

**Local 307, National Postal Mail Handlers Union,
AFL-CIO (United States Postal Service) and
James J. Yax.** Case 7-CB-13106(P)

May 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND ACOSTA

The issue presented in this proceeding¹ is whether the Respondent Union violated Section 8(b)(1)(A) of the Act by refusing to provide employee James Yax copies of witness statements in his grievance file. The judge concluded that the Respondent Union had not breached its duty of fair representation and thus did not violate the Act. The judge recommended that the complaint be dismissed. We agree for the reasons that follow.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order.

Charging Party Yax and fellow employee Craig Coffman were placed in off-duty status after having an altercation.³ Yax filed a grievance and the Respondent Union took statements from employees regarding the altercation. The Respondent Union and the United States Postal Service, with Yax's consent, entered into a settlement allowing Yax to return to work without compensation for the time in off-duty status. Yax later learned that Coffman had been compensated for off-duty time. Yax then told Union Representative John Barynas that he also wanted backpay. Barynas testified that Yax wanted to know what two specified witnesses had said in the statements that they had provided regarding the altercation. Barynas told Yax that the settlement of the grievance

was final. Barynas also explained to Yax that it was against union policy to release the statements.

After receiving a copy of the unfair labor practice charge in this case, Derrick White, the Respondent's vice president, sent a copy of the grievance file, minus the witnesses' statements, to the Charging Party. White testified that the Union's policy is not to give witness statements to anyone who is not an agent of the Union. He noted that this policy enhanced the Union's ability to obtain statements from witnesses who are reluctant to share information. In addition, White testified that, after discovering that there were allegations of a physical altercation regarding the incident here, he was also concerned that he might be placing the witnesses in harm's way if he released their statements.⁴

A union has a statutory obligation to serve the interests of all bargaining unit members without hostility or discrimination, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct. *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 76 (1991). Any substantive examination of a union's performance must be "highly deferential." *Id.* at 78. A union's conduct is arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness" as to be irrational. *Id.* at 67; *Betterroads Asphalt Corp.*, 336 NLRB 972 (2001).

In *Letter Carriers Branch 529*,⁵ the Board considered numerous factors in determining that the union had breached its duty of fair representation by refusing to provide the charging party in that case with a copy of her grievance file.⁶ Here, several of these factors must be considered in determining whether the Union breached its duty of fair representation by refusing to provide Yax with the requested statements. Thus, we assess whether Yax communicated a legitimate particular interest in the statements to the Respondent Union, and whether the

¹ On August 28, 2002, Administrative Law Judge Arthur J. Amchan issued the attached decision. The General Counsel filed exceptions and a supporting brief. The Respondent Union filed cross-exceptions to the judge's decision and a brief answering the General Counsel's exceptions and in support its of cross-exceptions.

² The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ The Postal Service's letter to Charging Party Yax, notifying him of his being placed on off-duty status, alleged that Yax had pushed Coffman and had told him that "I will kick your ass." Further, the grievance settlement required Yax to enter into, and participate in, an Employee Assistance Program (EAP) as determined by the EAP counselor.

⁴ The judge implicitly credited White's testimony. Thus, the judge found that the Respondent's confidentiality concerns were "genuine." The judge also noted that Yax had been accused of threatening Coffman. The judge found that it was not "irrational" for the Respondent to be concerned about confrontations between Yax and Coffman, or between Yax and anyone else, who provided support for Coffman's accusations.

⁵ 319 NLRB 879 (1995).

⁶ These factors were: (1) the documents requested pertained to a grievance filed by the charging party; (2) she had a legitimate *general* interest in obtaining the documents (because the documents pertained to a grievance she had filed); (3) her asserted *particular* legitimate interest was effectively and reasonably communicated to the union; (4) the union raised no substantial countervailing interest in refusing to provide the charging party with copies of the requested documents; (5) the ability of the union to provide copies of the documents; and (6) the relative ease in complying with the request.

Respondent Union has asserted any countervailing interest for its refusal to provide the statements. First, when Yax requested the witnesses' statements he indicated only that he wanted backpay for the time he had been suspended. As there had already been a final and binding settlement, with Yax's consent, Yax could not receive backpay. Thus, Yax was seeking information only as to what the witnesses had said in their statements. Consequently, although Yax had a legitimate *general* interest in obtaining the statements because they pertained to a grievance he had filed, the *particular* interest, obtaining backpay, that Yax communicated to the Union was not legitimate. Further, the Union had a countervailing confidentiality policy regarding witnesses' statements. In addition, the record indicates, as discussed above, that the Union had reason to believe that Yax could resort to physical confrontation if angry. In light of the above factors the Union's denial of the request for the statements was not arbitrary. Thus, the denial of Charging Party Yax's request for witnesses' statements pertaining to his grievance did not violate Section 8(b)(1)(A).⁷

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Kelly A. Temple, Esq., for the General Counsel.

Michael L. O'Hearon, Esq. (Helveston & Helveston, P.C.), of Detroit, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Detroit, Michigan, on June 20, 2002. The charge was filed December 26, 2001, and the complaint was issued March 28, 2002.

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

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service (USPS) operates a bulk mail facility in Allen Park, Michigan. The Respondent, Local 307, National Postal Mail Handlers Union, which represents employees at the Allen Park facility, is a labor organization within the meaning of Section 2(5) of the Act. The Board has

⁷ Member Liebman agrees that the Union did not act arbitrarily in denying Yax's request for the witness statements. Because Yax communicated no legitimate interest in the statements to the Union, there is no need to reach the question of whether the Union had a countervailing interest in refusing to provide Yax with the statements.

jurisdiction over the USPS pursuant to Section 1209 of the Postal Reorganization Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The General Counsel alleges that the Respondent, Local 307, violated Section 8(b)(1)(A) in refusing to provide the Charging Party, James J. Yax, copies of witness statements in his grievance file. Yax, a mailhandler and bargaining unit member, was placed in off-duty status by the USPS on August 27, 2001, for allegedly having an altercation with another employee, Craig Coffman.¹

The Postal Service's letter to Yax alleged:

On Monday, August 27, 2001, at approximately 1600 you were involved in a verbal altercation with Craig Coffman, another employee. Mr. Craig Coffman approached you standing outside of Satellite # 1 to talk with you, at that time you began to accuse him of taking your girlfriend. Mr. Coffman replied that it was not him and for you not to accuse him of anything. At that time you began to threaten [sic] him by saying you were "going to kick someone's Ass." You begin [sic] to punch boxes and pushed Mr. Coffman backwards and held up your fists and said, "let's go, I will kick your Ass."

USPS' "emergency placement in off-duty status" was tantamount to an indefinite suspension. At Yax's request the Union filed a grievance on his behalf. Robert Ross, a union steward, took statements regarding the alleged altercation from four employees who were part of the USPS' supplemental work force and thus not bargaining unit members. USPS investigators took statements from witnesses who were members of the bargaining unit.

After USPS denied Yax's grievance at step 1 of the grievance procedure, the Union's step 2 designee, John Barynas met with management's designee in mid-September 2001 to resolve the grievance. The Union and management agreed that Yax's personnel file would reflect a 10-day suspension, that Yax would participate in USPS' employee assistance program, and that Yax would not be compensated for the period that he was on off-duty status. The agreement also provided for removing Yax's personnel file if he did not receive any discipline over the course of 1 year for conduct similar to that for which he was suspended. Yax acquiesced in the proposed settlement and returned to work on October 13, 2001.

Soon after his return to work, Yax approached Barynas and told him that he wanted backpay for the 6 weeks of work he missed. He apparently had learned that Coffman, the other employee allegedly involved in the altercation, had been paid for the time he had been off from work. Barynas informed Yax that the settlement of the grievance was final and binding.

Yax called the Local Union President Gary Hicks on December 10, 2001, asking for copies of his grievance file; he never filed a written request for documents with the Union.² Pursuant to instructions from Hicks, Barynas met with Yax in the Union's office at the bulk mail center on December 10, and had Yax sign a form acknowledging receipt of the Union's step

¹ Yax did not join the Union until approximately March 2002.

² Yax may also have requested the grievance file from Barynas earlier.

2 grievance form, the step 2 settlement form and a copy of a statement given to the USPS inspectors on August 29, apparently authored by Union Steward Robert Ross. Barynas told Yax that his supervisor, Carnell George, provided a statement that was favorable to Yax. I credit Barynas' testimony that he did not give Yax his grievance file, nor did he show or read Yax any of the witness statements in the file.

On December 26, 2001, Yax filed an unfair labor practice charge against the Union, alleging that the Union was violating the Act by refusing to provide him with a complete copy of his grievance file, including the witness statements. On January 29, 2002, the Union provided Yax with copies of documents from his grievance file. Most of these were the same documents that Barynas had provided to him on December 10. It did not provide him with copies of witness statements as he had requested.

Analysis

The principles governing this case are set forth in *Letter Carriers Branch 529*, 319 NLRB 879 (1995):

A union owes all unit employees the duty of fair representation, which extends to all functions of the bargaining representative. When a union's conduct toward a bargaining unit member is arbitrary, discriminatory, or in bad faith, it breaches its duty of fair representation. But a union must be allowed a wide range of reasonableness in serving the unit employees, and any subsequent examination of a union's performance must be "highly deferential." Mere negligence does not constitute a breach of the duty of fair representation. And a union's conduct is arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a wide range of reasonableness as to be irrational. [Id. at 881.]

In *Letter Carriers Branch 529*, the Board considered six factors in concluding that the union in that case breached its duty of fair representation and thus violated Section 8(b)(1)(A) of the Act. These factors were that: (1) the documents requested pertained to a grievance filed by the charging party; (2) the charging party had a legitimate general interest in obtaining the documents; (3) her legitimate interest was communicated to the Union; (4) the Union raised no substantial countervailing interest in refusing to provide the charging party with copies of the requested documents; (5) the ability of the Union to provide copies of the documents; and (6) the relative ease in complying with the request taking into account the amount of documentation requested.

The Union herein argues that its refusal to provide James Yax with copies of the witness statements in his grievance file does not breach its duty of fair representation. Further, it contends that Yax has not demonstrated a legitimate general interest in obtaining the documents, that he never communicated such an interest to the Union, and that the Union has raised a countervailing interest that warrants its refusal to provide these statements.

In the limited circumstances of the instant case, I conclude that the Union did not breach its duty of fair representation and therefore did not violate Section 8(b)(1)(A) in refusing to pro-

vide James Yax with copies of witness statements in its possession. The fact that his grievance has been resolved in a final binding settlement is critical to my disposition of this case. Had Yax demanded these statements so that he could evaluate whether or not he should acquiesce in the proposed settlement, or whether or not to challenge the fairness of the Union's representation of him in the grievance, I might well reach a different result. However, given the fact that the grievance was closed, I conclude that the Union's concern for the confidentiality and welfare of those who provided these statements outweighs Yax's interest in obtaining them.

Prior to the hearing, the only reason Yax provided the Union for wanting the witness statements was his desire to obtain his backpay. This was for all practical purposes impossible after the Union had entered into a settlement of the grievance, without a backpay remedy, with Yax's approval. Thus, prior to the hearing Yax had not communicated to the Union a legitimate interest in the statements.

However, at the hearing, Yax expressed a desire to obtain the statements so that he could consider filing a lawsuit against Craig Coffman and/or the United States Postal Service. I need not decide whether he could obtain the Union's witness statements through discovery. He also alleges, but has not established, that he has filed a complaint with the Equal Employment Opportunity Commission. The Union contends that if the EEOC requested the statements it would provide them to the EEOC. The fact that the Union might have to disclose these documents in other proceedings does not establish that it breached its duty in refusing to provide them simply upon the request of the Charging Party.

Most importantly, the Union's countervailing interest in refusing to provide Yax with the witness statements is far from frivolous. The Postal Service accused Yax of threatening violence against a fellow employee. It is certainly not irrational for the Union to be concerned lest the review of the statements by Yax create tension and the potential for confrontations in the workplace between Yax and Coffman, and between Yax and anyone else who may have provided support for Coffman's accusations.

If Yax in fact initiates further legal proceedings regarding his suspension, his interest in these statements may outweigh the Union's interest in maintaining the confidentiality of these statements. At this point in time, it does not.³ It is true that the Union did not raise its confidentiality interest until Vice President Derrick White testified as to these concerns at hearing. John Barynas only communicated a vaguely articulated "union policy" against providing documents to Yax. The Union's failure to raise its confidentiality concerns earlier does not bar their consideration, *Hospitality Care Center*, 314 NLRB 893, 894 (1994). Moreover, I find the Union's concerns genuine despite the delay in raising this issue.

³ I also conclude that Yax's interest in obtaining these statements under current conditions is insufficient to place upon the Union an obligation to come forward with an offer to accommodate its confidentiality concerns and Yax's desire for the statements. Cf. *Metropolitan Edison Co.*, 330 NLRB 107 (1999).

Finally, the General Counsel argues that the Union, like an employer responding to a union information request, must raise its confidentiality concern at the time it refused to provide the witness statements. I conclude that a union's obligations to fairly represent bargaining unit members are not identical to that of an employer in providing information to a bargaining representative. The Union's obligations must be evaluated solely on the basis of whether its countervailing interest in refusing to provide documents is genuine and sufficiently reasonable as to be rational.

In conclusion, after balancing James Yax's interests following closure of the grievance, with what I deem to be legitimate union concerns for the safety of witnesses and harmony in the workplace, I conclude that the Union has not violated the Act in

refusing to provide James Yax with witness statements from his grievance file.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The complaint is dismissed.

⁴ 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.