

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

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NATIONAL ASSOCIATION OF LETTER :
CARRIERS, BRANCH 343 (UNITED STATES :
POSTAL SERVICE), : Case No. 14-CB-246743
:
Respondent, :
:
and :
:
JANAYAH DUNLAP, AN INDIVIDUAL, :
:
Charging Party. :
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**POST-HEARING BRIEF OF RESPONDENT BRANCH 343 OF THE NATIONAL
ASSOCIATION OF LETTER CARRIERS, AFL-CIO**

Joshua J. Ellison
Marie B. Hahn
COHEN, WEISS AND SIMON LLP
900 Third Avenue
New York, New York 10022
(212) 563-4100

Counsel for Respondent Branch 343 of the National
Association of Letter Carriers, AFL-CIO

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Respondent Branch 343 (“Branch” or “Union”) of the National Association of Letter Carriers, AFL-CIO (“NALC”) respectfully submits this post-hearing brief in the above-captioned unfair labor practice proceeding. For the reasons set forth below, the General Counsel’s Complaint should be dismissed.

PRELIMINARY STATEMENT

The General Counsel alleges that the Branch breached its duty of fair representation to the Charging Party, Janayah Dunlap, by telling her that the Branch would not represent non-members and threatening not to process grievances filed by non-members on two occasions on August 15, 2019. The General Counsel first contends that Union Steward Gregory Stelfox stated to Dunlap that the Branch does not process grievances of non-members to the Step B level of the grievance procedure in the collective bargaining agreement between NALC and the United States Postal Service (“USPS”). The Complaint also alleges that, on the same day, Branch President Robert Rapisardo told Dunlap that he did not have to speak to her or waste time with her because she was not a member. The General Counsel’s theory of the case is that these statements were intended to coerce Dunlap to join the Union in violation of the Act.

These allegations were not borne out by the evidence at hearing. First, the General Counsel’s only evidence was Dunlap’s testimony, which was contradictory and strained credulity in several respects, both on its own terms and considering other evidence in the record. The Union’s witnesses, by contrast, were open, candid, and straightforward. Moreover, the General Counsel does not dispute that Stelfox processed the grievance at issue, and his theory that Stelfox falsely told Dunlap that he would not, at the same time he was in fact doing so, simply makes no sense. Similarly farfetched is the notion that long-standing Branch official Rapisardo also happened to comment on Dunlap’s membership status during a brief call where he explained to her that he believed a settled matter was handled appropriately and did not want

to engage in a debate with Dunlap over it. The only account of events that comports with the credible evidence at trial is that Dunlap does not like the Union and (as she admitted) does not like that the Union settled her grievance rather than advancing it to Step B, and filed a meritless charge as retribution against the Branch.

FACTS

I. NALC and USPS

NALC is the collective bargaining representative under the Act of a nationwide bargaining unit of city letter carriers employed by USPS. *See* General Counsel’s Exhibit (“GC”) 2, at ¶1. At all times relevant to this case, USPS and NALC were party to a collective bargaining agreement (“National Agreement”) governing the terms and conditions of employment of city letter carriers. *See id.*

The Branch acts as NALC’s agent with respect to the administration of the “Informal A” and “Formal A” steps of the grievance procedures for NALC-represented letter carriers in St. Louis, Missouri. Hearing Transcript (“Tr.”) 114:3-116:4. In particular, Article 15 of the National Agreement provides that, either the Branch or an aggrieved employee may initiate a grievance at Informal Step A within fourteen days of the incident. GC 2, at 65; Tr. 114:6-25. If the grievance is unresolved at Informal Step A, the Branch may file a written appeal to Formal A with the USPS installation head or their designee. GC 2, at 65-66; Tr. 115:1-17. If the parties do not settle at Formal A, the Branch may advance the grievance to Step B, where it is heard by a two-person Dispute Resolution Team (the “Step B Team” or “DRT”), consisting of one NALC representative and one USPS representative. GC 2, at 67-68; Tr. 115:18-116:1. If the DRT does not agree on a resolution, NALC’s National Business Agent (or designee thereof) may, but is not required to, request arbitration. GC 2 at 68, Tr. 116:2-4.

II. Branch 343 and Wheeler Station

Branch 343 represents approximately 2,600 members and 40 non-members in the St. Louis metropolitan area. Tr. 116:13-17. Each year, the Branch processes approximately 1,000 grievances, of which 40-45% are settled at Informal Step A. Tr. 116:5-12.

Robert Rapisardo has been Branch 343 President since January 2018. Tr. 110:14-111:12. He was the Branch's Vice President - Financial Secretary for six years beginning in January 2012. Tr. 111:13-17. Prior to that, Rapisardo was a City Letter Carrier from 1977 through 2011, primarily at a postal facility called "Clayton Station." Tr. 111:18-23. Rapisardo was a Steward in the Clayton Station from the late 1990s through 2011. Tr. 111:24-112:17.

Branch 343 represents letter carriers who are assigned to a station known as "Wheeler Station," "Carrier Square" or "Downtown Station" ("Wheeler Station" or the "Station"). Tr. 67:25-68:3. Wheeler Station is a post office and processing facility housing 25 carriers who work in an office which is approximately 40 yards by 40 yards in size. Tr. 68:9-69:6.

Gregory Stelfox is a United States Marine Corps veteran and has been a Letter Carrier in St. Louis for 35 years. Tr. 66:24-67:22. He has been a Steward in the Wheeler Station for approximately five years and was previously an Alternate Steward. Tr. 70:12-20. As Steward, Stelfox is responsible for processing and, if possible, settling grievances at Informal Step A. Tr. 70:21-71:1. Since November 2018, Stelfox's position as Letter Carrier requires that he drive to the airport in the morning to pick up Express Mail for Wheeler Station. Tr. 69: 19-70:11. This aspect of Stelfox's duties differs from those of most carriers, who "case"¹ mail in

¹ "Casing" refers to office work conducted by letter carriers prior to going on their routes, including retrieving letters and parcels, packing these in a case, and retrieving keys for delivery. Tr. 68:15-20.

the office for up to two hours at the beginning of their shifts. Stelfox typically returns from the airport only when nearly all carriers have left to deliver their routes. 68:12-70:11.

III. Dunlap's History with USPS and the Branch

Dunlap was hired by USPS in or around 2007. Tr. 14:25-15:4. Dunlap admits that, while working for USPS, she has been disciplined several times. Tr. 31:4-9. Her disciplinary history includes at least two suspensions for her conduct towards a customer and towards a coworker. Tr. 120:9-18. Between 2007 and 2011, Rapisardo was Dunlap's Shop Steward while she worked at Clayton Station. Tr. 112:18-113:7. During that time, Rapisardo processed several grievances on Dunlap's behalf. Tr. 120:9-121:2. Dunlap subsequently worked as a Letter Carrier at Wheeler Station for approximately six months in 2019, where Stelfox was her Shop Steward. Tr. 15:6-16:7; 34:11-16.

Dunlap was a member of the Branch from the time she was hired until August 2017, when she resigned her membership. Tr. 19:9-20:10; GC 6. At that time, NALC informed Rapisardo, who was then the Branch Vice President and Financial Secretary, of Dunlap's withdrawal, as was its custom. Tr. 116:21-117:25. It is undisputed that, between August 2017 and June 2019, the Branch made no statements to Dunlap regarding her resignation from membership or in any way encouraged her to re-join the Union. Tr. 117:17-118:6.

Dunlap and Stelfox first met on or around June 4, 2019, when he was sent to retrieve her after she was stranded on her route when her mail truck had a mechanical problem. Tr. 17:7-18:12; 71:7-20. After Stelfox met her and they dealt with her undelivered mail and a few other matters, they drove back to Wheeler Station. Tr. 18:6-14. Dunlap testified that, during this 20-minute drive, Stelfox informed her that he was a Steward and she told him she was not in the Union. 18:15-19:1. Dunlap further testified that Stelfox did not respond to this, but instead made general conversation about the route for the remainder of the drive together. Tr. 18:25-

19:8. Stelfox, however, testified that he and Dunlap had no discussion about the Union during this encounter and that he did not know that Dunlap was not a member of the Union before August 2019. Tr. 72:11-73:12; 77:11-77:23. Stelfox testified, rather, that he made small talk with Dunlap about her station, her route, and the vehicle, during their ride back to Wheeler Station on June 4. Tr. 72:3-23. Dunlap and Stelfox did not speak again until August 2019. Tr. 73:10-12.

IV. The Branch's Representation of Dunlap in August 2019

The Branch repeatedly assisted and represented Dunlap during August 2019 regarding two disputes she had with management, one concerning the proper length of her uniform shorts, and the other regarding a disciplinary letter she received for a poor attendance record.

A. *Stelfox's Interactions with Dunlap Concerning Her Uniform Issues*

At some point during the first week of August, Dunlap approached Stelfox at the Station and asked him if he was a Shop Steward. Tr. 73:10-16. When Stelfox confirmed this, Dunlap reported harassment from management regarding the length of her uniform shorts. Tr. 73:10-75:8. Stelfox informed Dunlap that he would investigate the dress code requirements for female letter carriers. Tr. 75:9-15. During this conversation, Stelfox did not ask about or mention Dunlap's membership status in the Union. Tr. 74:17-21.

Stelfox subsequently consulted with other female carriers in the Union Hall about the dress code, and a few days later reported to Dunlap that her shorts could not be more than 6 inches above her knees, advising her that she could get them tailored to comply with the dress code. Tr. 76:2-77:7.

Around the same time, prior to August 9, Stelfox asked Dunlap whether she was a member of the Union. Tr. 77:11-79:1. Stelfox's reason for asking was that he thought Union

officials and other members might be helpful resources to Dunlap in dealing with her conflicts with management. *Id.* As it happened, a Union meeting was scheduled for August 8. *Id.* Dunlap did not answer the question, but rather asked, “what does that have to do with anything?” and Stelfox responded that the Union would represent Dunlap whether she was a member or not. *Id.* This was the only instance in which he discussed Union membership with Dunlap. Tr. 81:13-21.

The next interaction between Dunlap and Stelfox occurred the morning of August 9, when USPS Station Manager Antoinette Perkins asked Stelfox to bring Dunlap to a pre-disciplinary interview (“PDI”) with Perkins regarding Dunlap’s uniform. Tr. 77:24-83:1; Respondent’s Exhibit (“R”) 1. Stelfox, Perkins, a supervisor named Shaniqua, and Dunlap were present during the PDI, which lasted approximately ten minutes. Prior to and during the meeting, there was no discussion of Dunlap’s status as a non-member, nor did Stelfox indicate that he would not represent Dunlap in the PDI or for any subsequent grievance processing. *Id.*; Tr. 34:11-24. Stelfox took detailed notes of the conversation that transpired during the PDI, as was his practice. Tr. 77:24-83:1; R 1. Those notes contain no reference to any discussion of Dunlap’s membership status. R 1.

Dunlap does not dispute that Stelfox represented her during this meeting. Tr. 34:11-24. Stelfox stopped the meeting when Dunlap became upset and began crying, yelling, and using profanity towards her supervisors, for fear that the altercation could escalate and result in additional discipline for Dunlap or possible law enforcement involvement. Tr. 77:24-83:1. Fortunately, Dunlap was not disciplined for her behavior during the PDI. 103:8-14. Dunlap testified that during these events, she made no mention to Stelfox that she had received a letter of warning for failing to meet USPS’s attendance expectations, discussed below. Tr. 34:4-35:5.

B. *The Branch's Processing of Dunlap's Attendance Warning and Stelfox's Alleged Statements*

On August 3, USPS issued Dunlap a written warning for failure to maintain a regular work schedule (the "Warning Letter"), which Dunlap testified that she received on August 8. Tr. 20:25-21:17; GC 3. Around the same time, Stelfox received a copy of the same Warning Letter from management. Tr. 34:25-36:35; 88:23-90:1. The Warning Letter cites 19 instances when Dunlap was absent between April and July 2019. GC 3 at 1. Dunlap felt that the warning was unjust because two of the nineteen dates listed on the warning corresponded with dates when she was entitled to FMLA leave. Tr. 22:1-8; 62:19-64:21.

Dunlap testified that on August 14, she provided her copy of the Warning Letter to Stelfox, which contained her own handwriting noting which incidents of absenteeism she felt were excused, presumably so that Stelfox would initiate a grievance on her behalf. Tr. 22:10-23:1. Stelfox asked Dunlap, and Dunlap agreed, to provide Stelfox with a written statement concerning her grievance and documents supporting her claim that some of the absences on her warning were excused. Tr. 90:19-92:9.

Although Dunlap testified that she wrote the requested statement and had the documents ready, Dunlap never provided Stelfox with these materials. Tr. 59:9-62:18; 90:19-92:9. Nor did the General Counsel produce them to corroborate her testimony. Dunlap claimed she did not provide the documents to Stelfox because, in order to meet with him, she was required to submit a request ("Form 613") for Union time to management, but admits that she did not complete such a form to obtain management permission when she initially handed him the Warning Letter. Nor did Dunlap attempt to provide Stelfox the documents after work or have any discussion with Stelfox how she would get the documents to him. Tr. 58:8-59:2; 90:19-92:9.

Instead of assisting Stelfox in processing her grievance, Dunlap testified that, sometime between August 14 and the morning August 15, she had a change of heart regarding Stelfox and her grievance because of “some conversations that happened” in the interim, and decided to handle the grievance herself, even though Dunlap had never before handled a grievance and was unfamiliar with the contractual grievance procedure. Tr. 45:11-21; 50:15-51:16. Dunlap further testified that, on the morning of August 15, after participating in a staff meeting (“Stand Up Talk”), she approached Stelfox and requested that he return her written warning. Tr. 23:2-25:24.² At this point, Dunlap testified that Stelfox told her that someone had told him that Dunlap was not in the Union, that he did not have to return her written warning to her, and that it would not be sent up to Step B for a non-member. *Id.*

Dunlap acknowledged that, at the time she allegedly had this conversation with Stelfox on August 15, carriers are typically not in the office and not able to speak to each other because they are delivering their routes. Tr. 47:23-50:7. She also conceded that Stelfox would likely have been making runs to the airport to pick up Express Mail around this time. *Id.*

It is undisputed that Stelfox received the Warning Letter prior to August 14, and that he processed a grievance on Dunlap’s behalf. Through multiple discussions with USPS Station Manager Antoinette Perkins, who did not want to agree to a resolution initially, Stelfox was able to reduce the written warning from one which would stay in Dunlap’s employee file for two years, to only six months on August 15. GC 5; Tr. 92:2-93:13. It is further undisputed that, in seeking to settle the grievance, Stelfox met with a former long-time shop steward, Andre

² Dunlap did not testify that she had submitted any request to management for permission to have this meeting.

Hayes, and with Branch President Rapisardo on or about August 11 to ask for guidance to ensure that the settlement would be fair.³ Tr. 94:1-95:2; 122:9-124:4.

C. Rapisardo's Conversation with Dunlap on August 15

On August 15, Dunlap learned of the settlement and did not agree with it. Tr. 26:9-27:17. Dunlap called Rapisardo using her cell phone to voice her objection. Tr. 27:21-29:25; 124:23-127:15. Dunlap told Rapisardo that she did not believe the settlement was fair. *Id.* Rapisardo told her that the settlement was fair, and the matter was concluded. *Id.* At this point, accounts of the conversation diverge. Dunlap claimed that Rapisardo told her he did not have to waste his time talking to a non-member. Tr. 29:19-25. Rapisardo denied this and testified that Dunlap, not him, brought up her membership status, and Rapisardo assured her that her status as a non-member had nothing to do with the settlement, reiterating that the settlement was fair. Tr. 125:2-126:11. Rapisardo then ended the conversation, saying that he had other things to do and did not have to continue talking to Dunlap about a matter that was concluded. Tr. 125:2-11. Rapisardo also testified that he had said similar things to members when he felt that the conversation was no longer productive. Tr. 126:14-24.

Minutes after this first call, Dunlap called Rapisardo a second time. Tr. 52:9-54:10; 126:25-127:17. Dunlap informed Rapisardo that she had recorded their prior conversation and Rapisardo stated that he had not said anything inappropriate on the first call and ended the second call. *Id.* Dunlap testified that she regularly records her telephone calls using an app on her cell phone. Tr. 52:9-54:23. On this occasion, however, she testified that the app malfunctioned and did not record either conversation with Rapisardo on August 15. *Id.*

³ This settlement was more than fair, given that Dunlap does not dispute 17 of the 19 unexcused absences alleged in the Warning Letter.

ARGUMENT

I. Dunlap's Testimony Was Not Credible, and Stelfox and Rapisardo's Was.

A. *Dunlap's Testimony Was Inconsistent and Implausible and Should Not Be Credited.*

The General Counsel's case stands or falls on the credibility of his one witness, Dunlap, but her testimony was riddled with contradictions, inconsistencies, implausible assertions, and other indicia of dishonesty.

1. Dunlap's Account of Her Change of Heart Regarding Stelfox's Processing of the Warning Letter Grievance Was Not Credible.

Dunlap's testimony about her interactions with Stelfox and management on August 14 and 15 that led her to change her mind about whether the Branch should process her grievance does not hold up to scrutiny. First, Dunlap testified that she provided Stelfox with the Warning Letter for the first time on August 14, Tr. 22:10-22, and the very next morning asked for it back, because of "some conversations that happened" that gave her concerns about how Stelfox might handle it. Tr. 24:12-19. She testified that those conversations were with her supervisors Tamara (last name unknown) and Antoinette Perkins, who told her that they knew that Dunlap planned to file an Equal Employment Opportunity complaint or otherwise "make trouble." Tr. 46:14-47:22.

It is doubtful on its face that either of these alleged conversations, much less both, took place in the short period between August 14 and the early morning of August 15, when Dunlap claims she asked Stelfox to return her copy of the letter. Moreover, Dunlap first testified that the conversation with at least one of the supervisors took place "the day that I --- that I found the settlement on my ledge," August 15, even though she also testified she asked Stelfox to return her copy of the letter of warning shortly after arriving at work in the early morning of August 15, well before she received a copy of the settlement. It is obviously impossible for

Dunlap to have had a conversation with a supervisor that prompted her to demand the return of her Warning Letter *after* she made that demand, but that was nonetheless her initial testimony. Realizing that sequence of events is impossible, however, Dunlap quickly changed her story to say that she instead had that conversation with a supervisor on August 14, even though that was not the day she found the settlement on her ledge. Tr. 48:2-11. Dunlap was thus either lying about having had this conversation on the day she received the settlement (a corroborating but impossible detail), or lying when she changed her testimony so that the conversation with the supervisor happened on August 14 to cure the flaw.

Moreover, Dunlap told an even more obvious lie when she testified that she prepared the statement *after* Stelfox gave her a copy of the Warning Letter back: “when I got this [GC 3] back from him.” Tr. 59:9-25. But she testified a few minutes later that Stelfox gave her a copy of the Warning Letter by leaving it on her case, with the settlement. Tr. 60:20-25. It makes absolutely no sense that Dunlap would have prepared a statement after she knew the grievance had been settled and received a copy of the settlement. Moreover, she testified that she asked Stelfox to return the letter early in the morning of August 15, because by that time she had determined she wanted to handle her grievance herself. Tr. 23:2-24:25. This is another reason Dunlap would not have prepared the statement when she said she did (and in fact did not prepare it at all). She would have had no reason to write a statement Stelfox had requested after she had already decided she did not want him to process the grievance for her. Dunlap’s testimony does not hold up, and she simply invented the entire story about having prepared a statement. Unsurprisingly, neither the statement nor the FMLA materials were produced at the hearing.

The obvious explanation for this dubious account is that Dunlap never gave Stelfox a copy of the Warning Letter, wrote the statement, or gathered her FMLA documentation. Instead, Stelfox received the Warning Letter from management several days prior to August 14, and discussed it with Dunlap, as well as Rapisardo and Hayes, in the interim, as he negotiated a settlement with Perkins. There was likely no conversation between Dunlap and Stelfox on either August 14 or August 15, and Stelfox certainly did not tell her the Branch would not assist her because she was not a member. While Stelfox and Dunlap did speak at some point about the Warning Letter, it was at least several days prior to August 14, since Stelfox negotiated the settlement with Perkins, and solicited advice from Hayes and Rapisardo between August 9 and August 15.

Dunlap's story surrounding her interactions with Stelfox between August 14 and the morning of August 15 was thus largely, if not entirely, fabricated, and her statement that Stelfox, out of nowhere, suddenly told her on August 15 that the Branch would not advance her grievance to Step B, after undisputedly fairly representing her on two occasions in the days prior to that, should not be credited.

2. Numerous Other Aspects of Dunlap's Testimony Are Implausible.

Additionally, Dunlap testified that, on August 14, Stelfox took the Warning Letter from her with the clear intent to process her grievance using supporting documents which Dunlap promised to provide. Then, Dunlap claimed that less than twenty-four hours later, when Dunlap asked for the return of her warning letter, implying that she did not want the Union to process her grievance, Stelfox ranted that Dunlap wanted Union benefits without paying dues

and told her that the Union would not process her grievance to Step B.⁴ If Stelfox did not want to process Dunlap's grievance because she was not in the Union, why would he take it from her to process it and then wait a day to attempt to coerce her? Moreover, why would he say the Union would not advance it to Step B in a conversation where Dunlap asked for it back so she could handle it herself?

Dunlap's explanation for Stelfox's asserted change in attitude was that he said "someone" had told him that she was not in the Union. Tr. 25:3-5. But Dunlap herself testified that she told Stelfox on June 4 that she was not in the Union. It is completely farcical that Stelfox would tell Dunlap on the morning of August 15 that, between then and the previous day, someone had told him she was not in the Union if Stelfox knew, and Stelfox knew that Dunlap knew, she had informed him of that fact two months prior.

Second, Dunlap testified that she received the letter of warning regarding her attendance on August 8, 2019 from a supervisor named Tamara, Tr. 21:3-25, but also that she believed Stelfox must have received it prior to August 14, when Dunlap testified she first gave it to him. But Dunlap testified that the basis for this belief was her understanding that *a different supervisor*, Antoinette Perkins, provides Union stewards copies of disciplinary notices at the same time she provides them to the disciplined employee. Tr. 34:5-35:10. This explanation is also nonsensical and indicates Dunlap's willingness to fabricate testimony.

Third, Dunlap testified that she provided a copy of her warning letter to Stelfox on August 14, Tr. 22:18-23:1, but did not state that she had requested permission from management to do so, though later her excuse for not providing any documents or a written

⁴ At the hearing, Dunlap pretended to become emotional and hold back tears when recounting this statement, but it is not one that would move a reasonable person to actual tears.

statement to Stelfox or discussing her grievance with him was that she did not believe she could do so without first informing management by submitting the necessary Form 613 and obtaining management's permission. Tr. 61:13-16. Dunlap also testified, however, that she had written out the requested statement and had prepared the necessary documentation: "I had the paperwork. I had prepared a statement, and none of that was ever collected because it was immediately settled." Tr. 58:23-25. It beggars belief that Dunlap would not have believed she needed management's permission to initially hand Stelfox the Warning Letter, but would have been so scrupulous about obtaining management's permission to simply hand him another set of documents. And, as noted above, Dunlap later clearly testified that she prepared the statement only *after* she had received the settlement and a copy of the Warning Letter back from Stelfox, which directly contradicts the above-quoted testimony. What actually happened here is obvious. Dunlap never prepared the statement or gathered the FMLA documentation. She invented that story at trial to make it appear that she was trying to work with Stelfox and paint Stelfox in a poor light for settling her grievance without her permission before she could provide him her evidence.

Finally, Dunlap's claim, and the General Counsel's overarching theory, that two Branch representatives both attempted to coerce her to rejoin the Union, for the first and only time, on the same day two years after she resigned her membership is not plausible. Dunlap withdrew from membership in August 2017. There is no dispute that Branch President Rapisardo knew that she withdrew at that time. Dunlap further testified that she informed Stelfox on June 4 that she was not a member of the Union. Yet it is undisputed that Stelfox advised and supported Dunlap when she came to him about being harassed by management over her uniform, and represented her in a predisciplinary interview on August 9, all without making

any mention of Dunlap's membership status. It simply does not pass the laugh test that, on August 15, for the first and only time, two years after withdrawing from the Union and two months after allegedly telling Stelfox that she had done so, Stelfox and Rapisardo both decided, independently or in concert, that this was the moment to attempt to coerce Dunlap to re-join the Union.

B. *Dunlap's Admitted Behavior Undermines Her Credibility.*

Nor does Dunlap's employment history suggest she is an honest and conscientious person. To the contrary, she admits that she has been disciplined on numerous occasions, and it is undisputed that that she has been suspended at least twice. Tr. 31:4-9; 120:15-18. Moreover, undisputed evidence shows that she has yelled and used profanity with her supervisor as recently as August 9. Tr. 82:3-19.

Dunlap also claimed to have recorded her conversation with Rapisardo which, if true, was undisputedly surreptitious. Tr. 54:8-10. But even this testimony is dubious. Dunlap testified the app which she regularly uses to record telephone conversations, which would have been very strong evidence going directly to the truth of her testimony on one of the key issues in this case, mysteriously failed and did not record either of her two conversations with Rapisardo on August 15. Tr. 53:2-5.

C. *The Branch's Witnesses Gave Consistent, Corroborated and Straightforward Testimony Which Should Be Credited.*

In contrast to Dunlap, Branch President Robert Rapisardo and Shop Steward Gregory Stelfox testified in a direct, consistent, and credible manner. They were each forthright and each made a sincere effort to provide their recollections of what occurred with respect to their long history as Union representatives and in representing Dunlap. Stelfox provided detailed testimony regarding his first conversation with Dunlap in June, and the subjects they discussed.

Tr. 72:15-23. He recalled specific details of the conversation he had with her about management's objections to her uniform, including her view that that was how her uniform came, Tr. 75:21-76:1, that he learned from other carriers that USPS uniform regulations require the hem of a carrier's shorts to be four to six inches above the knee, Tr. 76:9-24, and that he suggested Dunlap could have them tailored to fit USPS's rule. Tr. 77:1-5. He also recalled specific details about the events leading to the PDI, such as where Dunlap was when Stelfox was instructed to bring her to the meeting. Tr. 80:3-6.

When Stelfox did not remember a particular detail, he was candid in admitting it. He freely admitted that he could not specifically recall when he received a copy of the Warning Letter, Tr. 89:2-90:1, nor did he deny that it was possible that he received a copy of the Warning Letter from Dunlap on August 14, though his best recollection was that he had not. Tr. 93:18-25. He also admitted that he could not recall how many discussions he had with Perkins to negotiate the settlement of the Warning Letter grievance. Tr. 93:4-13. Stelfox was also candid in admitting that he did ask Dunlap if she was in the Union and did not try to deny or evade that fact. Tr. 77:13-21. Finally, Stelfox's testimony about his meeting with Rapisardo was corroborated by Rapisardo, and his testimony about the PDI was corroborated by his notes.

Likewise, Rapisardo was straightforward in answering questions about the history of the Branch and his knowledge of Dunlap's membership status. He, too, forthrightly acknowledged that he was aware, prior to these events, that she was not a member and did not try to avoid that fact, even though it could be perceived negatively in the context of this case. Tr. 117:17-25.

In sum, both Stelfox and Rapisardo were detailed and candid in describing their recollection of events. Unlike Dunlap, their testimony was not internally inconsistent, nor did

they backtrack on statements they had made. Their testimony should be credited, and Dunlap's should be discounted.

II. The Statements That Rapisardo and Stelfox Did Make Did Not Violate the Act.

To the extent the Complaint is based on the statements that Stelfox and Rapisardo did make, rather than Dunlap's fabrications, their actions did not violate the Act.

A. *Stelfox did not Violate the Act when He Asked Whether Dunlap was a Member of the Union.*

Stelfox admits that, sometime in the first week of August, he asked Dunlap if she was a member of the Union, and that he did so because he thought that she could benefit from utilizing Union officials and other Union members as resources. This does not violate the Act. *Randell Warehouse of Arizona, Inc*, 347 NLRB 591, 595 (2006) ("The Board has held that it is not objectionable conduct for a union to solicit employees noncoercively to support it and to maintain a written record of how employees respond.") (citing cases). Moreover, Stelfox credibly testified that, immediately after asking Dunlap about her membership, he reassured her that it would play no role in how he represented her as a steward. *See Am. Postal Workers Union*, 328 NLRB 281, 282 (1999) (two inquiries into membership status not violative because statements must be analyzed "in context in order to determine if under all the circumstances it would have a tendency to restrain and coerce employees within the meaning of Section 8(b)(1)(A) of the Act.") (quoting *Letter Carriers Local 233*, 311 NLRB 541, 545 (1993)).

B. *Rapisardo's Abrupt Ending of His Conversation With Dunlap Did Not Violate the Act.*

Finally, that Rapisardo declined to speak further with Dunlap, after explaining to her that the Warning Letter grievance was fair and the matter was concluded, did not violate the Act. The Act does not obligate a union official to engage in a pointless back-and-forth with a

bargaining unit employee concerning a settled matter simply because the employee wishes to continue to argue their position.

CONCLUSION

For the foregoing reasons, the complaint is without merit and should be dismissed.

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Respectfully submitted,

/s/ Joshua J. Ellison

Joshua J. Ellison
Marie B. Hahn
COHEN, WEISS AND SIMON LLP
900 Third Avenue
New York, NY 10022-4869
212-563-4100

Counsel for Respondent Branch 343 of the
National Association of Letter Carriers,
AFL-CIO

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing brief to be served this 10th day of February 2020 by first-class mail, postage prepaid, upon:

Bradley A. Fink, Esq.
National Labor Relations Board
1222 Spruce Street
Room 8.302
St. Louis, MO 63103-2829

/s/ Joshua J. Ellison _____

Joshua J. Ellison