

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

**NATIONAL ASSOCIATION OF LETTER
CARRIERS, BRANCH NO. 11, CHICAGO,
affiliated with NATIONAL ASSOCIATION
OF LETTER CARRIERS, AFL-CIO
(United States Postal Service)**

and

CASE 13-CB-187174

VANESSA P. WILLIAMS, an Individual

Catherine Terrell, Esq., for the General Counsel.
Ms. Vanessa P. Williams, for the Charging Party.
Peter D. DeChiara, Esq. (Cohen Weiss & Simon, LLP),
of New York, New York, for the Respondent.

DECISION

Statement of the Case

KELTNER W. LOCKE, Administrative Law Judge: The Union filed a grievance on behalf of the Charging Party, a nonmember, and won it. However, the General Counsel alleges that the Union breached its duty of fair representation. Not crediting the Charging Party, I conclude that the Union did not violate the Act in any manner alleged in the complaint.

Procedural History

This case began on October 28, 2016, when the Charging Party, Vanessa P. Williams, filed an unfair labor practice charge against the Respondent, National Association of Letter Carriers, Branch No. 11, affiliated with the National Association of Letter Carriers, AFL–CIO. The Board's Chicago regional office docketed this charge as Case 13–CB–187174. The Charging Party amended this charge on April 14, 2017, on June 16, 2017, and on October 23, 2017.

The Respondent is a labor organization representing a unit of employees of the United States Postal Service. The Board therefore exercises jurisdiction by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Sec. 1209.

After an investigation, the Regional Director for Region 13 issued a complaint and Notice of Hearing on June 29, 2017, and amended it on August 18, 2017, and November 14, 2017. The Respondent filed timely answers to the complaint and amendments.

A hearing opened before me in Chicago on January 16, 2018. On that day and the next, the parties presented evidence. The hearing then adjourned until March 2, 2018, when it resumed by telephone conference call for oral argument and then closed.

Filing and Service of the Charges

Complaint paragraph I(a) alleges that the initial charge in this proceeding was filed on October 28, 2016, and that a copy was served on Respondent Branch 11 by U.S. mail on that same day. Complaint paragraph I(b) alleges that the first amended charge in this proceeding was filed by the Charging Party on April 17, 2017, and that a copy was served on Respondent Branch 11 by U.S. mail on that same day. Complaint paragraph I(c) alleges that the second amended charge was filed by the Charging Party on June 16, 2017, and a copy was served on Respondent Branch 11 by U.S. mail on that same day. Complaint paragraph I(d) alleges that the third amended charge in this proceeding was filed by the Charging Party on October 23, 2017, and copies were served on Respondents by U.S. mail on that same day.

The Respondent answers that it "denies knowledge of information sufficient to form a belief" regarding the correctness of these allegations. However, the Respondent has not presented any evidence to contradict these allegations and no such evidence appears in the record.

Based upon the certificates of service, the absence of evidence contradicting those certificates and the presumption of administrative regularity, I find that the government has proven that the charges were filed and served as alleged in complaint paragraphs I(a) through I(d).

Admitted Allegations

In its answer and by stipulation, the Respondent has admitted some of the allegations in the complaint. Based on those admissions, I make the following findings.

The General Counsel has proven that the United States Postal Service (referred to herein as the Postal Service or the Employer) provides postal services for the United States and operates various facilities throughout the United States, including a facility at 1419 W. Carroll Ave., Chicago, Illinois, which will be referred to as the Wicker Park facility. The government also has proven that the Board has jurisdiction over the Respondent by virtue of Section 1209 of the Postal Reorganization Act, as alleged in complaint paragraphs II(a) and II(b).

The parties stipulated, and I find, that at all material times, the National Association of Letter Carriers, AFL-CIO (referred to herein as the Respondent National Union or simply as the National Union), has been a labor organization within the meaning of Section 2(5) of the Act, as alleged in complaint paragraph III(a).

Complaint paragraph III(b) alleges that at all material times, the National Association of Letter Carriers, Branch No. 11 (Respondent Branch 11) has been a labor organization within the meaning of Section 2(5) of the Act. In its answer, the Respondent states that it "[a]vers that paragraphs III (a) and (b) set forth conclusions of law as to which no responsive pleading is required, but does not deny that the Branch is a labor organization and that Branch 11 is an agent of the NALC."

The Respondent neither presented evidence to contradict the allegations in complaint paragraph III(b) nor argued that these allegations were untrue. Based upon the uncontradicted testimony of Branch 11 President Mack Julion, and on the record as a whole, I find Respondent Branch 11 is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. Therefore, I find that the General Counsel has proven that Respondent Branch 11 is a labor organization within the meaning of Section 2(5) of the Act, as alleged in complaint paragraph III(b). Further, based on Julion's testimony and the record as a whole, including the collective-bargaining agreement introduced into evidence as a joint exhibit, I find that at all material times, Respondent Branch 11 has been the duly designated agent of the Respondent National Union for contract administration and grievance handling at the Respondent's Wicker Park facility, as alleged in complaint paragraph III(c).

Based upon the Respondent's answer to complaint paragraph IV(a), I find that at all material times, Mack Junion was the president of Respondent Branch 11 and that Tony McCauley and Erika Estrada were shop stewards. Further, pursuant to the stipulation of the parties, I find that John Harden was a workers' compensation specialist for, and an agent of the Respondent.

Additionally, based on the Respondent's answer to complaint paragraph IV(b), I find that at all material times, Michael Caref held the position of Respondent National Union's business agent.

Complaint paragraph V(a) alleges that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All city letter carriers, excluding all managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375,1201(2); all Postal Inspection Service employees; employees in the supplemental work force as defined in Article 7 of the parties' collective bargaining agreement; rural letter carriers; mail handlers; maintenance employees; special delivery messengers; motor vehicle employees; and Postal clerks.

Complaint paragraph V(b) alleges that since at least January 10, 2013, and at all material times, the Employer has recognized Respondent National Union as the exclusive collective-bargaining representative of the Unit, and that this recognition has been embodied in successive

collective-bargaining agreements, the most recent of which was effective from January 10, 2013, to May 20, 2016. The Respondent's answer states that it "[a]dmits the allegations of paragraph V (a), except refers to Article I of the National Agreement for the definition of the bargaining unit."

5 The parties introduced into evidence as a joint exhibit the January 10, 2013, to May 20, 2016 National Agreement. The recognition clause of that agreement describes the same bargaining unit as alleged in the complaint, as set forth above, but also goes on to exclude the following employees who work at certain postal facilities not involved in this proceeding:

10 This Agreement does not apply to employees who work in other employer facilities which are not engaged in customer services and mail processing, previously understood and expressed by the parties to mean mail processing and delivery, including but not limited to Headquarters, Area Offices, Information Service Centers, Postal Service Training and Development Institute, Oklahoma Postal Training Operations, Postal
15 Academies, Postal Academy Training Institute, Stamped Envelope Agency, Supply Centers, Mail Equipment Shops, or Mail Transport Equipment Centers.

 Accordingly, based upon the Respondent's answer and the collective-bargaining agreement which was introduced into evidence as a joint exhibit, I find that at all material times,¹
20 the Respondent National Union has been the exclusive bargaining representative of employees in the following bargaining unit, which is an appropriate bargaining unit within the meaning of Section 9(b) of the Act:

25 All city letter carriers, excluding all managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375,1201(2); all Postal Inspection Service employees; employees in the supplemental work force as defined in Article 7 of the parties' collective bargaining agreement; rural letter carriers; mail
30 handlers; maintenance employees; special delivery messengers; motor vehicle employees; and Postal clerks; and further excluding employees who work in employer facilities which are not engaged in customer services and mail processing, previously understood and expressed by the parties to mean mail processing and delivery, including but not limited to Headquarters, Area Offices, Information Service Centers, Postal Service Training and Development Institute, Oklahoma Postal Training Operations, Postal
35 Academies, Postal Academy Training Institute, Stamped Envelope Agency, Supply Centers, Mail Equipment Shops, or Mail Transport Equipment Centers.

 Complaint paragraph V(c) alleges and the Respondent admits that at all material times, based on Section (a) of the Act, the Respondent National Union has been the exclusive collective
40 bargaining representative of the employees in the alleged bargaining unit. For reasons discussed

1 Complaint par. V(b) alleges that the Postal Service's recognition of the Respondent has been embodied in successive collective-bargaining agreements, the most recent of which was effective from January 10, 2013, to May 20, 2016. Respondent's answer states that the most recent collective-bargaining agreement is effective from May 16, 2016, to September 20, 2019. However, no party asserts, and no evidence indicates, that the scope of the bargaining unit has changed.

above, I have concluded that the appropriate bargaining unit is as described in complaint paragraph V(a) but with the additional exclusions set forth in the collective-bargaining agreement. In other words, the appropriate unit is that described in the indented paragraph immediately above. Based on the Respondent's answer and on the collective-bargaining agreement introduced as a joint exhibit, I find that the Respondent National Union is the exclusive bargaining representative, within the meaning of Section 9(a) of the Act, of this unit.

Disputed Allegations

Complaint Paragraph VI

Complaint paragraph VI(a) alleges that since about the last week of July 2016, Respondent Branch 11 has refused to process a grievance concerning suitable work and hours that the Charging Party attempted to file under the provisions of the collective-bargaining agreement. Complaint paragraph VI(b) alleges that Respondent Branch 11 did so because of the Charging Party's nonmembership or dissident union activity. Complaint paragraph VI(c) alleges that Respondent Branch 11 thereby has failed to represent the Charging Party for reasons that are arbitrary, discriminatory, or in bad faith and thereby has breached the fiduciary duty it owes to her and to the bargaining unit.

The Respondent denies these allegations. It also denies the conclusion, alleged in complaint paragraph IX, that it thereby violated Section 8(b)(1)(A) of the Act.

At the outset, it may be noted that although complaint paragraph VI(b) alleges that the Local Union harbored hostility either because of Williams' nonmembership or her dissident union activity, she has not been a member of the Union for about 15 years and the credited evidence does not establish that she engaged in dissident union activity. Therefore, this analysis focuses on whether Williams' nonmembership in the Union affected how the Union processed or failed to process her grievance.

To support the allegation that the Respondent has refused to process Williams' grievance, the General Counsel relied on Williams' testimony concerning a number of conversations she claims to have had with various union officials. The first of these encounters supposedly occurred in late July 2016 but it was not the last. For clarity, I will use subheadings to denote those claimed encounters. These subheadings describe Williams' version of what happened. Because I do not credit her testimony, the subheadings should not be considered findings of fact.

Late July 2016 Discussion With Steward McCauley

Charging Party Williams became an employee of the Postal Service in April 1993. She works at the Wicker Park Station in Chicago. On October 29, 2014, she suffered a knee injury which caused her to be off work until June 19, 2016. Although Williams' physician had authorized her return to work as a letter carrier, the doctor had included a significant restriction: Williams should walk for no more than an hour a day. Because walking is a major part of a letter carrier's job, this limitation resulted in Williams working fewer hours per day than she had worked before her injury.

5 During the period October 29, 2014, to June 19, 2016, while she was off work because of the injury, Williams had received a monthly workers compensation payment equal to 80 percent of her regular wages. After she returned to work, her injury continued to limit how much she could do and she continued to receive a workers compensation payment, although smaller than what she had received when totally disabled. Williams testified that the amount she received after returning to work was about 65 percent of what she would earn absent the injury.

10 A letter carrier's work entails both arranging the mail for efficient delivery (casing) and then delivering it to various locations on a particular route. The amount of walking involved, and whether it requires climbing many steps, depends on the route assignment. Some routes are more arduous than others.

15 On Williams' first day back, her immediate supervisor assigned her to a postal route which allowed her to work for a full 8 hours. Likewise, Williams worked 8 hours the next day. However, at some time on or before June 23, 2016, the station manager reversed the supervisor's decision and reassigned Williams to another route because Williams' doctor had limited her walking to one hour a day. The new route assignment resulted in Williams working only about 4 hours per day.

20 During this period, Williams went to physical therapy three times a week and continued to receive workers compensation at the reduced rate discussed above. To be eligible for this payment, Williams had to make herself available for work assignments which were consistent with the physician-imposed restrictions. In other words, she could not continue to receive workers' compensation if she refused to perform assigned duties which fell within the limited range of work allowed by the doctor.

30 On July 22, 2016, Williams met with the station manager, Jeniece Nelson, to discuss her route assignment. Nelson did not testify and I must depend here on Williams' testimony, even though, for reasons discussed later in this decision, I have some doubts about its reliability. According to Williams, Nelson offered her a route which still did not provide 8 hours work per day and said that if Williams did not accept this assignment, Nelson would notify the Office of Workers Compensation Programs that Williams was refusing work.

35 Williams accepted the assignment. According to Williams, the assignment provided fewer than 8 hours work per day because it didn't include the task of "casing," the sorting of mail which a letter carrier typically performs before going out to deliver it.

40 Williams then called the Union's assistant steward, Tony McCauley, who told her "we'll talk." About 2 days later, Williams met with McCauley when they both were at work. Williams testified that she told McCauley that he needed to file a grievance for her:

Q. And what did he say?

45 A. He said, I don't know about that V, I can't make management give you hours. I said, but it's in the contract. I'm supposed to get eight hours. I'm supposed to be able to case my route. I am the regular.

Q. And what, if anything, did he say to that?

A. After that he just said, I don't know, V. I got to load up. I got to get up outta here.

5 During oral argument, the General Counsel stated: "Though Respondent called Tony McCauley as a witness, it did not challenge Vanessa Williams' account of the conversation between Williams and McCauley in July of 2016. (Transcript 234 through 249). Therefore, Williams' testimony should be credited."

10 However, for reasons discussed later in this decision, I have concluded that Williams' testimony is not reliable and hesitate to credit even those portions which other witnesses did not contradict. In this instance, I am skeptical that Williams requested that McCauley file a grievance for her.

15 In an August 18, 2018 email to Local Union President Mack Julion, Steward McCauley said that Williams was not a union member and that she had told management that "she does not want to share any of her info with the union. Nor does she file grievances. . .At this point Vanessa has not approached me at all."

20 My observations of the witnesses do not provide any basis to question the reliability of McCauley's testimony and likewise do not cause me to doubt the accuracy of the information in the August 18, 2016 email which he sent to the union president. McCauley would have no obvious reason to make false statements in this email and I conclude that he did not. In contrast, and as discussed further below, inconsistencies in Williams' testimony cause me to place little
25 faith in it. Therefore, I conclude that, even if Williams spoke with McCauley in late July 2016, she did not tell him at that time that she wanted to file a grievance.²

August 1, 2016 Conversation With Union President Julion

30 During oral argument, the General Counsel stated that on "August 1st, 2016, Williams tried again to get representation from the union for the suitability of the work being assigned to her when she approached Union President Mack Julion on the shop floor. Julion summarily rejected Williams' request to talk about her not getting any hours, telling her, 'he doesn't talk to nonunion members.'"

35 Both Williams and Local Union President Julion agree that on about August 1, 2016, he came to the Wicker Park Station. The local Union represents about 5000 letter carriers at various postal facilities around Chicago, and it appears to have been Julion's practice to pay visits to those facilities, introduce himself to bargaining unit employees and discuss working conditions
40 with them. Williams testified that when Julion came to her workplace on August 1, 2016, she approached him:

² Further, based on McCauley's credited testimony, I find that he did not learn that Williams wanted to file a grievance until about August 23, 2018, when Williams gave him one in letter form. That grievance will be discussed later in this decision.

So when I saw him, I did a beeline walk towards him. I said, hey, Mack, I want to talk about me not getting no hours. He said, I don't talk to nonunion members. And I said, ain't that about a bitch.

5 Julion was present in the courtroom when Williams gave this testimony. When he took the stand, he contradicted it:

Q. Do you recall Ms. Williams' testimony?

A. Yes.

10 Q. Do you recall she testified that there was an occasion where you came to the Wicker Park Station, she approached you, and you said something to the effect of, I'm not going to talk to you, you're a non-member —I'm not quoting her testimony directly, but words to that effect? Do you recall that testimony?

15 A. I recall that testimony.

Q. Do you recall that incident?

A. I definitely don't recall that incident. That don't sound like me because, one — You know, again, we're trying to get everyone to join the union, so it's counterproductive not to try to defend a member or to, as she says, blow her off like that. I wouldn't do that on the workroom floor. I go —As she said, I go to each and every carrier. I talk to each carrier on the workroom floor, ask them how conditions are in the station. I wouldn't treat a member like that. I wouldn't treat a non-member like that because we are all letter carriers.

25 No other witnesses testified concerning this conversation. Because Williams and Julion contradict each other, the conflict must be resolved by deciding whether Williams or Julion gave more reliable testimony.

30 Credibility Analysis

The General Counsel argues that Julion's testimony does not squarely contradict Williams' because he only said that he did not recall the incident rather than flatly denying that it occurred. As a general practice, it is appropriate to credit and rely upon uncontradicted testimony. However, even assuming that Williams' testimony is uncontradicted, as the General Counsel argues, I do not believe that her testimony is sufficiently sturdy to stand on its own.

40 For a number of reasons, I do not have confidence in Williams' testimony and therefore do not credit it even when no other witness disagrees. Her testimony often was confusing³ and sometimes contradicted itself.⁴ It also was not entirely consistent with her pretrial affidavit. A

3 For example, in response to a question on cross-examination—"isn't it true that the union got you the money you were seeking?"—she answered yes, but then testified that she did not specifically remember filing the grievance and did not specifically remember receiving pay for sick leave.

4 For example, Williams testified that when she returned to work on July 19, 2016, her knees were still causing problems and that her assigned route entailed climbing stairs. From this testimony, it would be reasonable to conclude that she would have preferred a different route, but she testified that she did not want to get a new route.

particularly significant discrepancy between her affidavit and her testimony concerns a telephone conversation she claimed to have taken place in September 2016. Williams testified that the Union's workers compensation specialist, John Harden, told her that she would have to choose just one claim in her grievance and could not proceed on both claims.

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This statement which Williams attributed to Harden—that she had to choose one of the claims—figures significantly in the General Counsel's case. However, not only does Williams' affidavit omit this quotation, it also states "nothing much else was said in that conversation" with Harden.⁵ This contradiction between Williams' prehearing affidavit and her testimony at the hearing contributes to my conclusion that her testimony is not reliable. Instead, crediting Harden's testimony, I find that he never spoke to Williams.

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However, she then testified that she bid on a new route. Williams initially testified that she had made this bid on May 5 but then said it was on August 5.

5 The General Counsel relies on Williams' testimony to support the government's argument that the Union, by Harden, "presented the Charging Party with a false choice, telling her she could not fight for all of her contractual rights and that she must surrender her right to suitable work and hours if she wanted to pursue her bid assignment grievance." On cross-examination, Williams testified:

Q. So there were parts of your—the paragraph I read in your affidavit that were not accurate?

A. The part—the part that is not in the affidavit is when he told me I had to choose one. I had to pick, either I wanted hours or I wanted the route back.

Q. Okay. And I heard you testify to that here today.

A. Yes.

Q. But that's not what it says in your affidavit, does it?

A. No, but that don't mean it—

Q. And, in fact—well, your affidavit says, nothing much else was said in that conversation. Those were your words, correct?

A. Yes.

Q. Okay. And you put that in the affidavit?

A. Yes.

Q. Well, I'm representing to you, put it in the affidavit. I'm reading it.

A. Yes.

Q. You signed this affidavit?

A. Yes.

Q. And you signed it under oath?

A. Yes.

Q. Okay. And so where the last sentence says, nothing much else was said in that conversation, that's not true?

A. No.

Q. So you made a false statement in your affidavit?

A. No.

Portions of Williams' testimony conflicted with documents she had written.⁶ Moreover, sometimes her answers were not responsive to the question asked. In some instances, this nonresponsiveness may simply have indicated a misunderstanding of the question⁷ but in other instances the nonresponsive character of the answer cannot be attributed to such a misunderstanding.

As the Respondent's counsel noted during oral argument, at various points in her testimony, Williams gave different explanations for why she had not furnished to the station manager the information the manager had sought concerning Williams' medical condition. These shifting explanations diminish her credibility.

Additionally, some of Williams' testimony suggests that she imputed hostile motives to others without justification. For example, Williams testified as follows concerning a conversation with Station Manager Nelson, in which Nelson requested medical documentation:

She said, did you get a copy of your grievance. I said, no. She said, well, let me inform you. There's a stipulation that I can ask for medical documentation. I said, but I did the route already. There's proof that I did the route. She said, well, I need something from your doctor saying that it's okay for you to do the route. So I just assumed that she was harassing me, and I dismissed her.

It isn't obvious how Nelson's request for "something from your doctor saying that it's okay for you to do the route" could be considered harassment, particularly in view of Williams' medical limitations. Indeed, a letter which Williams wrote to the Department of Labor's Office of Workers Compensation programs effectively conceded that she could *not*, in fact, perform all the work required. In that August 13, 2016 letter, Williams stated that she could "[c]omplete most of the route even with my restriction" and "I can do the majority of my new route because there are NO stairs for me to climb." Her claims that she could do "most" or a "majority" of the work indicates that she could not, in fact, do all of it.

Thus, the station manager clearly had reason to ask for additional medical documentation,

⁶ As discussed later in the decision, Williams testified that after she won a bid to work Route 4235, the station manager restricted her work to 1 hour a day. However, a grievance she wrote on August 22, 2016, stated that management only allowed her to work 3 hours per day. Moreover, as discussed below, letters and a grievance written by Williams disagree as to the date on which she was awarded Route 4235.

⁷ In some instances, Williams simply may have made different assumptions about the meaning of a question. For example, Williams testified that a friend, Bob Morales, sent her an email with information concerning the contractual right of an employee on limited duty to bid on a work assignment. Williams identified this email but then, when asked if Morales was advising her concerning her employment issues, said no. That answer simply suggests that Williams did not consider that Morales was giving "advice" when he sent the information.

The cross-examiner, apparently surprised by Williams' answer, then asked why Morales had sent her the email, presumably meaning what caused Morales to send her this particular document. Perhaps the question would have been clearer if the attorney had asked, "Why did Morales send you this information if he wasn't, in fact, giving you advice?" However, those last words went unspoken. Williams, who did not hear what the attorney had not said, likely did not understand the question as seeking to know why Morales had chosen to send this information, but rather why Morales chose email as the means of communication. She answered, "He doesn't work at our station."

not only to assure that Williams could perform the duties assigned but also to make sure that Williams did not injure herself further. Later events proved such concern justified; on January 16, 2017, Williams broke her toe.

5 However, rather than complying with the station manager's legitimate request, Williams simply ignored it. Williams' explained that she "just assumed that" the station manager "was harassing me, and I dismissed her." Neither Williams' testimony nor other evidence in the record supports a finding either that Station Manager Nelson was engaging in harassment or that a request for medical documentation constituted harassment.

10 Moreover, inconsistencies between Williams' testimony and documents she had written raise doubts about her reliability as a witness. As discussed later in the decision, Williams testified that after she won a bid to work Route 4235, the station manager restricted her work to one hour a day. However, a grievance she wrote on August 22, 2016, stated that management
15 only allowed her to work 3 hours per day.

 This same grievance stated that she won the bid on August 20, 2016, but an earlier letter she had written indicates that she learned she had won on August 12, 2016. However, Williams testified "I think it was like the 13th because they announced it on a Saturday."
20

 For all these reasons, I do not have confidence in Williams' testimony even when uncontradicted. Moreover, based on my observations of the witnesses, I do believe that Julion testified in a forthright manner and that his testimony is reliable. Therefore, I credit it. Because I do not credit Williams' testimony, I find that Julion did not say that he didn't talk with nonunion
25 members.

Later Events in August 2016

30 On about August 2, 2016, Williams went to the station manager, Ms. Nelson, to ask for a route assignment providing more hours of work. No one else was present during this conversation and Nelson didn't testify. According to Williams, Nelson said "you need to put in a change of crafts."

35 Williams wrote a letter requesting such a change and brought it to Nelson on August 3, 2016. Nelson told Williams that she had to mail the letter to the Department of Labor. Williams did, with a copy to Nelson. The letter, dated August 3, 2016, and addressed to the United States Department of Labor, Division of Federal Employees, stated as follows:

40 I, Vanessa P. Williams (02525135) am requesting a lateral change of craft due to my injury that occurred on October 29, 2014.

 After considering my medical condition, I feel I can no longer perform my duties as letter carrier.⁸

⁸ The Respondent noted during oral argument that Williams' actions contradict her statement that "I feel I can no longer perform my duties as letter carrier." Two days after claiming that she could no longer perform letter carrier duties, she placed a bid to obtain assignment to a letter carrier route.

I would appreciate any consideration you can give to this matter.

Sincerely,

Vanessa P. Williams

On August 5, 2016, a route opened for bid. Williams described it as a "juicy route, no stairs. I think the only building that has stairs is like seven stairs which is not bad, but it's all flat and you inside. So, you know, rain, sleet or snow, you inside a building, so it really don't matter. And the little bit of walking was less than an hour worth of work."

Williams testified that she could perform all of this work without exceeding the job limitations her doctor had imposed.⁹ She bid on the route and, because of her seniority, won the bid.

Williams testified that she believed she found out that she had won on "like the 13th because they announced it on a Saturday." She sent letters to the Department of Labor's Office of Workers Compensation Programs (OWCP) on both August 12 and 13, 2016. She did not mention winning the bid in the first of those letters, but did in the second, which stated she received the news on August 12.¹⁰

The letters to OWCP suggest that Williams may have believed that this component of the Department of Labor had some authority to overrule the route assignments made by the station manager. Her August 12 letter complained that station management was not assigning her work which was allowed by her medical restrictions and which was available. The letter stated as follows (spelling, capitalization, and punctuation as in original):

I'm writing to you because my Station Manager Ms. G. Nelson and Supervisors T. Williams and A, Sykes are not willfully looking for work with my restrictions. In close is a copy of said restrictions. There is a Truck Route 2296 that has been vacated my Eva Estrada 17 months ago, she went out on retirement disability due to a back injury. Truck Route 2296 should be available for permanent bid, it is a collection route (you drive from box to box collecting mail then drive mail downtown to main post office. Drop off parcels and sometime deliver mail on business routes it is a 8 hour route but not offered to me. So my job offer is; DELIVER FLAT LAND ON ASSIGEND ROUTE 2256 Tuesday, Thursday, Saturday 10:00am to 4:30pm 3HRS. Monday, Wednesday, Friday, 2:00 pm to 4:30pm 3HRS and get the rest from OWCP. I was told that Management can keep me on OWCP for 20 YEARS if they chose too. There is also an evening Dispatch position 11am to 7pm available but lite duty CCA's do that work. There is work that I can

⁹ However, as noted above, in her August 13, 2016 letter to the Office of Workers Compensation Programs, Williams only stated that she could do "most" or a "majority of" the duties inherent in a route assignment. This difference between her testimony and her letter to the OWCP casts additional doubt on the reliability of Williams' testimony.

¹⁰ However, as discussed further below, 2 other documents written by Williams stated that she received notice that she won the bid on August 15 and 20, 2016, respectively.

do with my restrictions I should not be outcast by this Management staff forget injured by carrying a 3 bundle system as I was instructed to do.

I really want to get back to some NORMALCY.

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The next day, Williams again sent a letter to the OWCP. Before discussing this letter, it may be noted that inconsistencies in the evidence make it very difficult, if not impossible, to establish an accurate chronology. For example, as discussed below, Williams authored three documents stating that she bid on and won a desirable route assignment, Route 4235, but the documents do not agree on the date she learned she had won the assignment.

10

Williams' August 12, 2016 letter to OWCP, set forth above, does not mention her being awarded Route 4235. Rather, this letter expresses Williams' complaint about not receiving work assignments compatible with her medical restrictions. Her August 13, 2016 letter also seeks the OWCP's assistance in obtaining such assignments but it is not entirely clear why Williams would need such assistance because, as the letter itself mentions, Williams had just been awarded Route 4235, which is the "juicy" route she wanted.

15

Williams' August 13, 2016 letter also had another apparent purpose, to counter any claim by management that she had refused work, which would be grounds for the termination of her continuing workers compensation benefit. However, the letter is rather confusing because, although Williams acknowledged that "I refused the modified assignment offer" it also stated "I did not refuse work. . ." These two statements appear to contradict each other, but based on the letter as a whole, I believe that Williams was trying to say, in effect, that notwithstanding her refusal to work the assignment in question, there was ample work she could still perform within the constraints of her medical limitations, and that she was willing to perform such work.

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Although the August 13 letter sought OWCP's help in obtaining job assignments within her medical restrictions, it is unclear why she would need such assistance, considering that she had just been awarded Route 4235, which she desired. The letter, in its entirety, stated as follows (spelling, capitalization and punctuation as in original):

30

August 13, 2016

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Dear Injury Comp

This letter is in reference to my recent Job offer August 9, 2016 I refused the modified assignment offer, But my me refusing the offer (by Jessie Tucker and my station Ms. G. Nelson that they would kick me off of OWCP because I refused work.) I did not refuse work I said that I can do more hours even with my new restrictions it only change the amount of continuously walking. My first day back Ms. Sykes sent me out on my route 2256 which now has new blocks and a different tie out. Now, of my new blocks came from route 2221 and she would not tell me where the old block went, or what to do with that mail. Just to get out and deliver the mail. I went back to the Doctor's office after. Three weeks of walking the route from being off of work for 21 months the women supervisors did not try to ease me back to work Just follow my instructions and deliver

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the mail. My new work restrictions are enclosed. On August 12, 2016 I won the BID for route 4235 with is full of apartment buildings very little walking mostly driving to building to building getting out and putting my in the mail boxes. All of the buildings have a door man that holds the door and keep all large parcels for the residence to pick up in a safe location in the building. When I get to work this morning at 10:00am I look over the route and I can Complete *most* of the route even with my restriction but by signing the 3 hour only work offer I can only do 2 of the 5 rows. Okay they all so gave Marvin Foster the 2o4B position, did not offer me that, there is a 11:am to 7:00pm position for evening dispatch that I can do. But most of all I can do the *majority* of my new route because there are NO stairs for me to climb. Management is to find work for me to do but the work that I can do is given to CCA's or their Boy Friend. I should not have to but [put] in for a lateral change of crafts until I try to do the work that is available but not offered. Can the DEPARTMENT OF LABOR HELP ME GET OFFERED THE AVAILABLE WORK THAT WE HAVE IN OUR STATION¹¹

This letter casts further doubt on the reliability of Williams' testimony. As noted above, on one fact—when she won the bid for Route 4235—this letter conflicts with two other documents which Williams wrote. The August 13, 2016 letter specifically indicates that she learned that she had won the bid on August 12, 2016. However, in a grievance she prepared on August 22, 2016, Williams stated "on August 9, 2016 I BID on route 4235 and WON was AWARDED ROUTE 4235 *August 20, 2016.*" (Italics added.) Moreover, in an October 27, 2016 letter to the postmaster, Williams stated that she was awarded Route 4235 on August 15, 2016. When asked at the hearing when she won the bid, Williams answered "I think it was *like the 13th* because they announced it on a Saturday." (Italics added.) These disparities increase my concern about the reliability of Williams' testimony even when uncontradicted by other witnesses.¹²

There is also an inconsistency between Williams' August 13, 2016 letter to the Office of

11 Italics added to note that Williams does not claim she can perform all the work required but only "most" or a "majority" of that work. Williams' apparent difficulty in performing the entirety of this work may explain why Station Manager Nelson allowed Williams to work the route for only 2 days and then removed her, saying "right now you are not fit."

12 As discussed above, conflicting statements in various documents authored by Williams raise uncertainty about when she learned that she had been awarded Route 4235. An additional inconsistency becomes apparent in trying to pinpoint when Williams actually began working Route 4235 and when she was removed from that duty. This inconsistency appears in Williams' August 22, 2016 grievance.

It might be reasonable to assume that this grievance would be the most accurate evidence concerning her first and last days working Route 4235. Williams prepared the grievance soon after her removal from the route, which is the event the grievance concerns, so her memory presumably would have been at its freshest. However, her grievance describes an impossible chronology.

Williams' grievance states, in part, "So on August 9, 2016 I BID on route 4235 and WON was AWARDED ROUTE 4235 August 20, 2016. Came to work Carried rows 1, 2 and 3 on Monday Carried rows 1, 2, and 3 but again not allowed to case my new route. Thursday August 18, 2016 Route 4235 was taken away by the station manager. . ."

Williams' grievance thus claims that the route was awarded to her on August 20, 2016, but taken away from her 2 days earlier. If that sequence of events were correct, then Williams would not have spent any time working this route at all. However, Williams claims that she worked the route for 2 days and that the station manager relieved her of that assignment on the 3rd day.

Workers Compensation Programs and her testimony. It concerns how many hours management allowed her to work.

Williams' August 13, 2016 letter indicates that management limited her work to 3 hours a day. In that letter, she stated that "I can Complete most of the route even with my restriction but by signing *the 3 hour only* work offer I can only do 2 of the 5 rows." (Italics added.) However, her testimony indicates that management allowed her to work only 1 hour per day:

Q. Did you work the full route?

A. No.

Q. Okay. Well, did you work—tell me about that.

A. After I bid on the route and won the route, they still would only give me a hour worth of work on the route.

That testimony certainly appears to conflict with what Williams said in her August 13, 2016 letter to OWCP about signing a "3 hour only work offer." It is conceivable that although Williams signed a "3 hour only work offer" she only was allowed to work one hour. However, in an August 22, 2016 grievance, set forth below, Williams stated "I'm to hit in at 10 am on 719, load my vehicle and *do the 3 hours I signed up for.*" (Italics added.)

In any event, Williams testified that after she was assigned the desired Route 4235, management permitted her to work 1 hour per day only for 2 days and then, on the third day, took the route away from her completely. Williams protested to Station Manager Nelson that she had won the route. According to Williams, the manager replied "no, I'm the station manager, and I award the routes to who I see fit. And right now you are not fit. And I said, huh? She said, yeah, she said, no, you wasn't even supposed to bid."

Williams testified that she then decided to telephone the Union. According to Williams, the receptionist told her that she needed to speak with John Harden, the Union's workers compensation specialist. However, Harden was not there at the time.

Williams decided she would go down to the Union hall. After work, she prepared a written grievance to take with her. It stated:

8/22/2016

I Vanessa P. Williams would like to file this grievance against the Wicker Park Management for not finding suitable work after return from a 2 year injury. As a 22 year employee I fell down the stairs at 2318 West Rice around 4:15pm after completing my overtime. I was at the end of my route when I fell. I tore my ACL ripped my inner, cracked my cartilage, all of the muscles and nerves were also torn. Since returning to work I not allowed to case my route 2256, I can only come in and carry a 3-1/2 blocks. CCA case my route and tie it out. I'm to hit in at 10 am on 719, load my vehicle and do the 3 hours I signed up for. My offer of modified assignment was sign under duress because I asked why can't I case my on route, (Jessie Tucker and MS Nelson said if I

refused work they would kick me off of OWCP for refusing work.) But according to OWCP 4 hours is adequate work. I can Case Routes, write up certified mail, priority express mail, file the COA information I can do the evening dispatch, but none of this was offered. So on August 9,2016 I BID on route 4235 and WON was AWARDED ROUTE 4235 August 20,2016. Came to work Carried rows 1,2 and 3 on Monday Carried rows 1,2,and 3 but again not allowed to case my new route. Thursday August 18, 2016 Route 4235 was taken away by the station manager and awarded to Marvin Foster NO reason given. Now Eva Estrada was awarded 2298 over 7 years ago and she has never HIT the clock to do any parts of the route now if she can and still have to hold down on that route 2298. I should be given back route 4235 because she filed a grievance and won that said route. I'm asking BRANCH 11 to make sure that management do take away my CARRIER RIGHTS UNDER THE NATIONAL AGREEMENT OF LETTER CARRIERS ACT.

The wording of this grievance is somewhat confusing, but I find that it was not clearly frivolous. Indeed, it was not frivolous at all, and ultimately resulted in a resolution favorable to Williams.

Williams dated the grievance August 22, 2016. The next morning, she went to the union hall. She testified that she spoke with a "guy named Pete Puskinski. I think I'm butchering his name, and I'm so sorry, but I can't pronounce his last name."¹³ She also could not remember his title. Williams described their conversation as follows:

Q. And what did you say?

A. I told him—when he came down, he shook my hand, and he told me his name. I said, hi, I'm Vanessa Williams. I'm a letter carrier at Wicker Park. I said, I wrote up this grievance, and I want you to show—tell me if I did it the correct way. So he read it and he said, yeah, this is fine. I said—then I told him the story on why I wrote this grievance, and then -

Q. What did you say to him?

A. I told him that I bidded on a route, and Miss Nelson, my station manager, took my route. And I told him that I wasn't getting any hours at the station. And I said that, you know, I got awarded the route on seniority, but she took the route and said that light duty can't bid. And he said, that is not true. And I said, what do you mean. He said, light duty people can bid on routes. He said, you can bid on a route, and then you have six months to prove that you can do the route. And then if you still need additional time, you can put in an extension so you can have another six months to do the route. So basically he said you have a whole year to prove that you can do this route. And he said, so she misinformed you on that. I said, well, what about her only giving me three hours. I said, that's against the contract. He said, that is correct. He said, now that is a contract dispute because you are supposed to be able to case your route. Now that we can do.

¹³ Based on representations of counsel, I conclude that the Union official's last name was spelled Skrzypczynski.

Williams gave the union representative a grievance she had prepared and he took time to read it. About 10 to 15 minutes into the conversation, someone called him away, but he returned about 5 minutes later. Williams testified:

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Q. Okay. And what happened after that?

A. Five minutes later he came back down, and he said, I'm sorry, but I got a meeting to get to. And I said, oh, she must have told you that I'm not in the union. He said, that has nothing to do with anything. I really do have a meeting to get to, and you have to get this to your union steward.

10

Q. And so did he take the letter?

A. He gave it back to me and told me I had to give it to my union steward.

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Based on Williams' testimony, I conclude that the union representative did not say anything which would communicate to her any unwillingness to process her grievance. To the contrary, he took time to read it. When Williams mentioned that she was not a union member, he replied "That has nothing to do with anything."

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After Williams' visit to the union hall, she went to work and tried to give the grievance to Steward Erika Estrada. However, Williams testified, Estrada was busy and told her to give the grievance to the assistant steward, Tony McCauley.

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Williams further testified that, on about August 27, 2016, she saw McCauley as he was leaving the postal facility's parking lot in a truck to deliver mail: "So I just jumped on the truck and said, hey, Tony, I've been looking for you. And I took my grievance out, and I showed it to him."

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According to Williams, McCauley told her that he could not read the grievance right then but would call her later. "So, I put it back in the envelope, gave it to him, jumped off the truck."

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McCauley did contact Williams later that day. According to Williams, McCauley told her that he had read the grievance and would file it for her, but he "doubted very seriously if they argue it for you." Williams replied that she did not "need them to argue it. I just need them to enforce the contract."

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The government contends that these events demonstrate that the Union was hostile to Williams because she was not a member. For example, the General Counsel asserted that Skrzypczynski "refused to take her grievance and directed her back to her Union steward." However, the established grievance procedure contemplates raising the matter with management at the facility where the grievant works because in some cases, the grievance can be resolved at that level without having to go to the next step.

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After meeting with Skrzypczynski, Williams took the grievance to Steward Erika Estrada, who told Williams to give it to the assistant steward, Tony McCauley. The General Counsel characterizes Estrada's instruction as "yet another roadblock." To the contrary, no evidence

suggests that Estrada was trying to make it more difficult for Williams to file the grievance rather than simply being busy.

5 Indeed, Estrada credibly testified that in 2016 she was "on a detail as a Formal A representative for Branch 11." A steward performing this duty is not involved with the initial presentation of the grievance to management but becomes involved after management denies the grievance at the "informal Step A" level. Because the Union had detailed Estrada to represent grievants at an "appellate" level, she was not responsible for the initial filing of the grievance with local management. Therefore, I find nothing sinister in Estrada's instruction that Williams
10 should take the grievance to the assistant steward.

The General Counsel argues that when Williams took the grievance to Assistant Steward McCauley, his response—that he "doubted very seriously if they argue it for you"—was a "demonstration of further animus and discriminatory conduct towards Vanessa Williams." But,
15 even assuming that Williams accurately quoted McCauley, the words she attributed to him do not mention her nonmembership. If McCauley had doubts about whether the Union would pursue the grievance vigorously, they might have resulted from another cause such as, for example, a belief that the grievance lacked merit.

20 However, the General Counsel would rule out the possibility that McCauley believed the grievance meritless. The government contends that the Union "had routinely won grievances essentially on all fours with Ms. Williams' situation in the past" and that McCauley knew about such victories because, as a steward, he had received training concerning the "Joint Contract Administration Manual which covers just such an issue."
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That argument would be more persuasive if Williams' testimony were more trustworthy. But even assuming that McCauley spoke the words Williams attributed to him, I have little confidence that Williams' testimony reported the whole truth and nothing but the truth. Testimony which is not itself contrary to fact still can mislead if it omits details establishing
30 context. In determining what McCauley had meant if he said he "doubted very seriously if they argue it for you," knowing the context is particularly important. However, I do not trust Williams' testimony to furnish that context accurately.

35 In considering the words attributed to McCauley, it would be reasonable to assume that "they" referred to union officials involved in grievance processing. At the initial stage of the grievance procedure, "they" would be McCauley himself, the steward responsible for filing Williams' grievance. The evidence clearly establishes that McCauley acted diligently in doing so.

40 McCauley credibly testified that on August 27, 2016, in connection with Williams' grievance, he gave Station Manager Nelson an information request which also included a request for a Step A meeting no later than September 2, 2016. The information request, which is in evidence, bears McCauley's signature and is dated 08/27/2016. On it, McCauley listed four categories of documents relevant to Williams' claim.¹⁴

¹⁴ McCauley also credibly testified that he later took a copy of this information request to the union hall. A time stamp on the document establishes that Branch 11 received it on September 9, 2016.

McCauley met with Station Manager Nelson on September 2, 2016, but this meeting was brief because management had not, at that point, provided the requested information. When Nelson and McCauley failed to resolve the grievance at this level, McCauley signed a form to
 5 move the grievance up to the next level, designated "formal Step A," and forwarded the grievance to the steward who represented grievants at this level. However, McCauley did not advise Williams about the status of her grievance.

The General Counsel characterizes McCauley's actions as "perfunctory" and "going
 10 through the motions and setting up Vanessa Williams' grievance to fail." However, the record does not establish that McCauley treated Williams' grievance differently than he treated any other grievance. Moreover, the grievance concerned Nelson's decisions about assigning work to Williams and it seems unlikely that Nelson would settle the grievance, thereby admitting that she had not followed the collective-bargaining agreement. McCauley quite reasonably could
 15 conclude that only a manager at a level above Nelson would reverse her decision, and that it would be a waste of time to try to convince Nelson she had erred.

Similarly, it would be within the steward's sound discretion to decide, based on past
 20 experience, that waiting until management complied with the information request would delay resolution of the grievance. The General Counsel argues that the Union's "response to the Employer's failure to provide. . . information was spiritless at best and a willful abandonment at most." However, the Union's decision to proceed without the requested information really involves a tactical judgment about the importance of the information at this early stage in the grievance process. Even if the information might ultimately be necessary should the Union have
 25 to take the matter to arbitration, union officials reasonably could decide that they could go ahead and discuss the grievance with the Employer. It is difficult to fault them for this choice because, after all, they did settle the grievance before having to arbitrate it.

In weighing whether a union satisfied its duty of fair representation, the judge's job does
 30 not involve second-guessing the union officials' choices. A union need not prove that its decisions were wise. *Reading Anthracite Co.*, 326 NLRB 1370 (1998).

In making choices concerning how to represent the bargaining unit and its employees, a
 35 union enjoys a wide range of reasonableness, so long as its officials act "in good faith, with honesty of purpose, and free from reliance on impermissible considerations." *Union de Obreros de Cemento Mezelado (Betteroads Asphalt Corp.)*, 336 NLRB 972 (2001), citing *Auto Workers Local 651 (General Motors Corp.)*, 331 NLRB 479, 480 (2000).

Therefore, I do not consider whether McCauley's decision to send the grievance up to the
 40 next level was the best possible strategy but rather weigh only whether it was reasonable, made in good faith with honesty of purpose, and whether it was free from reliance on impermissible considerations, such as the grievant's membership or nonmembership in the Union. Based on the credible evidence, I conclude that McCauley's decision was reasonable and does not manifest bad faith or dishonesty of purpose. There is no evidence that an impermissible consideration
 45 such as Williams' nonmembership in the Union, affected the decision. Accordingly, I reject the General Counsel's argument that McCauley was "going through the motions" and setting up

Williams' grievance to fail.

To the contrary, I conclude that Steward McCauley acted with dispatch. He received the grievance from Williams on about August 27, 2016, and discussed it with Manager Nelson approximately a week later. It is true that McCauley did not keep Williams apprised about the status of the grievance, but I do not infer from this failure that McCauley or the Union acted in bad faith.

Events in September 2016

Conflicting testimony creates considerable uncertainty about events in September 2016. One uncertainty concerns whether a telephone conversation took place between John Harden, the Union's workers compensation specialist, and Charging Party Vanessa Williams. She testified she received a call from him but he denied speaking with her.

Another uncertainty concerns whether there was a telephone conversation between Union Steward Tony Williams and Charging Party Vanessa Williams. He testified that he spoke with her twice. She did not recall either conversation. Moreover, even if these calls did occur, evidence does not establish for certain when either took place.

In considering whether John Harden telephoned Charging Party Williams, as she claimed and he denied, it will be helpful to begin by summarizing relevant events leading up to the claimed call. As discussed above, Williams made a successful bid to work Route 4235. Sometime in the latter part of August 2016 she began working this route but only did so for 2 days. On the 3rd day, Station Manager Nelson removed Williams from the Route. According to Williams, the station manager explained that Williams wasn't fit and should not even have placed a bid for the route.

After the meeting with the station manager, Nelson phoned the Union and spoke with the receptionist. Williams testified:

I said, well, I bid on a route, and my station manager took it. I said—and she told me that light duty people can't bid on the route. That's when the receptionist said, you need to talk to John Hardin. I said, well, can I talk to him. She said, he's not in. I said, well, can you leave a message for him to call me when he gets in. That was it.

About a month elapsed. Then, according to Williams, in late September 2016, she received a telephone call from Harden while she was driving her car. She testified that Harden spoke in a very hostile tone of voice:

He said, hello, this is John Harden. I'm looking for Vanessa Williams. And I said, this she. He said, look, Vanessa, I'm looking over your paperwork, and you got too much stuff going on. I said, what you mean. He said, you need to pick one. I said, pick what. He said, I'm looking at your grievance, and you are asking for too much right now. You asking about hours. What exactly do you want the union do for you? I said, well, why can't I get it all. He said, it don't work like that. You have to pick one. I said, well, if I got to pick, I

want my route back. I said, because that way I know I end up getting eight hours.

5 According to Williams, Harden also asked her about the form she had submitted requesting a change of craft, from letter carrier to the clerk. She testified that she told Harden she had sought this change because she believed she could earn more money.

10 Harden denied making such a call. First, he testified "I'm absolutely—I'm almost certain, no. No." Then, he said "Normally I wouldn't speak to anyone about a grievance, so I'm certain I didn't."

15 Harden, who specializes in workers compensation matters, testified that his job duties do not involve processing grievances. Therefore, he had no reason to call Williams concerning her grievance. Moreover, the record does not suggest that Harden played any role in handling Williams' grievance.

20 According to Williams, Harden's tone of voice was "very hostile" but her testimony does not suggest any reason why Harden would be hostile. Williams' testimony also does not indicate that Harden made any reference to Williams' nonmembership in the Union.

25 To credit Williams' version, I would have to accept that a union employee whose job does not involve grievance processing called Williams to inform her that she had to modify her grievance and that he spoke in a hostile tone without giving any reason for such hostility.

30 Moreover, Williams' testimony about this telephone conversation with Harden differs in one quite significant way from her pretrial affidavit. At hearing, she testified that Harden had told her that she had to "pick one" of the claims in her grievance and could not proceed on both. However, on cross-examination, Williams admitted not mentioning it in her affidavit: "The part—the part that is not in the affidavit is when he told me I had to choose one. I had to pick, either I wanted hours or I wanted the route back."

35 Additionally, after describing the telephone conversation with Harden, the affidavit states that "nothing much else was said in that conversation." It does not seem likely that Williams, at the time she gave her affidavit, simply forgot that Harden had said that she had to choose one of the two claims and could not proceed on both. That she should omit this fact from the affidavit but then recall it at hearing raises the possibility that her memory is both fluid and creative. This difference between her affidavit and her testimony, along with a number of other inconsistencies discussed above, lead me to conclude that her testimony is of questionable reliability even when uncontradicted.

40 In this instance, though, it is contradicted. Harden denied that the conversation even took place. There was nothing, either in the substance of Harden's testimony or in his demeanor as a witness, which would raise similar doubts about his testimony. Therefore, crediting it, I conclude that he did not telephone Williams in September 2016 and did not make the statements which Williams attributed to him.

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The General Counsel argues that Harden's "pick one" instruction presented Williams with a "false choice, telling her she could not fight for all of her contractual rights and that she must surrender her right to suitable work and hours if she wanted to pursue her bid assignment grievance." However, in view of my finding that Harden never told Williams that she had to "pick one," I need not consider whether such a statement reasonably would convey the message claimed.

Turning now to the second uncertainty—whether Charging Party Williams had one or more conversations with Steward Tony Williams—it again will be helpful to begin with some background information. Union Steward Tony Williams, who testified that he telephoned Vanessa Williams twice, has responsibility for handling grievances at the "formal Step A" level. Thus, he was not involved with Vanessa Williams' grievance on September 2, 2016, when Steward McCauley met with Manager Nelson. However, once Nelson denied the grievance at this initial level, Steward McCauley was no longer involved and Steward Williams took over. He described his first conversation with Vanessa Williams as follows:

I talked to the steward, then I called her. Like I said, I said that basically I see you got two issues here, you're not getting work and that they took your assignment. I said I don't have the information for when you was off work. I said, well, management said they don't have it, and so can I get it from you, but I know based on what I have here I can get your route back. She said, well, I gave them the information. I said, well, I don't see it, and I said, but--I don't know. She was saying that she talked to them and that they didn't do this and so on. I said, well, I don't know. I said, well, what they told me was the information that you were off work and that you wasn't--that the information I needed they didn't have. That's what the Steward Erika Estrada told me, and that's what I explained to her. I said but I can get you your route. I said you want me to pursue the route? She was like, yes, get my route back. That was the end of that conversation.

However, Vanessa Williams could not recall speaking with Steward Williams. She testified:

Q. Who's Tony Williams?

A. I don't know.

Q. And did you ever contact him?

A. I don't remember talking to Tony Williams. I could have, but I just don't remember.

Because of the credibility problems discussed above, I do not credit Charging Party Vanessa Williams' testimony but instead rely on the testimony of Steward Tony Williams. Based upon my observations of the witnesses, I conclude that his testimony is more reliable and therefore credit it.

Considering that Steward Williams did telephone the Charging Party, and did discuss her grievance with her, is it possible that the Charging Party became confused and believed that she was speaking with John Harden when actually the caller was the steward? In considering this

question, I compare the steward's testimony concerning what he told the Charging Party with the latter's description of her supposed conversation with Harden.

5 According to Charging Party Williams, Harden told her to choose which claim to pursue, either the claim that management was not giving her enough hours or the claim that management had deprived her of Route 4235, which she had bid on and won. Did Steward Williams say anything similar when he spoke with the Charging Party?

10 Steward Williams' testimony does not indicate that he told Charging Party Williams she would have to *choose* one of two claims. Rather, the steward said that the grievance raised two separate issues, "you're not getting work and that they took your assignment." Nothing in Steward Williams' testimony suggests that he told the charging party "you have to pick one." However, he did discuss the two separate claims in the grievance.

15 Crediting Steward Williams, I find that he told Vanessa Williams that he did not have information about when she had been off work, then said "but I can get you your route" and asked "you want me to pursue the route?" Arguably, it's possible that Vanessa Williams understood those words to mean that she could only pursue one of the two claims and was being required to make a choice, then erroneously attributed the words to Harden.

20 Because of the inconsistencies and confusion in Charging Party Williams' testimony, such a mistake cannot be ruled out entirely. However, other evidence makes this possibility seem unlikely. When Charging Party Williams gave the following testimony, her tone of voice sounded confident:

25 Q. How do you know it was John Harden you were speaking to as opposed to another union rep?

A. Because he said, hello, Vanessa, this is John Harden.

30 It is difficult to believe that the Charging Party would hear the steward introduce himself as "Tony Williams" and somehow mistake that name for "John Harden." Moreover, because she shared the same last name as the steward, it seems especially unlikely that she would confuse that name with Harden.

35 The General Counsel, urging that the credibility conflict be resolved in favor of the Charging Party, characterized Steward Williams' testimony as "littered with internal inconsistencies." For example, the General Counsel argued that Steward Williams "testified that Vanessa Williams told him that her issue was 'that during the two years she was off, she wasn't getting any work.' (Transcript 262) This is nonsense."

40 Of course, such a statement—that while she was off work she wasn't getting any work—does state an obvious truism which explains nothing. In that sense, of an explanation which does not explain, the statement might well be labeled "nonsense." However, it is not Steward Williams' nonsense. He was quoting Vanessa Williams.

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It is entirely plausible that she would make a statement to the steward which was just as confusing as her testimony at trial. After experiencing that testimony, it is not too difficult to believe that someone who had a conversation with her might go away bewildered. Steward Williams testified that after speaking with her he went to fellow steward Estrada and said "explain to me what's going on."

Although I consider it highly unlikely that Charging Party Williams believed she was speaking with Harden when, in fact, the person on the telephone was Steward Williams, that possibility cannot be ruled out entirely. However, I do find that *Harden* never had this supposed conversation with the Charging Party. Therefore, I must conclude either that the Charging Party spoke with someone she incorrectly identified as Harden or else that she simply imagined a conversation. It would appear more likely that Charging Party Williams was confused rather than dishonest or delusional, but regardless of the reason, her testimony provides limited help in ascertaining what actually happened.

Even though I have difficulty believing that Charging Party Williams mistook Steward Williams for Harden, here, for the sake of analysis I will assume that she did. In other words, at this point I will weigh the testimony as if Charging Party Williams and Steward Williams were describing a conversation they had, and giving conflicting accounts of what was said.

The Charging Party testified that the man who telephoned her (and whom she identified as Harden) said "I'm looking at your grievance, and you are asking for too much right now. You asking about hours. What exactly do you want the union do for you?" According to Williams, she asked the man "why can't I get it all" and he replied "it don't work like that. You have to pick one."

In contrast, Steward Williams did not testify that he told the Charging Party that she had to "pick one." Rather, the steward testified as follows:

I said that basically I see you got two issues here, you're not getting work and that they took your assignment. I said I don't have the information for when you was off work. I said, well, management said they don't have it, and so can I get it from you, but I know based on what I have here I can get your route back.

Crediting Steward Williams, I find that he did not say to Vanessa Williams "you have to pick one."¹⁵ Rather, he asked her to provide certain information which, he said, management claimed not to have. Then he assured her that he could get her route back based on the information he already possessed. Vanessa Williams then told Steward Williams she wished him to proceed with his effort to get her assigned to the route she desired.

The government contends that Steward Williams' actions restrained and coerced the Charging Party in three different ways: (1) By discriminatorily failing to proceed on one of the

¹⁵ Because I lack confidence in Charging Party Williams' testimony even when uncontradicted, I do not find that anyone made to her the statements which she attributed to John Harden. Credible evidence fails to establish that anyone associated with the Union told Williams she had to "pick one."

two claims raised by the grievance;¹⁶ As the Respondent noted in oral argument, the original grievance filed by Steward McCauley included this "suitability of work" claim. When the grievance reached the "formal Step A level" (after its initial denial at the "informal Step A" level), Steward Williams decided to proceed only on the route assignment issue, (2) by falsely and deliberating
 5 informing her that she could only proceed with one of her claims rather than both of them, and (3) by the steward making statements which misled the Charging Party into believing that the Union could not proceed on one of the claims—the "suitability of work" claim—because the steward lacked information needed to advance this claim.

10 It is true that the grievance raised two issues and that Steward Williams proceeded on only one of them. However, based on the steward's credited testimony, I find that Vanessa Williams' nonmembership in the Union did not influence the steward's decision to proceed at that time only with one claim—the grievant's assertion that management improperly denied her the Route 4235 assignment—and not to proceed with her claim that management should be
 15 assigning her more work, specifically, work consistent with her medical limitations.

The credited evidence does not establish that either the Union or Steward Williams harbored improper motivation affecting the decision on how to proceed with the Charging Party's grievance. Likewise, credited evidence does not establish that gross negligence—or, for that
 20 matter, even ordinary negligence¹⁷—affected the processing of the grievance.

It certainly isn't the judge's job to second-guess the decisions made by Union officials concerning the best strategy for winning a grievance. The law affords a union a wide range of reasonableness in making such decisions. *Union de Obreros de Cemento Mezclado (Betteroads Asphalt Corp.)*, 336 NLRB 972 (2001). A union does not breach its duty of fair representation when it makes a good faith decision, within this wide range of reasonableness, about whether to
 25 proceed on the grievance and, if so, what course of action should be taken to prevail. Rather, a union breaches the duty, and violates the Act, when it engages in conduct that is "arbitrary, discriminatory or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967).

30 To establish a breach of the duty of fair representation, the General Counsel must prove, by a preponderance of the evidence, that a union's disposition of a grievance was motivated by ill will or other invidious considerations, *Bottle Blowers Local 106 (Owens-Illinois, Inc.)*, 240 NLRB 324 (1979). The government also may establish a violation by showing something more than mere negligence or poor judgment in the union's handling of a grievance. *Rainey Security Agency*, 274 NLRB 269 (1985); *Diversified Contract Services*, 292 NLRB 603, 605 (1989). In a close case, discerning the line between "mere negligence" and "something more" may be difficult because "something more than mere negligence" is not susceptible to precise definition. *Office Employees Local 2*, 268 NLRB 1353, 1355 (1984). However, the present case is not a
 35 close one.
 40

16 For clarity, it may be noted that although the General Counsel refers to the claim not pursued as the "suitable work grievance" or "suitability of work grievance," the Charging Party raised both claims in a single grievance document. The "suitability of work" claim alleged, in effect, that management was not assigning to Vanessa Williams available work which was sui table for someone with her medical limitations.

17 It is well established that, to prove that a union violated its duty of fair representation, the General Counsel must show more than "mere negligence." *Unlicensed Division, District 1 (Mormac Marine Transport)*, 312 NLRB 944 (1993).

Steward Williams' credited testimony establishes that he made the decision on how to proceed based on his judgments about his ability to win. Thus, after telling Vanessa Williams that he was having problems getting "the information for when you was off work," he said "but I know based on what I have here I can get your route back."

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Steward Williams' decision to focus on getting Vanessa Williams assigned to Route 4235, as she desired, falls well within the union's wide range of reasonableness. His assessment that he could win the route assignment claim proved correct when the Union prevailed. Moreover, because assignment to Route 4235 would result in Vanessa Williams working more hours, it provided a remedy for her complaint that she was not being given sufficient work.

10

Contrary to the General Counsel's first argument, the credited evidence establishes that the Union's decision to proceed only on one of the grievance's claims was not motivated by ill will or other invidious considerations and that it fell well within the wide range of reasonableness. Therefore, I reject the government's first argument and turn now to its second, that Steward Williams falsely and deliberately led the Charging Party to believe that she could proceed only with one of the claims in her grievance.

15

The General Counsel argues that even "Respondent's own records show others have been permitted to take multiple issues under a single grievance." Because of this past experience, the government reasons, the Union was well aware that an employee would not have to make such a choice. Therefore, the General Counsel contends, when an agent of the Union told the Charging Party that she would have to "pick one," he knew that he was conveying a falsehood. Accordingly, the Union breached its duty to represent Williams fairly "because it wilfully misinformed her that she had to pick between her issues when no such choice needed to be made."

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However, credited evidence does not establish that anyone associated with the Union ever told the Charging Party that she had to "pick one," to choose to proceed on one claim while abandoning the other. To the contrary, I have found that no union agent made such a statement.

30

Steward Williams did not present Vanessa Williams with an either-or choice but left the door open to pursue her claim that management was not giving her sufficient hours of work. He simply asked her for the information he needed but which he could not obtain from management. Rejecting the General Counsel's second argument, I turn to the third.

35

The government contends that when Steward Williams told Vanessa Williams that he needed information which he could not obtain from management, he was not telling her the truth. The General Counsel asserts that the Union *already possessed* the information needed to proceed with the hours of work (suitability of work) claim. Thus, the General Counsel argued: "If Tony Williams is credited at all, he, at best, wilfully misinformed Vanessa Williams that he did not have the information he needed to continue processing her suitability of work grievance in violation of Section 8(b)(1)(a) of the Act."

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The government bases this argument on the assumption that the only information which Steward Williams would need was a "CA17." An examining physician notes on this form an

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injured employee's remaining physical limitations. Management uses this information to decide which tasks the returning employee can and cannot perform safely.

5 The government's assumption, that the CA17 form was the *only* information needed for Steward Williams to pursue the hours-of-work claim, becomes apparent in the following portion of the General Counsel's oral argument: "On cross examination, Tony Williams testified that Steward Estrada had told him that the Employer did not have the information needed for nonmember Vanessa Williams' suitable work claim; however, he admitted he had Vanessa Williams' medical restriction documentation, or otherwise known as CA17 form, when he framed the scope of her grievance. (R1 transcript 268)."

15 The General Counsel's citation to "R1," Respondent's Exhibit 1, refers to a previous grievance which the Union filed on behalf of Vanessa Williams in 2011. Respondent introduced this document, as well as grievances it had filed on behalf of other nonmembers, to show that it did not discriminate on the basis of membership. "Transcript 268" refers to Steward Williams' testimony during the brief cross-examination by the General Counsel. That testimony is as follows:

20 Q. So it's your testimony that you talked to Steward Erika Estrada before you spoke to Ms. Williams, correct?

A. Yes.

25 Q. And there is a type of documentation that a letter carrier should turn in to show what sort of restrictions they're on when they're on light duty, correct?

A. Yes.

Q. And that form is called a CA-17?

A. Yes.

30 Q. And it was your testimony earlier that before you framed the issue that you had page 15 out of Respondent's 13 packet?

A. Um-hum.

35 Q. So you had this whenever you framed the issue, isn't that correct?

A. Yes.

40 The General Counsel asked no further questions. However, to support its argument that Steward Williams misrepresented to Vanessa Williams that he did not have the documentation necessary to pursue one of her claims, the government also must show that Steward Williams needed *only* the form which the steward admitted possessing.

45 The record gives reason to believe that more documentation was needed. As discussed further below, On about February 25, 2017, Station Manager Nelson gave Vanessa Williams a "Relinquish Assignment" notice informing her that she would have to give up Route 4235 if she did not submit medical documents within 2 weeks. The notice referred to a March 16, 1987 memorandum of understanding which is included in the Joint Contract Administration Manual

used by management and the Union in grievance processing. That memorandum of understanding stated, in part:

5 Management may, at the time of submission of the bid or at any time thereafter, request that letter carrier provide medical certification indicating that the letter carrier will be able to perform the duties of the bid-for position within (6) months of the bid. If the letter carrier fails to provide such new certification, the bid shall be disallowed, and, if the assignment was awarded, it shall be reposted for bidding. Under such circumstances, the letter carrier shall not be permitted to rebid in the next posting of that assignment.

10 Williams testified that she was submitting a CA17 form each month but still received the "Relinquish Assignment" notice. Williams apparently believed that management's requirement of additional documentation was harassment, but that characterization does not change the fact that such a requirement existed:

15 Q. Okay. So when you received the letters from Miss Nelson, GC7 and GC8, that said that you needed to provide medical documentation, and it cited a memorandum of understanding and the JCAM,¹⁸ you believed that because you won the grievance, that you didn't have to do what management was saying. Am I right?

20 A. No.

Q. Okay.

25 A. Since I was on light duty, every month I had—the doctor filled out a CA17. So if he steady filling out my CA17 every month, I'm giving her documentation. She wanted a specific documentation. I assumed that the documentation that the doctor was sending monthly was the documentation that she needed, because every month I went to the doctor, I got a CA17. He had to fill those out, and then he made a report and send it in. So if the doctor is giving her that medical record, I'm thinking that it's harassment.

30 Notwithstanding my concerns about the reliability of Williams' testimony, in this instance, the portion quoted above is consistent with Williams' receipt of "Relinquish Assignment" notices, which are in evidence. This evidence suffices to raise a doubt about the General Counsel's assumption that the steward needed no other document besides a CA17 form. If the CA17 form, which Williams submitted every month, had been sufficient, then management would not have issued a "Relinquish Assignment" notice indicating that additional documentation was necessary.

35 The General Counsel argues that Steward Williams' conduct "goes beyond negligence" and that he "willfully misinformed Vanessa Williams that he did not have the information he needed to continue processing her suitability of work grievance. . ." Stated more bluntly, the government contends that the steward lied by telling Charging Party Williams that he needed

18 "GC7" refers to General Counsel's Exhibit 7, the "Relinquish Assignment" notice which Williams received in February 2017, and "GC8" refers to another such notice she received later. "JCAM" refers to the Joint Contract Administration Manual.

more information to proceed with the suitability of work claim. Proving that assertion of willful misrepresentation entails showing (1) what information or documents the Union needed to proceed with the grievance, (2) that the steward already possessed or believed that he possessed all the needed information and documents, and (3) that notwithstanding his belief that he already had the needed information and documents, he told Charging Party Williams that he did not.

At the first stage of the grievance procedure, the Union would be dealing with Manager Nelson. As discussed above, Charging Party Williams' own testimony indicates that Nelson required more than a CA17 before allowing Williams to perform some of Williams' previous job duties. Therefore, the Union would need such additional documentation to overcome any objection that Williams had not established that she was physically able to do the work.

The General Counsel's evidence that Steward Williams already possessed a CA17 form falls short of establishing that he had all the information needed to make the case that management had a contractual obligation to give Vanessa Williams more work. The government has not carried its burden of proving that the CA17 form already in the steward's possession was the only document the Union needed to proceed on the "suitability of work" claim.

To the contrary, the record suggests that the station manager required additional documentation as a precondition to assigning the Charging Party more duties. Therefore, I cannot conclude that Steward Williams willfully misled the Charging Party by telling her that he needed further information. Indeed, based upon my observations of Steward Williams while he testified and the cogency of his testimony, I conclude that he was a truthful witness whom I credit.

The General Counsel's own evidence suggests that a CA-17 form alone would not be sufficient to support a grievance alleging that management had failed to offer a limited-duty employee sufficient work which the employee could perform. A union publication¹⁹ listed the documents needed. That list included OWCP acceptance letters, current and prior CA-17 forms or other documentation showing medical restrictions, current and present limited duty and rehabilitation job offers, current and selected Postal Service Form 50s (documenting past assignments to limited duty or rehabilitation positions), the Postal Service injury compensation file, the Postal Service medical records file, and all Postal Service documentation of its efforts to find work which the employee on limited duty could perform. Moreover, management reasonably would want sufficient medical documentation to be sure that a possible work assignment would not further injure the employee or cause a risk to others, such as pedestrians who might be near a letter carrier driving a Postal Service vehicle. Additionally, the Charging Party's testimony itself leaves little doubt that a CA17 form alone would not be enough to satisfy Station Manager Nelson.

Because the government has shown neither that Steward Williams already had all the information and documentation needed nor that he *believed* that he had all the necessary

¹⁹ The General Counsel introduced into evidence an article from the Union's "Postal Record" publication. The article, titled "Documentation for limited duty," stated that for several years, the Postal Service had pursued an aggressive "little or no work available" policy for limited duty. The article then listed the basic documentation which the Union should submit with every grievance arising from the employer's application of this policy.

information and documentation, I cannot conclude that the steward knowingly told a falsehood when he said that he needed more information in connection with the grievant's "suitability of work" claim. Rejecting the General Counsel's argument, I find that Steward Williams did not mislead the Charging Party.

To summarize, although Steward Williams was reluctant to proceed on the hours-of-work claim (the "suitability of work" claim) absent further information, he expressed confidence in his ability to prevail in arguing that management should allow Vanessa Williams to work Route 4235. Since obtaining Route 4235 for Vanessa Williams would result in her working more hours, and on a route she desired, Steward Williams' decision to focus on the route-assignment claim falls well within the broad range of reasonableness a union enjoys when representing employees in grievance proceedings.

Events in October 2016

Although the Union was acting on Charging Party Williams' behalf, it did not inform her about the steps it was taking to resolve her grievance. On about October 27, 2016, she sent a letter to the postmaster general, with copies to the postmaster responsible for Chicago operations and to the National Union. That letter stated as follows (capitalization, spelling and punctuation as in the original):

Dear Poster Master

My name is Vanessa P. Williams, I'm a Letter Carrier at the Wicker Park Post Office CHGO,IL 60622. I have 22.years of service, on October 29, 2014 I fell down the stairs at 2318 Rice on my route and tore my ACL, ripped my inner meniscus, and cracked my cartilage. Needless to say I was off work for just 20 months, upon my return to work July 21, 2016 I came back with some restrictions my knee is not strong enough to climb stairs yet, but I was still in therapy 3 day a week until August 31,2016. So since my return to work my station manager Janice Nelson REFUSED to find me work. My route has too many stairs so I was only allowed to carry the flat part of the route. I was not allowed to case my route but come in at 10am and just carry the business part. So when a route became open with on [typo, should be "no"] stairs 4 large buildings, and drive off drops, I BIDDED on it (4235) was awarded the route August 15, 2016. I was not allowed to case the route or even drive off the post. So after 3 days when Miss Janice Nelson came back from vacation she took my route. NO reason just said the she is the Station Manager and she can award the routes to who she say is fit. I went to Branch 11 to file a grievance but was told I have to give it to my union steward who is (Erika Estrada) but Erika Is always at the union on a detail and the assistant Tony Macaulay was on vacation they said watt until he comes back. See I'm NOT IN THE BRANCH 11 UNION so they refused to help or even call me on this matter. I'm writing to you because I cannot paid my bills, I cannot get a mortgage modification because the station manager only gives me 3-1/2 to 4 hours a day I have to get the rest from OWCP because no work is available for me(BUT)overtime is given out to the CCA's and other carriers with less seniority. I WANT TO WORK!!! I I need to be able to pay my bills. After 22 years of service I cannot add money to my TSP, I have to stop my POSTAL INSURANCE because I need

the money to pay my MORTGAGE and CAR NOTE. CAN YOU PLEASE HELD FIND ME SOME WORK.

5 On October 28, 2016, she filed the unfair labor practice charge which began this proceeding. She also began receiving 8 hours of work a day, but the record does not pinpoint the date on which her hours of work increased. It also doesn't establish the extent to which her letter to the postmasters, or the unfair labor practice charge against the union, or both, prompted this increase.

10 As noted above, Williams sent a copy of her October 27, 2016 letter to the National Union. National Business Agent Michael Caref, who serves the National Union's Region 3, then telephoned her to discuss it. Williams did not specify the exact date on which Caref called her, but did state that it was right after she began receiving 8 hours of work. She testified, in part, as follows:

- 15 Q. Okay. And tell me about that phone conversation.
- A. He called and he said, hey, Vanessa, this is Mike. He said, I'm looking at this letter that you sent to national and—let me get it right. I'm looking at this letter that you sent to national, and why do you think we should work for you for free.
- 20 And I said, what do you mean. He said, you want us to argue a case for you for free. And I said, no, I want you all to honor the contract. And then he said, no, this is in detailing more work. We actually have to put in work for this. He said, and do you at any point in time plan on joining the union. I said, no.
- 25 Q. And did you—was anything else said in the conversation?
- A. We talked about my grievance letter, and I kept on saying, you know, I said, what make you think that y'all working for me for free. We both work for the post office. We get our major salary from the post office, so you not actually working for me for free. He said, well, this is going to entail us actually having to do—
- 30 investigate things for you, so and in that aspect we are working for you for free. And I said, no. All you all need to do is enforce the contract. Then he said, well, Miss Williams, I need you to do something for me. And I said, what, Mike. He said, you need to write me a letter stating why you don't want to join the union.
- 35 Q. And what'd you say to that?
- A. You'll love that.

40 National Business Agent Carif confirmed that he telephoned Williams after receiving a copy of her letter to the postmasters. He also testified that during this conversation, he brought up the subject of Williams becoming a union member, but explained that he did so because on a previous occasion Williams had expressed to him an interest in joining:

- 45 Q. In the course of your duties, have you ever had occasion to communicate with Vanessa Williams?
- A. Yes.

Q. Did Ms. Williams at any point indicate to you an interest in becoming a member of the National Association of Letter Carriers?

A. Yes, she did.

5 Q. Can you recount for us on what occasion or occasions she expressed such an interest?

A. Okay. So I remember one instance for sure. I know Vanessa and I have known each other for a lot of years, and we've spoken many times, you know, had kind of cordial dialogue over the years. But I'm certain that in the fall of 2016 she had written a letter to—I'm not sure where the letter was written to, but somewhere in Washington, and the letter got redirected back to me for a response. As part of the response, I know I called her and talked to her on the phone, and as part of that conversation, I have recently sent out a letter to everybody who wasn't a member of the NALC and Region 3 asking them to join the Union, kind of extolling the virtues, letting them know all the things we were working on as a Union, the benefits and everything, and I asked her if she had received that letter, and she said she had. I asked her would you consider joining the Union and how do you feel about that. In the letter I asked anyone that did not want to join the Union to please tell me why. So I asked her if you're not going to join the Union, you know, please let me know the reasons why, and she told me at that time, well, I am thinking about joining the Union. So I said okay. Then I responded to her letter. Sent her a letter back. Sent her a copy of the form to join the Union if she wanted to, you know, sign up.

25 Williams testified that she never told Caref that she wanted to join the Union. However, for reasons discussed above, I have doubts about the reliability of her testimony. To the extent that Caref's testimony conflicts with Williams, I credit Caref's version, which I believe more trustworthy, and find that Williams did tell him that she was thinking about joining the Union.

30 About a month after Caref's telephone call to Williams, he sent her a letter. Dated December 1, 2016, the letter stated as follows:

Dear Ms. Williams,

35 This is in response to the "Dear Post Master" letter dated October 27, 2016 that was received at the NLAC Headquarters on November 2, 2016. I am responding on behalf of National President Fredric V. Rolando.

40 A grievance has been initiated by NALC Branch 11 on your behalf. It is currently at the Formal A level of the grievance procedure. Please communicate with Mr. Tony Williams at 773.624.4209 to discuss the grievance. We want to be clear on any possible contractual violations that may need to be addressed.

45 Per our telephone conversation, I am still waiting on your response regarding your membership status.

Thank you.

Sincerely,

5 Michael Caref
NATIONAL BUSINESS AGENT
NALC - Region 3

10 Caref had enclosed with the letter a form which, if signed by the Charging Party, would authorize management to deduct union dues from her paycheck. The General Counsel argued that Caref thereby added insult to injury. However, in view of my finding that Williams told Caref she was thinking about joining the Union, Caref's inclusion of the dues checkoff form is neither insulting nor remarkable.

15 Events in 2017

On January 16, 2017, while at home, Charging Party Williams broke her toe, resulting in her being off work for 6 weeks.

20 On February 9, 2017, while Williams remained away from work due to her injury, the Union and management, meeting at the Step B level, settled her grievance, resulting in Williams being assigned to the route she had desired and bid on, Route 4235.

25 For reasons discussed later in this decision, I conclude that the Union did not breach its duty of fair representation, or violate the Act, by the way it handled Williams' grievance and did not process her grievance in any way materially different from the manner in which it represented employees who were union members. Accordingly, I recommend that the Board dismiss these allegations.

30 However, it will serve clarity to continue discussing events in their chronological order. Therefore, at this juncture, I will put aside the discussion of allegations raised in complaint paragraph VI and turn instead to the allegations raised in complaint paragraph VII.

35 Complaint Paragraph VII

Complaint paragraph VII(a) alleges that about March 1, 2017, and repeatedly thereafter, the Charging Party, who is a member of the bargaining unit, asked Respondents to provide a copy of a grievance settlement concerning her bid on route 4235, or a description of that settlement's terms. Complaint Paragraph VII(b) alleges that from about March 1, 2017, to about 40 April 18, 2017, Respondent Branch 11 refused to provide the Charging Party with the information or documents described above in paragraph VII(a).

45 The Respondent denies these allegations. It also denies that these alleged actions violated the Act, as alleged in complaint paragraph X.

On February 9, 2017, the Union and management resolved Williams' grievance by granting her the route assignment she had sought, Route 4235. On Monday, February 13, 2017, Union President Julion mailed a copy of the grievance resolution document to Steward Erika Estrada with a cover letter instructing her to provide a copy to the grievant. For reasons discussed below, I conclude that when Estrada received the letter from Julion and the grievance resolution document enclosed with that letter, she placed a copy of the grievance settlement in a drawer on the "case" which Williams would be using to sort the mail for Route 4235. This action followed Estrada's usual practice.

Because of her broken toe, Williams was not at work on February 9, when she won the grievance, or on February 13, when Julion mailed a copy to Steward Estrada with instructions to provide the grievant with a copy. Williams also was not at work the day Estrada received the grievance settlement and placed a copy in Williams' drawer. She would not return to the facility until February 27, 2017.

Williams learned about the grievance settlement indirectly when she received a "Relinquish Assignment" notice informing her that, to keep her Route 4235 assignment, she had to submit medical documentation within 2 weeks. Williams testified that she received the "Relinquish Assignment" notice on February 25, which was two days before her return to work.

When Williams returned to the facility on February 27, she began the new assignment. On this route, Williams worked 8 to 10 hours each day. Thus, the resolution of her grievance not only had resulted in her being awarded the route she desired, but also had provided, in effect, a remedy for her "suitability of work" claim.

In early March 2017, Station Manager Nelson called Williams into her office and asked Williams for medical documentation. Only the two of them were present. Because Nelson did not testify, Williams' testimony provides the only account of this conversation:

Q. Did Miss Nelson make any comments about your work on Route 35?

A. A week after I did the whole route, I think it was like a Tuesday I came to work. And she called me into her office because Route 35 is right next to her office. So I come in 35, door, her office. So she said, Miss Williams, I need to speak to you. The door was open. I walked in. She said, did you get my grievance -- she said, did you get my relinquish letter. I said, yes. She said, well, where's my paperwork. I said, what paperwork. She said, I requested medical documentation from you. I said, yeah, I said, but I did the whole route the whole week and did ten hours, so why do you need medical documentation if I'm doing the route and I already did the route. She said, because I'm the station manager, and I can request that. I said, look, I won my grievance, so as far as I know it's ceased and desist. She said, did you get a copy of your grievance. I said, no. She said, well, let me inform you. There's a stipulation that I can ask for medical documentation. I said, but I did the route already. There's proof that I did the route. She said, well, I need something from your doctor saying that it's okay for you to do the route. So I just assumed that she was harassing me, and I dismissed her. . .

After the conversation with Nelson, Williams went to Union Steward Erika Estrada. According to Williams, she said to Estrada, "I know I won my grievance. I said, but am I supposed to get some type of letter or something."

5 Williams testified that Estrada replied, "I don't know what you're talking about. I didn't file your grievance." Williams said that she then asked Estrada "is there somebody that I can call" and that Estrada replied "I don't know who you can call."

10 Estrada's version of the conversation differs substantially from Williams' account. Estrada testified:

Q. Tell me what if anything she said and what if anything you said?

15 A. I don't recall exact words, but I know she asked me for a copy or that she wanted a copy, something to that nature, and I had informed her that there was a copy in her drawer, but if there wasn't, that I would still give her another one if she wanted me to.

Q. Did she say anything else?

20 A. No, she said okay.

25 For reasons discussed above, I do not believe that Williams' testimony is reliable. Because of those concerns, and based on my observations of the witnesses, I conclude that Estrada's account of this conversation is more trustworthy, credit it, and do not credit Williams' version. Therefore, I find that when Williams asked for a copy of the grievance settlement, Estrada replied that she had placed a copy in Williams' drawer but would give Williams another copy if she wished. Further, I find that Williams replied "okay."

30 Estrada's testimony does not indicate that Williams thereafter requested a copy until April 18, 2018 and I conclude that during this period before April 18, Williams did not. This conclusion is consistent with the fact that Williams was on vacation during part of this period and did not return to work until April 18.

35 Because Williams did not get back to Estrada immediately after Estrada said she had place a copy of the grievance settlement in Williams' drawer, Estrada reasonably would have assumed that Williams had received that copy. However, Williams claims that she did not. Moreover, the General Counsel argues that placing the document in Williams' drawer was an inadequate attempt to deliver it to Williams. Therefore, it is appropriate to examine the steward's customary procedure for delivering grievance documents to grievants.

40 Steward Estrada credibly testified that each letter carrier has a drawer. When the Union resolves grievances filed by bargaining unit employees who work at the facility, Estrada customarily will receive a copy of the document memorializing the actions. Typically, the document comes to her about a week after the action which resolves a grievance. She then places a copy in the drawer of the grievant.

5 The Union and management resolved Williams' grievance on February 9, 2017, and Local Union President Julion mailed Estrada a copy of the resolution document on February 13, 2017. It seems likely that Estrada would have received the document by February 15, 2017, if not sooner. Based on Estrada's testimony, I find that she placed a copy in Williams' drawer on or around February 15, 2017.

10 However, Williams was not then working and would not return to the facility until February 27, 2016. The record does not reveal what happened to the document during the 11 days after Estrada placed it in the drawer. If it, in fact, disappeared, the cause and circumstances remain unknown.

15 The General Counsel appears to argue that the Union acted negligently when it trusted Steward Estrada to deliver the grievance resolution document to Williams. In an October 31, 2016 email from Steward Tony McCauley to Local Union President Julion, the steward had stated "Vanessa Williams does not like the union or Erika. Not quite sure how she feels about me." During oral argument, the General Counsel referred to this email and stated:

20 If Respondent's true intention was to make sure Vanessa Williams received a copy of her settlement, it is curious why it would entrust a messenger it knew to have a strained relationship with Ms. Williams.

25 However, as the Respondent observes, even if Williams did not like Estrada, it cannot be assumed that this dislike was mutual. The record certainly does not establish that Estrada harbored any such feeling, but even if she did, that would not warrant an assumption that she would fail to do her duty as a steward. Moreover, a casual remark that the grievant did not like the steward reasonably would not cause the union president to be concerned that the steward might fail to deliver the grievance resolution document. Therefore, I reject the General Counsel's argument.

30 Moreover, I conclude that Steward Estrada did not act negligently when she put a copy of the grievance settlement document in Williams' drawer. That was the procedure the steward customarily used in transmitting such documents to employees and that procedure appears to be well within the Union's wide range of reasonableness.

35 After Estrada told Williams that she had placed the document in Williams' drawer, Williams did not make further inquiry about it in early March 2017. Williams only sought the settlement when she learned that the station manager would take Route 4235 away from her unless she provided further medical documentation.

40 As discussed above, on about February 25, 2017, Charging Party Williams received a letter stating that she had 2 weeks to submit medical documentation and that absent such documentation, she would have to relinquish Route 4235. Williams testified that in early March 2017, Station Manager Nelson asked her for the additional documentation. Williams further testified "I just assumed that she was harassing me, and I dismissed her. . ."

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In other words, William did not comply with the manager's request for further medical documentation. Manager Nelson sent Williams another "Relinquish Assignment" letter. Dated March 28, 2017, the letter stated, in part:

5 According to the JCAM, you have not fulfilled requirements to maintain your current assignment on Route 4235. You were given two (2) weeks to turn in Medical Documents indicating you will be able to fulfill requirements of your bidded assigned duties within the next (6) months. The letter to Relinquish Assignment was dated February 22, 2617,

10 As of March 28, 2017 you have not provided medical documentation indicating you will be able to fulfill the requirements of your bid assigned duties.

Effective April 01, 2017 your bid assignment 4235 will be posted for "In-Station Bid."

15 Williams testified that after receiving this letter, she spoke with Nelson, who said that Williams needed to get a copy of the grievance settlement because it provided that Nelson could request documentation. Williams then telephoned the Union and spoke with John Harden.

20 According to Williams, Harden told her that the manager could request those documents and asked her if she had received a copy of the grievance settlement. When she replied that she had not, he asked whether Steward Estrada had given her a copy. Williams replied that Estrada had not. Harden told Williams to send him a self-addressed envelope and he would send her a copy.

25 Williams decided to file a grievance. On March 30, 2017, she sent a letter to the National Union. It stated as follows (capitalization and spelling as in original):

30 I, Vanessa P. Williams, would like to file this grievance -on Jeniece Nelson the Station Manager, at the Wicker Park Post Office. I won the last grievance about my bid on route 42035 February 13, 2017 in which the letter said to cease and desist the route was mine.

35 On February 22, 2017 I received a letter telling me that I had to RELINQUISH MY ASSIGNMENT 42035 while I was out for six weeks for a broken toe. returned to work February 27, 2017 with my Doctors release went to my route and completed the whole route the rest of the week. Due to the fact that I have to have another surgery on my knee, because Ms. Nelson brought me back to work six months to soon, and continuing to violate the Carriers Contract when it cane to me by not allowing me to case my route, keeping me on workers comp when I was release on full duty, and only giving me 3 hours of only walking and sending me hone. When I give her my CA17 she could never
40 read it, but everyone else could. I bid on route 42035 because it had three stops with stairs this was a route that I can do with my restrictions. Now I have done the whole route for the first week but the pain in my knee it took me 9 hours to complete. I have my next surgery on June 26, 2017 so to say in my 8 hours I give up two blocks of walking so that I don't cause more damage. Now on March 30,2017 I received another letter telling me
45 that my route will be put up for bid again because she doesn't want me to have this route. What was the purpose of me winning my grievance that said to CEASE AND DESIST

5 route 42035 was settled. I have been HARASSED by this Station Manager before and after I came back to work. She has sent me a Notice of investigatory Interview , since March 16, 2016 while I was going to Therapy 5 days a week every month until I came back to work. The last one was in June 19, 2016 NO JOB OFFER just come back She is the reason why I have to have this second surgery. After 24 years of service why is this lady picking with me.

10 This letter is most relevant to the allegations in complaint paragraph 8, discussed later in this decision. However, it is set forth here because of its place in the sequence of events and also because it reflects on the credibility of Williams.²⁰

Williams went on vacation and returned to work on April 18, 2017. She testified that she then wrote the following note which she gave to Steward Estrada:

15 I won my grievance 2/13/17 for Route 42035. But Branch 11 will not send or give me the paperwork. In the order it said to Cease and desist about Route 42035 but Ms. Jeniece Nelson is still trying to take this Route. So I'm sending you a copy of my Doctor's note and will be giving one to Ms. Nelson 4/18/17 just in case she trys something else.

20 In this letter, Williams referred to route "42035" but from context I infer that she meant Route 4235, which she had been assigned because of the grievance settlement. This error likely was inadvertent and does not reflect adversely on credibility, but other parts of the letter do, buttressing the impression that she was not particularly conscientious about matching description to reality.

For example, the letter states that when she gave Station Manager Nelson her CA17 form (completed by a physician evaluating her medical limitations) Nelson "could never read it, but everyone else could." However, neither Williams' testimony nor any other evidence indicates that Nelson had difficulty reading the form.

Possibly, Williams was exaggerating for rhetorical effect and really meant that Manager Nelson read the CA17 but did not take seriously the doctor's opinion that Williams now could perform a full range of work. However, in this grievance Williams also stated that she would have to have another knee operation and blamed the station manager ("because Ms. Nelson brought me back to work six months to[o] soon"). It would be inconsistent for Williams to claim, on the one hand, that the manager had caused her return to work while she was still physically unable to do all of it while, on the other hand, insisting that the manager accept without question a doctor's statement that Williams fully had recovered.

It also is not clear why Williams would blame the station manager bringing her back to work too soon when it was the physician who released Williams for duty. Blaming the manager seems no more well founded than for Williams to claim that the manager was "harassing" her by seeking more medical documentation while at the same time admitting she continued to suffer medical problems. In addition to mentioning the upcoming knee surgery, Williams' grievance also stated that after one week on the new route, the pain was so severe it was taking her 9 hours to complete a day's work. Williams also displayed hostility to the manager by simply ignoring the manager's instructions to provide additional documentation.

The "Relinquish Assignment" notice plainly stated the reason for taking Williams off the route: She had not submitted the required medical documentation. However, rather than acknowledging her noncompliance with this requirement, Williams characterized the "Relinquish Assignment" letter from Station Manager Nelson as "telling me that my route will be put up for bid again because she doesn't want me to have this route." This phrasing avoided the inconvenient fact that Williams had not submitted the required documentation. It perhaps also implied that Station Manager Nelson had acted arbitrarily. Actually, the manager had a very specific and legitimate reason, William's failure to submit required documents, a reason which the "Relinquish Assignment" letter had clearly explained.

Williams testified without contradiction that Estrada gave her a copy of the grievance settlement the next day. The Respondent does not dispute this date and has offered no evidence that it gave Williams a copy of the grievance settlement any earlier. Therefore, I find that on April 19, 2017, Williams received a copy of the grievance settlement from Steward Estrada.

5

The General Counsel argues that "Respondent Branch 11 is playing a game of hide the ball from nonmember Vanessa Williams. Williams requested the information in multiple ways and ultimately had to wait more than a month and a half to receive a document her steward admits that she already had a copy of." To the contrary, the credited evidence suggests that Williams was playing a game of "don't want the ball."

10

The credited evidence establishes, and I find, that in late February 2017, shortly after Williams had returned to work after a 6-week absence, Steward Estrada told Williams that she had placed a copy of the grievance settlement in Williams' drawer and that if it wasn't there Estrada would provide her with another copy. Williams replied "okay." When Williams did not come back to request a copy, it would have been reasonable for the steward to conclude that Williams had found the copy in her drawer.

15

The next time that Williams asked the steward for a copy of the grievance settlement was on April 18, 2017, and the steward furnished Williams with a copy the next day.

20

No credited evidence establishes that the Respondent refused, from about March 1, 2017 to about April 18, 2017, to provide the Charging Party with information or documents related to the settlement of her grievance, as alleged in complaint paragraph 7(b). To the contrary, I find that the Union did not engage in this alleged conduct.

25

Accordingly, I recommend that the Board dismiss the allegations raised by complaint paragraph VII(a) and VII(b).

30

Complaint Paragraph VIII

Complaint paragraph VIII alleges that about May 3, 2017, Respondent National Union, by Michael Caref, in a letter impliedly threatened not to file grievances for employees unless they signed union membership forms. The Respondent denies this allegation.

35

The Respondent admitted that, at all material times, Caref has held the position of Respondent National Union's national business agent, as alleged in complaint paragraph IV(b), but did not admit that Caref was the National Union's agent within the meaning of Section 2(13) of the Act.

40

Caref testified that he was national business agent of the Union's Region 3, which covers the entire state of Illinois. He described his duties as follows:

I handle the grievances once they reach—I have oversight over the Step B teams. And if they're not resolved at Step B, we appeal to arbitration or try to resolve them. We do a lot of training. We do a lot of communication with the members. Kind of a liaison between

45

the branches and the National Union. So we attend a lot of meetings, communication, training, things like that.

5 Caref wrote the letter described in Complaint paragraph 8 on letterhead of the National Union and bearing the Union's logo. The stationery also bears Caref's name, his title, address and telephone number. The letter begins "You sent a letter to the NALC, received on April 21, 2017. President Rolando has asked me to respond on his behalf."

10 In determining whether Caref is an agent of the National Union, I will consider whether, under all the circumstances, employees reasonably would believe that he was reflecting the National Union's policies and speaking and acting on the National Union's behalf. See, e.g., *Albertson's, Inc.*, 344 NLRB 1172 (2005). Clearly, that is the case.

15 Caref oversees grievance processing at the Step B level and acts as a liaison between the National Union and its branches. Such work identifies him as acting with the authority of the National Union, as does his letterhead. In the first paragraph of his May 3, 2017 letter to Williams, he indicates that he is writing on behalf of the National Union's president. Employees would have no doubt that Caref was speaking and acting on behalf of the National Union. Therefore, I conclude that the General Counsel has proven that Caref is the National Union's agent.

20 Caref's May 3, 2017 letter replies to the March 30, 2017 letter which Williams sent to the National Union. That letter is set forth in its entirety above in the section discussing complaint paragraph VII. The remainder of Caref's May 3, 2017 reply to Williams states as follows:

25 The letter indicates that you have not received copy of a 2016 grievance settlement pertaining to route 52035. Please request a copy of the grievance settlement directly from NALC Branch 11 at:

30 3850 S. Wabash Ave.
Chicago, IL 60653

Along with your request, please include a self-addressed stamped envelope so it can be mailed to you.

35 The rest of your letter indicates that there may be a further contractual violation at this time by the Postal Service and/or manager Jeniece Nelson. That would not surprise me, but in order to file a grievance for a non-member such as yourself, we will need more information. Please provide detailed information on what exactly transpired, and where you believe that violates the contract to your station's union steward, Erika Estrada. The documents you included are insufficient to determine what happened. We cannot proceed until we receive that.

40 In closing, the last time we spoke you indicated that you were interested in becoming a member of the NALC. Our records show that you haven't been a member in 15 years. I have enclosed the PS Form 1187 used to sign up for the union to facilitate that.

45

Please write again if you have any more concerns.

Sincerely,

5 Michael Caref
NATIONAL BUSINESS AGENT—NALC Region 3

10 Although nothing in Caref's letter constitutes a threat on its face, the General Counsel, observing that the letter refers to Williams' nonmembership in the Union and encloses a form to become a member, argues that the letter conveys a threatening message when viewed in context with all the circumstances.

15 The government also focuses on the letter's statement that "in order to file a grievance for a non-member such as yourself, we will need more information," followed by a request that Williams provide detailed information to the shop steward. The General Counsel argues that the Union already had sufficient information because it had won Williams' previous grievance and the new grievance, in effect, claimed the Postal Service was not abiding by the previous grievance settlement. "Under those circumstances," the General Counsel contends, "the Union's assertion that Caref believed the Union lacked necessary information to process a grievance because of Williams' nonmember status just makes no sense."

20 To the extent that Caref's letter links the need for information to Williams' lack of membership, the General Counsel makes a valid point. The letter's wording—"to file a grievance for a non-member such as yourself, we will need more information"—definitely implies that the Union would not need this additional information if Williams were a member. However, there is no obvious reason why the Union's need for information would depend on Williams' membership status.

25 The rest of the General Counsel's argument—that the Union already had all the information it needed to process the grievance—fails because Williams' March 30, 2017 letter to the union bewilders. This letter begins by noting that she won the last grievance and therefore the route assignment and continues by referring to the first "Relinquish Assignment" letter. Those introductory statements provide a general notion of the nature of the grievance she wants the Union to file but not the sort of specific information needed to proceed with it.

30 The rest of Williams' March 30, 2017 letter sheds faint light on the exact nature of the grievance she wants filed but instead generates smoke. As discussed in footnote 20, above, confusing and seemingly contradictory statements cast doubt on Williams' credibility. Her March 30, 2017 letter to the Union also failed to provide a coherent framework of fact which would allow an understanding of how the collective-bargaining agreement had been violated, let alone an analysis of the grievance's possible merits.

35 For example, Williams' letter stated: "I have been HARASSED by this Station Manager before and after I came back to work." Her use of capital letters suggests some significant misconduct by the station manager, but the letter gives no clue as to what that misconduct might be. Williams' previous grievance had not concerned harassment but instead alleged that the

Postal Service had violated the collective-bargaining agreement by ignoring Williams' seniority, which was sufficient for her to win the route assignment.

5 By raising the harassment allegation, Williams' new grievance moved beyond the territory which the old grievance had charted. Of course the Union needed additional information.

10 The General Counsel argued that Williams' letter concerned whether the Postal Service was abiding by the previous grievance settlement, and the letter certainly appeared to include such an issue, as well as the harassment claim. However, the letter also seemed to undercut the factual basis of the previous grievance settlement. That agreement to award the route to Williams came with the condition that she was medically able to perform the work. However, Williams' March 30, 2017 letter raised serious doubts about her medical condition and her ability to do all that the route required.

15 The letter stated that the new route caused Williams so much pain that it took her 9 hours to complete it. The letter also stated that she was scheduled to have additional surgery.

20 Williams' letter thus raised many questions and provided few if any answers. To say that the Union needed more information amounts to an understatement.

25 In sum, Caref wrote accurately and responsibly when he stated that the Union would need more information. The only inaccuracy was the letter's implication that the need for information resulted from Williams' not being a union member. Did that implication restrain and coerce Williams in the exercise of her Section 7 rights?

30 The General Counsel characterizes the statement as an implied threat. However, I cannot conclude that an employee reasonably would understand Caref's words to mean that the Union would refuse to represent her unless she joined. Certainly, an employee in Williams' situation reasonably would not hear such a message because the Union had just represented her and won.

35 Caref's statements that Williams previously had indicated an interest in joining the Union and that she had not been a member in 15 years, and the inclusion of a form to join the Union, do not change the message into a threat. As discussed above, I have found that Williams had told Caref that she was interested in joining the Union. In these circumstances, an employee reasonably would not understand Caref's statements, or the enclosure of the form, to communicate that the Union would refuse to represent her if she did not join.

40 Moreover, the statement must be understood in the context of all the circumstances, and one of those circumstances is that the Union had just represented a nonmember and won her grievance. Nothing in Caref's letter reasonably would be understood to signify that the Union would not do so again.

45 The only condition imposed by the letter is that Williams provided further information relevant to the grievance. That was not only reasonable but responsible. Requesting more information did not signal an unwillingness to process the grievance but the exact opposite, an

intent to do so.

Accordingly, I conclude that neither the National Union nor Branch 11 violated the Act by the conduct alleged in complaint paragraph VIII. Therefore, I recommend that the Board
5 dismiss the allegation.

The Union's Motive

For reasons discussed above, I have found that neither the National Union nor Branch 11
10 acted in a manner which restrained or coerced employees in the exercise of Section 7 rights. The analysis of statements made by union agents applied an objective standard, asking what message an employee reasonably would receive under all the circumstances. Such an analysis need not inquire into a motive secretly harbored by the agent which did not affect the message communicated.

15 However, consideration of all the circumstances is important because other statements and actions by agents of the Respondent can affect the message which an employee reasonably would understand. A statement which is benign on its face might reasonably be understood to be malignant when considered with other words and conduct.

20 The General Counsel argues that the Union communicated hostility to nonmembers by statements it published in its newsletters. The complaint does not allege that such statements are violative in and of themselves but the government contends that they demonstrate that the Union acted with bias based on the Charging Party's nonmembership.

25 The Union's motive would be relevant if it had acted in a way which treated Williams differently from the way it treated members. However, credited evidence establishes no such disparate treatment.

30 The General Counsel contends that the Union proceeded more slowly in processing Williams' grievance than it did with others but the evidence does not establish such a difference. At best, it shows that Williams' grievance took longer to resolve than those of other nonmembers, which does not establish disparate treatment on the basis of union membership. Moreover, how long it takes to resolve a grievance depends not only on the Union's actions but also on the
35 Employer's.

In this instance, whether or not the Union took longer with Williams' grievance, ultimately it won the grievance for her. In view of this victory, how long the Union took to achieve it can be viewed not as delay but as time well spent. Offered a choice between a quick
40 resolution which results in denial of the claim and a more protracted process which results in victory, most grievants would choose the latter course.

45 The General Counsel also argues that the Union decided not to proceed with Williams' claim that management was not offering her enough opportunities to perform work allowed by her medical restrictions, resulting in her working fewer hours. However, the credited evidence led me to conclude that the union steward needed information not then available to pursue this

"suitability of work" claim and that Williams, after discussing the matter, decided to proceed only on the shift assignment claim. The resulting victory on this claim resulted in Williams working more hours, indeed, working 9 hours per day. The steward's decision therefore did not prejudice Williams in any way and, in any event, fell within the Union's wide range of reasonableness.

Because the Union's actions did not result in any harm to Williams, and did not violate the Act, it is not necessary to consider whether the agents of the Union had pure hearts. However, it is still relevant to consider whether the actions and statements of agents of the Union communicated to employees that the Union was so hostile to nonmembers that it would not represent them fairly.

The General Counsel has presented, as evidence of motive, statements published in the union newsletter. Here, I considered whether those statements create a context which changed the message reasonably communicated to employees by the actions which the complaint did allege as violations of the Act.

The Union's newsletter for March 2017 included a page with this headline:
WANTED

**BELOW ARE "SCABS" THAT KEEP YOUR STATION FROM BEING 100% UNION -
 GET THEM SIGNED UP - THEY ARE FREELADING OFF YOUR BENEFITS!!**

Below the headline were subheadings, each listing a facility with bargaining unit employees, and below each subheading were the names of the nonmembers who worked at that facility. Under the "Wicker Park Station" subheading appeared two names. One of them was Vanessa P. Williams.

At the bottom of the page, in large bold type, appeared the words "SIGN UP A NON-MEMBER AND RECEIVE \$100 FROM THE BRANCH." A similar page appeared in the Local Union's June 2017 newsletter.

As noted above, the complaint does not allege that these pages violated the Act and the General Counsel introduced them as evidence of the Union's motive and noted, during oral argument, that Union President Julion had used the word "scab" in his testimony.²¹ Without doubt, the term "scab" is a pejorative term originally used by strikers to refer to those who crossed the picket line to work. Here, the Union uses it more loosely to refer to nonmembers.

However, the overall message reasonably communicated by these pages is not that the Union intends to act unlawfully, by discriminating against nonmembers, but rather that it values their becoming members so much it is willing to pay \$100 to any member who persuades a

²¹ On cross-examination, the General Counsel had asked Julion if the Union informed its members that certain employees were nonmembers. Julion answered, "Yes, in our branch publication periodically we notify the members who are—those who are not members in our office, those who are so-called Scabs in the office."

nonmember to join. This message is far different from that communicated by the hostile shouts of picketers during a strike.

5 Additionally, I do not find that union agents made any other statements which reasonably would be understood as threats to discriminate against nonmembers.

Summary

10 Based on the credited evidence, I find that the Respondents did not violate the Act in any way alleged in the complaint. Therefore, I recommend that the Board dismiss the complaint in its entirety.

Conclusions of Law

15 1. The Respondent National Association of Letter Carriers, is a labor organization within the meaning of Section 2(5) of the Act and is the exclusive bargaining representative, within the meaning of Section 9(a) of the Act, of letter carrier employees of the United States Postal Service in a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

20 2. The Respondent Branch 11 of the National Association of Letter Carriers is a subordinate unit of the Respondent National Association of Letter Carriers, is its duly designated agent, and on its behalf performs duties administering the collective-bargaining agreement between the Respondent National Association of Letter Carriers and the United States Postal Service and representing bargaining unit employees in grievance proceedings pursuant to that agreement. The Respondent Branch 11 of the National Association of Letter Carriers is a labor organization within the meaning of Section 2(5) of the Act.

25 3. The Board has jurisdiction over this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Sec. 1209.

35 4. Neither Respondent National Association of Letter Carriers nor Respondent Branch 11 of the National Association of Letter Carriers violated the Act in any manner alleged in the complaint.

5. On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended²²

22 If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed.

5 Dated, Washington, D.C. September 24, 2018



10

Keltner W. Locke
Keltner W. Locke
Administrative Law Judge