

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**AMERICAN POSTAL WORKERS UNION, DALLAS  
AREA LOCAL (UNITED STATES POSTAL SERVICE)**

and

**Case No. 16-CB-153326**

**BRENDA CLARK, An Individual**

*Bryan Dooley, Esq.*, Counsel for the General Counsel.  
*Glenn Cook*, Clerk Craft Director, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me in Ft. Worth, Texas on August 10, 2016. The Complaint herein, which issued on May 26, 2016, was based upon an unfair labor practice charge filed by Brenda Clark, an Individual, on May 28, 2015.<sup>1</sup> The Complaint alleges that American Postal Workers Union, Dallas Area Local, herein called the Respondent, violated Section 8(b)(1)(A) of the Act by refusing to process grievances for Clark and refusing to provide her with a steward who did not have a conflict of interest with her, because she testified on the Employer's behalf in an arbitration related to another employer's grievance.

**I. JURISDICTION AND LABOR ORGANIZATION STATUS**

Respondent admits, and I find, that the Board has jurisdiction over the Respondent by virtue of Section 1209 of the PRA and that the Respondent and the American Postal Workers Union have each been labor organizations within the meaning of Section 2(5) of the Act.

**II. THE FACTS**

Clark is employed by the Postal Service as a distribution clerk at its Oak Lawn facility in Dallas, Texas; Mockingbird is a satellite postal facility. She has been employed by the Postal Service for 32 years, has been a member of the Respondent for that entire period and was a steward for the Union from 2004 to 2008. It is alleged that the event that resulted in the violations here were caused by the fact that she testified as a witness for the Postal Service in an arbitration conducted on December 2, 2014. Clark testified that shortly prior to that date, when she reported for work she found a money bag that did not belong to her in the drawer of her desk and she told her supervisor about it and the supervisor took the bag. The next morning, employee Marvin Anderson left her a voice mail saying that he had put the money bag in her drawer, and when she was questioned about it by the postal inspectors, she played Anderson's voice mail for them. A short time later her supervisor told her to report to the main post office and when she asked the reason, she was told, "Just report there on Monday and you'll know." She asked what it was about and was told that it was about Anderson; she asked if

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<sup>1</sup> Unless indicated otherwise, all dates referred to herein relate to the year 2015.

she needed her steward, and was told that she didn't. When she reported to the main post office that Monday, it was for the Anderson arbitration, where she was asked about the procedures and protocols of till counting and signatures. She was also questioned by Charles Tillman, executive vice president of the Respondent, who represented Anderson at the arbitration. At the  
5 conclusion of the arbitration, she asked Tillman why she didn't have representation and he said that he didn't know that she was going to be called as a witness. In his decision, the arbitrator cited Clark's testimony a number of times in his ruling in favor of the Postal Service.

Clark testified that when she returned to the station at the conclusion of the arbitration  
10 hearing: "my work area had been destroyed...everything was on the floor. There was trash all over my work station." When she complained about the situation to Jennifer Thompson, her supervisor, Thompson told her that clerks had told her that another employee threw all of her things on the floor. Some time later that day, while she was working, Steward Tamara Golden Forde "just kept ringing the bell." Clark asked her what was going on and she said that they  
15 need her help, but Clark did not see any customers in the area. As a result, she wrote a letter dated December 2, 2014 to Station Manager Tonya Hampton, complaining about a "hostile atmosphere" and "bullying" that she was experiencing, including the trashing of her work station and Forde repeatedly ringing the bell. As a result of this letter, Hampton met with Forde. Shortly after that incident, Clark met Tillman at the facility and asked about some of her past grievances and he told her not to be concerned, that they would be taken care of. She also told him that  
20 she believed that she was receiving "lash-back" because of her testimony at the arbitration, and he told her, "Normally, clerks don't testify against other clerks, but I understand that you were called to do, and so I'm not mad at you."

Glenn Cook, Respondent's Clerk Craft Director, testified that he is aware that Clark  
25 testified for the Postal Service at the arbitration and that the arbitrator "relied partially" on her testimony, but that "it didn't bother me either way." Tillman testified that he didn't blame Clark for Anderson's termination and denied that he was unhappy with her testimony: "I wouldn't say that I wasn't happy. Again, she was called as a witness. She provided the testimony as requested...  
30 She had an obligation to provide the testimony." Carlton Williams, the president of a different postal workers union that shares office space with the Respondent, testified that he never heard the Respondent's officers state that they were upset at Clark's arbitration testimony. However, in an affidavit that he gave to the Board, Williams stated: "I do know that that union, from the top down were upset about Clark's testimony, Tillman, [Yared] Wonde and Cook."

Clark testified that in December 2014, while she and Curry were working the window  
35 together, she told Curry, "It's funny how we cannot get overtime resolved. You're a steward and I've asked you about it." Curry "just blew up, started cussing me out." Also some time in December, she and Cook met with Hampton in her office to discuss problems that she was  
40 having. Cook asked her what the problems were and she said that they were ongoing and that she wanted to file a grievance, and Cook told her that you can't file grievances against fellow employees.

On February 18, Clark wrote to the Union stating: "On January 29, 2015, there was a  
45 request made to Union steward Rep Tina Singh to be certified to the Oak Lawn Post Office. To this day, there has been no answer to myself nor my managers. This is a second request for a union representative for a grievance procedure." On February 25 she made another request to Cook and Yared Wonde, the Respondent's President, stating:

50 Re: Requesting for Tina Singh as Union Rep@ Oak Lawn Post Office.

I, BJ Clark have been asking and waiting for a representative in order to file a grievance.

Per Mr. Cook, I am now writing this request for the fourth time.

5        Due to conflict of interest I do not want or wish to have Tamara Forde nor Sandra Graham-Curry as a representative. However, I am requesting Tina Singh to be certified as a union representative for me at the Oak Lawn Post Office. This request has been going on for 4 weeks.

On March 3 she wrote to Cook:

10        Re: My 5<sup>th</sup> request for representation.

I am requesting for Tina Singh for representation because I need to file grievances for:

- 15        1. Overtime issues.  
2. T-7 workload.  
3. Manager/clerk confrontation.

20        Due to conflict of interest I DO NOT want neither [sic] Tamara Ford nor Sandra Graham-Curry to represent me.

25        Cook testified that he spoke to Clark about her requests on several occasions and told her that Ford and Graham-Curry were the certified stewards at Oak Lawn, Singh was not. On August 6, Clark made another request to the Union to file grievances regarding overtime, harassment from management, work assignment and paid lunch issues, again requesting someone other than Forde because of a conflict of interest. Cook testified that Bobby Edwards, a steward at another facility, filed grievances for Clark on one or two of these issues in August.

30        Clark testified that in late January she called Wonde and “explained the situation.” She said that she didn’t feel that she was getting any help and asked him to file the grievance: “He said I didn’t have a grievance, and I just want to file it. You can file it, and then we can deny it or whatever’s going on, but somebody needs to see what’s happening at this station.”

She testified further:

35        He then told me just send a request...tell him what the problem is. I said, now, what do you want me to do? Write a long letter because I got plenty of letters to send you. He said, no, you don’t have to do that...just give the topic of what’s going on, and tell them that you have a conflict of interest and put the names down, and then send the request, and then we can come out, and then we can go more in depth into writing your  
40        grievances.

45        In about March she called Cook, but, instead, spoke to Billy Jones, Respondent’s Assistant Clerk Craft Director. He said that he would be taking her case and would call her back. Jones called her in May and said that Bobby Edwards would be handling her case, but the Union never told her that he would be handling her case. She attempted to call him on a few occasions, but was unable to get in touch with him.

50        Wonde testified that he spoke to Clark (but cannot be certain of the date) and she told him that her manager was harassing her and not allowing her to take her lunch break. He told her that if she couldn’t get the stewards, that she should speak to Cook. She told him that she had a conflict with Forde “in the past,” but did not say anything about a conflict with Curry and did not say that Forde or Curry refused to file grievances for her. As a result of this

conversation, on March 9, he appointed Edwards as a designated steward “in the investigation and processing of the following specific grievance: B.J. Clark, a Clerk Craft employee at the Oaklawn Station on Tour 2, for the following: 1) Overtime (Art. 8), 2) T-7 Workload (Art. 37), 3) Management/Clerk Confrontation (Art 2).” The Respondent introduced into evidence a 1983 settlement between the APWU and the Postal Service as well as a rule that states that the Union will provide a list of stewards and that there will be no “shopping” for stewards permitted. He testified further that members are not permitted to pick and choose the steward that they wish to represent them; they must use the steward or stewards appointed for the facility where they are employed. Edwards testified that he spoke to Clark about filing grievances for her and when he was preparing to meet with her, she told him that Jones was going to handle it for her. Even so, he arranged to meet her, but she did not appear at the appointed time. He filed the grievances on her behalf and most of them had dispositions that the Postal Service would cease and desist from engaging in that conduct. Clark testified that she is aware that Edwards was certified to represent her in March and he called her and told her that he was coming to meet and represent her, “but never gave me a date” and they never met. Jones testified that in March he spoke to Clark by phone about a complaint that she had and he scheduled an appointment to meet her at the Oak Lawn Post Office, but when he got there she was not there. He learned that she was not working that day.

Clark testified that the reason she requested Singh, rather than Forde or Curry to represent her was:

The two stewards that he appointed at that station were bullying me, intimidating me. They were giving me hard times and every time I would say something to them, it was being repeated amongst the whole—all the other clerks, and I just felt that that was a trust issue, and I didn’t feel that a person that represented the union should be allowed to file grievances if they cannot keep it personal and keep it within the union as private.

On August 12, Cook wrote to Clark:

Thank you for your letter dated August 6, 2015. As you are already aware we need a short detailed statement for each issue you addressed (blank statement forms enclosed). Within each statement we need to know, 1.) What actually happened, 2.) Who was involved, 3.) When did it happen, and 4.) Where did it happen. It is imperative that you get those to your steward ASAP with copies to me due to time limits.

You again state that it would be a conflict of interest for your Chief Steward Tamara Forde to represent you. You also state that “Some of these issues is from the location Union steward (Tamara Forde).” Please expound on the conflict. Basically all of our stewards work in the same location as other craft employees. Again what is the conflict?

As you know Sandra Graham-Curry is also an on premises steward at your office, do you have a conflict of interest with her also? Please send me the statements ASAP. That way when the step 1 meeting is held I will come out and sit in with you and either Ms. Forde or Ms. Graham-Curry to ensure that you are properly represented.

On September 22, 2014, Clark wrote to Tonya Hampton, the Oak Lawn Station Manager:

On Friday, September 19, 2014 I was instructed to relieve Sandra Graham-Curry lunch at the Mockingbird Station; prior to leaving I did inform Ms. Jennifer Thomas so that she would be aware that I was leaving Oaklawn. Upon my arrival at Mockingbird, I told Sandra that when she returns from lunch that I would be leaving to go back to Oaklawn.

At that point, she became enraged in her tone and her bodily gestures in front of customers. Minutes later, Ms. Jennifer called me and asked me what time I had arrived since Sandra told her that it took me over an hour to arrive per Tamara Forde.

5 Both Sandra and Tamara are active American Postal Workers Union representatives, and both are very disruptive causing hostility among the clerk craft at Oaklawn station. Instead of making sure that the mail gets processed in a timely manner, and the duties among the clerks are equally distributed, overtime is always an issue, but no one is making an effort in regards to the mail, that the work is being done.

10 Tamara as union rep cusses the Station Manager in front of customers...and constantly trying to sabotage the workforce and process flow of the mail by steering [sic] up problems among the clerks. Therefore, clerks are having hostility and hatred toward each other.

15 Curry, who has been a Union representative for about 15 years, testified that she and Clark "have been friends, been very friendly, on friendly terms" although: "In the work environment, there's always going to be disputes about how some procedures should be done, but it's always been based on work procedures, not anything personal." She testified that she has heard Clark complaining about things, but Clark never asked her to handle a grievance for her. Forde testified that in about December 2014, Clark asked her to file a grievance for her, and she never refused to represent her in disputes with the Postal Service. She has filed grievances for Clark; the most recent was a class-action grievance regarding overtime that included her. In about August, Forde asked Cook to handle a disciplinary grievance involving Clark because Clark accused her of causing the argument that Clark had with her supervisor and, as a result, she thought that it would be better if he handled the grievance.

30 Counsel for the General Counsel introduced into evidence the Postal Service's payroll records for the Oak Lawn Post Office to establish that Clark was not given a reasonable share of the overtime work at the facility, alleging that this evidence supports his case that the Respondent did not properly file grievances for her. I find that while this exhibit might establish favoritism toward Forde and Curry in the awarding of overtime work, that is not alleged as a violation herein, and this evidence will therefore not be considered. It should also be noted that at the hearing, the Respondent presented evidence that Clark did not obtain as much overtime work as they did because her shift hours often conflicted with the available overtime work.

### III. ANALYSIS

40 A union breaches its duty of fair representation toward employees it represents when it engages in arbitrary, discriminatory or bad faith conduct affecting the employment conditions of these employees. *Vaca v. Sipes*, 386 U.S. 171 (1967). However a union, as the employees' bargaining representative, must necessarily be afforded "a wide range of reasonableness" in serving the unit that it represents, *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953), and a union's refusal to process a grievance does not violate the duty of fair representation when it acted pursuant to a reasonable interpretation of the collective-bargaining agreement and/or a good faith evaluation regarding the merits of the grievance. *Teamsters Local 814 (Beth Israel Medical)*, 281 NLRB 1130, 1146 (1986); *Delphi/Delco East Local 651*, 331 NLRB 479, 480 (2000). *Letter Carriers Branch 6070 (Postal Service)*, 316 NLRB 235, 236 (1995) stated:

50 And any substantive examination of a union's performance must be "highly deferential." Thus, mere negligence does not constitute a breach of the duty of fair representation. A union's conduct is arbitrary only if, in light of the factual and legal landscape at the time

of the union's actions, the union's behavior is so far outside a "wide range of reasonableness" as to be irrational.

5 The Complaint alleges that the Respondent refused to process grievances for Clark, and refused to provide her with a steward who did not have a "conflict of interest with her" because of the testimony that she gave at the Anderson arbitration. Although I believe the statement that Williams made in his Board affidavit that the union representatives were upset that she testified at the arbitration hearing for the Postal Service, I also credit Cook's testimony that he accepted the fact that she testified because "she had an obligation to provide the testimony." Further, I  
 10 find no clear credible evidence of animus on the part of the Union that was caused by her testimony. In fact, Wonde designated Edwards as a steward specifically to handle her three grievances, and on August 12, Cook asked her what her conflict with Forde was and offered to assist her with filing grievances. As I found Edwards and Jones to be the most credible witnesses at the hearing, I credit their testimony that when they went to meet her at the agreed upon times, she was not there. I therefore find nothing arbitrary, invidious or in bad faith  
 15 regarding the Respondent's response to Clark's grievances.

I also find no violation of the Act in the Respondent's alleged failure to provide her with a steward who did not have a conflict of interest with her. As stated above, Wonde specifically  
 20 appointed Edwards to represent her in her grievances, but she was not present when he and Jones went to meet her. Further, there is no evidence that Forde and Curry had a conflict of interest with her. In addition, Forde asked Cook to handle a grievance for Clark because Clark accused her of causing the argument that was the subject of the grievance. Although she may have had a disagreement with one or both of them at one time or another, that is not an  
 25 adequate reason to refuse their representation and to "shop" for a steward to her liking. I therefore recommend that this allegation be dismissed as well.

**CONCLUSIONS OF LAW**

- 30 1. The Board has jurisdiction of the Postal Service by virtue of Section 1209 of the PRA.
2. American Postal Workers Union, Dallas Area Local and the American Postal Workers Union are each labor organizations within the meaning of Section 2(5) of the Act.
- 35 3. The Respondent did not violate Section 8(b)(1)(A) of the Act as alleged in the Complaint.

On these findings of fact, conclusions of law and based upon the entire record, I hereby  
 40 issue the following recommended<sup>2</sup>

**ORDER**

It is recommended that the Complaint be dismissed in its entirety.

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50 <sup>2</sup> 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.

Dated, Washington, D.C. September 21, 2016

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**Joel P. Biblowitz**  
**Administrative Law Judge**

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