

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

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

and

Case 09-CB-245613

JOCELYN HARGRAVE,  
An Individual

*Kevin Luken, Esq.*, for the General Counsel.  
*Gary M. Eby, Esq.*, (*Manley Burke, LPA, Cincinnati, Ohio*)  
for the Respondent.

DECISION

STATEMENT OF THE CASE

Arthur J. Amchan, Administrative Law Judge. This case was tried by Zoom video technology on August 13, 2020. Both the General Counsel and the Respondent's counsel participated from Cincinnati, Ohio. Jocelyn Hargrave, who filed the charge giving rise to this case on July 29, 2019, participated from Dayton, Ohio. The General Counsel issued a complaint and notice of hearing on January 22, 2020.

The General Counsel alleges that Respondent Union violated its duty of fair representation pursuant to Section 8(b)(1)(A) of the Act by failing to file and process a grievance regarding Charging Party Jocelyn Hargrave's removal from light duty and from work on March 29, 2019.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The employer, the United States Postal Service, has its headquarters in Washington, D.C. It provides postal services throughout the United States, including from its post office on Dalton Street in downtown Cincinnati, Ohio. The Board has jurisdiction over the Employer and

Respondent Union pursuant to Section 1209 of the Postal Reorganization Act. The Respondent, Local 164 of the American Postal Workers Union, is a labor organization within the meaning of Section 2(5) of the Act.

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## II. ALLEGED UNFAIR LABOR PRACTICES

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The Postal Service hired the Charging Party, Jocelyn Hargrave as a Christmas casual employee in December 2017 at its facility in Sharonville which is located in the northern suburbs of Cincinnati, Ohio. She was hired as a part-time employee in June 2018 at a facility in Springdale which is also on the north side of metropolitan Cincinnati. The next month the Postal Service transferred Hargrave involuntarily to the main Cincinnati post office on Dalton Street in downtown. Hargrave lives in Dayton, 50 miles from the Dalton Street facility. Her title was mail processing clerk. She worked on the third shift, 7:30 p.m. to 4:00 a.m. Hargrave became a member of the Respondent Union.

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On September 16, 2018, while running the BBS machine, Hargrave's ankles began to swell. On September 24, her primary care physician gave Hargrave work restrictions. She filed a workers compensation claim on October 22, 2018, which has never been granted by the Postal Service and is currently on appeal.

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On November 11, 2018, the Postal Service transferred Hargrave to a light duty position. The job entailed sorting mail by hand which was consistent with her physician's restrictions. This job was also on third shift. In the Postal Service, light duty may be available for injuries not sustained on the job. Employees who sustain work-related injuries may receive limited duty. On January 15, 2019, Hargrave became a full-time career Postal employee.

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On March 29, 2019, USPS supervisors removed Hargrave from light duty and ordered her to clock out. Chief Union Steward Arthur Saturday, who was with them, testified that the supervisors told Hargrave that she had to apply to the plant manager for further light duty. He told Hargrave to bring in the paperwork necessary to be restored to a light duty position and that he would submit that to the plant manager with her request. According to Hargrave, Saturday told her that if the USPS did not put her back on light duty that he would file a grievance on her behalf. Prior to March 29, 2019, Saturday had no interaction with Hargrave.

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Hargrave testified that on April 1, she came to the Dalton Street facility and gave steward Saturday the paperwork documenting the medical reasons for extending her light duty. At that time, according to Hargrave, Saturday told her once again that if the USPS did not put her back on light duty that he would file a grievance on her behalf. Saturday denies that Hargrave ever asked him to file a grievance over her removal from light duty, or that he told her he would file a grievance if USPS did not put her back to work.<sup>1</sup> In fact, he denies meeting with Hargrave on April 1, Tr. 131-32.<sup>2</sup>

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<sup>1</sup> Hargrave testified that Saturday made this statement twice, on March 29 and again April 1, Tr. 29, 30.

<sup>2</sup> Respondent points out that Hargrave did not mention giving Saturday any such paperwork in the affidavit she gave to the Board agent.

On April 20, 2019, the Union filed a grievance on Hargrave's behalf. This grievance alleged that she was not compensated for annual leave between April 5 and 8, 2019.

5 Saturday and Hargrave spoke on the telephone several times between March 29 and June 3, 2019. According to Saturday, he told Hargrave she could return to work, but not on light duty. He testified that her response was that she could not do that due to her pending workers compensation claim. According to Saturday, Hargrave never filed another request for light duty with the plant manager..

10 Hargrave asked the Postal Service for a reasonable accommodation on April 15, 2019. She appeared before a District Reasonable Accommodation Committee (DRAC) on April 23, 2019. This is a management committee in which the Union plays no role. Hargrave did not ask for union representation before this Committee and nobody from the Union attended the April 23 meeting. However, after getting no response from DRAC, Hargrave complained to the Union, 15 which filed a grievance on July 17, 2019 to get another appearance for Hargrave before the Committee. .

20 Hargrave's home was damaged by a tornado in the spring of 2019. On May 29, 2019 she went to the union office and met with then local union president Mike Smith to seek relief from a union fund set up for that purpose. According to Hargrave she asked Smith about a grievance concerning her removal from light duty. Smith testified that he does not recall Hargrave discussing this with him, Tr. 174.

25 Hargrave testified that Smith told her that steward Saturday was taking care of that grievance and that Smith called Saturday in her presence. Hargrave testified further that she heard Smith ask Saturday to check on the status of her grievance. Smith may have discussed other grievances the Union filed on Hargrave's behalf with Saturday. Art Saturday sent Hargrave a text message on June 3, asking her for her mailing address. He needed it to send her 30 the paperwork needed to apply for tornado relief.

35 On June 23, 2019, Hargrave attended a prediscipline meeting at the Dalton Post Office with Lisa McKlinsky, who was her supervisor from her light duty job and a union steward, Richard Leigh. Hargrave testified that she asked Leigh to see the paperwork for her grievance about being removed from light duty. Leigh could not find any. Hargrave gave Leigh 2 documents, G.C. Exh. 2: one asking that her annual leave be restored; the other for not being paid for working on March 29, 2019. Neither document challenged USPS' decision to remove Hargrave from light duty.

40 On July 26, 2019 Hargrave spoke to steward Saturday, who told her he did not have any paperwork regarding the Reasonable Accommodation Committee. On July 29, she filed the initial unfair labor practice charge in this case.

45 Hargrave testified that on July 31, Saturday asked her to send him her paperwork. On August 30, Saturday asked Hargrave to provide him with documentation for everything that had happened since March 29. Hargrave's last communication with Saturday occurred on September 6, when he told her that the Postal Service said she had not done anything to try to return to work and that he needed her updated medical restrictions.

During Hargrave's employment at the Postal Service, the Union has filed 3 grievances on her behalf: one for emergency placement, a second for a 7-day suspension and a third for a 14-day suspension. Jocelyn Hargrave is not a union dissident. She has never run for union office or been active in intra-union politics. There is no evidence of animus towards her on the part of Arthur Saturday or any other union official.

This case largely presents a one on one situation with the only participants to the events herein providing no clear basis for choosing one version over the other. However, given the lack of any evidence as to why the Union or Art Saturday would ignore Hargrave's requests and/or lie to her about pursuing a grievance, I credit Saturday. The absence of evidence of animus towards the unit member is not necessarily dispositive in a duty of fair representation case, *Operating Engineers Local 513*, 308 NLRB 1300 (1992). However, it is relevant in assessing the credibility of witnesses and in determining whether the Union violated its duty under the Act. Therefore, I dismiss the complaint. Moreover, I would dismiss the complaint even if I were to credit Jocelyn Hargrave's testimony.

*The applicable legal standard*

Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." Section 8(b)(1)(A) creates a duty, when a union is acting as an exclusive bargaining representative, to fairly represent all employees in the bargaining unit and to refrain from any action against an employee based upon considerations or classifications that are arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); see also *Operating Engineers Local 181 (Maxim Crane Works)*, 365 NLRB No. 6 (2017).

The Supreme Court has long held that a union is afforded wide latitude in carrying out its representational duties. See *United Steelworkers of America, AFL-CIO-CLC v. Rawson*, 495 U.S. 362, 374 (1990), citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953); *Vaca v. Sipes*, above at 191; see also *Operating Engineers Local 181*, above. As the Court stated in *Airline Pilots Assn. v. O'Neill*, 499 U.S. 65, 78 (1991), regarding a union's negotiated strike settlement, an examination of a union's performance "must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities." To be found arbitrary, the union's behavior must have been "so far outside a 'wide range of reasonableness' that it is wholly 'irrational' or 'arbitrary.'" *Airline Pilots Assn.*, above at 66, citing *Ford Motor Co.*, above at 338;

Thus, a union enjoys a wide range of discretion in determining whether and how to handle employee grievances, provided the exercise of such discretion is not based on discriminatory, arbitrary, or bad-faith considerations. *Office Employees Local 2*, 268 NLRB 1353, 1355 (1984), affd. sub nom. *Eichelberger v. NLRB*, 765 F.2d 851 (9th Cir. 1985), citing *Teamsters Local 692 (Great Western)*, 209 NLRB 446 (1974); see also *Turner v. Air Transport Dispatchers' Assn.*, 468 F.2d 297, 299 (5th Cir. 1972).

Something more than mere negligence, poor judgment or ineptitude in grievance handling is needed to establish a breach of a union's duty of fair representation, *American*

*Transit Union , Local 1498*, 360 NLRB 777 (2014). In this case, even if I were to credit Jocelyn Hargrave, the record would establish nothing more than negligence, poor judgment or ineptitude on the part of the Union or Steward Arthur Saturday.

5 I reach this conclusion because there is no evidence of animus towards Hargrave on the part of Arthur Saturday or any other union official and the fact that the Union has filed several grievances on Hargrave's behalf.

10 At worst, the Union and Saturday are with respect to the light duty grievance guilty of "dropping the ball." Thus, I find no basis for finding that the Union violated 8(b)(1)(A) even if I viewed the facts in a manner most favorably to Hargrave. Therefore, I dismiss the complaint.

15 On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

ORDER

The complaint is dismissed.

20 Dated, Washington, D.C.  
September 23, 2020




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25 Arthur J. Amchan  
Administrative Law Judge

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<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.