

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

AMERICAN POSTAL WORKERS UNION,  
GREATER CINCINNATI OHIO AREA  
LOCAL 164, AFL-CIO (APWU)  
(United States Postal Service)

and

Case 09-CB-245613

JOCEYLYN HARGRAVE, AN INDIVIDUAL

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

**I. OVERVIEW**

This matter is before Administrative Law Judge Arthur Amchan upon General Counsel's Complaint and Notice of Hearing which issued on January 22, 2020 and a First Amended Complaint and Notice of Hearing which issued on July 8, 2020, to include an *Iron Workers, Local 377 (Amarillo Steel Corp.)*, 326 NLRB 375 (1998) (G.C. Ex. 1(c)) remedy <sup>1/</sup>, based upon a charge filed by Jocelyn Hargrave on July 29, 2019 and a first amended charge filed on August 5, 2019. The amended complaint alleges that the American Postal Workers Union, Local 164 (Respondent, Local 164 or Union) violated Section 8(b)(1)(A) of the Act by since about March 29, 2019, failing to file and process a grievance(s) on Hargrave's behalf concerning her removal from a light-duty position which also resulted in Hargrave's removal from work under the relevant provisions of the parties collective-bargaining agreement. The administrative hearing on the allegations of the complaint was held remotely on a Zoom platform on August 13, 2020.

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<sup>1/</sup> At the unfair labor practice hearing before the Administrative Law Judge, Respondent exercised its option under *Rubber Workers Local 250 (Mack-Wayne Closures) (Mack-Wayne II)*, 290 NLRB 817 (1988), to defer litigation of the merits of Hargrave's grievance to the compliance stage of this proceeding.

## **II. ISSUE**

The only issue in this case is whether Respondent violated Section 8(b)(1)(A) of the Act by failing to file and process a grievance related to Hargraves's removal from light duty on March 29, 2019 which also resulted in her removal from work. The remedial aspect of this matter is not in issue and will be the subject of a compliance proceeding only on a final determination of a violation of the Act, absent an earlier resolution.

## **III. FACTS<sup>2/</sup>**

### **Background**

Certain background facts in this case are not in dispute. Jocelyn Hargrave was hired by the Employer for the 2017 Christmas season as a casual mail handler at the Employer's location in Sharonville, Ohio. She worked the Christmas season, just for a couple of months. (Tr. at 13)

Hargrave returned to the Employer as a casual employee in June 2018, returning to the Springdale Annex as a part-time casual employee; (a part-time position, as a PSE, Postal Support Employee). Since returning in June 2018, she has been continually employed up to the present time. (Tr. at 13-14)

Hargrave was transferred to Dalton Street (the only location involved in this matter) in July 2018 without any input on the transfer from her and remained at Dalton Street until March 29, 2019. When transferred to Dalton Street, she held the same position as she had held at Springdale; a part-time casual employee. (Tr. at 15) Hargrave lives approximately 50 miles from the Dalton Street facility, and it takes her approximately 1-1.5 hours to drive to Dalton Street. (Tr. at 15-16)

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<sup>2/</sup> References to the transcript will be designated as (Tr. \_\_); General Counsel's Exhibits will be designated as (G.C. Ex. \_\_); Respondent's Exhibits will be designated as (Resp. Ex. \_\_); and Joint Exhibits will be designated as (Jt. Ex. \_\_).

Hargrave became a member of Respondent in approximately July 2018 when she was transferred to Dalton Street. (Tr. at 16) She remains a member and is currently a dues paying member of Respondent located in Cincinnati, Ohio. (Tr. at 12-13) While employed at Dalton Street, Hargrave became a full-time career employee of the Employer on January 5, 2019. Becoming full time allowed her to bid on positions. (Tr. at 14-15) Light Duty is a work accommodation afforded to employees who have an off the job injury, as compared to an alternative work schedule which is a work accommodation afforded to employees who have an on the job injury. (Tr. at 16-17)

**Additional Facts:**

On September 16, 2018, Hargrave suffered what she believed to be an on the job injury while working on a BBS machine, a physically demanding position with repetitive movements. (Tr. at 17-18) She reported the injury to her supervisor. However, her supervisor did not take any action and Hargrave completed her shift. (Tr. at 18-19) She reported to the emergency room the next day and the ER doctor took her off work for 3 days. (Tr. at 19-20) She returned to work to the same job assignment with no restrictions and provided the paperwork for her 3 day absence to her supervisor. (Tr. at 19-20)

Because she was still experiencing issues with her injury after the 3 days off work, Hargrave followed up with her primary care physician. The physician put Hargrave on job restrictions; limiting the amount of time she could spend on the BBS machine. (Tr. at 21) Hargrave provided this documentation from her doctor to her supervisor who would not accept it; telling Hargrave the documentation was incomplete, without further explanation and returning Hargrave to her assignment on the BBS machine. (Tr. at 21-22) After several weeks, Hargrave finally provided her documentation to a different supervisor, who first informed Hargrave about the deficiencies in her documentation. (Tr. at 23)

With the documentation in the plant manager's hand, Hargrave began working in a light-duty position on November 11, 2018. (Tr. at 23) The assignment consisted of sorting mail by hand with no overtime, fitting her light-duty restrictions. (Tr. at 24) Hargrave held this position from November 11, 2018 through March 29, 2019. (Tr. at 24-25)

Hargrave had additional documentation completed in October 2018, including a C-2 form to support an on the job injury claim. (Tr. at 24) She provided that documentation to her immediate supervisor. (Tr. at 24)

When Hargrave became a full-time career employee on January 5, 2018, this appointment allowed her to bid on posted positions. However, her assignment did not change as a result of the full-time appointment. She remained in the same light-duty position, sorting mail by hand. (Tr. at 26-27) Hargrave provided the Postal Service with documentation once a month, allowing her to continue in her light-duty position. (Tr. at 27)

Without any warning, on March 29, 2019, Hargrave was called into a meeting in the Union office with MDO (Manager Distribution Operations) Lola Wizard, and Supervisor Mustafa Sene. Union Steward Arthur Saturday was present for the Union on behalf of Hargrave. Once in the meeting, Sene told Hargrave that she had to clock out. He told her that the Employer was referring her to the DRAC (District Reasonable Accommodation Committee). (Tr. at 27-28) Hargrave did not know what the DRAC was or why she was being referred to the DRAC. (Tr. at 28) No one in the meeting told Hargrave why her light duty was being denied. She did not receive any documentation concerning this job action. (Tr. at 29-30.)

Hargrave tried to explain to Sene, Wizard and Saturday that she had an on the job injury. However, the Employer's representatives told Hargrave that they did not have any paperwork to support her on the job injury. (Tr. at 28-29) Hargrave informed them that she could provide the

paperwork. (Tr. at 28) Wizard told Hargrave that if she provided the documentation for an on the job injury, she could be returned to work immediately. (Tr. at 28)

Saturday was in the meeting as Hargrave's union representative. (Tr. at 29) However, he had no input during the meeting, he just listened. (Tr. at 29) After the meeting with management ended, Saturday looked at Hargrave and told her, "don't worry about it." If Wizard did not allow Hargrave to return to work after she had brought in her documentation, he "**would file a grievance**" (Emphasis added). Hargrave felt reassured. (Tr. at 30, 52)

Hargrave returned to work to provide Wizard with her paperwork on April 1, 2019. Hargrave provided the paperwork to Saturday. Hargrave provided the same paperwork she had provided in October 2018. (Tr. at 30) Saturday called for Wizard, but she was not in. Therefore, Hargrave could not be returned to work at that time. (Tr. at 30)

Saturday reviewed the documentation and told Hargrave he would see that Wizard received it and if Wizard did not let her return to work based upon the documentation, "**he would file a grievance.**" (Emphasis added) (Tr. at 30)

As noted, Saturday represented Hargrave when she was removed from light duty and taken off of work in the meeting with the Employer on March 29, 2019. (Tr. at 128) Saturday recalls that Supervisors Mustafa Sene and MDO Lola Wizard told him that Hargrave was no longer eligible for her light-duty position. However, they provided no explanation for that determination. (Tr. at 129) They stated only that they did not have any light-duty positions available at that time. (Tr. at 129) Saturday states that he told Hargrave that she needed to resubmit a light-duty request to the plant manager, including her doctor's report and he then walked her out of the building. (Tr. at 130)

Saturday testified that he could not recall if Hargrave returned to the Employer's Dalton Street facility on Monday, April 1, 2019 to provide him with the documentation which was

discussed in the March 29, 2019 meeting so Saturday could pass it on to Wizard (management). (Tr. at 150-151)

Hargrave was not returned to work after providing her documentation in April 2019. (Tr. at 31) Hargrave had submitted the documentation for her continued light-duty position for the month of April just a few days before she was sent home on March 29, 2019. This was the same documentation she had been providing every month for several months. (Tr. 188-189) However, no representative of the Employer or the Union ever told Hargrave why she was not returned to work. (Tr. at 31-32)

It is undisputed that the Union never filed a grievance over Hargrave's removal from work on March 29, 2019. (Tr. at 144-145)

Arthur Saturday has held Union positions for about 15 years. He has been an officer in the Union serving as a trustee. (Tr. at 127-128) He has also served as a Steward for about 9 years and a Chief Steward for just over a year. (Tr. at 127-128) Hargrave was removed from her position and sent home, but the seasoned union representative called to represent her in this matter, never asked management why. (Tr. at 146-147) Following her removal, Hargrave stayed in touch with Saturday through phone calls (several) and texts. (Tr. at 46, 68, 91; Resp. Ex 9) Both Saturday and Union President Michael Smith testified that the labor agreement allows a limited number of light-duty positions. (Tr. at 141, 167-168) While the Union claims that Hargrave was sent home because there were no light-duty positions available, the Union, her bargaining agent, was never given nor did it ask for any information concerning light-duty positions or why Hargrave was removed from a light-duty position. (Tr. at 152-153) Although Hargrave states that there was work available for her in the light-duty assignment. (Tr. at 187-188) The Union states that to continue to work she could have been returned to her bid position. (Tr. at 135) However, Hargrave did not have a bid position. She had been sorting mail by hand

in the light-duty position she had been assigned to as a result of bringing in her medical documentation even after she became a career employee and was able to bid on positions. (Tr. at 26-27)

Union witnesses acknowledge that the DRAC (District Reasonable Accommodation Committee) is a management committee with no union involvement. The Union has nothing to do with it. (Tr. at 151) The DRAC is a committee comprised of Employer labor relations specialists. (Tr. at 169) The Union cannot grieve a decision of the DRAC. (Tr. at 181)

Although Hargrave was a relatively new employee, who was not familiar with the DRAC and had never heard of it before, her union representatives knew she was being directed to the DRAC to resolve her light duty removal issue. (Tr. at 32, 151) No one ever explained what the DRAC was to Hargrave. (Tr. at 32) The only thing she was told was that she was being referred to the DRAC and the Employer would be sending her paperwork for the DRAC process in the mail. (Tr. at 32)

Hargrave participated in the DRAC process on April 23, 2019 without any input from the Union concerning the process and without union representation at the meeting. (Tr. at 33-34) She did not understand the process and did not request that the Union represent her at the hearing. (Tr. at 75-78) Although Hargrave believed the Union would be involved in the process to make sure everything went the right way, (Tr. at 109) she did not know who was on the committee. (Tr. at 34) The committee reviewed Hargrave's documentation and told her they would get back to her. (Tr. at 34, 80)

Hargrave never received any paperwork from the Employer regarding the DRAC or her return to work, and she did not hear from any representative of the Employer or Union about these matters until she spoke to Union President Mike Smith at the union hall on May 29, 2029. (Tr. at 33) Hargrave went there to discuss her grievances and to investigate any support which she may

have been able to receive from the Union as a result of her home being severely impacted by a tornado. (Tr. at 35) She wanted to know what was going on with her grievance(s) because she still was not back to work and had not heard anything back from Saturday. (Tr. at 35-36) Smith reassured Hargrave that everything was OK, and Saturday would handle everything. (Tr. at 36) Smith called Saturday while Hargrave was in the office. Hargrave listened as Smith told Saturday to find out which step the grievance was at and to keep him (Smith) posted on what was going on with Hargrave's grievance(s). (Tr. at 37)

Without a response from the DRAC, the Union belatedly filed a grievance related to the committee's failure to respond to Hargrave's claim. However, the only resolution of that grievance was for Hargrave to refile the claim she had made months earlier. The Union did not assist Hargrave with the claim itself. (Tr. at 102-104) After three meetings with the DRAC, Hargrave's request for a light-duty accommodation from the DRAC was ultimately denied. (Tr. at 81)

Light-duty work is grievable under Article 13 of the national agreement. (Tr. at 151-152; Jt. Ex. 1; Article 13) Past Union President Mike Smith worked as an administrator for grievances. He made sure that grievances went through the process of timeliness, timely appeals if the Union had an adverse decision, and up to and through arbitration. (Tr. at 166)

Smith testified that he probably contacted Saturday when Hargrave met with him at the union hall, but he cannot recall the substance of the conversation. (Tr. at 175) He does recall that Hargrave was having issues with her light-duty position. (Tr. at 179)

On June 23, 2019, Hargrave returned to the Dalton Street facility for a pre-disciplinary investigation. It was the first time she had returned to the building since leaving on April 1, 2019. (Tr. at 38-39) Union Representative Richard Leigh represented Hargrave in this meeting. After the meeting, Hargrave accompanied Leigh to the union office. She wanted to review her

grievance papers. However, Leigh could not locate any files. (Tr. 40-43, 69-71) Hargrave filled out a grievance form because Leigh could not find any grievance files related to her removal from work. (Tr. at 43-44; G.C. Ex. 2) Hargrave was under the impression that that a grievance related to her removal from work was already in place. She thought that it was in a Step Two or Step One; some type of step. (Tr. at 75)

Hargrave spoke with Saturday on July 26, 2019. He told her that he did not have any paperwork on her, nothing from the DRAC, nothing on her C-2; he had nothing. (Tr. at 45, 90-91)

Hargrave filed a charge with the National Labor Relations Board on July 29, 2019, because she was caught in a run-around with the Union. (Tr. 84-85; G.C. Ex. 1(a)) She amended the charge on August 6, 2019, after it was assigned to an investigating agent in Region 9, Cincinnati, Ohio. (Tr. at 89, 101; G.C. Ex. 1(c))

After the charge was filed, on August 30, 2019, Saturday asked Hargrave for an account of what had happened on March 29, 2019. Saturday did not tell her why he needed that information. (Tr. at 105-106; Resp. Ex. 9) Hargrave still believed she had a grievance pending at this time. (Tr. at 106)

Through a text message, Saturday asked Hargrave for a detailed account of all actions from March 29, 2019. He asked her for an account for all her interactions she had when it came to filing a grievance, reasonable accommodations, or any interactions with the Union from the time that she was denied her light-duty assignment. He testified this was just for his personal records. (Tr. at 139) As a result of this text, Hargrave provided Saturday with the same paperwork she had provided him on April 1, 2019. (Tr. at 45, 90-91)

Hargrave has never attended a grievance meeting for any grievance filed on her behalf and she has never been advised that any meetings were being held. She has just been informed of the outcome after the fact. (Tr. at 110)

Hargrave testified that there was plenty of work available in the position she was holding under her light-duty work restrictions on March 29, 2010. To the best of her knowledge, there was still plenty work available after she was sent home. (Tr. at 187-188)

Hargrave returned to work on July 19, 2020 as the result of being awarded a bid position at the Springdale Annex. This was a position that accommodated her light-duty work restrictions. (Tr. at 46-47) The Union played no role in returning Hargrave to work. (Tr. at 47) As a result of the Union's failure to represent her, Hargrave did not work from March 29, 2019 through July 19, 2020, a period of nearly 16 months. (Tr. at 47)

Smith testified that light duty is at the Employer's discretion, its representatives evaluate it. (Tr. at 183-184) However, Smith conceded and acknowledged that in discussions about policies, procedures and the like, the contract is the bottom line. (Tr. at 180) Thus, Local Agreement contractual provisions regarding light duty are grievable under the National Agreement. (Tr. at 180)

Under Article 13 the Union could have filed a grievance, as Smith testified: “**Absolutely you could file a grievance**” (Emphasis added) (Tr. at 184) Therefore, it cannot reasonably be controverted that determinations regarding Hargrave's removal from her light-duty position resulting in her also being removed from work for the Employer are grievable.

Hargrave did everything she thought she could do in order to be returned to work; including seeking out and relying on the proffered aid of her Union. After April 1, 2020, she did not provide any additional documentation until Saturday requested it on August 30, 2019. No one from the Union, or the Employer ever told Hargrave why she was not returned to work promptly after April 1, 2019, even though she believed she had provided everything required to be returned to work and believed, as the Union led her to do so, that she had a grievance pending. (Tr. at 75, 190-191, 198)

#### **IV. LEGAL ANALYSIS**

The applicable law concerning this matter is well established and not in dispute. A union is obligated to represent employees fairly, in good faith, and without discrimination on the basis of arbitrary, irrelevant or invidious distinctions. *Vaca v. Sipes*, 386 U.S. 171 (1967). This duty is breached when the union arbitrarily ignores a meritorious grievance or processes it a perfunctory fashion. *Id.* at 191, 194; *Local 579 SEIU (Beverly Manor Center)*, 229 NLRB 692, 695 (1977); *Local 76B Furniture Workers (Office Furniture Service)*, 290 NLRB 51, 63 (1988).

However, as long as a union exercises its discretion in good faith and with honesty of purpose, it is endowed as collective-bargaining representative with a range of reasonableness in the performance of its duties. Mere negligence, poor judgment or ineptitude in grievance handling are insufficient to establish a breach of the duty of fair representation. Something more than mere negligence must be established in order to find arbitrary conduct. *Local 195 Plumbers (Stone & Webster)*, 240 NLRB 504, 507-508 (1979); *Local 692 Teamsters (Great Western Unifreight System)*, 209 NLRB 446, 448 (1974). There comes a point however, when a union's actions or inactions are so unreasonable as to be arbitrary, perfunctory, and contrary to its obligation to represent employees fairly. *Stone & Webster*, *supra*, *Beverly Manor*, *supra*.

The Board examines the totality of the circumstances in evaluating whether a union's grievance processing was arbitrary. *Office Employees Local 2*, 268 NLRB 1353, 1354-56 (1984). Perfunctory or arbitrary grievance handling can constitute more than mere negligence, and thus violate Section 8(b)(1)(A) of the Act. *Service Employees, Local 579 (Beverly Manor)*, 229 NLRB 692, 696 (1977). Non-action may amount to a willful and unlawful failure to pursue a grievance. *Union of Sec. Personnel of Hospitals and Health Related Facilities*, 267 NLRB 974 (1983). Where a union had little or no investigation in connection with a discharge

grievance the Board found a violation of Section 8(b)(1)(A) of the Act. *Convacare of Decatur*, 229 NLRB 692 (1977)

When a union's conduct is wholly arbitrary and cannot be reasonably explained and in situations in which a union does not act reasonably, that conduct constitutes a reckless disregard of the interests of unit employees. *Ford Motor Co. v. Hoffman*, 345 U.S. 330, 338 (1954).

The Supreme Court's ruling in *Vaca v. Sipes*, supra, does not eliminate the union's duty of fair representation because it has filed other grievances or processed other grievances in the past. Under *Vaca v. Sipes*, supra, the statutory duty is breached when the union arbitrarily ignores a meritorious grievance or processes it in a perfunctory fashion. Therefore, it is not relevant that the Union processed other trivial grievances for Hargrave, such as the grievance resulting in refiling with the DRAC with no substantive result (when in fact the Union states that DRAC issues are not grievable). The grievance, or lack thereof, at issue here goes to the core of the employment relationship and the Union's failure to file that grievance is the gravamen of the amended complaint. Here, Hargrave was removed from her light-duty position which also led to her removal from work. She was walked out of the building and remained unemployed for nearly 16 months with no income during that period. Although the Union had full knowledge of the situation, and her removal from light duty was grievable under Article 13 of the parties collective-bargaining agreement, no grievance was filed. Moreover, the Union specifically promised that it would file such a grievance for Hargrave.

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). A union's extreme dereliction of its duty as exclusive bargaining representative can violate Section 8(b)(1)(A) even in the absence of an unlawful motive. *Mormac Marine*, 312,

NLRB 944. When as here, the Union's conduct is wholly arbitrary and cannot be reasonably explained it amounts to a violation of Section 8(b)(1)(A) of the Act.

Here, Respondent's conduct blatantly crossed the line to constitute unreasonable and arbitrary conduct and easily meets the standard for "more than mere negligence." *Beverly Manor*, supra; *Mormac Marine*, 312 NLR 944 (1993); *Steelworkers (Inter-Royal Corp.)*, 223 NLRB 1184, 1185 (1976). Saturday told Hargrave on two occasions, when she was removed from work on March 29, 2019 and when she returned to work on April 1, 2019 with her medical documentation to remain in a light-duty position, not to worry and that he would file a grievance if she was not returned to work. However, the Union failed to file a grievance or in fact to take any action on Hargrave's behalf concerning her removal from work. This left Hargrave at the mercy of the Employer and left her without a contractual remedy. When a union does nothing for months, as here, there is no defense to such conduct. *Mormac Marine*; 312 NLRB 944, at 948.

Before a union assesses the merits of a grievance, the union must have an ample basis upon which to make such an assessment. *Banks v. Bethlehem Steel Corp.*, 870 F.2d 1438, 1444 (9th Cir. 1989). Here, Respondent did absolutely nothing to assist Hargrave with this most fundamental issue, her removal from work.

Light duty is a contractual matter, and grievable under the collective-bargaining agreement. The Board has found that the failure to inquire into the stated reasons for the discharge, and willingness to evaluate the worth of an employee's claim solely through the eyes of the employer, is more than mere negligence or ineptitude. It is perfunctory grievance handling and so unreasonable as to be arbitrary." *Beverly Manor Center*, 229 NLRB 692, (1977). Here, Respondent, did absolutely nothing to assist Hargrave with her removal from light duty or her removal from work. Respondent, through Saturday, a well-seasoned union

representative, never even asked the Employer, let alone investigated, the reason for Hargrave's removal from light duty, or removal from work. Respondent's failure to raise inquiries into Hargrave's removal from work at the meeting where Hargrave was removed from light duty and also from work is arbitrary conduct. Saturday acknowledged that he does not know why Hargrave was removed from duty. Yet, Saturday did absolutely nothing. Respondent asserts it merely assumed Hargrave would re-file her light duty request, which in fact she believed she had done, but she was not reinstated. Or Respondent assumed that she would return to her bid position. However, Hargrave did not have a bid position. When she became a full-time career employee, she remained in the same light-duty position that she had been assigned to as a part-time casual employee; which was not a bid position.

Respondent merely accepted the Employers' decision that Hargrave would be directed to the DRAC, a management committee with no Union input and would re-file for an extension of her light duty request with management. Light duty is a grievable issue. Rather than enforce the parties collective-bargaining agreement and file a grievance, Respondent's response to Hargrave's removal from light-duty and work was to send her to the Employer for adjudication through the DRAC or other management processes. This left Hargrave without a contractual remedy. This failure to inquire into the stated reasons for Hargrave's removal from work and willingness to evaluate the worth of an employee's contractual rights solely through the eyes of an employer committee, is more than mere negligence or ineptitude. It is perfunctory grievance handling and so unreasonable as to be arbitrary.

On August 30, 2019, after the original and amended charges were filed, Saturday finally looked into Hargrave's removal from work. He asked Hargrave to provide him with all the information she had related to her removal from work, "for his personal records." Respondent had done nothing about Hargrave's removal from light duty and from work for more than

4 months, until after this charge was filed. The logical conclusion is that Saturday requested this information solely to cover himself and Respondent and for Respondent to defend itself in this matter.

Clearly, the totality of Hargraves's actions supports the proposition that she believed she had a grievance pending concerning her return to light duty. She believed she had done everything she was supposed to do to be returned to work. She provided her paperwork, which she believed would allow her to immediately be returned to work on April 1, 2020. She met with Smith on May 29, 2020 to find out the status of her grievance. Smith acknowledges that he was aware that she was having issues with her return to light duty. And the next time Hargrave was able to gain access to the Employer's facility, when she was there for a pre-disciplinary hearing on June 23, 2019, she sought assistance from Union Steward Richard Leigh to determine the status of her grievance, but he was unable to locate any information on any grievance. When she was unable to obtain information from Leigh concerning the status of any grievance she tried to follow up with Saturday, but she believed she was getting the run around. In response to this run around she filed the charge and amended charge in this matter.

General Counsel submits that he has fully satisfied his evidentiary burden in this duty of fair representation case. Saturday told Hargrave that he would file a grievance concerning her removal from light duty and her removal from work. Hargrave relied upon and trusted Saturday's promise and she believed a grievance had been filed. Her Union failed her.

## **V. CONCLUSION**

Based on the record, the totality of the circumstances, and for the reasons discussed above, Counsel for the General Counsel submits that Respondent acted in bad faith and in an arbitrary manner when it failed to file a grievance on Hargrave's behalf. It is respectfully

submitted that General Counsel has sustained the allegations of the amended complaint and has proved that Respondent violated Section 8(b)(1)(A) of the Act.

Counsel for the General Counsel urges the Administrative Law Judge to consider the attached Proposed Order. Additionally, Counsel for the General Counsel urges the Administrative Law Judge to consider the attached proposed Notice to Employees as part of the remedy in this case.

Dated: September 17, 2020

Respectfully submitted,

*/s/ Kevin P. Luken*

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**CERTIFICATE OF SERVICE**

September 17, 2020

I hereby certify that I served the attached Counsel for the General Counsel's Brief to the Administrative Law Judge on this date by electronic mail to the following at the addresses listed below:

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