to him in the first week of September. Additionally, between his two meetings with Meier, the handwritten statements from the three Lakeside employees were furnished to Lowe by Toaspern's successor under a covering letter saying, in effect, that the enclosed statements were those of the Lakeside employees requested by Lowe.¹¹ Lowe ultimately chose to accord these statements no weight because they were not in affidavit form and because he claimed not to know who Frost and Thomas were at the time. There is no evidence that Lowe sought statements in an affidavit form or made any attempt to learn the identity of Frost or Thomas.

Lowe testified that the October 15 meeting with Meier on the Tom Bryce grievance lasted approximately 2 or 3 hours. He asserted it was grueling, that they "discussed the merits of the entire case." Asked to recount Meier's position at this meeting on the grievance, Lowe testified only "He was advocating the position of Ms Bryce." This oblique response prompted the USPS counsel to press further for the reasons explicated by Meier for advocating Tom Bryce's position. In response, Lowe testified

A Well, there were several. One was, did we have a letter of resignation that he could review?

Q What did you tell him in answer to that?

A I told him that there wasn't any and not to expect any because there wasn't any. The absence of the letter of resignation was, as far as I was concerned at that time, was understood by him.

Q All right. I cut you off, you were starting to tell us what Mr Meier's reasons were, or his position, regarding the grievance?

A That was one of the elements that he argued. Another element that he argued was the seniority of Bryce over Lofgreen.

Q Tell us what was said on that subject?

A Well, after establishing where his—where he was coming from in terms of his arguments, we then argued or discussed, more or less argued, the criteria upon which he was basing his arguments on.

Q What did he tell you the criteria were, what were his criteria?

A He used, as an argument, the memo of understanding as one argument, the contract issues that we discussed in detail, and the mere fact that I couldn't establish that she was not available for work at the Lakeside Post Office during the 10 month absence.

Q Did he mention anything about the Form 50's situation?

A Well, he also mentioned that, too.

Q What did he say about that?

A Where is the separation 50?

Lowe's interrogation at the hearing produced the following responses about his own investigation and conclusions.

Q Well, based on your experience, if you don't have a Form 50 separating an employee, but yet their [sic] not working, they're not on a pay status or duty status, what is their status with the Postal Service?

A Well, it could include leave without pay, it could be sick leave, it could be annual leave as far as pay status is concerned, and it could be maternity leave.

Q What did it show as far—what did the files show for Ms Bryce, the Form 50's in the file, what did it show as to her status during a period beginning in May of '78 and ending in March of '79?

A The available information that I received in the files indicated that she was still on the rolls.

Q Did it indicate whether or not she was on duty at the Lakeside Post Office during that time?

A A Form 50 wouldn't show an employee being in pay status as such.

Q Did your investigation indicate whether or not she was on duty during that 10 months at the Lakeside Post Office?

A There was no indication that she was at work.

Q What did you believe as of October 15, 1982, as to the whereabouts of Ms Bryce during that 10-month period?

A Oh, I was convinced she was in Kingman.

Q And what did your investigation show as to the date of her return to duty at Lakeside?

A Approximately May of 1979.

Q All right. What did that form [USPS Form 1412-B from the Kingman substation] tell you about the nature of her employment and her earnings in Kingman, Arizona?

[Intervening questions occurred relative to the exhibit.]

A It shows dates of employment from October, 1978, to January of '79.

Q Where was she working?

A Kingman, Arizona.

Q In what job?

A The form shows part-time clerk.

Q Where?

A Post Office Substation.

Q All right. Did you have any other evidence in your file that showed that she was employed in Kingman, Arizona, during that period?

A There were, yes.

Q Okay. Can you tell, or did you know, from your investigation when you were meeting with

¹¹ Those handwritten statements are signed by Lakeside employees Curry, Frost, and Thomas and are in evidence as Jt. Exh. 3, pp. 4-7.

Mr. Meier on October 15th, by whom Ms. Bryce was employed in Kingman, Arizona?

A. By then I knew that this was a contract station.

Q. A contract station performing services for the Postal Service?

A. It's an independent contractor

Q. All right. But can you tell from the face of this document that this belongs to an independent contractor in Kingman, Arizona?

A. Not on the face of it, you've got to ask questions.

Q. Well, who would you ask the questions of?

A. In this case, because Mr. Toasperm filed the information to me, he either identified it in his transmittal letter, or he told me in one of the telephone conversations.

Q. Did you ever check with anybody in Kingman, Arizona, to verify the authenticity of this document?

A. No.

Q. What was Mr. Meier's belief or what statements regarding whether or not Ms. Bryce was in Kingman, Arizona, for approximately 10 months in late '78 and early '79?

A. Probably one of the first elements of agreement.

Q. You and he agreed.

A. Yeah. I was persuaded by it.

Q. All right. Well, then if she was gone for 10 months were you able to determine why she hadn't been separated from the rolls of the Postal Service?

A. Only that no Form 50 personnel action was executed to terminate her from the rolls.

Q. Did you learn from your investigation as to what efforts had been made to terminate her from the rolls?

A. By whom?

Q. By anybody.

A. No.

Q. Did you find out whether anybody had done anything to attempt to terminate her from the rolls?

A. Only from what they call—by memo.

Q. Well, who sent a memo to whom?

A. Allegedly, Mr. Massey sent a letter to the Postal Data Center.

Q. Sent what letter?

A. A so called memo.

Q. Saying what?

A. I don't know, I never saw it.

Q. It was never produced to you?

A. No.

Meier asserted that it was the Union's position at step 3 of the 1982 grievance that under the terms of the 1979 Memorandum only Toni Bryce was entitled to credit for time worked as an auxiliary carrier for bidding purposes. Meier explained that USPS documents showed that on September 21, 1979, the day before Toni Bryce and Lofgreen's appointment as substitute carriers, only Toni Bryce was actually employed as an auxiliary carrier and, presumably, at least he regarded her as the primary auxiliary carrier within the meaning of the 1979 Memorandum.

Lofgreen, according to Meier, was employed as a distribution clerk. Under this theory, Toni Bryce's 1978 resignation would be immaterial.

There is confusing evidence with respect to the above claim by Meier and the basis for it. First, to the extent that the record here contained pre-1982 Form 50s for the two employees, they show that Toni Bryce's position title was that of an auxiliary rural carrier until September 22, 1979, and "rural carrier" thereafter. Lofgreen's Form 50 lists his position as that of a distribution clerk even for post-September 22, 1979, when everyone agrees he was a substitute carrier. On the other hand, the same form contained a position code number of 77 (auxiliary carrier) for both employees. Second, the ARLCA introduced the pertinent carrier time records for the period preceeding September 22, 1979, on Lakeside route 2. That record listed Curry as the "Regular Carrier" and Lofgreen as the "Substitute Carrier." However, the time notations showed that Curry, Lofgreen, and Toni Bryce all carried the route at one time or another and that Toni Bryce carried it more than Lofgreen in the period from June 16 to September 22, 1979. Third, Massey testified that Lofgreen was qualified as a dual designation employee, that is, qualified and working both as a clerk and a rural carrier and, hence, he could be used where the need was the greatest.

Whatever else may be said, it is clear that Lowe's ultimate step 3 determination was based on a theory other than that discussed by Meier at the hearing. At the conclusion of the October 15, 1982 meeting between Lowe and Meier, Lowe informed Meier that he was going to sustain the Toni Bryce grievance. Between that time and Lowe's November 18, 1982 letter which served to officially notify the parties of his action, Lowe made a courtesy call to Massey to inform him of the result. Lowe stated that he informed Massey that the lack of a Form 50 showing Toni Bryce's separation from service with the USPS put him in an "awkward position." Lowe doubted that he discussed the alleged letter of resignation with Massey at this time.

Lowe's November 18 decision letter recites, in effect, that the central issue presented by Toni Bryce's grievance was whether she or Lofgreen had the "longest period of continuous employment." Lowe then articulated the rationale for his resolution of this issue in the following manner.

PS Form 50, Notification of Personnel Actions dated May 7 and 20, 1982 of E. A. Bryce shows a break in service from May 20, 1978 to March 23, 1979. There is no PS Form 50 to support this break in service. The record also shows Ms. Bryce was entitled to contract and COLA increases effective November 4 and 18, 1978.

The inconsistent actions do not square off. Simply, the absence of a separation action renders E. A. Bryce the employee having accrued the longest period of continuous service. It follows E. A. Bryce is then entitled to the then vacant rural route #1 retroactively to the date the route was initially awarded.

In his testimony, Lowe explained that the effect of his decision was to invalidate the correction to the Form 50 of Bryce which was initiated by Toasperm after he had rendered his step 2 decision. Lowe put the basis for his decision in a nutshell when he testified that he disregarded Toasperm's corrective action because "absent a letter of resignation to support that termination, it follows that there is no break in service." Nevertheless, Lowe agreed unequivocally "that an employee may resign verbally without a written resignation letter." On the other hand, Lowe acknowledged that he had no basis to question Norman Massey's integrity. Lowe asserted that in making the decision he did he was careful to apply "the principles of equity" because he "went around once before on this."

Over the Thanksgiving weekend, Postmaster Massey went to Lofgreen's home and told him he was going to lose the grievance and his job as a regular rural carrier. He told Lofgreen that there had been a "terrible mistake."

In December 1982, after his removal from the position of regular rural carrier on route 1, Lofgreen filed a grievance seeking to be returned to that position. Massey denied the grievance, noting that the matter could only be resolved further up the chain of command. Curry, the Lakeside steward, and Whipple, the area steward, perfected an appeal of Lofgreen's grievance to step 2. By a letter dated December 23, 1982, Feckner, the state steward, withdrew Lofgreen's grievance without notifying either Whipple or Curry.

Unaware of Feckner's action, Whipple and two other Show Low rural carriers arranged to meet with Meier at a statewide meeting of the ARLCA in January 1983. At the last minute, Meier was detained at his home by a personal matter. Another representative of the NRLCA, Paul Moeller, went to the ARLCA meeting in Meier's place and met with the Show Low group. According to Whipple, Moeller was presented with much of the evidence available when Toni Bryce's 1982 grievance was considered at step 2 and the Show Low delegation requested that the Union's position on Toni Bryce's 1982 grievance be reconsidered. Moeller promised to discuss the matter with Meier but the Show Low carriers heard nothing further from their national organization about the matter. Instead, Curry said that in January 1983, before he learned that Feckner had withdrawn Lofgreen's grievance, D J Bryce visited him at the Lakeside post office. On this occasion, Bryce told Curry that he had spoken with Meier the evening before and had been informed that the decision on Toni Bryce's 1982 grievance would stand. Meier testified that Lofgreen's December 1982 grievance was withdrawn because it was inconsistent with the position taken by the Union in the Toni Bryce grievance.

5 Further findings and conclusions

In its brief, the ARLCA argues philosophically that if it is guilty of the alleged conduct "then no union which chooses between completing employees in a seniority dispute, in a good faith and non-discriminatory way, can avoid liability before the Board." In arguing at the hearing in support of its motion to dismiss at the conclusion

of the General Counsel's case, the ARLCA seemed to concede that D J Bryce's conduct in pursuing his daughter-in-law's interest might not be defensible but that the Union was cleansed of any resulting taint when Meier took over the 1982 grievance at step 3 and processed it to a successful conclusion.

The USPS argues that mere grievance decision in favor of a union steward's relative is not "inherently destructive" of an employee's Section 7 rights within the meaning of the Supreme Court's *Great Dane* decision¹² if the applicable facts and contract provisions provide a rational basis for the grievance decision. As Lowe assertedly had legitimate business reasons for deciding Toni Bryce's 1982 grievance in the manner in which it was decided, the USPS argues, in effect, that it was incumbent upon the General Counsel to prove that Lowe was motivated by the Bryce's relationship or Lofgreen's alleged opposition to the Union. The USPS concedes that the key to Lowe's grievance decision was that Toni Bryce's 10-month absence from the Lakeside Post Office did not constitute a break in service and therefore she "had greater length of service as a postal employee so that she was entitled to the position pursuant to Article 12 of the 1981-84 agreement." Lowe, the USPS asserts, was motivated in reaching his decision "by [the] evidence then before him and his concern as to how that evidence would be viewed by an arbitrator charged with deciding this dispute under the 1981-84 agreement."

The General Counsel argues that there are numerous instances of misconduct by D J Bryce shown by the record and that both Moreland and Meier were fully informed of the elder Bryce's activities but chose to actively support the elder Bryce's pursuit of his daughter-in-law's interests. Meier, the General Counsel asserts, merely parroted the position of D J Bryce as he made no independent investigation of the relative merits of the claims by the two competing employees. As to the USPS, the General Counsel argues that Lowe was fully aware of all of the nuances of the case, including D J Bryce's activities. When the extent of Lowe's knowledge is considered together with his "bizarre" decision, the General Counsel believes that it is reasonable to infer that Lowe was biased toward the Union or at least extremely cooperative. The General Counsel further contends that Lowe's decision was so illogical and arbitrary that, standing alone, it constitutes acquiescence in the Union's alleged unlawful conduct. The General Counsel seeks to have Lofgreen reinstated to the regular rural carrier position and to be made whole for his losses.

The Board, in *Miranda Fuel Co.*, 140 NLRB 181 (1962), adopted the doctrine of fair representation developed years before by the U.S. Supreme Court.¹³ In so

¹² *NLRB v. Great Dane Trailers*, 388 U.S. 26 (1967).

¹³ See *Steele v. Louisville & Nashville Railroad Co.*, 323 U.S. 192 (1944), *Tunstall v. Brotherhood of Locomotive Firemen & Enginemen*, 323 U.S. 210 (1944), *Wallace Corp. v. NLRB*, 323 U.S. 248 (1944). Although enforcement of the Board's *Miranda Fuel* Order was denied by the court of appeals 326 F.2d 172 (2d Cir. 1963), the case was subsequently cited with approval by the U.S. Supreme Court in *Vaca v. Sipes*, 386 U.S. 171 (1967).

doing, the Board held that Section 8(b)(1)(A) of the Act¹⁴ "prohibits labor organizations, when acting in a statutory representative capacity, from taking action against any employee upon considerations or classifications which are irrelevant, invidious, or unfair." Additionally, the Board held that an employer, to the extent that it participates in a union's arbitrary action against an employee, violates Section 8(a)(1) of the Act.¹⁵ Furthermore, to the extent that a union's unlawful conduct under Section 8(b)(1)(A) causes, or attempts to cause, an employer to derogate the employment status of an affected employee, and the employer acquiesces, the union and the employer also violate Section 8(b)(2) and Section 8(a)(3) of the Act, respectively.¹⁶ Merely breaching the duty of fair representation is not per se a violation of Section 8(b)(2) *Glass Bottle Blowers Local 106 (Owens-Illinois)*, 240 NLRB 324, 325 (1979). And, recently, the Board has had occasion to observe that its holding in *Miranda Fuel* "is focused upon limiting certain actions of a union in light of powers conferred on the union as a statutory representative under the Act" and that "[i]n the absence of any action or failure to take action based upon unlawful considerations, no obligation is placed upon the union to take action in furtherance of employees' Section 7 rights." *East Texas Motor Freight*, 262 NLRB 868, 870 (1982). A cursory review of Board volumes following *Miranda Fuel* discloses numerous cases in which the Board has found the duty of fair representation breached where the union's conduct was motivated by an employee's lack of union membership, strifes resulting from intraunion politics, and racial or gender considerations.

There is yet another class of fair representation cases pertinent here wherein a Board's finding of unlawful conduct is grounded upon the existence of a conflict between the union agent's private, personal interests. The *Miranda Fuel* case itself suggested precisely this type of case. Thus, the majority there observed at 184:

¹⁴ Sec. 8(b)(1)(A) provides that it is an unfair labor practice for a labor organization or its agents

[T]o restrain or coerce . . . employees in the exercise of the rights guaranteed in section 7. Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein

Sec. 7 provides.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

¹⁵ Sec. 8(a)(1) provides that it is an unfair labor practice for an employer

[T]o interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7

¹⁶ Sec. 8(b)(2) provides that it is an unfair labor practice for a labor organization or its agents:

[T]o cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)

And Sec. 8(a)(3) provides, in pertinent part, that it is an unfair labor practice for an employer

[B]y discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization

What our [dissenting] colleagues' proposition comes down to is that the Act lawfully entitles a statutory bargaining representative to refuse to refer an individual under an exclusive hiring arrangement for reasons other than a failure to tender dues and initiation fees, and that a union, no matter how arbitrary or unfair or disparate its action may be, may close the doors of employment to such individuals so long as the union's action is not motivated by the individual's union membership or activities. Thus, to cite an example, Union Business Agent Smith, who runs a union hiring hall under an exclusive hiring hall arrangement, places union member or non-member Jones at the bottom of the referral list and causes his discharge, or otherwise refuses to refer Jones, because Jones refuses to court Smith's daughter. Our colleagues' syllogism would read as follows: Courting is not a protected right under Section 7 of the Act, and an employer may discharge Jones for such reason; therefore, as an employer is free to act on such basis under the Act, a union also does not violate the Act by causing the employer to take such action even in the context of an exclusive hiring agreement.

This syllogism has an appealing rationality if the Act treats and regards labor organizations no differently than it does employers. Therein lies the issue.

Representative of the class of fair representation cases suggested by the *Miranda Fuel* syllogism is *Auto Workers Local 600 (Ford Motor)*, 225 NLRB 1299 (1976), where the union was found to have violated Section 8(b)(1)(A) by the conduct of its unit chairman who refused to appeal the unsuccessful grievance of certain unit employees protesting the chairman's relegation of overtime to himself which had previously been allocated among the chairman and the protesting employees. In finding this violation of the Act, the Board noted:

While an individual's grievance may be rejected for the greater good of the entire unit, the contrary action cannot be accepted as valid. . . . That is precisely what occurred here—the Respondent permitted its agent to reject the committeemen's grievance for the individual benefit of that agent. Such action was manifestly unfair.

Nevertheless, the Board also held that the chairman's refusal to appeal—which was imputed to the union—did not violate Section 8(b)(2) because it "lacked the element of causing or attempting to cause the Company to take any action . . . much less causing it to discriminate against [the grieving employees] in violation of Section 8(a)(3)."

In *Expro, Inc.*, 235 NLRB 918 (1978), the Board held that a union violated Section 8(b)(1)(A) and (2) where its business agent, for personal reasons, appointed his son-in-law to be the unit steward. As steward, the relative was accorded contractual superseniority, advancing him over two other employees who, as a consequence, suffered a more erratic work pattern. However, it is noteworthy that in the companion case against the employer the

Board absolved the employer because the evidence failed to show that it was abetting the union's unlawful conduct by merely meeting its contractual obligation to comply with the superseniority provision.

Additionally, in *Auto Workers Local 417 (Falcon Industries)*, 245 NLRB 527 (1979), the Board found that the union violated Section 8(b)(1)(A) where its responsible agent willfully refused to process a grievance primarily because of a long-festering personal feud the agent had with the potential grievant *Eldorado Mfg Corp*, 249 NLRB 646 (1980), is a similar case. There the union was found to have violated Section 8(b)(1)(A) when its business agent chose to rely on a shop steward to inform two discharged employees of the union's supposed willingness to process their grievances knowing full well that the steward was vehemently antagonistic toward the potential grievants. Not surprisingly, the union's message never reached the discharged employees.

The record here does not support the Union's fundamental contention that its agents approached the dispute over the Lakeside route 1 assignment in "a good faith and non-discriminatory way." The General Counsel adduced substantial, uncontradicted evidence showing not only D J Bryce's actual conflict of interest resulting from his close relationship with one of the disputants, but also his open and extreme efforts on behalf of his daughter-in-law in the dispute. The evidence shows the elder Bryce's conduct began with his pursuit of the 1981 grievance on behalf of Toni Bryce which was solely for the purposes of advancing Toni Bryce's standing in the competition for his job when he retired. At the same time, D J Bryce refused to sponsor a similar grievance when requested to do so by Lofgreen. During this period, D J Bryce was open about his biased intentions to numerous individuals, including other Lakeside employees and Toaspern, who in turn adequately alerted Lowe. The extent of D J Bryce's determination was made very clear when, shortly before his retirement, he unsuccessfully sought Massey's involvement in his design with an attempted bribe.

The Union's state officials were put on notice of D J Bryce's invidious activities as early as October 1981 and on repeated occasions thereafter. Moreland, as the chief executive officer of the Union, effectively ignored the initial signals of Bryce's misconduct by refusing to designate a different steward for Lofgreen. Even the conflict of interest obvious from the Bryces' relationship alone and the obvious nature of the 1981 grievance demanded some form of redress similar to that called for by Lofgreen's October 1981 letter in order to maintain the slightest appearance of fairness. Later, it became evident that the Union's state officials were active participants in D J Bryce's scheme to secure the regular rural carrier position for Toni Bryce when authority was withheld from Whipple over Toni Bryce's 1982 grievance at the time he was appointed the area steward to replace D J Bryce notwithstanding even further complaints of misconduct. These events together with the Union's failure to provide evidence of a rational, nondiscriminatory basis for its state officers to authorize an appeal of the Toni Bryce grievance to step 3 render it culpable for D J Bryce's misconduct.

Likewise, Meier conducted no independent investigation of the merits of the dispute over the Lakeside rural carrier's job. Instead, he relied solely on the file prepared by the Union at the earlier stages of the grievance. Whipple and Stepp credibly recounted their repeated efforts to inform Meier of the nature of the previous involvement of responsible union officials in the 1982 Toni Bryce grievance. By contrast, Meier's purported lack of recollection of the Whipple and Stepp telephone calls convinces me that he, too, was a willing participant in advancing Toni Bryce's cause. Lowe's limited explanation of the Union's position at step 3 further supports such a conclusion. Thus, both Lowe's decision and his testimony give no indication that Meier ever developed an argument during the course of processing the 1982 grievance which would render Toni Bryce's absence from Lakeside while she was living in Kingman immaterial. Moreover, apart from the flimsy and inconclusive carrier time records, no explanation was provided by the Union to show the basis for a conclusion that Toni Bryce had ever been designated the primary auxiliary carrier immediately prior to September 22, 1979, as Meier, in effect, claimed. In sum, I find that the entire argument developed by the time of the hearing that Toni Bryce was the primary auxiliary carrier and that Lofgreen was not even a unit employee is little more than a thin subterfuge designed to avoid the more pertinent question concerning Toni Bryce's break in service and is not a credible explanation of the basis for the Union's position on the Toni Bryce grievance. The Union's contention that Meier cleansed the 1982 grievance is not at all believable.

In view of the foregoing and the entire record, I find a preponderance of the evidence establishes that the Union failed to fairly represent Lofgreen as alleged in the complaint. As the purpose and result of the Union's unlawful conduct was to seek to have the USPS remove Lofgreen from the regular rural carrier's position, I also find that the Union's conduct was tantamount to attempting to cause the USPS to discriminate against Lofgreen.

Nor can I agree with the central argument of the USPS that Lowe's 1982 grievance decision was motivated by a legitimate business purpose. Instead, I find that a preponderance of the evidence established that Lowe knowingly acquiesced in and abetted the ARLCA's unlawful conduct.

As a consequence of the 1981 grievance, Lowe was admittedly acquainted with all of the nuances of the Lakeside rural carrier's dispute when it came to him for consideration in 1982. Ordinarily, it could be expected that such knowledge would cause an especially careful consideration of all the facts and circumstances. That was plainly not the case. Apart from the fact that Lowe accorded the USPS Form 50 unusual weight in his 1982 decision, his decision does not withstand any critical and objective examination. Specifically, it is especially noteworthy that Lowe did not dispute Toaspern's testimony, which I have credited, that the Form 50 is not "carved in granite" and that errors and omissions on this form are routinely corrected administratively. Nevertheless, Lowe declined to give weight to Toaspern's Form 50 correc-

tive action in order to properly reflect Toni Bryce's separation from service even though he was personally convinced that the evidence demonstrated that, during the period she was absent from Lakeside, she was residing 300 miles away from her duty station in Kingman. Lowe's explanation that he rejected Toaspern's corrective action because there was no letter of resignation to support it is simply inconsistent with his further testimony that an oral resignation would suffice to support Form 50 action. And Lowe's effort to justify his wooden adherence to the incorrect Form 50 by suggesting that Toni Bryce's 1978-1979 absence from her Lakeside job might have been an excused leave is unsupported speculation flying in the face of a direct finding by Toaspern that there was no evidence that Toni Bryce applied for or was granted leave of any sort. Moreover, it is fair to infer that the pay increases of Toni Bryce referred to by Lowe in his decision were little other than mass computer adjustments made when contractual increases were implemented.

Notwithstanding the foregoing conclusion made concerning the total lack of logic in Lowe's decision, I would not conclude, without more, that Lowe's decision was little other than—as Massey observed—"a terrible mistake." In that circumstance, USPS's liability in this matter might be doubtful at best. However, Lowe's pursuit and treatment of known evidence that Toni Bryce effectively resigned her job in Lakeside in 1978 supports the controlling conclusion which I have reached that Lowe's decision deliberately abetted the Union's unlawful activities designed to secure the appointment of Toni Bryce to the rural carrier position vacated by her father-in-law. The bases for this latter conclusion are:

1. Lowe completely discounted the handwritten statements of Lakeside employees Curry, Frost, and Thomas (all of which disclosed 1978 statements by Toni Bryce to the effect that she was quitting her job at Lakeside to move to Kingman) which were furnished to Lowe at his request on the ground that they were not in affidavit form and because he claimed not to know at the time who Frost and Thomas were. Lowe's startling explanation of his treatment of this evidence when considered in context completely undermines the credibility of his decision as well as his credibility as a witness in this proceeding.

2. Although Lowe acknowledged that a resignation in oral form would suffice to effectively separate an employee from the rolls, he initiated no inquiry of any kind to Postmaster Massey, the most likely recipient of any resignation, even though Lowe was aware that Massey claimed to have once possessed a written resignation from Toni Bryce. Indeed, that claim by Massey alone would appear to satisfy the oral resignation standard acknowledged by Lowe. Additionally, Massey's contemporaneous notations on Toni Bryce's 1978 time documents (also apparently ignored by Lowe) lend a strong aura of credibility to Massey's claim that Toni Bryce resigned in 1978. And because I found Lowe not to be a convincing witness, I cannot credit his assertion that he did not see Massey's written statement of April 15, 1982, certifying that Toni Bryce had resigned until the week of the hearing.

3. Lowe's effort to explain his failure to pursue the very significant information he had concerning Toni Bryce's status by asserting that his role was akin to that of a "neutral" and that it was up to others at lower steps in the grievance procedure to build the file is totally at odds with common labor relations experience. This is especially true where, as here, both Massey and Toaspern undertook to comply with exceedingly limited contractual time restraints when they considered the 1982 grievance. Lowe was clearly a management functionary and his attempt to characterize himself otherwise was, in my judgment, deliberately misleading. Lowe's function included the screening of cases before arbitration. It is utterly impossible to accept Lowe's conclusion that the circumstances here presented the USPS with an untenable case for arbitration.

4. Lowe promptly and directly intervened with Toaspern concerning Lofgreen's individually processed grievances. Viewed in context, Lowe's action in this regard also served to frustrate a full airing of the Lakeside dispute and is consistent with other conduct by him of a similar nature.

5. Lowe accorded practically no significance to Lofgreen's contention that the 1981 decision as implemented on the subsequent Form 50 effectively stripped him of important service time as an auxiliary carrier. Clearly, the collective-bargaining agreement and the 1979 Memorandum demonstrate otherwise. Lowe's testimonial assertion that an in-house compensation specialist agreed with his conclusion after reviewing the respective personnel files can be accorded no probative weight especially where, as here, it is clear that the information contained in those files was clearly faulty.

Considering the quality and quantity of evidence that Lowe disregarded in reaching his decision, the information available to him concerning the personages involved in the Lakeside carrier's dispute, the glaring logical inconsistencies between his November 1982 decision in the case and his explanation of the basis for that decision, the high level of Lowe's labor relations sophistication, and Lowe's unconvincing testimony noted above on critical matters, it is fair to infer, as I have, that Lowe consciously chose to acquiesce in the Union's obvious unlawful conduct rather than compel the Union to arbitrate Toni Bryce's very tenuous claim. In sum, I find that Lowe knowingly abetted the Union's unlawful effort to secure Toni Bryce's appointment as a regular rural carrier.

In my judgment, the evidence conclusively establishes that the outcome of the grievance over Lofgreen's appointment as a regular rural carrier resulted directly from the knowing acquiescence of responsible union officials and Lowe in D. J. Bryce's use of his office to pursue his own personal interests. Where employees chose to exercise their Section 7 right to establish a system of workplace jurisprudence by means of a contractual grievance-arbitration procedure, they are protected against invidious attempts of this sort to distort the system to serve the private, personal interests of their representatives. Accordingly, I find that the Union vio-

lated Section 8(b)(1)(A) and (2) of the Act and the USPS violated Section 8(a)(1) and (3) of the Act, as alleged¹⁷

IV THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of USPS and the ARLCA set forth in section III, above, occurring in connection with the operations of the USPS described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce

V THE REMEDY

Having found that USPS and the ARLCA each engaged in certain unfair labor practices, it is recommended that they be ordered to cease and desist therefrom

As the initial appointment of Lofgreen to the position of regular rural carrier for the Lakeside rural route 1 occurred in a context free of any unfair labor practice and as he was later removed from that position only as a consequence of the unfair labor practices found above, the following affirmative action is required to undo the effects of those unlawful actions. First, it is recommended that the ARLCA be ordered to withdraw the grievance of Ellen A. Bryce filed in April 1982, as responsible representatives of the ARLCA pursued that grievance from the outset for arbitrary and invidious reasons inconsistent with its obligation under the Act to fairly represent all unit employees. Second, it is recommended that the USPS be ordered to rescind Lowe's November 18, 1982 step 3 grievance decision and restore the corrected personnel records (Form 50s) of Lofgreen and Ellen A. Bryce initiated by Toasperm in May 1982. Third, it is recommended that both the USPS and the ARLCA expunge from its records any reference to the April 1982 grievance of Ellen A. Bryce and any actions taken pursuant thereto, that both parties notify Lofgreen in writing that such action has been taken, that the USPS assure Lofgreen in writing that evidence of its unlawful conduct will not be considered in any future personnel actions, and that the ARLCA assure Lofgreen in writing that evidence of its unlawful conduct will not be considered in representing him in the future. *Sterling Sugars*, 261 NLRB 472 (1982), *Engineers & Scientists Guild (Lockheed-California)*, 268 NLRB 311 (1983). Fourth, it is recommended that the USPS be ordered to immediately restore Lofgreen to the position of regular rural carrier for the Lakeside rural route 1 from which he was removed as a consequence of Lowe's November 18, 1982 grievance decision, together with all seniority and benefits which would have accrued to him if he had not been removed from that position, or, if that position no longer exists, to the position or status he would have been entitled at the time the position ceased to exist. Fifth, it is recommended that the USPS and ARLCA be ordered to

make Lofgreen whole, jointly and severally, for losses he incurred as a consequence of his removal from the regular rural carrier's position pursuant to the November 18, 1982 grievance decision. Backpay, if any, shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and interest shall be added to that amount in accord with *Olympic Medical Corp.*, 250 NLRB 146 (1980), and *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962). Any trust fund reimbursements shall be in accord with *Merryweather Optical Co.*, 240 NLRB 1213 (1979). Finally, it is recommended that the USPS and the ARLCA be ordered to post the notices attached hereto as Appendices A and B in order to fully inform employees of their rights and the outcome of this matter.¹⁸

CONCLUSIONS OF LAW

1 The USPS is an employer within the meaning of Section 2(2) of the Act, engaged in commerce or a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2 The Union is labor organization within the meaning of Section 2(5) of the Act.

3 The Union restrained and coerced Robert Lofgreen in violation of Section 8(b)(1)(A) of the Act and caused an employer to discriminate against Lofgreen in violation of Section 8(b)(2) of the Act by failing to fairly represent Lofgreen in the dispute which occurred over his appointment as the regular rural carrier for route 1, Lakeside, Arizona.

4 The USPS interfered with, restrained, and coerced Robert Lofgreen in violation of Section 8(a)(1) of the Act and discriminated against Lofgreen in violation of Section 8(a)(3) of the Act by knowingly acquiescing in, and abetting, the Union's unlawful conduct specified in paragraph 3, above, in connection with the dispute over Lofgreen's appointment as the regular rural carrier for route 1, Lakeside, Arizona.

5 The unfair labor practices specified in paragraphs 3 and 4, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I make the following recommendation.¹⁹

ORDER

A Respondent United States Postal Service, its officers, agents, successors, and assigns, shall

1 Cease and desist from

(a) Interfering with, restraining, and coercing employees by entertaining or acquiescing in any grievance pur-

¹⁷ I do not believe, however, that the General Counsel established that Lofgreen's opposition to union actions controlled the 1982 grievance outcome. Colloquially speaking, Lofgreen lost the 1982 grievance and his job because he was not favored by the inner circle of "good old boys" who handled the matter.

¹⁸ It is further recommended that the Board consider whether, under all the circumstances of this record, it would be appropriate to refer the evidence in this case of the attempt to bribe Postmaster Massey by D. J. Bryce to the United States Department of Justice or the Postal Inspection Service for consideration of further action.

¹⁹ 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.

sued by a labor organization if there is a known conflict of interest between any of the labor organization's representatives or agents who participated in processing the grievance and any unit employee directly affected by the grievance

(b) Discriminating with respect to the hire, tenure, or other term or condition of employment of any employee by acquiescing in any grievance pursued by a labor organization if there is a known conflict of interest between any of the labor organization's representatives or agents who participated in processing the grievance and any unit employee directly affected by the grievance

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act or discriminating against employees for reasons prohibited by Section 8(a)(3) of the Act

2 Take the following affirmative action necessary to effectuate the policies of the Act

(a) Rescind the decision dated November 18, 1982, in the grievance brought by Ellen A Bryce concerning the appointment of Robert Lofgreen as the the regular rural carrier for rural route 1 at the Lakeside, Arizona Post Office

(b) Expunge from its files any reference to the removal of Robert Lofgreen from the position of regular rural carrier pursuant to the November 18, 1982 grievance decision and notify him in writing that this has been done and that evidence of this unlawful conduct will not be considered in future personnel actions involving him

(c) Immediately restore Robert Lofgreen to the position of regular rural carrier of rural route 1 at the Lakeside, Arizona Post Office with full seniority and benefits, and make Lofgreen whole, jointly and severally with the Arizona Rural Letter Carriers' Association, for any losses suffered by him as a result of his removal from that position pursuant to the November 18, 1982 grievance decision, both in the manner specified in the above section entitled "The Remedy"

(d) Preserve and, on 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 or useful to determination of the amount of back-pay due under the terms of this Order, the propriety of the job restoration action required, and USPS's compliance with paragraph 2, subparagraph (b), of this Order

(e) Post at its Post Office in Lakeside, Arizona, copies of the attached notice marked "Appendix A"²⁰ Copies of the notice, on forms provided by the Regional Director for Region 28, being signed by an authorized representative of the USPS shall be posted by the USPS immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted Reasonable steps shall be taken by the USPS to ensure that

the notices are not altered, defaced, or covered by any other material

(f) Post at its Post Office in Lakeside, Arizona, signed copies of the attached notice marked "Appendix B," furnished by the Regional Director for Region 28 of the Board, for a period of 60 consecutive days in the same manner as specified in subparagraph (e) above

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply

B Respondent Arizona Rural Letter Carriers' Association affiliated with National Rural Letter Carriers' Association, its officers, agents, and representatives, shall

1 Cease and desist from

(a) Restraining and coercing employees by permitting any representative or agent to participate in the processing of any grievance if there is a conflict of interest between such representative or agent and any unit employee who may be directly affected by the grievance

(b) Causing or attempting to cause an employer to discriminate against an employee by pursuing any grievance if there is a conflict of interest between its representative or agent who participated in processing the grievance and any unit employee directly affected by the grievance

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act, or causing, or attempting to cause, an employer to discriminate against employees in violation of Section 8(a)(3) of the Act

2 Take the following affirmative action necessary to effectuate the policies of the Act

(a) Withdraw the April 1982 grievance of Ellen A Bryce

(b) Expunge from its files any reference to the April 1982 grievance of Ellen A Bryce and notify Robert Lofgreen in writing that this action has been taken and that evidence of its unlawful conduct will not be considered in the future when it may be called upon to represent Lofgreen

(c) Notify the United States Postal Service in writing that it has no objection to the employment of Robert Lofgreen as the regular rural carrier for rural route 1 at the Lakeside, Arizona Post Office and make Lofgreen whole, jointly and severally with the United States Postal Service, for any losses which he incurred as the result of his removal from that position pursuant to the step 3 grievance decision dated November 18, 1982

(d) Post at its business offices, union halls, and meeting halls copies of the attached notice marked "Appendix B"²¹ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the its authorized representative, shall be posted by the Arizona Rural Letter Carriers' Association immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted Reasonable steps shall be taken by the Arizona Rural Letter Carriers' Associa-

²⁰ If 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"

²¹ See fn 20 supra

tion to ensure that the notices are not altered, defaced, or covered by any other material

(e) Forward signed copies of Appendix B to the Regional Director for Region 28 for posting by the USPS at its Post Office in Lakeside, Arizona

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply

APPENDIX A

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

After a hearing before an administrative law judge at which all parties were provided with the opportunity to present evidence and argument, the National Labor Relations Board concluded that we violated the law by pursuing a grievance which resulted in Robert Lofgreen losing his job as a regular rural carrier. To remedy this matter the NLRB has ordered us to post this notice and to comply with its terms

WE WILL NOT entertain, or acquiesce in, any grievance filed or pursued by a labor organization which represents our employees if we know of a conflict of interest between any of the labor organization's representatives or agents who participated in processing the grievance and any unit employee directly affected by the grievance

WE WILL NOT discriminate with respect to the hire, tenure, or other terms or conditions of employment of any employee by acquiescing in any grievance pursued by a labor organization representing our employees if we know of a conflict of interest between any of the labor organization's representatives or agents who participated in processing the grievance and any unit employee directly affected by the grievance

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act, or discriminate against employees in violation of Section 8(a)(3) of the Act

WE WILL rescind our decision dated November 18, 1982, in the grievance of Ellen A. Bryce, and immediately restore Robert Lofgreen with full seniority and other benefits to the position of regular rural carrier of rural route 1, Lakeside, Arizona

WE WILL make Robert Lofgreen whole, jointly and severally with the Arizona Rural Letter Carriers' Association, for any losses he incurred as a consequence of his being removed from the regular rural carrier position pursuant to the November 18, 1982 grievance decision, together with interest as required by law

WE WILL expunge from our records any reference to Robert Lofgreen's removal as a regular rural carrier, and WE WILL notify him in writing that this has been done and that no consideration will be given in future person-

nel actions involving him to his unlawful removal from the regular rural carrier's position

UNITED STATES POSTAL SERVICE

APPENDIX B

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

After a hearing before an administrative law judge at which all parties were provided with the opportunity to present evidence and argument, the National Labor Relations Board concluded that we violated the law by pursuing a grievance which resulted in Robert Lofgreen losing his job as a regular rural carrier. To remedy this matter the NLRB has ordered us to post this notice and to comply with its terms

WE WILL NOT permit representatives or agents of our organization to pursue or participate in the processing of any grievance if there is a conflict of interest between the representative or agent and any unit employee who may be directly affected by the grievance

WE WILL NOT cause or attempt to cause an employer to discriminate against an employee represented by us by pursuing any grievance where there is a conflict of interest between any of our representatives or agents who participate in processing the grievance and any unit employee directly affected by the grievance

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed them in Section 7 of the Act, or cause or attempt to cause an employer to discriminate against an employee in violation of Section 8(a)(3) of the Act

WE WILL notify the United States Postal Service that we have no objection to restoring Robert Lofgreen to the position of regular rural carrier of rural route 1, Lakeside, Arizona

WE WILL withdraw the grievance filed by Ellen A. Bryce in April 1982, concerning the appointment of Robert Lofgreen to the position of regular rural carrier of rural route 1, Lakeside, Arizona

WE WILL make Robert Lofgreen whole, jointly and severally with the United States Postal Service, for any losses he incurred as a consequence of his being removed from the regular rural carrier position pursuant to the November 18, 1982, decision on Ellen A. Bryce's grievance together with interest as required by law

WE WILL expunge from our records all references to Ellen A. Bryce's April 1982 grievance, and WE WILL notify Robert Lofgreen in writing that this has been done and that no consideration will be given on any future occasion when we may be requested to represent Lofgreen to any circumstance involving that grievance

**ARIZONA RURAL LETTER CARRIERS' ASSOCIATION
AFFILIATED WITH NATIONAL
RURAL LETTER CARRIERS' ASSOCIATION**