

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL NO. 251  
(Rhode Island Hospital)

and

MICHAEL S. BEARSE, an Individual

Case 01-CB-172600

*Elizabeth A. Vorro, Esq.*,  
for the General Counsel.

*Marc C. Gursky, Esq.*,  
North Kingston, Rhode Island,  
for the Respondent.

*Michael S. Bearse, Esq.*,  
East Walpole, Massachusetts,  
for the Charging Party.

DECISION

STATEMENT OF THE CASE

PAUL BOGAS, U.S. Administrative Law Judge. This case was tried in Providence, Rhode Island, on February 29, and March 1 and 2, 2017. Attorney Michael S. Bearse is both the charging party in this case and the legal representative for the charging party. Bearse filed the charge on March 25, 2016, and the Director for Region One of the National Labor Relations Board (NLRB or Board), issued the complaint on September 14, 2016. The complaint alleges that the International Brotherhood of Teamsters, Local No. 251 (the Respondent or the Union) violated Section 8(b)(1)(A) and Section 8(b)(2) of the National Labor Relations Act (the Act) by improperly causing Rhode Island Hospital (the Employer or the Hospital) to discipline Kelley McNally, a bargaining unit member who opposed the Union's incumbent leadership. The Respondent filed a timely answer to the complaint in which it denied committing any violation of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the parties, I make the following findings of fact and conclusions of law.

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent is a labor organization that represents employees at the Hospital. The Hospital, a corporation, operates a facility in Providence, Rhode Island, where it annually derives gross revenues in excess of \$250,000 and purchases and receives goods valued in excess of \$5000 directly from points outside the State of Rhode Island. The Respondent admits, and I find that it is a labor organization within the meaning of Section 2(5) of the Act and that the Hospital is an employer within the meaning of Section 2(2), (6) and (7) and a health care institution within the meaning of Section 2(14) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. BACKGROUND FACTS

The Respondent represents 6000 individuals in Rhode Island and Massachusetts. Approximately 2500 of those individuals work at Rhode Island Hospital in one of two bargaining units – one of skilled employees and one of unskilled employees. The evidence at trial showed that leadership of the Respondent has been fiercely contested during recent years. As a result of an officers' election in late 2013, the then-existing administration, led by Joseph Bairos and Kevin Reddy, was ousted and a new slate of leaders, with Matt Taibi as principal officer and Paul Santos as president/business agent, came to power. When elections for union leaders were held again in 2016, Bairos led a slate of opposition candidates that tried unsuccessfully to re-take control of the Respondent from the incumbent administration of Taibi and Santos. In February 2016 an election was held for union delegates and Taibi, Santos, and seven other candidates on the incumbent slate, won all the delegate slots. In October 2016, an election was held for union officers and, once again, the incumbent slate prevailed, with Taibi winning the position of secretary-treasurer, Santos winning the positions of president and business agent and various other individuals on the incumbent slate capturing the other positions. In these elections, Taibi and Santos each received well over twice as many votes as the opposition slate candidates and not a single member of the opposition slate prevailed for any position in either the election for delegates or the election for officers.<sup>1</sup>

The 2016 elections for union delegates and officers were bitterly and aggressively contested with the incumbent slate and the opposition slate making accusations against one another – including that the other side was engaged in cheating, lying, intimidation and coercion. Both sides circulated literature and posted statements singling out particular candidates on the other side for criticism. The two individuals at the center of the allegations in this case were actively engaged on opposing sides during the 2016 leadership campaign. Brooke Reeves ran on the incumbent slate and was elected to serve as a delegate and recording secretary. Prior to those elections, Reeves was already serving as a steward and

<sup>1</sup> In addition to the opposition slate headed by Bairos there was a second slate opposing the Taibi/Santos incumbent leadership slate. The second opposition slate does not figure meaningfully in this case.

union liaison.<sup>2</sup> The other individual, Kelley McNally, a former union liaison and bargaining unit member,<sup>3</sup> ran unsuccessfully for delegate and business agent on the opposition slate led by Bairos in the 2016 elections. Reeves and McNally were both among those candidates singled out for criticism by the other side.

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The General Counsel contends that during the campaign, Reeves, acting on behalf of the Respondent, unlawfully caused the Hospital to investigate and discipline McNally. The record establishes that, beyond the general bitterness of the campaigns, McNally and Reeves had a standing antagonism. That antagonism was spurred by their differing positions regarding the Respondent's leadership, although the record suggests that it also had a personal element. Prior to when the Bairos leadership team was ousted in 2013, Reeves and McNally were both active supporters of the Bairos team, served as union liaisons in that administration, and had what McNally described as a "decent" relationship. When Santos took over as president of the Respondent, he terminated McNally from the liaison position. When Santos informed McNally of this she yelled at him, stuck her finger in his face, and stormed away. Transcript at Page(s) (Tr.) 459-460. On the other hand, Santos retained Reeves as a liaison even though she had supported the other leadership slate. Santos testified that he did this because he was impressed with Reeves' commitment to serving the unit members. Sometime after this, in about early 2015, Santos and Reeves were talking in a stairwell at the Hospital when they encountered McNally. McNally stated that she wanted to talk to Santos about a work schedule issue without Reeves present, but Santos insisted that Reeves remain as a witness. Hostile remarks were exchanged between McNally and Reeves, during which McNally criticized Reeves for "switching sides" and told Reeves "I'd like to kick you down the stairs." Tr. 581, 673. That was the last face-to-face conversation between the two.

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During the period leading up to the delegate and officer elections in 2016, the incumbent slate led by Taibi and Santos complained on at least five occasions that the opposition slate led by Bairos was engaged in improper electioneering. One of these complaints singled out McNally for allegedly soliciting signatures in the Hospital cafeteria during time when she supposed to be working. Complaints of this type were made to Louis Sperling, the Hospital's vice president of human resources and labor relations. Sperling found that McNally had not, in fact, engaged in the solicitation activity at a time when she was supposed to be working. The record shows that even when Sperling found improper electioneering, he did not discipline employees on that basis. Instead, Sperling addressed any such misconduct by orally advising the individuals involved to make sure the conduct did not occur again. Tr. 260, 471-472.

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#### B. PRINT SHOP CONTROVERSY

The Hospital has an in-house print shop that provides printing services and materials for the Hospital's operations. When services or supplies are requisitioned from the print shop for the Hospital's purposes, the individual making the request provides a "cost center" code to

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<sup>2</sup> Liaisons act as intermediaries between other stewards and representatives of the Hospital's human resources department. Union liaisons are allotted two days per week to devote to their duties as liaisons and, pursuant to the collective bargaining agreement, the Hospital pays them for those days as if they were performing their regular duties for the Hospital.

<sup>3</sup> The bargaining unit that included McNally is defined as follows:

All full-time and regular part-time non-professional employees, including per diem employees who regularly average four (4) hours or more of work per week, employed by the Employer at its Providence, Rhode Island, facility, but excluding all business office clerical employees, technical employees, skilled maintenance employees, confidential employees, guards, managers and supervisors as defined in the [National Labor Relations] Act.

indicate which of the hospital's departments the cost of the services or supplies should be attributed to. In addition to providing services and materials for hospital operations, the print shop sometimes provides services to hospital employees for their personal use or for other non-official business. Employees are required to reimburse the hospital's accounting department for this non-official work.

In 2013, Sperling orally communicated a number of ground rules relating to electioneering at the facility. Most significantly for purposes of this case, Sperling directed the print shop that, "during the union's elections . . . they were not to get involved in printing . . . campaign literature" or related items. Tr. 234-235. This rule was not reduced to writing. In addition to communicating this rule to the print shop, he also informed the Respondent about it. McNally testified that she was aware that campaign literature was not to be printed at the Hospital's print shop. Tr. 67. In addition, Sperling orally communicated rules restricting where the campaigns could leaflet and prohibiting employees from campaigning on work time. Tr. 465-466.

During the run-up to the 2016 elections for union delegates and officers, Reeves heard unsubstantiated rumors that Bairos' opposition slate was improperly using the Hospital print shop to print its campaign materials. Then on February 9, 2016, Carl Chicoine, a union steward, told Reeves that he had observed McNally outside the print shop carrying boxes. Chicoine told Reeves that when McNally saw him she attempted to hold the boxes in such a way as to block his view of them. Soon thereafter, McNally was seen distributing campaign literature at the Hospital. Reeves contacted Santos on February 9, related what Chicoine had told her, and expressed her suspicion that McNally had obtained campaign literature for the opposition slate from the Hospital print shop.<sup>4</sup> Reeves was unaware that Sperling had prohibited the print shop from printing campaign literature, but she was concerned that the Hospital was assisting the

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<sup>4</sup> I do not believe that it is necessary for me to address the question of whether the evidence introduced at trial showed that the Hospital's print shop had, in fact, improperly printed campaign literature for the opposition campaign and McNally. My analysis turns instead on the evidence regarding what Reeves knew and reasonably believed when she took the actions that the General Counsel alleges are unlawful. However, on the chance that a reviewing body may view the analysis differently, I note that the evidence at trial showed that the Hospital print shop did, in fact, improperly print campaign literature for the opposition campaign, that McNally was the one who handled this for the opposition slate, and that McNally lied about doing so, both in response to employer inquiries in 2016 and repeatedly under oath at the trial before me. Tr. 67, 163-164, 196. During the trial, Mario Luis, the manager of the print shop in February 2016, testified that McNally had the opposition's campaign material printed in the print shop and that the print shop had not charged McNally or the opposition slate for that work. At the time he testified Luis was no longer employed by the Hospital, and the record does not indicate that he would have anything to gain from lying under oath regarding the matter. Tr. 361-362. Luis' testimony that McNally printed opposition campaign literature in the Hospital print shop was corroborated by Nicole DeLeo, a print shop employee who testified that she herself had performed the work of printing the opposition slate campaign material at Luis' direction, and that McNally was the individual who both provided the campaign literature to be printed and retrieved the literature when it was ready. Tr. 308-310. DeLeo was a credible witness who was not shown to have any interest in the outcome of this litigation.

If this was not enough, the record reveals that McNally's contrary testimony – i.e., that the boxes she took from the Hospital print shop contained prescription paper for the Emergency Department, not campaign materials – was implausible. The record showed that there would have been no reason for McNally to retrieve prescription paper for the Emergency Department, because the Emergency Department did not use prescription paper. Moreover, when the Emergency Department director searched for the prescription paper that McNally said she had delivered, the paper was not there. Finally, although McNally claimed that a physician told her to bring prescription paper to the Emergency Department, no individual meeting McNally's description of that physician was identified despite the Hospital's efforts to do so.

opposition slate by improperly doing its printing free-of-charge. This concern was fueled in part by statements Sterling had previously made to Reeves expressing preference for the way union matters had been handled by Reddy prior to his ouster in 2013, as compared to the way they were being handled by the incumbent administration.

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Santos' first action in response to Reeves' report was to call the manager of the Hospital print shop, Mario Luis, and ask whether the shop had printed campaign literature for the opposition slate. Luis told Santos that the print shop had not done so, but at trial Luis admitted under oath that the print shop had, in fact, printed opposition campaign materials for McNally and the opposition slate. Santos' next action, either that day or the following day, was to contact Sperling and advise him that there was an allegation that the Hospital print shop was improperly favoring the opposition slate by allowing McNally to have campaign materials printed there. Sperling told Santos that he would look into the matter.

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Reeves did not pursue her suspicions further while Sperling made a rather modest inquiry into the matter during the subsequent few days. Sperling asked Luis and McNally whether the Hospital print shop had produced material for the opposition campaign, and both denied that this had occurred. Then Sperling informed the Respondent that he had concluded that the print shop had not created materials for McNally and the opposition slate. Santos and Reeves both took issue with Sperling's conclusion. Reeves complained to Sperling that his investigation was inadequate and that she wanted proof that what was in the boxes McNally took from print shop on February 9 was not campaign material.

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In response to Reeves' challenge to the adequacy of his inquiry into the matter, Sperling asked Luis for documentation regarding the contents of the boxes. Two days later, Luis gave Sperling a requisition form, completed by McNally and dated February 9, on which McNally had written that she obtained prescription paper from the print shop that day. Prescription paper can be used to print prescriptions only if one employs a special printing program or printer and so such paper is not easy to abuse. Sperling provided a copy of the requisition for prescription paper to a union steward, who, in turn, shared it with Reeves on about February 19.

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The requisition form for prescription paper did not alleviate Reeves' suspicions, but rather had the effect of reasonably intensifying them. Reeves knew, based on statements the Hospital had made to employees, that prescription paper was no longer being used. On February 19, Reeves discussed this with Lindsay McKeever, the manager of the Emergency Department for which McNally claimed to have obtained the paper. Reeves' told McKeever that she believed the requisition for prescription paper was fake and that what McNally had really obtained in the print shop was campaign literature. McKeever confirmed Reeves' understanding that the Emergency Department did not use prescription paper and also noted that no one in the Department had been authorized to requisition such paper from the Hospital print shop. Moreover, Reeves and McKeever searched the Emergency Department for the prescription paper McNally claimed to have delivered, but the paper was not there. Luis' supervisor, Roger Durand, also searched the Emergency Department but did not find the prescription paper. McNally's requisition form is suspicious for other reasons as well. McNally used an improper "cost center" code on the form and Reeves noted that the price listed on the requisition – \$140 for two reams of prescription paper – was inexplicably high.<sup>5</sup> McKeever told Reeves that she would provide an update after discussing the matter with McNally, but when Reeves attempted to follow-up, McKeever said that Sperling had directed her not to discuss the matter with Reeves. Reeves had no further discussions with McKeever on the subject.

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<sup>5</sup> At trial, the General Counsel introduced a document showing that prescription paper was offered for retail sale by a national office supply chain at \$37.99 per ream. GC Exh. 2.

After McKeever told Reeves that Sperling had prohibited her from discussing the matter, Reeves pursued it with Sperling. She told him that the prescription paper that McNally said she had delivered did not exist in the Emergency Department and argued that this showed that something else – specifically, campaign material – was in McNally’s boxes. Sperling dismissed Reeves’ argument, stating that “things go missing all the time.” Regarding McKeever’s and Reeves’ skepticism about the authenticity of the prescription paper requisition form, Sperling responded “you asked for evidence, this is the evidence, there’s nothing more for me to do.” Tr. 241.

Reeves became convinced not only that the Hospital print shop had improperly helped the opposition slate by printing campaign material, but that Sperling was helping to cover up that misconduct, or at least was not interested in getting to the truth. In an email letter dated February 23, 2016, Reeves raised her concerns with Margaret Van Bree (head of the hospital) and Barbara Riley (head of nursing) – two high-level hospital officials. See General Counsel Exhibit Number (GC Exh.) 25.<sup>6</sup> In essence, Reeves’ letter states her belief that the Hospital print shop had improperly printed campaign literature and that Luis’ claim that what the print shop had given McNally was prescription paper, not campaign materials, was a cover story to conceal that wrongdoing. Reeves email briefly recounted some information that supported that belief, and also expressed her view that Sperling was not adequately investigating the matter. She stated that management’s attempt to cover up the print shop misconduct with the cover story about prescription paper could subject the hospital to a “direct hit” from the department of health for losing prescription paper. Based on my review of the entire letter, I find that Reeves’ purpose was to try to put an end to the improper assistance that she believed the Hospital print shop was giving to the opposition slate, not to get McNally in trouble for losing boxes of prescription paper that the letter makes clear that Reeves did not think ever existed. No where in the letter does Reeves ask, or suggest, that McNally be disciplined in any way. She does, however, imply that manager Luis should be disciplined for improperly assisting the opposition slate. In the first paragraph of the letter, Reeves identifies herself by her Union positions, stating that she is “a Liaison with Teamsters Local 251” and “not only a candidate on the [incumbent] delegate slate but also a concerned employee.”

During the last week of February 2016, Reeves contacted a reporter with a local media outlet about her concerns. Reeves’ testimony, and the records of her email contacts with the reporter, GC Exh. 30, support the view that her purpose was to pressure the Hospital to more thoroughly investigate whether the Hospital print shop was improperly aiding the opposition slate. For example, when the reporter asked whether it was possible that what McNally had obtained was “prescription paper that was actually needed and used properly,” Reeves responded that it “seems like one big cover up,” that the prescription paper story “doesn’t make sense” and that she did not “ever remember the hospital using prescription grade paper in the printers.” Ibid. She expressed the opinion that what was in fact happening was that the Hospital was making McNally a “sacrificial lamb.” Ibid. Reeves referenced the “lost” prescription paper in an effort to expose that the explanation based on such paper was implausible. However, it appears that the reporter was primarily interested in the possibility that the hospital had lost paper that could be misused to obtain drugs illegally. The reporter contacted the hospital about the matter, but appears to have lost interest in the story once he became convinced that prescription paper is not susceptible to such abuse.

<sup>6</sup> The General Counsel and the Respondent both cite GC Exh. 25 in their briefs, there was extensive testimony about it at trial, and it is included in the record prepared by the court reporter, but it is not clear that the exhibit was properly received at trial. To the extent that GC Exh. 25 may not have been received at trial, I hereby order it received into evidence.

By letter dated February 26, the hospital's attorney, Anthony Rizzotti, responded to Reeves' February 23 email to Van Bree and McNally. According to Reeves she received this letter on March 3. In the letter Rizzotti states: that the hospital had investigated the matter but  
 5 "could not conclude" that campaign material was printed in the Hospital print shop; that nevertheless the Hospital had "made clear to staff that the Hospital print shop is not to be used to print materials for either side"; that this ended the Hospital's investigation into the printing of the campaign material; and that the Hospital was reviewing "the issue of the prescription paper" and would "attend to that matter." Rizzotti also noted that he was attaching "a receipt from an  
 10 outside printing company indicating that [the opposition slate's campaign fliers] were printed there." The attachment was an invoice from a private print shop that was dated February 15, 2016, for 1000 flyers, the cost of which was to be billed to "251 Strong" (the designation for the opposition slate) without any individual or address identified for 251 Strong. No documentation was introduced at trial showing that this invoice had been paid. The invoice did not allay Reeves'  
 15 suspicions because it came from a different private print shop than the one where Sperling previously told her the opposition campaign was having its material printed, and also because it was for only a single one of the opposition's fliers.<sup>7</sup> Nevertheless it appears that after she received Rizzotti's letter, Reeves did not take further actions that are alleged to be unlawful.

On March 1, McKeever called McNally to a meeting, which was also attended by a manager and a representative from the Hospital's human resources department. At that meeting, McKeever placed McNally on administrative suspension pending the outcome of an investigation. McKeever testified that she had lost confidence in McNally and that she had concerns regardless of whether what happened was that McNally had misplaced prescription  
 25 materials or if what happened was that McNally had used the Emergency Department's cost center code to obtain campaign materials from the Hospital print shop. McKeever testified that her own recommendation was that McNally be terminated, but that Sperling took issue with imposing that level of discipline. Instead Susan Patterson, who was McKeever's supervisor, and Sperling, made a decision to discipline McNally with a 3-day suspension and a requirement that McNally transfer out of McKeever's department. According to Sperling, the discipline was  
 30 based on the conclusion that McNally had "some culpability in not properly securing the [prescription] paper."<sup>8</sup> On March 4, Sperling informed McNally of the discipline. McNally

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<sup>7</sup> At trial the General Counsel introduced an email exchange from February 23 between McNally and a private print shop, to which were attached 10 invoices, including the one referenced above, for a variety of dates between September 9, 2015, and February 23, 2016. Each identifies "251 Strong" as the client to be billed. McNally provided these to Sperling on February 23. Other than the one invoice Rizzotti attached to his letter, Reeves was not provided with any of these invoices until well after the actions that the General Counsel takes issue with. At any rate, the record justifies skepticism about the legitimacy of these invoices. First, despite the 5-month span of dates, and the sometimes lengthy intervals between those dates, the invoices are numbered sequentially. This is the case because the invoices were not issued at the time work was supposedly performed, but rather were all printed at a later date, and at the same time, when McNally requested them after questions arose regarding the misuse of the Hospital print shop. Tr.217-218. In addition, neither the General Counsel, nor anyone else, produced documentation showing that McNally or the opposition slate had paid the balances indicated on a single one of the invoices. According to McNally the opposition slate did not keep any track of paying these invoices, which totaled over \$2500. Tr. 61.

<sup>8</sup> This was not a reasonable conclusion for Sperling to reach given what he knew at the time. Specifically, he knew that the Emergency Department did not use prescription paper, that McKeever had not authorized anyone to obtain prescription paper, that no physician was identified who met the description that McNally gave of the person she claimed had asked for the paper, and that the prescription paper that McNally claims to have recently delivered to the Emergency Department was not there. This is putting aside the evidence, presented at trial, which included both Luis and DeLeo stating

challenged the discipline and an accommodation was subsequently reached under which she was permitted to remain in the Emergency Department.<sup>9</sup>

### C. EVIDENCE REGARDING REEVES' MOTIVATION

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The General Counsel argues that the evidence shows that Reeves, acting on behalf of the Respondent Union, discriminatorily investigated, and asked the Hospital to investigate, McNally because of McNally's opposition to the incumbent union leadership, and that through this conduct Reeves attempted to cause, and did in fact cause, the Hospital to suspend McNally. There is no doubt that Reeves and McNally shared a mutual dislike for one another and that this dislike had its origin in disagreements about union leadership. What the evidence does not show is that Reeves ever requested that the Hospital discipline McNally or that any of the actions Reeves took in February and March 2016 had the purpose of causing, the foreseeable effect of causing, or did in fact cause, the Hospital to discipline McNally in March 2016. To the contrary, the evidence shows that Reeves' motivation was to prevent the Hospital from improperly assisting the opposition slate and that the proximate cause of McNally's discipline was not Reeves' effort to prevent improper assistance, but McNally's own report that what she had obtained from the Hospital print shop was prescription paper.

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The record does not show that Reeves ever requested that the Hospital discipline McNally. To the contrary, the record shows that during her conversations with Sperling and McKeever, Reeves never requested that McNally be disciplined, or suggested that she should be disciplined. Similarly, Reeves' letter to Van Bree and Riley did not suggest that McNally had done anything warranting discipline. Not only do I find that Reeves did not ask, or intend for, the Hospital to discipline McNally, but the record corroborates her testimony that she did not foresee, and could not reasonably foresee, that her inquiry into whether the Hospital print shop was aiding the opposition slate would result in discipline for McNally. Tr. 609, 677. It was commonplace for campaigns to bring complaints about improper electioneering to the Hospital's attention, as Reeves did in this case. However, even when the Hospital believed that improper electioneering had occurred, it did not impose discipline. Rather Sperling had always addressed such circumstances by discussing the improper electioneering with the involved individuals and directing them not to engage in such conduct in the future. Similarly, there was no evidence that the Hospital had ever disciplined an employee for misplacing prescription paper, and McNally herself testified she was not aware of anyone having been disciplined on

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under oath that what McNally left the print shop with on February 9 was campaign material. I do not reach any finding as to Sperling's motivation for endorsing the clearly implausible story that McNally had left the print shop with prescription paper. I do note, however, that this course was, at least facially, the path of least resistance since McNally "admitted" to failing to secure prescription paper, but persisted in denying that she had opposition slate campaign literature printed in-house.

<sup>9</sup> McNally also filed intra-union allegations of misconduct by union officials, including Reeves, and those efforts, while generally rejected at the initial level, have since met with some success upon review by Teamsters union entities. The General Counsel introduced union determinations issued in that context, and to the extent that they touch on some of the same questions presented in the instant litigation, asks that I give them weight. After considering the matter, I conclude that those determinations do not meet the barest due process standards. In particular, I note that in the Teamsters' internal review: the parties did not have the right to subpoena witnesses or documents; witness statements were not made under oath; witnesses were not subjected to cross examination; the rules of evidence did not apply, and legal representatives did not participate. During those proceedings, the union officials did not obtain statements from a number of key witnesses – most notably Luis and DeLeo. I find that it would be improper to give significant weight to any of the determinations made by the Teamsters tribunals because of due process concerns and because they are unreliable hearsay. See *Emergency One, Inc.*, 306 NLRB 800, 804 n.7 (1992).

that basis. Given this, I not only find credible Reeves' testimony that she did not foresee that her actions could cause the Hospital to discipline McNally, but I find that Reeves could not reasonably have foreseen that her actions would lead to such a result. Like Reeves, Santos did not believe that the inquiry placed McNally at risk of discipline, because the type of campaign issue involved had not led to discipline in the past. Tr. 471-472, 561. Not only did Reeves not try to persuade the Hospital to discipline McNally, but even during her internal union conversations with Santos and union vice-president Antonio Suazo, she did not suggest that the Union should ask the Respondent to discipline McNally.<sup>10</sup>

The Respondent disputes the General Counsel's contention that Reeves was acting on behalf of the Respondent when she pursued questions regarding the print shop's suspected assistance to the opposition campaign. Relative to that issue, the record shows the following. First that Reeves, in the first two sentences of her February 23 letter to Van Bree and Riley, identified herself as a union liaison, a candidate on the incumbent leadership slate in the upcoming election, and also a concerned employee. Second, Sperling, McKeever and Luis were all aware of Reeves' position with the Respondent, and the evidence did not show that during her inquiry Reeves ever informed the Hospital that she was acting in her individual capacity as an employee and not in her role as a union liaison. Third, union president Santos cooperated with Reeves' efforts by raising the print shop concerns with both Sperling and Luis. Fourth, although Reeves continued investigating the matter after Santos' attention turned to other matters, Santos was aware of Reeves' further actions and never advised Reeves or the Hospital's management that the Union disavowed those actions.

The evidence shows that throughout the relevant time period, the Respondent offered effective representation to McNally regarding various disputes she had with the Hospital. When the Respondent discovered that the Hospital had suspended Reeves because of the "lost" prescription paper, the Respondent filed a grievance. In addition, when a union steward made a complaint to the Respondent about McNally, Santos sided with McNally and removed the complaining individual from the steward position.

### III. COMPLAINT ALLEGATIONS

The complaint alleges that since about February 9, 2016, the Respondent, by Reeves, failed to provide fair representation to McNally in violation of Section 8(b)(1)(A) of the Act when, because McNally was running for union office in opposition to the Respondent's incumbent leadership, Reeves asked the Hospital to investigate, and herself investigated, whether McNally was having campaign material printed in the Hospital print shop. The complaint also alleges that the Respondent, by Reeves, violated Section 8(b)(2) of the Act through the above actions because by those actions it attempted to cause, and did cause, the Hospital to discipline McNally in violation of Section 8(a)(3).

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<sup>10</sup> The General Counsel presented testimony from Edmund Carreiro a former business agent with the Union (not a hospital employee), who stated that he had been present during a conversation at the Union's offices in February 2016, at which union officials, including Carreiro himself, were "pushing" Reeves "to get [McNally] in trouble, you know, get her out of the way." Carreiro was not a disinterested witness inasmuch as the incumbent union leadership had demoted him in August 2016 and he responded by resigning his union position and running against the incumbent leadership on the opposition slate. Carreiro was vague regarding the details of the conversation he testified about, and while he identified persons who were present, he could not say who had made any of the specific statements he recounted urging Reeves to get McNally in trouble. At any rate, even Carreiro conceded that he had no recollection of Reeves making, or endorsing, any statements about attempting to get McNally in trouble.

## IV. DISCUSSION

5           The General Counsel alleges that the Union, by Reeves,<sup>11</sup> violated Section 8(b)(1)(A) of  
the Act by breaching its duty of fair representation to McNally and violated Section 8(b)(2) of the  
Act by causing or attempting to cause the employer to discriminate against McNally.<sup>12</sup> The  
Respondent urges me to reject these allegations without reaching their substantive merits  
based on the defense that Reeves was acting in her individual capacity, not her union capacity,  
10           at the time she engaged in the challenged actions and, as a result, the requisite union action  
was not shown.<sup>13</sup> This defense is not persuasive. When deciding whether an individual is  
acting as an agent the Board applies common law principles and finds agency if the individual  
has either actual or apparent authority for the challenged actions. *Shen Automotive Dealership*  
*Group*, 321 NLRB 586, 593 (1996). Actual authority is created by “written or spoken words or  
15           other conduct of the principal which, reasonably interpreted, causes the agent to believe that the  
principal desires him so to act on the principal's account,” Restatement (Second) of Agency,  
Section 26 (1958),<sup>14</sup> while “[a]pparent authority results from a manifestation by the principal to a  
third party that creates a reasonable basis for the latter to believe that the principal has  
20           authorized the alleged agent to perform the acts in question,” *Great American Products*, 312  
NLRB 962, 963 (1992). The facts here show that Reeves was acting, at a minimum, with  
apparent authority of the Union when she pursued her suspicions that the Hospital print shop  
was providing improper assistance to the opposition campaign. Reeves was a union liaison and  
in that capacity was responsible for interacting with management on behalf of the Union.  
Sperling and McKeever were aware of Reeves’ position with the Union, and Reeves expressly  
25           identified herself as a liaison in the first sentence of her letter to Van Bree and Riley regarding  
suspected print shop assistance to the opposition campaign. Moreover, Santos – the Union  
president – participated in Reeves’ efforts by personally raising Reeves’ concerns with Luis and  
with Sperling. Santos was aware of Reeves’ continuing effort to prevent improper  
electioneering and neither he, nor Reeves, ever indicated to the Hospital that Reeves was  
30           acting exclusively in her individual capacity when she pressed the Hospital to investigate further.  
Under these circumstances, I find that Reeves had, at a minimum, apparent authority to act on  
behalf of the Union when she took the actions alleged to violate the Act.

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<sup>11</sup> I note at the outset that the complaint allegations go exclusively to actions by Reeves. Therefore, although the Respondent argues at some length that Santos’ actions were lawful, and although evidence regarding the conduct of Santos and other union officials bears on the question of whether Reeves was acting in her individual capacity as opposed to her capacity as a union official, the lawfulness of the actions of individuals other than Reeves is not before me.

<sup>12</sup> Section 8(b)(1)(A) and (2) of the Act provide as follows:

It shall be an unfair labor practice for a labor organization or its agents (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 . . . or (2) to cause or attempt to cause an employer to discriminate against an employee in violation of [section 8(a)(3)] or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

<sup>13</sup> See *Good Samaritan*, 361 NLRB No. 145, slip op. at 3 (2014) (demonstration of union conduct is necessary to showing a violation of Section 8(b)(2)), enf. denied on other basis, 858 F.3d 617 (1<sup>st</sup> Cir. 2017).

<sup>14</sup> The Restatement has been adopted by the federal common law. *Pohl v. United Airlines, Inc.*, 110 F. Supp. 2d 829, 838-39 (S.D. Ind. 1999), aff’d, 213 F.3d 336 (7<sup>th</sup> Cir. 2000).

A union violates Section 8(b)(1)(A) and Section 8(b)(2)<sup>15</sup> when it “cause[s], or attempt[s] to cause an employer” to discipline a unit employee and its actions either violate the duty of fair representation<sup>16</sup> or are discriminatory under the Board’s *Wright Line*<sup>17</sup> analysis. *Good Samaritan Medical Center*, supra, slip op. at 2-3 (2014); *Paperworkers Local 1048 (Jefferson Smurfit Corp.)*, 323 NLRB 1042, 1044 (1997); *Laborers Local 158 (Contractors of Pennsylvania)*, 280 NLRB 1100, 1100 (1986), enfd. 865 F.2d 251 (3d Cir. 1988) (Table). Based on the facts present in this case, I find that the General Counsel’s case stumbles at the initial hurdle because the Union did not “cause or attempt to cause” the Hospital to discipline McNally. The Board finds such causation when a union demands, either explicitly or by implication, that the employer take disciplinary action against an employee.<sup>18</sup> At trial, both the General Counsel and the Charging Party acknowledged that they would fail to establish a violation if the evidence showed that Reeves was attempting to prevent the Hospital from improperly assisting the opposition campaign, not attempting to cause the Hospital to discipline McNally Tr. 45-47. In the instant case, Reeves did not explicitly ask the Hospital to discipline McNally. Nor can an indirect or implied request be inferred from the circumstances. To the contrary, the evidence shows that Reeves had no intention of asking or causing the Hospital to discipline McNally. Rather, Reeves’ actions were motivated by a desire to prevent the print shop management from providing improper, one-sided, support to the opposition campaign. Under these circumstances the requisite causation has not been shown. Moreover, Reeves’ suspicions regarding the improper assistance were reasonable, and the possibility that the employer, by its print shop, was providing one-sided support to the opposition campaign was of legitimate concern to the membership as a whole because such support would threaten to compromise the process by which the members were choosing their union leaders. Therefore, the actions that Reeves took to prevent such improper assistance were not arbitrary, discriminatory, or in bad faith. See *Vaca v. Sipes*, 386 U.S. at 190.

The General Counsel contends that even without a direct or indirect request to discipline McNally, I should find the required causal connection because it was foreseeable that Reeves’ actions would cause the Hospital to impose that discipline. This suggestion fails because the record amply demonstrates that it was not foreseeable that Reeves’ complaint that the print shop was improperly preparing campaign material for the opposition slate would lead Sperling to discipline McNally. In the past, the Hospital had dealt with improper electioneering in a non-disciplinary manner. Indeed, the discipline that the Hospital issued to McNally was not premised on Reeves’ report of improper electioneering, but rather on McNally’s *own* report that she had obtained prescription paper from the print shop. Reeves had no way of knowing that Luis and McNally would respond to concerns about improper cooperation between the print shop and the opposition slate by claiming that what McNally took from the print shop was not campaign literature, but prescription paper for the Emergency Department. The Hospital’s

<sup>15</sup> *International Union, Security, Police and Fire Professionals of America*, 360 NLRB No. 576, slip op. at 10 (2014) (when a Union violates Section 8(b)(2) by causing the discipline of a unit member, a derivative violation of Section 8(b)(1)(A) arises).

<sup>16</sup> *Vaca v. Sipes*, 386 U.S. 171, 190 (1967) (“[a] breach of the statutory duty of fair representation occurs only when a union’s conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.”).

<sup>17</sup> *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. (1982), approved in *NLRB v. Transportation Corp.*, 462 U.S. 393 (1983)

<sup>18</sup> A request to discipline may be direct or indirect. *Laborers Local 1184 (Nicholson Rodio)*, 332 NLRB 1292, 1296 (2000); *Avon Roofing & Sheet Metal*, 312 NLRB 499 (1993); *M.W. Kellogg Constr.*, 273 NLRB 1049, 1051 (1984), enf. denied on other grounds 806 F.2d 1435 (9th Cir. 1986). Causation may be shown either by evidence of a direct union request or by evidence supporting a reasonable inference of a union request. *Paperworkers Local 1048 (Jefferson Smurfit Corp.)*, 323 NLRB at 1044.

5 decision to discipline McNally was even more unforeseeable to Reeves since that action was dependent on Sperling choosing to accept Luis' and McNally's story about prescription paper despite the fact that, as Reeves knew and pointed out to Sperling, the Emergency Department did not use prescription paper. At any rate, the record did not even show that in the past the Hospital had ever disciplined an employee for failing to properly handle prescription paper. The Board has found that the evidence does not demonstrate the requisite causal nexus between a union's actions and discipline imposed by an employer where, as here, the record does not show that the union requested (either directly or indirectly) that the employer impose discipline and the union was not shown to have taken actions that had the foreseeable consequence of causing, or were intended to cause, the employer to impose discipline. *Service Employees Local 87 (Able Building Maintenance Co.)*, 349 NLRB 408, 411-412 (2007); *Laborers Local 158 (Contractors of Pennsylvania)*, supra.

15 For the reasons discussed above, I find that the record does not establish that the Respondent, by Reeves, violated Section 8(b)(1)(A) or Section 8(b)(2) of the Act.

#### CONCLUSIONS OF LAW

- 20 1. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.
2. The Hospital is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
- 25 3. The Respondent was not shown to have violated Section 8(b)(1)(A) or Section 8(b)(2) of the Act.

30 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.<sup>19</sup>

#### ORDER

35 The complaint is dismissed.

40 Dated, Washington, D.C. June 30, 2017



PAUL BOGAS  
Administrative Law Judge

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<sup>19</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.