International Brotherhood of Teamsters, Local 70 (United Parcel Service (UPS)) *and* Gigi Wilson Butler. Case 32–CB–279104

December 6, 2022

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN AND RING

On January 14, 2022, Administrative Law Judge Eleanor Laws issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. The General Counsel filed cross-exceptions and a supporting brief.

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,[1] and conclusions and to adopt the recommended Order as modified and set forth in full below.[2]

Prior to June 2021, UPS, the Employer, made job assignments by seniority in the "small sort" department of its Oakland Airport facility. Around this time, the job assignments in that department became a topic of concern among employees, and, in June 2021, in response to employee complaints, the Employer implemented a rotation system for job assignments in the department. Some employees, particularly more senior employees, complained that the new rotation system was unfair. On June 2, the Employer convened a meeting with employees and Union representatives, with the purpose of discussing the employees' concerns about the rotation system for assignments. After the Employer's representative departed the meeting, the Respondent's secretary-treasurer, Marty Frates, continued to discuss the job assignment process with the employees and expressed his view that the assignments should be made by seniority, but stated that employees should vote on the issue. Several employees, including Gigi Wilson Butler, then raised their hands. Wilson Butler voiced her support for the rotation system and said she did not think the previous seniority system was fair. In so doing, she pointed to her lower seniority level and stated her view that the most senior employees did not work. In response, Frates said that it was nobody's business who did not work, and nobody should be going to management about it. Wilson Butler testified:

> [Frates] looked directly at me, and said, if I have two employees and one employee snitches on another employee and that employee gets fired, well, that's snitching. Snitches . . . I'm not going to say it, but I'm from Oakland and you know what that means.

Frates, for his part, recalled saying, "From where I come from, that if you snitch on somebody, you've got to be aware because you don't know who you're talking to." The judge found it unnecessary to credit one statement over the other because she found that both versions clearly constituted a threat to employees that they should not snitch on their coworkers to management or they may face unspecified adverse consequences.

As the Board explained in *Branch 4779, National Assn. of Letter Carriers (Postal Service),* 364 NLRB 655 (2016):

> The test used to establish whether a union representative's statement violates Section 8(b)(1)(A) of the Act is objective—whether the statement can reasonably be interpreted by employees as a threat based upon engaging in protected concerted activity. What the union agent subjectively intended by the comment and the subjective state of mind of any employee who heard or read the statement is not determinative. Moreover, the statement itself cannot be viewed in a vacuum, but must be viewed 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).

Id. at 657 (quotation marks and citations omitted).

As the judge found, Wilson Butler's statements at the June 2 meeting disagreeing with the seniority-based assignments, including her comments about the work habits of employees with more seniority, constituted protected concerted activity.[3] In response to Wilson Butler's

[1] The Respondent has implicitly 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.

[2] We shall modify the judge's recommended Order to conform to the Board's standard remedial language and in accordance with our decision in *Paragon Systems, Inc.*, 371 NLRB No. 104 (2022), and we shall substitute a new notice to conform to the Order as modified.

Member Kaplan acknowledges and applies *Paragon Systems* as Board precedent, although he expressed disagreement there with the Board's approach and would have adhered to the position the Board adopted in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020).

[3] The judge found that assignments in the small sort department had been causing friction among employees – some employees apparently desired rotation-based assignments, while other employees preferred

protected comments, Frates, who earlier in the meeting had expressed his support for seniority-based assignments, likened Wilson Butler's remarks at the meeting to "snitching" and conveyed that negative consequences could result from snitching on a coworker. In these circumstances, we agree with the judge that Frates' "snitches" remark would reasonably be understood to threaten employees, including Wilson Butler, with bodily harm or other unspecified reprisals for engaging in protected concerted activity and thus constituted a violation of Section 8(b)(1)(A).[4]

ORDER

The National Labor Relations Board orders that the Respondent, International Brotherhood of Teamsters, Local 70, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees with physical harm or unspecified reprisals if they engage in protected concerted activities.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Oakland, California business office and meeting places copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily placed. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, deliver to the Regional Director for Region 32 signed copies of the Respondent's notice to employees and members for

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the existing seniority-based assignments. Indeed, the record establishes that at least some employees were unhappy about the assignments and had discussed the issue with other employees. On this point, Frates testified that one of the union stewards told him there were problems with the job assignments and that they were causing disputes among the employees. In response to these issues, the Employer held the June 2 meeting with the small sort department employees and several union representatives, including Frates, where the sole topic of discussion was the job assignment process. At this meeting, as part of the discourse about the rotation assignments, Wilson Butler articulated her views on the assignment process and, in stating her disagreement with the seniority-based assignments, made comments about the work habits of employees with more seniority. In these circumstances, we agree with the judge that Wilson Butler's comments at the June 2 meeting were protected as a logical outgrowth of the employees' ongoing group concerns over the job assignment system in the small sort department. See, e.g., *Mike Yurosek & Son, Inc.*, 306 NLRB 1037, 1038 (1992) (noting that "individual action is concerted where the evidence supports a finding that the concerns expressed by the individual are logical outgrowth of the concerns expressed by the group"), supplemented by 310 NLRB 831 (1993), enfd. 53 F.3d 261 (9th Cir. 1995); see also *Every Woman's Place*, 282 NLRB 413, 413 (1986) (finding employee's individual telephone call was concerted activity because it was a "logical outgrowth" of prior concerted employee protests).

[4] Like the judge, we find it unnecessary to rely on the media accounts of workplace violence introduced by the General Counsel.

Our dissenting colleague asserts that Frates' "snitches" remark was not an unlawful threat because it was directed at Wilson Butler's complaint about employees with higher seniority not working and was not directed at the statements Wilson Butler made in response to the group concerns related to the job assignment process in the small sort department. Applying the Board's established objective test, which considers all the circumstances to determine whether employees reasonably could interpret a union representative's statement as an unlawful threat, we disagree with our dissenting colleague's fine parsing of Wilson Butler's comments and his attempt to link Frates' "snitches" threat only to the comment by Wilson Butler that our colleague deems to be an unprotected individual gripe. Instead, like the judge, we find that Wilson Butler's comments about the job assignment process and the work habits of more senior employees were intertwined and, as explained above, her comments on these matters at the June 2 meeting constituted protected concerted activity. As the judge found, viewing Frates' "snitches" threat as being directed only at certain portions of Wilson Butler's June 2 comments fails to take into account the larger context here, which would reasonably permit employees to interpret Frates' remarks as a threat for engaging in protected concerted activity. The facts on which our dissenting colleague rely do not suggest otherwise. For instance, our colleague observes that Frates did not threaten the two other employees who raised their hands at the employee meeting. However, our colleague also states that those two employees were "presumably indicating their opposition to the change" advocated by Wilson Butler. It is thus unsurprising that Frates, who likewise opposed that change, would not threaten them.

[5] If the Respondent's office and meeting places are open and accessible to a substantial complement of members, the notice must be posted within 14 days after service by the Region. If the office and meeting places involved in these proceedings are closed or not accessible by a substantial complement of members due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the office and meeting places reopen and are accessible by a substantial complement of members. If, while closed or not accessible by a substantial complement of members due to the pandemic, the Respondent is communicating with members by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that "This notice is the same notice previously [sent or posted] electronically on [date]." If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

posting by United Parcel Service at its Oakland, California Airport facility, if it wishes, in all places where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 6, 2022

Lauren McFerran, Chairman

Marvin E. Kaplan, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER RING, dissenting.

Contrary to my colleagues, I would reverse the judge's decision because the Respondent's threat of physical harm directed at employee Gigi Wilson Butler was prompted by her purely individual gripe, not by protected concerted activity.

Briefly, the Employer had recently changed the way job assignments were made in the "small sort" department, which is divided into two sections, bagging and scanning. Bagging work is more laborious than scanning work. Previously, jobs in the department were assigned by seniority. In response to what a union steward characterized as "bickering" about job assignments in small sort, the Employer replaced the seniority system with a rotation system.

During a group meeting to discuss this change, the Respondent's secretary-treasurer, Marty Frates, put the issue up for a vote. Several employees raised their hands, presumably indicating their opposition to the change. Wilson Butler indicated her support for the change and said she did not think the previous seniority system was fair because she had the least seniority and the most senior employees did not work. In response, Frates said that it was nobody's business who didn't work, nobody should be going to management about it, and "snitching" to the Employer on a coworker for not working could result in physical harm, alluding to the phrase "snitches get stitches."

As these facts show, Frates' threat was directed at Wilson Butler's gripe that most senior employees do not work and was a warning that employees better not complain to the Employer about their coworkers not working. There is no evidence that Wilson Butler's complaint about senior employees not working was shared or discussed with her coworkers or in any way reflected a group concern. The fact that Frates' threat was made at a meeting called to discuss employees' complaints about job assignments, during which Wilson Butler expressed an opinion about that group concern, does not establish that Frates threatened Wilson Butler for expressing her opinion on that subject.[1] While I do not condone what Frates said to Wilson Butler, the threat was directed at her individual gripe about senior employees not working, not at an opinion the expression of which was a logical outgrowth of group concerns regarding how jobs should be assigned. Accordingly, I would find that the Respondent, by Frates, did not restrain or coerce employees in the exercise of their Sec. 7 rights in violation of Sec. 8(b)(1)(A) of the Act.

Dated, Washington, D.C. December 6, 2022

John F. Ring, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives 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.

[1] Indeed, the totality of the circumstances supports a finding that Frates was not threatening Wilson Butler for her comment supporting the change to the assignment system. Although Frates voiced his opinion opposing the recent change, he then immediately told employees that he would let them vote to decide the issue. In that way, he encouraged employees to voice disagreement with his opinion by opening the floor for debate. Furthermore, there is no evidence that the other employees who raised their hands were threatened for expressing their opinion. The full context of the meeting makes it clear that Frates was not directing his threat at Wilson Butler's comment expressing her opinion on the change to the assignment system but rather at the specific, unprotected content of her individual gripe.

WE WILL NOT threaten you with physical harm or unspecified reprisals if you engage in protected concerted activities.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 70

The Board's decision can be found at www.nlrb.gov/case/32-CB-279104 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

D. Criss Parker, Esq., for the General Counsel.
Andrew H. Baker, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried using the Zoom for Government platform on November 8, 2021. Gigi Wilson Butler (the Charging Party or Wilson Butler) filed the charge on June 28, 2021[1] and the General Counsel issued the complaint on August 17. The International Brother of Teamsters, Local 70 (the Respondent or Union) filed a timely answer denying all material allegations.

The complaint alleges the Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) when, in early June 2021, the Union's Secretary-Treasurer Marty Frates told employees at a group meeting that they should not raise issues about job assignments regarding coworkers with the employer and threatened that they could be physically injured for raising such issues.

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

United Parcel Service (UPS or the Employer), an Ohio corporation with an office and place of business in Oakland, California, transports freight. During the relevant time period, the Employer derived gross revenues in excess of $50,000 for the transportation of freight from the State of California directly to points outside of California. The Employer admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union admits, and I find, it is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

The Respondent is the exclusive collective-bargaining representative of the following unit of employees at UPS's Oakland facility:

> All employees in the classifications set forth in the Wage Schedule or Addenda of the Collective Bargaining Agreement between the Employer and various local unions including Respondent, in effect by its terms from August 1, 2018, through July 31, 2023.

Charging Party Gigi Wilson Butler, who has worked for UPS since September 2019, has been a bargaining unit member since February 2020. Wilson Butler reports to Urszulka "Shug" Calloway, who in turn reports to Kalynda Walton and Nicole Brown.

Marty Frates is the Union's secretary-treasurer, which is the highest ranking position with the Respondent. He has served as the Union's business agent since the early 1980's. Chet Scorsonelli is a union steward.

Employees who work in UPS's sort department sort parcels by geographical areas and zip codes. During the relevant time period, Wilson Butler worked in the small sort department, which entails working with small parcels under 7 pounds. The small sort department has a front section and a back section. The front section is sometimes referred to as scanning, and the back section bagging. Wilson Butler worked in the front section in May–June 2021, but had previously worked in the back section. In Wilson Butler's experience, working in the back section is harder and more labor intensive because workers constantly use their shoulders to fill bags and throw them on a belt. Prior to June 2021, assignments within the small sort department were assigned by seniority.[2]

Scorsonelli told Frates that there was a lot of bickering among the small sort employees about assignments.[3] In May, Calloway told employees that UPS planned to rotate positions in small sort starting June 1. She did not say when or why management made this decision. The change was implemented as

[1] All dates are in 2021 unless otherwise indicated.

[2] Both parties agree that within small sort, assignments were done by seniority prior to June 1. It is unclear from the record whether employees with seniority were assigned to a certain area within small sort or whether they had their choice of assignment.

[3] According to Frates, Scorsonelli told him that Walton told Scorsonelli that management was tired of the bickering in small sort and was going to make some changes. This is double hearsay and is not given weight. See *Auto Workers Local 651 (General Motors)*, 331 NLRB 479, 481 (2000). Though Frates and Scorsonelli are parties, Walton is not, and her purported statement to Scorsonelli, as conveyed by Frates, does not otherwise meet a hearsay exception or exclusion.

planned, and on June 1, a schedule was posted with a monthly rotation of employees between scanning and bagging.

According to Wilson Butler, some employees were unhappy with the rotation. She heard Theresa Padilla complain that the rotation was not fair, she was not going to work in the back because she had the most seniority, and she was going to call the Union. Wilson Butler saw Babaranti Oloyede (nicknamed "Bubba") look at the new schedule and shake his head with what she perceived as a disgusted expression on his face.[4]

On June 2, Walton held a meeting of the small sort employees in a conference room at the facility. Present at the meeting were Walton and another supervisor, the small sort employees (except for Wilson Butler until later in the meeting), three shop stewards including Scorsonelli, and Frates. Walton said she was tired of the internal complaints, and if the employees did not sort things out, she would start to remove people from small sort.[5] Frates then asked Walton to leave so he could meet with the employees. While taking her break with a coworker, Wilson Butler, who had been unaware of the meeting, was informed of it while it was already in progress. She therefore arrived at the meeting late, and she did not hear Walton's comments. People were talking among themselves when Wilson Butler entered the conference room.

According to Wilson Butler, Frates said he had heard that some employees had asked that assignments be rotated. He told employees that small sort was a good job, everyone needs to do their job, and nobody should be complaining. Frates said he thought assignments should be done by seniority, but he would let employees vote.[6]

Padilla and employee Mahmud Hussein raised their hands.[7] Wilson Butler raised her hand and said she disagreed with the seniority system because she did not think it was fair, as she had the lowest seniority and people with the highest seniority didn't work. According to Wilson Butler, Frates, who was sitting directly across from her, responded that it was nobody's business who didn't work, and nobody should be going to management about it. Wilson Butler recounted the following:

> He looked directly at me, and said, if I have two employees and one employee snitches on another employee and that employee gets fired, well, that's snitching. Snitches—he turned his head—said, get—and then he came back and said, I'm not going to say it, but I'm from Oakland and you know what that means. He was looking directly at me the whole time.

(Tr. 39–40.) Frates recalled saying something akin to what Buter recounted, but he did not specifically recall seeing her at the meeting.[8] Wilson Butler was not aware of any other employees who supported the rotation system at the time, though she had not complained to management about it.

Wilson Butler felt that Frates had threatened her, so she got up and left. Wilson Butler ran into Walton and Brown in the hall, told them that Frates had been rude and disrespectful, and said she needed to get out of small sort. She also reported Frates' conduct to Calloway and said she needed to leave. Wilson Butler clocked out and went home. She was transferred to a different department within the same bargaining unit at the same facility.

The following day, Wilson Butler ran into Scorsonelli, who had seen her leave the meeting. Scorsonelli asked how she was doing, and Wilson Butler said Frates had threatened her. Scorsonelli said, "I don't think he meant it that way."[9] (Tr. 43.)

Asked if he was threatening that the Union would act against members who complained, Frates responded:

> Absolutely not. I was trying to make the point that when you start talking about somebody, you don't know who you're talking to or talking about, and that's when you have to be aware. And that if you have a problem, I am not shy. I will come down, and we will take care of it, just like I was doing that night.

(Tr. 55.)

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[4] Wilson Butler's statement about what Padilla said is hearsay, and her testimony about Oloyede is an uncorroborated impression of his body language. They are not entitled to any significant weight other than to corroborate the record evidence that assignments within the small sort department caused friction. Butler did not know whether Oloyede favored assignment by seniority and the record does not establish whether he worked in the front or back section prior to June 1. (Tr. 47.)

The abbreviations used in this decision are "Tr." for transcript, and "GC Exh." for General Counsel's exhibit. Though I have made specific references to the record, I emphasize that my decision is based on my review of the entire record.

[5] Walton's comment, as reported by Frates, is hearsay, and on its own is not accorded much weight. As noted in the footnote directly above, however, it is clear from Wilson Butler and Frates' testimony, and the fact that the meeting took place and the matter was put up for a vote, that there was friction over assignments in the small sort department.

[6] Wilson Butler offered different accounts of what Frates said regarding how assignments should be made. She testified that Frates said, "I don't think it should be done by rotation; I think it should be done by seniority." (Tr. 38.) In the immediate follow-up, she testified:

Q And did he say something else?
A I will let you vote—but I will let you vote.
Q And did he say something else?
A Sorry. I don't remember what—I know he said he didn't think it should be done by seniority, but he would let us vote. (Tr. 38.)

I am not sure whether the discrepancy was intentional, an unintentional slip of the tongue, or a transcription error. By Frates' own account, however, he said he thought it should be done by seniority.

[7] It is somewhat unclear what they raised their hands to vote for, as the Wilson Butler testified they voted for "whether we did it by seniority." (Tr. 39.) The most reasonable assumption is that at least Padilla voted to keep assignments by seniority. Hussein's seniority is not a matter of record, so it is unclear how he would likely vote.

[8] Frates recalled saying something like, "From where I come from, that if you snitch on somebody, you've got to be aware because you don't know who you're talking to." (Tr. 55.) He did not dispute, however, that what he said was along the same lines as what Wilson Butler recounted. And the two comments are in essence the same—i.e. make the wrong person mad by snitching on them, and harm may result.

[9] This is yet another uncorroborated hearsay statement and is therefore given little weight. The General Counsel asserts that Scorsonelli was an agent of the union. This was never alleged in the complaint, however, and there is no evidence establishing agency.

B. Legal Standards and Analysis

The Act, at Section 8(b)(1)(A) states, "It shall be an unfair labor practice for a labor organization or its agents-- (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7." Section 7 confers on employees "the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ." In *NLRB v. Drivers Local 639*, 362 U.S. 274 (1960), the Supreme Court stated:

> Section 8(b)(1)(A) is a grant of power to the Board limited to authority to proceed against union tactics involving violence, intimidation, and reprisal or threats thereof—conduct involving more than the general pressures upon persons employed by the affected employers implicit in economic strikes

While most threats falling under 8(b)(1)(A) take place in the context of a strike/picket or election, the statute explicitly prohibits threats that restrain employees' Section 7 rights regardless of context. Evidence showing unlawful intent or that the threat was effective is not required to support an 8(b)(1)(A) violation. *Local 542, International Union of Operating Engineers v. NLRB*, 328 F.2d 850 (3d Cir.), cert denied, 379 U.S. 826, 85 S.Ct. 52 (1964).

It is undisputed that Frates is a union agent. It is also undisputed that during the group meeting, in response to Wilson Butler's comment that her coworkers with seniority didn't work, Frates said (or at the very least implied) that snitching on a coworker for failing to do his or her job may result in harm.[10] This is true whether Frates said, "snitches get . . . I'm from Oakland and you know what that means" as a thinly veiled reference to the familiar idiom "snitches get stitches," or whether he warned employees that if they snitch on someone, they need to be aware, because they don't know who they're dealing with. Either way, it is clearly a threat to employees that they should not snitch on their coworkers to management or they may face harm.[11]

The remaining question is whether Frates' threat would coerce employees to refrain from engaging in actions protected by Section 7—here, protected concerted activities for mutual aid and protection. Both the elements of concertedness and protection under the Act must be met. For the following reasons, I find that the fact that the threat occurred while Wilson Butler was raising concerns protected by Section 7 would reasonably restrain employees from engaging in similar protected concerted activity.

The Board has held that activity is concerted if it is "engaged in with or on the authority of other employees, and not solely by and on behalf of the employee himself." *Meyers Industries (Meyers I)*, 268 NLRB 493 (1984), revd. sub nom *Prill v. NLRB*, 755 F.2d 941 (D.C. Cir. 1985), cert. denied 474 U.S. 948 (1985), on remand *Meyers Industries (Meyers II)*, 281 NLRB 882 (1986), affd. sub nom *Prill v. NLRB*, 835 F.2d 1481 (D.C. Cir. 1987), cert. denied 487 U.S. 1205 (1988). Concerted activity also includes "circumstances where individual employees seek to initiate or to induce or to prepare for group action" and where an individual employee brings "truly group complaints to management's attention." *Meyers II*, 281 NLRB at 887. An individual employee's complaint is concerted if it is a "logical outgrowth of the concerns of the group." *Every Woman's Place*, 282 NLRB 413 (1986); *Mike Yurosek & Son, Inc.*, 306 NLRB 1037, 1038 (1992), after remand, 10 NLRB 831 (1993), enfd. 53 F.3d 261 (9th Cir. 1995).

I find Wilson Butler's comment at the June 2 meeting was a direct outgrowth of employee concerns regarding assignments in the small sort department, which had been raised to management, prompting the June 1 change. The context here cannot be ignored. This was a group meeting of the small sort department to discuss bickering among employees immediately in the wake of a change in how their jobs were assigned. Though the change was a management decision, Frates put the matter to a vote among members, signaling that the Union had some control or at least sway over the matter. While not everyone in the small sort department was on the same page about how assignments should be made, it is clear there was disagreement among employees. Wilson Butler never brought her concerns about assignments to management prior to the June 1 change, indicating that she was not the sole employee who disagreed with the original seniority system. As such, raising her concerns about assignment allocations in small sort, in a group meeting as part of the group action of voting about them, was concerted activity.

To be protected, an employee's activity must relate to her wages, hours, or working conditions. See *Waters of Orchard Park*, 341 NLRB 642 (2004). Wilson Butler expressed her belief that assigning work by seniority was unfair. Work assignments are clearly a term and condition of employment. As such, Wilson Butler's comment was protected under Section 7.

Though Frates' threat was specifically related to employees snitching on each other for "not working", it occurred during a meeting where members were voting on how to allocate work assignments immediately following Wilson Butler's protected comments related to the same. And, while Wilson Butler, as part of her complaint about work assignments, specifically said that senior employees don't work, the two are intertwined considering the circumstances and setting. Technically, read very narrowly, Frates' threat was not to warn employees against requesting a rotating schedule versus a schedule based on seniority, or any other scheduling issue for that matter. Rather, the threat cautioned that a member should not snitch on a coworker

[10] Frates didn't remember whether Wilson Butler was at the meeting, but he did not dispute it. Wilson Butler's account is therefore unrefuted. Admittedly, Butler and Frates had never spoken before, so the fact that Frates testified he did not recall whether Butler was at the meeting does not strike me as disingenuous. Moreover, Wilson Butler said that employees were talking among themselves when she entered the meeting, so her joining the meeting was not likely particularly notable.

[11] I find Frates' statement was a threat regardless of the evidence the General Counsel introduced about other workplace violence incidents. (GC Exhs. 3–8.) I also don't find material the presence of gang activity in the Oakland area, especially considering the absence of competent evidence tying any small sort employee to any gang. The Respondent's argument that the Union was not threatening any harm from any union official is likewise unavailing. The threat does not have to relate to any particular perpetrator(s) to be coercive.

for not working without being ready to face the consequences.[12] Given context and timing, however, I find an overly narrow interpretation of Frates' comment is not reasonable, and it constituted a threat in violation of Section 8(b)(1)(A). See *Graphic Communications Conference/Teamsters Local 735-S (Bemis Company, Inc.)*, 369 NLRB No. 97, slip op. at 2 (2020).

That said, I do not believe Frates intended to threaten employees. The evidence supports his testimony that management and the Union were tired of the bickering among employees in small sort, and they expected the employees to figure things out without resorting to tattling about each other's work habits. It is clear he wanted his members to act in solidarity rather than run to management with what he saw as petty issues. Frates, a union official dating back to a time when coarse language was more normal, likely did not think his comments were off base. However, as noted above, intent is not an element of a Section 8(b)(1)(A) violation.

Based on the foregoing, I find the General Counsel has proved the Respondent violated Section 8(b)(1)(A) of the Act as alleged in the complaint.

CONCLUSIONS OF LAW

The Respondent, International Brotherhood of Teamsters, Local 70, is a labor organization within the meaning of Section 2(5) of the Act.

United Parcel Service is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

By threatening employees with bodily injury or unspecified reprisals in response to protected activities, the Respondent has violated Section 8(b)(1)(A) oof the Act.

The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found the Respondent threatened employees with bodily injury or unspecified reprisals in response to protected activities, I shall order the Respondent to cease and desist from such actions.

The Respondent shall post an appropriate informational notice, as described in the attached Appendix. This notice shall be posted in the Respondent's offices or wherever the notices to members are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. When the notice is issued to the Respondent, it shall sign it or otherwise notify Region 32 of the Board what action it will take with respect to this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[13]

ORDER

The Respondent, International Brotherhood of Teamsters, Local 70, Oakland, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with bodily injury or unspecified reprisals in response to protected activities;

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Oakland, California facility copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 2, 2021.

(b) Within 14 days after service by the Region, deliver to the Regional Director for Region 32 signed copies of the notice in sufficient number for posting by the Employer at its Oakland, California facility, if it wishes, in all places where notices to

[12] Even under a narrow interpretation, the concertedness element is met, as Frates' comments would certainly restrain or coerce a group of two or more employees from reporting to management that a coworker was slacking off. The element of protection under the narrow reading is thornier. Is who you work with a working condition? More specifically, is it a working condition or term of employment to have productive vs. lazy coworkers? Even more pointedly, is an employee's perception of the competence and work ethic of fellow employees a term and condition of employment? Fortunately the can of worms required to answer these questions need not be opened to decide this case.

[13] 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.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. January 14, 2022

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives 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 threaten you with bodily injury or unspecified reprisals in response to your protected activities.

WE WILL NOT in any like or related manner, restrain, or coerce you in the exercise of the rights listed above.

TEAMSTERS, LOCAL 70 (UNITED PARCEL SERVICE (UPS))

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/32-CB-279104 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.