

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

National Association of Letter Carriers, Branch 343
(United States Postal Service)

and

Case 14-CB-246743

Janayah Dunlap, an Individual

COUNSEL FOR THE GENERAL COUNSEL'S
BRIEF TO THE ADMINISTRATIVE LAW JUDGE

I. INTRODUCTION

The point of a threat is to induce an individual to change his or her behavior; this is why a threat can be coercive even if the party making the threat never followed through on it. *See Regal Heights Rehabilitation and Healthcare Center*, 2010 WL 5177733, n. 22 (2010) (“[W]hile [the supervisor’s] threat may have been proven to be an empty one, it is nonetheless a threat sufficient to constitute interference, restraint or coercion of employees in the exercise of their rights.”).

This Case involves a union steward and a union president who threatened a non-member by telling her that she would receive a different level of representation because of her membership status. It is immaterial if these union agents meant what they said or what actions they ultimately took after making the threat. As the testimony established at the hearing, the steward and the president coerced Charging Party Janayah Dunlap when they told her that they did not have to fully represent her because she was a non-member. Accordingly, Counsel for the General Counsel (General Counsel) urges a finding that Respondent National Association of Letter Carriers, Branch

343 (Respondent or Union) violated Section 8(b)(1)(A) of the National Labor Relations Act as well as the Postal Reorganization Act.¹

II. FACTS

Respondent is a union representing over 2,600 letter carriers in the St. Louis area. (GC Exh. 1(f); Tr. 116). Respondent is an affiliate of a national union which has a collective-bargaining agreement with the United States Postal Service (USPS). (GC Exh. 2). Article 15 of this contract contains a grievance-arbitration provision. Under the terms of this provision, a grievance must be filed at Step A within 14 days of when an individual learned of a violation. Grievances that cannot be resolved at Step A can be advanced to Step B and then on to arbitration.

Robert Rapisardo has been Respondent's president for two years. (Tr. 111). Before becoming president, he was first a steward and then vice-president/financial secretary. (Tr. 111). Gregory Stelfox has been a steward at the Wheeler facility in downtown St. Louis for the last four years. (Tr. 70). Both Rapisardo and Stelfox are agents of Respondent. (GC Exh. 1(f)).

Charging Party Janayah Dunlap is a 13-year postal employee. (Tr. 15). As a letter carrier, she has been represented by Respondent for her entire carrier. (Tr. 16). Dunlap was a Union member until she resigned her membership in 2017. (Tr. 19; GC Exh 6). Dunlap worked at the Wheeler facility in downtown St. Louis for approximately six months in 2019. (Tr. 15). She met steward Stelfox early in her tour at the facility when her truck malfunctioned on her route and Stelfox was dispatched to her with a replacement truck. (Tr. 17). After transferring mail between the trucks, Stelfox and Dunlap had a conversation during their return trip to the postal facility.

¹ This case was heard in St. Louis, Missouri, on January 7, 2020, based on a charge filed in Case 14-CB-246743, filed on August 19, 2019, and an amended charge filed on November 11, 2019. The Complaint and Notice of Hearing was dated November 7, 2019.

Among other topics, Stelfox told Dunlap that he was a steward, to which Dunlap responded that she was not in the union. (Tr. 19).

On August 8, 2019, Dunlap received a letter of warning for excessive unscheduled absences. (Tr. 21; GC Exh. 3). Dunlap believed that several of the unexcused absences denoted on the letter of warning were covered by the Family Medical Leave Act (FMLA). (Tr. 22). Dunlap spoke to steward Stelfox about the warning. (Tr. 91). Stelfox told her that they had 14 days to file a grievance. The steward testified that he asked Dunlap to write a statement about what occurred and that Dunlap agreed to this plan. (Tr. 92). That evening, Dunlap called a human resources number to get more information about her FMLA claims. Dunlap marked up her copy of the letter of warning with notes about which absences should have been covered by FMLA. (Tr. 22). Around this same time, steward Stelfox approached Dunlap and asked her whether she was in the union. (Tr. 77).

On August 14, Dunlap gave her only copy of the annotated letter of warning to Stelfox. (Tr. 22). After handing over this letter, Dunlap grew concerned about how Stelfox would handle her issue, so she decided that she would ask Stelfox to return her copy of the letter.

Dunlap next saw Stelfox at some point during the morning of August 15, 2019. Dunlap approached Stelfox and asked him to return her marked copy of the letter of warning. (Tr. 24). Stelfox replied that he still had a week to grieve the warning and did not have to give anything back. (Tr. 25). He then added that someone had told him that Dunlap was not in the union. (Tr. 25). Dunlap responded, "I understand that. Just give me my copy back and I will handle it myself. I will handle the grievance part myself." (Tr. 25). Stelfox told Dunlap that he did not have to give it back to her and that the matter would not be sent up to Step B for a non-union member. (Tr. 25). He added that Dunlap wanted union benefits and union pay but did not want to pay dues. (Tr. 25). Dunlap again asked to have her copy of the letter returned to her and then walked away.

That same day, Stelfox filed a grievance over the letter of warning and then settled it. (GC Exh. 4; GC Exh. 5). Dunlap learned of the settlement when a copy was placed in her office. (Tr. 27). She disagreed with the settlement terms, so she called the union hall. A receptionist answered the call and transferred her to president Rapisardo. (Tr. 28). Rapisardo answered the phone and Dunlap explained that she had received a settlement that she did not think was fair. (Tr. 29). Rapisardo replied that the settlement had gone through and was done. He told Dunlap he did not have to waste his time talking to her anyway because she was not in the union. (Tr. 29). Rapisardo then hung up the phone. (Tr. 29). The entire exchange lasted less than two minutes. (Tr. 28).

Immediately after making this first phone call to Rapisardo, Dunlap called Rapisardo again and told him that she had recorded their first phone call. Shortly thereafter, Dunlap realized that she in fact failed to record the first call to Rapisardo.

III. CREDIBILITY

General Counsel's and Respondent's witnesses provided directly contradictory testimony. This case hinges on a determination about which version of events to credit. In comparing the testimony of Dunlap to Stelfox and Rapisardo, Dunlap's testimony should be credited.

A. Dunlap's testimony should be credited

Dunlap provided a clear and direct recounting of her brief conversations with Stelfox and Rapisardo. She did not waiver in her testimony about what occurred during these conversations. Her memory of the events was sharp.

Respondent may attempt to impeach Dunlap's credibility by noting that she told Rapisardo that she had made a recording of their initial conversation but she did not produce that recording. Dunlap testified that she regularly recorded phone conversations and she believed that she had recorded her initial phone call with Rapisardo on August 15. Immediately after the first

conversation, Dunlap called Rapisardo back and told him that she recorded the first call, as was her routine. It was only after the second call that she tried to listen to the recording and realized she had made a mistake, so no recording existed. The non-existence of the recording was the result of a technological mishap and does not reflect negatively on Dunlap's credibility.

Respondent also insinuated at hearing that Dunlap's testimony was fabricated because she did not specifically allege the coercive statements on her initial charge, which she filed on August 19, 2019. However, Dunlap testified that she provided a sworn statement to a Board agent ten days later and that she told the agent what Stelfox and Rapisardo said to her on August 15. Dunlap is not an expert on creating NLRB charges, so her initial failure to allege coercive statements is not a reason to discredit her.

Additionally, Respondent's counsel attempted to impeach Dunlap's testimony by showing that she made incorrect assumptions about the USPS' process for notifying stewards about discipline issued to members. At most, Respondent established that Dunlap generalized the USPS' process based on what she had seen occur on one occasion. This does not diminish Dunlap's ability to perceive and remember conversations in which she participated.

Dunlap's clear and direct testimony about the core issues to be decided should be credited.

B. Stelfox's evasive testimony should not be credited

Steward Gregory Stelfox's testimony should not be credited because he was evasive and gave responses that strained credibility.

Stelfox's testimony was clearly evasive. For example, during cross examination, Stelfox claimed he did not understand the concept of "a lot" or "common."

Bradley Fink: [D]o a lot of individuals represented by the Union come to you about how managers are treating them?

Gregory Stelfox: How do you define a lot again?

Bradley Fink: Is it common or uncommon for individuals represented by the Union to talk about how managers are treating them, to you, in your role as Steward?

Gregory Stelfox: I don't know how you define common, but I would say that if I had to give you a straight answer, I would say, "Yes, they -- they come to me about everything."

...

Bradley Fink: [I]s it your testimony that it is not common for individuals to claim they are being harassed by Stewards - by the management when they come to you --

Gregory Stelfox: Well, you would have to give me your precise, specific definition of common. At what point mathematically does it become common. I mean, relative to the percentage of the employees, relative to how much I am exposed to them? (Tr. 103-104).

However, once redirect examination began, Stelfox was again familiar with the meaning of the word "common."

Joshua Ellison: Okay, and is it common for you to have discussions about a -- a grievance before you actually put in a piece of paper?

Gregory Stelfox: Yes. (Tr. 108).

Further, Stelfox's own testimony showed he had a working understanding of the phrase "a lot."

Joshua Ellison: [D]o you have any positions in your -- while you've been a carrier?

Gregory Stelfox: A lot of things; alternate stewards -- steward. (Tr. 70).

Stelfox's testimony should not be credited because he was clearly evasive.

In addition to his lack of candor, Stelfox's testimony about several key facts was simply not credible. For example, the timing around Stelfox's settling the grievance simply does not make

sense. Why did Stelfox suddenly file and settle the grievance on August 15 when he told Dunlap on August 8 that they had 14 days to file a grievance and then asked her to provide a written statement? (Tr. 91).

Stelfox did not testify to having any other conversations with Dunlap about her grievance after August 8. Stelfox testified he did not think he saw Dunlap on August 14 and that he did not speak to her on August 15. (Tr. 93, 95). Despite this, according to Stelfox he decided on August 15 to settle the grievance. Stelfox did not explain why he took precipitous action on August 15 without first asking Dunlap if she could provide any more evidence, including the statement he himself asked her to provide. Stelfox's testimony that he did not talk to Dunlap on August 14 or 15 does not make sense. It is far more likely that, as Dunlap testified, she talked to him on August 14 and 15, and that these conversations prompted Stelfox to file and settle the grievance.

Also not credible is Stelfox's claim of being away from the facility on August 15 because of his morning trip to the airport. In the weeks preceding August 15, steward Stelfox managed to be around the facility at the same time as Dunlap on at least three occasions. Stelfox testified that he saw Dunlap at work after his airport run during the first week of August when Dunlap asked him if he was a steward. (Tr. 73). On August 9, Stelfox must have completed his airport run in time to attend Dunlap's pre-disciplinary interview. (Resp. Exh 1). Finally, Stelfox saw Dunlap again sometime after this, when he saw her at her workstation and asked if she was in the union. (Tr. 77). As a steward, it makes sense that Stelfox would not always be absent from the facility for his airport run during the only times that the other letter carriers were present. Thus, it is possible that he was also back from the airport run on August 15 in time for the conversation Dunlap testified about.

Finally, it is worth noting that Stelfox's testimony was self-serving. Stelfox testified that around August 8, 2019, he found Dunlap upset near her work area. Stelfox asked Dunlap if she

was in the union, to which she replied, "What does that have to do with anything." According to Stelfox, he responded, "Nothing. We represent you either which way." (Tr. 77). Stelfox testified that he did not regularly ask individuals if they were in the union. (Tr. 100). Thus, Stelfox's questioning of Dunlap about her union membership was unusual. Despite this, according to Stelfox, he followed up on his unusual question by perfectly articulating the proper legal standard for representation under the Act, but did not say anything beyond that. It makes no sense for Stelfox to ask a question whose answer he considered irrelevant, just so he could say that the answer did not matter. Stelfox's testimony about this conversation is so unlikely and self-serving, it strains credulity.

In sum, Stelfox's testimony should not be credited because he was an evasive witness and because his testimony was not credible.

C. Rapisardo lacked a clear recollection of the critical conversation

Rapisardo's testimony should not be credited because he admitted his memory of his August 15 phone conversation with Dunlap was not clear. He testified that Dunlap, "may or may not have" said during the conversation that she was not a union member. (Tr. 126). During his testimony, Rapisardo only added this detail after he had initially omitted it when describing his conversation with Dunlap. Rapisardo's memory of the conversation is less than clear and his testimony should not be credited.

IV. ANALYSIS

A union violates § 8(b)(1)(A) of the Act when its agents make threats related to the processing of a grievance in order to restrain an employee from exercising Section 7 rights.

Graphic communications Conference/International Brotherhood of Teamsters, Local 137C

(Offset Paperback MFRS., INC.), 359 NLRB 265, 271 (2012) (union threatened to remove a grievant from a class action grievance if he did not stop making complaints to union).

Here, Dunlap was engaged in protected Section 7 activity when she withdrew her union membership. Stelfox coerced her in the exercise of this protected activity when he told her on August 15 that the union would not take her grievance to Step B because she was not a union member. He further coerced Dunlap when he told her that she wanted union benefits and union pay but did not want to pay dues. Having a grievance processed fairly is a union benefit. Both of steward Stelfox's statements linked the fair processing of Dunlap's grievance to her membership status. Stelfox's August 15, 2019, comments were undoubtedly coercive.

President Rapisardo similarly coerced Dunlap when he told her that he did not have to talk to her because she was not a union member. This statement linked a discussion about Dunlap's grievance to her membership status. It placed pressure on her to rejoin the union if she wanted to continue to discuss her grievance. It was therefore coercive.

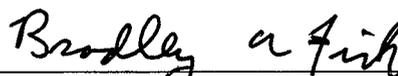
It is immaterial if the union would have continued to process the grievances despite what Stelfox and Rapisardo said. It is immaterial if they reached a fair settlement. The issue is that the steward and the president pressured a non-member to join the union by telling her that having her grievance processed fairly depended on her membership status. As such, the conduct was coercive and unlawful. *Pipe Fitters Local Union No. 195 (Bethlehem Steel Corp.)*, 291 NLRB 571, 571 (1988) (union violated the Act when it told a non-member it would not process his grievances unless he became a member); *see also National Association of Letter Carriers Local 3825*, 333 NLRB 343, 343 (2001) (finding that union violated Act when steward told a non-member that he could not have copies of grievance documents based on membership status).

VI. CONCLUSION

Counsel for the General Counsel submits that, as alleged in the Complaint and demonstrated above, Respondent violated Section 8(b)(1)(A) of the Act by making coercive statements to Janayah Dunlap conditioning the fair processing of her grievance on her membership status. Counsel for the General Counsel urges the administrative law judge to so find and order the appropriate remedies.²

February 10, 2020

Respectfully submitted,



Bradley A. Fink, Counsel for the General Counsel
National Labor Relations Board, Region 14
1222 Spruce Street, Room 8.302
St. Louis, MO 63103-2829

² A proposed Notice to Employees is attached and marked as Attachment A.

ATTACHMENT A – Proposed Notice to Employees Language

(To be printed and posted on official Board notice form)

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT interfere with restrain or coerce you in the exercise of the above rights.

WE WILL NOT tell bargaining unit employees that we do not have to help them in the processing of grievances.

WE WILL NOT tell non-member bargaining unit employees that letters of warning will not be processed to Step B.

WE WILL NOT tell non-member bargaining unit employees that we do not have to speak to them based on their membership status.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

National Association of Letter Carriers, Branch 343

(Labor Organization)

Dated: _____

By: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.

CERTIFICATE OF SERVICE

Pursuant to the National Labor Relations Board's Rules and Regulations, Section 102.114, a true and correct copy of the foregoing Counsel for the General Counsel's Brief to the Administrative Law Judge was e-filed with the Division of Judges and served via electronic mail on this 10th day of February, 2020, on the following parties:

Marie B. Hahn, Esquire
Cohen Weiss & Simon LLP
mhahn@cwsny.com

Joshua J. Ellison, Attorney
Cohen, Weiss and Simon, LLP
jellison@cwsny.com

Janayah Dunlap
jmd906@hotmail.com



Bradley A. Fink, Counsel for the General Counsel
National Labor Relations Board, Region 14
1222 Spruce Street, Room 8.302
St. Louis, MO 63103-2829