

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

INTERNATIONAL ALLIANCE OF
THEATRICAL STAGE EMPLOYEES,
MOVING PICTURE TECHNICIANS,
ARTISTS, AND ALLIED CRAFTS OF
THE UNITED STATES ITS TERRITORIES
AND CANADA, AFL-CIO, CLC, LOCAL 835
(FREEMAN DECORATING CO.;
GLOBAL EXPERIENCE SPECIALISTS, INC.)

and

DAWN GENTRY, an Individual

Case 12-CB-233694

and

LUIS LUGO, an Individual

Case 12-CB-233788

RESPONDENT’S PROPOSED FINDINGS AND CONCLUSIONS

The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists, and Allied Crafts of the United States, its Territories and Canada, AFL-CIO, CLC, Local 835 (“Local 835”) files this post-hearing brief pursuant to Section 102.42 of the National Labor Relations Board’s Rules and Regulations.

Proposed Findings of Fact

Local 835 operates a hiring hall for a variety of jobs that service the convention and trade show industry in Central Florida. *See* Res. Ex. 3 (CBA with Freeman Expositions LLC), Res. Ex. 4 (CBA with Global Experience Specialists), Res. Ex. 5 (Orlando Job Referral Procedures (“referral hall rules”)). Mark Hardter is the local’s current business representative—an elected position that represents bargaining unit members in collective bargaining and manages the union’s office that refers bargaining unit work. T. 117, 119. Individuals who are eligible to be referred

work through the hiring hall are known as “referents.” T. 123. Local 835 has about 1,500 active referents. *Id.*

Luis Lugo

Luis Lugo worked for Global Experience Specialists (GES) for many years as a “Lead” worker in GES’ carpet warehouse department. T. 17. Lugo testified that he “ran the carpet department.” (T. 17) Lugo would receive carpet orders; Lugo used his independent discretion to figure out how to complete the order most efficiently; and he directed the employees in his department on what to do. T. 35–36. Lugo was ultimately responsible for the department’s work. T. 36. Lugo led a team of 5–8 employees. T. 33. Whereas the employees in his department did hard work in a hot warehouse (T. 38) and worked intermittently (T. 34); Lugo had a regular 40-hour-per-week job (T. 34); he had an office with air conditioning (T. 38); and he had a GES company-issued cellphone (T. 38).

On August 22, 2018, GES suspended Lugo for allegedly taking property without permission. (T. 18.) In late August or early September 2018, Lugo met with GES for an investigative interview. T. 43. Although disciplinary investigations are usually handled by union stewards, Lugo asked Hardter to attend this meeting, and Hardter did so. T. 138–39. Local 835’s president, Herman Dagner, also attended the meeting. T. 139.

At some point following this meeting, Hardter learned GES was refusing to dispatch Lugo, which is the equivalent of termination, and Hardter initiated Step 1 of the grievance process. T. 142. Local 835’s CBA with GES contains a three-step grievance procedure culminating in arbitration. Res. Ex. 2 at 13. Step 1 is initiated by verbal request. T. 140. Step 2 and 3 are processed

in writing. T. 140–42. Hardter processed Lugo’s grievance to Step 2 on September 10, 2018 (Res. Ex. 7) and to Step 3 on September 27, 2018 (Res. Ex. 8).¹

On October 2, 2018, Lugo texted Hardter requesting a “a copy of my grievance and the statement from GES leading them to my termination.” Res. Ex. 1. Lugo repeated the request in an email on October 3, 2018. GC Ex. 3. On October 4, Hardter responded to Lugo, asking him to call the office and schedule an appointment to come in to meet with him. GC Ex. 3. T. 52–53.

Lugo then met Hardter at the union hall on October 8, 2018. T. 27. Hardter had a packet of papers for Lugo, which Hardter directed his administrative assistant, Bonnie Cone, to copy for Lugo. T. 53 (Lugo); 145–46 (Hardter); 207 (Cone) (“Mark handed me a file and asked me to make a complete copy for Luis. . . I did.”). The file contained about “30-plus” pieces of paper. T. 207. Lugo took the file and left the union hall. *Id.*

Hardter believed that the packet of papers provided to Lugo included the Step 2 and Step 3 grievance documents. T. 145 (“I believe he got everything, including copies of the grievance at that point. Everything I had in that one file was all that I had, including those letters.”). And after October 8, 2018, Lugo never again requested a copy of his grievance. T. 146–47.

Lugo claimed that he got “tired” and stopped asking (T. 56), but that isn’t credible because he continued to communicate with Hardter frequently about the status of the grievance and other issues. On November 3, 2018, Lugo wrote to Hardter: “Hi Mark I want to know if you had a chance to read my statement and where we at in the grievance.” Res. Ex. 1. Hardter responded on November 6 with an update, and Lugo thanked him for the response. *Id.* On November 19, Lugo and Hardter exchanged text messages about the return of Lugo’s property and the status of the grievance. *Id.* On December 20, 2018, Lugo wrote to Hardter asking about the status of the

¹ Lugo was provided a copy of the Step 2 and Step 3 grievance documents during the August 7, 2019 hearing. T. 143.

grievance and other issues. Hardter responded on December 26, informing Lugo that the grievance had been advanced to arbitration. Res. Ex. 2. Lugo did not, in any of these interactions, let Hardter know that he had not received a copy of his grievance, or was still in need of a copy of his grievance.

Dawn Gentry

On November 7, 2018, Dawn Gentry used inappropriate language while working at a show for Freeman Expositions, LLC (“Freeman”), one of the largest employers in the Orlando convention industry. GC Ex. 13. T. 68, 89, 118.

As a result of Gentry’s conduct, Freeman suspended Gentry from working for Freeman for six months. GC Ex. 13.² Local 835 did not file a grievance of Freeman’s disciplinary action against Gentry, and the General Counsel does not allege that Local 835 should have filed a grievance.

Separately from Freeman’s disciplinary action, a Local 835 union steward, Eddie Kisosondi, witnessed Gentry’s outburst and filed a charge against Gentry for violating Local 835’s referral hall rules. *See* Res Ex. 3.

The referral hall rules contain a code of conduct for referents. Res Ex. 3. The referral hall conduct rules are enforced by a Referral Hall Committee (RHC), which has the authority to suspend referents from the hiring hall for serious violations. *Id.* Referents may appeal their disciplinary charges and have their case heard by the RHC. Res. Ex. 3; T. 183, 186–87.

Local 835 president, Dagner, oversees the RHC, and Bonnie Cone acts as the administrative assistant for the RHC. T. 168, 205. Cone estimated that there are 20–30 disciplinary charges before the RHC every month. T. 219. Cone processes the charges and prepares the records for the RHC meetings. T. 219. When Cone receives a disciplinary charge from a union steward,

² If she had not already received this document, counsel for the General Counsel provided Gentry a copy of this exhibit during the August 7, 2019 hearing.

she sends the accused referent a form letter notifying them of the charge and Cone includes a copy of the referral hall rules, with the disciplinary appeal process sections highlighted. T. 209–11. If the charge references any witnesses, Cone sends form letters to the witnesses soliciting information for the RHC. T. 210–11. And if the accused referent files a notice requesting to appear before the RHC to appeal their charge in person, Cone sends the accused referent a form letter, notifying them when and where the RHC meeting will occur. T. 213–14. The RHC is all volunteers, and the meetings are sometimes conducted ad-hoc by telephone depending on when the volunteers can get together for a quorum. T. 214. As documents accumulate relative to each charge, Cone places these documents into one binder, referred to as the “Referral Hall Book,” which is used by the RHC chairperson whenever the next RHC meeting occurs. T. 183, 192, 196, 209–11.

Cone notified Gentry by letter dated November 12, 2018, that she had been charged by Kisosondi with violating the referral hall rules, and that she had a deadline to appeal the charge. GC Ex. 6. Cone testified that the November 12 notice to Gentry also included a copy of the referral hall rules, with the procedures for the appeal process highlighted. T. 210.

On November 16, 2018, Gentry called the union hall and spoke with Cone. T. 85. Gentry asked Cone if she was allowed to review the charge that Kisosondi had filed against her before the referral hall committee meeting. T. 86–87. Cone told Gentry that she could review the charge against her if she attended the RHC meeting, but that she could not review the charge before the RHC meeting:

MS. GENTRY: Got the letter about being wrote up or whatever. But I want to know, am I allowed to see what he wrote?

MS. CONE: You can appear at the -- you can request to appear at the referral hall.

MS. GENTRY: And that's it? So I can't see it beforehand to see what lies he said on me?

Ms. CONE: No.

T. 86–87 (as corrected by post-hearing motion). Res. Ex. 6c at 2.

Dagner has been president of Local 835 for about 18 years. T. 181. He testified that since 2005 the RHC has consistently maintained a rule that allows accused referents to review charges against them by attending the RHC meeting, but accused referents may not review the Referral Hall Book before the RHC meeting. T. 184. Cone has worked for Local 835 for about 5 years and testified to the same, that during her tenure she has consistently enforced a policy that accused referents may inspect materials in the Referral Hall Book at the RHC meeting, but not before. T. 220. Dagner testified that in the past he understood there was problem with witnesses being bullied or attacked, and with witness statements being destroyed. T. 199.³ The Referral Hall Book inspection policies were introduced to prevent witness tampering. T. 201. The RHC disciplinary hearings are intended to be confidential. T. 200.

At the end of the November 16 call between Gentry and Cone, Hardter was near Cone's desk and could hear Gentry yelling at Cone through the phone. T. 149. Hardter had Cone to transfer the call to him. *Id.* Hardter testified that he then spoke with Gentry for about 2 minutes; that she was upset about her disciplinary charges; that he told Gentry she could argue her case before the RC; and that he told Gentry she could not argue her appeal to Cone. T. 149–50. Gentry did not ask Hardter for any documents. T. 150, 154. Cone heard Hardter during the call, and Cone testified that she didn't hear Hardter refuse to provide Gentry any records. T. 222.

Gentry testified differently. She testified that she “constantly kept asking” Hardter for paperwork. T. 74. She testified variously that she requested a copy of her “grievance” and her “paperwork.” T. 73. Then when asked the same question later, she claimed differently that she requested “any type of write-ups or complaints.” T. 74. And Gentry claimed that Hardter told her “he didn't have to give [her] nothing.” T. 73.

³ Charging Party made an offer of proof that Bonnie Cone would have testified that one of the witnesses in Gentry's case desired to remain anonymous because she was specifically concerned about retaliation. T. 212–13.

Gentry's testimony was not credible. Her testimony was contradicted by exhibits. For example, even after her November 16 call with Cone was played aloud during the hearing, Gentry continued to argue that she had asked Cone for a copy of her discipline from Freeman. T. 93 ("okay, I asked them for the Freeman one. You need to rehear it. I know what I was asking for."). Her testimony at different points was contradicted by Dagner, Cone, Hardter, and even herself. For example, when Gentry was asked about her familiarity with the RHC, she initially claimed she only had one issue before the committee, many years ago. T. 97. Later she seemed to concede, evasively, that there were other appearances, and maybe too many appearances for her to remember the exact number. T. 98 (Q. "And so is it your testimony that other than this incident in 2005, you've never had any other matters before the Referral Hall Committee? You've never been charged --" A. "I was not found guilty, so let's really get that on the record that --"); T. 100–01. Dagner testified that Gentry has issues before the RHC at least five or six times. T. 186. And Gentry's overall behavior throughout the entire hearing was unreasonable and immature. *See, e.g.*, 96–97, 98 (Judge Dawson: "It doesn't -- ma'am, excuse me. I'm going to instruct you again, please..."); 99 (Judge Dawson: "Excuse me, ma'am. You need to not speak unless you're asked a question. Witness: . . . This is just so -- ooh. Lord"); 153 (Mr. Lindstrom: "We're getting hissing from the gallery, which is very distracting to me." Judge Dawson: "Yeah, and I am going to direct that you please stop, okay?").

On November 18, 2018, Gentry wrote two letters. The first was addressed to the RHC, appealing her charge: "This letter is to inform you that I am appealing the charges listed in your letter dated 12 November 2018." GC Ex. 7. In the last paragraph of her appeal, Gentry wrote "I am asking for a copy of any and all complaints regarding this matter." *Id.*

The second letter was addressed ostensibly to three offices: (1) Hardter, (2) the President of IATSE, and (3) the National Labor Relations Board. GC Ex. 8. The letter is a complaint. *Id.* ("I

am writing to complain about a failure to represent me and discrimination in recent charges levelled against me.”). The letter speaks about Hardter in the third-person. *Id.* Toward the end of this letter, Gentry wrote:

In the telephone conversation I had with Mark Hardter on 16 November 2018 I asked if I could see the complaint from Freeman about me or the report from Br. Kisosondi who had been the steward on IAAPA for the decorating. Br. Hardter refused. He did inform me the call was being recorded, however.

Id.

Hardter testified that he did not understand the second letter to be a request for information. T. 153. Instead, it appeared to him to be a complaint, and a false complaint at that because Gentry has misrepresented their phone call. *Id.*

Cone placed both letters in the Referral Hall Book for the RHC to review in connection with Gentry’s appeal. T. 229. Cone saw that Gentry’s letter to RHC constituted an appeal, but Gentry had not stated she was requesting to appear before the RC, so Cone, following her normal procedure, did not notify Gentry when the RHC would meet. T. 214–15, 218 (“I did not because she did not request to appear . . . that’s our policy. If they wish to appear, we notify them when the meeting is so they can appear . . . If they write a written appeal, then that speaks for their appeal and we don’t - -”).

The RHC met on November 29, 2018; considered Gentry’s appeal; and voted to deny the appeal. GC Ex. 9; T. 188. Gentry received notice of the RHC decision by letter dated December 3, 2018. GC Ex. 15.

Gentry took no subsequent action to follow up with the RHC or anyone else at Local 835 to revisit her appeal or to reiterate that she was still requesting documents, notwithstanding the denial of her appeal. T. 104, 213. In fact, a representative for the NLRB told Gentry that she should not follow up with Local 835. T. 104.

Cone maintains folders in her office for each referent where personnel information and disciplinary records are maintained. T. 225. Local 835 allows referents to inspect these files by appointment. T. 191, 225. Cone testified that Gentry could have scheduled an appointment to come inspect her personnel file, but Cone never understood Gentry to be requesting to inspect her personnel records:

The one letter, the appeal said -- I'm paraphrasing, I believe it said, I am writing this appeal. That was clearly her appeal in writing. I read through it to make sure she didn't ask to be seen by the Referral Hall Committee and acted upon that, put it in the book. The other one seemed a complaint about the way the process was handled or she was complaining that she didn't get documents or something. It didn't -- it wasn't asking for anything. It seemed more of a venting.

T. 229. Cone processed Gentry's letter to the RHC treating it as an appeal, and then after Gentry's appeal was denied, Gentry never followed up further. T. 230.

Analysis

"A breach of the duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). This standard "applies to all union activity." *Air Line Pilots v. O'Neill*, 499 U.S. 65, 67 (1991).

There is "no general affirmative duty [for a union] to provide [a bargaining unit member] relevant requested documents upon request." *Int'l Union of Operating Engineers Local 18*, 362 NLRB 1438, 1446 (2015). Employers have such a duty under Section 8(a)(5). But unions owe no comparable duty to bargaining unit members. Whereas an employer commits a per se unfair labor practice by refusing to respond to a union's reasonable request for relevant information; a union may lawfully refuse to provide a bargaining unit member information, so long as the union's refusal is not "arbitrary, discriminatory, or in bad faith." *Id.*

For example, in *Int'l Union of Operating Engineers Local 18 (Precision Pipeline, LLC)*, 362 NLRB 1438 (2015), a union's refusal to provide a bargaining unit member information about its competitive bidding did not constitute a ULP because the union maintained a consistent policy that was not "irrational." In *Local Joint Exec. Bd. of Las Vegas, Culinary Workers Union, Local 226*, 363 NLRB No. 33 (Oct. 30, 2015), petition for review denied sub nom., *856 Ruisi v. Nat'l Labor Relations Bd.*, 856 F.3d 1031 (D.C. Cir. 2017), a union did not commit a ULP by consistently maintaining a rule against providing membership information out of the telephone, even where such information was necessary for a member to withdraw from the union and avoid further union dues. And in *Int'l Union of Operating Engineers Local 181 (Maxim Crane Works)*, 365 NLRB No. 6 (2017), a union did not commit ULP by requiring a bargaining unit member to travel to a specific union office and schedule an appointment in advance, even where the records were seemingly equally available at another office that was more convenient for the bargaining unit member.

Arbitrariness. "[A] union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational." *Air Line Pilots Ass'n, Int'l v. O'Neill*, 499 U.S. 65, 67 (1991). It is well established that a union's negligence, alone, does not rise to the level of arbitrary conduct. *Teamsters Local 692 (Great Western Unifreight)*, 209 NLRB 446 (1974). To survive an arbitrariness challenge, a union need not "prove 'that the choices it makes are better or more logical than other possibilities,' but, instead, that the union 'act[s] on the basis of relevant considerations,' not arbitrary ones." *Thomas v. NLRB*, 213 F.3d 651, 656 (D.C. Cir. 2000) (quoting *Reading Anthracite Co.*, 326 NLRB 1370, 1370 (1998)). The Board examines the totality of the circumstances in evaluating whether a union's grievance processing was arbitrary. See *Office Employees Local 2*, 268 NLRB 1353, 1354–56 (1984).

Discrimination. The Supreme Court has explained that the duty of fair representation bars only “invidious” discrimination. *O’Neill*, 499 U.S. at 81. Proving discrimination requires “substantial evidence of discrimination that is intentional, severe, and unrelated to legitimate union objectives.” *Amalgamated Ass’n of St., Elec. Ry. & Motor Coach Emps. of Am. v. Lockridge*, 403 U.S. 274, 301.

Bad Faith. A union commits a bad faith violation of the duty of fair representation when it engages in “fraud, or deceitful or dishonest action.” *Int’l Union of Elec., Elec., Salaried, Mach. & Furniture Workers v. NLRB*, 41 F.3d 1532, 1537 (D.C. Cir. 1994).

The *Vaca* standard requires deliberate conduct that is intended to harm. Mistakes in copying files or miscommunications do not establish an unfair labor practice:

The descriptive terms used to describe breaches of the duty--“arbitrary,” “invidious,” “discriminatory,” “hostile,” “unreasonable,” “capricious,” “irrelevant or unfair considerations,” without “honesty of purpose”--indicate *deliberate conduct that is intended to harm or disadvantage hiring hall applicants*. They all imply that the union is either using its power to control referrals against the interests of individual applicants or classes of applicants, or that it may do so at any time, at its discretion.

Steamfitters Local Union No. 342, 336 NLRB 549, 551 (2001) (emphasis supplied). This sort of mens rea is entirely lacking in the General Counsel’s case here.

I. Luis Lugo

Lugo asked Hardter for a copy of his grievance on October 2, 2018. Hardter promptly responded to Lugo and invited him to come into the union hall. On October 8, 2018, Lugo visited the union hall and Hardter had a packet of papers for him. Hardter asked Cone to copy the entire file; Bonnie did so; and Lugo walked out of the office with the entire file. Hardter reasonably believed that Lugo had received the Step 2 and Step 3 grievance documents. And Lugo never followed back up to tell Hardter that the file did not, in fact, contain the grievance documents.

Hardter never refused to provide Lugo a copy of the grievance document and had no reason not to share it with Lugo. Hardter continued to provide Lugo updates on the grievance, and in December told Lugo that the grievance had been processed to arbitration. Hardter in fact believed Lugo had received the grievance documents. And Hardter was surprised when Lugo filed this charge without first following up with Hardter to say he had not received the grievance. To the extent there was any confusion, Lugo received a copy of the Step 2 and Step 3 grievance documents during the August 7, 2019 hearing.

Even if Lugo's testimony were credited—that the file of papers he received on October 8, 2018, did not contain any grievance documents—at most that would establish a mere mistake on the part of Hardter or Cone. There was no evidence that Hardter *refused* to provide Lugo the grievance document. And even if Hardter *mistakenly* failed to provide the grievance, Hardter's conduct was not arbitrary, i.e. “so far outside a wide range of reasonableness as to be irrational,” nor motivated by discrimination or bad faith—particularly in so far that Lugo continued communicating with Hardter for several more months about the grievance and other issues and Lugo failed to mention that he had not received the grievance and still desired a copy.

The complaint with respect to Lugo should also be dismissed because Lugo admitted by his own testimony that he is not an “employee” within the protection of the Act. Lugo ran GES' carpet department; he received carpet orders; used his independent discretion to figure out how to complete the order most efficiently; and directed the employees in his department on what to do. T. 35–36. He is a supervisor under the Act. 29 U.S.C. § 152(11) (“The term ‘supervisor’ means any individual having authority, in the interest of the employer . . . to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them . . . if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”) (emphasis added). And

supervisors do not enjoy the protections of the Act. *Beasley v. Food Fair of N. Carolina, Inc.*, 416 U.S. 653, 656 (1974); *NLRB v. Yeshiva University*, 444 U.S. 672, 680 (1980).

II. Dawn Gentry

A. November 16, 2018 Request.

In a telephone call with Cone on November 16, 2018, Gentry inquired whether she could inspect the referral hall charge filed against by Kisosondi. Cone conveyed to Gentry the union's long-standing policy: that Gentry could inspect the records by appearing at the RHC meeting and argue her case there, but that she could not inspect the charge before the RHC meeting.

Cone and Dagner each credibly testified that this rule—that accused referents can inspect RHC materials by appearing before a RHC meeting, but not before the meeting—has been consistently applied for many years. And Dagner offered reasonable explanations for the rule, that the RHC process is intended to be confidential and that the rules were designed to prevent witness intimidation and evidence-tampering. That is a patently reasonable countervailing interest and standard procedure. The Board must show a union deference when determining what conduct is reasonable to ensure the effective performance of its representative function and will not substitute its judgement for the union's in determining what is reasonable. *In re Int'l Alliance of Theatrical Stage Emples.*, 364 NLRB No. 89 (N.L.R.B. Aug. 26, 2016); *Chicago Federation of Musicians, Local 10, American Federation of Musicians* (Shield Radio & T.V. Productions, Inc.), 153 NLRB 68, 84 (1965).

Local 835' RHC inspection rule is comparable to the other union rules found non-arbitrary by the Board. *Int'l Union of Operating Engineers Local 18 (Precision Pipeline, LLC)*, 362 NLRB 1438 (2015) (refusal to provide competitive bidding information); *Local Joint Exec. Bd. of Las Vegas, Culinary Workers Union, Local 226*, 363 NLRB No. 33 (Oct. 30, 2015), petition for review denied sub nom., *856 Ruisi v. Nat'l Labor Relations Bd.*, 856 F.3d 1031 (D.C. Cir. 2017) (refusal

to provide membership information over the telephone); *Int'l Union of Operating Engineers Local 181 (Maxim Crane Works)*, 365 NLRB No. 6 (2017) (requiring records to be inspected at a specific union office by appointment only, even when the records are technologically accessible at branch locations). And Local 835's pre-hearing inspection rule is similar to and motivated by the same reasons as the General Counsel's own document inspection rules. *Ampersand Publ'g, LLC*, 358 NLRB 1539, 1540 (2012) ("The Board accordingly has a well-established policy against prehearing disclosure of witness statements. . . . The Supreme Court has recognized the danger inherent in the prehearing disclosure of Board affidavits and endorsed the Board's nondisclosure policy.").

In responding to Gentry's inquiry on November 16, Cone's response was not arbitrary, i.e. "so far outside a wide range of reasonableness as to be irrational," nor motivated by discrimination or bad faith.

B. November 18, 2018 Letters to RHC (GC Ex. 7)

On November 18, 2018, Gentry wrote a letter addressed to the RC. The topic sentence indicated that the purpose of this letter was to appeal her referral hall discipline: "This letter is to inform you that I am appealing the charges listed in your letter dated 12 November 2018." GC Ex. 7. In connection with her appeal, Gentry requested "a copy of any and all complaints regarding this matter." *Id.*

Cone received this letter and reasonably interpreted the letter to be an appeal directed to the RC, and Cone accordingly placed the letter in the Referral Hall Book to be reviewed by the RC at their next meeting. By this time, Cone had already told Gentry that she could not review the records before the RHC meeting, and that if she wanted to review the records she should appear before the RHC meeting.

Gentry testified (in retrospect) that she would have wanted to appear before the RHC meeting, but she didn't file a notice requesting to appear, even though she had filed such notices in the past. T. 215. And Cone didn't intentionally keep Gentry in the dark about the RHC meeting date. Cone's consistent practice was to only inform accused referents about their RHC meeting date if they specifically requested to appear. Cone provides each accused referent a copy of the referral hall rules, which provide that in order to appear before the RC, an accused referent must specifically request to appear. Res Ex. 5 at 8 ("The written appeal should indicate if the appellate wishes to appear in person before the Referral Committee"). And that rule is logical. There are 20-30 disciplinary cases every month; the RHC is all volunteers; and the meetings are sometimes conducted ad-hoc by telephone depending on when the volunteers can get together for a quorum. T. 214. If someone wants to appear, the committee can accommodate the hearing time; otherwise, cases are heard whenever the committee finds the time to meet.

Cone, Dagner, and the RHC reasonably interpreted Gentry's letter to the RHC as primarily an appeal, and not as a stand-alone records request. So they acted not-irrationally by denying Gentry's appeal, and then considering the entire matter resolved, especially considering that Gentry never followed up with anyone to let them know she was still requesting the records, independent of her appeal. As with Lugo, the union officers' interpretation of Gentry's November 18 request was at most mistaken, but it was not arbitrary, i.e. "so far outside a wide range of reasonableness as to be irrational," nor motivated by discrimination or bad faith.

C. November 18, 2018 Letters to NLRB et al (GC Ex. 8)

The second letter is easier. It is a complaint. It is not a request for information. The union officers acted reasonably in interpreting it as such. Their failure to treat her complaint as an information request was not arbitrary, nor motivated by discrimination or bad faith.

Conclusion

Respondent did not violate the Act as alleged in the complaint. The complaint should be dismissed.

Dated: September 13, 2019.

Respectfully submitted,

/s/ Eric Lindstrom

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 13, 2019, the foregoing was e-filed via nlr.gov with the Division of Judges and served upon the following via email and US mail:

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