

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON D.C.**

**BRANCH 4779, NATIONAL ASSOCIATION
OF LETTER CARRIERS (NALC), AFL-CIO
(UNITED STATES POSTAL SERVICE)**

Respondent

and

**VALERIE JUNE WINIESDORFFER,
an Individual**

CASE 07-CB-155726

Charging Party Winiesdorffer

and

ELIZABETH BOSSICK, an Individual

CASE 07-CB-156115

Charging Party Bossick

**COUNSEL FOR THE GENERAL COUNSEL'S BRIEF IN SUPPORT OF
EXCEPTIONS TO THE DECISION OF
ADMINISTRATIVE LAW JUDGE JOHN GIANNOPOULOS**

Counsel for the General Counsel Donna M. Nixon, pursuant to Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, hereafter Rules, hereby excepts to certain findings and conclusions in Administrative Law Judge John Giannopoulos decision, and in support of these exceptions, files this brief.

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I. SUMMARY OF ARGUMENTS

On March 2, 2016, Administrative Law Judge (ALJ) John Giannopoulos issued his Decision in the above entitled proceeding. He found that Respondent did not violate Section 8(b)(1)(a) of the Act. The ALJ found that the text, which the General Counsel had alleged was a threat, sent by Respondent's President was not meant as a threat. The ALJ found that the subjective interpretation of the Charging Parties who received the text is irrelevant because the text is to be viewed objectively as determined by how it was "subjectively" intended by the sender.

The ALJ erroneously allowed irrelevant and subjective evidence at trial, over the objections of Counsel for the General Counsel, and then found facts and made conclusions based on that testimony. The testimony that the ALJ allowed in showed that Respondent's President subjective and self-serving intent was to send the text to a group of employee/members to make fun of Charging Party Bossick who disagreed with a grievance he had filed and who notified him that she sought to withdraw her Union membership one work day earlier. The evidence and testimony showed that the President had sent other texts to his text group using the same picture of the person used in the text sent to Bossick. The subjective testimony regarding the text was relied upon to explain and clarify the text.

However, the standard by which the Board judges whether a statement is unlawful in an 8(b)(1)(A) threat allegation does not permit the ALJ to look at the statement from the mind of the sender. Rather, the standard is to look at the statement from the point of a reasonable person in the place of the receiver to determine whether a reasonable person would consider the statement a threat. Moreover, once the text was sent by Respondent's

President it was accountable for its content no matter the intended recipient. Using this standard, the text is clearly a threat.

II. FACTS

The material facts of this case are not in dispute. Respondent's President Robert Willbanks (Willbanks) has been employed by the United States Postal Service at its Allen Park facility for 25 years. He has been President of Respondent for 10 years.¹ (T 48) The Employer and the Union have a Collective Bargaining Agreement (CBA) in effect with a term from January 10, 2013 through May 20, 2016. (Jt.1, p. 131) Respondent represents city letter carriers at the Employer's Allen Park facility.

Charging Party Elizabeth Bossick (Bossick) has been a city letter carrier at the Employer's Allen Park facility since 2013. She has never held any position with the Union, and at times has served as an acting supervisor. (T 16) Charging Party Valerie Winiesdorffer (Winiesdorffer) has worked at the Allen Park Post Office for 28 years. She is also a city letter carrier.

On Friday, June 12, 2015, Willbanks and Bossick had a conversation at the end of their shifts. Willbanks noted to Bossick that some of the customers on her route were asking about her and he told them she would be back on her route on Monday. (T18) This comment was related to a grievance that Willbanks had filed related to city carriers being transferred to the facility. In response to the grievance, the Postmaster decided to remove the acting supervisor duties from Bossick, Al Wilson and Tom Wassele and return them to

¹ References to the record are hereinafter abbreviated as follows: GC = General Counsel's Exhibit; R = Respondent's Exhibit; Jt. = Joint Exhibit; T = Transcript.

their carrier routes as of Monday, June 15. (T 18-19) Willbanks knew that Bossick wanted to remain an acting supervisor. Bossick subsequently asked what she had to do to get out of the Union. (T 20) He responded that she had to find out her anniversary date. Willbanks then said that she should be mad at (Postmaster) Mark Taurence not him.

On Monday, June 15, 2015, the next work day, Willbanks sent a text message to bargaining unit employees Mark Tocco, Al Wilson and Kris Shaw. (GC 4, T 72) Willbanks testified that he sent it using his personal cell phone which he often uses for official Union business. (T 67-70, R 6) The text message contained a picture of a large man who was a wrestling promoter from the 1980's called Paul Bearer. (T 38) Bearer promoted a wrestler by the name of the Undertaker. (T 38) The text from Willbanks stated, "Beth, you are one major illness or injury. From being in my dog-house. You see how petty I am. I will come after you too." (sic) The Beth that Willbanks was referring to in the text is Bossick. (T 69-70) That same day, Wilson forwarded the text to Bossick. (GC 3, T 25)

Upon receiving the text, Bossick was surprised (T 25) and concerned that the Union President would send such a text to employees. She initially thought the picture was of Willbanks (T 38), but she didn't really know who the person was in the text. She had never seen him before. Bossick then forwarded and discussed the text with co-worker Winiesdorffer. (T 26) She told Winiesdorffer that the text was about her (Bossick) and from Willbanks through Wilson. (T 26) Winiesdorffer told Bossick that she should report the text to the Postmaster because it was a threat. (T 26) Bossick stated that she had never seen the man in the text before, or his picture in the facility. (T 25) Bossick testified that she had never received a text like this from Wilson or Willbanks before. (T 27) Bossick had

never received a text from Willbanks or to her knowledge been referenced by Willbanks in a text before.

Bossick testified that she reported the text to the Postmaster. (T 30) Bossick also reported the text to Respondent's National Business Agent Pat Carroll. (T 32) Bossick stated that Carroll is considered Willbanks' boss. (T 34) After investigating the matter, Carroll dismissed the incident as "school yard play." (T 34)

III. ARGUMENT

A. The ALJ erroneously allowed and ultimately relied upon, over the General Counsel's trial objections, irrelevant and subjective testimony and evidence with respect to the context of the text sent by Respondent. [Exceptions 1, 2, 3, 4, 7 and 8]

The standard for determining whether Section 8(b)(1)(A) has been violated with respect to a statement from a union official is an objective one that does not turn on evidence that the particular employee was actually restrained or coerced by a union agent's statement or on the intention of the sender, but, rather, on whether the statement would have a reasonable tendency to restrain or coerce employees in the exercise of their statutory rights. *Graphic Communications Conference/International Brotherhood of Teamsters, Local 137C*, 359 NLRB no. 22 (November 27, 2012); *Letter Carriers Branch 3126 (Postal Service)*, 330 NLRB 587, 587-588 (2000); *Steelworkers Local 1397 (U.S. Steel Corp.)*, 240 NLRB 848, 849 (1979).

The plain reading of the text with the accompanying picture objectively restrains or coerces employees. Using a picture of large menacing man in a suit pointing a finger at the recipient and stating, "Beth, you are one major illness or injury. From being in my dog-house. [sic] You see how petty I am. I will come after you too." is a threat. Moreover,

when the Union President disseminates the text to employees within one business day of Bossick's request to resign her union membership this threat objectively restrains or coerces employees.

Nevertheless, the ALJ erroneously found a context that was based on the subjective, irrelevant, and self-serving testimony of Union President Willbanks despite the standard that requires the ALJ to view the text from the point of view of the receiver, with the information that the receiver had at the time of receipt. *Teamsters Local No. 886*, 354 NLRB 370 (2009). In the Teamsters case, the Board reversed the judge's finding that Respondent did not violate Section 8(b)(1)(A) of the Act when one of its stewards, Wes Pruitt, told employee Michael D. Reynolds, in the presence of employee Thomas Hawkins, that it dropped Reynolds' grievances because the Company did not like him and because he ran against Respondent's leadership in an intraunion election. The judge dismissed the complaint, finding that Reynolds could not have reasonably believed that Pruitt was acting on behalf of Respondent. The judge, however, did not analyze the issue of Pruitt's authority from Hawkins' perspective; in fact, the judge failed to consider Hawkins at all. The Board found that an employee in Hawkins' position reasonably could have believed that Pruitt was acting on behalf of Respondent. *Id.*

The ALJ incorrectly based his decision on the basis that Willbanks sent the text to his friends despite the record establishing that when Bossick and Winiesdorffer received the text, they knew nothing about a group text because the text sent to Bossick did not contain the names of the other recipients. (compare G 3 to G 4) In fact, they only knew that Willbanks sent the text to Wilson who forwarded it to Bossick. (GC 3) Nevertheless, even

assuming that Bossick and Winiesdorffer knew it was sent to more employees, further dissemination of an unlawful threat does not cure a threat but rather broadens its impact.

The ALJ erroneously based his decision on Willbanks' assertion that he sent the text to his friends as a joke. This finding is in error for two reasons. First, it assumes that Bossick and Winiesdorffer had this type of relationship with Willbanks and that they knew it was a joke. The record evidence shows that Willbanks never communicated by text with Bossick and Winiesdorffer and further they would never have known this to be joke because they had an acrimonious relationship. Second, and perhaps more disturbingly, an unlawful threat, is not sanitized because the deliverer self-servingly testifies that it was a joke and only intended for his friends. Ascribing, to this logic, seemingly resurrects the "good old boy" defense. *NLRB v. Homemaker Shops*, 724 F.2d 535, 549-550 (6th Cir. 1984), enfg. in part 261 NLRB 441 (1982; *Seligman & Associates, Inc. v. N.L.R.B.*, 639 F.2d 307, 309 (6th Cir.1981), *cert. denied*, 454 U.S. 838, 102 S.Ct. 144, 70 L.Ed.2d 120 (1981).

The ALJ erroneously held that Paul Bearer was a caricature and therefore the statement was objectively a joke. However, neither Bossick nor Winiesdorffer knew who the large menacing man in a suit pointing a finger was in the text. Moreover, just one workday earlier, Bossick had a conversation with Willbanks where he taunted her because she would no longer be an acting supervisor as a result of a grievance he filed. Willbanks' actions resulted in Bossick's immediate request to withdraw from the Union. This is the information that Bossick and Winiesdorffer had when they received the text. Taking the text from the viewpoint of a reasonable person receiving the text as Bossick

and Winiesdorffer did, a reasonable person would interpret the text as a threat.

As the Board held in *Randell Warehouse of Arizona, Inc.*, 347 NLRB 591 (2006):

Once elected, a union has a voice in determining when employees will work, what they shall do, how much they will be paid, and how grievances will be handled. Just as some employers have used the means at their disposal for retaliation, some unions have used their influence and authority to retaliate against employees who displease them. See, e.g., *Letter Carriers Branch 3126 (Postal Service)*, 330 NLRB 587 (2000) (union unlawfully caused employer to deny overtime to nonmember), enfd. 281 F.3d 235 (D.C. Cir. 2002); *Teamsters Local 17 (Universal Studios & Warner Bros.)*, 251 NLRB 1248 (1980) (union unlawfully caused employer to discharge nonmembers). Consistent with the foregoing, a reasonable employee could believe that a union could make good on threats to have antiunion employees fired or run off the job if the union won the election. *NLRB v. Kentucky Tennessee Clay Co.*, 295 F.3d 436, 446 (4th Cir. 2002) (union agents told employees that if the union won they would run them off or get them fired); see also *Mike Yurosek*, supra (employees could reasonably fear reprisal when union agent photographed antiunion employees and told them, “We’ve got it on film; we know who you guys are ... after the Union wins the election some of you may not be here”); *Alyeska Pipeline Service Co.*, 261 NLRB 125 (1982) (union coerced employees during election campaign by promising to give union members an unlawful advantage over nonmembers in its operation of its hiring hall); *Graham Engineering*, 164 NLRB 679, 694-695 (1967) (union coerced employees who opposed the union by threatening to discharge and withhold its services from them).

It is irrelevant why Willbanks asserts he sent the text. It is also irrelevant to whom Willbanks asserts the text was intended. Respondent’s testimony putting any context to the text should not have been allowed and the other texts submitted by Respondent should not have been admitted. The text has to be viewed from the point of view of the person receiving the text using a reasonable person’s standard – the objective standard. Thus, evidence explaining what the sender meant is irrelevant.

B. The ALJ erroneously took judicial notice of an obscure wrestler from the 1980's and incorrectly based his findings on this wrestler being a joke. [Exception 5]

In *Saccoccia* the Judge cited Fed.R.Evid. 201(b)(1); 21 Charles A. Wright & Kenneth W. Graham, Jr., *Federal Practice and Procedure* § 5105, at 489 (1977) (noting that facts that are “generally known within the territorial jurisdiction of the trial court” include those which “exist in the unaided memory of the populace”). Clad in a serape and sombrero and accompanied by his faithful donkey, Valdez regularly appears in supermarkets and private kitchens to remind consumers of the virtues of Colombian coffee. The Judge in that case was able to take judicial notice of character of Juan Valdez who was very well known, from commercials for coffee that appeared on television and newspapers, to a coffee brand distributed nationwide in grocery stores internationally.

In contrast, the character of Paul Bearer is not well known in popular culture and does not exist in the unaided memory of the populace. Unless you are a fan of wrestling in the 1980's, you would have no idea who this character is. In fact, both Bossick and Winiesdorffer testified that they did not know who it was.

Thus, the ALJ erred in taking judicial notice of this obscure figure who is not well known in either the State of Michigan or nationwide. He is not in the memory of the populace and does not have the notoriety of personas normally the type that a judge would take judicial notice about. Therefore, the ALJ erred when he found the text to be lawful in part because this person was a wrestling caricature and a joke.

C. The ALJ made findings of fact based on self-serving testimony without corroboration and made findings of fact unsupported by the evidence. [Exceptions 6 and 9]

The ALJ relied on testimony from Willbanks that he was unaware that the text was being sent to Bossick to support his finding related to Wilson. Without testimony from Wilson, the ALJ described what Wilson knew and put context and meaning on why he sent the text to Bossick. When Bossick attempted to describe her conversation with Wilson after he sent her the text, over Respondent's objection, the ALJ refused that testimony. (Tr 26-27) Yet that conversation might have shed light on the reason why Wilson sent Bossick the text.

Again, the ALJ used the testimony of Willbanks and the other witnesses to describe the context of the text and to describe how Wilson interpreted the text and why he sent it to Bossick. As stated throughout this brief, this testimony was improperly allowed and should not form the basis of the ALJ's findings. Further, if Respondent had sought the ALJ to make a finding as to why Wilson sent the text or how he interpreted the text from Willbanks, it would have called Wilson as a witness. Its failure to do so implies that he was hostile to their arguments. The Board has held that when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. In particular, it may be inferred that the witness, if called would have testified adversely to the party on that issue. *International Automated Machines*, 285 NLRB 1122 (1987). Thus, Wilson may have testified that he was unfamiliar with the character of Paul Bearer and that he only recently began receiving the group texts. He may have testified that he, and the other members of the group, sent texts to people outside the group on other occasions.

He may have testified that Willbanks told him to send the text to Bossick. Obviously, Wilson was friends with Willbanks because he was a part of the group that shared group texts. In contrast, the General Counsel had no need to produce Wilson because he would not have testified adversely to anything in support of the General Counsel's case.

D. The ALJ used the incorrect standard to evaluate the text sent by Respondent to employee/members. [Exceptions 11, 12, 13 and 10]

The ALJ cited *ManorCare of Kingston PA, LLC*, 360 NLRB No. 93 slip op. at 1 (2014), to find that the objective meaning of the text doesn't change because it was forwarded to Bossick and Winiesdorffer. The ALJ also found that Wilson forwarding the text is the equivalent of him repeating words purporting to come from the Union. These two cases are representation cases which are analyzed under a different standard. *Randell Warehouse of Arizona, Inc.*, 347 NLRB 591 (2006) *Cal-West Periodicals, Inc.*, 330 NLRB 599, 600 (2000) (Indeed, the Board has justified the different standards applied to third-party and union election conduct on the very ground that "employees reasonably have a greater concern about threats emanating from the union that may become their exclusive representative.") Moreover, just because a written message was disseminated further than the original recipients does not change the meaning of the words. In other words, threatening not to represent a member that just asked to resign her membership is unlawful because employees like Bossick read Union President Willbanks text.

In a representational election where a threat is made, "the Board will not set aside an election based on third-party threats unless the objecting party proves that the conduct was "so aggravated as to create a general atmosphere of fear and reprisal rendering a free

election impossible.” *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984); see also *Mastec Direct TV*, 356 NLRB 809 (2011); *Lamar Advertising of Janesville*, 340 NLRB 979, 980 (2003); *Cal-West Periodicals*, 330 NLRB 599, 600 (2000). In assessing the seriousness of an alleged threat, the Board considers the following factors: (1) the nature of the threat itself; (2) whether it encompassed the entire unit; (3) the extent of dissemination; (4) whether the person making the threat was capable of carrying it out, and whether it is likely that employees acted in fear of that capability; and (5) whether the threat was made or revived at or near the time of the election. *Westwood*, supra at 803.” *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 963 (2004). This is a completely different standard than the objective standard to be used here.

The ALJ also cited both *Mastec Direct TV*, 356 NLRB 809 (2011) and *SSC Corp.*, 317 NLRB 542, 546 (1995) to hold that statements made by individual employees were not attributable to the union as they had neither actual nor apparent authority to speak on behalf of the union. However, *Mastec* was also a Representation case to determine whether a member of an in-plant organizing committee was an agent of the Union. The Board held that they were not. *SSC Corp* was an interrogation case where the context of the interrogation must be known to determine whether it is coercive. *American Postal Workers Union*, 328 NLRB 281 (1999). Both cases are distinguishable from this case because there is no dispute that Willbanks is an agent of the Union. There is no dispute that he sent the text, and clearly he had actual and apparent authority of the Union as the head of the local Union. The fact that Wilson, a non-officer of the Union forwarded the message is irrelevant as it does not change the authorship of the text. Similarly, it doesn't

matter if Wilson was an agent of Respondent or not as there is no dispute as that Union President Willbanks authored and disseminated the text to a group of employees. Wilson didn't alter the message. More importantly, after Willbanks learned that Bossick received the message, he made no attempt to explain to her what it meant or to diminish its impact. *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). All that Bossick and Winiesdorffer had to interpret the text was the text. It wasn't until the trial that Respondent first offered the other texts to attempt to explain the text sent to Bossick. In this case, the text forwarded by Wilson was directly from Willbanks, an actual authority of Respondent. It was not a false rumor, and it was not misinterpreted as the ALJ found. The cases cited by the ALJ are inapplicable to the case at hand.

G. H. Hess, Masonic Homes, and Donaldson Bros are also Representation cases, which were analyzed under a different standard. Here, it is not only irrelevant how the receiver subjectively receives the message, but it is irrelevant how the sender can try to explain it. In the objective standard, the statement is to be interpreted by the reasonable mind, i.e., whether a reasonable person with the information of the receiver would interpret the statement as a threat. Under that analysis, there is no question that a reasonable person would find the text from Willbanks a threat. *Letter Carriers Branch 3126 (Postal Service)*, 330 NLRB 587, 587-588 (2000); *Steelworkers Local 1397 (U.S. Steel Corp.)*, 240 NLRB 848, 849 (1979); *Local 9431, Communications Workers of America*, 304 NLRB 446 (1991)(threat to "take care of dissident members once and for all, and telling dissident to "watch his back")(Toledo World Terminals, 289 NLRB 670 (1988) (threat to seek discharge and refuse to process grievance of employee/member for soliciting other

employees/members to sign a petition seeking an investigation into alleged irregularities in the election of the union's president and his removal from office); **Graphic Communications Workers Local 388**, 287 NLRB 1128(1988) (threat to refuse to process the grievance of an employee/member because he prepared and circulated a petition challenging the election of the union's grievance committeemen); **Detroit Plaza Hotel**, 267 NLRB 1030 (1983) (threatening to withhold any union assistance to a member/employee because he distributed a leaflet to other employees/members urging a “No” vote on a dues increase sought by union officers); **Furniture Workers Local 1010**, 261 NLRB 524 (1982) (threatening to seek discharge and to refuse to process the grievance of an employee/member because he objected to a union officer's signing of a collective-bargaining agreement with his employer without prior review and approval of its terms by the affected employees/members); **Highway City & Airport Drivers Local 600**, 250 NLRB 1127 (1980) (threat to “get” an employee/member because he distributed literature to other employees/members opposing a dues increase supported by the union's officers); **Boilermakers Local 5**, 249 NLRB 840 (1980) (threat to seek discharge and to refuse to process the grievance of an employee/member because he supported the opponent to an incumbent union president seeking reelection); **Steelworkers Local 1397**, 240 NLRB 844 (1979) (threatening to seek discharge and to refuse to process the grievance of an employee/member because he was affiliated with a group of dissident employees/members who distributed a document criticizing the actions and policies of a union officer).

As such, **NLRB v. Homemaker Shops**, 724 F.2d 535, 549–50 (6th Cir. 1984) and **Masters, Mates & Pilots (Marine Transport)**, 301 NLRB 526, 532 (1991) are both directly

on point. *Homemaker* was cited by Counsel for the General Counsel in her brief to the ALJ for the proposition that statements made which are later described as “jokes” are not always to be taken as a joke, and statements made to “friends” do not rule out that the statement on its face is a threat. As the court held in *NLRB v. Homemaker Shops*, 724 F.2d 535, 549-550 (6th Cir. 1984), enfg. in part 261 NLRB 441 (1982) “..all of us are, no doubt, aware that threatening or manipulative statements can, at times, be couched in ostensibly friendly, or even humorous, terms. The threat or manipulation remains nonetheless. The mere existence of friendly relations between a supervisor and an employee does not preclude a finding that the supervisor employed coercion violative of the Act.” *Seligman & Associates, Inc. v. N.L.R.B.*, 639 F.2d 307, 309 (6th Cir.1981), *cert. denied*, 454 U.S. 838, 102 S.Ct. 144, 70 L.Ed.2d 120 (1981). Similarly, in *Masters, Mates & Pilots* the Board held that agents of the union that threatened an employee with threats of bodily harm to himself and his family, and picketers with the support of the union who participated in threatening conduct, and who made specific threats to an involved attorney in front of employees, all clearly restrained and coerced these employees in the exercise of their Section 7 rights. The fact that the threats were made in front of other employees is dispositive. Similarly, the threat to Bossick which was in writing was shared with not only Bossick, but Winiesdorffer, Wilson, Tocco and Shaw. Although the last three might not have found the statement offensive or threatening, again the standard is an objective one.

E. The ALJ erred in finding that Respondent did not violate the Act [Exceptions 14, 15 and 16]

Bossick received this text from a co-worker. It was forwarded from Willbanks, the President of the Union. Not a low ranking official, but the highest official in the

Local Union. A 10 year veteran in office as the President of the Union. (T 49) The text on its face mentions Bossick's name and Willbank's testified that he was specifically referring to her in the text (T 69). The text implies that Bossick is one major illness or injury from needing the Union and then threatens Bossick with being in Respondent's dog-house, threatens how petty Respondent can be and finally threatens unspecified retaliation "I will come after you too." The picture of the large menacing man that accompanied these statements greatly amplified the threats.

In context, the text followed a verbal exchange, the previous workday, between Bossick and Willbanks where Willbanks taunted her because he was successful with a grievance, which as a consequence removed Bossick from a coveted acting supervisor position. In a petty way, he taunted her because his win was her loss. Bossick's immediate response, was asking him how to leave the Union. Willbanks replied, don't be mad at me, be mad at the Postmaster. In essence, he interpreted her request to leave the union as related to the grievance. The next working day she received the text. A reasonable interpretation of the text is that her request to leave the Union was answered with his threat that he can be petty and will retaliate. She wants to leave the Union, well she's one illness away from regretting that. He can be petty. He will come after her too. Additionally, Bossick testified that she subsequently learned who the person was from her husband. (T 24) Imagine her dismay when the added inference is that the caricature is a person named Paul Bearer (someone who carries a casket at a funeral) who managed a wrestler named the Undertaker. A reasonable person might interpret this as a threat of violence referencing death.

Like the employer, its customers, and suppliers in *Service Employees Local 87 (West Bay Maintenance)* 291 NLRB 82 (1988) who acted reasonably when they assumed that Respondent union authorized its agents-members' unlawful picketing of the employer, Bossick and Winiesdorffer were reasonable in assuming that Respondent authorized Willbanks' threats. In fact, the Union failed to explain or disavow the threats. *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). Bossick and Willbanks had just had a conversation where he made fun of the fact that she would have to return to her route and stop being an acting supervisor. He assumed that her request to leave the union was due to the grievance, and that she was mad about the grievance.

Willbanks is the Union President and as such he is immersed in representational activities for employees. Thus, it is not unreasonable for her to believe that he was saying that he would be petty and not represent her as a bargaining unit member. He needed no other authorization to make this claim.

The objective evidence clearly shows that Bossick received a threat from Willbanks that a reasonable person would interpret as a threat. The ALJ erred in not making that finding and in recommending that the consolidated complaint be dismissed.

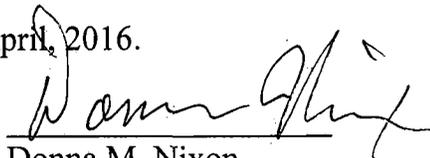
IV. CONCLUSION

For the reasons stated in this brief, Counsel for the General Counsel respectfully requests that the Board reverse the ALJ and issue an order stating that Respondent has violated the Act and must refrain from engaging in the following activities in violation of Section 8(b)(1)(A) of the Act: (1) **WE WILL NOT** do anything to prevent you from exercising your Section 7 rights; (2) **WE WILL NOT** physically or otherwise threaten you, or refuse to represent you, because we dislike you, or because you request to resign from the

Union, or because you oppose grievances we raise, or for any other unlawful reasons; (3) **WE WILL NOT** in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act; and we ask for the affirmative remedy that Respondent post an appropriate notice.

Counsel for General Counsel further prays for such other relief as may be just and proper to remedy the unfair labor practices alleged.

Respectfully submitted this 20th day of April, 2016.



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Proposed Notice Language

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with your employer on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

Based on Section 9(a) of the National Labor Relations Act, the National Association of Letter Carriers (NALC), AFL-CIO, is the exclusive collective-bargaining representative of the employees employed by the United States Postal Service (the Employer) in the classifications described in Article 7 of the collective bargaining agreement between the Employer and the National Association of Letter Carriers (NALC), AFL-CIO (Unit), and Branch 4779, National Association of Letter Carriers (NALC), AFL-CIO is the designated servicing representative of Unit employees employed by the Employer at its facility located at Allen Park, Michigan.

WE WILL NOT physically or otherwise threaten you, or refuse to represent you, because we dislike you, or because you request to resign from the Union, or because you oppose grievances we raise, or for any other unlawful reasons.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

Branch 4779, National Association of Letter Carriers (NALC), AFL-CIO
(Labor Organization)

Dated _____ **By:** _____
: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-866-667-NLRB (1-866-667-6572). Hearing impaired persons may contact the Agency's TTY service at 1-866-315-NLRB. You may also obtain information from the Board's website: www.nlrb.gov.

477 Michigan Ave Rm 300
Detroit, MI 48226-2543

Telephone: (313)226-3200
Hours of Operation: 8:15 a.m. to 4:45 p.m