

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

UNITED STATES POSTAL SERVICE

and

Cases: 27-CA-292103
27-CA-321703
27-CA-348597

**NATIONAL ASSOCIATION OF LETTER
CARRIERS, BRANCH 642 AFL-CIO**

and

Cases: 27-CB-279652
27-CB-289629
27-CB-321708

TERRY T. DANIELS, AN INDIVIDUAL

Noor I. Alam, Esq., for the General Counsel.
Dallas Kingsbury, Esq., for the USPS.
James Colling, Esq., for the USPS.
Kate M. Swearengen, Esq., for the Union.

DECISION

STATEMENT OF THE CASE

CHRISTAL J. KEY, Administrative Law Judge. This case was tried in Denver, Colorado, on February 3–7, and February 12 and 13, 2025. On December 18, 2024, counsel for the Acting General Counsel (General Counsel) issued the third amended consolidated complaint (complaint) in the above-listed cases. On January 28, 2025, General Counsel filed a notice of intent to amend the complaint to remove paragraph 10(a). (GC Exh. 1(am).) During the hearing, I granted that motion. On December 20, 2024 and January 2, 2025, the National Association of Letter Carriers, Branch 642, AFL-CIO (the Union) and the United States Postal Service (the USPS) respectively filed their answers in which each denied the essential allegations of the complaint.

The complaint alleges that the USPS and the Union engaged in unfair labor practices that violate the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and the Postal Reorganization Act, 39 U.S.C. § 101 et seq. (PRA). In general terms, the complaint alleges the USPS violated Section 8(a)(1) and 8(a)(3) of the Act by discriminating against the Charging Party, Terry Daniels (Daniels) by issuing him various discipline and refusing his transfer request in response to his union activities representing members as a shop steward. The complaint also contends the USPS discriminated against Daniels in response to his dissident union activities

including running for union election against incumbent Union President Dave Negrotti. It alleges the USPS made various unlawful and coercive statements to Daniels in response to his union activities. The complaint generally alleges the Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act by removing Daniels from his shop steward position, processing his grievances in a perfunctory manner or failing or refusing to process and/or arbitrate his grievances and by the Union's president causing the USPS to issue Daniels a written warning. After the conclusion of the trial, General Counsel, the USPS and the Union filed briefs, which I have carefully read and considered.

Based on the entire record, including my observation of the demeanor of the witnesses, and after considering the parties' briefs, I make the following

FINDINGS OF FACT¹

I. JURISDICTION

The USPS provides postal services for the United States and operates various facilities throughout the United States in performing that function, including its facilities located at: 2995 55th St., Boulder, Colorado (Valmont)²; 1905 15th St., Boulder, Colorado 80206 (Boulder Main); 4985 Moorhead Ave., Boulder, Colorado 80305 (High Mar)³; 603 S. Public Rd., Lafayette, Colorado (Lafayette); and 566 S. McCaslin Blvd, Louisville, Colorado (Louisville.) The Board has jurisdiction over the USPS by virtue of Section 1209 of the PRA. The National Association of Letter Carriers, AFL–CIO (National Union) is a labor organization within the meaning of Section 2(5) of the Act. The Union is a constituent local of the National Union. The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

1. USPS facilities represented by the Union

The Union is the collective-bargaining representative of the letter carriers at three post offices in Boulder, Colorado: Boulder Main; High Mar; and Valmont. They also represent employees at two post offices in the nearby suburbs of Lafayette and Louisville, Colorado. The Union represents about 170 to 180 employees. (Tr. 1142.) The USPS groups its facilities into districts. The facilities at issue in this case are part of the Colorado and Wyoming district. (Tr. 852–853, 898.)

¹ Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations but rather are based on my review and consideration of the entire record for this case.

² The transcript contains errors at pp. 521, 830, 834, 846, 1039–1040, 1063–1064, where the Valmont facility is incorrectly written as the Belmont facility.

³ This facility is also referred to in the record as the Moorehead facility.

2. USPS' supervisors

During all relevant times, Kenneth Price served as the post office operations manager (POOM.) (Tr. 22, 62.)⁴ Below the POOM is a Postmaster (PM) who reports to the POOM. One PM is responsible for all three Boulder facilities. Mike Fittje had been the Boulder PM up until about March 2020. (Tr. 63, U. Exh. 44 at 67.) Ron Domingo replaced Fittje as the Boulder PM in March 2020. (Tr. 62, U. Exh. 44 at 67.) Domingo worked primarily at Boulder Main. In January 2022, Domingo transferred to a position in Tampa, Florida, as manager, customer service operations for the USPS and he continued to be employed by them up through the hearing. (Tr. 417, Jt. Exhs. 16(a) at 74, 12 at 16, GC Exh. 1(ak).)⁵ Robert Archambeault replaced Domingo as the PM.⁶ In October 2020, Jeffrey Rodarti became a temporary supervisor at Boulder Main. In September 2021, the USPS promoted him to a permanent supervisory position. (Tr. 482, 518–519.) Boulder Main was Rodarti's official duty station, but he primarily worked at Valmont and he would occasionally supervise at Boulder Main and High Mar. (Tr. 482.) Rodarti resigned on June 6, 2022. Manager of Customer Service Erik Thaler and Supervisor Margaret Putzier were Terry Daniels' supervisors at High Mar. (Tr. 210–211, 289, 859-860.) Thaler had more contact with Daniels because Thaler usually worked the opening shift and Putzier came in later in closed the facility. (Tr. 289, 1193.) Thaler left High Mar in September 2022 to become a USPS labor relations specialist. Weston Cavness replaced Thaler. In about October 2019, Tim Hooker became a supervisor at Boulder Main and he continued to serve in that role at least through June 2020. (Tr. 122, 949, GC Exhs. 10, 12.) Dennis Kuntz was the officer in charge at Lafayette. (Tr. 773, Jt. Exh. 29.) Jorge Alonzo was a supervisor at Lafayette.⁷ Leah McGowan was a supervisor at Louisville. (Tr. 1051, Jt. Exh. 29.)⁸

3. Union's supervisors and agents

Many of the facts and contentions in this case relate to Dave Negrotti. Soon after Negrotti began his career with the USPS in 1999, he began serving as a steward for the Union and he has continually served in that role at the facilities at issue in this case. (Tr. 1142–1143.) Candidates for union officer positions announce their candidacy in October of each year and elections are held in December, for a term to begin in January of the following year. In October 2020, the union membership elected Negrotti as the Union's president. He began serving in January 2021, and continued to serve in that position as of the hearing in 2025. Sometime between 2015 and 2020, he also served as the Union's president for about a year to a year and a half. (Tr. 1142–1143.)

⁴ The Union referred to Price as an MPO as of February 16, 2023. It is unclear if this is a typographical error or if he changed positions. (Jt. Exh. 12 at 16.)

⁵ In an August 23, 2023 email, Domingo stated that when he left Boulder, Daniels was facing a removal regarding his workers compensation claim. Thaler submitted the removal paperwork on December 22, 2021 and Price agreed to remove it on February 16, 2022. (Tr. 864, Jt. Exh. 16(a) at 74, GC Exh. 44 at 1.)

⁶ In the record Robert Archambeault's name incorrectly appears as Robert Archibald. (Tr. 417, 420.)

⁷ Daniels referred to this individual as "George". Rodarti testified that the installation head of the Lafayette station was Jorge Alonzo. (Tr. 492–493.)

⁸ With the exception of Tim Hooker and Jorge Alonzo the USPS admits the supervisory and agency status of all the individuals discussed in this paragraph. (GC Exh. 1, GC Exh. 29.) The complaint did not plead Hooker or Alonzo as supervisors or agents. I find them to be supervisors because they held the same position as Rodarti, Putzier, and McGowan and the USPS admitted that they were supervisors and agents under Sec. 2(11) and (13) of the Act.

Negrotti testified that the last time he performed duties as a letter carrier was about the first week of March 2020, and since then the USPS has paid him strictly to perform union duties. (Tr. 1143.)

In 2019 up through February 2020, Erica Pugliese served as the Union's president. She moved to Pennsylvania in about February 2020, and Lane Hice took over as the Union's president. (Tr. 65, 911.) Hice served as president through December 2020. Hice served as vice president from 2015 to about February 2020. From about 2020 up through the date of the hearing in 2025, Slater Saile served as the Union's vice president, and steward for the Valmont station. Bailey Taylor is a letter carrier at High Mar. She served as the Union's secretary from 2018 to 2022 and she briefly served as a steward at the High Mar facility in 2022. (Tr. 935.) Craig Humbarger is a carrier in the Valmont station and he has served as steward from about 2020 through the date of the hearing in 2025. (Tr. 1039–1040.) Sometime prior to June 5, 2020, Union President Lane Hice appointed Jorge Soto as an alternate steward at Boulder Main. (Tr. 1002-1003, GC Exh. 12.)

4. The Union and the USPS' grievance process

The grievance and arbitration process is set forth in Article 15 of the parties' collective bargaining agreement. (Jt. Exh. 1 at 66.) The first step in the grievance process is an informal step A meeting between the steward who has filed the grievance and a supervisor. (Tr. 976.) The second step is a formal step A meeting between the Union's formal step A representative and the postmaster. Lane Hice and Slater Saile served in this role for the Union during the events in this case. (Tr. 998, 1092–1093.) PM Domingo served as the USPS' representative for most of the formal step A meetings in this case. (Tr. 1000, 1093.) If a grievance is not resolved at the formal step A level it is transferred from the Local Union to the National Union where a Dispute Resolution Team also known as a step B Team meets and attempts to resolve the grievance. (Tr. 900, 976.) At step B the team is comprised of a member of the National Union and a USPS manager. If the parties reach an impasse at step B, the National Business Agent must decide whether to take the grievance to the final arbitration stage. (898–899.)

5. Terry Daniels' background and union activities

The USPS hired Daniels as a postal clerk at Lafayette in 1994. In 1995, the USPS transferred him to a letter carrier position at Boulder Main and he became a member of the Union. (Tr. 35–36.) In about June 2020 Daniels transferred to High Mar where he remained until the USPS put him on paid emergency placement on August 4, 2023. (Tr. 664, USPS Br. at 18.) As of the hearing, he was still on paid emergency placement.

Daniels served as the Union's treasurer from about 2007 to 2011. In 2011, Daniels believed the Union had misused funds. In response, he made a report to the Office of Labor Management Standards (OLMS). The OLMS conducted an audit and issued a March 29, 2011 letter citing the Union for record keeping violations. (GC Exh. 3.) Following Daniels report, the Union brought internal union charges against him. (Tr. 54–55.) The Unions' members found Daniels guilty of the internal union charges and removed him as treasurer. (Tr. 59.) Negrotti was the Union's sergeant at arms at the meeting during which the Union brought these charges. (Tr. 55–57, 1165.)

In 2017 or 2018 Daniels was appointed the steward for Boulder Main. In December 2019, he was elected to that role for the 2020 calendar year. In about January 2020, supervisors at Boulder Main gave Daniels an office to use for his steward duties. (Tr. 89, 1248.) Managers also provided Daniels with a key to the office and he stored grievance documents in the office. (Tr. 1245–1246.) Daniels remained a steward until June 9, 2020, when Union President Lane Hice removed him from that position. (Tr. 40, 61, 583.) On October 14, 2021, Daniels announced his intention to run for the offices of shop steward and union president against the incumbent President Dave Negrotti. (Tr. 216–218.) During the nomination meeting, Jorge Soto who had been involved in getting Daniels removed from his shop steward position in June 2020, spoke against Daniels’ candidacy. (Tr. 218–219.) On December 3, 2021, the Union conducted an election and the members elected Negrotti over Daniels. Daniels also lost the election for a position as a steward. (Tr. 254.)

B. Complaint Allegations and the Parties’ Contentions

1. Hice removing Daniels as a shop steward on June 9, 2020

Paragraph 7(c) of the complaint alleges that the Union violated Section 8(b)(1)(A) of the Act by removing Daniels as the Boulder Main shop steward. In 2019, while Daniels was the Boulder Main steward, the USPS removed letter carrier Pete Dighans. They put Dighans on emergency placement for several months following an altercation with PM Mike Fittje and the local police. (Tr. 72–73, GC Exh. 6 at 2.) After Dighans returned to work, multiple letter carriers approached Daniels as their steward and reported Dighans was engaging in threatening and harassing conduct. They reported him physically running into them and yelling profane language. (Tr. 74–75.) On October 17, 2019, Daniels sent an email to management requesting that they investigate Dighans’ conduct. (GC Exh. 5.) Labor Relations Manager James Dunlap responded to Daniels’ request by telling him that he did not know about the situation with Dighans and that Daniels would need to request an investigation from his supervisor. (GC Exh. 5.) On April 27, 2020, Daniels sent an email to District Manager McMahon and Acting POOM Stephen Begay. (Tr. 79, 954–955, GC Exh. 6.) In the email, Daniels listed multiple dates and incidents that Dighans had threatened or harassed employees. Daniels’ email explained that the 2019 incident that resulted in Dighans being put on emergency placement originated from Dighans threatening to harm himself after a fellow letter carrier Greta Smadbeck had told him she was not interested in being more than friends with him. (GC Exh. 6 at 2.) In the email, Daniels requested a meeting with management to address some of his coworkers’ concerns. (GC Exh. 6 at 3.)

In early 2020, Domingo approached Daniels as the steward at Boulder Main. Domingo asked him what they could do about carrier Reno Kraiser. Domingo said Kraiser was giving his supervisors a hard time. Daniels responded, “if you’re saying that there’s an issue or he’s done something wrong, you have the right to issue him corrective action, and I have the right to combat that, and I’ll file for him, but we aren’t doing anything about him.” (Tr. 63–64.) Sometime prior to June 2020, then Union President Hice appointed Jorge Soto as an alternate steward at High Mar. (Tr. 1002–1003, GC Exh. 12.) On June 5, 2020, Soto conducted a fact-finding interview with Boulder Main Supervisor Tim Hooker, regarding Daniels’ conduct in relation to his duties as a shop steward. Prior to the meeting, Soto or another union representative prepared a written list of

questions for Soto to ask Hooker. (GC Exh. 12.) Soto's questions focused on whether Daniels had fairly and appropriately represented all the carriers at Boulder Main. Hooker responded that he did not feel like Daniels properly represented Kevin Hahn, Pete Dighans, Greta Smadbeck, and Nasser Khanabadi. (Tr. 127.) It is evident from the pre-written questions for this interview, including the leading nature of the questions and from Hooker's answers, that Soto, or the person who prepared the questions, had previously spoken to Hooker and knew the answers that he was going to provide. It is also clear that the purpose of the interview was for Hooker to provide the Union information intended to denigrate Daniels in his role as a shop steward. Below are a few examples of these questions:

10 Q. Did Steward Daniels try to fraudulently request medical information not directly correlated with a grievance? (medical notes, documents, etc.)

A. Yes

Q. Can you elaborate?

15 A. He was asking for Greta's medical documentation or her driving restrictions. He also requested all carrier information who were all on Covid 19

Q. Has Steward Daniels disclosed any private information regarding Pete Diggins and his ongoing case?

A. Yes

Q. To what extent?

20 A. He basically told me the story of how Pete had a love infatuation with Greta. Terry said that Pete threatened to harm himself when Greta didn't reciprocate feelings. He said the cops were called, Pete was arrested, and he got his arm broken in the process.

25 Q. On January 7th, 2020, did you have a meeting with Steward Daniels and Stephanie Lambert?

A. Yes

Q. What was the nature of your meeting?

30 A. A warning from Terry regarding the present situation listed above – Greta returning to the office. He also mentioned Pete's jealousy issues when it comes to different carriers in the office.

Q. During you[r] meeting did Steward Daniels falsely claim that Jorge Soto and Greta Smadbeck were in a personal relationship that could cause Pete Diggins to become violent?

A. Yes (GC Exh. 12.)

Neither Hooker nor Soto testified at the hearing. There is no evidence in the record regarding why Hooker agreed to meet with Soto and answer questions which were related only to internal union matters. Lane Hice testified that on about June 7 or 8, 2020,⁹ he was in a formal A grievance meeting with PM Domingo at Boulder Main and Supervisor Hooker unexpectedly came into the meeting. (Tr. 948-949, 1000.) Hice testified that when Hooker came in, he told Hice about an agreement between him and Daniels. Hooker said under their agreement, Hooker would approve all the mandation grievances that Daniels filed (management mandating that employees work outside their regular work schedule), and in exchange Daniels would not file any grievances for instances when carriers were entitled to extra pay because they worked more than 12 hours in a day or 60 hours in a week (12/60 grievances). (Tr. 950, 952, 1005.) Hice testified he believed the reason Hooker suddenly divulged this agreement was because Soto had made him “nervous” during the June 5, 2020, fact finding interview. (Tr. 1002.) Hice testified he told Hooker and Domingo that this agreement was improper and that he was going to file the 12/60 grievances. Hice further testified that during this meeting, PM Domingo provided him the April 27, 2020 email that Daniels had sent to District Manager McMahon and Acting POOM Begay in his role as a steward related to his safety concerns regarding Dighans. (Tr. 954-955, GC Exh. 6.) Hice testified that in his view, Daniels’ email was designed to harm Dighans and Smadbeck. (Tr. 955-956.)

Hice testified that after his June 8, 2020 meeting with Domingo and Hooker, Alternate Shop Steward Jorge Soto, for the first time, told him about his June 5, 2020 interview with Hooker and he provided Hice with a copy of the interview notes. (GC Exh. 12, Tr. 1005.) Hice testified that he told Soto it had been inappropriate for him to have conducted the interview with Hooker, because as an alternate steward he was only authorized to serve as a steward if Daniels was not present. (Tr. 1003.) Hice testified that, based on the information from Soto’s fact-finding interview and his meeting with Domingo and Hooker, he decided to remove Daniels from his duties as a shop steward. On June 8, 2020, Hice sent Daniels a letter informing him of that decision. (U. Exh. 34; Tr. 957.) Daniels denied making an agreement with Hooker not to file 12/60 grievances. (Tr. 1245.) Prior to deciding to remove Daniels as a steward, Hice never asked Daniels about whether he made such an agreement. (Tr. 1244.) Hooker did not testify. I credit Daniels’ un rebutted testimony on this issue. On about June 8 2020, Hice wrote Domingo and told him he had relieved Daniels of his steward duties. (Tr. 956.) On June 9, 2020, Hice sent Daniels a text message stating that he had decided to remove him as a steward and he needed to turn over all his files and union property to Dave Negrotti. (Tr. 81, 948, GC. Exh. 7.)

On the following morning, Daniels came into work early and collected the documents he needed to turn over to Negrotti. (Tr. 88.) Daniels kept the materials in the office that supervisors at Boulder Main had provided him. Daniels organized the grievances by number and put them into one tub. (Tr. 90.) He also gathered folders of statements from carriers and other union materials and put them in a second tub. (Tr. 90.) Daniels planned to give the materials to Negrotti at the union meeting that was scheduled for the next day, Thursday, June 11, 2020. (Tr. 88.) Daniels took the items from his union office and put them in his car. Next, Daniels left to deliver

⁹ June 7, 2020, was a Sunday, thus I find it more likely the meeting happened on June 8, 2020. Hereinafter, I have referred to the meeting as having occurred on June 8, 2020.

his mail. (Tr. 91, 1249–1250, GC Exh. 67.) While Daniels was on his route he received a message from PM Domingo instructing him to immediately return to the Boulder Main station. (Tr. 91.) When Daniels arrived, PM Domingo was standing next to Daniels’ car with a hamper. (Tr. 91.) Domingo told Daniels that the Office of Inspector General had been called because there had been a report of him stealing postal property. Domingo then instructed Daniels to open his car and empty the contents into the hamper. (Tr. 92.) Daniels said he wanted to call his Union. Domingo responded, “I’ve got your president on the phone right now, and he agreed that I call the OIG and the inspection service on you.” (Tr. 92.) After Daniels emptied the items from his car, Domingo told Daniels to come with him to his office. Daniels then called Hice and advised him about the situation. Hice told Daniels, “Terry, I’m on my route, what do you want me to do?” (Tr. 94.) Next Daniels called and left a voice mail for the National Business Agent Dan Versluis. John Robles, the regional administrative assistant for the National Union returned Daniels’ call. Robles told Daniels that he would reach out to Hice. (Tr. 95.)

Domingo then instructed Daniels to sit down at a table in his office while Domingo sorted through the materials. (Tr. 97.) When Hice arrived, Domingo met privately with Hice and told him that the materials he had taken from Daniels were union materials. (Tr. 1023.) Next, Hice sat down at a table and watched Domingo sort the materials without objecting to or questioning Domingo’s actions. (Tr. 99.) Hice also failed to advise Domingo that the day before he had instructed Daniels to gather up the materials and turn them over to Negrotti. (Tr. 99, GC Exh. 7.) After Domingo had sorted through the materials, Soto came into the room and Domingo gave him materials which had been taken from Daniels’ car. (Tr. 99, 109, GC Exh. 8.) Domingo retained some of the materials in his office. (Tr. 110.) As Domingo sorted through the materials Daniels made a contemporaneous note listing who was present and whatever he was able to list of the items that Domingo was sorting through. (GC Exh. 8.) He listed Hice, Soto, and Domingo as being present and dated the document “6/10/20.” Daniels purpose for making the list was to get those present to sign an acknowledgment of the items Domingo had taken from him, but none of those present would sign it. (Tr. 104, 109.) After Domingo finished sorting the items Daniels left and completed his mail route. Hice remained in the office with Domingo. (Tr. 110–111.) On June 10, 2020, at 8:54 p.m., Daniels prepared an email message to himself. The email documented grievances that Daniels felt Negrotti should complete or initiate. (GC Exh. 9, Tr. 113–131.) The email also documented that two tubs of documents had been “provided 6/10/2020 when postmaster [D]omingo ordered steward Daniels to let him review the union documents...before turning them over to Jorge Soto [and] President Hice.” The document also stated, “illegal search on personal vehicle ordered on employee Terry Daniels by postmaster Domingo without inspection service 6/10/2020”. (GC Exh. 9 at 2.)

On June 11, 2020, there was a previously scheduled Union meeting. Just prior to that meeting, Daniels provided Negrotti with the remaining union documents in his possession. (Tr. 1178.) Daniels also presented Negrotti a copy of the email he had prepared the night before and Negrotti signed it and handwrote the date “6–11–20” next to his signature. (GC Exh. 9, Tr. 133, 1178.) On June 11, 2020, Hice filed internal union charges against Daniels. (GC Exh. 10, Tr. 957.) The charges alleged: 1) Daniels engaged in misconduct by making an agreement with Hooker not to collect 12/60 grievances; and 2) he had used his steward position to gather information that he

had no right to collect and provided confidential and damaging information to management. (GC Exh. 10.) Hice assigned the charges to an internal union committee. (Tr. 1269.) Erica Pugliese was the Union president up until February 2020. While she was president, she took it upon herself to file all the 12/60 grievances for the entire city of Boulder. (Tr. 1010, 1269–1270.) Pugliese had moved to Pennsylvania when the committee heard evidence regarding the charges. At Daniels' request, Pugliese called into and provided information to the committee. (Tr. 698, 1268, 1270, 1311.) The committee determined that the first charge did not have merit, but the second charge did have merit. (GC Exh. 14 at 1, Tr. 1028–1029.) On July 9, 2020, the membership voted to uphold the committee's recommendations regarding the charges and that Daniels should write a letter of apology which would appear in the next Union newsletter. (GC Exh. 14 at 1-3.) Alternate Steward Jorge Soto made a motion to remove Daniels as steward for the remainder of the term. Soto's motion failed. (Tr. 165-166, GC Exh. 14.)

2. General Counsel's claim of collusion between the Union and the USPS

General Counsel contends that beginning in March 2020, the USPS began bestowing assistance to incumbent officers including Negrotti and Hice and that it supported Negrotti's candidacy for union president over that of Daniels between October and December 2021. Negrotti testified that beginning about the first week of March 2020, he stopped carrying mail and the USPS paid him full time to perform his steward duties. (Tr. 1143.) Negrotti testified that in 2020, at Domingo's instruction, the USPS stopped requiring him to swipe his timecard at the beginning and end of his shift. (Tr. 1223–1224, GC Exh. 60.) Instead, Negrotti testified that Domingo instructed him to submit a 1260 form so that management could manually enter his time. (Tr. 831–832, 1223, GC Exh. 60.) On May 3, 2021, Domingo and Negrotti entered into a local memorandum of understanding (LMOU) which created a full-time union president position, two offices, a meeting room, and two parking spaces for the Union at Boulder Main. (Jt. Exh. 3 at 17–18.) Since the parties entered into the LMOU the USPS has paid Negrotti to perform exclusively union representation duties. (Tr. 1142–1143.) Following the LMOU, Negrotti began putting in almost daily for overtime pay. (GC Exh. 60, 61.) Dating back to 2020, the USPS has been bestowing Negrotti favorable conditions of employment including the ability to work a flexible work schedule, regular accrual of overtime and penalty time, and the ability to have USPS' supervisors clock in and out for him. (Tr. 1219-1220, 1226, 1236, GC Exh. 60.) These benefits allowed Negrotti to accumulate hundreds of hours of sick and annual leave between 2020 and 2025. The USPS hired Negrotti in 1999. Between 2020 and 2025 he annually earned 104 hours of sick leave and 208 hours of annual leave. (Tr. 1142, 1227-1228.) Below is a listing of Negrotti's annual and sick leave balances as of the first pay period of each year:

Year	Annual leave	Sick leave
2020	426.14	32
2021	544	88.25
2022	560	176.25
2023	600	288.25
2024	584	392.25
2025	600	492.25 ¹⁰

¹⁰ (GC Exh. 60 at 1, 103, 203, 305, 407, 507.)

An example of the USPS' willingness to pay Negrotti for large numbers of overtime hours is demonstrated by his time records for the week of July 2, 2022. During that week, the USPS paid Negrotti for 85.04 hours. (GC Exh. 60 at 258–259.) The 85.04 hours included 8 hours of holiday pay, 32 hours of straight time pay, 16 hours of overtime, paid at 150 percent of his hourly rate and 29.04 hours of penalty overtime, paid at 200 percent of his hourly rate. (Tr. 1220-1221 Jt. Exh. 1 at 25, 28.) Further 8.54 hours included an additional hourly rate for a night differential for hours worked between 6 p.m. and 6 a.m. (Tr. 1220, GC Exh. 60 at 258–259.)¹¹ Similarly, during the week of February 12, 2022, the USPS paid Negrotti for 75.13 hours. During that week, his time records repeatedly show him on the clock at or near 3 a.m., and the USPS paying him overtime, double time and for a night differential. (Jt. Exh. 1 at 29, 136, GC Exh. 60 at 218–219.) These are just two of the countless examples in the record demonstrating that the USPS paid Negrotti for large amounts of hours in excess of his straight time rate to perform union functions. (GC 60 at 218.) Below is a listing of the amount of overtime and night differential hours the USPS paid Negrotti during the first ten weeks of 2022:

	Pay period	OT hours	Penalty OT hours	Night Differential Hours
	22-1-1	21.17		1.57
	22-1-2	13		1
	22-2-1	8	13.01	4.01
	22-2-2	16	16.4	5.63
	22-3-1	16	15.93	7.34
	22-3-2	16	17.43	9.51
	22-4-1	16	18.12	10.58
	22-4-2	16	19.27	13.52
	22-5-1	16	19.13	14.17
	22-5-2	8	12.05	.05 ¹²

In November 2024, PM Consuelo Guzman told Lafayette carrier Christopher Konold that the USPS had flagged Negrotti's earnings on a "high earners report" and that Negrotti earned \$176,000 per year. Konold testified this is about double the amount he earns. (Tr. 786–787.) This is consistent with Negrotti's time records for 2022-2025 which show him frequently working between 60 to 80 hours per week. (GC Exh. 60.) Further, in October 2021, the day after Daniels announced he was running against Negrotti for the position of union president, Thaler approached Daniels and told him he had heard about him running. Thaler commented, "I wish you luck, man, but Negrotti is not giving up that position very easily. He's got it pretty good." (Tr. 251.)

¹¹ General Counsel introduced Negrotti's time records from the first pay period of 2020 through fourth pay period of 2025. (GC Exh. 60.) The following are relevant pay codes: 52 hours worked on the clock; 58 holiday pay; 43 penalty overtime pay; 53 overtime pay; 54 night differential pay; 56 sick leave; and 55 for annual leave. (Tr. 833, 841-842, 1221, Jt. 1 at 29, 136 and Appendix A.)

¹² (GC Exh. 60 at 203-221.)

3. The Union's response to General Counsel's claim of collusion

In response to the General Counsel's claim that the Union's local officers and the USPS were in collusion the Union presented evidence regarding its success in representing the Union's approximately 170 members. I credit Negrotti's un rebutted testimony that between 2020 and 2024 the Union filed the following number of grievances: 1,253 in 2020, 1,233 in 2021, 1,159 in 2022, 1,750 in 2023, and 1,479 in 2024. (Tr. 1142, 1202.) The Union called Nicholas Goodwin to testify and I fully credit his testimony.¹³ Goodwin is a labor relations manager for the USPS. (Tr. 888.) Since October 2022 he has been detailed to a contract compliance labor relations specialist position. In this position he investigates grievance payouts and the causes of such for the WestPac area which is comprised of the western half of the United States. Goodwin testified that Boulder was considered a large installation by USPS' standards. Goodwin testified that in his position, he has focused on payouts for 2022 forward and that during this period total payouts for the three Boulder installations was relatively high compared to other large installations in the Westpac area.¹⁴ In fiscal years 2020 to 2024, the Union's settlements for the Boulder installations respectively brought in a total of \$402,222.67; \$1,354,502.28; \$1,573,424.19; \$2,619,405.37; and \$1,120,444.09. (Tr. 890-891, U. Exh. 45.)

4. Daniels' information requests

Paragraph 7(d) of the complaint alleges that from July 9, 2021 through October 2, 2021, the Union delayed in providing Daniels with information related to his grievances. On April 10, 2021, per a mandate from the District, the USPS changed the starting times for carriers at Boulder Main, High Mar and Valmont. (U. Exhs. 5(a) at 15, 13 at 3.) On April 29 and 30, 2021, eight letter carriers at High Mar provided the Union with written statements in which they said that they wanted their start time moved from 8:30 a.m. back to 7:30 a.m. (U. Exh. 13 at 31-39.) On May 14, 2021, Negrotti met with Manager of Customer Service, Erik Thaler regarding a class action grievance for the High Mar carriers.¹⁵ (U. Exh. 13 at 1.) The grievance Negrotti filed sought a remedy for the USPS to move the carriers' start times back to 8 a.m., effective May 15, 2021. (U. Exh. 13 at 3.) It is unclear why Negrotti sought to have the carriers' start times "rolled back" to 8 a.m. rather than 7:30 a.m. as the carriers had requested. (U. Exh. 13 at 31-37.) Negrotti testified he settled the grievance on May 14, 2021, by the USPS agreeing to move High Mar carriers' start times to 8 a.m. (Tr. 1307.) As discussed later in this decision, in practice carriers at the High Mar station did not regularly report to work at 8 a.m., on or after May 15, 2021, rather Thaler was very flexible about when carriers could report to work.

On May 10, 2021, Daniels sent Thaler a text message asking if he could start at 8 a.m. the next day rather than 8:30 a.m. (GC Exh. 40.) Thaler responded that Domingo would not approve of Daniels' early start time requests. (GC Exh. 40.) On May 11, 2021, Daniels submitted a form 3189, requesting to have his start time on May 19, 2021, moved from 8:30 a.m. to 8 a.m. in order for him to attend a medical appointment. (U. Exh. 5(a) at 2.) On May 13, 2021, Thaler wrote on the request form that he had denied the request because per the postmaster [Domingo] no early

¹³ General Counsel did not present any witness to rebut Goodwin's testimony. I credit his testimony. I found him to be a credible witness because he testified in a straightforward manner and he willingly answer all parties' questions.

¹⁴ While the Union represents members at the Lafayette and Louisville stations, information for payouts at those locations was not included in this exhibit.

¹⁵ The grievance number is H21-434DN.

starts would be approved. (U. Exh. 5(a) at 2.) On May 15, 2021, Daniels asked in writing that Negrotti file a grievance regarding Domingo changing his bid start time by 1 hour between April 10, 2021 and May 14, 2021 and by thirty minutes since May 15, 2021. (Tr. 193–195, GC Exh. 18.) He also requested that Negrotti file a grievance regarding Thaler’s denial of an early start time for May 19, 2021, and his statement that Domingo would deny all such requests. (GC Exh. 5(a) at 2, Tr. 193.) While Domingo denied Daniels’ request for a change in a start time, management allowed other High Mar carriers to begin their shifts 30 minutes late or early. For example, on numerous dates in April, May, and June 2021, High Mar carriers Shalyn Boteler and Michelle Gutierrez arrived more than 30 minutes late or early for their start times. (GC Exhs. 56 at 92, 102, 104, 105, 106, 110, 57 at 95, 113.)

On May 15, 2021, Negrotti filed a grievance regarding management denying Daniels an early start time on May 19, 2021¹⁶ (GC Exh. 5(a) at 1.) On May 15, 2021, Negrotti met Thaler for an informal step A meeting regarding that grievance. During that meeting the parties did not resolve the grievance. On June 25, 2021, Slater Saile met with Domingo for a formal step A meeting regarding the grievance. They resolved the grievance by Domingo agreeing not to arbitrarily deny early start time requests. (U. Exh. 5(a) at 5.)

On June 24, 2021, Negrotti filed the class action grievance Daniels had requested on May 15, 2021, regarding the USPS’ changing his and other carriers’ start times.¹⁷ (U. Exh. 5(a) at 10, 13.) Negrotti did not testify regarding why he filed this grievance since he had settled a grievance over this exact same issue on May 14, 2020, when he and Thaler settled grievance number H21-434DN, by agreeing to move the High Mar carriers’ start time to 8 a.m. (U. Exh. 13 at 1-39.) On June 24, 2021, Thaler and Negrotti met regarding Daniels’ grievance but they did not resolve it. Thus, it was moved to the formal step A process. On an unknown date, but prior to July 15, 2021, Slater Saile withdrew the grievance stating lack of contractual evidence. (GC Exh. 5(a) at 10.)

On July 9, 2021, Daniels sent Negrotti an email requesting information about the current status of grievances that he had asked Negrotti to file. (GC Exh. 19.) In the email, Daniels asked Negrotti to tell him what was happening with the grievances he took over from Daniels involving Boulder Main and the grievances he had asked Negrotti to file regarding his time at High Mar. “Please let me know what’s going on with the grievances so that I can go from there...” (GC Exh. 19, Tr. 196.) On July 14, 2021, Negrotti sent a response stating that Daniels’ grievance regarding the denial of an early start time on May 19, 2021, had been settled by the USPS agreeing it would not arbitrarily deny early start time requests and that the class action grievance that he had requested be filed regarding the change to carriers’ start times had been withdrawn at the formal A step with an agreement that there was no provable contract violation. (GC Exh. 20.)

On July 16, 2021, Daniels sent Negrotti a response stating:

I do want to know what happened to all the grievances that you signed and took over from me as many do many ... involved [sic] me and others that voted for me ... I do want to know what happened on those grievances especially the ones for

¹⁶ That grievance number is H21-425DN.

¹⁷ That grievance number is H21-519DN.

me . . . I would like to see any grievance of mine that you withdrew or a reason why they weren't filed[.]" (GC Exh. 21 at 2-3.)

On July 27, 2021, Negrotti emailed Daniels and stated in relevant part, "You ask again about current grievances at Himar (sic). There are no current grievances at Himar. I explained this to you in your last email." (GC Exh. 22 at 2.) Negrotti testified that near the end of July 2021, he was at High Mar and handed Daniels copies of the grievance files that Daniels had requested. (Tr. 1199–1200.) As discussed in the analysis section below, I do not credit Negrotti's testimony on this point. On October 2, 2021, Negrotti emailed Daniels copies of the grievance files related to the class action grievance for the change in the High Mar carriers' schedule and for the USPS denying his request for a change in his schedule for May 19, 2021. (U. Exh. 5 (a) at 1-9.)

5. Daniels' October 28, 2021 statements to Taylor and Thaler

Paragraphs 8(e) and 8(g) of the complaint allege that the USPS violated Section 8(a)(1) and 8(a)(3) of the Act by threatening Daniels with discipline and issuing him a 7-day suspension related to comments he made to Thaler and Union Secretary Bailey Taylor on October 28, 2021. On Wednesday, October 27, 2021 at 2:52 p.m., Daniels sent Negrotti an email stating that he had requested union time for the afternoon of Friday, October 29, 2021, because he needed to meet with Negrotti about filing some grievances. (GC Exh. 24 at 4-5.) Next, Daniels sent Thaler a text message asking if he had let the Union know he needed union time Friday afternoon. (GC Exh. 25 at 1.) Thaler responded, he had not because "If I call them asking for a time... they'll get upset [a]t me for being involved I just need to know when they choose to meet with you." Daniels texted back that he had emailed Negrotti to let him know that he had requested union time for Friday afternoon. Thaler texted that the last time he got involved with scheduling union time Negrotti "blew a gasket on me. Sorry" (GC Exh. 25 at 1.) On Wednesday, October 27, 2021, at 7:25 p.m., Negrotti sent Daniels an email stating that management had told him that due to operational needs they would not be able to meet on Friday October 29, 2021, and he would be coming to the facility at 8 a.m. the next morning, Thursday, October 28, 2021. (GC Exh. 24 at 4.) At 7:58 p.m., Daniels texted Thaler to ask if he had told Negrotti that due to operational needs they would have to meet on Thursday rather than Friday afternoon. (GC Exh. 25 at 2.) Thaler responded, no it was Negrotti who asked that the meeting take place on Thursday rather than Friday. He opined "[m]aybe [Negrotti] has something going on Friday". (GC Exh. 25 at 2.) Thaler also mentioned that a Thursday meeting worked better for him. (GC Exh. 25 at 2.)

At 7:27 a.m. on Thursday, October 28, 2021, Daniels texted Thaler and advised him that he did not need to meet with Negrotti because the meeting time had changed and he had not yet completed the necessary paperwork for the meeting. (GC Exh. 25 at 3.) On October 28, 2021, at 7:57 a.m., Daniels sent Negrotti an email stating that he had asked for the meeting on Friday and he was not prepared to meet. (GC Exh. 24 at 3-4.) When Negrotti arrived at the facility Daniels told him he was not prepared to meet. (Tr. 229, 1185.) Negrotti then boisterously stated, "you're refusing Union time? You're refusing my representation?" (Tr. 229.) Negrotti asked Union Secretary Bailey Taylor to come witness that Daniels was refusing to meet with him and to write a statement about it. (Tr. 229, 1185.) Thaler was about 20 feet away and Negrotti said "Eric you heard him, right? He denied representation. He doesn't want Union representation. He is refusing it. Write me a statement for that too." (Tr. 229.) After Negrotti left, Daniels then told Taylor that if she wrote a false statement he would file internal union charges against her. (Tr. 229.) Daniels

also told Thaler if he wrote a false statement he would file a charge or a complaint against him because he was not refusing union representation. (Tr. 229-230.)

On November 8, 2021, Bailey Taylor wrote a statement regarding the events of October 28, 2021, in her statement Taylor wrote that Daniels had refused to meet with Negrotti and that Negrotti had requested that she write a statement to confirm that Daniels had refused to meet with him. Taylor further wrote Daniels told her “if [she] wrote a statement he would have something against me or come after me, I don’t remember his exact wording.” Taylor further noted in her statement that she had reported Daniels’ statement to Negrotti and Thaler. In her written statement, Taylor also stated that when she reported Daniels’ statements to Thaler, he told her that Daniels had also told him “...he would come after him or have something against him.” (GC Exh. 13(a) at 27.)

On December 3, 2021, Supervisor Jeffrey Rodarti conducted an investigatory interview with Daniels regarding his statements to Thaler and Taylor. (GC Exh. 37.) Rodarti had prewritten questions for the interview. Questions 12 and 13 stated as follows:

On October 28, 2021 you had a union meeting for grievances scheduled with Dave Negrotti and Erik Thaler. You refused to meet at the scheduled time that was established by Erik based on the needs of the service that day. Dave Negrotti asked Bailey Taylor to write a statement stating that the events that took place. After Dave Negrotti left, you threatened Bailey Taylor that if she wrote a statement you “would have something against her or would come after her.” The Postal Service has a zero-tolerance policy for threats or threatening behavior. Why would you think it would be appropriate to threaten another employee?

On October 28, 2021 you had a union meeting for grievances scheduled with Dave Negrotti and Erik Thaler. You refused to meet at the scheduled time that was established by Erik based on the needs of the service that day. After you refused the meeting; you told MCS Eric Thaler that you would come after him if he wrote a statement for Dave Negrotti. The Postal Service has a zero-tolerance policy for threats or threatening behavior. Why would you think it would be appropriate to threaten your manager? (GC Exh. 37 at 6.)

In his responses to these questions, Daniels stated that he had requested that the meeting be scheduled for Friday, November 29, 2021, and that prior to the meeting, he told Thaler and Negrotti that he did not want to meet because he was not prepared for the meeting. Daniels stated that he never said he would go after Taylor rather he said to her that if she wrote a false statement he would file internal union charges against her. Finally, Daniels stated that he never said he would come after Thaler, rather he may have said that if Thaler wrote a false statement against him he may file labor board charges against him. (GC Exh. 27.)

On December 9, 2021, the USPS issued Daniels a 7-day suspension no time off suspension. (Jt. Exh. 9 at 9-11.) The suspension notice stated,

Specifically, you made threats towards a fellow carrier and to your Manager on the morning of October 28, 2021. During your investigative interview held on December 3, 2021 you refused union representation. When you were asked what you meant telling both Bailey Taylor and MSC Eric Thaler you would come after both of them if they provided statements to NALC President David Negrotti, you stated, 'Like I had mentioned, I may have told Erik Thaler and Bailey that if they write false and inaccurate statements I would file charges against them (Labor or Branch). I do want to apologize to them both if they took this the wrong way.' The Postal Service has a Zero Tolerance Policy which you acknowledge in your investigative interview that you were aware of Bullying behavior cannot be tolerated at any level within the Postal Service. (Jt. Exh. 9 at 9-11.)

Joint Exhibit 9 is a copy of the Union's grievance file related to the 7-day suspension. (Jt. Exh. 28.) On December 17, 2021, steward Craig Humbarger interviewed Thaler and asked him questions that Daniels had prepared for him to ask Thaler. Thaler responded to the questions by stating that prior to this current discipline he had not had any issues with Daniels since he started supervising him. Thaler confirmed that prior to the October 28, 2021 meeting, Daniels had told him that because the meeting time had changed he did not need to meet that day. Thaler confirmed that Daniels did ask him to make a note that he was not refusing union representation as Negrotti was claiming. There was a question which asked, "did you feel threatened by Terry Daniels for his comments to you on October 28, 2021[?]" Thaler responded, "No, but I felt his intentions were threatening." Thaler also stated that on October 28, 2021, Bailey Taylor had not reported to him that she felt threatened. (GC Exh. 42(c) at 3, Tr. 383.)¹⁸ On December 20, 2021, Domingo instructed Thaler to write a statement regarding the events of October 28, 2021. (Tr. 884.) It states, "On October 28, 2021, after getting into an argument with his union steward, Terry Daniels came to me and said, 'If you write a statement saying I refused union time with my steward, I will come after you.'" (Jt. Exh. 13(a) at 26.)

As will be discussed in greater detail below, on December 21, 2021, Humbarger filed and settled a grievance regarding the 7-day suspension by the parties agreeing to leave the discipline in Daniels' personnel file, but reducing the retention period from 2 years to 6 months. (Jt. Exh. 9 at 1.) On February 16, 2022, the USPS and Daniels entered into a written settlement where POOM Kenneth Price agreed to remove the 7-day suspension from Daniels' file. (GC Exh. 44.)

6. Daniels arrived late to work on October 30, 2021, because he was campaigning for union office

Paragraphs 8(a), 8(b), 8(d) and 8(h) allege that the USPS violated Section 8(a)(1) and 8(a)(3) of the Act by prohibiting Daniels from campaigning for internal union office, interrogating him about campaigning, and issued him a letter of warning because he arrived late on the date he was campaigning. Daniels testified that on October 30, 2021, he arrived at work one hour and 25 minutes after his scheduled start time of 8:30 a.m. (Tr. 234, 673.) The parties dispute whether on October 30, 2021, Daniels' start time was 8:30 a.m. or 8 a.m. The confusion regarding this issue

¹⁸ On February 3, 2022, Thaler crossed out the words, "but I felt his intentions were threatening". (GC Exh. 42(c) at 3.)

arises first because Thaler was very flexible about allowing carriers to arrive before or after their scheduled start times. Second, Daniels testified that carriers at High Mar had different start times. (Tr. 673, 676.) Time records confirm Daniels' testimony. For example, USPS' time records for October 30, 2021, show an 8:30 a.m. start time for Daniels, but a 7:30 a.m. start time for carriers Shalyn Boteler and Michelle Gutierrez. (GC Exhs. 8 at 23, 56 at 153, 57 at 158.) As discussed above, on May 14, 2021, Negrotti settled a grievance which stated that effective May 15, 2021, carriers' start time at High Mar would be moved from 8:30 a.m. to 8 a.m. (U. Exh. 13 at 1) However, Daniels and other High Mar letter carriers' time records, were not changed to reflect that new start time. (GC Exhs. 8 at 23, 56, 57.) Further, after May 15, 2021, in practice, High Mar letter carriers did not report to work at a scheduled start time of 8 a.m. (GC Exhs. 56-57, Jt. Exh. 14(a) at 1-12.) Thus, I credit Daniels' testimony that as of October 30, 2021, his scheduled start time was 8:30 a.m.

On October 30, 2021, Daniels was late to work because he visited the Lafayette and Louisville postal facilities to campaign for the office of union president. (Tr. 236–237.) Lafayette carrier Kurt Sterdivan secured permission from the installation head for Daniels to campaign at the facility. (Tr. 238.) At 7:41 a.m., Daniels sent Thaler a text message stating, "I think your gone today. I am not sure who's running things. But I'll be a little late and didn't know who to call." (GC Exh. 27.) Thaler had previously told Daniels that he would be on vacation on October 30, 2021. Supervisor Jeffery Rodarti filled in for Thaler. (Tr. 486.) After Daniels failed to arrive at work at his scheduled start time, Rodarti called Daniels' cell phone, but the call went to voicemail. (Tr. 486–487.) At 8:57 a.m. Rodarti sent a text message to Thaler, asking if there was any reason Daniels would be late. (Jt. Exh. 13(a) at 1.) Thaler texted Rodarti back stating, "He texted me he'd be late but I was in the air." Rodarti then asked, "Do you know when?" Thaler responded that Daniels' text message did not provide that information. (Jt. Exh. 13(a) at 1.) Rodarti replied, "No worries—I already split his route. I'll let them know they're no longer mandated. Thank you. If you would be willing, would you kindly text Terry back asking when he might be in?" (Jt. Exh. 13(a) at 2.) Rodarti informed the carriers to whom he had assigned Daniels' route that they no longer needed to handle it. (Tr. 489.)

On the morning of October 30, 2021, Daniels visited the Lafayette post office and spent about 30 minutes campaigning for the position of union president. (Tr. 238, 240.) While Daniels was at Lafayette he spoke to supervisor, Jorge Alonzo. Daniels thanked him for allowing him to campaign and Alonzo responded he had no problem granting him permission to campaign because Dave Negrotti had campaigned there. (Tr. 238.) While Daniels was at Lafayette, union steward Chris Konold advised Daniels that he had spoken with Louisville supervisor Leah McGowan and obtained her permission for Daniels to also campaign there. (Tr. 240.) After leaving Lafayette, Daniels went to Louisville. (Tr. 240.) When Daniels arrived, he introduced himself to McGowan and thanked her for allowing him to campaign. (Tr. 240.) Daniels spent about 45 minutes to an hour campaigning at Louisville. (Tr. 241.)

Daniels then drove to High Mar. On his way to the office he realized he had missed a 9:08 a.m., text message from Thaler asking him when he would be at work. At 9:45 a.m., Daniels responded that he would be there in 10 minutes. (GC Exh. 27.) Daniels clocked in at High Mar at

9:56 a.m.¹⁹ (Jt. Exh. 8 at 23.) When Daniels arrived, Rodarti asked him why he had been late and Daniels responded that he had been running errands. (Tr. 244, 488.) Daniels then went and delivered his route. (Tr. 246.) While Daniels was delivering his route, carrier Michelle Gutierrez advised Rodarti that her sister who works at Louisville had reported to her that Daniels had been at the Louisville facility that morning campaigning for Union office. (Tr. 490, Jt. Exh. 13(a) at 3.) Daniels finished his route before working an 8-hour day. (Jt. Exh. 8 at 23.) Daniels asked Rodarti how he wanted him to handle his hours for the day. Rodarti told him to put in for annual leave. Daniels filled out an annual leave form. (Tr. 246.) Rodarti again asked Daniels to tell him where he was that morning and Daniels refused to tell him. (GC Exh. 29 at 2.) At 5:39 p.m., Rodarti sent an email to Domingo and Thaler, which stated:

As you know, Terry was just about two hours late to work today, having texted Erik while he was on annual that he would be late. Upon his return to the office, I asked Terry why he was two hours late. Terry replied that he had some “errands” to run and didn’t provide any further details. When asked why he did not use the hotline, Terry responded that he texted Erik and when Erik did not respond, he wasn’t sure who to contact. When pressed again as to why he did not use the hotline given that Erik hadn’t responded and that he wasn’t sure who was supervising, Terry mentioned that he felt it was common practice for people to show up “half an hour, an hour, two hours late” without notifying anyone and asked that Erik conduct a standup to clarify expectations.

Separately, Michelle Gutierrez mentioned that she has a sister who is a carrier at the Louisville Post Office who reported that Terry was at that installation this morning campaigning for union president on the workroom floor.

Lastly, Terry submitted a 3971 for AL [annual leave] for the remainder of his shift today before leaving. Would you like me to enter it in? Thank you Jeff. (Jt. Exh. 13(a) at 4.)

Rodarti then consulted with Thaler and Domingo regarding how he should enter Daniels’ time. The decision was made that Rodarti would enter Daniels’ time as absent without leave (AWOL) for .62 hours. (Tr. 513–515, Jt. Exh. 11 at 23.) Rodarti did not mark Daniels AWOL for the entire period of his tardiness. Daniels’ time records show he made up some of his hours in the time it took him to deliver his route. His time records for October 30, 2021, show he worked 7 hours and 23 minutes and the USPS marked him AWOL for .62 hours or 37 minutes.

A few days after Daniels campaigned at Lafayette, Chris Konold saw PM Domingo and POOM Ken Price at the station speaking with Supervisors Dennis Kuntz and Leah McGowan. (Tr. 774–775.) Konold later asked Kuntz and McGowan, why Price and Domingo had come to the station. McGowan or Kuntz responded that they had come because they were after Terry Daniels for campaigning, and Kuntz told Konold that Price “despised Terry Daniels”. (Tr. 775.) During the week following Daniels campaigning at the Lafayette and Louisville stations, Thaler approached Daniels and told him that at a managers’ meeting over telecom, including 20–30

¹⁹ The time shows up on Daniels’ time record as 9:93.

supervisors, POOM Price “went hard” and “ripped into” the Lafayette and Louisville supervisors Leah McGowan and Jorge Alonzo for letting Daniels campaign for the position of union president. (Tr. 253.) Thaler reported that Price had said “. . . why are you guys letting him campaign?” . . . “We don’t support him being president.” (Tr. 253, 660.) Thaler testified after Daniels and he
 5 did not refute any of this testimony. (Tr. 659–660.)

Rodarti stated in his October 30, 2021 email to Thaler and Domingo that Thaler needed to conduct a meeting to clarify expectations regarding tardiness because Daniels had reported that Thaler had a very lax policy of allowing carriers to arrive late. (Jt. Exh. 13(a) at 4.) During the first week of November 2021, Domingo instructed Thaler that he needed to change his policy
 10 regarding employees’ tardiness. (Tr. 879.) It appears that on November 8, 2021, Thaler held a meeting at which he discussed tardiness with his employees because on November 9, 2021, in response to an investigatory interview, Thaler asked Michelle Gutierrez if there was anything he could do to help her improve her attendance and her response was, “had a stand up yesterday”. (Jt. Exh. 14(a) at 6.) On November 9, 2021, pursuant to instructions from Domingo, Thaler conducted
 15 investigatory interviews with carriers Shaylyn Boteler, Michelle Gutierrez, Bailey Taylor and Robin Keller whose time records show that in October and November 2021, they had repeatedly clocked in after their scheduled start times. (Jt. Exh. 14(a) at 1–12.) The employees’ responses to questions asked in those interviews demonstrate that Thaler had a very flexible policy regarding tardiness. For example, during the interviews the four employees were asked what the USPS’
 20 tardiness policy meant to them wherein it stated that tardiness was defined as any deviation from their schedule. The four employees responded to this question as follows: (1) Be on time / communicate with supervisor about why you’re going to be late; (2) Doesn’t impact us at this station because we’ve always had a flexible start time; (3) I’m not aware of that; and (4) No, never really heard of that before. (Jt. Exh. 14(a) at 1–12.) The forms listed a number of dates and times
 25 in October and November 2021, when each of the employees had arrived late at work. The forms then asked the employees to respond regarding why they had arrived late on each date. Rather than responding to why they were late on each particular date the employees’ responses were as follows:

Because of my 4 p.m. business pickup I come in later to reduce overtime.

30 Physical therapy on some days and fluctuating start time on others

9 a.m. start Valmont[.] Too far back can’t remember

Child care drop-offs (Jt. Exh. 14(a) at 1–12.)

Thaler testified that it was common for High Mar carriers to text him if they were going to be late. (Tr. 861.) He testified that between October 30, 2020 and October 30, 2021, he never
 35 disciplined any employees at High Mar for tardiness. (Tr. 875.) Prior to October 30, 2021, there had been numerous times when Daniels was going to be late and he texted Thaler or supervisor Margaret Putzier to let them know he would be late and they did not have any problem with that. (Tr. 211–212.) Depending on how late he was, Thaler or Putzier would just let him make up his time at the end of the day or ask him to put in for leave. (Tr. 212.) Thaler confirmed that if an
 40 employee came in late for work he would allow them to work an 8-hour day if it fit within the

window of operation and he could not think of a situation where he entered an employee who was late as AWOL. (Tr. 886.) General Counsel introduced clock rings showing that carriers Michelle Gutierrez and Shaylyn Boteler regularly arrived at work after 9 a.m. and the USPS did not discipline them. (Tr. 875, GC Exhs. 56–57.)²⁰ It is the USPS’ position that Gutierrez and Boteler’s start time was 8 a.m. as of April 2021. (Tr. 486, USPS Br. at 10.)

On November 9, 2021, Rodarti conducted an investigatory interview with Daniels regarding his tardiness on October 30, 2021. Negrotti was present for this interview. (Jt. 13(a) at 6–10.) Rodarti testified that Domingo likely assisted him in preparing questions for this interview. Some of the questions that Rodarti asked Daniels on November 9, 2021, were similar to those that Thaler had asked of four other High Mar carriers he interviewed about their attendance that same date. However, the questions that Rodarti asked Daniels differed in that they focused on where exactly Daniels had been on the morning of October 30, 2021. One question asked, “Do you think ‘campaigning’ for the union election constitutes an emergency that would have prevented you from notifying management prior to your start time?” Another question asked, “Did you intentionally create this situation as a reason to help garner interest in your campaign for a union position?” (Jt. Exh. 13(a) at 9.) Another question asked, “Do you think you do not have to explain to management where you were during your regular scheduled work hours?” (Tr. 317, GC Exh. 36 at 1–2.) Daniels answered that generally High Mar carriers did not have to explain their whereabouts when they were not on the clock. (Tr. 317, GC Exh. 36 at 1–2.)

On November 16, 2021, Daniels texted Lafayette station manager Dennis Kuntz, and asked him if he could return to Lafayette to campaign for the position of union president after work when he was off the clock. (GC Exh. 31.) Supervisor Kuntz responded, “I can’t”, Daniels asked, “I assume this came from above?” and Kuntz replied, “yes”. (GC Exh. 31.)

On December 2 and 3, 2021, Rodarti conducted a second investigatory interview with Daniels about the events of October 30, 2021. (Jt. 13(a) at 11–15.) The prewritten questions for this interview stated that management had learned that on the morning of October 30, 2021, Daniels had been at Lafayette and Louisville campaigning for union office and asked why Daniels had not previously provided the USPS with this information. The questions also focused on why Daniels had not requested leave in advance.

On December 9, 2021, the USPS issued Daniels a disciplinary letter of warning for his attendance on October 30, 2021. (Jt. Exh. 8 at 6.) The letter stated that he had been almost two hours late and that during its investigation of the matter Daniels had been uncooperative in providing the USPS with information about why he had been late. It stated that further investigation of his whereabouts had revealed that he had been at the Louisville and Lafayette stations campaigning for a union position. The letter discussed that Daniels failed to understand

²⁰ The clock rings during the relevant period respectively for Boteler show she arrived at 9:08 a.m., 9:02 a.m., 9:11 a.m., 9:04 a.m., 9:05 a.m., 9:03 a.m., and 9 a.m. (GC Exh. 56 at 2, 6, 19, 35, 92, 145, 150.) The clock rings during the relevant period respectively show Gutierrez arrived at 9:32 a.m., 9 a.m., 9:21 a.m., 9:14 a.m., 9:16 a.m., 9:18 a.m., 9:04 a.m., 9 a.m., 9:05 a.m., 9:25 a.m., 9:15 a.m., and 9:05 a.m. (GC Exh. 57 at 34, 70, 72, 77, 86, 95, 139, 144, 145, 150, 152.)

that it has the right to ask him to explain his whereabouts for periods of time that are during his normal work schedule.

On December 10, 2021, Daniels sent steward Craig Humbarger an email requesting that the Union file a grievance regarding the disciplinary notice. (GC Exh. 41(a) at 1-2.) On December 17, 2021, Humbarger met with Thaler and asked him questions prepared by Daniels related to his attendance. (GC Exh. 42(c) at 1-3.) Thaler stated: (1) that Daniels had texted him prior to his start time on October 30, 2021, that he would be late; (2) that when he got Daniels' text message he immediately forwarded it to Rodarti; (3) he had never disciplined Daniels for being AWOL when he had come in late for work; (4) he had previously communicated with employees when he was off work via email and text message; (5) that Daniels' attendance had been reviewed on October 19, 2021 and it was "not bad"; (6) that he had never required a carrier to tell him where they were when they came in late; and (7) prior to Daniels' conduct on October 28 and 30, 2021, he had not previously had any disciplinary issues with Daniels. (GC Exh. 42(c) at 1-3.) Humbarger also obtained a similar, but less detailed statement from High Mar Supervisor Putzier. (GC Exh. 42(b) at 1.) As will be discussed in greater detail below, on December 21, 2021, Humbarger filed a grievance regarding Daniels' letter of warning for being late. Humbarger settled that grievance with the USPS on December 21, 2021, by agreeing to keep the discipline in Daniels' personnel file, but reducing the retention period for the discipline from 2 years to 3 months. (Jt. Exh. 8 at 1.)

On November 29, 2021, Negrotti filed two grievances for Daniels. The first related to the USPS marking Daniels as AWOL for .62 hours on October 30, 2021, rather than allowing him to make up his time at the end of the day. (Jt. Exh. 10 at 6.) The second related to whether Rodarti violated the USPS' policy regarding dignity and respect in his interactions with Daniels on October 30, 2021. (Jt. Exh. 11 at 9.) On February 10, 2022, the National Union settled those grievances. As part of the resolution of one of the grievances the parties agreed there were seven other occasions in 2021, where the USPS had coded four other Boulder carriers' time as away without leave when they had arrived late to work. (Jt. Exh. 11 at 18.) One of those carriers was High Mar carrier Shaylyn Boteler who was late to work on September 30, 2021, the USPS coded her time as AWOL, code 24 for .49 hours which equates to 29 minutes. (Jt. Exh. 11 at 18, GC Exh. 56 at 144.) (First name unknown) Brock was a carrier at Boulder Main who the USPS marked as AWOL three times in 2021, including one day during the first pay period in 2021 when the USPS marked him AWOL for 1.42 hours which equates to 1 hour and 25 minutes. (Jt. Exh. 11 at 18.) The USPS did not introduce any evidence to show that it disciplined any of the four other carriers, including Boteler or Brock when they were late to work and the USPS marked them AWOL.

7. November 21, 2021 grievance meeting between Daniels, Negrotti and Thaler

Paragraphs 8(c), (f), and (j) of the complaint allege that the USPS violated Section 8(a)(1) of the Act by: (1) the USPS denying Daniels' request to initiate a violence and harassment investigation into Negrotti's conduct of slamming a door at Daniels as he was leaving a grievance meeting; (2) threatening Daniels with discipline for filing a workers' compensation claim related to the door slamming incident; and (3) threatening Daniels with discipline during an investigatory interview related to his workers' compensation claim. Paragraphs 10(c) and (d) of the complaint allege that the Union violated 8(b)(1)(A) of the Act by failing to arbitrate a grievance regarding

Rodarti failing to treat Daniels with dignity and respect on October 30, 2021, and a second grievance regarding the USPS marking him AWOL and not allowing him to work 8 hours on that date.

On November 29, 2021, Daniels attended an informal step A grievance meeting with Thaler and Negrotti. The meeting was held in the supervisor's office at High Mar. The grievances at issue related to whether Rodarti violated the USPS' standards for dignity and respect related to his questioning of Daniels about his late arrival on October 30, 2021, and whether the USPS violated the contract by marking Daniels AWOL and not allowing him to work a full 8 hours. (Jt. Exhs. 10 at 6, 11 at 9.) Daniels and Negrotti testified that the meeting was very contentious. Daniels claimed he became frustrated because he felt that Negrotti was unprepared for the meeting. (Tr. 302–303.) Negrotti testified that Daniels kept trying to talk over him and interject statements about arguments that he felt Negrotti should have been making on his behalf. (Tr. 1189–1190.) In Negrotti's words Daniels' behavior was very frustrating and annoying and the meeting got very contentious. (Tr. 1190.) The meeting ended with Negrotti and Thaler agreeing that they could not resolve the grievances. What happened as Daniels exited the room is in dispute. Daniels testified that as he exited the room Negrotti got up, slammed the door of the office and hit Daniels in the shoulder. (Tr. 303.) Conversely, Negrotti testified that after the meeting was over, Daniels walked out the door and he shut it "a little too strong" and that he did shut it louder than he should have, but that he did not hit Daniels with the door. (Tr. 1190.) Thaler testified that he did not see the door as it closed, he wasn't staring at the door, but he did hear the door slam and it was a loud noise. (Tr. 883.) I credit Daniels' testimony that the door hit him in the shoulder.

Immediately after the incident, Daniels called the Boulder Police Department. About ten minutes after the incident PM Domingo came to the High Mar facility and met with Thaler. (Tr. 306–307.) After Domingo met with Thaler he approached Daniels and said, "if you try to file a workman's comp claim, I'll make sure it's denied." (Tr. 307.) Daniels then asked Thaler to tell Domingo what had happened and Thaler said, "well, Dave slammed the door at him pretty hard." (Tr. 307.) Daniels encouraged Domingo and Thaler to talk to postal clerk Carla Paxton who was sitting nearby when Daniels exited the room. Domingo took Paxton aside and spoke with her. (Tr. 307.) Next an officer from the Boulder Police Department arrived and took statements from Paxton, Daniels, Thaler and Negrotti. The police officer prepared a report. Under the section entitled "offense" the report states "incident–no crime." The officer spoke to Carla Paxton and she provided a written statement which states, "Terri Daniels was at least a foot and a half away from the door when it slammed shut. The door did not hit him." (Jt. Exh. 12 at 88.) The statement Paxton gave to the officer states that she heard the door slam shut and it shook the walls. "This was after Terry had exited the room and was about 2 feet from the door." (Jt. 12 at 92.) The statements Daniels, Thaler and Negrotti gave to the officer were basically consistent with their hearing testimony. (Jt. 12 at 92.) The officer also prepared a supplemental report stating that he had Daniels pull his sleeve up to check whether he could see a red mark or bruise and that he did not observe any obvious injuries to Daniels' shoulder. (Jt. Exh. 12 at 94.)

On November 29, 2021, Daniels sent an email to Thaler requesting that he initiate a harassment investigation regarding Negrotti's conduct. (Tr. 310, GC Exh. 34.) Thaler forwarded

that request to Domingo. (Tr. 862.) On November 29, 2021, Daniels made an appointment to be seen at Kaiser Permanente medical clinic the next morning. On November 30, 2021, a physician assistant saw Daniels and diagnosed him with a left shoulder contusion and placed him off work on November 30 and December 1, 2021, and placed him on modified activity for December 2 through 4, 2021. (GC Exh. 33 at 1–2.) Daniels also filed a Federal Employee Compensation Act (FECA) Office of Workers' Compensation Program (OWCP) claim stating that Negrotti injured him sufficiently during the door slamming incident so as to require medical attention. (Tr. 660, Jt. Exh. 12 at 71, 95–97.)

The witnesses who testified about this incident were Daniels who said the door hit him, Negrotti who said the door did not hit him and Thaler who testified he did not see whether the door hit him, but he did hear the door slam. No party called Paxton to testify. Thus, she was not subject to cross-examination to probe issues such as what direction she was facing, whether she was looking at the door at the exact moment Daniels exited, or whether as a current employee she had an interest in providing favorable testimony to the USPS or the union president. Because I was not able to assess Paxton's credibility I have given her statements, which are in evidence, little weight. With regard to this incident, I find the physician assistant's medical diagnosis of a left shoulder contusion to be the most reliable and persuasive evidence. Thus, based on this diagnosis as well as Daniels' immediate reporting of his injury, I credit his testimony that the door hit his shoulder. The physician assistant is more qualified to make a medical diagnosis than the police officer and the physician assistant who was employed by Kaiser Permanente had no motive to provide a false diagnosis. Daniels has insurance through the Veteran's Administration (VA) and he receives his regular medical care at their clinic. (Tr. 430, 437, 701.)

On December 3, 2021, Thaler conducted an investigatory interview which focused on the November 29, 2021, door slamming incident. (GC Exh. 38.) Based on the following pre-written interview questions, it is apparent that prior to this interview management had already decided that the door had not hit Daniels and that he submitted a fraudulent OWCP claim:

The witness statement provided to management states you were approximately 1.5 feet away from the door when it closed. Do you think it is appropriate to file a fraudulent claim for OWCP?

Do you think it is appropriate to report a false accident/injury to your manager?

Would you like to change or correct any of the answers you have provided to me before I conclude this interview?

On December 18, 2021, Slater Saile met with Domingo for a formal step A meeting regarding Daniels' two grievances which were the subject of the November 29, 2021 grievance meeting. They were not able to resolve the grievances. Thus, the grievances were transferred from the Union to the National Union for processing at step B. (Jt. Exhs. 10 at 6, 11 at 9.)

On December 22, 2021, Thaler submitted a worksheet for disciplinary action seeking Daniels' removal. (Jt. Exh. 16(a) at 83.) Thaler wrote that Daniels' false OWCP claim and his false report to the Boulder Police Department warranted termination. In support of such, Thaler

cited to the portion of the police report stating that no crime had been committed, that it was clear from Paxton's reports to the police that the door had not hit Daniels, and it was not clear how the door could have shut if it hit him. The statement then went on to discuss how Daniels had "lashed out" the previous day during a meeting with Humbarger and Rodarti "because he did not like how a meeting regarding grievances were handled on 12/21/21"

On February 3, 2022, Thaler conducted another interview with Daniels regarding his OWCP claim. (Jt. 13(a) 37–38.) Here again, it is evident from management's questions that they had already decided that Daniels submitted a fraudulent OWCP claim.

Do you think it's appropriate to file a false [OWCP] claim?

You previously received corrective action for making threats to other employees and management. Was filing this false claim you acting on those previous threats?

Also on February 3, 2022, Thaler submitted another worksheet for disciplinary action seeking Daniels' removal citing essentially the same basis as his December 22, 2021 worksheet. (Jt. Exh. 16(a) at 83–84.) Following a February 16, 2022 settlement meeting, POOM Ken Price advised Thaler that he was removing the requests for removal as a result of an EEOC settlement with Daniels. (Tr. 864.)

On February 10, 2022, a National Union representative and a USPS representative met for a step B meeting regarding Daniels' grievances alleging Rodarti violated standards for dignity and respect and the failure to allow him to work a full 8 hours after he arrived late on October 30, 2021. (Jt. Exhs. 10 at 6, 11 at 9.) They resolved both of those grievances by deciding that the case file failed to establish a violation of the National Agreement. (Jt. Exh. 10 at 1, 11 at 1.) Thus, the National Union did not arbitrate those grievances.

On September 2, 2022, the U.S. Department of Labor issued a letter advising Daniels that his claim for workman's compensation was being denied. (Jt. 12 at 95–97.) The stated basis for the denial was that:

[T]he evidence did not support that the injury or event(s) occurred as you described it. The reason for this finding is that based on the investigation findings, supervisor, and witness statements the incident did not occur as alleged. None of the reports provided support that you were hit by the door as claimed. The Boulder Police report also notes that they asked you to pull up your shirt sleeve to see if there was a red mark or bruise. No obvious injury to your shoulder was observed.

[Y]ou also did not submit any medical evidence containing a medical diagnosis in connection with the injury or event(s).

The letter went on to explain that the medical evidence Daniels submitted was signed by a physician assistant and that a physician assistant is not considered a qualified physician under the FECA unless the medical report is countersigned by a physician.

8. December 21, 2021, grievance meeting between Humbarger, Rodarti, and Daniels

Paragraphs 10(d) and (e) of the complaint allege that the Union violated Section 8(b)(1)(A) of the Act by Steward Humbarger processing Daniels' grievances regarding his disciplinary warning and 7-day suspension in a perfunctory manner. Paragraph 8(i) of the complaint alleges that the USPS violated Section 8(a)(1) of the Act by Rodarti threatening to emergency place Daniels for speaking during the December 21, 2021 grievance meeting. Paragraph 10(g) alleges that the Union violated Section 8(b)(1)(A) by failing to file a grievance regarding Rodarti refusing to treat Daniels with dignity and respect during that meeting.

On December 10, 2021, Daniels sent Humbarger an email requesting that he file grievances regarding his letter of warning for being late and his 7-day suspension regarding his statements to Taylor and Thaler. (GC Exh. 41(a) at 2.) Between December 12 and 20, 2021, Humbarger and Daniels exchanged emails in which Daniels provided Humbarger with information regarding the discipline related to him being late and he asked Humbarger to take certain steps to investigate it. (U. Exh. 59.) On December 12, 2021, Daniels requested that Humbarger request clock rings. Specifically, the email stated, "... the clock rings I'm requesting you pull are crucial as it will show I'm being singled out & that the policy of starting late is being enforced [disparately] with me ...". (U. Exh. 59 at 4.) Daniels provided Humbarger prior text messages with Thaler and Putzier when he texted them that he was going to be late and was not disciplined. (U. Exh. 59 at 8-9.) On December 16, 2021, Daniels met with Humbarger and provided him with a list of documents he requested that Humbarger obtain regarding the discipline. (GC Exh. 42 (a).) The list included the disciplinary warning itself, the investigatory interviews the USPS conducted with him on November 9, and December 3, 2021, a May 2021 form showing that when Daniels had requested an early start time Domingo denied his request, and a list of witnesses he wanted Humbarger to interview and written questions Daniels had prepared for him to ask the witnesses. (GC Exh. 42(a).) The witnesses were: Louisville and Lafayette Supervisors Leah McGowan, Dennis Kuntz, and Jorge Alonzo; High Mar Supervisors Thaler and Putzier; and carriers Kurt Sterdivan, Chris Konold, and Debra Vigil. (GC Exh. 42(a), 42(b), 42(c).) Daniels also provided Humbarger with a written statement dated December 16, 2021 that he had prepared regarding the events of October 30, 2021. (Jt. Exh. 8 at 19.)

The parties stipulated that Joint Exhibit 8 is the Union's grievance file related to its grievance regarding Daniels' discipline for being late to work on October 30, 2021. (Jt. Exh. 28.) That file demonstrates that Humbarger interviewed all the witnesses that Daniels asked him to interview except for Chris Konold who declined to be interviewed. (GC Exh. 42(a), 42(b), 42(c), Jt. Exh. 8 at 31, Tr. 1051.) Humbarger obtained Daniels' attendance records, the form showing that in May 2021, Domingo denied Daniels' request for an early start time, and the investigatory interviews of Daniels. (Jt. Exh. 8.) Humbarger did not request that the USPS provide the Union with any clock rings related to whether other High Mar employees had been late to work and were not disciplined for such. Humbarger did not include any documents showing disparate treatment evidence in the grievance file. (Jt. Exh. 8.) On November 9, 2021, Negrotti had attended investigatory interviews with High Mar carriers Shaylyn Boteler, Michelle Gutierrez, Bailey Taylor, and Robin Keller. (Jt. Exh. 14(a) 1-12.) During these meetings, Thaler asked all four of these employees to provide a reason for each date when they arrived late to work in October and

November 2021. Despite the fact that the employees did not provide an explanation for all the absences, the Union's grievance file did not include any evidence that the USPS had engaged in disparate treatment by failing to discipline these four employees. Sometime prior to December 21, 2021, Humbarger and/or Daniels prepared a list of written union contentions regarding the discipline for being late on October 30, 2021. The contentions were: (1) Daniels texted his supervisor to notify him that he would be late; (2) Daniels had approval from the Louisville and Lafayette supervisors to campaign there; (3) other carriers have been late, but were not marked as AWOL; and (4) Daniels had 30 years of service with no prior discipline and no progressive discipline. Because this was Daniels' first disciplinary notice for attendance, the Union sought a remedy that the 2-year letter of warning be modified to an official discussion.

During their December 16, 2021 meeting, Daniels asked Humbarger to obtain a copy of his 7-day suspension and the investigatory interviews that the USPS conducted with him on December 3, 2021 regarding his statements to Thaler and Tayler. He also provided questions for Humbarger to ask Thaler related to that discipline. (GC Exh. 42(a) and 42(c) at 1-3.) The parties stipulated that Joint Exhibit 9 is a copy of the Union's grievance file related to the 7-day suspension. (Jt. 28.) That file demonstrates that Humbarger obtained a copy of the discipline, interviewed Thaler regarding the incident, obtained a copy of Taylor's November 8, 2021 statement and Thaler's December 20, 2021 statement regarding the incident, and obtained the USPS' December 3, 2021 investigatory interview of Daniels related to the incident. (Jt. Exh. 9.) The Union's grievance file does not contain text messages and emails showing that Daniels had requested that his meeting with Negrotti take place on October 29, 2021, that Negrotti asked that the meeting take place on the morning of October 28, 2021, or that on the night of October 27, 2021, the parties scheduled the meeting for 8 a.m. the next morning. Prior to Humbarger meeting with Rodarti on December 21, 2021, for the informal step A meeting Humbarger and or Daniels prepared a list of the Union's facts and contentions.²¹ Those contentions include: (1) Prior to December 9, 2021, the USPS had never disciplined Daniels; (2) Daniels has 30 years of service and prior military service; (3) the USPS waited 39 days between the date Daniels allegedly made the threats and the day they disciplined him; (4) that if Taylor and Thaler felt threatened the USPS would have acted immediately instead of waiting over 30 days; (5) the date of the October 28, 2021 meeting had been changed and that prior to the scheduled meeting, Daniels had told his supervisor that he did not need to meet with Negrotti because he was not prepared to meet; (6) despite the fact that Daniels said he did not need to meet Negrotti showed up anyway for the meeting and Daniels again said he did not need to meet because he was not prepared to meet; (7) after Daniels said he was not prepared to meet Negrotti asked carrier Bailey Taylor to write a statement that Daniels was refusing union representation; (8) after Daniels heard this statement Daniels told her that if she wrote a false statement he may file charges on her; (9) Daniels said to Thaler that if he wrote a false statement he may also file charges on him; (10) on December 3, 2021, Daniels had apologized to Thaler and Taylor if they misunderstood his comments; (11) that Thaler had said he did not take Daniels statements as a threat; (12) that the USPS did not issue Daniels the discipline until after Daniels decided to run against current Union President Negrotti;

²¹ There is no testimony regarding who prepared the facts and contentions. However, because the facts and contentions accept all of Daniels' version of events including the events related to the door slamming incident, it is clear that Daniels played some role in drafting the document.

(13) that on November 29, 2021, Negrotti had slammed a door on Daniels during a grievance meeting but the USPS had not taken any disciplinary action against Negrotti; (14) Supervisor Rodarti who issued the discipline was not present for the incident at issue and was not Daniels' supervisor; and (15) the discipline was punitive rather than corrective. The remedy the Union sought in the written grievance was that the 7-day suspension be expunged. (Jt. Exh. 9, 4-8.)

On December 21, 2021, Daniels attended an informal step A grievance meeting with Humbarger and Rodarti at High Mar. The purpose of the meeting was to address the Union's grievances regarding the 7-day suspension and the written warning. The meeting opened by Humbarger and Rodarti talking for about five minutes. They discussed what the USPS was seeking related to the discipline and the two discussed an agreement regarding how long the discipline would be retained in Daniels' file. (Tr. 385–386, 1045, 1047, U. Exh. 42.) During this portion of the meeting, Daniels was silent while Humbarger conversed with Rodarti. (U. Exh. 42.) However, once it became clear that Humbarger was not going to seek a rescission of the discipline Daniels became upset and started speaking over Humbarger. (U. Exh. 42, Jt. Exh. 13(a) at 34.) Humbarger asked Daniels to let him handle the meeting as it was his grievance as the steward. (U. Exh. 42, Jt. 13(a) at 34.) Daniels then asked to caucus with Humbarger and left the office and went and got carrier David Gonzales. (Tr. 507, Jt. 13(a) at 34, U. Exh. 42.) When Daniels and Gonzales returned, Rodarti stated that while Daniels could be present for the meeting Gonzales could not. Daniels then stated that Rodarti was refusing his right to caucus. (Jt. 13(a) at 34.) Daniels became loud and accused Humbarger of working for management and selling out the carriers. (U. Exh. 42 at 1-2.) Rodarti told Daniels that if he continued to raise his voice he would put Daniels on emergency placement. (Tr. 387, 508, U. Exh. 58, Jt. 13(a) at 34.) Daniels then asked Gonzalez to write a statement regarding what he had witnessed and he left the meeting. After Daniels left, Rodarti and Humbarger met for about five more minutes. They resolved the grievances by agreeing to reduce the retention period for the 7-day suspension from 2 years to 6 months and the disciplinary warning from 2 years to 3 months. (Jt. Exhs. 8-9.)

Humbarger testified about what occurred during the December 21, 2021 meeting and he prepared a written statement about it. (Tr. 1044–1049, U. Exh. 42.) Rodarti also testified about the meeting. (Tr. 506–510, 515–517.) From these accounts it is clear that during the grievance meeting Humbarger did not present to Rodarti any of the written contentions set forth in the Union's grievances nor did he seek the removal of either disciplinary notice. Rather, the only issue he discussed with Rodarti was how long the USPS would retain the discipline. Further, Humbarger did not present evidence that other employees were late to work and were not disciplined. He also did not present facts demonstrating that on October 28, 2021, when Negrotti asked Taylor and Thaler to prepare statements that Daniels was refusing union representation, Negrotti was asking them for statements which would have been a gross misrepresentation of what really happened that morning.

Following this meeting, Daniels requested Humbarger file a grievance alleging Rodarti violated the USPS' policy regarding treating employees with dignity and respect during this meeting. (Tr. 389, U. Exh. 58.) The Union admits that it did not file this grievance. (Jt. Exh. 20 at 3.) Humbarger testified that in his view there was no basis for filing the grievance, because Daniels was the one being aggressive during the meeting. (Tr. 1058.)

9. The USPS denying Daniels' requests for union time

Paragraph 8(k) of the complaint alleges that between December 28, 2021 and February 1, 2022, the USPS violated Section 8(a)(1) of the Act by denying Daniels union time to meet with his union representatives. On December 10, 2021, Daniels sent Humbarger an email documenting that on December 8, 2021, he had requested the USPS provide him with union time to gather information regarding his grievances. (U. Exh. 59 at 1.) On December 15, 2021, Daniels and Thaler exchanged text messages about union time. Thaler told Daniels that he had been instructed that he could not give Daniels personal union time to work on grievances rather he could only provide Daniels union time if he was meeting with his steward and 30 minutes was the maximum he could give him. (GC Exh. 63.) Daniels responded that he needed more than 30 minutes to meet and write statements concerning the serious nature of the discipline he had recently been issued. (GC Exh. 63.) Thaler testified that he never denied Daniels union time for the purpose of meeting with his union representatives. (Tr. 866.) On December 16, 2021, the USPS provided Daniels with 30 minutes of paid time to meet with Humbarger. (Tr. 604. U. Exh. 59 at 4–6.)

On December 24, 2021, Daniels requested union time to write statements in order to provide his steward information to file grievances. (Tr. 1061–1062, U. Exh. 59 at 12.) On December 27, 2021, Daniels submitted a request for two hours of union time to work on statements of fact for grievances. (Tr. 1060–1061, U. Exh. 59 at 13.) It appears that Daniels submitted another request for 3 hours of union time, but the document is not sufficiently clear to tell whether Daniels submitted it on December 9, 2021, or whether the request related to his December 9, 2021 discipline. (Tr. 1062, U. Exh. 59 at 11.) On December 28, 2021, Daniels sent an email to Humbarger stating that his additional requests for union time had been denied. (U. Exh. 59 at 10.)

On July 15, 2022, the Union filed a grievance regarding Daniels requesting Union time to meet with a steward on June 13 and 15, and again on July 5, 2022, the grievance stated that Daniels request was finally granted on July 7, 2022. The grievance stated,

The Union contends that management violated the employees rights and violated the agreement when they failed to facilitate or allow the employee time with a steward for three weeks after the initial request. (U. Exh. 22 at 2.)

On July 15, 2022, Slater Saile and Thaler settled that grievance by agreeing that management would abide by the contract, cease delaying the opportunity for an employee to meet with his steward, allow the Union to file the grievance at issue and pay Daniels \$50 for violating the contract by denying him union time to meet with his steward. (U. Exh. 22.) On May 26, 2023, the Union filed another grievance regarding the USPS denying Daniels union time on May 1, 2023 to meet with his steward. The parties settled that grievance by the USPS agreeing to pay Daniels \$200 for violating the contract by denying him union time and that any future violations would result in a further escalation of a financial remedy.

Article 17 of the parties' contract provides that the USPS will allow stewards reasonable time to investigate and process grievances and to interview aggrieved employees and witnesses during working hours. It does not provide employees with paid time to gather information or work on their own grievances. (Jt. Exh. 1 at 89–95.)

10. Daniels leaving the building on June 30, 2023, while Negrotti was at the facility

Paragraphs 9(a), 10(h) and (i) of the complaint allege that on June 30, 2023, the Union by Negrotti violated Section 8(b)(2) of the Act by reporting Daniels AWOL and requesting that the USPS discipline him. Paragraphs 9(c) and (d) allege that the USPS violated Section 8(a)(3) of the Act by Supervisor Putzier on June 30, 2021, telling Daniels the USPS was going to mark him AWOL and issuing him a written warning on July 13, 2023, for his June 30, 2023 conduct.²² Thaler testified that following the November 29, 2021 door slamming incident, he implemented a policy under which he did not allow Negrotti to visit the High Mar station when Daniels was present. (Tr. 867.) Further, Thaler testified that he advised Negrotti of this policy and that they had many conversations about it. (Tr. 867.) During a February 16, 2022 EEO mediation, Daniels discussed this policy with POOM Price who agreed with the policy of having Negrotti schedule his visits to High Mar, in order to limit Daniels and Negrotti's interactions. (Tr. 398.) In September 2022, Thaler left High Mar as a result of the USPS hiring him into a position as a labor relations specialist. (Tr. 408, 830, 859.) After Thaler left he and Daniels spoke via telephone. During the call, Thaler told him that on his last day of work at High Mar, Negrotti spoke to him and said that he hated to see him go and he enjoyed working with him. However, Negrotti said he disagreed with Thaler about "the fact that you kept me out of here when Terry was working, and that stops today." (Tr. 408–409.) On September 14, 2022, Daniels texted Thaler stating, "Not that I think it's going to be a[n] issue but does the new station management know about Negrotti not coming in here while I'm at work?" (GC Exh. 45.) Thaler replied, "I think I did one better. Told them no stewards can come in and interact with you without authority to. If they don't take my advice, it's on them." (GC Exh. 45.)

After Weston Cavness replaced Thaler as the manager of customer service at High Mar, he continued following the policy by allowing Daniels to go outside the facility when Negrotti was present. (Tr. 411–412.) For example, on October 5, 2022, Daniels went outside the facility when Negrotti was present and Cavness then sent Daniels a text message that Negrotti was gone and that Daniels could head back into the facility. (GC Exh. 46.) Daniels testified that on that day, Cavness told Daniels that he should go outside and that he went to an adjacent parking lot where he could see when Negrotti left the building, and he was outside for about 20-25 minutes. (Tr. 412-413.) Cavness did not discipline Daniels for going outside. (Tr. 414.)

On June 30, 2023, Daniels was working at the High Mar facility when another carrier advised him that Negrotti was at the facility. (Tr. 415.) When Daniels saw Negrotti he walked outside. At 7:40 a.m., Daniels sent a text message to Putzier, who was outside on a smoke break, he stated that Negrotti was not supposed to be at the facility when he was present and that management required Negrotti to schedule his visits to the facility to avoid them coming into contact. He asked Putzier to text him when Negrotti left. (GC Exh. 47 at 1.) At 7:41 a.m., Putzier replied to Daniels that she did not know anything about the agreement and she needed him to come inside and process his mail. (GC Exh. 47 at 1.) Daniels texted back that he was afraid to be in the facility with Negrotti. Putzier replied that she needed him to come in and process his mail and that

²² The complaint does not contain a conclusionary paragraph related to the allegations in paragraph 9 of the complaint. However, I find pars. 9, 10(h), 10(i), 10(j) and 14 put the parties on sufficient notice as to the allegations and that the matters were fully litigated and briefed. *Service Employees Local 32BJ v. NLRB*, 647 F.3d 435, 447 (2d Cir. 2011). Further, neither the USPS nor the Union raised the issue of notice during the hearing or in their briefs.

she would keep the peace. (Tr. 416, GC Exh. 47 at 1.) Daniels replied that if she required him to come inside while Negrotti was present he was sorry, but he would put in a leave slip because it was not worth the risk of being around Negrotti. (GC Exh. 47 at 1.) At 8:14 a.m., Putzier sent Daniels a text message which stated, “We are done.” (GC Exh. 47 at 1.) Daniels saw Negrotti leave and then he returned to work. Later he left the facility and delivered his route. (Tr. 417.) The allegations against the Union in paragraphs 10(h) and (i) of the complaint allege that Negrotti caused the USPS to discipline Daniels by reporting him AWOL on June 30, 2021. The allegations arise out of a conversation that Daniels testified he had with Putzier after he returned from his route that day. For reasons I will discuss in the credibility section of this decision, I do not credit Daniels’ testimony with regard to that conversation.

On July 13, 2023, Weston Cavness signed and issued Daniels a letter of warning for failing to follow Putzier’s instruction to come back inside and process his mail on June 30, 2021. (Tr. 418; Jt. Exh. 12 at 13.) Daniels filed a grievance and an EEO complaint regarding this discipline. On August 24, 2023, the USPS and the National Union entered into an agreement at the step B stage of the grievance process wherein they agreed that the USPS had just cause to issue the discipline, but that the retention period for the discipline would be reduced to 1 year. (Tr. 1194; Jt. Exh. 12 at 5.) In that settlement, the parties stated that Daniels had claimed that there was a standing policy at the High Mar station for Negrotti and Daniels not to be in the building together. However, they stated that the case files showed no evidence of such a policy. (Jt. Exh. 12 at 5.)

11. USPS refusing to transfer Daniels

Paragraph 8(l) of the complaint alleges that since about June 28, 2024, the USPS has refused to hire and/or transfer Daniels to a laborer custodial position. On July 28, 2023, Daniels went to the VA medical clinic to obtain some assistance with the stress he was experiencing related to his work. (Tr. 424.) The provider recommended Daniels apply for leave under the Family Medical Leave Act (FMLA). In order to get the necessary paperwork filled out the provider scheduled Daniels for an appointment with his primary doctor, Travis Peveto, who Daniels had previously seen for a few visits. (Tr. 430.) On August 2, 2023, Daniels attended an appointment with Dr. Peveto. (GC Exh. 49 at 6.) Daniels showed up early and checked in. Daniels testified that while he was in the waiting room he received a call and the woman on the phone said that he needed to make a follow up appointment with a VA mental healthcare provider. (Tr. 431.) Daniels said that he would schedule an appointment and he hung up. (Tr. 431.) Daniels then met Dr. Peveto. During the visit, Daniels talked with Dr. Peveto about issues with the Union and management at work. Further, Daniels advised him he was seeking approval of FMLA paperwork due to the stress he was experiencing at work. Daniels testified he also told the doctor that he felt that more trouble was coming for him at work and that he did not trust anything with the Union or management. (Tr. 432.) Dr. Peveto’s treatment notes state Daniels reported that at work he had experienced violence and threats of violence, that he recently left work for 12 minutes for his safety to get away from an individual, which causes him stress, and he was reported as being AWOL. The notes state, “He feels he is being setup to get fired, ‘people hiding mail in my truck,’ ‘trying to set me up.’” He reported that a union representative had previously physically assaulted him and that person was banned from the building. (GC Exh. 49 at 6.) Dr. Peveto completed FMLA

paperwork during the visit. As Daniels was leaving, Dr. Peveto said that he needed to make a follow-up appointment with him and with a mental healthcare provider. (Tr. 434.) Daniels responded that he knew that because they had called him while he was waiting in the lobby. (Tr. 434.) Daniels then spoke to the woman at the front desk about making a follow-up appointment. He told her that she had called him earlier while he was sitting in the waiting room. (Tr. 435.) Daniels and the woman at the front desk then went back and forth arguing about whether she had called him while he was sitting in the lobby. (Tr. 435.) The woman at the front desk then got up and went and got the doctor's nurse. The nurse asked Daniels what his problem was. Daniels then continued on about how the person at the front desk had called him while he was in the lobby and the nurse told Daniels he needed to leave. (Tr. 435.) Following Daniels' visit Dr. Peveto prepared an addendum to his treatment notes stating as follows:

After the visit patient exited and approached the front desk MSA inquiring about a message she left on patient phone while he was sitting awaiting his appointment. The MSA informed the patient that she nor anyone else had called and left a message with the patient while he was waiting in the lobby and confirmed with the PACT team that no contact attempts had been made. Patient became argumentative and accusatory stating that he had witnessed the MSA call him while he was in the waiting room. PACT nursing was called upon and diffused the situation and escorted him out.

Based upon this interaction after the visit and the vague reports of workplace persecution and reprisals along with paranoia I am questioning if there is an underlying psychiatric disorder.

Reached out to MH RN [mental health registered nurse] Sunny Mosal, she states his major concern recently was worsening headaches. He did not mention this today.

At his appointment 8/21 we will discuss this further, suspect neuroimaging may be helpful to rule out structural disease. Will reach out to MH provider at that time to coordinate followup cares (sic) based on how this progresses. (GC Exh. 49 at 11.)

Dr. Peveto's treatment notes from Daniels' August 2, 2023 visit did not include any mental health diagnoses. (Tr. 459–460.) On August 3, 2023, Dr. Peveto called the USPS Postal Inspection Service which the USPS documented in a report. (Jt. Exh. 16(a) at 104–105.) The report says that Dr. Peveto reported that Daniels was his patient and Daniels had recently reported being treated badly at work and if it didn't stop, he would "have to defend" himself. The report goes on to state that Daniels appeared mentally unstable to the doctor, "enough so that he wanted to make sure we were informed." On August 4, 2023, a Postal Inspector reached out to Dr. Peveto to obtain more details. During that discussion, Dr. Peveto repeated much of the same information he had previously provided. While Dr. Peveto did not have any names to provide he stated that Daniels had reported a union representative slamming a door into his shoulder and that Daniels said he would have to "defend himself" if the situation got worse. Dr. Peveto also provided information regarding Daniels' interaction with the front office staff following his visit. The report states,

Daniels exhibited behavior that was “delusional” and “schizophrenic” and that Dr. Peveto believed Daniels was mentally unstable because of his “delusional and paranoid behavior.” (Jt. Exh. 16(a) at 105.)

5 On August 4, 2023, the USPS put Daniels on emergency placement which provided for paid administrative leave. (GC Exh. 50.) At the time the USPS put Daniels on paid administrative leave supervisor Cavness provided him a form entitled “Return to work from a mental or nervous condition”. (GC Exh. 58.) Cavness told Daniels that when the form was complete he could turn it into the occupational health nurse, and management would review it in order to determine if and when he could return to work. (Tr. 442, 688.) The USPS’s Emergency Placement notice dated 10 August 4, 2023, states that Daniels’ emergency placement would be terminated as soon as it is reasonably possible to conclude that the above-described risk of harm to the Postal Service will cease. Daniels testified that he has provided the form to multiple of his mental healthcare providers, but to date none of them have been willing to complete and sign it. (Tr. 664-665, 689-690, 696.) The Union filed a grievance regarding Daniels’ emergency placement. (U. Exh. 28 at 15 6.) During a September 23, 2023 step B meeting, the National Union and the USPS settled that grievance by agreeing that the USPS had the authority to put Daniels on emergency placement. (U. Exh. 28 at 1.)

In June 2020, Daniels submitted a request to transfer to various locations and crafts throughout Colorado. (Tr. 95-96.) On February 16, 2022, POOMPrice agreed as part of an EEOC 20 settlement that he would review and get back to Daniels within one week about transferring him to a Lafayette custodial position. (GC Exh. 44.) The USPS did not offer Daniels that transfer.

On June 26, 2024, while Daniels was still on emergency placement, Zuliema Peterson, a senior human resources workforce planning specialist for the USPS, advised Daniels that his name had been reached for a transfer to a custodial position at the Longmont post office. She asked him 25 if he was interested in the position. (Tr. 466, GC Exh. 52 at 5.) Daniels asked Peterson about the days and hours of the position and said he would get back to her. (Tr. 466.) On June 28, 2024, Daniels sent Peterson an email stating he would accept the position. (Tr. 468, GC Exh. 52 at 8.) Peterson then advised Daniels that she had passed him over for the position and selected the next candidate because she saw that he put in for a disability retirement and a custodian position requires 30 a lot of movement. (GC Exh. 52 at 9.) Daniels responded that his disability retirement had not been approved so his status had not changed. He further advised her that his doctor recommended the custodial job over his current job because it was less physical. (GC Exh. 52 at 10.) Peterson said she would reach out to “labor and see what they suggest.” (GC Exh. 52 at 12.) Peterson then advised Daniels that she called him because he was next in line on the eReassign, but she had not 35 yet made him a job offer and then she asked him if he was still on emergency placement. (GC Exh. 52 at 1.) The USPS states that it did not transfer Daniels to the custodial position because he was still on emergency placement and unable to safely return to work. (U. Exh. 31 at 7, Jt. Exh. 17, 18.) While the complaint alleges the USPS violated the Act by failing to offer Daniels a transfer, it does not allege that it violated the Act by putting Daniels on emergency placement.

The Union filed a grievance regarding the USPS denying the transfer. At the time of the hearing, the parties had reached an impasse at step B and the National Union had decided to arbitrate the issue. (Tr. 1127, U. Exh. 31.)

III. CREDIBILITY

A. General Principles

Evaluating certain issues of fact in this case requires an assessment of witness credibility. Credibility determinations involve consideration of the witness' testimony in context, including factors such as witness demeanor, "the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole." *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), *enfd.* 56 Fed.Appx. 516 (D.C. Cir. 2003); see also *Hill & Dales General Hospital*, 360 NLRB 611, 615 (2014). Corroboration and the relative reliability of conflicting testimony are also significant. See, e.g., *Pain Relief Centers, P.A.*, 371 NLRB No. 70 slip op. at 2 fn. 4, 14 (2022), *enfd.* 2023 WL 5380232 (4th Cir. 2023). As a general matter, in making credibility resolutions here, I have considered the demeanor of the witnesses, the context of their testimony, corroboration via other testimony or documentary evidence or lack thereof, the internal consistency of their accounts, and the witnesses' apparent interests, if any.

B. USPS' Failure to Call Relevant Witnesses

The USPS failed to call Kenneth Price, Ron Domingo, Margaret Putzier, and Weston Cavness, all of whom the General Counsel named in the complaint and had knowledge of facts relevant to the case. Thus, many statements attributed to them are unrebutted. Further, I must consider whether an adverse inference is appropriate with respect to allegations against the USPS because the USPS did not call them or explain their failure to do so. The adverse inference rule consists of the principle that "when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him." *Sparks Rest*, 366 NLRB No. 97, slip op. at 10 (2018), and *Auto Workers v. NLRB*, 459 F.2d 1329, 1335–1336 (D.C. Cir. 1972). "When a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge." *Champion Rivet Co.*, 314 NLRB 1097, 1098 fn. 8 (1994). "It may be inferred that the witness, if called, would have testified adversely to the party on that issue." *Id.* Further, such an inference may be drawn when a party fails to explain their failure to call relevant witnesses. *Martin Luther King, Sr., Nursing Center*, 231 NLRB 15 at fn. 1 (1977) See also, *Villa Maria Nursing Center*, 335 NLRB 1345, 1355 (2001), *enfd.*, 49 Fed.Appx. 289 (11th Cir. 2002); *Food Lion, Inc.*, 304 NLRB 602, 608, fn. 4 (1991). I do not draw a blanket adverse inference regarding every issue in the case because of the USPS' failure to call Price, Domingo, Putzier and Cavness. However, I do find it appropriate to draw adverse inferences regarding specific issues because the USPS failed to call them. Further, the parties failure to call these witnesses resulted in a number of witnesses' testimony being unrebutted. I have generally credited the unrebutted testimony of the witnesses in this case.

C. Credibility Findings Related to Specific Witnesses and Events

Kenneth Price and Ron Domingo

One of the central issues in this case is whether General Counsel established that the USPS' managers, in particular POOM Price and PM Domingo bore animus towards Daniels because of actions he took while carrying out his steward duties and because he ran against incumbent Union President Negrotti. I credit Daniels and Konold's un rebutted testimony which demonstrates their animus towards Daniels because of his union activities. The strongest evidence related to this issue was Daniels' unrefuted testimony that about a week after he campaigned at Lafayette and Louisville, Thaler told him that during a management meeting Price "went hard" on and "ripped into" Lafayette and Louisville supervisors for letting Daniels campaign. Further, during the meeting Price stated "why are you guys letting him campaign? [...] We don't support him being president." (Tr. 253, 660.) My decision to credit this testimony is buttressed by the fact that Thaler testified after Daniels and did not rebut that testimony. This is particularly surprising since the USPS' attorney asked Daniels if he would be surprised that Thaler would deny this testimony and he asked Daniels if he wanted to retract it. Daniels said no. (Tr. 659-660.) I also credit Konold's un rebutted testimony regarding this issue. Konold testified that a few days after Daniels campaigned at Lafayette, he saw Domingo and Price at the station speaking with Supervisors Dennis Kuntz and Leah McGowan. (Tr. 774-775.) Konold later asked Kuntz and McGowan, why Price and Domingo had come to the station. McGowan or Kuntz responded that they had come because they were after Daniels for campaigning, and Kuntz told Konold that Price "despised Terry Daniels". (Tr. 775.) First I credit this testimony because it was un rebutted. Secondly, my findings are consistent with a November 16, 2021 text message exchange between Daniels and Kuntz, wherein Kuntz stated that based on instructions from upper management, Daniels could not come back to Lafayette to campaign during his off hours. (GC Exh. 31.) Further, my findings are consistent with evidence that the USPS favored Negrotti over Daniels in the election for union president. The record is replete with evidence that the USPS, specifically Domingo treated Negrotti favorably. For example, Domingo allowed Negrotti to work a flexible work schedule, allowed him to work staggering amounts of hours at double time, time and a half, and with night differential pay and had supervisors enter his time rather than requiring him to clock in or out.

I credit Daniels' testimony regarding the events surrounding Domingo's search of his car and the materials removed therefrom. Neither Domingo nor any other witness rebutted Daniels' testimony regarding the events prior to Hice's arrival at the facility. As discussed below, Hice testified about the review of the materials removed from Daniels' car, but I discredit this portion of his testimony. Further, I find Domingo's conduct on June 10, 2020, to be consistent with his conduct on June 8, 2020, when he provided Hice with information regarding Daniels' conduct as a steward, which I find was intended to undermine Daniels' standing with the union. In both of these instances, Domingo had no reason to involve himself in these purely internal union issues, but he chose to involve himself because he bore animus toward Daniels regarding how he carried out his duties as a shop steward.

Finally, I draw an adverse inference from the USPS' failure to call Domingo or Price or explain their failure to do so. I find had they called them their testimony regarding the issue of animus toward Daniels would have supported the General Counsel's case. Domingo transferred to a USPS facility in Tampa, Florida, in about January 2022. (Tr. 417, Jt. Exhs. 16(a) at 74, 12 at

16.) Domingo was still employed by the USPS at the time of the hearing because on January 22, 2025, which was less than two weeks before the hearing opened, the USPS filed a motion requesting that I allow Domingo to testify remotely. (GC Exh. 1(ak).) In the motion, the USPS stated that Domingo was currently employed by them as a manager of customer service operations in Tampa, Florida. Thus, the evidence established that they could have called Domingo, but chose not to do so. There is no evidence in the record regarding why they did not call Price.

1. Margaret Putzier

June 30, 2023, is the date when Daniels went outside while Negrotti was at the High Mar facility. Daniels testified as follows regarding a conversation that he and Putzier had that day when he returned from his route. Daniels testified that Putzier said to him, “I’m sorry, Terry. You’re really going to hate me.” Daniels asked, “what did I do now?” and Putzier replied, “well, you didn’t do anything, but I have to AWOL you for leaving this morning when Dave was here.” Daniels asked who told her that she had to AWOL him, and Putzier replied that it was the new PM Robert Archibald. (Tr. 417.) Daniels testified he asked Putzier how Archibald knew he had left the station, since PM Robert Archibald did not work at High Mar. Daniels asked, “did you tell him?” and Putzier replied, “I didn’t. Your Union did.” (Tr. 418.)

Despite the fact that neither party called Putzier or Archibald, I discredit Daniels’ testimony that Putzier told him that it was his union who reported to management that he had been AWOL when he went outside. I discredit Daniels because first I note that Daniels provided inconsistent statements about the conversation. At hearing he testified Putzier told him that his union reported him AWOL. (Tr. 418.) However, during a July 10, 2023 investigatory interview he stated that when he asked Putzier if it was Negrotti who reported him AWOL Putzier “just smiled.” (Jt. Exh. 12 at 38.) Further, Putzier’s text messages with Daniels, while he was outside away from his workstation on the morning of June 30, 2023, demonstrate that she repeatedly asked Daniels to come inside and perform his job and that she told him she would keep the peace between Daniels and Negrotti. However, Daniels refused and said he would put in leave rather than come inside. Putzier’s final text message demonstrated her clear frustration at Daniels’ behavior. It stated, “We are done.” I find the Putzier’s contemporaneous text messages make it more likely that it was Putzier who reported Daniels AWOL rather than Negrotti. In discrediting Daniels regarding this incident, I also rely on the fact that on July 10, 2023, Daniels provided the USPS with a statement wherein he said he was only outside for 12.5 minutes. (Jt. 12 at 24, 37, 72.) However, Daniels’ text messages with Putzier demonstrate that by 7:42 a.m., he was outside, it says, “I am afraid to be there when he’s there” and at 8:14 a.m. Putzier texted “We are done” to which Daniels replied “ok.” (Jt. Exh. 16(a) at 57–58.) I find that Daniels was still outside when he sent the last message because had he returned to work, he would have said so. Thus, these text messages demonstrate that Daniels was outside from at least 7:42 to 8:14 a.m.

2. Jeffery Rodarti

The USPS called former supervisor Jeffery Rodarti. I recognize that as a former supervisor Rodarti had no financial interest in providing the USPS favorable testimony. However, one area where I do not credit Rodarti's testimony is his testimony that Daniels start time on October 30, 2021, was 8 a.m. This may have been because he was an acting supervisor at High Mar that day and unaware of the start time. Further, documents corroborate Daniels' testimony over that of Rodarti. Daniels' time records which show a start time of 8:30 a.m., corroborate his testimony. (GC Exh. 8 at 23.) Further, Rodarti testified that on October 30, 2021, by about 8:15 a.m. all the letter carriers had arrived at work except for Daniels and another carrier approached him and reported that they were concerned because Daniels had not yet shown up for work. (Tr. 486.) Documents contradict this testimony. Letter carriers Shaylene Boettler and Michelle Gutierrez both worked on October 30, 2021, and they respectively clocked in at 8:13 and 8:40 a.m. (GC Exh. 56 at 153, GC Exh. 57 at 158.) Thus, neither Boettler nor Gutierrez arrived by 8 a.m., which Rodarti testified was the start time that day. Further, contrary to Rodarti's testimony, that all the carriers except Daniels had arrived by 8:15 a.m., Gutierrez was not at work until 8:40 a.m. Moreover, Boettler and Gutierrez' time records for the entirety of the calendar year 2021, demonstrate that they regularly reported to work after 8:30 a.m. (GC Exh. 56 and 57.)

Rodarti testified that Daniels' union activity on October 30, 2021, was only relevant to the USPS' decision to issue Daniels discipline for his late arrival in that it demonstrated that he was not honest about why he was late. (Tr. 494.) I discredit this testimony because from moment one Rodarti, Domingo and Price's statements and conduct demonstrate that what they were upset about was the fact that Daniels was late because he had been campaigning for the office of Union president.

3. Steward Craig Humbarger and Rodarti's testimony regarding the December 21, 2021 grievance meeting

I credit Humbarger and Rodarti's version of the December 21, 2021, informal step A grievance meeting over Daniels' testimony. I find that Rodarti told Daniels that if he continued to speak loudly and aggressively, he would put him on emergency placement. I discredit Daniels' testimony that Rodarti told him that he could not speak and that if he continued to do so he would be emergency placed. I further find that Rodarti did not deny Daniels the opportunity to caucus with Humbarger. Consistent with the testimony of Rodarti, Humbarger and Daniels, I find that during the meeting, Humbarger failed to seek the rescission of either the 7-day suspension or his written notice of discipline. I credit Rodarti and Humbarger over Daniels because their statements were generally consistent with their hearing testimony and the written documents they prepared regarding the events. I find their version more logical than Daniels and I find that there were multiple instances where Daniels exhibited angry and aggressive behavior. For example, his own primary care physician, Dr. Peveto reported such conduct to the USPS.

4. David Negrotti and Terry Daniels

I found significant credibility issues with both Negrotti and Daniels' testimony. One example of Negrotti's lack of credibility is his testimony that High Mar supervisors did not maintain a policy where Negrotti could only come to that facility when Daniels was not present. (Tr. 1192.) Thaler testified there was such a policy and General Counsel introduced documents demonstrating the existence of the policy. (GC Exhs. 45–46.) Thaler further credibly testified that he had many conversations with Negrotti about the policy. (Tr. 867.) Another example regarding Negrotti's lack of credibility is demonstrated by his testimony regarding Daniels' October 27, 2021, request for a meeting on the afternoon of October 29, 2021. Negrotti testified that when he attempted to schedule that meeting, Thaler denied his request, and insisted that the meeting take place at 8 a.m., on October 28, 2021, due to "operational needs". (Tr. 1185.) On October 27, 2021, Negrotti sent Daniels an email stating the same thing. (GC Exh. 24 at 4.) However, after Daniels received Negrotti's text message Daniels texted Thaler to ask if he had told Negrotti that due to operational needs they would have to meet on Thursday. (GC Exh. 25 at 2.) Thaler responded, no it was Negrotti who asked that the meeting take place on Thursday, October 28, 2021, rather than Friday, October 29, 2021, stating, "Maybe [Negrotti] has something going on Friday." (GC Exh. 25 at 1–2.) Further, Negrotti's conduct on the morning of October 28, 2021, is one of many examples, which demonstrates Negrotti had no intention of providing Daniels honest or fair union representation. Prior to the scheduled meeting on October 28, 2021, Daniels advised both Negrotti and Thaler that because of the change in the time of the meeting he was not prepared to meet with Negrotti. Negrotti testified that prior to the scheduled meeting he did not see that message. Thus, he showed up for the meeting, then when Daniels told him he was not prepared to meet, Negrotti insisted that Union Secretary Bailey Taylor come witness and write a statement that Daniels was refusing to meet with him. Negrotti also ask Thaler to write such a statement. However, Negrotti knew full well that the statements he was requesting from Taylor and Thaler were a gross misrepresentation of what really happened that morning.

I also found Negrotti's testimony lacked credibility because he feigned ignorance about his own earnings. The parties' contract provides for the USPS to pay carriers a night shift differential when working between 6 p.m. and 6 a.m. (Jt. Exh. 1 at 29.) The USPS' time records have a specific code for such hours. Yet, when General Counsel questioned Negrotti about receiving a night shift differential on dates when his time records showed him working at 3 a.m., Negrotti testified that he did not even know what a night differential was. (Tr. 1237.) Further, Negrotti testified that he did not know the pay code for the night shift differential. (Tr. 1222.) I do not find this testimony credible. Negrotti has been a shop steward dating back to about 1999. Further, Article 8 Section 7 of the parties' contract is entitled Night Shift Differential and the extra wage rate is set out in Appendix A, it provides for additional compensation for hours carriers work between 6 p.m. and 6 a.m. It is simply not credible that Negrotti would not be aware of such especially considering that the USPS frequently paid him for a night shift differential. (GC Exh. 60.)

I also find that many portions of Daniels' testimony lacked credibility.²³ One example of Daniels' lack of credibility related to an incident when Daniels testified that Negrotti whipped a

²³ In its brief, the Union focuses a great deal of its arguments regarding Daniels' lack of credibility on the finding of a Boulder, Colorado District Court Judge related to a temporary restraining order (TRO) that Daniels sought against

clipboard at him and hit him in the chest with it while Daniels was sitting in a chair. (Tr. 57.) However, in an affidavit Daniels testified that Negrotti had nudged him with the clipboard on his shoulder. (Tr. 580.) Another incident where I find Daniels exaggerated his testimony related to statements made by Jorge Soto during the October 14, 2021, union meeting for the nomination of officers. At hearing Daniels testified that after he was nominated for the office of union president, Soto stated that Daniels had been found guilty of sexual assault. (Tr. 627.) However, on cross examination Daniels acknowledged that in an October 14, 2021 email Daniels stated Soto had accused him of sexual harassment. (Tr. 628.)

Throughout the events at issue in this case, Daniels was his own worst enemy. Repeatedly when Daniels was faced with a situation where he felt wronged by the Union or the USPS, he failed to let the matter go for the moment and later pursue it through an appropriate channel. Instead, he repeatedly got upset and insisted on responding immediately. For example, on December 21, 2021, when Humbarger failed to seek the removal of either of his disciplinary notices, rather than waiting for an opening in the meeting to present his contentions, Daniels instead became loud and angry and started accusing Humbarger of colluding with management. Consistent with this behavior is his conduct on August 2, 2023, while interacting with the woman at the front desk at the VA clinic. Rather than dropping the immaterial issue of whether she had called him while he was in the waiting room, he continued to argue the issue with her. Whatever Daniels said to her was significant enough for her to get a nurse to escort Daniels out of the office.

Despite my reservations about both Daniels and Negrotti's testimony I have credited certain portions of both of their testimony. It is not uncommon in making credibility resolutions to find that some but not all of a particular witness' testimony is reliable. See, e.g., *Farm Fresh Company, Target One, LLC*, 361 NLRB 848, 860 (2014).

I credit Daniels' testimony that Thaler and Putzier had a flexible policy at High Mar whereby if a carrier was going to arrive late to work they could text their supervisor and let them know they were going to arrive late. (Tr. 211.) Further, when they arrived late Thaler and Putzier did not discipline them and depending on how late they were they would allow carriers to work past their scheduled end time, up to about 6 p.m., rather than having to put in leave to make up for their late arrival. (Tr. 212–213.) My credibility finding is consistent with the record including carriers' time records. Additionally, Thaler's testimony corroborated much of Daniels' testimony regarding this issue. (GC Exh. 56 and 57.) I drawn an adverse inference that had the USPS called Putzier she would have provided testimony that the USPS engaged in disparate treatment of Daniels by issuing him a written discipline for being late on October 30, 2021, when Putzier and Thaler did not discipline other carriers for such conduct. This inference is supported by multiple documents in the record.

Pete Dighans. The judge found that Daniels had not met his burden to prove a TRO was warranted. She found that during a union meeting Dighans had rushed at Daniels and that Daniels had reciprocated. (U. Exh. 44 at 106.) She found that Daniels' testimony was not credible and he had exaggerated the events. I have not relied on her credibility findings because I was not present to observe the demeanor of the witnesses for that hearing. Further, the record before me, including my observation of the witnesses at hearing, provides sufficient information to allow me to make credibility findings.

5. Hice and Daniels

There are important issues in the case where Hice and Daniels provided testimony wherein they rebutted each other's testimony. As discussed below, on one important issue I credit Hice and another I credit Daniels.

5 I credit Hice over Daniels regarding an alleged conversation at the Union hall on about May 22, 2020. Daniels testified that during this conversation, Hice told Daniels about a deal where Domingo would offer Daniels a full-time paid union position if he stopped pursuing or withdrew grievances related to Greta Smadbeck, 400 hours of cross craft work and a dignity and respect grievance for Reno Kraiser. (Tr. 83, 484.) Daniels testified that he refused to accept the deal. (Tr. 10 83–84.) Hice denied ever having such a conversation with Daniels. (Tr. 946–947.) I discredit Daniels in part because when he provided an affidavit about the conversation in 2021, he testified that the agreement to be paid as a full-time steward was in exchange for just the grievance related to Smadbeck. (Tr. 484.) However, at hearing he said it was in relation to two other grievances. Further, I discredit Daniels because he gave differing accounts of whether prior to the alleged 15 conversation he had even filed the grievances. At hearing he testified he had worked on the grievances, but had not yet filed them. (Tr. 589–590.) Yet in a March 21, 2021 email Daniels stated he had personally filed the grievance related to Smadbeck. (GC Exh. 64 at 1.) More importantly, I find it implausible that Domingo would be willing to offer Daniels a full-time paid steward position in order for Daniels to withhold filing or withdraw the grievance(s). Under the 20 party's grievance process a steward handles grievances at the informal step A meeting and another Union representative handles them at the second formal step A meeting. (Jt. Exh. 8 at 2, Tr. 896–897, 900.) If Hice and Domingo were really looking to get rid of the grievances, Hice could have just withdrawn them or agreed to some other favorable settlement at the formal A level. As of June 2020, Hice was the Union's formal step A representative. (Tr. 1000, GC Exh. 53 at 1.)

25 I credit Daniels over Hice regarding the events of June 10, 2020, related to Domingo's search of the materials removed from Daniels' car. On June 9, 2020 at 2:58 p.m., Hice instructed Daniels in writing that he was removing him as a shop steward. (GC Exh. 7.) Further, Hice instructed him to gather up all his union materials and turn them over to Negrotti. (GC Exh. 7.) Hice testified that the next day, Domingo called Hice and told him that he was "holding [Daniels] 30 outside his office" because he believed Daniels was attempting to steal union material. (Tr. 961–962.) The obvious question is, why didn't Hice put an end to the issue by telling Domingo that he had instructed Daniels to gather up his union-related materials and turn them over to Negrotti. (Tr. 960, 1012–1013.) During cross examination, Counsel for the General Counsel asked Hice this question. (Tr. 1012.) Hice responded that he did not do so because, prior to Domingo calling him 35 on June 10, 2020, Daniels had called him and told Hice that he had turned the materials over to Negrotti. (Tr. 1012.) I discredit this testimony for the following reasons. First on direct, Hice never testified about receiving this phone call from Daniels. Second, Hice had a very poor recollection of the alleged call, for example he had no recollection if the call happened in the morning, afternoon, or evening or where he was when he received the call. (Tr. 1013–1014.) Third, 40 Daniels and Negrotti worked at different locations and Daniels worked on June 10, 2020. (Tr. 1015.) Thus, it would have been logistically difficult for Daniels to have gathered up the

documents and given them to Negrotti between the time Daniels received Hice's text on June 9, 2020 and the time that Domingo called Hice on the afternoon of June 10, 2020. (Tr. 1015.) Fifth, Daniels testified he did not call Hice and tell him he had turned the union materials over to Negrotti. (Tr. 1253.) Sixth, and most importantly, documents demonstrate that Daniels did not
 5 turn the union materials over to Negrotti until June 11, 2021. On June 10, 2020, at 8:54 p.m. Daniels prepared a list of documents he was going to turn over to Negrotti the next day at the union meeting scheduled for June 11, 2020. (GC Exh. 9 at 1.) Negrotti signed that he received the documents on June 11, 2020, which was the day after Domingo's call to Hice. (GC Exh. 9 at 1–2.)

10 Further, Hice's conduct throughout the entire June 10, 2020 incident demonstrates that he was working with Domingo rather than attempting to assist Daniels. I credit Daniels' testimony that when he called Hice on June 10, 2020, Hice told him he was on his route and could not help him. (Tr. 94.) Hice did not rebut this testimony, rather he testified that he could not recall if he spoke to Daniels. (Tr. 1020.) Daniels testified he called the Regional Administrative Assistant for
 15 the National Union, John Robles because Hice would not help him. (Tr. 94-95, 894–895.) Robles told Daniels that he would call Hice. (Tr. 95.) Hice confirmed Robles called him. (Tr. 961.) Hice testified he came to the facility based on Domingo's request. (Tr. 960 1020.) Hice testified that once he arrived, Domingo called him into his office so they could speak privately and Domingo told him Daniels had documents that should be turned over to the Union. (Tr. 1023.) Further, Hice
 20 sitting idly by while Domingo searched the materials removed from Daniels' car is consistent with their June 8, 2020 meeting during which Domingo provided Hice information meant to undermine Daniels' work as a steward.

I further credit Daniels over Hice regarding the events of June 10, 2020, because in all his testimony about the incident Hice failed to place alternate steward Jorge Soto as being present.
 25 (962–966.) However, Daniels testified that Soto was present and made contemporaneous notes about the incident which placed him as being present. (GC Exh. 8.) On June 10, 2020, Daniels made a note that Domingo had turned documents over to Soto. (GC Exh. 9 at 2.) Daniels testified that while Domingo was sorting through his documents Soto came into the room and Domingo handed him some of the documents. (Tr. 109–110, 112, 129.) Soto's presence during the incident
 30 is relevant because just a few days earlier, on June 5, 2020, Soto in his capacity as the alternate steward had interviewed Supervisor Hooker in order to obtain information for the Union intended to undermine Daniels' work as a shop steward. (GC Exh. 12.)

6. Slater Saile

35 Vice President Slater Saile testified extensively regarding the Union's processing of Daniels' grievances. Generally speaking other witnesses did not rebut his testimony. He testified regarding his speculation about what would have happened at later stages of the grievance process if Humbarger had not settled Daniels' grievances regarding his 7-day suspension and discipline for being AWOL. I give that testimony limited weight because the grievances at issue never reached him at formal step A. Thus, he did not independently investigate them and he relied only
 40 on information Humbarger provided to him related to Daniels' conduct. I found him to be a credible witness who provided straight forward answers to the questions he was asked by both

sides. When General Counsel questioned him regarding whether the Union is successful during the grievance process in getting discipline rescinded, he willingly answered that the Union gets it rescinded somewhere between 25 and 50 percent of the time.

7. Bailey Taylor

5 I give Bailey Taylor's testimony limited credibility. I credit Daniels' testimony over Taylor regarding what he said to her on October 28, 2021. I give her testimony limited credit in part because the Union's counsel used leading questions during important portions of her testimony. One of the key issues Taylor testified about related to what Daniels said to her on October 28, 2021, after Negrotti asked her to serve as a witness and write a statement that Daniels was refusing to meet with him. When the Union's counsel questioned her, rather than asking Taylor what happened and allowing her to testify from her memory, counsel pointed Taylor to a statement she had written about the incident on November 8, 2021. Counsel asked her, "Why did you write this statement?" Taylor responded, "I wrote it after Terry had threatened me at work." Counsel then ask the leading question of, "Are the statements in this document Joint Exhibit 9, 15 page 15 true?" To which Taylor not surprisingly answered, "Yes". (Tr. 936.) Neither at this point in the Union counsel's questioning of Taylor, or at any other point, did she ask Taylor an open-ended question about her recollection of what occurred between herself, Negrotti and Daniels on October 28, 2021. Taylor's failure to provide testimony about her recollection of the events is more glaring because on cross examination she had a very poor recollection of the events of that 20 day. For example, she was asked on cross examination why she waited until November 8, 2021, to write her statement if she felt threatened on October 28, 2021. She responded, "I don't recall." (Tr. 939.) When she was asked whether someone had asked her to write the statement, she responded, "I don't remember." (Tr. 939.) In Taylor's statement, she stated that she reported the statements that Daniels made to her on October 28, 2021, to Thaler and Negrotti. The Union's 25 counsel asked Taylor if she reported Daniels' conduct on October 28, 2021, or on a subsequent date, Taylor responded, "I honestly don't remember." Further, Taylor's November 8, 2021 statement demonstrates that she had a poor recollection of what exactly Daniels said to her on October 28, 2021. In her statement Taylor wrote, "After Dave left, Terry threatened me, saying if I wrote a statement he would have something against me or come after me, *I don't remember his exact wording.*" (Jt. 9 at 15 emphasis added.) Taylor's testimony about what Daniels said to her is undermined by the fact that Thaler stated that on October 28, 2021, Taylor did not report to him that she felt threatened by Daniels. (Jt. Exh. 8 at 26.) Further, I credit Daniels over Taylor because he had a much clearer recollection of what he said to Taylor. He testified that he told her that if she made a false statement he would bring internal union charges against her. (Tr. 229.) Further, 35 I find Daniels' version of the conversation more likely. It is logical that Daniels would tell Taylor that if she wrote a false statement, he would file internal union charges against her because the statement Negrotti was asking her to write was in essence false. This is because: (1) Daniels asked for the meeting to take place on the afternoon of October 29, 2021; (2) on the night of October 27, 2021, Negrotti and Thaler advised Daniels they had scheduled the meeting for the next morning at 40 8 a.m.; and (3) prior to the 8 a.m. meeting, Daniels had told both of them he was not prepared to meet.

8. Eric Thaler

For similar reasons, I credit Daniels' version of what he said to Thaler on October 28, 2021 over that of Thaler. The USPS' counsel used leading questions when questioning Thaler regarding the conversation and did not ask him to testify about his recollection of what was said. Instead
 5 counsel showed Thaler a statement he had written on December 20, 2021, about the incident. (Jt. Exh. 13(a) at 26.) Next counsel asked Thaler a leading question which was favorable to the USPS' case, and his question suggested a negative response, "Well, Mr. Daniels testified that he said he'd file labor board charges. Is that—your recollection." To which Thaler responded, "No." Then continuing with his leading questions counsel asked, "And your recollection is what you wrote in
 10 the statement?" To which Thaler responded, "Correct." Having secured Thaler's favorable testimony in response to his leading questions, counsel then moved on and failed to ask Thaler what he recalled about the events of October 28, 2021. (Tr. 865–866.) Any question which suggests or hints at the answer the witness should give is leading regardless of whether it suggests a positive or negative response. Further, questions are leading when they induce the witness to
 15 testify only about certain details a party views as favorable to their case rather than everything the witness remembers about the events. Wright & Miller et al., 28 Federal Practice and Procedure § 6168 (2d ed. June 2024 Update); Graham, 5 Handbook of Fed.Evid. § 611.8 (10th ed. Nov. 2024 Update); Goode & Wellborn, Courtroom Handbook Fed.Evid. FRE R 611 (April 2024 Update); and 4 Weinstein's Federal Evidence § 611.06 (2021). For these reasons, I credit Daniels' testimony over Thaler's testimony regarding what Daniels said to him on October 28, 2021.
 20

I further give other portions of Thaler's testimony limited credibility because documents established that during the USPS' investigation of Daniels' grievances he provided less than candid information when such information went against the USPS' interests. For example, there is no doubt that Thaler established a policy of only having Negrotti come to High Mar when Daniels
 25 was out of the building. He testified to having established such a policy, that he discussed it multiple times with Negrotti and he made written statements to Daniels documenting the policy. However, when upper management asked him about the policy while it was investigating Daniels' grievance related to going outside on June 30, 2023, Thaler was less than forthcoming about the policy. Stating that "[t]here was never any policy or settlement keeping Mr. Negrotti outside the
 30 building during my tenure in Boulder." (Jt. 12 at 75.) He went on to acknowledge that he made a personal accommodation to try and keep Negrotti and Daniels apart. However, he then stated that when he left he briefed Weston Cavness on his efforts to keep the situation mitigated, but that Daniels was aware there was no formal policy or settlement. He stated while he gave Cavness his advice Daniels was aware that Cavness had full authority to decide how he handled things going
 35 forward. (Jt. Exh. 12 at 75.)

Similarly, one of the questions Daniels asked Humbarger to ask Thaler during the Union's investigation of Daniels' discipline for arriving late on October 30, 2021, was "do you have other carriers that frequently come into work later than their start time?" (GC Exh. 42(c) at 3.) Thaler responded yes, but no more than half an hour late. However, the record shows that both Michelle
 40 Gutierrez and Shalyn Boteler regularly came into work after 9 a.m., despite the fact that the USPS states that their starting time was 8 a.m. (GC Exhs. 56–57.) I credit some portions of Thaler's testimony. However, with regard to the testimony discussed above, I find that Thaler, as a current manager for the USPS had a pecuniary interest in providing the USPS with favorable testimony and I discredit these portions of his testimony.

9. Chris Konold

General Counsel presented carrier Chris Konold to testify to an array of issues. I found most of his testimony of negligible relevance to the issues before me. For this reason, I have included very little of his testimony in the fact or analysis sections of this decision. I did find relevant his un rebutted testimony about Price and Domingo visiting Lafayette soon after Daniels' October 30, 2021 visit there to campaign. I credit his testimony as I found it consistent with the record including a text message between Daniels and supervisor Kuntz that Daniels could not return to campaign. It is also consistent with Daniels' un rebutted testimony that Thaler told him that during a managers' meeting Price went after the supervisors who allowed him to campaign. I also credit his testimony that it was common for Negrotti to campaign at the Lafayette station near elections and he had witnessed him campaigning (Tr. 771–772) This testimony was corroborated by Lafayette supervisor Jorge Alonzo. (Jt. Exh. 8 at 28.) I also credit Konold's testimony that Negrotti was flagged on a high earners report. (Tr. 786.) This testimony is certainly consistent with Negrotti's time records and Negrotti who testified after Konold did not rebut it.

IV. ANALYSIS

A. *The Union Removing Daniels as a Shop Steward*

Paragraph 7(c) of the complaint alleges that the Union violated Section 8(b)(1)(A) of the Act by removing Daniels as a shop steward.²⁴ In *Miranda Fuel Company, Inc.*, the Board articulated at length the concept of the duty of fair representation owed by labor organizations to their members, the Board stated that “Section 7 . . . gives employees the right to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent *in matters affecting their employment*. [Emphasis supplied.]” 140 NLRB 181, 185 (1962), enf. denied 326 F.2d 172 (2d Cir 1963). Thus, the touchstone for determining whether a union's action violates the duty of fair representation is whether that action adversely impacts “matters affecting employment.” *Commercial Workers Local 222*, 245 NLRB 1035, 1039 (1979). As a matter of law, conduct which is purely an internal union affair does not come within the duty of fair representation. *Longshoremens ILA Local. 1575*, 332 NLRB 1336 (2000). Unions are free to maintain and enforce their internal regulations, so long as those regulations do not have an impact on the employment relationship, impair access to the Board's processes, pertain to unacceptable methods of union coercion, such as physical violence in organizational or strike contexts, or otherwise impair policies imbedded in the Act. *Office Employees Local 251 (Sandia National Laboratories)*, 331 NLRB 1417, 1418–1419 (2001).

The Board has held that a union does not violate Section 8(b)(1)(A) if it removes from positions with representational responsibility dissident employees who are hostile to and in disagreement with the policies of the current union leadership. The Board explained in *Shenango, Inc.*, a “union is legitimately entitled to hostility or displeasure toward dissidence in such positions where teamwork, loyalty, and cooperation are necessary to enable the union to administer the contract and carry out its side of the relationship with the employer.” 237 NLRB 1355 (1978). Accordingly, the Board found the union's removal of an employee as the union's safety committee chairman did not violate the Act. *Id.* For the same reasons the Board has ruled that unions do not

²⁴ The analysis section of General Counsel's brief does not address or withdraw this allegation.

violate Section 8(b)(1)(A) of the Act, except in limited circumstances, when it removes a dissident member as a steward. *Service Employees Local 254*, 332 NLRB 1118, 1122–1123 (2000); See also *Teamsters Local 170*, 333 NLRB 1290, 1290-1291 (2001). Thus, I find General Counsel failed to establish that the Union violated Section 8(b)(1)(A) of the Act by removing Daniels as a shop steward.

Accordingly, I recommend that complaint paragraph 7(c) be dismissed.

1. Evidence that the USPS bore animus toward Daniels because of his union and dissident union activities and that it favored incumbent Union President Negrotti

The events related to the Union removing Daniels as a shop steward, do however, provide support for General Counsel's contentions: (1) that the USPS and Domingo bore animus toward Daniels because of his activities as a shop steward; and (2) that the USPS and Domingo supported incumbent Union President Negrotti over Daniels during the October to December 2021, internal union election for the office of union president. On June 5 and 8, 2020, Supervisor Hooker and PM Domingo met with Alternate Steward Soto and President Hice and provided them with information regarding Daniels' work as a shop steward. The information Hooker and Domingo provided related to purely internal union matters and was intended to denigrate Daniels' performance of his duties as a shop steward. Further, it is clear from the leading written questions and Hooker's responses that prior to their June 5, 2020 meeting, Hooker had provided Soto or the Union official who drafted the written questions for the meeting, the information contained in Hooker's responses. Next, just three days later Domingo met with then President Hice for an unrelated meeting and suddenly Domingo shared with Hice an email that Daniels sent as a steward to District Manager McCahill and Acting POOM Begay on April 27, 2020, related to safety concerns Daniels had regarding carrier Dighans' treatment of other carriers. (Tr. 79, 954–955, GC Exh. 6 at 1–3.) Here again, Domingo had no legitimate reason to become involved in how well or poorly Daniels was conducting his shop steward duties. Finally, during the same June 8, 2020 meeting, Hice testified that Hooker came into the meeting and suddenly divulged an alleged agreement between Daniels and Hooker under which Hooker would approve certain of Daniels' grievances in exchange for Daniels not filing other grievances. Hice testified on June 8, 2020, Soto for the first time told him about his June 5, 2020 fact finding interview with Hooker and he provided Hice with a copy of the interview notes. (GC Exh. 12, Tr. 1005.) Hice then utilized the information Hooker and Domingo provided him to remove Daniels as a shop steward and to support his June 11, 2020 internal union charges against Daniels. (GC Exhs. 10, 14.)

Domingo's animus towards Daniels' union activities is further demonstrated by Domingo's search of materials in Daniels' car on June 10, 2020. Here again, Domingo had no legitimate reason to get involved in the internal union matter of Daniels returning materials to the Union, yet he took it upon himself to have Daniels empty the contents of his car into a hamper and personally sort through them. Hice's response is instructive of his collusion with Domingo. Rather, than simply telling Domingo that the day prior, he had instructed Daniels to gather up all his union

materials and turn them into Negrotti, he said nothing and sat idly by and watched as Domingo sorted through the materials²⁵

The fact that the USPS bore animus toward and supported Negrotti over Daniels in the 2021 union election is further supported by the favorable working conditions Domingo provided to Negrotti. In May of 2020 Domingo instructed Negrotti that he did not need to swipe in and out of work with his badge and instead had supervisors manually enter his time. Management allowed Negrotti to work a staggering number of hours of overtime and double time and maintain a flexible work schedule. Domingo signed an LMOU with Negrotti on May 3, 2021 giving him a full-time paid position to carry out his duties as union president.

General Counsel did not demonstrate that Domingo or the USPS received anything in return for providing Negrotti these benefits. Negrotti testified that the reason the USPS signed the LMOU was to allow the Union to clear out a backlog of grievances. Negrotti testified that the LMOU allowed him to better represent carriers and it benefited management by taking fewer bodies off the work floor. (Tr. 1146–1147, U. Br. at 79.) The Union established that after Negrotti became the Union president the number of grievances the Union has filed have generally increased. (Tr. 1142, 1202.) Further, during this period the USPS has paid out more money in settlements to employees represented by the Union at the three Boulder installations. (Tr. 890–891, U. Exh. 45.) Thus, General Counsel did not show that the LMOU or Domingo’s beneficial treatment of Negrotti saved the USPS any money. Further, because the number of grievances increased after the USPS entered into the LMOU, it does not appear that the agreement benefited the USPS by its managers engaging in better contract compliance or taking fewer bodies off the work floor to resolve grievances. However, the evidence General Counsel presented shows Domingo provided Negrotti favorable working conditions as the union president and that Domingo and Price favored Negrotti over Daniels during the 2021 union election cycle. Further, the record demonstrates that Domingo and Hooker unnecessarily involved themselves in purely internal union matters by providing Hice and Soto with information about how Daniels carried out his steward duties and Hice used that information to remove Daniels as a shop steward and bring internal union charges against him.

B. Daniels’ Requests for Information from the Union

Paragraph 7(d) of the complaint alleges that from on or about July 9, through October 2, 2021, the Union delayed in providing Daniels with documents related to his grievances.²⁶

A union owes all unit employees the duty of fair representation, which extends to all functions of the bargaining representative. *Letter Carriers Branch 6070 (Postal Service)* 316 NLRB 235 (1995). See also *Mine Workers Local 17*, 315 NLRB 1052, 1062 (1994). When a union’s conduct toward a unit member is arbitrary, discriminatory, or in bad faith, it breaches its duty of fair representation. However, a union is allowed a wide range of reasonableness in serving the unit employees, and any subsequent examination of a union’s performance must be “highly

²⁵ I have credited Daniels over Hice that Domingo sorted the materials. However, even if one accepts that it was Hice who sorted the materials the incident is demonstrates Domingo’s animus and Hice and Domingo’s collusion. There is no reason this incident did not end by Hice telling Domingo that the previous day had instructed Daniels to gather up the materials and turn them over to Negrotti.

²⁶ General Counsel failed include a conclusionary paragraph in the complaint related to this allegation. However, I find the issue of whether the Union violated Sec. 8(b)(1)(A) was fully litigated and briefed and the Union had sufficient notice of the allegation. *Pergament United Sales*, 296 NLRB 333, 334 (1989), enfd. 920 F.2d 130 (2d Cir. 1990).

deferential.” Id. quoting in part *Air Line Pilots Assn. v. O’Neill*, 499 U.S. 65, 78 (1991). A Union breaches its duty of fair representation in violation of Section 8(b)(1)(A) of the Act when it arbitrarily refuses to provide a represented employee with his or her grievance forms. *Letter Carriers Branch 529*, 319 NLRB 879, 881 (1995); See also *Food & Commercial Workers Local 1657 (Food World)*, 340 NLRB 329 (2003); *Auto Workers Local 909 (General Motors Corp.--Powertrain)*, 325 NLRB 859 (1998); *Postal Workers*, 328 NLRB 281 (1998).

This allegation arises from Daniels’ July 9, 2021, request for information about two grievances that Daniels asked Negrotti to file on May 15, 2021. (Tr. 193195, GC Exh. 18.) The first grievance related to the USPS changing carriers’ bid start time from 7:30 to 8:30 a.m. between April 10 and May 14, 2021, and to 8 a.m. as of May 15, 2021. (U. Exh. 5(a) at 10–15.) The second grievance related to Thaler’s May 13, 2021 denial of Daniels’ request for an early start time on May 19, 2021, to attend a doctor’s appointment and Thaler’s statement that Domingo would deny all such requests. (U. Exh. 5(a) at 1-2.) When Negrotti received Daniels’ May 15, 2021 request to file a class action grievance over the change in carriers’ bid start times, Negrotti knew the grievance lacked merit. He knew this, because just the day before, Negrotti settled a class action grievance regarding the change in the carriers’ start times. Under that grievance settlement, Negrotti agreed to change the High Mar carriers’ start times from 8:30 a.m. to 8 a.m. effective May 15, 2021. (U. Exh. 13 at 2.) Further, Negrotti knew his resolution was contrary to the outcome desired by numerous High Mar carriers. He knew this because, as part of his submission for this grievance, Negrotti provided the USPS written statements from 9 carriers all of whom stated they wanted their start time restored back to 7:30 a.m. (U. Exh. 13 at 1–3, 31–39.) However, when faced with Daniels’ May 15, 2021 grievance request, Negrotti failed to tell Daniels that his grievance lacked merit because he had already settled a grievance over this very issue. Instead, on June 24, 2021, Negrotti went through a sham process of filing Daniels’ grievance and then on some date prior to July 14, 2021, formal step A representative Slater Saile withdrew the grievance by agreeing there was a lack of a provable contract violation. (U. Exh. 5(a) at 10–24, GC Exh. 20.)

On May 15, 2021, Negrotti prepared a grievance for Daniels regarding Thaler and Domingo’s denial of the early start time on May 19, 2021. (GC Exh. 5(a) at 1.) On May 15, 2021, Negrotti met with Thaler for an informal step A meeting regarding that grievance, but they did not resolve it. On June 25, 2021, Slater Saile met with Domingo for a formal step A meeting regarding the grievance and they resolved it by the USPS agreeing not to arbitrarily deny early start time requests. (U. Exh. 5(a) at 5.)

On July 9, 2021, Daniels sent Negrotti an email asking him about the status of the grievances, stating in part, “Please let me know what’s going on with the grievances so that I can go from there . . .” (GC Exh. 19, Tr. 196.) On July 14, 2021, Negrotti sent a written response stating that the Union had settled his grievance regarding being denied an early start time for May 19, 2021, by the USPS agreeing that management would not arbitrarily deny such requests. Further, Negrotti stated that the Union had withdrawn his class action grievance regarding the change to carriers’ start time at the formal A level because there was no provable contract violation. (Tr. 593–596, GC Exh. 20.) On July 16, 2021, Daniels wrote Negrotti stating he wanted to know what happened to all the grievances Negrotti had taken over from him back in June 2020, “I do want to know what happened on those grievances especially the ones for me . . . I would like to see any grievance of mine that you withdrew or a reason why they weren’t filed[.]” (GC Exh. 21

at 2–3.) This constituted a clear request for the Union to provide Daniels with copies of his grievances and the documents related to the basis for withdrawing them. On July 27, 2021, Negrotti emailed Daniels and stated in relevant part, “You ask again about current grievances at [High Mar]. There are no current grievances at [High Mar]. I explained this to you in your last email.” (GC Exh. 22 at 2.) Negrotti testified that near the end of July 2021, he was at High Mar station and handed Daniels copies of the grievance files for the grievances regarding the change to carriers’ start times and the denial of his early start time. (Tr. 1199–1200.) Daniels did not rebut this testimony. However, I discredit Negrotti’s testimony that he handed Daniels the grievance files. First, in his July 27, 2021, email Negrotti did not mention anything about having provided Daniels with the documents. Further, in communicating with Daniels, Negrotti consistently used written communication. I find it inconsistent that on this occasion Negrotti would have just handed Daniels information without documenting it at the time or in a subsequent communication. On October 2, 2021, Negrotti emailed Daniels copies of the grievances and the Union’s files related to such. (U. Exh. 5) In his October 2, 2021 email, Negrotti failed to mention that he had previously provided this information to Daniels in person in late July.

The General Counsel demonstrated that the Union violated Section 8(b)(1)(A) of the Act by delaying in providing Daniels copies of documents related to his grievances. From the first day that Daniels asked Negrotti to file a grievance over the change to carriers’ start time, Negrotti acted in bad faith and kept Daniels misinformed about the grievance. Negrotti knew that the day before Daniels asked him to file the grievance he had settled a class action grievance over this very issue, but he failed to tell Daniels that information. Thus, from the beginning Negrotti acted in bad faith in his communications with Daniels regarding the grievance. Next Negrotti filed and then Saile withdrew a sham grievance over the issue. (Tr. 1306–1307, U. Exhs. 13 at 1–39, 5(a) at 10–24.) Then on July 16, 2021, when Daniels made a formal request for documents related to his grievances, the Union delayed in providing them. I find the Union violated Section 8(b)(1)(A) of the Act by acting in an arbitrary and bad faith manner in responding to Daniels’ information request and delaying in providing Daniels information and documents regarding his grievances. “Willfully keeping an employee ignorant in regard to the processing of their grievance violates the duty of fair dealing.” *Machinists District 70 and Local Lodge 839 (Spirit Aerosystems)*, 363 NLRB 1599, 1608 (2016) citing *Yellow Freight System of Indiana*, 327 NLRB 996, 996 (1999); and *Groves-Granite*, 229 NLRB 56, 63 (1977).

The Union violated 8(b)(1)(A) of the Act by delaying in providing Daniels with information and documents related to his grievances.

C. December 9, 2021 7-day Suspension

Complaint paragraph 8(g) alleges the USPS violated Section 8(a)(3) of the Act by issuing Daniels a 7-day suspension on December 9, 2021, because of comments he made to Taylor and Thaler on October 28, 2021. Paragraph 8(e) of the complaint alleges that on about December 3,

2021, the USPS through Rodarti violated Section 8(a)(1) of the Act by threatening Daniels with discipline during an investigatory interview about the comments he made on October 28, 2021.²⁷

1. General legal principles

The complaint allegation that the USPS discriminated against Daniels in violation of Section 8(a)(3) of the Act on December 9, 2021, is properly analyzed using the framework set forth in *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982). The General Counsel satisfies its initial burden by showing (1) the employee's protected activity; (2) the employer's knowledge of that activity; and (3) the employer's animus. *Alternative Energy Applications Inc.*, 361 NLRB 1203, 1205 (2014). Proof of discriminatory motivation can be based on direct evidence or can be inferred from circumstantial evidence based on the record as a whole. *Embassy Vacation Resorts*, 340 NLRB 846, 848 (2003). A discriminatory motive may be established by among other factors: (1) the timing of an employer's adverse action in relation to the employee's protected activity; (2) statements and actions showing an employer's general and specific animus; (3) the presence of other unfair labor practices; and/or (4) evidence that an employer's proffered explanation for the adverse action is a pretext. *National Dance Institute–New Mexico, Inc.*, 364 NLRB 342, 351 (2016); and *Lucky Cab Co.*, 360 NLRB 271, 274 (2014). The Board "may infer from the pretextual nature of an employer's proffered justification that the employer acted out of animus, 'at least where.... the surrounding facts tend to reinforce that inference.'" *Electrolux Home Products Inc.*, 368 NLRB No. 34, slip op. at 3 (2019) (quoting *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966) (emphasis in *Electrolux Home Products*)). Pretext may be demonstrated by (1) an employer's false reasons for an adverse action; (2) disparate treatment; (3) departure from past practice; (4) shifting explanations by an employer for an adverse action; and/or (5) the failure to investigate whether the employee engaged in the alleged misconduct. *Manor Care Health Services–Easton*, 356 NLRB 202, 204 (2010); *Windsor Convalescent Center*, 351 NLRB 975, 984 (2007), *enfd.* in relevant part 570 F.3d 354 (D.C. Cir. 2009); *Inter-Disciplinary Advantage, Inc.*, 349 NLRB 480, 509 (2007).

If General Counsel establishes a discriminatory motive, the burden shifts to the employer to prove that it would have taken the same adverse employment action against the employee even in the absence of the employee's protected activity. *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 961 (2004); *McKesson Drug Co.*, 337 NLRB 935, 937 fn. 7 (2002); see also *Bally's Atlantic City*, 355 NLRB 1319, 1321 (2010) (explaining that where the General Counsel makes a strong initial showing of discriminatory motivation, the rebuttal burden is substantial), *enfd.* 646 F.3d

²⁷ The USPS argues in its brief that the allegations in this case should be deferred to the parties' grievance and arbitration process and their accompanying resolutions. (USPS Br. at 30.) However, deferral is only appropriate where the grievance proceedings are fair and regular. *United Parcel Serv., Inc.*, 372 NLRB No. 158 slip op. at 13-14, 18 (Nov. 21, 2023). Here Daniels engaged in dissident union activity. The USPS' supervisors bore animus toward Daniels for that activity. Further, General Counsel has established the Union breached its duty of fair representation in its processing of Daniels' grievances and its failure to provide him information regarding such. Thus, deferral is not appropriate. *Id.* at 18 citing *Mason and Dixon Lines, Inc.*, 237 NLRB at 6 fn. 2, 12-13.

929 (D.C. Cir. 2011). The employer cannot meet its burden merely by showing that it had a legitimate reason for the discharge or discipline; rather, it must demonstrate that it would have taken the same action in the absence of the protected conduct. *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984).

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2. Analysis of the suspension

General Counsel established that Daniels engaged in union activity prior to the USPS issuing him the 7-day suspension on December 9, 2021, and the USPS was aware of those activities. General Counsel established knowledge of Daniels' union activities as a shop steward in 2019 and 2020 related to Pete Dighans. They were aware that Daniels had requested a October 29, 2021 meeting with Union President Negrotti for the purpose of discussing grievances. Most relevant to this particular allegation, is Price, Domingo, Thaler, and Rodarti's knowledge of Daniels campaigning for the office of union president on October 30, 2021, at the Lafayette and Louisville stations. On October 30, 2021, carrier Michelle Gutierrez advised Rodarti that Daniels had been at the Louisville facility that morning campaigning for union office. (Tr. 490, Jt. Exh. 13(a) at 3.) On October 30, 2021, Rodarti emailed Domingo and Thaler and advised them of this information (Jt. Exh. 13 at 4.)

General Counsel established animus. It established animus through Domingo and Hooker's conduct on June 5 and 8, 2020, when they shared information with the Union intended to denigrate Daniels' work as a shop steward. General Counsel further established animus through Domingo's actions on June 10, 2020, when he unnecessarily involved himself in Daniels returning his steward materials to the Union, specifically by requiring Daniels to empty materials from his car and then searching those materials.

The USPS' animus is further demonstrated by its supervisor's response to Daniels' campaigning on October 30, 2021, for the office of union president. A few days after Daniels campaigned at Lafayette, Chris Konold observed PM Domingo and POOM Ken Price at the station speaking with Supervisors Dennis Kuntz and Leah McGowan. (Tr. 774–775.) McGowan or Kuntz told Konold that they had come to Lafayette because they were after Terry Daniels for campaigning, and Kuntz told Konold that Price “despised Terry Daniels.” (Tr. 775.) About the first week of November 2021, Thaler told Daniels that during a manager's meeting, POOM Price “went hard” and “ripped into” supervisors Leah McGowan and Jorge Alonzo for letting Daniels campaign for the position of union president. (Tr. 253.) Thaler reported that Price had said “. . . why are you guys letting him campaign?” . . . “We don't support him being president.” (Tr. 253, 660.) On November 16, 2021, Daniels sent Kuntz a text message asking if he could return to Lafayette to campaign for the position of union president while he was off the clock. (GC Exh. 31.) Kuntz responded, that based on instructions from upper management he had to deny Daniels' request. (GC Exh. 31.)

General Counsel established animus through timing. The USPS contends it disciplined Daniels on December 9, 2021, for threats he made to Thaler and Taylor on October 28, 2021. The USPS was aware of Daniels' conduct as of October 28, 2021, because he made one of the alleged threats to supervisor Thaler. However, the USPS initially took no action to investigate the matter or discipline Daniels. It was not until after Daniels campaigned for the office of union president on October 30, 2021, that the USPS began to investigate the events of October 28, 2021. On

November 8, 2021, carrier Bailey Taylor prepared a written statement regarding the events of October 28, 2021. (Jt. Exh. 9 at 15.)

General Counsel established animus because evidence demonstrates the USPS decided to discipline Daniels before it even met with him to investigate whether he had made the alleged threats. *Manor Care Health Services–Easton*, 356 NLRB 202, 204 (2010). On December 3, 2021, Rodarti met with Daniels for an investigative interview. (GC Exh. 36.) The pre-written questions for that interview, set out in the fact section, demonstrate that the USPS’ managers who prepared the questions had predetermined that Daniels had made the alleged threats and they drafted the questions in order to achieve their goal of disciplining Daniels. Further, question 13 which Rodarti asked Daniels on December 3, 2021, assumed Daniels threatened Thaler, but the USPS did not get a written statement from Thaler about the incident until December 20, 2021. The fact that the USPS’ December 3, 2021 investigatory interview was a sham is further demonstrated by the fact that its interview questions accepted Negrotti’s claim that on October 28, 2021, Daniels refused to meet with him. As discussed extensively regarding Taylor, Negrotti and Thaler’s credibility, this is a gross mischaracterization of the facts and Thaler and Negrotti knew it because the meeting had been belatedly scheduled for a day prior to the date Daniels had asked for the meeting and thus he was simply not prepared to meet with Negrotti. Finally, General Counsel demonstrated animus because the USPS disciplined Daniels for his statements despite the fact that Thaler knew that the statements that Negrotti was asking Taylor and himself to write were dishonest statements about what really happened on October 28, 2021.

General Counsel having established a discriminatory motive, the burden shifts to the USPS to prove that it would have issued Daniels the 7-day suspension even in the absence of his protected activity. *Wright Line*, supra. Here General Counsel has made a strong showing of discriminatory intent. Thus, the USPS’ rebuttal burden is substantial. *Bally’s Atlantic City*, supra. The USPS did not meet its burden. First, it took no action to investigate the matter or issue discipline until after Daniels campaigned for union office. The USPS’ claim that it disciplined Daniels for threatening behavior are undermined by the fact that it delayed investigating the matter and waited over a month to issue the discipline. It is also undermined by the fact that Thaler said he did not feel threatened by Daniels’ statements and that Thaler said Taylor did not report feeling threatened on the day of the events. Finally, the USPS failed to introduce any evidence to establish that it has issued discipline to other employees who have engaged in similar behavior.

General Counsel established that the USPS violated Section 8(a)(3) of the Act by issuing Daniels a 7-day suspension in retaliation for his union activities.

D. Rodarti’s December 3, 2021 Investigatory Interview of Daniels

Paragraph 8(e) of the complaint alleges that Rodarti violated Section 8(a)(1) of the Act by threatening Daniels with discipline during a December 3, 2021 investigatory interview. In assessing whether a remark constitutes a threat, the appropriate test is “whether the remark can reasonably be interpreted by the employee as a threat.” *Smithers Tire*, 308 NLRB 72 (1992). The actual intent of the speaker or the effect on the listener is immaterial. *Id.*; see also *Wyman-Gordon Co. v. NLRB*, 654 F.2d 134, 145 (1st Cir. 1981) (inquiry under Sec. 8(a)(1) is an objective one which examines whether the employer's actions would tend to coerce a reasonable employee). The “threats in question need not be explicit if the language used by the employer or his representative

can reasonably be construed as threatening.” *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49 (9th Cir. 1970). When applying this standard, the Board considers the totality of the relevant circumstances. *Saginaw Control & Engineering, Inc.*, 339 NLRB 541, 541 (2003); *Mediplex of Danbury*, 314 NLRB 470, 471 (1994).

The totality of the circumstances demonstrate that Rodarti threatened to discipline Daniels in retaliation for his union activities. The events giving rise to Rodarti’s interview arose out of Daniels’ union activity of requesting a meeting with his union representative Negrotti. Daniels engaged in protected activity when he said he would file internal union charges against Taylor and a complaint or unfair labor practice charge against Thaler if either wrote the statements that Negrotti was seeking. Despite Daniels’ protected activity, and that the USPS had not sought Daniels’ version of events, Rodarti’s interview questions accepted as fact: (1) that Daniels had refused to meet with Negrotti, just as Negrotti had claimed; and (2) that Daniels had threatened Taylor and Thaler just as the Union’s Secretary Bailey Taylor had claimed in her written statement. Having accepted such Rodarti then asked Daniels, “Why would you think it would be appropriate to threaten another employee?” and “Why would you think it would be appropriate to threaten your Manager?” The investigatory interview form Rodarti presented to Daniels during the December 3, 2021 interview stated that the meeting may result in disciplinary action up to and including termination. (GC Exh. 37 at 1.) As discussed above, Rodarti had no legitimate purpose to conduct this interview because management’s pre-written questions demonstrate that the USPS had already determined it was going to discipline Daniels for the alleged threats. In these circumstances, General Counsel has demonstrated that the USPS violated Section 8(a)(1) of the Act by threatening Daniels with discipline in response to him having engaged in union activities. *Saginaw Control & Engineering, Inc.*, supra; *Mediplex of Danbury*, supra.

General Counsel established that on December 3, 2021, the USPS through Rodarti violated Section 8(a)(1) of the Act by threatening to discipline Daniels in retaliation for his union activities.

E. USPS Prohibiting Daniels from Campaigning for Union Office

The complaint alleges in paragraph 8(a) that since about October 30, 2021, the USPS violated Section 8(a)(1) of the Act by prohibiting Daniels from campaigning for union office. Prior to October 2021, the USPS had allowed employees to campaign at its facilities and in November 2021 it allowed Negrotti to campaign. (Tr. 771–772) On October 30, 2021, Lafayette and Louisville supervisors Leah McGowan and Jorge Alonzo granted Daniels permission to campaign for union office. (Jt. 13(a) 4–5, GC Exh. 42(b) 2–4.) While Daniels was at Lafayette, Alonzo advised Daniels that he had no problem granting him permission to campaign because Dave Negrotti had previously campaigned there. (Tr. 238.) As discussed extensively herein POOM Price on multiple occasions stated his anger with Lafayette and Louisville’s supervisors for having allowed Daniels to campaign. (Tr. 253, 660, 773–775.) On November 16, 2021, Daniels texted the Lafayette station manager Dennis Kuntz, to ask him if he could return to campaign for the position of union president while he was off the clock. (GC Exh. 31.) Kuntz responded that Daniels could not return to campaign and that the directive came from upper management. (GC Exh. 31 at 1–3.) Given that Daniels requested to campaign when he was off the clock, that Domingo and Price made statements demonstrating their animus toward Daniels for campaigning and the USPS suddenly changed its position regarding Daniels campaigning, General Counsel established that

the USPS violated Section 8(a)(1) of the Act by coercing Daniels from engaging in dissident union activities. *Keller Construction, Inc.*, 362 NLRB 1246, 1255 (2015).

The USPS violated Section 8(a)(1) of the Act by prohibiting Daniels from campaigning for the office of union president.

5 *F. December 9, 2021 Letter of Warning*

Paragraph 8(h) of the complaint alleges that on December 9, 2021, the USPS violated Section 8(a)(3) of the Act by issuing Daniels a Letter of Warning. As discussed in detail above regarding the lawfulness of the USPS' 7-day suspension of Daniels, General Counsel established that prior to issuing Daniels the December 9, 2021 letter of warning, Daniels had engaged in union activities, the USPS had knowledge of and animus toward Daniels' union activities and specifically his activities of campaigning for union office against Negrotti on October 30, 2021. (GC Exh. 13(a) at 3, Tr. 490.)

General Counsel further demonstrated animus by showing disparate treatment with regard to the USPS issuing Daniels the December 9, 2021 letter of warning for arriving late on October 30, 2021. Specifically, it demonstrated that High Mar supervisors Thaler and Putzier had a very flexible policy of allowing carriers to arrive at work late and then allowing them to make up their time at the end of the day. (GC Exh. 56 and 57.) Thaler testified that it was common for carriers to text him if they were going to be late and that between October 30, 2020 and October 30, 2021, he never disciplined any employees at High Mar for tardiness. (Tr. 861, 875.) However, after Daniels arrived late on October 30, 2021, Domingo directed Thaler to change the High Mar policy regarding employees' tardiness. (Tr. 879.) On November 8, 2021, a supervisor at the High Mar station conducted a stand-up meeting to address employees' tardiness. (Jt. Exhs. 13(a) at 3, 14(a) at 6.) Further on November 9, 2021, Thaler conducted investigatory interviews with four carriers to address their tardiness. (Jt. Exh. 14(a) at 1-12.) Despite these four employees regularly arriving late in October and November 2021, the USPS did not discipline any of them. (Tr. 875, Jt. Exh. 14(a) at 1-12.) General Counsel introduced clock rings showing that employees Michelle Gutierrez and Shaylyn Boteler regularly arrived at work late, including numerous instances when they arrived after 9 a.m. and the USPS did not discipline them. (Tr. 875, GC Exhs. 56-57.)

General Counsel demonstrated further evidence of disparate treatment by showing that the USPS failed to follow its progressive disciplinary policy when it issued Daniels the letter of warning. The USPS' progressive discipline policy provides that discipline for a specific type of infraction such as tardiness starts with an official discussion with management, next a letter of warning, next a 7-day suspension, next a 14-day suspension and finally a notice of removal. (Tr. 359, 360, 493.) There are exceptions to this policy when an employee engages in violent or illegal behavior and is then immediately put on emergency placement. Thaler acknowledged that prior to October 30, 2021, Daniels' attendance was good and he had no discipline for attendance infractions. (Jt. Exh. 8 at 24-26.) Daniels' tardiness on October 30, 2021, was his first attendance infraction yet the USPS issued him a written warning rather than first issuing him an official discussion. (Tr. 365-366.) Thus, General Counsel demonstrated disparate treatment.

General Counsel having established a discriminatory motive, the burden shifts to the USPS to prove that it would have issued Daniels the disciplinary letter even in the absence of his protected activity. *Wright Line*, supra. Here again, General Counsel has made a strong showing of discriminatory intent. Thus, the USPS' rebuttal burden is substantial. *Bally's Atlantic City*, supra. The USPS did not meet its burden. The USPS did not introduce disciplinary records to show that it has issued discipline to other employees who engaged in conduct similar to that of Daniels. On February 10, 2022, the National Union and the USPS settled one of Daniels' grievances. As part of the resolution, the parties agreed that there were seven other occasions in 2021, when USPS managers had coded four other carriers' time as AWOL when they had been away from work during scheduled hours without approval. (Jt. Exh. 11 at 18.) One of those carriers was High Mar carrier Shaylyn Boteler who the USPS marked AWOL on September 30, 2021, for .49 hours. (Jt. Exh. 11 at 18, GC Exh. 56 at 144.) [First name unknown] Brock was a carrier at Boulder Main who the USPS marked as AWOL three times in 2021, including one day during the first pay period in 2021, when the USPS marked him AWOL for 1.42 hours, which equates to 1 hour and 25 minutes. (Jt. Exh. 11 at 18.) The USPS marked Daniels as AWOL on October 30, 2021, for .62 hours. (Jt. Exh. 11 at 23.) Daniels arrived at work, on October 30, 2021 at 9:56 a.m., which was 1 hour and 26 minutes after his 8:30 a.m. start time. Thus, the first time the USPS marked Brock AWOL he had engaged in conduct almost identical to that of Daniels. However, subsequently in 2021, the USPS again marked Brock as being AWOL for 30 minutes and then later 8 minutes. (Jt. Exh. 11 at 18.) The USPS did not introduce any evidence to show that it disciplined any of the four other carriers, including Boteler or Brock. Thus the USPS did not establish that it would have issued Daniels the letter of warning absent his protected activity.

The disciplinary notice the USPS issued Daniels on December 9, 2021, discusses extensively that Daniels was evasive or refused to tell his manager why he had been late on October 30, 2021. Thus, I must consider whether the USPS demonstrated that based on this behavior along with his tardiness, it would have issued Daniels the discipline in the absence of his protected activity. I find it failed to demonstrate such. First, when High Mar carriers were late to work, supervisors Thaler and Putzier did not require the carriers to tell them where they had been or why they were late. (GC Exhs. 42(b), 42(c) at 1–3.) This is further demonstrated by the November 9, 2021, investigatory interviews Thaler conducted with four carriers regarding their tardiness in October and November 2021. The interview questions asked the carriers to provide reasons why they were late. Despite the fact that the carriers provided reasons such as “too far back – can't remember” “physical therapy on some days and fluctuating start time on others” and “child care drop offs” the USPS did not discipline them. (Tr. 875, Jt. Exh. 14(a) 1-19.) On October 30, 2021, when Daniels arrived, Rodarti asked him why he had been late and Daniels responded that he had some errands. (Jt. 13(a) at 3.) While Daniels was delivering his route, carrier Gutierrez told Rodarti that Daniels had been late to work because he had been campaigning at Louisville for the office of union president. (Tr. 490, Jt. Exh. 13(a) at 3.) Further, on November 15, 2021, Rodarti contacted supervisors Alonso and McGowan and confirmed that he had been at Louisville and Lafayette campaigning. (Jt. 13(a) at 4–5.) During Rodarti's November 9 and December 3, 2021, investigatory interviews of Daniels, Rodarti repeatedly questioned him about his whereabouts on the morning of October 30, 2021. However, since the afternoon of October 30, 2021, Rodarti had known full well where Daniels had been. Thus Rodarti was not legitimately trying to discover where Daniels had been. (Jt. Exh. 13(a) at 8.) Rodarti testified that had Daniels been truthful from the beginning about why he was late the USPS probably would not have investigated the matter or disciplined Daniels. (Tr. 494, 555–557, USPS Br. at 10.) I find this testimony speculative and

I discredit it. I do so because I find the testimony contrary to Price's conduct of berating the Lafayette and Louisville supervisors who allowed Daniels to campaign and the USPS' refusal to allow Daniels to return to Lafayette to campaign. Thus, the USPS did not demonstrate that it would have disciplined Daniels in the absence of his union activities.

General Counsel established that on December 9, 2021, the USPS violated Section 8(a)(3) of the Act by issuing Daniels a written warning.

*G. Rodarti's November 9, and December 2 and 3, 2021,
Investigatory Interviews of Daniels*

Paragraphs 8(b) and (d) of the complaint allege that on November 9, and December 3, 2021, Rodarti violated Section 8(a)(1) of the Act by interrogating Daniels about his conduct of campaigning for the office of union president. In assessing the lawfulness of an interrogation, the Board applies the "totality of circumstances" test adopted in *Rossmore House*, 269 NLRB 1176, 1177–1178 (1984). This test involves a case-by-case analysis of various factors, including those set out in *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964): (1) the background, i.e., whether the employer has a history of hostility toward or discrimination against union activity; (2) the nature of the information sought; (3) the identity of the interrogator, i.e., his or her placement in the employer's hierarchy; (4) the place and method of the interrogation; and (5) the truthfulness of the interrogated employee's reply. See, e.g., *Sproule Construction Co.*, 350 NLRB 774, 774 fn. 2 (2007).

On November 9, and December 3, 2021, Rodarti conducted investigatory interviews of Daniels related to him being late on October 30, 2021, when he had been campaigning for the office of union president. (Jt. Exh. 13(a) at 6–10, GC Exh. 36) Factor one weighs in favor of finding a violation. The USPS exhibited hostility towards Daniels' union activity of campaigning for the office of union president. For example, soon after Daniels campaigned at Lafayette and Louisville, Price and Domingo visited those facilities and admonished their supervisors for allowing Daniels to campaign. (Tr. 774–775.) Additionally, Thaler told Daniels that during a managers' meeting, Price excoriated the managers for letting Daniels campaign. (Tr. 253, 660.) Factor two weighs in favor of finding a violation because the nature of the information sought related to Daniels' union activities. The USPS contends that Rodarti interviewed Daniels to determine his whereabouts on the morning of October 30, 2021. However, I find this claim disingenuous. Because on October 30, 2021, Rodarti, Domingo and Thaler were all advised that Daniels was late because he had been campaigning for union office. (GC Exh. 13(a) at 3.) Thus, the USPS had no legitimate reason to interview Daniels in order to determine where he had been on the morning of October 30, 2021. Further, Rodarti's questions during the November 9, and December 3, 2021 interviews focused heavily on Daniels' protected activity of campaigning for the office of union president. (GC Exhs. 13(a) at 6–10, 36 at 1.) Factors three and four weigh in favor of finding a violation. First line supervisor Rodarti conducted these interviews in the back office of the High Mar station. However, Daniels knew he faced the prospect of discipline for his answers because the USPS conducts these interviews when its managers are considering disciplining an employee. (Tr. 265.) In fact the written documents the USPS used during these interviews stated that the interviews may lead to corrective or disciplinary action including discharge. (GC Exhs. 12(a), 36.) The fifth factor, the truthfulness of the answers given, weighs in favor of finding coercion. Daniels, who during the November 9, 2021 interview, was sitting in the

room with current Union President Negrotti and Supervisor Rodarti, clearly did not want to reveal that he had been late because he was campaigning against incumbent Negrotti. Domingo and Price had already made it clear they did not support Daniels' candidacy. Considering all the circumstances, I find that Rodarti's questioning would reasonably tend to coerce an employee so that he or she would feel restrained from exercising rights protected by Section 7 of the Act. *Westwood Health Care Center.*, 330 NLRB 935, 940 (2000).

The General Counsel established that on November 9, and December 3, 2021, the USPS through Rodarti violated Section 8(a)(1) of the Act by interrogating Daniels about his union activities.

H. The Union's Processing of Daniels' Grievances Regarding his 7-day Suspension and Written Warning

Paragraphs 10(d) and (e) of the complaint allege that the Union violated Section 8(b)(1)(A) of the Act by breaching its duty of fair representation to Daniels because it processed grievances regarding his 7-day suspension and written warning in a bad faith or perfunctory manner. The Supreme Court has held, "a breach of the duty of fair representation occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith." *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). "[M]ore than a mere error of judgment" is required. *Castello v. Douglas Aircraft Co.*, 752 F.2d 1480, 1482 (9th Cir. 1985). Mere negligence in representation, is not a breach of the duty of fair representation. *United Steelworkers v. Rawson*, 495 U.S. 362, 372–373 (1990). Even, "[c]areless or bone-headed conduct is not a breach of the duty of fair representation." *NLRB v., Operating Engineers Local 139*, 796 F.2d 985, 993 (7th Cir. 1986). "A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion." *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). "Demonstration of bad faith requires proof of fraud or deceitful or dishonest action." *Machinists (Spirit Aerosystems)*, 363 NLRB 1599, 1608 (2016) (citing *Steel Workers (Cement Towing Products)*, 357 NLRB 516, 517 fn. 6 (2011)).

Pursuant to Daniels' December 10, 2021 request, Steward Craig Humbarger filed these grievances. Between December 12 and 20, 2021, Humbarger and Daniels exchanged emails in which Daniels provided Humbarger with information regarding the discipline related to him being late and he asked Humbarger to take certain steps to investigate it, including asking him to request the clock rings of other carriers to show disparate treatment. Daniels provided Humbarger prior text messages with Thaler and Putzier when he texted them that he was going to be late and was not disciplined. (U. Exh. 59 at 8–9.) On December 16, 2021, Daniels met with Humbarger and provided a written statement regarding his version of the events on October 30, 2021 and a list of documents he requested that Humbarger obtain. (GC Exh. 42 (a), Jt. Exh. 8 at 19.) As discussed in detail in the fact section of this decision, Humbarger obtained the documents requested by Daniels' request and interviewed the requested witnesses, except for one witness who refused Humbarger's request to meet. (GC Exh. 42(a), 42(b), 42(c).)

The parties stipulated that joint exhibit 8 is the Union's grievance file related to Daniels' written warning for being late to work on October 30, 2021. (Jt. Exh. 28.) That file demonstrates that Humbarger's grievance file contained the following information that was helpful to Daniels'

case: (1) Daniels' attendance records; (2) the form showing that in May 2021, Domingo denied Daniels' request for an early start time and Thaler's remark that all such requests would be denied; (3) the investigatory interviews the USPS conducted with Daniels on November 9 and December 2 and 3, 2021 which gave Daniels' version of events; (4) statements from Thaler confirming that Daniels had texted him prior to his start time on October 30, 2021 to tell him he would be late; (5) Thaler's statement that Daniels had a good attendance record and no prior discipline; and (6) statements from Thaler and Putzier that other employees have been late and were not disciplined and that when employees were late they did not require them to provide a reason as to why they were late. (Jt. Exh. 8.) Humbarger did not request that the USPS provide the Union with other carriers' clock rings or other records to show disparate treatment. (Jt. Exh. 8.) On November 9, 2021, Negrotti had attended investigatory interviews with High Mar carriers Shaylyn Boteler, Michelle Gutierrez, Bailey Taylor, and Robin Keller. (Jt. Exh. 14(a) 1–12.) The investigatory interview notes from these meeting show numerous dates and times when each of the four carriers arrived late to work in October and November 2021. The interview notes asked the carriers to provide reasons why they were late. Despite the fact that the employees did not provide an explanation for many of the absences, the Union's grievance file did not include any evidence that the USPS had engaged in disparate treatment by failing to discipline these four employees.

Sometime prior to December 21, 2021, Humbarger and/or Daniels prepared a list of written union contentions regarding the written warning. The contentions were: (1) Daniels texted his supervisor to notify him that he would be late; (2) Daniels had approval from the Louisville and Lafayette supervisors to campaign there; 3) other carriers have been late, but were not marked as AWOL; (4) Daniels had 30 years of service with no prior discipline and no progressive discipline. The Union sought a remedy that the 2-year letter of warning be modified to an official discussion.

During their December 16, 2021 meeting, Daniels asked Humbarger to obtain certain information and interview Thaler regarding his 7-day suspension for comments he made to Thaler and Taylor. Joint exhibit 9 is a copy of the Union's grievance file related to the suspension. (Jt. 28.) That file demonstrates that Humbarger obtained the records that Daniels requested and that he interviewed Thaler. The information in Humbarger's grievance file that was helpful to Daniels' case included: (1) Thaler's statement that Daniels had no prior discipline; (2) Thaler's statement that he did not feel threatened by Daniels' October 28, 2021, statement to him; and (3) that on October 28, 2021, Taylor had not reported to Thaler that she felt threatened by Daniels. The Union's grievance file does not contain text messages and emails showing that despite the fact that Daniels had requested a meeting with Negrotti for the afternoon of October 29, 2021, Negrotti requested that the meeting take place on October 28, 2021, and that on the night of October 27, 2021, Negrotti advise Daniels that the meeting would be held at 8 a.m. the next morning.

Prior to Humbarger meeting with Rodarti on December 21, 2021, for the informal step A meeting someone prepared a list of the Union's facts and contentions. It appears that Daniels drafted most if not all of the contentions because they are written purely from Daniels' view of the events and contain statements which Negrotti disputed during his hearing testimony. The Union's fifteen contentions are set forth in the fact section of this decision. The remedy the Union sought in the written grievance was that the 7-day suspension be expunged. (Jt. Exh. 9, 4–8.)

On December 21, 2021, Daniels attended an informal step A grievance meeting with Humbarger and Rodarti in order to resolve the Union's grievances regarding the 7-day suspension and written warning. The meeting opened by Humbarger and Rodarti talking for about five minutes about what the USPS was seeking with respect to the discipline and discussing an agreement regarding how long the discipline would be retained in Daniels' file. (Tr. 385–386, 1045, 1047, U. Exh. 42.) Daniels was silent during this portion of the meeting. (U. Exh. 42.) However, once it became clear that Humbarger was not going to seek a rescission of the discipline Daniels became upset and started speaking over Humbarger. (U. Exh. 42, Jt. Exh. 13(a) at 34.) Humbarger asked Daniels to let him handle the meeting as it was his grievance as the steward. (U. Exh. 42, Jt. 13(a) at 34.) Daniels then asked to caucus with Humbarger and left the office and went and got carrier David Gonzales. When Daniels returned, he became loud and accused Humbarger of working for management and selling out the carriers. (U. Exh. 42 at 1–2.) Rodarti told Daniels that if he continued to raise his voice he would put Daniels on emergency placement. (Tr. 387, 508, U. Exh. 58, Jt. 13(a) at 34.) Daniels then asked Gonzalez to write a statement regarding what he had witnessed and then Daniels left the meeting. After Daniels left, Rodarti and Humbarger met for about five more minutes. They resolved the grievances by agreeing to reduce the retention period for the 7-day suspension from 2 years to 6 months and the disciplinary warning from 2 years to 3 months. (Jt. Exhs. 8–9.)

From Rodarti and Humbarger's testimony and Humbarger's written statement there is no dispute that during the meeting Humbarger and Rodarti only discussed a reduction in the retention period for the discipline and Humbarger did not seek the rescission of either of the disciplinary notices. (Tr. 1044–1049, U. Exh. 42, Tr. 506–510, 515–517.) This is surprising because Slater Saile testified that during the grievance process the Union is successful in getting the USPS to rescind discipline somewhere between 25 and 50 percent of the time. Further, based on Rodarti and Humbarger's testimony, it is clear that Humbarger did not discuss any of the contentions in the Union's grievance files nor any evidence in the grievance files which supported the contentions. For example, Humbarger did not present evidence in the union's possession showing disparate treatment regarding tardiness. He did not present evidence that Daniels had no prior discipline and a good attendance record. He did not present evidence that the USPS waited over a month to discipline Daniels for alleged threats. Moreover, as it relates to the Union's duty of fair representation, Humbarger did not present facts demonstrating that on October 28, 2021, when Union President, Negrotti asked Taylor and Thaler to prepare statements for him that Daniels was refusing union representation, Negrotti was asking them to write statements which would have been a gross misrepresentation of what really happened that morning.

Humbarger testified that in his view the reduction in the retention periods for the discipline was a really good resolution considering that Daniels had been loud and acted inappropriately during the grievance meeting. (Tr. 1053–1054.) Slater Saile testified that he recalled appreciating Humbarger's settlement, explaining that a six-month retention period for a seven-day suspension regarding threats or hostility was a good resolution. (Tr. 1137.) Saile testified the settlement was "better than average" compared to other settlements the Union had obtained in similar cases. (Tr. 1137–1139.) The Union did not introduce any documents to support Saile's testimony.

General Counsel met its burden to prove that the Union breached its duty of fair representation in its handling of the grievance related to the 7-day suspension. General Counsel

proved the Union representatives conduct went beyond mere negligence because they acted in a deceitful or dishonest manner. *United Steelworkers v. Rawson*, supra. *Machinists (Spirit Aerosystems)*, 363 NLRB 1599, 1608 (2016) (citing *Steel Workers (Cequent Towing Products)*, 357 NLRB 516, 517 fn. 6 (2011)). As discussed extensively in this decision, Negrotti acted in bad faith regarding this meeting. Negrotti first advised the USPS that he wanted to schedule a meeting a day earlier than Daniels had requested. Next, the night before the meeting, he advised Daniels that it was the USPS who insisted on that date and that the meeting would be at 8 a.m. the next morning. Next when Daniels told Negrotti he was not prepared to meet with him Negrotti requested that Thaler and Taylor write statements which were a false account of events that morning. In response, Daniels told Taylor that if she wrote a false statement against him he would file internal union charges against her and he told Thaler that if he wrote a false statement he would file a complaint or charges against him. Humbarger's grievance file contained Daniels' statement setting forth all these facts. However, Humbarger failed to present any of this evidence during his December 21, 2021 grievance meeting with Rodarti. Humbarger did not even present the Union's written contention that the discipline should be removed. Rather, Humbarger merely negotiated with Rodarti regarding reducing the retention period of the suspension. Taken as a whole, the Union's actions went beyond mere negligence, rather their representatives engaged in deceitful or dishonest conduct.

General Counsel demonstrated that the Union violated Section 8(b)(1)(A) of the Act in the processing of Daniels' grievance regarding his 7-day suspension.

General Counsel did not meet its burden of proving more than mere negligence with regard to Humbarger's handling of Daniels' grievance regarding the written warning. With the exception of failing to obtain clock rings to show disparate treatment, Humbarger did gather all the evidence Daniels requested regarding this grievance. However, here again, Humbarger failed to present Rodarti with the contentions or evidence contained in his grievance file. Humbarger was successful in getting the USPS to reduce the retention period for the written warning. There is no evidence that Humbarger or any other union representative acted in bad faith or with dishonesty in its processing of this grievance. Thus, I find Humbarger's agreement to a reduction in the retention period for the discipline to be within the wide range of reasonableness a union is allowed as a statutory bargaining representative. *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). Thus, General Counsel failed to establish that the Union violated Section 8(b)(1)(A) in its processing of Daniels' grievance regarding his written warning.

Accordingly, I recommend that complaint paragraph 10(e) be dismissed.

I. The National Union's Failure to Arbitrate two of Daniels' Grievances

Paragraphs 10(b) and (c) of the complaint allege that the Union violated Section 8(b)(1)(A) of the Act by failing to arbitrate grievances regarding Rodarti failing to treat Daniels with dignity on October 30, 2021, and marking him AWOL and failing to allow him to work 8 hours on that date. The Union filed both grievances. (Jt. Exhs. 10–11.) The Union held informal and formal step A meetings with the USPS regarding the grievances, but was not able to resolve them. Thus the Union transferred the grievances to the National Union for a step B meeting. (Jt. Exhs. 10–11, Tr. 1096–1098.) At the step B meeting the USPS and the National Union agreed to resolve the

grievances by finding that the case file failed to establish a violation of the National Agreement. (Jt. Exhs. 10 at 1, 11 at 1.) Under the parties' contract only the National Union can resolve a grievance at step B or move it to arbitration. (Tr. 900–901, Jt. Exh. 1 at 69–70, 73–76.) The complaint does not allege that the National Union violated the Act. Thus, General Counsel failed to demonstrate the Union violated Section 8(b)(1)(A) of the Act as alleged in paragraphs 10(b) or 10(c) of the complaint.

Accordingly, I recommend that complaint paragraphs 10(b) and (c) be dismissed.

J. Analysis—Rodarti's Statements to Daniels during a December 21, 2021 Grievance Meeting

Complaint paragraph 8(i) alleges that Rodarti violated Section 8(a)(1) of the Act by threatening to put Daniels on emergency placement because he tried to speak during the December 21, 2021, grievance meeting. Paragraph 10(g) alleges the Union violated Section 8(b)(1)(A) by failing to process a grievance regarding Rodarti failing to treat Daniels with dignity and respect during this meeting. All the witnesses agree that during the December 21, 2021 grievance meeting, Rodarti threatened to put Daniels on emergency placement. I have credited Rodarti and Humbarger's testimony over that of Daniels regarding most of the events of this meeting. I find Rodarti threatened Daniels with emergency placement because he became loud and aggressive toward Humbarger rather than because he merely attempted to talk or requested a caucus with Humbarger. Thus, I do not find that the General Counsel met its burden to prove that the USPS coerced Daniels in the exercise of his right to speak during a grievance meeting or otherwise have access to his union representative. Daniels did request that Humbarger file a grievance regarding Rodarti's conduct. (U. Exh. 58.) Humbarger testified he did not believe there was any basis to file such a grievance. (Tr. 1058.) Based on my credibility determinations, I find Humbarger's assessment reasonable. Further, his decision was within the wide range of reasonableness a union is entitled to in deciding whether to file a grievance. Thus, General Counsel failed to meet its burden to prove that Rodarti violated Section 8(a)(1) of the Act by Rodarti making unlawful statements in this meeting or that the Union violated Section 8(b)(1)(A) by failing to file a grievance regarding Rodarti's conduct.

Accordingly, I recommend that complaint paragraphs 8(i) and 10(g) be dismissed.

K. USPS' Failure to Initiate a Harassment Investigation Regarding Negrotti's November 29, 2021 Conduct

Paragraph 8(c) of the complaint alleges that the USPS violated Section 8(a)(1) of the Act on November 29, 2021, by denying Daniels' request to initiate a harassment complaint against Negrotti regarding the door slamming incident. The parties agree that Daniels requested a harassment investigation and that the USPS denied it. (Tr. 311, 862–863, GC Exhs. 34–35.) Negrotti acknowledged he slammed the door after a "very very annoying" and "contentious" meeting with Daniels. (Tr. 1190.) I have found that Negrotti slammed the office door and it hit Daniels' left shoulder.

General Counsel argues that the USPS, by disciplining Daniels for what it called threatening statements to Taylor and Thaler on October 28, 2021, and refusing to investigate Negrotti's aggressive conduct on November 29, 2021, sent a coercive message that it would tolerate Negrotti's inappropriate conduct, but discipline Daniels because they opposed his dissident union activities. General Counsel failed to demonstrate that the USPS coerced Daniels by failing to initiate a harassment investigation. The Boulder Police Department investigated the events of the door slamming incident. (Jt. Exh. 12 at 92.) Further, following the incident, and admittedly after the USPS had denied Daniels' request for a harassment investigation, the Department of Labor carefully reviewed Daniels' workers' compensation claim. They even questioned, Thaler's statement in a December 29, 2021, interview "that he and Mr. Negrotti would not have known whether the door hit Daniels since they were on the other side of it." They also stated, "it is unclear from Ms. Paxton's testimony whether she was looking at the door when it slammed or whether she just heard it." (Jt. Exh. 12 at 70.) However, after further investigation, and in part because they could not rely on the physician assistant's diagnosis, the Department of Labor concluded that the door had not hit Daniels. Based in great part on the medical provider's diagnosis of a contusion to Daniels' left shoulder, I have reached a different conclusion about this incident. However, I find that the matter was thoroughly investigated by multiple entities. Thus, considering the totality of the relevant circumstances I do not find that the USPS' failure to initiate a harassment investigation violated the Act. *Mediplex of Danbury*, 314 NLRB 470, 471 (1994).

Accordingly, I recommend that complaint paragraph 8(c) be dismissed.

*L. Thaler's December 3, 2021 and February 3, 2022
Investigatory Interviews*

Complaint paragraphs 8(f) and (j) allege that on December 3, 2021 and February 3, 2022, Thaler threatened to discipline Daniels for pursuing a workers compensation claim related to Negrotti hitting him with the door as he was leaving a grievance meeting on November 29, 2021. In assessing whether a remark constitutes a threat, the appropriate test is "whether the remark can reasonably be interpreted by the employee as a threat." *Smithers Tire*, 308 NLRB 72 (1992). The Board considers the totality of the circumstances in assessing the reasonable tendency of an ambiguous statement or a veiled threat to coerce. The stated purpose of both of Thaler's meetings with Daniels was to conduct "Due Process Investigative Interview(s)" regarding the events of November 29, 2021, and whether Daniels had filed a false workman's compensation claim. However, there was no legitimate reason for the USPS to conduct these interviews because prior to both of them Domingo and Thaler had already decided Daniels had filed a fraudulent workers compensation claim. For example, Domingo arrived at the High Mar station about 10 minutes after Negrotti slammed the door. (Tr. 306-307.) When Domingo arrived he met with Thaler. He then approached Daniels and said, "if you try to file a workman's comp claim, I'll make sure it's denied." (Tr. 307.)

Further, the following pre-written questions for Daniels' December 3, 2021 interview demonstrate that management had already made the decision that Daniels filed a fraudulent claim:

The witness statement provided to management states you were approximately 1.5 feet away from the door when it closed. Do you think it is appropriate to file a fraudulent claim for OWCP?

Do you think it is appropriate to report a false accident/injury to your manager?

5 Similarly, Thaler's February 3, 2022 interview questions included the following:

Do you think it's appropriate to file a false [OWCP] claim?

You previously received corrective action for making threats to other employees and management. Was filing this false claim you acting on those previous threats?

10 The questions that Thaler asked Daniels on December 2, 2021, and February 3, 2022, are in stark contrast to the questions Rodarti asked Negrotti and Paxton on December 14, 2021, regarding the door slamming incident. The questions Rodarti asked them were either open ended or designed to help the USPS' case regarding Daniels' workers compensation claim or provide support to discipline him. (Jt. 13a at 23–25.) Rodarti testified that Domingo likely helped him prepare the questions for these interviews and that it was Domingo who asked him to conduct them. (Tr. 537–
15 538.)

The written questions, set forth above that Thaler presented to Daniels on December 3 and February 3, 2022, conveyed a threat of reprisal. The next issue is did they convey a threat of reprisal for Daniels' union activities or was the USPS appropriately investigating its concern that Daniels had filed a fraudulent workman's compensation claim. Taken as a whole, Thaler's
20 statements during both meetings conveyed a threat of retaliation. First, the events in question arose as Daniels was leaving a grievance meeting. Second, while Thaler claimed to be conducting legitimate investigatory interviews with Daniels, it is clear from the questions above that management had already decided that Daniels had made a false workers compensation claim. Third, Thaler was threatening Daniels with removal during these meetings, but the U.S.
25 Department of Labor (DOL) was still investigating Daniels' claim. In fact on December 3, 2021, the USPS submitted a letter challenging Daniels' worker's compensation claim and on December 16, 2021 the DOL provided Daniels with an opportunity to submit additional evidence. (Jt. Exh. 12 at 71.) Further, the USPS submitted additional witness statements on December 14, 15, and 29, 2021, respectively from Negrotti, Paxton and Thaler. (Jt. 12 at 70.) On April 29, 2022, the
30 DOL determined they needed additional documents to investigate Daniels' claim including supplemental statements from Thaler, Negrotti and Paxton to clear up inconsistencies in their December 2021 statements. (Jt. Exh. 12 at 70–71, 95.) The DOL finally decided the case on September 2, 2022, with a finding that the evidence did not support that the injury occurred as Daniels described it and because his medical evidence was from a physician's assistant and was
35 not countersigned by a physician. Given that Daniels was engaged in union activities on November 29, 2021, that Thaler's statements conveyed a threat of reprisal and had no legitimate purpose, and that Thaler made the statements in the context of the USPS having engaged in other unfair labor practices regarding Daniels, I find the USPS, through Thaler coerced Daniels by threatening him with discipline or termination in retaliation for his union activities. *Harrison Steel Castings Co.*,

293 NLRB 1158, 1159 fn. 4 (1989) (a background of other unlawful conduct or union animus represents significant context for evaluating the lawfulness of an employer's statements).

The General Counsel established that on December 3, 2021 and February 3, 2022, the USPS violated Section 8(a)(1) of the Act by Thaler threatening Daniels in retaliation for his union activities.

M. USPS Denying Daniels Union Time and the Union Failing to Grieve Such

Paragraph 8(k) of the complaint alleges that starting in December 2021, the USPS violated Section 8(a)(1) of the Act by denying Daniels time to meet with his Union representatives to consult about his grievances. Paragraph 10(f) alleges that since December 16, 2021, the Union violated Section 8(b)(1)(A) of the Act by failing to file a grievance regarding the denial of Union time. General Counsel established that per instructions from upper management, Thaler limited the time that Daniels could meet with his steward on December 16, 2021, to 30 minutes. (GC Exh. 63, U. Exh. 59 at 5.) General Counsel also established that in December 2021, the USPS denied multiple of Daniels' requests for paid time to gather information and write statements related to his grievances. (U. Exh. 59 at 1, 5–6, 10-13, Tr. 374, 1061–1062.) Article 17 of the parties' contract provides that the USPS will allow stewards reasonable time to investigate and process grievances and to interview aggrieved employees and witnesses during working hours. It does not provide employees with paid time to gather information or write statements related to their own grievances. (Jt. 1 at 89–95, Tr. 1056–1057.) General Counsel did not present evidence that: (1) the USPS allowed other employees who were not stewards or officers paid time to gather information or prepare grievances; (2) that in similar circumstances the USPS provided other employees more time to meet with their steward; or (3) that the 30 minutes that the USPS provided Daniels on December 16, 2021, was an insufficient amount of time to meet with Humbarger. In fact when Daniels complained it was not enough time his stated reason was that he needed more time to meet and write statements. (GC Exh. 63.) However, as discussed above the contract does not provide for paid time to write statements. Daniels was free to do that on his own personal time. Further, during the USPS' multiple investigatory interviews of Daniels, he had already written lengthy statements explaining his version of events and defending his conduct regarding the 7-day suspension and written warning. Humbarger testified that the typical amount of time the USPS provides to employees to meet with him is 10 to 15 minutes. (Tr. 1056–1057.) Further, I credit Humbarger's logical testimony that in December the USPS typically grants less union time because it is the busiest time of year. (Tr. 1056–1057.) Thus, General Counsel failed to establish that the USPS coerced Daniels in the exercise of his right to engage in union activity by failing to grant him or limiting his paid union time.²⁸ Daniels requested that the Union file a grievance regarding the USPS limiting his time to meet with Humbarger and denying him additional time to prepare statements. (GC Exh. 42(a)-41(d).) The Union did not file this grievance. (Jt. Exh. 20 at 3.) For the same reasons I found the 8(a)(1) allegation lacked merit, I find that the Union did not violate Section 8(b)(1)(A) of the Act by failing to file the grievance. The grievance would have

²⁸ General Counsel established that in June and July 2022, and May 2023, the USPS delayed in granting Daniels time to meet with his steward. The Union filed grievances regarding those instances and obtained a \$50 and then \$200 payment to Daniels along with an agreement for escalating remedies if the USPS engaged in future violations.

lacked merit under the parties' contract and the Union's failure to file it was within the wide range of reasonableness a union is entitled to in deciding whether to file grievances. *Letter Carriers Branch 529 (Postal Service)*, 319 NLRB 879, 881 (1995).

Accordingly, I recommend that complaint paragraphs 8(k) and 10(f) be dismissed.

5 *N. July 13, 2023, Letter of Warning*

Paragraph 9(d) of the complaint alleges that the USPS violated Section 8(a)(3) of the Act on July 13, 2023, by the USPS issuing Daniels a letter of warning for refusing a supervisor's instruction. On June 30, 2023, Daniels went outside the High Mar building when Negrotti arrived at the facility. Thaler and his replacement Weston Cavness maintained a policy of ensuring that
 10 Daniels was not in the High Mar facility when Negrotti was present. Thaler testified that following the November 29, 2021 door slamming incident, he implemented a policy under which Negrotti did not visit High Mar when Daniels was present. (Tr. 867.) Thaler had many conversations with Negrotti about this policy. (Tr. 867.) Further, Thaler documented this policy. In September 2022, Thaler transferred out of the High Mar facility into a labor relations position and Weston Cavness replaced him. (Tr. 408, 830, 859.) On September 14, 2022, Thaler documented in a text message
 15 to Daniels that he had let Cavness know about the policy. (GC Exh. 45.) After Cavness took over he continued to enforce the policy. (Tr. 411–412, GC Exh. 46.) When Negrotti came to the facility Cavness would have Daniels wait in an adjacent parking lot until Negrotti left. Cavness did not discipline Daniels for leaving the facility when Negrotti was present and he facilitated the policy
 20 by texting Daniels to let him know that Negrotti had left and he could come back inside. (Tr. 414, GC Exh. 46.) On February 16, 2022, POOM Price also agreed that the USPS would have Negrotti schedule his visits at High Mar, in order to avoid Daniels and Negrotti's interactions.²⁹ (Tr. 398–399.)

It appears that Supervisor Putzier, who usually worked the closing shift, did not know about
 25 the policy. On June 30, 2023, Daniels left the building when he saw Negrotti at High Mar. Daniels then texted Putzier that Negrotti was not supposed to be in the building when he was present. Putzier responded, she was not aware of this and she needed Daniels to come back inside and process his mail. (Jt. Exh. 16(a) at 56.) Daniels replied that he was afraid to be in the facility with Negrotti. Putzier again told him she needed him to come in and process his mail and that she
 30 would keep the peace. (Tr. 416; GC Exh. 47 at 1.) Daniels replied that if she required him to come inside he would put in a leave slip. (GC Exh. 47 at 1.) Putzier then sent Daniels a text message stating, "We are done." (GC Exh. 47 at 1.) When Daniels returned from delivering his route, Putzier told him that PM Archibald had instructed her to mark him AWOL for going outside that morning. On July 13, 2023, Cavness issued Daniels a written warning for failing to follow
 35 Putzier's instructions to come back into the building.

As discussed extensively in earlier portions of this decision, General Counsel established Daniels engaged in union activities, the USPS' managers knew about those activities and they harbored animus toward Daniels for them. The next issue is whether General Counsel established a nexus between Daniels' union activities and the issuance of this written warning. I find General

²⁹ I credit this testimony from Daniels because it was un rebutted and I draw an adverse inference from the USPS' failure to call Price regarding the issue.

Counsel demonstrated a nexus by showing that the USPS provided a false reason for the discipline. General Counsel showed that Cavness signed the disciplinary warning for Daniels leaving the facility on June 30, 2023, despite the fact that he knew the USPS had a policy of allowing Daniels to leave the building when Negrotti was present.³⁰ In fact, Daniels engaged in the exact same conduct when Cavness supervised him and Cavness did not discipline him. Instead, Cavness facilitated Daniels going outside and even texted him that he could return to the facility because Negrotti had left. (GC Exh. 46.) Thus, I find the USPS' proffered explanation for the adverse action is a pretext. *National Dance Institute–New Mexico, Inc.*, 364 NLRB 342, 351 (2016); and *Lucky Cab Co.*, 360 NLRB 271, 274 (2014).

General Counsel having established a discriminatory motive for the USPS' issuance of the discipline, the burden shifts to the employer to prove that it would have taken the same actions in the absence of the employee's union activity. *Wright Line*, supra. However, where an employer's proffered reasons are pretextual - either false or not actually relied on - the employer fails by definition to meet its burden of showing it would have taken the same action for those reasons absent the protected activity. See *Boothwyn Fire Co. No. 1*, 363 NLRB 1893, 1899 (2016); *Pro-Spec Painting, Inc.*, 339 NLRB 946, 949 (2003); and *Hays Corp.*, 334 NLRB 48, 49 (2001). I find the USPS' proffered reasons for disciplining Daniels to be disingenuous considering the totality of the circumstances here, and therefore, I find the defense to be pretext for its unlawful discipline of Daniels in retaliation for his union activities.

General Counsel established the USPS violated Section 8(a)(3) and (1) of the Act when it issued Daniels a written warning on July 13, 2023.

*O. Whether Negrotti Caused the USPS to Issue the
July 13, 2023 Discipline*

Paragraphs 13 and 14 of the complaint allege that the Union violated Section 8(b)(1)(A) and 8(b)(2) of the Act by Negrotti reporting Daniels as AWOL on June 30, 2023, and thus causing the USPS to discipline him in violation of Section 8(a)(3). A union violates Section 8(b)(2) when it causes or attempts to cause an employer to discriminate against an employee in violation of Section 8(a)(3). *Paperworkers Local 1048 (Jefferson Smurfit Corp.)* 323 NLRB 1042, 1044 (1997). Based on my credibility findings, I do not find that Negrotti caused or attempted to cause the USPS to discipline Daniels. General Counsel's contention that Negrotti reported Daniels AWOL on June 30, 2023, relies almost exclusively on Daniels' testimony that supervisor Putzier told him that Negrotti reported to PM Robert Archibald that he had been AWOL. As I have explained in the credibility section of this decision, I discredit this portion of Daniels' testimony because contemporaneous text messages demonstrate that it was more likely that it was Putzier who reported Daniels AWOL. Thus, General Counsel failed to establish that the Union violated 8(b)(1)(A) or 8(b)(2) by Negrotti reporting Daniels AWOL or causing the USPS to discipline him.

³⁰ The USPS failed to call Cavness or explain its failure to do so. I draw an adverse inference from the USPS' failure to call him. I draw the inference that his testimony would have been adverse to the USPS regarding whether it issued Daniels this letter of warning in retaliation for his union activities. My finding is supported by the fact that Cavness issued this disciplinary notice despite the fact that he had previously allowed Daniels to engage in the same conduct.

Accordingly, I recommend that complaint paragraphs 9(a) through (e) and 10(h) through (j), be dismissed.

P. USPS' Failure to Transfer Daniels

Paragraph 8(l) of the complaint alleges that since June 28, 2024, the USPS violated Section 8(a)(3) of the Act by refusing to transfer Daniels to a laborer custodial position in Longmont, Colorado. General Counsel presented ample evidence that prior to the USPS deciding not to offer Daniels the transfer he had engaged in union activities, the USPS knew about them and supervisors within the USPS bore animus toward Daniels because of his union activities. However, General Counsel failed to establish a nexus between the USPS' animus and its failure to transfer Daniels. The USPS' states it did not transfer Daniels to the custodial position because when they reached his name on the transfer register he was still on emergency placement and unable to safely return to work. (U. Exh. 31 at 7, Jt. Exhs. 17–18.) General Counsel in its brief argues that the USPS' "final retaliatory advance against Daniels was placing him on emergency placement indefinitely, based on the flimsiest of evidence, and to deny him a transfer outside of the Boulder stations." (GC Br. at 1–2.) Despite arguing the USPS' decision to put Daniels on emergency placement was based on flimsy evidence, the General Counsel's complaint does not allege this conduct violated the Act. Further, Daniels testified that despite repeated efforts, he has been unable to get any of his healthcare providers to complete the USPS' paperwork stating that it is safe for him to return to work. (Tr. 664–665, 689–690, 696.) Thus, the evidence shows that the USPS did not transfer Daniels, because he is not cleared to return to work rather than because he engaged in union activities.

While the General Counsel did present some evidence of shifting defenses by the USPS manager who first reached out to Daniels about the labor custodial position, the evidence demonstrates that she was initially unaware of Daniels' emergency placement. On June 26, 2024, Zuliema Peterson, a USPS senior human resources work force planning specialist called and texted Daniels and advised him that his name had been reached on the transfer list for a laborer custodial position in Longmont and she asked him if he was still interested in it. (Tr. 466 GC Exh. 52 at 5–6.) On June 28, 2024, Daniels sent a text message advising Peterson that he would accept the position. (GC Exh. 52 at 8.) Peterson responded that she had moved to the next candidate because she saw Daniels had applied for a disability retirement. (GC Exh. 52 at 9.) Daniels responded that the USPS had not approved his disability retirement, thus his status had not changed. (GC Exh. 52 at 10.) Peterson then advised Daniels that she would reach out to "labor" to see what they suggested and she also stated that she had not yet extended him a job offer so at this point there was no position for him to accept. (GC Exh. 52 at 13.) Later that day, Peterson sent Daniels an email asking him if he was still emergency placed. (GC Exh. 52 at 1.) The fact that Peterson was initially concerned about Daniels' request for a disability retirement does not change the fact that the USPS could not offer Daniels the job because he was on emergency placement and could not get his healthcare providers to sign off on his return to work.

General Counsel alleges the USPS engaged in disparate treatment by returning Pete Dighans back to work from emergency placement after he engaged in multiple incidents which created safety risks. (GC Br. 109, GC Exh. 2–4, 11.) General Counsel argues that the USPS twice

returned Dighans to work after he engaged in aggressive, threatening and violent behavior. While the record contains evidence showing the USPS did return Dighans to work, it does not contain evidence regarding any of his medical records or establish whether his medical providers cleared him to return to work. (GC Exh. 62.) In these circumstances, General Counsel did not demonstrate that the USPS engaged in disparate treatment by returning Dighans to work, but failing to return Daniels.

Finally, even if I were to assume that General Counsel established a discriminatory motive, the burden shifts to the employer to prove that it would have taken the same adverse employment action against the employee even in the absence of the employee's protected activity. *Donaldson Bros. Ready Mix, Inc.*, 341 NLRB 958, 961 (2004). General Counsel does not allege that the USPS' decision to put Daniels on emergency placement violated the Act. General Counsel's brief is correct where it states that Dr. Peveto's treatment notes from August 2, 2023, do not document the same information as he reported to the USPS Postal Inspector on August 4, 2023. However, there is no dispute that Peveto made a report on August 4, 2023, and he had no reason to provide the USPS false information. Further, regardless of the inconsistency between Peveto's treatment notes and his report to the USPS, the USPS' Postal Inspector had no way of knowing about the inconsistency. The USPS had every reason to accept Peveto's assessment that Daniels was mentally unstable because of his delusional and paranoid behavior and that he was a risk to himself, his supervisors and coworkers. (Jt. Exh. 16(a) at 105.) Thus, the USPS established that absent Daniels' union activities, it would not have offered him the transfer because he was on emergency placement due to reports made by his own treating physician.

Accordingly, I recommend that complaint paragraph 8(l) be dismissed.

CONCLUSIONS OF LAW

1. The USPS is an employer subject to the Board's jurisdiction under Section 1209 of the PRA.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union violated Section 8(b)(1)(A) of the Act by delaying in providing Terry Daniels with information about his grievances and with copies of documents related to them.

4. The USPS violated Section 8(a)(3) and (1) of the Act by issuing Terry Daniels a 7-day suspension on December 9, 2021, because he engaged in union activities protected by Section 7 of the Act.

5. The USPS violated Section 8(a)(1) of the Act by threatening an employee with discipline in retaliation for union activities protected by Section 7 of the Act.

6. The USPS violated Section 8(a)(1) of the Act by prohibiting an employee from campaigning for an internal union position during the employees' nonworking time.

7. The USPS violated Section 8(a)(3) and (1) of the Act by issuing Terry Daniels written warnings on December 9, 2021 and July 13, 2023, because he engaged in union activities protected by Section 7 of the Act.

8. The USPS violated Section 8(a)(1) of the Act by interrogating an employee about the employee's union and dissident union activities.

9. The Union violated Section 8(b)(1)(A) of the Act by acting in bad faith in its processing of a grievance regarding Terry Daniels' 7-day suspension.

5 10. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

11. The USPS and the Union have not otherwise violated the Act.

REMEDY

10 Having found that the United States Postal Service and the National Association of Letter Carriers Branch 642 have engaged in certain unfair labor practices, I shall order them to cease and desist therefrom and to take certain affirmative actions designed to effectuate the policies of the Act. General Counsel requests that I order the Union and the USPS to conduct notice readings. The Board generally grants such a remedy, only in cases where the unfair labor practices are so pervasive and egregious that a notice reading is necessary to dispel the impact of such conduct.
15 *Homer D. Bronson Co.*, 349 NLRB 512, 515 (2007); *Domsey Trading Co.*, 310 NLRB 777, 779–780 (1993). I do not find that the USPS or the Union's unlawful conduct in this case to be so egregious to warrant such. Further, there is no evidence that the USPS or the Union have engaged in a history of unfair labor practices.

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

ORDER

The United States Postal Service, its officers, agents, successors, and assigns shall

1. Cease and desist from

25 (a.) Threatening employees with discipline because they engage in union activity or dissident union activity.

(b.) Interrogating employees about their union activities or their dissident union activities.

(c.) Prohibiting employees from campaigning for union office during non-working time.

30 (d.) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

(e.) Disciplining or suspending or otherwise discriminating against employees because they engage in union activities or dissident union activities.

(f.) In any like or related manner interfering with your rights under Section 7 of the Act.

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

(a.) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful suspension and written warnings issued to Terry Daniels and within 3 days thereafter notify him in writing that this has been done and that the suspension and written warnings will not be used against him in any way.

(b). Within 14 days after service by the Region, physically post the Notice to Employees attached hereto an marked "Appendix A"³¹ at the Boulder Main, High Mar, Valmont, Louisville and Lafayette facilities. Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the USPS' authorized representative, shall be posted by the USPS immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees 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, text message, posting on social media websites and/or other electronic means, if the USPS customarily communicates with its employees by such means. Reasonable steps shall be taken by the USPS 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 USPS has closed a facility involved in these proceedings, the USPS shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the USPS at a relevant facility involved in this case since December 3, 2021.

(c.) During any ordered posting period, the USPS shall permit a duly appointed Board agent to enter its facilities at reasonable times and in a manner not to unduly interfere with its operations, for the limited purpose of determining whether it is in compliance with the notice posting, distribution, and mailing requirements.

(d.) Within 21 days after service by the Region, file with the Regional Director for Region 27 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the USPS has taken to comply.

The National Association of Letter Carriers Branch 642, and its officers, agents, and representatives, shall

1. Cease and desist from

(a) Delaying in providing employees with information and documents related to their grievances.

³¹ 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."

(b) Breaching its duty of fair representation by acting in a discriminatory, arbitrary or bad faith manner in its processing of employees' grievances.

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

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

10 (a.) Within 14 days after service by the Region, physically post the Notice to Members attached hereto an marked "Appendix B" at its business office, meeting halls, and other places where it customarily posts notices. Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Union's authorized representative, shall be posted
15 by the Union 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, text message, posting on social media websites and/or other electronic means, if the Union customarily communicates with its members by such means. Reasonable steps shall be taken by
the Union to ensure that the notices are not altered, defaced, or covered by any other material.

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

Dated, Washington, D.C., December 3 , 2025.

20



Christal J. Key
Administrative Law Judge

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by

employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Callers who are deaf or hard of hearing who wish to speak to an NLRB representative should send an email to relay.service@nlrb.gov. An NLRB representative will email the requestor with instructions on how to schedule a relay service call. You may also obtain information from the Board's website: www.nlrb.gov.

Byron Rogers Federal Office Building,
1961 Stout Street, Suite 13-103
Denver, CO 80294
(303) 844-3551, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at <https://www.nlrb.gov/case/27-CA-292103> 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.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (720) 598-7398.

APPENDIX B

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

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

WE WILL NOT delay in providing you with copies of your grievances or documents related to your grievances.

WE WILL NOT breach our duty of fair representation by acting in a discriminatory, arbitrary or bad faith manner in processing your grievances.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL process your grievances in a good faith and non-discriminatory manner.

National Association of Letter Carriers Branch 642
(Union)

Dated _____ By _____
(Representative) (Title)

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