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**American Postal Workers Union, Local 512 A/W
American Postal Workers Union AFL-CIO
(United States Postal Service) and JoAnn Britt.¹
Case 05-CB-241037**

April 8, 2026

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

On March 6, 2023, Administrative Law Judge Arthur J. Amchan issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed cross-exceptions. The General Counsel and the Respondent filed answering briefs, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel. The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions only to the extent consistent with this Decision and Order.

In 2017, the United States Postal Service (USPS or the Employer) suspended JoAnn Britt² without pay and later discharged her for her alleged threatening conduct during an altercation with a coworker. Curt Kretzer, Britt's union steward and Area Vice President of American Postal Workers Union, Local 512 (the Respondent or Union), agreed to file grievances over both disciplinary actions. Over the course of two years, Kretzer lied to Britt about the status of her grievances by repeatedly indicating that he had filed and was processing them, when in fact he had never done so. Kretzer compounded those lies by providing Britt with fake tracking and case numbers for her grievances that were never filed. The judge concluded that the Respondent, through Kretzer, engaged in conduct that would have violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) but dismissed the complaint allegations as untimely under Section 10(b) of

the Act. Contrary to the judge, we find that Section 10(b) does not bar the instant complaint. For the reasons set forth below, we find that the Respondent violated Section 8(b)(1)(A) both by failing to process Britt's grievances and by providing her false information about them.

I. FACTS AND BACKGROUND

Britt worked as a postal clerk for USPS since about 2005, most recently at its Emmitsburg, Maryland facility. On April 14, 2017, Britt had an altercation with a coworker, Vickie Alcorn, about who should sort letters. Britt attempted to take the letters from Alcorn's hand, but Alcorn refused. Alcorn reported the incident to USPS supervisor Amanda Whetzel, who instructed Britt to go home. Britt immediately reported the matter to her union steward, Kretzer, who discussed it with Whetzel that same day. Kretzer explained to Britt that Alcorn reported feeling threatened by Britt's conduct, and Whetzel decided to send Britt home on an unpaid Emergency Placement (EP) pursuant to USPS's Zero-Tolerance Policy against violence and/or threatening behavior.

On April 15, 2017, Britt received written notice of her EP status, which alleged that she "approached a co-worker and attempted to forcibly remove [I] letters from her hand," "continued to try to remove them" after the coworker said she would sort them, and became "argumentative and loud" when instructed to go home. The notice informed Britt that she had the "right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement with[in] fourteen (14) calendar days of your receipt of this notice."³ The notice provided no additional information about the grievance/arbitration procedure. Within 1 week, Kretzer advised Britt to file an Equal Employment Opportunity (EEO) complaint. Kretzer also stated that he would file a grievance over her EP. On May 1, 2017, Britt attended a predisciplinary interview with Whetzel, which Kretzer did not attend, but where the Union's President listened in by phone.

By letter dated May 19, 2017, USPS notified Britt that she would be discharged "no sooner than 30 days" from receipt of the letter. The letter repeated the same allegations as in Britt's EP notice and added that Britt had yelled at Alcorn and that Alcorn "incurred pain in her arm"

evidence and arguments before a designated local USPS representative. If agreement is not reached, the local USPS representative shall issue a written decision, which the Union may appeal to step three within 15 days of receipt. At step three, an employee is represented by a Regional union representative. If, at step three, an interpretative issue under the National Agreement arises, the issue will be discussed with a National union representative. National union representatives handle grievances at step four. The record shows that pursuant to this procedure, from the date of an employee's discharge, it may take more than one year for an arbitrator to issue a decision.

¹ We have corrected errors in the judge's case caption.

² Britt's first name is variously spelled as one or two words throughout the record.

³ The parties' collective-bargaining agreement (the National Agreement) establishes a four-step grievance-arbitration procedure. At step one, within 14 days of the date the Union becomes aware of facts giving rise to a grievance, the Union may verbally initiate a grievance and attempt to informally resolve the matter through discussion with an employee's supervisor. If this discussion does not resolve the matter, the supervisor will issue a verbal decision, which the Union may appeal to step two within 10 days of receipt. At step two, the parties present

because of the altercation. During Britt's predisciplinary interview, however, Whetzel made no mention of Britt's yelling or that Alcorn had experienced pain. The letter included the same, brief language advising Britt of her contractual right to file a grievance within 14 days of receipt of the notice. Britt immediately called Kretzer and asked him to add her discharge to her pending EP grievance. Kretzer explained that he would need to file a separate grievance, which he told Britt he would do.⁴ During April and May 2017, Britt requested copies of her grievances, but Kretzer did not respond to those requests.

In June 2017, Britt filed an EEO complaint based on age discrimination. Britt testified that Kretzer visited her at her home, helped her complete the necessary EEO paperwork, and "assured me that he was filing my grievances." In November 2017, Kretzer attended a meeting where the parties unsuccessfully attempted to resolve her EEO complaint.

By late 2017, Kretzer was not responding to Britt's communications and Britt felt that it was taking a long time to process her grievances. Britt thus contacted an unidentified Local union representative and asked him how long it should take to resolve a discharge grievance. Britt did not inquire, however, about the status of her specific grievances. The local representative reported that in general, it should take no more than 6 months to handle discharge grievances. In early 2018, Britt called an unidentified National union representative to ask about the status of her grievances. The representative reported that there were no grievances on file for her.

Britt testified that, after she contacted the National union representative and before September 26, 2018, she exchanged many additional text messages with Kretzer, but the record does not reveal the specific nature of these texts. As the judge observed, the text messages were not entered into the record, and Britt did not testify about their content. As the judge also observed, Britt's testimony that she texted Kretzer during this period was "somewhat inconsistent" with her testimony that in late 2017, Kretzer was nonresponsive to her communications. Nevertheless, the judge noted that the Respondent called no witnesses with firsthand knowledge of the events here. The judge concluded that "Britt's testimony about what transpired in this matter is uncontradicted and therefore credited." Accordingly, we clarify that the record and the judge's related

findings show that prior to September 26, 2018, Britt maintained contact of an unspecified nature with Kretzer.

Britt testified that in September 2018, she started wondering what was going on with her grievances. As discussed in greater detail below, the record contains numerous text messages exchanged between Britt and Kretzer from September 26, 2018, through June 19, 2019.⁵ In those texts, Britt asked about the status of her grievances no fewer than 30 times, and between March 27 and June 21, 2019, she also requested copies of her grievances eight times. Additionally, Britt asked several times to meet or speak with Kretzer.

From September through December 2018, Kretzer did not answer all of Britt's texts, but when he did, he responded with various assurances. In September 2018, he reported that he was "resending the documents," "talking to the NLRB" about unspecified delays in responding to his "requests," and predicted that USPS would "escalate" Britt's grievances. In October 2018, Kretzer reported receiving a box of "stuff" from Emmitsburg that he would "send to be added to your file" and that he was either "out of the office" or had meetings but would "get to it in the next few days." On November 2, 2018, Kretzer assured Britt that he had not forgotten a scheduled call with her but was "just way behind" and was working "on penalty overtime." On November 20, 2018, Kretzer assured Britt that he was "working on it." On December 11, 2018, Kretzer complained that he was inundated with work and that "many of the principles [sic]" were on leave.

On January 19, 2019, Britt contacted Union Steward Edith Hough to ask about her grievances. Hough in turn called Rachel Walthall, a National union business agent who litigates arbitrations. Walthall reported that the National office had no record of Britt's grievances.⁶ On January 22, 2019, Britt texted Kretzer: "The UNION OFFICE doesn't have my grevieces..? You haven't filed my gre- viances yet.? I thought you filed them? Timely is going to be an issue isn't it?"⁷ Thereafter, Kretzer did not answer most of Britt's texts, but when he did, he again responded with assurances. For instance, in January 2019, he texted that it was the "day after [the] holiday [and] I will do whatever I can to help" and the next month, he texted that he would "try to finish it tonight."

On March 27, 2019, Britt requested copies of her EP and discharge grievance paperwork. On March 29, 2019,

⁴ On cross-examination, Britt acknowledged that under the National Agreement, she had 14 days upon notice of a disciplinary action to file a grievance. Britt testified that it was her understanding that it was her Union representative's obligation to file grievances. She further testified that her only prior experience with a grievance occurred "a long time ago," when the Union filed a grievance on her behalf regarding managers performing unit work. Finally, Britt testified that she was not familiar "with the time limits of the grievance procedure in the National

Agreement" and that she "wouldn't know the first thing about filing a grievance."

⁵ The judge mistakenly found that the first text message was on September 6, 2018.

⁶ Britt testified that the business agent "looked up my grievances, my office, the district, and my name and my employee ID number and found nothing."

⁷ We use the spelling and punctuation that Britt used.

Kretzer texted Britt fake “tracking” numbers, which he explained were responsive to the “info you asked for.” On April 11, 2019, Britt again requested copies of her grievances. That same day, Kretzer responded that he would “bring them like 6 or 7 on Sunday.” On April 14, 2019, Kretzer texted Britt fake “case” numbers. One day later, Kretzer sent his last text to Britt, asserting he “wasn’t able to finish compiling everything [because] [t]oday is tax day.” Britt last texted Kretzer on June 21, 2019, when she again asked to “get a copy of my grievance information.” Although Kretzer failed to admit as much, copies of Britt’s grievances do not exist because Kretzer never filed them.

On May 3, 2019, Britt filed an unfair labor practice charge alleging that the Respondent violated Section 8(b)(1)(A) by refusing to process her EP and discharge grievances for “arbitrary or discriminatory reasons or in bad faith.” This charge was served on the Respondent on May 8, 2019. On November 23, 2020, the charge was amended to allege that the Respondent also violated Section 8(b)(1)(A) by failing and refusing to provide Britt with documentation related to her grievances.

The July 12, 2022, complaint alleges that since about May 19, 2017, the Respondent violated Section 8(b)(1)(A) by failing to process grievances over Britt’s EP and discharge for reasons that are arbitrary, discriminatory, or in bad faith and in breach of the fiduciary duty it owes to Britt and the unit. The complaint separately alleges that since about March 27, 2019, the Respondent violated Section 8(b)(1)(A) by refusing to provide Britt with copies of her grievances.⁸

II. THE JUDGE’S DECISION

The judge dismissed the complaint on the basis that the May 2019 charge alleging Kretzer violated Section 8(b)(1)(A) by failing to process Britt’s grievances was time-barred under Section 10(b). The judge found that Britt was on notice no later than late 2017 or early 2018—after her contact with the unidentified Local and National union representatives—that the Union did not intend to process her grievances. The judge found that by that time, Britt could have conclusively determined as much with the exercise of reasonable diligence. Accordingly, in the judge’s view, Britt had until around mid-2018 to file a charge, making her May 2019 charge untimely. The judge did not address the timeliness of the amended charge alleging that Kretzer also violated Section 8(b)(1)(A) by failing to provide Britt with copies of her grievances.

⁸ The complaint alleges that Britt is entitled to a make-whole remedy because had the Respondent processed her grievances, Britt would have prevailed and returned to her job. As explained below, we need not address the pertinent complaint allegations, the judge’s observations about

Had Section 10(b) not barred the charge, the judge concluded that the Union’s failure to process Britt’s grievances was at best gross negligence that would have constituted a violation of Section 8(b)(1)(A). The judge observed that Britt reasonably relied on Kretzer’s repeated lies and false assurances, which the judge characterized as made in bad faith, arbitrary, irrational, grossly negligent, or intentional. The judge did not address whether he would have also found unlawful Kretzer’s failure to provide Britt with copies of her grievances.

III. THE PARTIES’ POSITIONS

The General Counsel excepts to the judge’s dismissal of the complaint under Section 10(b). The General Counsel disagrees with the judge’s finding that by late 2017 or early 2018, Britt knew or should have known that the Respondent failed to process grievances on her behalf. The General Counsel argues that Britt’s inquiries at that time were merely focused on how long the grievance process should take and that only by January 2019 was Britt first suspicious that the Union had not processed her grievances at all. In the General Counsel’s view, Kretzer’s repeated lies and false assurances constitute fraudulent concealment that tolled the 10(b) period.⁹ The General Counsel also notes that so long as Britt did not have clear and unequivocal notice of the Respondent’s unfair labor practices before November 8, 2019 (6 months before service of her May 2019 charge), her charge was timely under Section 10(b). Finally, the General Counsel asserts that Britt acted with reasonable diligence.

The General Counsel also excepts to the judge’s failure to address the complaint allegation that the Respondent violated 8(b)(1)(A) by failing to provide Britt with copies of her grievances. The General Counsel asserts that this alleged violation is warranted because, within 6 months of filing and serving her May 3, 2019 charge, Britt asked Kretzer for copies of her grievances, Kretzer responded he would bring them to her, provided tracking numbers assumedly related to grievances filed on her behalf, but never actually provided any documents.

The Respondent asserts that the judge correctly applied Section 10(b) to dismiss the complaint allegation concerning Kretzer’s failure to process Britt’s grievances because by no later than early 2018, Britt was on notice that Kretzer had not filed her grievances. The Respondent further asserts that the General Counsel’s fraudulent concealment argument fails because Britt did not exercise due

this issue, or the parties’ related arguments because this remedial matter, if necessary, will be litigated in the Board’s compliance proceedings.

⁹ See, e.g., *Brown & Sharpe Mfg. Co.*, 321 NLRB 924 (1996), enfd. sub nom. *Machinists District Lodge 64 v. NLRB*, 130 F.3d 1083 (D.C. Cir. 1997), cert. denied 524 U.S. 926 (1998).

diligence. Concerning the complaint allegation that the Respondent unlawfully failed to provide Britt with copies of her grievances, the Respondent asserts that Britt had notice of that unlawful conduct as early as April or May of 2017, when Kretzer did not respond to her initial information requests.

IV. DISCUSSION

A. Section 10(b)

Section 10(b) states that “no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board[.]” The Section 10(b) period does not begin to run until the charging party has “clear and unequivocal notice,” either actual or constructive, of facts necessary to support a ripe unfair labor practice. *St. Barnabas Medical Center*, 343 NLRB 1125, 1126 (2004). A charging party has constructive notice of an unfair labor practice “where it could have discovered the alleged misconduct through the exercise of reasonable diligence.” *Id.* at 1126–1127. However, a charging party’s delay in filing an unfair labor practice charge will not bar a charge when the delay “is a consequence of conflicting signals or otherwise ambiguous conduct by the other party[.]” *A & L Underground*, 302 NLRB 467, 469 (1991). The party raising Section 10(b) as an affirmative defense bears the burden of proving that a complaint is time-barred. See, e.g., *Chinese American Planning Council*, 307 NLRB 410, 410 (1992), review denied mem. 990 F.2d 624 (2d Cir. 1993). Here, the Respondent has not met this “high burden of proof.” *Taylor Ridge Paving & Construction Co.*, 365 NLRB No. 168, slip op. at 3 (2017).

In this case, the charge was filed on May 3, 2019, and served on the Respondent on May 8, 2019. The Section 10(b) period thus started on November 8, 2018.¹⁰ We find that prior to November 8, 2018, Britt did not have clear and unequivocal notice that the Respondent had failed both to process her grievances and truthfully respond to her related information requests. While the judge and our dissenting colleague believe that Britt’s late 2017 and early 2018 communications with union representatives established clear and unequivocal notice, we find that those communications—coupled with Kretzer’s prior and subsequent conduct—created conflicting signals and ambiguity that justified Britt’s decision not to file her charge until May 2019.

From the time of Britt’s April 2017 EP through November 2017, Kretzer’s repeated assurances and other active

efforts gave no indication that he had not processed her grievances. In April and May 2017, immediately after Britt’s EP and discharge, Kretzer assured Britt that he would file grievances over both disciplinary actions. Consistent with those assurances, the Union participated in Britt’s May 2017 predisiplinary interview. Britt’s reasonable belief in Kretzer’s word was further bolstered by his active involvement in her EEO claim, which had the same goal as her grievances—a return to work. In June 2017, Kretzer went to Britt’s home to help her complete an EEO complaint and again assured her that he was processing both grievances. And in November 2017, Kretzer attended a meeting with USPS concerning Britt’s EEO complaint.

The messages from the Local and National union representatives in late 2017 and early 2018 failed to clarify the situation because their messages to Britt were equivocal. The unidentified Local representative reported to Britt that discharge grievances take 6 months to complete. But that representative explained that this timeframe was a general one, and he did not provide any specific information about the status of Britt’s grievances. Likewise, an unidentified National representative reported no grievances on file for Britt, but Britt provided unchallenged testimony that she was not familiar with the time limits associated with the grievance procedure and “wouldn’t know the first thing about filing a grievance.” Accordingly, we disagree with our colleague that Britt knew or should have known that had Kretzer actually filed her grievances, they would have already been within the National Union’s purview under steps 3 or 4 of the grievance process. At most, given the language in her EP and discharge notices, Britt was aware of one simple timeline—that she had the right to file a grievance within 14 days of her receiving notice of those disciplinary actions. Kretzer’s actions did not indicate that he had failed to meet those timelines. On each occasion, Britt promptly requested that Kretzer file a grievance, which he immediately promised to do and later affirmed that he had done.

Contrary to our colleague, we find the information she received during those conversations did not provide her with clear and unequivocal notice of the unfair labor practice. See *R.G. Burns Electric*, 326 NLRB 440, 440 (1998) (union agent’s strong suspicion that an employer refused to hire union-affiliated applicants insufficient to constitute clear and unequivocal notice where the employer gave applicants reassurances to suggest otherwise). Particularly because Britt’s own union steward and area Vice President

¹⁰ In raising its Sec. 10(b) defense, the Respondent only argues that its conduct prior to Britt filing her original May 2019 charge put her on notice that the Respondent had committed the alleged unfair labor practices. Because the Respondent raises the same arguments with respect to the

allegations in the November 2020 charge as it does to the May 2019 charge, we reject the Respondent’s Sec. 10(b) defense to that subsequent charge for the same reasons as we reject the challenge to the May 2019 charge.

had recently attended her EEO meeting and assisted Britt in that related effort to return to work, Britt did not have clear notice by that point that Kretzer had abandoned her grievances. At the least, given the ambiguities created by conflicting messages from these different union agents and their seemingly inconsistent conduct, it was not unreasonable for Britt to take more time to gather information before filing a charge. See *Sterling Nursing Home*, 316 NLRB 413, 416 (1995) (rejecting a 10(b) defense on the basis that an employer’s promises and explanations left a charging party union with “no reason to believe that a completed violation had occurred”); *Barnard Engineering Co.*, 295 NLRB 226, 226 (1989) (finding that, where a union had a “reasonable belief” that entities were related companies, the union “pursued the reasonable alternate course of requesting additional information . . . to determine whether a charge or grievance would likely have merit”).¹¹

By September 2018, Kretzer actively worked to alleviate Britt’s concerns by repeatedly assuring her that he was pursuing her grievances. In the 2 months immediately preceding the November 8, 2018, start of the 10(b) period, Kretzer told Britt that he expected an escalation of her grievances, had resent documents, contacted the NLRB, received information from USPS that he would add to her file, and explained that any delays were a result of being out of the office or too busy with other matters. And in November and December 2018, after the 10(b) period started, Kretzer similarly assured Britt that he was working on it, inundated with other work, or unable to contact the necessary principals in her case. At no time did

Kretzer indicate that he had failed to file or abandoned Britt’s grievances.

Certainly, beginning January 19, 2019, Britt had greater reason to suspect that Kretzer’s assurances were in fact false when the National union agent, at the behest of an active union steward, conducted a second, thorough search and reported no grievance activity on Britt’s behalf. Prior to that time, however, Kretzer’s repeated lies and false assurances seriously hampered Britt’s efforts to understand the true status of her requested grievances, including the accuracy of earlier reports from different union representatives that seemed to contradict Kretzer. Under the unique circumstances of this case, we conclude that any delay in Britt filing her May 3, 2019 charge was a consequence of these conflicting signals and otherwise ambiguous conduct, which persisted into the 10(b) period.¹²

For all these reasons, we find that the Respondent has failed to sustain its burden of establishing that Britt, outside the 10(b) period, had clear and unequivocal notice of the Respondent’s unfair labor practices. Accordingly, Section 10(b) does not bar the complaint allegations, and we now turn to the unfair labor practices alleged in the complaint.

B. Section 8(b)(1)(A)

A union breaches its duty of fair representation to the employees it represents, and thereby violates Section 8(b)(1)(A) of the Act, by engaging in conduct concerning a bargaining unit employee that is arbitrary, discriminatory, or in bad faith. See *Vaca v. Sipes*, 386 U.S. 171, 190 (1967). To be found arbitrary, the union’s behavior must

¹¹ Contrary to our colleague’s assertion that Britt took no action between early 2018 and September 2018, the record shows that she did maintain contact of an unspecified nature with Kretzer. And because the Respondent bears the burden of establishing a Sec. 10(b) defense, we decline to infer that, based on this contact, Britt knew or should have known that Kretzer failed to file the grievances.

We note that our dissenting colleague does not dispute the above-mentioned facts; he accepts the fact that the person responsible for ensuring that Britt’s grievances were filed—and who owed a duty of fair representation to her—lied to her, repeatedly. And he acknowledges that the Union committed an unfair labor practice by failing to file her grievances. Nevertheless, he would find that the Union should not be held responsible for its actions because, in his view, the Sec. 10(b) period started by “late 2017 or early 2018” ostensibly because Britt should have known “something was wrong” and “the record goes dark for at least eight months” after Britt learned that the National Union did not have a record of her grievances.

We disagree. The Respondent’s Sec. 10(b) argument is an affirmative defense and requires the Respondent, not the Charging Party, to meet a high burden of proof. In our view, not only has the Respondent failed to satisfy this burden, but our dissenting colleague’s position is effectively blaming the victim for the fact that Kretzer—a vice president for the union that was supposed to be representing Britt’s interests—had

repeatedly provided Britt with false assurances to cover up the Respondent’s unfair labor practice. Furthermore, the record establishes that, as late as 2019, Britt was still seeking reassurances from Kretzer and that Kretzer was still intent on concealing the unfair labor practice from her. In fact, Kretzer went so far as to provide Britt with made-up case numbers and fake tracking numbers to conceal the unfair labor practice.

Given that a union vice president had consistently and unwaveringly lied to Britt in order to prevent Britt from understanding that her grievances had not been filed, thereby concealing from her the fact that an unfair labor practice had been committed, we reject our colleague’s suggestion that Britt was clearly and unequivocally aware in early 2018 that Kretzer had been lying to her all along, or should have been clearly and unequivocally aware of that fact. See, e.g., *Stage Employees IATSE Local 412 (Asolo Center)*, 308 NLRB 1084, 1084, 1088 (1992) (finding that Sec. 10(b) period was not triggered, in part, because respondent’s “mixed signals” did not clearly and unequivocally apprise charging party of unfair labor practice), enfd. mem. 15 F.3d 1096 (11th Cir. 1994).

¹² Because we find that Britt’s delay in filing her May 3, 2019 charge was a consequence of conflicting signals or otherwise ambiguous conduct by the Respondent, we find it unnecessary to address the General Counsel’s argument that the 10(b) period was tolled under the equitable doctrine of fraudulent concealment.

have been “so far outside a ‘wide range of reasonableness,’ . . . that it is wholly ‘irrational’ or ‘arbitrary.’” *Air-line Pilots Assn. v. O’Neill*, 499 U.S. 65, 78 (1991) (quoting *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953)). A union acts arbitrarily and in bad faith when it willfully misinforms employees and willfully keeps them uninformed about their grievances. *Postal Workers*, 328 NLRB 281, 282 (1999).

Applying these principles, we find that the Respondent violated Section 8(b)(1)(A) by failing to process Britt’s grievances concerning her EP and discharge because its failure to do so and Kretzer’s lying about having filed the proper documents were arbitrary and in bad faith. The Respondent did not refuse to file the grievances based on a good faith determination about their merits. Instead, Kretzer committed himself to filing Britt’s grievances and repeatedly lied to and misinformed her about doing so when, in reality, he took no action on her part. The Respondent has adduced no testimony or presented any record evidence that might explain Kretzer’s actions. These inexcusable actions are beyond the wide range of reasonableness afforded unions in their representative duties and plainly constitute unlawful conduct. See *id.* (finding that union steward violated Section 8(b)(1)(A) by lying about the existence of an unsuccessful step-one grievance meeting and a future step-two meeting, thereby “falsely lead[ing]” the employee to believe that her grievance “had been filed” and that the steward was “actively pursuing” it).¹³

Additionally, we find that the Respondent violated Section 8(b)(1)(A) by providing Britt false information in response to her requests for copies of her grievances. Kretzer willfully misinformed Britt by providing her with fake “tracking” and “case” numbers, which Kretzer explained were responsive to her information requests. This inexcusable conduct is plainly unlawful because again, it

“falsely le[d]” Britt to believe that her grievances “had been filed” and that Kretzer was “actively pursuing” them. *Postal Workers*, supra at 282.¹⁴

CONCLUSIONS OF LAW

1. Since about May 19, 2017, the Respondent has violated Section 8(b)(1)(A) of the Act by failing to process Britt’s grievances concerning her EP and discharge for reasons that are arbitrary, discriminatory, or in bad faith and has breached the duty of fair representation it owes to Britt and the unit.

2. Since about March 27, 2019, the Respondent has violated Section 8(b)(1)(A) of the Act by providing Britt false information in response to her requests for copies of her grievances and has breached the duty of fair representation it owes to Britt and the unit.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent breached its duty of fair representation owed to Britt in connection with the processing of her grievances in violation of Section 8(b)(1)(A) of the Act, we shall provide the remedy prescribed in *Iron Workers Local 377 (Alamillo Steel Corp.)*, 326 NLRB 375 (1998). Accordingly, we shall order the Respondent to promptly request that the Employer consider Britt’s grievances and, if the Employer does so, to process the grievances in accordance with the collective-bargaining agreement between the Respondent and the Employer, including whatever settlement discussions or proposals may be consistent with the parties’ processing of the grievance.

In addition, we shall order the Respondent to permit Britt to be represented by her own counsel at any grievance proceeding, including any arbitration that the

¹³ See also *Maritime Union District 1 (Mormac Marine Transport)*, 312 NLRB 944, 944 (1993) (finding violation where a union twice assured an employee that “his grievance would be looked into and handled” but “took absolutely no action on the grievance” until 9 months later when it “finally began its investigation”); *Service Employees Local 3036 (Linden Maintenance)*, 280 NLRB 995, 997 (1986) (finding violation where union’s “continued nonaction” concerning a grievance, without presenting “any evidence of the exercise of discretion in abandoning the grievance . . . amounted to a willful failure to pursue the grievance”).

¹⁴ See also *Communications Workers Local 3410 (BellSouth Telecommunications)*, 328 NLRB 920, 922 (1999) (finding that union official violated Sec. 8(b)(1)(A) by, among other reasons, removing an employee from a grievance based on a union agent’s statement, “which was never made,” “falsely telling” the employee as much, and “falsely telling” the employee that a related settlement was a “done deal”).

Although the complaint alleges that the Respondent violated Sec. 8(b)(1)(A) by refusing to provide Britt with copies of her grievances, “[i]t is well settled that the Board may find and remedy a violation even in the absence of a specified allegation in the complaint if the issue is

closely connected to the subject matter of the complaint and has been fully litigated.” *Pergament United Sales*, 296 NLRB 333, 334 (1989), *enfd.* 920 F.2d 130 (2d Cir. 1990). Our finding that the Respondent violated Sec. 8(b)(1)(A) by providing Britt with false information in response to her requests for copies of her grievances satisfies both prongs. The violation we find is based on Kretzer’s provision of fake tracking and case numbers, which he explained were in response to Britt’s requests for copies of her grievances. These facts are thus plainly intertwined with the allegation that Kretzer unlawfully failed to provide Britt with copies of her grievances. In addition, we find that this issue has been fully litigated. At the hearing, the General Counsel adduced testimony establishing these facts, which the Respondent did not dispute. And in her opening statement, the General Counsel argued that a union breaches its duty of fair representation when it gives a member misinformation, thereby putting the Respondent on notice that these misdeeds were at issue. Finally, in her posthearing brief, the General Counsel cited *Postal Workers*, supra, in support of the specific argument that Kretzer’s provision of fraudulent information violated the Act.

Respondent authorizes or other resolution proceedings that may follow from the Respondent's efforts on Britt's behalf, and pay the reasonable legal fees of such counsel. Following exhaustion of any grievance processing in the prearbitration stage of the grievance procedure, the Respondent may exercise its discretion, consistent with its duty of fair representation, and decide in good faith whether to pursue the grievances to arbitration. If it is not possible to pursue the grievances based on the Employer's unwillingness to do so, and if the General Counsel shows in compliance proceedings that timely pursued grievances would have been successful in arbitration, the Respondent shall make Britt whole for increases in damages, if any, suffered as a consequence of its failure to process her grievances in good faith as set forth in *Iron Workers Local 377 (Alamillo Steel Corp.)*, supra, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

ORDER

The National Labor Relations Board orders that the Respondent, American Postal Workers Union, Local 512, a/w American Postal Workers Union AFL–CIO, Emmitsburg, Maryland, its officers, agents, and representatives shall

1. Cease and desist from

(a) Breaching its duty of fair representation by failing to process a unit employee's grievances for reasons that are arbitrary, discriminatory, or in bad faith.

(b) Breaching its duty of fair representation by providing a unit employee false information in response to the unit employee's requests for copies of her 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.

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

(a) Promptly request the United States Postal Service (the Employer) to consider JoAnn Britt's grievances, and, if it agrees to do so, process the grievances with due diligence in accordance with the collective-bargaining agreement between the Employer and the Respondent.

(b) Permit Britt to be represented by her own counsel at any grievance proceeding, including arbitration or other resolution proceeding, and pay the reasonable legal fees of such counsel.

(c) In the event that it is not possible for the Respondent to pursue the grievances, and if the General Counsel shows in a compliance proceeding that timely pursued grievances would have been successful, make Britt whole for any increases in damages she suffered as a consequence of the Respondent's refusal to process the grievances, in the manner set forth in the remedy section of this decision.

(d) Post at its union office and meeting places copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to unit members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 14 days after service by the Region, deliver to the Regional Director for Region 5 signed copies of the notice in sufficient number for posting by the Employer at its Emmitsburg, Maryland facility, if it is willing, at all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 5 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. April 8, 2026

James R. Murphy,

Chairman

¹⁵ If the Respondent's office and meeting places involved in these proceedings are open and accessible to a substantial complement of members, the notice must be posted within 14 days after service by the Region. If the office and meeting places involved in these proceedings are closed or not accessible to a substantial complement of members due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the office and meeting places reopen and are accessible to a substantial complement of members. If, while closed

or not accessible by a substantial complement of members due to the pandemic, the Respondent is communicating with its members by electronic means, the notice must also be posted by such electronic means. 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."

 Scott A. Mayer,

Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting.

Contrary to my colleagues, I would affirm the judge's finding that by late 2017 or early 2018, Charging Party JoAnn Britt had (at least) constructive notice that the Respondent had not processed grievances on her behalf and that the statute of limitations on her claim began to run at that time. At that point, when Britt was told that her grievances were not on file, she was aware of facts that reasonably engendered suspicion that an unfair labor practice had occurred. Yet she took no action for more than 6 months thereafter. In particular, I would affirm the judge's finding that by September 26, 2018, when the record shows Union Steward Curt Kretzer texting false intimations and worse about Britt's grievances, the statute of limitations period had already expired. Accordingly, I would find that the judge properly dismissed the complaint as time-barred under Section 10(b) of the Act, which provides in relevant part that "no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge"

The facts underlying this case were set in motion on April 14, 2017, when Britt was involved in a confrontation with a coworker over sorting letters. The same day, the manager on duty, Amanda Whetzel, sent Britt home on an Emergency Placement (EP), i.e., suspended her, while the incident was investigated. The USPS EP notice to Britt, dated April 14, set forth the basis for the EP and informed Britt of her right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement within 14 days after receipt of the notice. After leaving the facility, Britt contacted her steward, regional vice-president Curt Kretzer. Kretzer spoke with Whetzel and telephoned Britt to explain that she was put

on the EP pursuant to USPS's zero tolerance policy for engaging in threatening behavior. On May 19, USPS issued a notice of removal, i.e., a discharge notice, to Britt for her involvement in the incident. The notice set forth the basis for the discharge and stated that Britt had the right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement within 14 days of receipt of the notice.¹

Kretzer told Britt that he would file grievances on her behalf for both the EP and the discharge. Although Britt repeatedly asked Kretzer for copies of her grievances, he failed to provide them.²

As the months went by, Britt attended no grievance step hearings. As she testified, with regard to process on her grievances, "there was nothing." Concerned that it was taking too long, in late 2017, Britt called an unidentified associate who was working with the Respondent to ask how long it takes to process grievances and was told that it would take about 6 months. Then, also in late 2017 or early 2018, Britt called the National union office and was told directly there were no grievances on file for her.

For 9 months thereafter (from January to September 2018), Britt failed to act. As the judge found, "[t]he record is devoid of any specific evidence of contact between the Union, including Curt Kretzer, and Britt, between her inquiry in late 2017/early 2018 and September 26, 2018, as well as between mid-2017 and the Fall of 2017."³ Then from September 2018 through June 2019, she texted Kretzer almost daily seeking copies of the grievances and inquiring about their status. In the interim, on January 19, 2019, Britt also contacted Union Steward Edith Hough to ask about her grievances. Hough called a National union business agent who litigates arbitrations, and she reported back to Britt that the National had no record of her grievances—exactly the information that Britt had learned when she called the National office herself more than a year earlier. At that point, Britt texted Kretzer telling him that the National did not have the grievances she thought

¹ The National Agreement, which is the collective-bargaining agreement establishing the grievance/arbitration procedure covering Britt provides that an aggrieved employee, with or without their union representative, may initiate a grievance verbally at step 1 with a supervisor within 14 days of an event. The supervisor's decision must be given to the union representative (or grievant if the grievant is acting alone) no later than 5 days thereafter, absent mutual agreement to extend the 5-day period. Within 5 days after the supervisor's decision, at the Union's request, the supervisor will confirm her decision by initialing a Step 2 form and the Union thereafter is entitled to appeal a supervisor's adverse decision to Step 2 within 10 days. The Step 2 meeting is to be held no later than 7 days following the receipt of the Step 2 appeal unless the time limits are mutually extended, and a decision must then be rendered by management within 10 days of the meeting, absent mutually agreed-to extension. After that, 15 days is allotted for appeal of a grievance to Step 3, which is

the step of the grievance procedure where the National union business agents thereafter handle the grievances.

² Kretzer did help Britt file an EEO complaint. The record also shows that Whetzel provided the Union with a file that contained three April 2017 information requests that Kretzer made to the Respondent in conjunction with Britt's EP, and a June 1 email from Kretzer to Whetzel giving notice that Britt's April 14 EP and her May 19 discharge were being grieved at step 1 of the grievance procedure.

³ As the judge also found, Britt did not attempt to contact anyone else at Local 512 despite having access to the telephone numbers of officials other than Kretzer. Britt claimed that she exchanged many texts with Kretzer prior to September 26, 2018, but as the judge found, "there is no evidence as to the contents of these texts. Moreover, this testimony is somewhat inconsistent with Britt's testimony that she called another agent of Local 512 in late 2017 because Kretzer was not responding to her."

Kretzer filed for her and that the process was taking too long. On May 3, 2019, Britt filed an unfair labor practice charge against the Respondent.

The 10(b) period commences when a party has clear and unequivocal notice that the Act has been violated *or* where a party in the exercise of reasonable diligence should have been aware that the Act has been violated. *Amalgamated Transit Union Local 1433 (Phoenix Transit System)*, 335 NLRB 1263, 1271–1272 (2001); *Electrical Workers Local 25 (SMG)*, 321 NLRB 498, 500 (1995). In this instance, Britt was advised by the National Union in late 2017 or early 2018 that there were no grievances on file for her. Britt not only had a previous experience with the grievance procedure, but knew (or at least should have known) from her EP and removal notices that grievances had to be filed within 14 days. Moreover, under the standard contractual time limits in the National Agreement, unresolved grievances advance to Step 3 and to the National Union’s purview within less than 60 days from verbal initiation at Step 1. But in late December 2017 or early 2018, approximately 8 months after her EP grievance was required to be and supposedly was filed, and approximately 9 months after her discharge grievance was required to be and supposedly was filed, Britt learned directly from the National Union that there were no grievances for her. It would be reasonable to suspect at this point, in late 2017 or early 2018, that something was wrong; indeed, it would be unreasonable not to. To the point, by this time Britt not only “possessed facts which were sufficient to create a suspicion that an unfair labor practice had occurred” (*Electrical Workers Local 25 (SMG)*, supra at 500), but also acted on her belief that the process was taking too long and concern that Kretzer had stopped responding to her by calling the unnamed union representative, and thereafter, calling the National Union. Yet, after being told that there were no grievances on file, she took no action for well over 6 months. Indeed, after Britt learned in late December 2017/early 2018 from the National Union that there were no grievances for her, the record goes dark for at least 8 months as to Britt’s contact with Kretzer. As far as the record demonstrates, Britt waited until September 2018 to begin texting Kretzer on a regular basis to inquire about the status of her grievances.

Unfortunately, by September 2018 when the regular texting began—at least eight months after her suspicions led her to call the National Union where she was told affirmatively that there were no grievances on file—her case was time-barred. The National Union’s representation to her that there were no grievances for her provided far more than the “reasonable suspicion” of the facts of the unfair labor practice to commence the running of the 10(b) period. See, e.g., *Amalgamated Transit Union (Phoenix Transit System)*, supra at 1263 fn. 2, and 1271–1272 (applying Sec. 10(b) where a charging party was found to have been “on notice of facts that reasonably engendered suspicion that an unfair labor practice had occurred”).⁴

My colleagues disclaim reliance on the General Counsel’s fraudulent concealment theory of a violation. Instead, they create their own theory of violation, one that essentially holds that Kretzer’s initial misconduct insulates Britt from 10(b) and from any obligation to act at all, much less with diligence, based on what she subsequently learned (or should have known) about her grievance. My colleagues contend that in late 2017 and early 2018 when Kretzer had stopped responding, and acting on her suspicions Britt contacted the unnamed union representative and the National Union and learned that there was no grievance, this information did nothing to cause the statute of limitations to begin running. In the majority’s view, these contacts “failed to clarify the situation” and were “equivocal.” However, this claim of uncertainty is based not on what Britt was told—she was told there was no grievance—but rather based entirely on Kretzer’s earlier misleading of Britt. But “mixed signals,” as my colleagues denote the issue, need to be contemporaneous to be effective to toll the running of the statute of limitations. By the time Britt acted on her suspicions and contacted the National Union, there were no contemporaneous “mixed signals.” Rather, she learned in late 2017 or early 2018 that Kretzer’s earlier statements were suspect and that there was no grievance. At a bare minimum, Britt was now “on notice of facts that reasonably engendered suspicion that an unfair labor practice had occurred.” *Amalgamated Transit Union (Phoenix Transit System)*, supra at 1263 fn. 2. And yet, after that point, Britt took no action at all for at least 8 months and did not file a charge for 16 months. That is a time-barred claim.⁵

⁴ As the judge found, Kretzer’s repeated dodges to her inquiries and to her requests to talk after September 2018—well after the 10(b) period had passed—do not revive Britt’s already time-barred claim. *Ohio & Vicinity Regional Council of Carpenters (Schaeffer Group)*, 344 NLRB 366, 366–368 (2005). Thus, to the extent my colleagues rely on Kretzer’s misconduct during this period and “as late as 2019,” they miss the point: by that time, the 10(b) period had already run.

⁵ My colleagues “clarify” that Britt maintained contact of an unspecified nature with Kretzer prior to September 26, 2018, but they do not challenge the judge’s finding that “[t]he record is devoid of any specific evidence of contact between the Union, including Curt Kretzer, and Britt, between her inquiry in late 2017/early 2018 and September 26, 2018, as well as between mid-2017 and the Fall of 2017.” Nor do they challenge the judge’s finding that “there is no evidence as to the contents of these texts.”

My colleagues focus on Kretzer's misconduct and accuse me of "blaming the victim." However, the issue, obviously, is not whether the Respondent is blameworthy or whether Britt is aggrieved. Section 10(b) is a part of the Act. It reflects Congress's judgment "[a]s expositor of the national interest . . . that a six-month limitations period did 'not seem unreasonable,'" and pursuant to 10(b), Congress "barred the Board from dealing with past conduct after that period had run, even at the expense of the vindication of statutory rights." *Machinists Local Lodge No. 1424 v. NLRB*, 362 U.S. 411, 429 (1960) (quoting H.R.Rep.No. 245, 80th Cong., 1st Sess., p. 40). As shown above, the application of 10(b) in this case is based on Britt's actual knowledge and/or reasonable suspicion, which the Respondent substantiated largely through the Charging Party's own testimony regarding the timing of her calls, texts, and inquiries and her acknowledgement that as much as 16 months prior to filing the charge she learned that the National Union had no record of a grievance being filed on her behalf.⁶

As a corollary, I would also find that the Respondent's failure to provide copies of the grievances, and more concretely, its failure to tell Britt they had not been processed are subsumed in the time-barred duty of fair representation allegations. In these circumstances the failure to provide information, like the failure to process the grievances, is not revived by the Respondent's actions following the expiration of the Section 10(b) period.

Accordingly, I agree with the judge's dismissal of the complaint in its entirety.

Dated, Washington, D.C. April 8, 2026

David M. Prouty, Member

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

⁶ As noted, and notwithstanding the repeated invocation in their arguments of Kretzer's misleading conduct, my colleagues expressly eschew the theory of fraudulent concealment put forward in this case by the General Counsel as their basis for rejecting the Respondent's 10(b) defense. They do so, I presume, because they know that a required element of such a theory is that "the injured party was ignorant of [material

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

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT breach our duty of fair representation by refusing to process your grievances for reasons that are arbitrary, discriminatory, or in bad faith.

WE WILL NOT breach our duty of fair representation by providing you false information in response to requests for copies of your grievances.

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

WE WILL promptly request the United States Postal Service (the Employer) to process JoAnn Britt's grievances, and, if it agrees to do so, WE WILL process the grievance with due diligence in accordance with our collective-bargaining agreement with the Employer.

WE WILL permit Britt to be represented by her own counsel at any grievance proceeding, including arbitration or other resolution proceeding, and WE WILL pay the reasonable legal fees of such counsel.

WE WILL, in the event that it is not possible to pursue the grievances, and if the General Counsel of the National Labor Relations Board shows in a compliance proceeding that timely pursued grievances would have been successful, make Britt whole for any increases in damages she suffered as a consequence of our refusal to process the grievances, together with interest.

AMERICAN POSTAL WORKERS UNION, LOCAL
512 A/W AMERICAN POSTAL WORKERS UNION
AFL-CIO

The Board's decision can be found at www.nlr.gov/case/05-CB-241037 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.

facts, without any fault or want of due diligence on its part." *Brown & Sharp Mfg. Co.*, 321 NLRB 924, 924 (1996). As I have demonstrated, that is manifestly not the case here, at least not as of January 2018, when Britt came to know the material facts, 16 months before she filed her unfair labor practice charge.



Benjamin W. Palewicz, Esq., for the General Counsel.
Jason R. Veny, Esq. (Murphy Anderson PLLC), of Washington,
D.C., for the Respondent.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case opened by Zoom video technology on November 14, 2022 to discuss a petition to revoke a subpoena served on the U.S. Postal Service by the General Counsel. The substantive part of the case was tried in Baltimore, Maryland, on January 3 and 4, 2023.

Jo Ann Britt filed the charge giving rise to this case on May 3, 2019. It was served on Respondent on May 8, 2019. She alleges that Respondent Union violated Section 8(b)(1)(A) by failing to file a timely grievance over her discharge in May 2017 and designation for emergency placement a month earlier.

The General Counsel issued a complaint on July 12, 2022. The General Counsel alleges that Respondent Union violated Section 8(b)(1)(A) of the Act by failing to process Ms. Britt's grievance and failing to provide her a copy of her grievances relating to her emergency placement and discharge.

Respondent in its Answer contends that the complaint is time barred under Section 10(b) of the Act. For the reasons stated herein. I find that the complaint is time barred and dismiss the complaint. However, in the event the Board and/or a Court of Appeals disagrees with me, I am setting forth the facts and an analysis indicating that if the charge had been timely, I would have found Respondent in violation of Section 8(b)(1)(A) as alleged.¹

On the entire record, including my observation of the

¹ Compliance matters are way beyond the scope of this decision. However, I would note that backpay would conceivably be reduced by interim earnings and issues as to whether Ms. Britt made an adequate search for work.

² The Union in its brief relies on documents that were admitted solely for the proposition that they were given to Trina Bennett-Fair, the current union president and not for the truth of any matters asserted therein, Tr. 184–185. Respondent has not established, for instance, that Curt Kretzer ever filed a grievance on behalf of Britt or that he made a request for information from the Postal Service. While the General Counsel appears to concede that Kretzer tried to file a grievance on June 1, 2017. I find the record evidence, an email purportedly sent from Kretzer to Whetzel, supporting that proposition has not been properly authenticated. For one thing, I would expect to see a response from the Postal Service in this record. Assuming that Kretzer did file a grievance, it is uncontroverted that he did not submit it to the International Union for further processing and possible arbitration.

demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent Union² I make the following

FINDINGS OF FACT

I. JURISDICTION

The employer, the United States Postal Service, has its headquarters in Washington, D.C. It provides postal services throughout the United States, including from its facility in Emmitsburg, Maryland. The Board has jurisdiction over the Employer and Respondent Union pursuant to Section 1209 of the Postal Reorganization Act. The Respondent, Local 512 of the American Postal Workers Union, is a labor organization within the meaning of Section 2(5) of the Act.³

Jo Ann Britt's employment with the U.S. Postal Service, emergency placement and discharge

Jo Ann Britt's testimony about what transpired in this matter is uncontradicted and therefore credited. None of the other individuals with first-hand information, Curt Kretzer, Ron Borsella, Amanda Whetzel or Britt's coworker, Vickie, testified. Respondent did not contend that they were unavailable.⁴ Respondent's brief in arguing a different set of facts than that testified to by Britt, relies almost totally on hearsay evidence that is entitled to no weight.

The Postal Service hired Jo Ann Britt in October 2005, or earlier. She worked as a postal clerk at the Emmitsburg, Maryland postal facility and was a member of Local 512.. Prior to April 14, 2017, the Postal Service had not disciplined Britt. On that day, Britt had a dispute with another employee, who I will only identify as Vickie. Britt and Vickie's dispute had to do with who was to sort some letters that Vickie was holding. Britt tried to take the letters out of Vickie's hand. Vickie would not let Britt do so. Forty-five minutes afterwards, Amanda Whetzel, a Postal Service supervisor, informed Britt that she would have to leave the facility.

Britt called Curt Kretzer, a shop steward and area vice-president of the Union.⁵ Kretzer told Britt that Whetzel was sending her home on "emergency placement" pursuant to the Postal Service's zero tolerance policy for violent and/or threatening

³ Aka Southwest Maryland Bay Area Local 512.

⁴ Vickie apparently retired from the Postal Service in September 2017. Whetzel currently works for the Postal Service in Frederick, Maryland. Whetzel provided documents to the current union president Trina Bennett-Fair, in conjunction with the instant matter after March 2020.

There is no information in this record about Kretzer, other than he ceased being president of Local 512 in October 2019. The current union president, Trina Bennett-Fair, talked to Kretzer in preparing to respond to the General Counsel's subpoena after March 2020 when she assumed office.

There is no information regarding Borsella other than he ceased being president of Local 512 prior to March 2018.

⁵ At this time Kretzer and Jeffrey Watson were handling many of the duties of then Union President Ron Borsella. Kretzer officially became the union president in March 2018 and served in that position until October 2019.

behavior. Kretzer told Britt that Whetzel told him that Vickie felt threatened by Britt's conduct. On April 14, 2017, the Postal Service issued Britt a notice of her emergency placement in off-duty status (GC Exh. 4). That notice, signed by supervisor Amanda Whetzel, which Britt received the next day, stated:

On Friday April 14, 2017 you approached a co-worker and attempted to forcibly remove letters from her hand while she was sorting mail. When your coworker told you that she would sort the letters you continued to try to remove them from her hand. When I approached you about the incident and instructed you to leave the premises you became argumentative and loud. I had to instruct you three times to leave.

Your actions are in violation of the following Postal Service rules and regulations: Employee and Labor or Relations Manual (ELM). Section 665.24. Violent and/or threatening behavior.

The notice informed Britt of her right to file a grievance pursuant to Article 15 of the National Agreement between the Postal Service and the APWU within 14 calendar days of her receipt of the notice.

Sometime within a week of April 14, Kretzer told Britt that she should file an EEO complaint and that he would file a grievance.

Whetzel scheduled a pre-disciplinary interview (PDI) for April 21. Britt did not attend that as scheduled due to a doctor's appointment.⁶ However, she did meet in-person with Whetzel for a PDI on May 1, 2017. Ron Borsella, then the Union President, acted as Britt's Weingarten representative by phone (GC Exh. 8). He said nothing during the interview.

Whetzel asked Britt what happened on April 14. Britt replied as follows:

She and Vickie were sorting letters. Vickie had letters in her hand, Britt put her hand on the letters to take them. When Vickie told Britt she was going to sort the letters she held, Britt let go of them.

When asked about her working relationship with Vickie, Britt stated it was "challenging."

The form on which Whetzel made notes of the PDI contains a question as to whether Vickie was upset when Britt attempted to remove mail from her hands. Britt answered in the negative. A follow-up question "if yes: Are you aware that this caused her physical pain in her arm?" was not asked. Britt was never told that Vickie alleged that Britt hurt her.

Kretzer assured Britt on at least several occasions that he was

filing a grievance on her behalf. He came to her home and assisted her in filling out an EEO complaint.⁷

On May 1, Whetzel drafted a Notice recommending Britt's removal from Postal Service employment. This was approved by Whetzel's supervisor the next day (GC Exh. 8).

Whetzel's proposed personnel action was predicated on interviews with Britt, Vickie and another employee, Harriet. The proposed personnel action, which was never shared with Britt stated that Britt grabbed letters that were in Vickie's hand and started pulling on them. Whetzel recounted that Vickie stated she did not feel safe working with Britt and that the incident caused Vickie pain in her arm from Britt pulling on the letters repeatedly.

During Britt's PDI she was not told or asked about Vickie's allegations that she was injured or experienced pain as a result of Britt pulling on the letters.

On May 19, 2017, the Postal Service mailed Britt a Notice of Removal, pursuant to its Zero Tolerance Policy for violent and/or threatening behavior (GC Exh. 5). The notice stated that after Vickie told Britt she would sort the mail, Britt continued pulling at the letters and that "Vickie indicated that she had incurred pain in her arm." The Notice also implied that Britt had yelled at Vickie, something else she had not been accused of in the Pre Disciplinary Interview.

When Britt received the notice of her removal she called Kretzer immediately. She asked him to include her discharge in the grievance she had been told he had already filed. Kretzer told her a new grievance had to be filed regarding the discharge.

In April and May 2017, Britt asked Kretzer for copies of her grievances several times. Kretzer did not provide her with such copies (Tr. 104).

In late 2017, Britt talked to "an associate that was also working with the Union that was a union representative in his office that had retired" (Tr. 83). Britt asked how long it took to file grievances and to address a removal. That person said no more than 6 months. Britt made no attempt to contact anyone else at Local 512 despite having access to the telephone numbers of other officials.

In late 2017 or early 2018, Britt believed the processing of her grievance was taking a long time. She called an unidentified person at the International Union. That person told Britt that no grievance had been filed. A regional business agent of the national APWU represents a grievant at step 3 of the collective bargaining agreement's grievance and arbitration provisions.

Britt then asked Kretzer why she was being told this (Tr. 105–107, 112–113). Respondent contends this record establishes that this individual told Britt that the grievance arbitration process should not take longer than six months. I find the testimony in this regard ambiguous.⁸ I find that it is unclear whether Britt

⁶ Britt testified that she relied on Curt Kretzer to inform Whetzel about the doctor's appointment.

⁷ Britt filed an EEO complaint based on age discrimination in June 2017. It is no longer active for reasons not apparent in this record.

⁸ BY MR. VENY: But you asked someone else about the status of—of the grievance in 2017?

A No, not the status, just what the protocol was, like—

Q How to file?

A Just that what he was going to do, and how long it would take. Like what Curt was going to do, and how long a dismissal is supposed to take. Shouldn't take longer than six months.

Q And when did you ask this other official that?

A Late 2017.

Q In 2017?

A Yeah, late—late 2017. It was, like, in December because, as far as I was concerned, it was taking a long time.

Q In December of 2017 you felt it was taking a long time?

subjectively thought the process should take 6 months or that she was told that by someone at the International Union. Exhibits submitted by Respondent show that the time from a discharge to an arbitrator's decision may take more than a year.

Britt's phone does not contain text messages between her and Curt Kretzer prior to September 26, 2018. She testified that she exchanged many texts with Kretzer prior to that date, Tr. 66. If so, there is no evidence as to the contents of these texts. Moreover, this testimony is somewhat inconsistent with Britt's testimony that she called another agent of Local 512 in late 2017 because Kretzer was not responding to her (Tr. 83). General Counsel Exhibit 6 contains 57 pages of text messages between Britt and Kretzer from September 6, 2018, through June 21, 2019.

In the first one, on September 26, 2018, Britt inquired about her grievances. Kretzer responded that he was resending the documents. He did not tell Britt that he had not filed a grievance or that the time for filing a grievance had expired before he could do so. He left Britt with the impression that he had filed grievances on her behalf regarding the emergency placement and her discharge. Kretzer went so far as to give Britt phony tracking numbers suggesting they pertained to her grievances. He told Britt he had contacted the NLRB about the Postal Service repeatedly delaying a response to his information requests.

On October 24, 2018, Britt asked Kretzer whether he had received any updates about the grievances or from the Labor Department. Britt asked Kretzer what was going on with her grievances on December 10, 2018. He replied that he was inundated. Kretzer did not give her any indication that he never filed a grievance on her behalf or that he had not submitted one to the International Union.

In January 2019, Britt contacted union steward Edith Hough to inquire about the status of her grievances. Hough called Rachel Walthall, who works for the International APWU in Glen Burnie, Maryland.⁹ Walthall informed Hough that the International had no record of a grievance filed on behalf of Britt. Hough conveyed that message to Britt. On January 22, 2019, Britt texted Kretzer that the Union Office did not have her grievances and asked if he had filed them.

On April 11, 2019, Britt asked Kretzer to provide her with complete copies of her grievance information. Kretzer responded that he would bring them to her. He also provided Britt with tracking numbers, that assumedly related to grievances filed on her behalf. He did not bring any documents to Britt and at some point stopped responding to Britt's inquiries. (GC Exh. 6, pp. 46–53.)

On May 3, 2019, Britt filed the unfair labor practice charge giving rise to this case. It was served on Respondent on May 8, 2019, almost 2 years after the Postal Service discharged Jo Ann Britt.

⁹ Walthall testified that Hough called her in April 2019. On the basis of GC Exh. 6, p. 27, I conclude Walthall talked to Hough in January 2019. As to the Section 10(b) issue, it makes no difference as to whether the call was in January or April 2019, both dates are within 6 months of Britt filing the charge.

¹⁰ GC Exh 6, pp. 4–53.

Analysis

The Section 10(b) issue

Section 10(b) of the Act provides that no complaint shall be based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge was made. The 6-month period within which a charge must be filed under Section 10(b) does not begin until the employee has clear and unequivocal notice, either actual or constructive, that an unfair labor practice was committed.

Respondent contends that the 6 month 10(b) period began to run no later than December 2017, almost a year and a half before Ms. Britt filed her charge against the Union. It bases this argument on Britt's contact with an unnamed Local 512 agent in late 2017 and an unnamed representative of the International in late 2017 or early 2018. The record is devoid of any specific evidence of contact between the Union, including Curt Kretzer, and Britt, between her inquiry in late 2017/early 2018 and September 26, 2018, as well as between mid-2017 and the Fall of 2017.

In this case, despite Kretzer's repeated and false assurances and intimations that he had filed a grievance on Britt's behalf between September 26, 2018, and April 15, 2019,¹⁰ the 6 month period set forth in Section 10(b) expired sometime prior to September 26, 2018. This was more than 6 months before Ms. Britt filed her charge and thus, the complaint must be dismissed, *Ohio & Vicinity Regional Council of Carpenters (Schaeffer Group)*, 344 NLRB 366, 366–368 (2005).¹¹ Jo Ann Britt was on notice no later than late 2017 or early 2018 that neither the Local Union nor the International Union had a record of a grievance filed on her behalf. As of those dates she is charged with constructive knowledge of the Union's unfair labor practice in not processing her grievance. This is so because she could have conclusively determined this fact with the exercise of reasonable diligence, *Transit Union Local 1433 (Phoenix Transit System)*, 335 NLRB 1263 fn. 2 (2001).¹²

The merits of the General Counsel's case, assuming that ultimately the case is not dismissed pursuant to Section 10(b)

The applicable legal standard

Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization "to restrain or coerce . . . employees in the exercise of the rights guaranteed in Section 7 of the Act." Section 8(b)(1)(A) creates a duty, when a union is acting as an exclusive bargaining representative, to fairly represent all employees in the bargaining unit and to refrain from any action against an employee based upon considerations or classifications that are arbitrary, discriminatory, or in bad faith. *Vaca*

¹¹ Kretzer's statements after the 6-month period elapsed do not revive Britt's ULP claim, *Ohio & Vicinity Regional Council of Carpenters (Schaeffer Group)*, 344 NLRB 366, 366–68 (2005).

¹² *Service Employees Local 3006 (Linden Maintenance)*, 280 NLRB 995, 995–996 (1986) is distinguishable. Not only was Britt not getting responses from Kretzer, she affirmatively learned that the Union had no record of a grievance filed on her behalf.

v. *Sipes*, 386 U.S. 171, 190 (1967); see also *Operating Engineers Local 181 (Maxim Crane Works)*, 365 NLRB No. 6 (2017).

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

To be found arbitrary, the union's behavior must have been "so far outside a "wide range of reasonableness' that it is wholly 'irrational' or 'arbitrary.'" *Airline Pilots Assn.*, above at 66, citing *Ford Motor Co.*, above at 338.

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

Something more than mere negligence, poor judgment or ineptitude in grievance handling is needed to establish a breach of a union's duty of fair representation, *American Transit Union, Local 1498*, 360 NLRB 777 (2014).

Respondent Union knew or had reason to know that Britt might prevail if it filed a grievance and took it to arbitration. Emergency Placement does not always result in termination, nor does application of the Postal Service's Zero Tolerance Policy. Moreover, it is highly debatable as to whether Britt's conduct constituted violent or threatening behavior per the Postal Service's zero tolerance policy. Indeed, given the facts in the termination notice, it is difficult to imagine an arbitrator reasonably concluding that Britt was violent or threatening towards Vickie. It is even more difficult to imagine that a reasonable arbitrator would find that discharge was an appropriate penalty for Britt's conduct, particularly if the arbitrator applied the factors set forth in the Joint Contract Interpretation Manual (GC Exh. 12).¹³

¹³ The record does not reflect whether this manual is binding on the arbitrators.

¹⁴ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings conclusions, and recommended

That the Union did not file a grievance on her behalf under the circumstances was at best gross negligence and thus a violation of Section 8(b)(1)(A). Moreover, given the fact that Kretzer had actual authority to file grievances, he was acting as the Union's agent in failing to file a grievance on behalf of Britt, *Teamsters Local 866, (Lee Way Motor Freight)* 229 NLRB 832, 833 (1977). It is unclear why Kretzer failed to act on Britt's behalf. If the reason was personal animosity towards Britt, that amounts to arbitrary behavior that violates Section 8(b)(1)(A), *United Steelworkers of America, AFL-CIO (Inter-Royal Corp.)*, 223 NLRB 1184 (1976). Kretzer had a duty to insure that a timely grievance was filed because he told Britt that he would file one; That he did not do so and then repeatedly lied about it to Britt constitutes bad faith and a violation of Section 8(b)(1)(A), *Union of Security Personnel of Hospitals*, 267 NLRB 974, 979-980 (1983).

The Union defends its actions on the grounds that Britt could have filed a grievance without the Union doing so. Despite this, but for Section 10(b), I would find it violated the Act because the Union, by Kretzer, told Britt it would file a grievance on her behalf and did not do so for reasons that were either irrational, grossly negligent or intentional. Britt reasonably relied on Kretzer's assurances. There is no evidence that Kretzer told Britt she should file her own grievances or that he was too busy to do so or to submit them to the International Union.

Kretzer had left Britt with the impression that her grievances had been referred to the International Union. Where it not for the Section 10(b) issue, I would conclude that Respondent, Local 512 of The American Postal Workers Union violated Section 8(b)(1)(A) of the Act in failing to file and process a grievance on behalf of Jo Ann Britt relating to her emergency placement and discharge. However, pursuant to Section 10(b) I dismiss the complaint.

CONCLUSIONS OF LAW

The complaint in this matter is barred by Section 10(b) of the Act.

ORDER¹⁴

The complaint is dismissed.

Dated, Washington, D.C. March 6, 2023

Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.