

UNITED STATES OF AMERICA BEFORE
THE NATIONAL LABOR RELATIONS BOARD

In the matter of

United Government Security Officers
of America International and its Local
217,

Respondents,

and

Albert Frazier, an individual,

Charging Party

Case No. 04-CB-202803

**UNITED GOVERNMENT SECURITY OFFICERS OF AMERICA
AND ITS LOCAL 217'S ANSWERING BRIEF TO COUNSEL
FOR THE GENERAL COUNSEL'S EXCEPTIONS
TO THE DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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I. INTRODUCTION

United Government Security Officers of America International Union (“International”) and United Government Security Officers of America, Local 217 (“Local 217”) (collectively, “Respondents” or “UGSOA”) file this answering brief to the Counsel for the General Counsel’s exceptions to the Administrative Law Judge’s decision (“ALJ Decision”). Counsel for the General Counsel excepts to the ALJ’s finding that a March 31, 2017 email from Desiree Sullivan, President of the International, to Protective Security Officer (“PSO”) Rashid Goins did not constitute an unlawful threat in violation of Section 8(b)(1)(A) of the Act. As explained in detail below, the ALJ correctly evaluated the email at issue and the Board should affirm his findings and conclusions in that respect.

II. FACTUAL BACKGROUND

Prior to April 2017, Respondents represented approximately 220 PSOs within the Local 217 bargaining unit. Those PSOs worked at about 30 buildings in the metropolitan Philadelphia area, including the Veteran Affairs Office (“VA site”) at 5000 Wissahickon Avenue; the Social Security Administration Office (“SSA site”) at 701 E Cheltenham Avenue; and the Internal Revenue Service’s Office (“IRS site”) at 2970 Market Street. (Natale, 103).¹

An election for officials of Local 217 was held in the Spring of 2017. PSOs Goins, Albert Frazier, and Andrea Markert, who were assigned to the VA

¹ Citations to the hearing transcript shall be designated by witness’ last name and page number throughout.

site, intended to run for positions within Local 217. (ALJ Decision, 9). Prior to the election, Goins, Frazier, and Markert were notified that they could not participate in the election because they were not in good standing due to their failure to pay dues. (ALJ Decision, at 9-10). Ultimately, approximately 25 PSOs, including Markert, Frazier, and Goins as well as some PSOs who were not assigned to the VA, SSA, or IRS sites, were not permitted to run for office or vote in the election because they were not members in good standing of Local 217 due to their failure to pay dues. (Natale, 119-120, 127, 133).

On March 31, 2017, Goins emailed Sullivan and other UGSOA representatives multiples times. (ALJ Decision, at 11; Joint Exhibits 30, 54, and 57). Goins emailed Sullivan, among other Union representatives, writing, in part,

We would like to make our fellow Union members aware of the turmoil surrounding tomorrow's UGSOA local 217 election. The name of 3 dedicated knowledgeable and passionate Union members who were nominated by their peers were notified 4 days prior of our election that they were not in "good standing" with the Union because of unpaid dues for 10 months. As a result were not eligible to run for Union office. These Union members who are all posted at Veteran Affairs have been involved in 6 company TRANSITIONS/subcontractors over a 3 year period. Causing them and fellow Union members to fall victim of lost H&W money, unpaid medical expenses, denied paid vacation & personal time, denied uniform requests, delayed payroll, direct deposits, etc. etc. etc. Through each TRANSITION we had, at best, MINIMAL support from local and/or international.² We pulled

² Contrary to Goins' claims, the Union and its third-party administrator BSI, were actively involved in the recovery of missing health and welfare funds for Local 217 PSOs. (See Joint Exhibits 27 and 28). Allied, previously named C&D Security and AlliedBarton, employed Local 217 PSOs beginning in 2010.

our resources ranging from the NLRB, BBB, independent attorneys, Fraternal Order of Police. As a result we have been successful in recouping over 100,000 dollar of lost H&W and by enforcing ALL the rules of our CBA, Constitution, and by laws, NLRB laws we have been able to successfully navigate these TRANSITIONS with less turbulence[.]

(Joint Exhibit 57). Goins emailed Sullivan again, writing,

Also, you need to read our cba section 3.2 & the UGSOA bylaws article 6, section 8, article 13 section 1: c&d and you will see we are still in good standing. This makes the UGSOA and the Local 217 accountable for unfair union practices which we are seeking full restitution from. Be advised we are in the process of obtaining legal counsel for these violations and the gross negligence of both the UGSOA and the Local 217 in their denial of accountability for these violations.

(Joint Exhibit 57). Despite crediting himself with recovering \$100,000 in health and welfare funds, Goins further notified Sullivan that there was \$150,000 of unaccounted funds for VA & SSA PSOs. (Joint Exhibit 54). In reality, BSI, UGSOA's third-party administrator, was actively engaged in recovering only about \$23,000 of outstanding funds from Greenlee. (Joint Exhibit 54).

Allied, at certain points, subcontracted security services to Trident Security, Butler Security, and Greenlee Security. (ALJ Decision, at 2). At times, Greenlee failed to make requisite contributions to PSOs' health and welfare accounts. (See Joint Exhibits 27 & 28). Initially, the International attempted to resolve health and welfare issues caused by Greenlee's failure to make required health and welfare contributions directly with Greenlee but Greenlee would not cooperate in recovering the funds. The International then contacted Allied who recovered the funds which were then applied to employees' accounts. Thereafter, a process was used to determine what the earnings or losses would have been on the accounts had the payments been timely applied. Greenlee was notified of additional interest payments due as a result of those calculations. By July or August of 2017, Greenlee had made its final interest payment and all of the health and welfare accounts had been reconciled. (Natale, 117).

On March 31, 2017, Sullivan emailed Goins, writing,

Rashid,

UGSOA doesn't keep members hostage. If you're unhappy with us or local 217, we can disaffiliate with your site and free you up to go with Steve Maritas' union.

If so, I'll put the documentation together Monday.

Let me know asap.

(Joint Exhibit 30). Goins responded,

We may be able to consider your offer once we receive the H&W and 401K monies missing from each PSO[.]

(Joint Exhibit 30).

Regarding Sullivan's March 31 email described above, the ALJ found as follows:

Sullivan's initial statements in this sequence of events came during an exchange in which Goins repeatedly expressed extreme dissatisfaction with UGSOA and were not inherently coercive. The statement combined with UGSOA's repudiation of hostage taking with an offer to "free you up" to go with another union," if that was what Goins wanted, and she asked him to let her know "asap."

. . . . Sullivan had only offered to transfer representation at this point and had not threatened disaffiliation. Her statements cannot be considered coercive because she did not threaten to withhold benefits, but rather, a reaction to Goins's dissatisfaction with an offer.

(ALJ Decision, at 26).

III. ARGUMENT

The ALJ correctly concluded that Sullivan’s email set out above did not constitute an unlawful threat in violation of Section 8(b)(1)(A) of the Act. In assessing alleged unlawful threats, the Board evaluates whether the alleged conduct would reasonably tend to restrain or coerce employees in the exercise of their Section 7 rights. Culinary Workers Union, Local 226, 323 N.L.R.B. 148 (1997). Sullivan’s email would not have reasonably coerced or restrained any employee in the exercise of his or her rights under the Act. As the ALJ concluded, in response to Goins’ emails expressing extreme dissatisfaction with UGSOA, Sullivan made a mere offer to Goins in an attempt to resolve his concerns. Sullivan asked Goins if his site would like UGSOA to cease representing them so that another union could represent them. Sullivan explicitly asked Goins to respond to her offer with his position. In the March 31 email challenged by Counsel for the General Counsel, Sullivan was not indicating that she was going to take any particular action against Goins or his site. A reasonable employee would not have construed Sullivan’s email as a threat that UGSOA would cease representing them under the circumstances.

While the Board evaluates alleged threats using an objective standard, the evidence clearly shows that Goins did not construe Sullivan’s email as a threat. He responded quickly, characterizing her statements as an “offer,” and identified the conditions under which he³ would consider that offer. (See Joint

³ In responding, Goins actually wrote on behalf of “we” and was apparently holding himself out as a representative of the site.

Exhibit 30). After March 31, Goins continued to refer to Sullivan's March 31 emails as only a suggestion that UGSOA cease representing certain PSOs. (See Joint Exhibit 34) ("Jim as I said to Desiree when she made the suggestion for us to disaffiliate from UGSOA, there is still unfinished business that UGSOA has not resolved."). As found by the ALJ, Sullivan's email constituted a mere offer to withdraw from representing the PSOs, who were extremely dissatisfied with UGSOA's representation as demonstrated by repeated complaints, so that they could pursue obtaining representation by another entity and was not an unlawful threat. Indeed, the record shows that Goins interpreted Sullivan's email in the same manner as the ALJ.

Although challenging the ALJ's remarks, the General Counsel has not identified even a single factually analogous case to support its exceptions. In Teamsters, Local 992, 362 N.L.R.B. 543, n.1 (2015), the Board adopted an ALJ's finding that a union violated Section 8(b)(1)(A) of the Act by threatening that an employee could be brought up on internal union charges if he testified on behalf of the employer at an arbitration proceeding. The Board noted that the action clearly impaired policies imbedded in the Act where grievance and arbitration procedures are a fundamental component of national labor policy. Here, Sullivan's email is entirely unlike the threat at issue in Teamsters, Local 992. In the email at issue, Sullivan was not indicating that she would take any action against Goins or other PSOs. Rather, in the context of Goins repeated, heated expression of extreme dissatisfaction with UGSOA, Sullivan asked Goins if his site wished UGSOA to withdraw from representing them so that

they could be represented by another union. Sullivan's mere offer, without any threatened or implied consequences, cannot be construed as an unlawful threat and is entirely unlike the conduct at issue in Teamsters, Local 992.

IV. CONCLUSION

For the reasons set forth above, Respondents request that the Board affirm the ALJ's findings related to Sullivan's March 31 email.

Respectfully submitted,

On behalf of the United Government
Security Officers of America International
and its Local 217,

By its attorneys,

/s/ Kristen A. Barnes

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Date: March 15, 2019

CERTIFICATE OF SERVICE

I, Kristen A. Barnes, hereby certify that I have on this day served by PDF email a copy of the foregoing United Government Security Officers of America And Its Local 217's Answering Brief To Counsel For The General Counsel's Exceptions To The Decision Of The Administrative Law Judge upon Patricia A. Garber, [patricia.garber@nrb.gov] Supervisory Attorney, NLRB Region 4, 615 Chestnut Street, Philadelphia, PA, 19106, and Charging Party Albert Frazier [reemstyle32@gmail.com].

Dated: March 15, 2019

/s/ Kristen A. Barnes
Kristen A. Barnes