

United States Postal Service and Leroy Deramus.
Cases 7-CA-20549(P), 7-CA-21043(P), 7-CA-21099(P), and 7-CA-21290(P)

27 February 1984

DECISION AND ORDER

BY MEMBERS ZIMMERMAN, HUNTER, AND
DENNIS

On 5 August 1983 Administrative Law Judge Joel A. Harmatz issued the attached decision. Charging Party Leroy Deramus filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt the recommended Order.

ORDER

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

¹ Leroy Deramus contends that the judge's interpretation of the evidence and his credibility findings exhibit bias and prejudice. Upon careful examination of the judge's decision and the entire record, we are satisfied that these contentions are without merit. Further, the Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

DECISION

STATEMENT OF THE CASE

JOEL A. HARMATZ, Administrative Law Judge: This proceeding was heard by me in Detroit, Michigan, on March 23 and 24, 1983, on an initial unfair labor practice charge filed on April 15, 1982, and a second consolidated complaint issued on November 30, 1982, alleging that the Respondent violated Section 8(a)(3) and (1) of the Act by disparate application of certain restrictive work policies against its employee, Leroy Deramus. The complaint alleged further that the Respondent also violated Section 8(a)(3) and (1) by denying Deramus permission to work and representation by a union steward and by issuing him written warnings and suspending him, all because he engaged in union and other protected concerted activity. In its duly filed answer the Respondent denies it committed any unfair labor practices. Following the close of the hearing, a brief was filed on behalf of the Respondent, and the General Counsel filed a statement.

Upon the entire record in this proceeding, including my opportunity directly to observe the witnesses while testifying and their demeanor, and upon consideration of

the post-hearing submissions of counsel, it is hereby found as follows.

FINDINGS OF FACT

I. JURISDICTION

The Respondent provides postal services for and throughout the United States of America and operates various facilities throughout the United States in the performance of that function, including its General Mail Facility in Detroit, Michigan, the sole location involved in this proceeding. The Board has jurisdiction over the Respondent and this matter by virtue of Section 1209 of the Postal Reorganization Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that National Post Office Mailhandlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO, Local 307, herein called Local 307, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

In this proceeding, the General Counsel, in the main, lays challenge to various acts of discipline meted out to Leroy Deramus, a deposed president of Mailhandlers, Local 307, within 5 months after his return to active employment.

By way of background, it is noted that Local 307 represents a segment of employees engaged in certain postal operations throughout the State of Michigan. Deramus, who began his employment with the Postal Service in Atlanta, Georgia, in 1965, from the onset was active in union affairs. In Atlanta, he had been a union steward and a representative to the national convention. Employed by the Postal Service in Detroit, Michigan, since 1970, Deramus became a member of Local 307, and first served as an official thereof in 1974 when assigned to the Air Mail Facility (AMF). Between 1974 and 1979, he served as steward and then chief steward at that facility. Later, Deramus was transferred to the Direct Mail Facility (DMF) where, in 1978, he became a candidate for president of Local 307. An election was held, with the incumbent receiving a narrow majority. Deramus challenged that election, which was set aside by the United States Department of Labor. In the ensuing rerun election, Deramus was designated president of Local 307.

Prior to the expiration of his 3-year presidential term, Deramus was forced out of office when Local 307 was put under an emergency trusteeship by the National Union.¹ For this reason, he returned to active payroll status with the Postal Service on April 1, 1982.² On his

¹ Deramus has challenged the validity of the imposition of the trusteeship with the U.S. Department of Labor, and also in a civil suit in the United States District Court, Eastern District of Michigan.

² Unless otherwise indicated all dates refer to 1982.

behalf, the General Counsel contends that through October 1982 Deramus was victimized by a series of discriminatory acts founded on his union or other activity protected by the Act, including his filing of unfair labor practice charges, EEO complaints and grievances, and the assistance he provided in those areas to other employees.

The first of the unfair labor practice charges giving rise to this proceeding was filed on April 15, little more than 2 weeks after Deramus returned to work. This was followed by a second, filed on August 12, a third on August 26, and a fourth on October 12.

B. Concluding Findings

1. The tinted glasses policy

The complaint alleged that Deramus was a victim of disparate application of the Respondent's policy concerning the wearing of sunglasses during two distinct time frames in April and August. In that connection, it appears that on October 1, 1981, the Postmaster published, in writing, various regulations, including a safety-oriented restriction, which provided as follows:

Sunglasses and other tinted glasses must not be worn *indoors*, unless required for medical reasons—then certification must be supplied.

When this restriction was promulgated, Deramus was president of Local 307 and as such was not on active payroll status. He admittedly was aware of the policy at that time, claiming that he protested its issuance because adopted by the Postmaster without consulting the Union.

Deramus contends that he has worn darkly tinted glasses since 1963. He asserts that those worn at all times since his reinstatement in April and, indeed, during the course of the instant hearing were the very same glasses issued him while he was in the Air Force in 1963. He denies having had an eye examination at any time between 1963 and his return to work in 1982.

The complaint, as amended, alleges that John Banks, a general supervisor,³ disparately applied the sunglasses policy against Deramus on or about April 16. Deramus was then assigned to the third tour, working from 6 p.m. until 2:30 a.m. John Banks worked tour one with hours from 10 p.m. until 6:45 a.m. He was not the immediate supervisor of Deramus. However, it appears that Banks, observing that Deramus was wearing tinted lenses while working, inquired as to whether he had certification justifying his wearing such glasses. Deramus claims that he responded that certification would be available in medical records he provided the post office in 1965. Banks testified that Deramus told him to consult a military general, in that the glasses worn by Deramus had been issued to him while he served in the Army. Banks then told Deramus that dark glasses were not to be worn on the working floor unless there was a certification for them and that they would have to be removed. Accord-

ing to Banks, Deramus responded, "I told you to see the General and talk to him about the certification."

Later that night, Banks, again having observed Deramus wearing dark glasses while working, summoned him to his office. Banks showed him a copy of the Postmaster's order concerning the wearing of dark glasses. When Banks inquired as to whether Deramus had read that policy, Deramus characterized it as "garbage," pointing out that he had protested that policy during his term as Local 307's president because the Postmaster had failed to consult with the Union prior to its promulgation. Banks advised that the Postmaster was his boss and, as general supervisor, it was his job to carry out the instructions, orders, and regulations issued by the latter. Deramus angrily accused Banks of picking on him but then calmed down, advising that documentation for the dark glasses was available in the medical unit. Banks suggested that Deramus get a copy, carry it with him on his person at all times, as it was likely that other supervisors would inquire. The conversation was concluded with Deramus being informed by Banks that, if he wore the glasses in Banks' unit again without documentation, Banks would take the necessary corrective action. Deramus at this juncture requested a union steward, and Banks obliged him.⁴

About a week and a half later, Banks again observed Deramus wearing the dark glasses in a work area. He again intervened and again was referred by Deramus to the Army general. Banks issued a direct order to Deramus to remove the glasses. Deramus did so. Later that evening, Banks observed Deramus in a break area, again wearing the glasses. At this juncture, before confronting Deramus, Banks attempted to obtain verification as to whether Deramus was protected by a justification held in the medical unit. After learning that there was none, Banks arranged a meeting between Deramus and Jimmy Compton, chief union steward. Compton, while objecting to being present during the interview, indicated that he might some day be called on to represent Deramus on a grievance. Nonetheless he remained on the plea of Banks. In the course of this interview, Deramus again referred to the regulation on sunglasses as "garbage," accused Banks of being prejudiced against him, and charged that Banks was among the group responsible for his ouster from the union presidency. The meeting was ended with Banks informing Deramus that he had been afforded ample time and opportunity to comply with the regulations. He threatened to take appropriate disciplinary action if Deramus appeared in his unit again wearing dark glasses. Banks claimed he did not thereafter in 1982 observe Deramus in his area in violation of the Postmaster's directive.⁵

⁴ On April 17, Deramus filed a grievance against Banks' attempt to enforce the eyeglass policy. See G.C. Exh. 3. On August 21, this grievance was withdrawn, shortly before Deramus filed unfair labor practice charges against Local 307 on grounds that a union official had "displayed arbitrariness [sic], discriminatory and bad faith attitude [sic] in receiving, investigation and the processing of grievances." See G.C. Exh. 6.

⁵ The foregoing is based on the credited testimony of Banks. His account impressed as more comprehensive than that of Deramus and the more probable. In any event, Deramus was regarded as a thoroughly un-

³ The classification "general supervisor" entails no direct, immediate supervisory responsibility with respect to rank-and-file employees. Lesser supervisors report to the general supervisors.

Continued

The effort by Banks to secure Deramus' compliance with the published directive of the Postmaster resulted in no discipline. Nonetheless, the General Counsel claims that the Respondent violated Section 8(a)(3) and (1) of the Act, inasmuch as, "John Banks . . . maintained and enforced the rule . . . selectively and disparately by only applying it to the Charging Party because of his union and protected concerted activities. However, in adopting this stance, the General Counsel does not dispute the legitimacy of the policy, as published in October 1981, nor is it denied that Deramus *knowingly*, violated it.

The thrust of the General Counsel's position lies in its effort to impute animus to Banks in connection with protected activity waged by Deramus and to couple such evidence, with testimony to the effect that the eyeglass rule was not universally enforced. Thus, it appears that Banks was the subject of a sexual harassment charge in 1981 by a female employee. Deramus represented the complainant. Although the matter was amicably resolved, according to Deramus, Banks was dissatisfied with Deramus' handling of the adjustment and specifically protested to Deramus on several occasions thereafter. According to Deramus, after the matter was resolved, he prepared a letter which failed to exonerate Banks from having engaged in sexual harassment, and Banks protested the absence of such a reference on two occasions, the latest being in February 1982. Banks denied this, claiming that the complaint was handled at a meeting in which it was agreed between Deramus and Mary Curtis, the representative of Banks in this matter, that the sexual harassment charge was groundless. Banks asserts that he never again discussed the matter with Deramus. I prefer the testimony of Banks. My mistrust of Deramus has been outlined previously. Relying on Banks' account, it is concluded that Deramus handled the complaint fairly and acted responsibly in a joint effort to determine the underlying facts and, after having done so, concurred that the charges were baseless. In the circumstances, no appropriate foundation would lie for an assumption that Banks' harbored resentment toward Deramus in consequence of this incident.

As for the claim of disparate application, it is noted that the GMF is manned by thousands of employees, all of whom, when working indoors, would be subject to the 1981 restriction on tinted glasses. Quite a few of these employees wear dark glasses.⁶ Yet, the General Counsel produced only two employees to establish that management condoned violations of the rule. The first, Lonzo Bradford, testified that he regularly wore tinted glasses to work, and no one ever questioned him. Bradford worked the day shift from 7 a.m. to 3:30 p.m. and, since October 1981, had never performed under the supervision of Banks. Testimony by Bradford suggests that

reliable witness. He was argumentative, fenced with counsel, and throughout exhibited a propensity to tailor facts as his interest in the proceeding might dictate. However, at the same time, it is apparent on the face of Deramus' own testimony that following his reinstatement his course on the job was provocative in nature and indicative of a need to confront, rather than accept, the authority of management.

⁶ Bessie May Sheats, a witness for the General Counsel, testified to this effect. She confessedly lacked knowledge that the others did or did not submit certification or medical reasons so as to comply with the rule.

he frequently worked outdoors loading and unloading trucks. The second witness, Bessie May Sheats, was assigned to the third shift, working 5 p.m. to 1:30 a.m. under general supervision of Paul Stokes. The glasses worn by Sheats were the multi-tint variety and were lightly tinted and almost clear at the base of the lens. She claims that subject to a single exception no one had ever questioned her use of tinted glasses. That exception involved General Supervisor Paul Stokes, who while the instant proceeding was pending, asked to see her glasses, stating, "I just want to check them out because I am in hot water about dark glasses."⁷

The foregoing, in my opinion, is at best, indicative of aberration, rather than abandonment of the policy against the wearing of tinted glasses or that it had fallen into disuse. In sum, I am convinced that it was the basic responsibility of Banks, and other supervisory personnel, to enforce policies promulgated by the Postmaster and that the fact that all representatives of management may not have acted with equal vigilance as to each of the 4000 employees at the GMF, in no fashion diminished that obligation. The attempt by Banks to obtain compliance from Deramus with that rule was temperate and rational. In contrast, the conduct of Deramus was indefensible. His wrangling disobedience was marked by evasive references to nonexistent medical records and long-outdated and irrelevant military experiences. His overall conduct reflected a disdain for an unmistakably clear manifestation of supervisory authority. Protected conduct by an employee does not serve, in these circumstances, to insulate him from complying with legitimate instructions founded on published employment policy. In sum, the effort by Banks to enforce the rule was not shown to have been founded on considerations proscribed by Section 8(a)(3) and (1) of the Act, and the allegation in this respect shall be dismissed.

The complaint also attributes a like violation to General Supervisor Paul Stokes in August. Prior thereto, I am convinced that Deramus put aside his challenge to the sunglasses policy and declined to wear them indoors.⁸ He at no time obtained the required certification. In August, however, for reasons which do not appear clear under the record, he elected again to wear the glasses in violation of the Respondent's policy.

According to the testimony of Supervisor Stokes, on August 10, Deramus reported for work wearing dark glasses. Stokes inquired as to whether he had "a prescription or any kind of medical substantiation to justify . . . wearing dark glasses indoors." Deramus referred him to the medical unit, but when Stokes checked he was informed, as in the case of Banks, that there was no such record in the health unit. Stokes then informed

⁷ Stokes acknowledged such a conversation with Sheats, and admitted that he told her that they were having a problem with dark shaded glasses. With her permission, he examined her glasses, and determined that the tint was sufficiently light to conform with the Respondent's policy. It was the view of Stokes that the Respondent's policy was merely targeted at glasses designed for wear in sunlight.

⁸ Although the testimony of Deramus is susceptible to interpretation that he wore them continuously between April and August, I did not believe that to have been the case and reject any such view of the evidence.

Deramus that it would be necessary for him to remove his glasses. Deramus responded that he would be more of a hazard if he took the glasses off inasmuch as he needed them to perform his work. For this reason, Stokes elected to provide Deramus administrative leave to allow him to obtain medical substantiation for wearing the dark glasses indoors. To this end, Deramus concededly was given 8 hours' leave *with pay* in order to come into compliance with the Respondent's policy.

The account of Deramus stands as a self-expression of his manipulative style and predilection for confrontation. Notwithstanding his knowledge of the policy and his previous encounter with Banks, he claims that Stokes gave him the day off simply to obtain evidence that his glasses "were prescription." More specifically, according to the testimony of Deramus, Stokes first inquired as to whether Deramus "has certification that these were prescription glasses." Deramus claims to have referred Stokes to his government driving permit which obviously would signify his use, though not necessarily a need for, prescription lenses. Deramus claims that Stokes insisted upon "a certification" of that fact and gave him a day off to obtain it.⁹

Deramus did go to an eye clinic on August 11. However, he did *not* have an examination. That evening he returned to work, and provided Stokes with a certificate which stated as follows:

Mr. Deramus sunglasses are prescription glasses from a 1977 record. His eyes were not examined at that time. Prescription was taken from his glasses.¹⁰

As could be expected, Stokes informed Deramus that this document was "administratively unacceptable" and that he could not work. Deramus then indicated that he was "tired of messing around with them," and requested that Stokes put what he wanted in writing. At this juncture, Operation Manager James Harris, Stokes' superior, happened by and gave Deramus a written definition of what was required, as follows:

Medical statement stating specifically that tinted or prescription sunglasses must be worn indoors for medical reasons. Medical statement must be signed by doctor.

The foregoing is no more than a paraphrase of the obligation imposed on employees through the Respondent's published policy. Deramus, as president of the union, was aware of that policy when promulgated, and in April he had been counseled concerning his need to comply therewith by Supervisor Banks. Contrary to his testimony, this precisely was what was asked of him by Stokes on August 10. I am convinced that Deramus knew full well what was expected of him and that it was he who was giving management the runaround. In any

⁹ The testimony of Deramus in this respect was inherently implausible. It strikes as totally implausible that a supervisor would give an employee a day off to obtain proof as to a matter that anyone could readily ascertain simply by visual inspection of the glasses.

¹⁰ See G.C. Exh. 8. Obviously, this certification does not even signify that Deramus had a need for prescription glasses. He concedes that prior to August 20 he had not had an eye examination since 1963.

event, at this juncture, Deramus carried the game even further. Though he had not had an eye examination for 20 years, he showed no interest in seeking a current evaluation of his visual needs. Instead, having been given the written instruction by Harris, he inquired, "Is this exactly what I must have?" Deramus then informed Harris that if this is what was required he "would have to write to get . . . records from the Air Force who issued . . . the glasses . . ." In response, Harris told Stokes to clock Deramus out, thereby precluding him from working the shift on August 11. At this point, Deramus again requested administrative leave. The request was denied and Deramus was placed on leave without pay.¹¹ On August 12 and 13, Deramus neither called off "nor reported for his scheduled shift. When he finally did appear on August 14, he was cited for being out AWOL on these latter dates.¹² Deramus was permitted to return to work under the stipulation that he would not wear his glasses while working indoors. It is clear from the record that Deramus at no time prior to August 14 attempted to obtain the certification necessary under the Respondent's policy to permit his indoor use of dark glasses.

On August 17 Joseph Moses, the immediate supervisor of Deramus, issued a letter of warning based on the latter's failure to report for duty with acceptable evidence of need for the absences on August 12 and 13.¹³

The complaint, in addition to challenging Stokes' application of the policy on August 10, also alleges that the Respondent violated Section 8(a)(3) and (1) by the Respondent's denial of employment to Deramus on August 11, 12, and 13 and by on August 24 issuing the letter of warning based on these absences. Contrary to the General Counsel, I am convinced that none of these events was provoked by considerations protected by the Act, but all were founded exclusively on the reaction by Deramus to efforts by Harris and Stokes to obtain compliance with Respondent's tinted lens policy. I am convinced that Deramus deliberately frustrated those efforts by falsely creating the impression that he did not know what was expected of him, and by injecting delay oriented roadblocks, rather than obtaining an immediate medical examination which would avoid further confrontations with supervision.¹⁴ His absenteeism on August 12 and 13

¹¹ See G.C. Exh. 10(a).

¹² I did not believe the testimony of Deramus that on August 11 he was told by Harris or Stokes that they would take care of his leave. It is entirely illogical that they, in the face of Deramus' recalcitrance, would have given him off indefinitely with pay. I am convinced that Deramus must have been mindful that they would not have done so. It is clear, however, that, since Deramus was instructed to report to the medical unit that evening, Harris and Stokes did tell him that they would pay for one-half hour, the time consumed by Deramus in that process.

¹³ See G.C. Exh. 10(b).

¹⁴ Deramus testified that, after leaving work on August 11, he checked with an Air Force reserve unit to find out what forms were required to obtain his military medical records. This appears to be the only attempt by Deramus to come into compliance with the Respondent's policy. He at no time, prior to returning to work on August 14, attempted to obtain a current medical certification as had been expressly requested. Later on August 20, Deramus apparently succumbed and had his first eye examination in 20 years. In consequence, he received a document which, as matters would have it, was turned in to a supervisor, who unlike Banks, Stokes and Harris, was not involved in the effort to secure Deramus'

Continued

were by reason of his own mischief and a subject for proper discipline, unrelated to any protected activity.¹⁵ The allegations that the Respondent thereby violated Section 8(a)(3) and (1) of the Act are not substantiated and shall be dismissed.

2. The denial of union representation

The complaint, apart from the Respondent's effort to obtain compliance with its sunglass policy, endorses other challenges by Deramus to the conduct of certain supervisors. Thus, it is alleged that the Respondent violated Section 8(a)(3) and (1) of the Act through various supervisors including Paul Stokes', Fred Coleman's, and Joseph Moses' refusal of the Charging Party's request for union representation "pursuant to the applicable collective bargaining agreement . . . because of his persistent union and/or concerted activities . . ." All such denials allegedly occurred between Thursday, April 29, and Tuesday, May 4.

compliance with Respondent's policy on sunglasses. This document was the last submitted by Deramus to the Respondent. It would not have exempted Deramus from the scope of that restriction, for it simply provided as follows:

The above named gentleman had a complete visual analysis this afternoon.

Deramus attempted to explain this submission, on recross-examination by the Respondent's counsel, as having been prompted by direction of Postmaster Gene Cole. Deramus claims that after Harris gave him the written, hardly ambiguous definition of what was required (See G.C. Exh. 7), he, nonetheless, contacted the Postmaster for "clarification" of Harris' statement as to "the eye glass policy." According to Deramus, Postmaster Cole, who he described as "Mr. Harris' boss," simply stated that Deramus should "get an eye examination," and bring in evidence that he had done so. It is difficult to imagine that this was the case. This episode merely adds to already convincing evidence that Deramus was intent on pursuing any diversion other than direct, reasonable effort to comply with the Respondent's policy and the explicit direction of his superiors.

¹⁵ On August 11, Postmaster Gene Cole and General Foreman John Banks were notified that an internal investigation would be held on August 17 concerning an EEO complaint previously filed by Deramus. That complaint cited Postmaster Cole and Personnel Manager Ruben Fowlkes, both Black, with race discrimination against Deramus, also Black, in filling vacancies at the Air Mail Facility with whites. There is no evidence that Harris, Stokes, or Moses was aware of this complaint or that the discipline meted out based on the events of August 10, 11, 12, and 13 was based on considerations other than the obstinate refusal of Deramus to comply with company directives and supervisory instructions seeking such compliance. In this connection, also of concern is a representation made to the Board on August 12, when Deramus filed unfair labor practice charges. Those charges, in material part, set forth as follows:

On or about August 10, 1982, the Charging Party was required to secure a statement providing that he had to have prescription glasses for his eyes and work. He secured that statement. At the time he had been placed on administrative and not permitted to work 8/10. On 8/11/82, the Charging Party was not permitted to report to work and no indication why was provided. Management's action constituted harassment and retaliation for union and protected concerted activities. The effect of said actions is to deprive the Charging Party of a livelihood in order to provide for his family. [Emphasis added. See G.C. Exh. 1(c).]

Contrary to the interlineation in the above charge, G.C. Exh. 10(a), a form signed by both Deramus and Stokes on August 11, includes the notation that Deramus was "sent home by postal management," because management "refused to accept doctor's statement regarding eyeglasses." I am convinced that Deramus was shown this document on August 11. Indeed, on cross-examination, Deramus conceded that he knew he had been sent home and not allowed to work because he had been "told" he "couldn't come in and wear the glasses . . . without certification." It is difficult to reconcile this admission with the representation appearing in the aforementioned unfair labor practice charge.

In support of this allegation, Deramus testified that on April 22 at a safety meeting conducted by Joe Moses, he requested work gloves. Moses indicated that he would have to look into the matter and check with Stokes. He claims that on April 27, in the presence of Stokes, he inquired of Moses as to the work gloves. Moses indicated that they were not available and that Stokes was handling the matter. Stokes acknowledged that he would check into it. The next day, April 28, Deramus claims that he again inquired as to the work gloves. Stokes responded that they had not been obtained as yet and that he would get back to Deramus. The next day, April 29, Deramus again inquired of Stokes as to the gloves, whereon he said he had none. At this juncture, Deramus claims that he asked for a steward, and that Stokes said nothing but simply walked away. Deramus went on to testify that on May 4 he confronted Lois Lee, an individual described as a supervisor in the cancellation unit, and requested her to get him a steward and the work gloves. According to Deramus, she indicated that she would check with Stokes. Later that day, Deramus claims to have asked Stokes, "when was I going to get some gloves and when could I see a steward." Stokes is alleged to have responded that "he would take care of my problem . . . in the form of a letter of warning, suspension, or removal."¹⁶ Deramus testified that he eventually got his work gloves in June, but was never provided a steward.

Even were I to find that Stokes made no affirmative effort to secure a union representative, no illegality would inure on these presents. Stokes was the only supervisor implicated by Deramus who was named in the complaint. The General Counsel concedes that any right of Deramus to union representation in this instance was not founded on statutory guarantees in Section 7 of the Act.¹⁷ Instead, it is the General Counsel's theory that a right to union representation existed by virtue of the terms of the contract between the Mailhandlers Union and the Respondent, that said right was absolute, and that denial thereof for discriminatory reasons was violative of Section 8(a)(3) and (1) of the Act in this instance. Even if the Respondent acted on such a motivation, it is plain that the General Counsel's premise that such a right existed by virtue of contract has not been substantiated by convincing proof. Firstly, it is difficult to believe that management would be obliged immediately to seek out a steward on request of an employee during working time on each occasion that an employee disapproved action by supervision. No provision of the contract is cited which would tend to support such a right.¹⁸ On the contrary, article 17 of the contract dealing with "representation" strongly suggests that employees are *not* en-

¹⁶ I credit Stokes' denial that he ever made such a statement to Deramus. I also credibly testified that on several occasions Deramus requested a steward and was referred by Stokes to his immediate supervisor.

¹⁷ See, e.g., *NLRB v. J. Weingarten*, 420 U.S. 251 (1975).

¹⁸ The General Counsel in this respect points to the testimony of Lonzo Bradford, who testified to the practice existing under collective-bargaining agreements between the American Postal Workers Union and the Postal Service. However, Bradford's testimony was negated when he admitted that he could not state that the terms of this latter agreement are identical to that of the Mailhandlers agreement.

titled to a steward on an unqualified basis simply because they request one. Thus, the only pertinent provision is article 17.3(c), which provides in material part as follows:

If an employee requests a steward or union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted.

The negative implication is that there is no contractual obligation to provide a steward during working hours with respect to other confrontations between employees and supervisors. Quite plainly, the request by Deramus for a steward had nothing to do with "interrogation" or activity of the "Inspection Service." Beyond that other contract language restricting the movement of stewards further militates against the General Counsel's position here. Thus, by virtue of section 17.3(a) and (b), stewards are not entitled to leave their work areas, and move to other work areas, or conduct investigations during working hours in connection with grievances on an absolute basis. The terms of these subsections authorize the Employer to deny such permission to the stewards themselves, in these respects, where said denials are reasonably founded. No other provision of the contract confers on employees a right to obtain union representation or imposes an obligation on management to provide it simply because an employee "feels" aggrieved.

In sum, it is concluded that neither practice nor contract obligated management, during working hours, to secure and arrange meetings between employee and steward simply because an employee was dissatisfied with a supervisor's conduct. Accordingly, as Deramus was not entitled to impel supervision to put aside normal duties during working time in order to accommodate his request for union representation, the allegation that he was discriminatorily denied any right founded on contract, practice, or statute has not been substantiated and the 8(a)(3) and (1) allegations based thereon shall be dismissed.

3. The submarine sandwich

The final allegation concerning alleged mistreatment of Deramus relates to a 7-day suspension issued on October 5. The suspension was triggered by a confrontation between Deramus and Supervisor of Mails Cornelius Malone on September 24. On that date, Deramus reported for work early. He requested and obtained Malone's permission to speak with an employee who was subject to Malone's supervision and was then working. Having spoken with the employee in question, Deramus left the area. He then encountered a coworker, Eugene Tyler.¹⁹ Deramus claims that after his conversation with Tyler he went into the locker room, changed clothes, and then went to a break area where he heated a submarine sandwich in a microwave oven. After this, Deramus left the break area and resumed his conversation with Tyler.

¹⁹ Tyler was a former colleague of Deramus, having served as administrative vice president of Local 307. He too was ousted when the trust-eeship was imposed in the spring of 1982.

While both were in a work area, Malone approached and told Deramus not to eat his sandwich on the north dock. Deramus denied that he had eaten from the sandwich. Malone then left, according to Deramus, and came back "a few minutes later" with Supervisor of Mails Theodore Jones. Malone again told Deramus that he could not eat the sandwich on the workroom floor. Deramus again denied eating the sandwich. Jones then attempted to speak to Deramus privately. According to Deramus, Jones also stated that he could not eat on the dock. Deramus denied to Jones that he had eaten the sandwich. Deramus explained that, in heating the sandwich, he had erroneously pushed the wrong button on the microwave oven and "had over heated the sandwich and . . . pulled the wrapping back so that the sandwich would cool off and . . . had it sitting on my note pad." Deramus testified that he did not start eating the sandwich until he left the first floor work area.²⁰

Malone testified that he observed Deramus in a work area with a hero sandwich in his hand while he was engaged in conversation with Tyler. Malone claims to have actually observed Deramus eating the sandwich and indicates that, when he told him that he could not do so and would have to leave the dock with the sandwich, Deramus indicated that he would leave when he completed his conversation with Tyler. Malone corrected Deramus advising him that he would have to leave immediately. At this juncture, Deramus enforced his refusal to leave by addressing Malone with a profanity. Accordingly, Malone sought out Jones to witness his giving Deramus a direct order. When Malone returned with Jones, Tyler and Deramus were still engaged in a conversation in a work area, whereon Malone directly ordered Deramus to leave the area. Deramus again reacted, cursing Malone.²¹ According to Malone, he then walked off while Jones attempted to communicate with Deramus, who initially appeared unwilling to do so.²²

²⁰ Tyler was called by the General Counsel as a corroborating witness. Although he attempted to confirm that Deramus did not eat the sandwich at any time prior to the confrontations with Malone and Jones, his testimony is not entirely consistent with that of Deramus. Thus, he testified that Deramus was holding the sandwich in his hand, rather than on a notebook, a discrepancy significant when considered in the light of Deramus' suggestion that the sandwich was too hot to eat. My suspicion was hardly allayed by Tyler's response to questioning as to how he knew that the sandwich was hot. For in response, Tyler explained that he could observe "steam" coming from it, adding that Deramus was holding the sandwich with a napkin. My impression of Tyler's corroborating testimony was less than favorable, and I prefer the accounts of Jones and Malone to the effect that the sandwich had been partially eaten.

²¹ Neither Jones nor Malone could recall the exact words used by Deramus on the occasion in question and their professed recollection as to what was said did not jibe. Nonetheless, as to the essential elements, I believed Malone's testimony as to the first encounter as well as that of Malone and Jones as to the second encounter, including the assertion that Deramus responded by cursing Malone.

²² Tyler confirmed that it was not until Jones pleaded three times that Deramus agreed to talk with Jones, a fact tending to confirm the department of Deramus' as described by Malone and Jones. All in all, the latter's account seemed far more probable when weighed against undisputed fact. For, it is considered entirely unlikely, that Malone would have intervened and attempted to correct Deramus had the latter not been eating the sandwich in an area in which such activity was prohibited under established policy. It will be recalled that Malone, shortly before, had given Deramus permission to consult with another employee under his

Continued

On October 5, a suspension notice dated September 28 was delivered to Deramus. Through that document, Deramus was notified that he would be suspended for 7 calendar days and that the basis for the suspension was his prior warnings of May 19 and August 17, as well as the following:

On September 24, 1982, prior to your scheduled . . . tour at approximately 5.45 p.m. you were observed on the north dock eating a hero sandwich. I told you that you could not remain on the workroom floor eating. You stated that you would leave as soon as you talked to Mr. Tyler and you continued down the aisle, eating the sandwich. I stopped you a second time and informed you that you could not eat on the workroom floor. You refused to leave the floor. I then summoned another supervisor, Mr. Ted Jones. In Mr. Jones' presence I gave you a direct order to stop eating on the workroom floor. You stated that you were not on the clock and you did not give a fuck about what I had ordered you to do. Your actions disobeyed the safety regulations and disobeyed a direct order.

The General Counsel contends that this warning and suspension were provoked by Deramus' history of protected activity and particularly because Deramus was actively engaged in assisting a fellow employee with a grievance and in the filing of an unfair labor practice charge before the National Labor Relations Board during the same time frame.²³ As indicated, however,

supervision on worktime and in a work area, an act which hardly is in consonance with animus toward Deramus. It is also considered unlikely that it would have been necessary to summon Jones had Deramus accepted Malone's instruction. Indeed, the fact that Jones had difficulty himself in communicating with Deramus confirms the Respondent's testimony that Deramus was guilty of intemperate behavior on the occasion in question.

²³ Deramus testified that he assisted fellow employee Wayne Atkins in the filing of unfair labor practice charges against the Union and the Postal Service on September 28. See G.C. Exhs. 12(b) and 15. The charges were based on the fact that a supervisor, Robert Sterrett, had issued a letter of warning to Atkins for leaving the building without authorization. There is no evidence that any representative of the Respondent, prior to October 5, was aware of Deramus' involvement in the processing of these unfair labor practice charges. Although a notice of appearance form which bears his signature is dated October 4, nothing in that document reveals that it pertained to the unfair labor practice charges filed by Atkins, nor does it bear a time receipt stamp of the National Labor Relations Board Regional Office. See G.C. Exhs. 16(a) and (b). Furthermore, I did not believe the uncorroborated testimony of Deramus that a supervisor by the name of David Law observed him, together with Atkins, writing out information in connection with the unfair labor practice charge. Also discredited is testimony of Deramus that at some undefined date after he assisted Atkins in the filing of the charge

the account of Malone and Jones as to what transpired on September 24 has been credited substantially. Accordingly, it is concluded that the suspension was based on legitimately issued prior warnings and that the citation on October 5 was based on deliberate disobedience and abusive behavior toward supervision inherent in conduct of Deramus on September 24.²⁴ Accordingly, I find that the Respondent did not violate Section 8(a)(3) and (1) of the Act in this, or any other, respect herein.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

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

3. The Respondent did not disparately apply its tinted glass policy on April 16, 1982, and August 10, 1982; deny employment on August 11, 12, and 13, 1982; issue a written warning on August 24, 1982; issue a 7-day suspension on October 16, 1982; deny a union representative on April 29 and 30 and May 4, 1982; or otherwise discriminate against Leroy Deramus because of his union or protected activity, in violation of Section 8(a)(3) and (1) of the Act.

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

ORDER²⁵

IT IS HEREBY ORDERED that the complaint herein be, and hereby is, dismissed in its entirety.

Supervisor Sterrett, on two occasions, addressed Deramus, "How you doing, post office lawyer?" Sterrett testified that some years ago when he worked with Deramus other employees would refer to Deramus as the Philadelphia lawyer of the "L- Belt" and that he, himself, would do so. However, I credit Sterrett's denial that any such reference was made to Deramus in connection with the Atkins' unfair labor practice charge. In any event, I credit the testimony of Malone that he did not know that Atkins had filed an unfair labor practice charge at the time of this incident. I also accept his testimony as well as that of Jones that neither was mindful that Deramus was in any way involved in the Atkins-Sterrett incident.

²⁴ Undue concern does not arise by virtue of the fact that the warning was not delivered to Deramus until October 5. The Respondent's evidence convinces that both Jones and Malone participated in a training session requiring their absence from work between September 27 and October 1.

²⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.