

**Branch 9, National Association of Letter Carriers
(United States Postal Service) and Beverly
Berg.** Cases 18–CB–3372(P) and 18–CB–3415(P)

April 21, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND
TRUESDALE

On November 3, 1994, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Charging Party filed exceptions and a supporting brief.¹ The Respondent filed cross-exceptions, a supporting brief, and a brief in opposition to the Charging Party's exceptions and in support of the judge's decision. The Charging Party filed a reply brief to the cross-exceptions and a reply brief to the brief supporting the judge's decision.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Branch 9, National Association of Letter Carriers, Minneapolis, Minnesota, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 1(a) and (c).

¹In view of the disposition of this case, we find it unnecessary to pass on the Respondent's motion to strike certain portions of the Charging Party's brief which are allegedly not supported by the record.

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

³The Respondent excepts, *inter alia*, to par. 1(a) of the judge's recommended Order and the corresponding unnumbered paragraph in the Notice to Members. The Respondent contends that these paragraphs are overly broad because they extend beyond the geographical situs of the violation found and they infringe on a union's right to agree to legitimate restrictions on employee distribution and posting of union literature. We find merit in this exception and have accordingly modified the Order and substituted the attached notice for that of the judge. In addition, we have substituted the standard cease-and-desist language in the Order and notice.

“(a) Entering into an agreement with the United States Postal Service affecting the Nokomis Station that impermissibly restricts an employee's right to post and distribute union-related literature.”

“(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. Substitute the attached notice for that of the administrative law judge.

APPENDIX

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

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT enter into an agreement with the United States Postal Service affecting the Nokomis Station that impermissibly restricts an employee's right to post and distribute union-related literature.

WE WILL NOT deprive employees of the right to disseminate literature by failing to advise them that the literature they distributed was confiscated by management.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

BRANCH 9, NATIONAL ASSOCIATION OF
LETTER CARRIERS

Joseph N. Bornong, Esq., for the General Counsel.
Susan J. Panepento, Esq. (Cohen Weiss and Simon), of New
York, New York, for the Respondent.
Beverly Berg, of Minneapolis, Minnesota, *pro se*.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing in this matter was held before me in Minneapolis, Minnesota, from July 26 to 29, 1994. The initial charge was filed on November 23, 1993, by Beverly Berg, an individual. Thereafter, an additional charge in Case 18–CB–3415(P) was filed on March 30, 1994, and that charge was amended on April 15, 1994. On May 27, 1994, the Regional Director for Region 18 of the National Labor Relations Board (the Board) issued an order consolidating cases, amended and consolidated complaint and notice of hearing alleging violations by Branch 9, National Association of Letter Carriers (the Respondent or the Union) of Section 8(b)(1)(A) of the National Labor Relations Act (the Act).

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs

have been received from counsel for the General Counsel, from counsel for the Union, and from the Charging Party, Beverly Berg. On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service provides postal service for the United States and operates various facilities throughout the United States in the performance of that function, including various facilities in Minneapolis, Minnesota. The Board has jurisdiction over the Postal Service and this matter by virtue of Section 1029 of the Postal Reorganization Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted and I find that the Union is, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issues in this proceeding are whether the Union, in violation of Section 8(b)(1)(A) of the Act, has restrained and coerced Beverly Berg in the exercise of the rights guaranteed her by Section 7 of the Act, namely, by interfering with her right to engage in union activity, and by suspending her from membership because of such activity.

B. *The Facts*

1. Background

Beverly Berg, a letter carrier, works for the Postal Service at the Powderhorn Station. She was hired in December 1988. She is a self-proclaimed union activist and dissident, and has been active in distributing and posting literature, much of it highly critical of the current union officers and representatives, at virtually all of the approximately 35 stations within the jurisdiction of the Respondent herein, Branch 9 of the National Association of Letter Carriers (NALC). She ran for the office of shop steward at the Powderhorn Station in November 1991, and at times material was running for the position of national business agent. In addition, she was a paid delegate from her branch to the 1992 union convention in St. Louis.

2. Incidents at the Nokomis Station

On April 27, 1993, after regular working hours, Berg went to the Nokomis Station and requested permission from Station Supervisor Sue Robison to distribute literature by placing it on each of the carriers' "cases" where they sort the mail each day. Berg advised Robison that she was running for election and that the literature she wanted to distribute was campaign literature. Robison gave her permission to do so. The leaflets were highly critical of the Union's leadership,¹ and Berg believed that the carriers would be more

¹ It should be noted that there is no contention by the Respondent here that any of the material distributed or posted by Berg is of such

likely to read or look at the leaflets if they were placed on the carriers' cases rather than on the wall near the timeclock where notices were customarily posted.

On the following day, when Nokomis Station Union Steward Debra Enger became aware of Berg's distribution of the flyers, she checked with and received permission from Union President Leonard Larson to file an "UMPS Worksheet"² which is essentially the first step of an informal grievance procedure. Enger stated on the UMPS worksheet that management allowed Berg to enter the Nokomis Station and distribute material that was "defamatory" (sic) of the current local union officers and National Business Agent Gene McNulty. Enger alleged that this activity of Berg was contrary to law, and that Berg should not have been permitted to distribute such literature during a nonelection year.³ Enger proposed that the station management resolve the matter by furnishing a letter of apology to both the Union and the national business agent and pay the Union \$500 in damages.

Management's initial counteroffer, as noted on the UMPS form, was as follows: "As a show of good faith, in the future we will require union notification before any literature is distributed to the carriers." On May 15, 1993, the Union dropped its request for monetary damages, and stated that it was willing to settle for a letter of apology. On May 27, 1993, the parties agreed to an "UMPS Settlement." The settlement defines the issue as: "Distribution of Union campaign literature during non-election year."⁴ It resolves the issue as follows:

Any literature distributed within Nokomis station concerning (NALC) Union business/or elections will meet the following conditions:

—Anyone desiring to distribute literature must state their purpose to supervisor.

—Materials will be given to supervisor who will give to station steward for distribution or posting on Union Bulletin Board.

Berg had previously filed an unfair labor practice charge against the Postal Service alleging that the management of the Powderhorn Station, where she is based, had unlawfully interfered with her right to post and distribute literature at that location. In exchange for withdrawal of her charge, the Postal Service furnished Berg with a letter dated June 14, 1993, assuring her of her right to utilize the informal posting area at the Powderhorn Station for her material, and further assuring her that "prior management approval based on content will not be necessary or required." Further, the letter

a nature that it exceeds the bounds of propriety or constitutes unprotected activity. Accordingly, it appears unnecessary to describe the literature.

² "UMPS" is an acronym for "Union Management Pairs"; if a grievance or complaint is not resolved through this process, the matter may progress to the formal grievance procedure.

³ In about March 1992, Berg had announced her candidacy for national business agent from her region, an office then occupied by Gene McNulty, who, in addition to Branch 9 union leaders, was criticized in Berg's literature. The election for national business agent was not to be held until November 1994.

⁴ The parties appear to agree that Berg's Sec. 7 rights in distributing and posting literature are the same regardless of whether she was campaigning for a union position or whether such campaigning occurred during an officially recognized campaign period.

permits Berg to post material on her locker at the station. Regarding the distribution of material, the letter states that Berg may distribute literature at the Powderhorn Station on the workroom floor during workroom hours and, "With respect to Ms. Berg's access to other stations to distribute literature, permission to enter and distribute will not be denied based on the content of the material."

Following receipt of the aforementioned letter, Berg sought permission to again distribute literature at the Nokomis Station. She was refused permission by Station Manager Roxanne Bergquist, who simply stated, according to Berg, that as a result of the aforementioned UMPS settlement with the Union, Berg's distribution of literature at that station would not be possible. Thus, Berg was not told that, in conformity with the UMPS settlement, she would be permitted to deliver the material to management, who in turn would deliver it to the steward at that station, for posting or distribution.⁵ Berg complained to Bergquist's superiors, and shortly thereafter Berg was informed by the Postal Service that the policy enunciated in the letter from the Postal Service preempted the UMPS arrangement at the Nokomis Station. Thereafter, on about July 26, 1993, Berg was permitted to distribute literature by placing it on the carriers' cases at the Nokomis Station during a period when the carriers were not present. In addition, on the same day she distributed the same flyers on the carriers' cases at the Richfield and Normandale Stations. Earlier, on July 21, she had distributed this same literature at the Minnehaha Station.

3. Incidents at the Normandale Station

As noted above, Berg placed her literature on the carriers' cases at the Normandale Station on July 26, 1993. Wanting to make sure that the carriers at that station actually received the flyers, she phoned Jeana Watts, a carrier at the station, on the evening of July 26, 1993, and asked if Watts would let her know whether the flyers were on the carriers' cases the following morning when they came to work. Berg again called Watts 3 days later, on July 29, and Watts informed her that neither Watts nor any of the other carriers had seen or heard of Berg's flyers. Watts said that she would talk to Union Steward Jan Wild about the matter. The following day, July 30, Watts phoned Berg and stated that she had talked to Wild and to the station manager, and found out that the flyers had been collected from the carriers' cases by the station manager, that the station manager had given them to Wild, and that Wild had thrown them away; however, Watts told her that one of the flyers had been posted in the breakroom.

Jeana Watts corroborated Berg's foregoing testimony, and testified that Union Steward Wild told her that Wild and Station Manager Maureen McKenna had a meeting about the flyers and had decided that the distribution of the flyers was not appropriate; further, Wild told her that the flyers had been discarded. Later in the day, according to Watts, Wild approached her and said that a copy of the flyer was posted on the wall in the swing room. Watts testified that the flyer had not, prior to her initial conversation with Wild, been

⁵At this point Station Manager Bergquist apparently did not know anything about the aforementioned letter to Berg from the Postal Service.

posted at the station, as she had specifically looked for such a posting.

Jan Wild, currently a union steward, was president of the Respondent in 1990 and 1991. Wild testified that Station Manager McKenna brought a stack of the flyers in question to her one morning and said that she had removed them from the cases the preceding evening because, although she had previously granted permission to someone, whom she assumed was Berg, to distribute them, she had not looked at them. On looking at them she had second thoughts about the propriety of permitting such a distribution, and collected them from the cases. McKenna speculated to Wild that perhaps she should not have collected them and that she should place them back on the cases. Wild told McKenna that it would not be appropriate for McKenna to appear to be passing out such literature, critical of the union officers and representatives, to the carriers. McKenna apparently agreed, and left the matter to the discretion of Wild, in her capacity as steward.

Wild testified that she immediately took it on herself to post the flyer on the wall of the breakroom where other material is customarily posted, and did so prior to about 10:30 that morning when she went out on her route.

Wild testified that at first she wasn't going to post the flyer because it contained statements that were derogatory, critical, and embarrassing for Berg,⁶ and she was not certain that Berg was the individual who had distributed the flyers. Thus, Wild testified that she did not know for certain that they were Berg's flyers until she was approached by Watts and asked about the flyers. Then, according to Wild, she assumed that Berg had initially distributed them.

4. President Larson's remarks at the officers' and stewards' meeting

On August 3, 1993, Berg attended an officers' and stewards' meeting, attended by the union officers and the stewards from the various stations. There were about 50 individuals in attendance. Berg, who was not a steward, made it a practice of attending all of these meetings as an interested union member. At the meeting President Leonard Larson and Vice President Charles Peasha spoke about a new written policy that was being instituted by management. The policy, issued by Minneapolis Postmaster Rochelle Eastman and addressed to all station managers, begins as follows:

There have been several questions lately regarding access to the workroom floor in carrier stations. I wish to reaffirm the existing policy on this question.

The policy memo then goes on to recount the rules for access to the premises and the workroom floor, and states:

Electioneering and campaigning by union officials and challengers are not official union duties. Employees may campaign or distribute literature for themselves or in behalf of others if they:

⁶The flyer in question was a letter to Berg dated December 1, 1992, from National Business Agent Gene McNulty, in which McNulty makes the statement to Berg that, "Either you intentionally distort things which people say to you or your thought processes are so irrational that you are incapable of understanding what is being said to you."

(a) Are on non-work time. (Official break and lunch periods are considered non-work times.)

AND

(b) Are in a non-work area. (This includes parking lots, break areas, and swing rooms.)

Access to facilities should not be denied based upon the content of any material to be distributed.

Attached to this memo was a four-page addendum entitled, "Do's and Don'ts for Postal Supervisors," setting forth the rules for handling "Campaigning and Electioneering by Employees." Among the directives in this addendum, are:

DO NOT permit an employee from another post office or postal facility to enter your facility for the purpose of campaigning.

DO NOT allow distribution of literature of any kind on the work room floor.⁷

Berg testified that during the meeting President Larson stated that, "There has been a member who has been spreading flyers at the stations with false accusations against me and the assistant business agent, that has caused the Postmaster to issue a directive to all the station managers concerning distribution on the work room floor." Larson stated, according to Berg, that the flyers have caused both management and union members to doubt the Union's effectiveness and have thus interfered with good-faith bargaining with management and good relations between the Union and its members. Then Larson said, according to Berg, that "Bev Berg has ruined it for us all. We have always had a local agreement that at election times we could enter the stations freely and distribute campaign literature. Now we can't." Then he pointed at her and asked, "Bev, what is your problem?" Berg then was given time to reply to Larson's question and spoke about her concerns regarding the Union's representation of its members.

A week after the officers' and stewards' meeting, Berg phoned Larson and asked if he had received prior notification from management about implementation of the aforementioned policy, and Larson said no. Berg then suggested that this was a unilateral action on the part of management and asked whether Larson was going to file a grievance over the matter. Larson, according to Berg, agreed that it was a unilateral action, but that he had no intention of filing a grievance over the matter.

Leonard Larson, president of the Respondent, testified that the Minneapolis postmaster was fairly new and that she appeared to be attempting to enforce more stringent checks on people going in and out of the stations. During the course of the officers' and stewards' meeting, Larson explained the more stringent rules that the postmaster was attempting to institute, which limited electioneering and campaigning by members. Someone asked the identity of the individual who was out distributing campaign literature when there was no ongoing official campaign for any union office. Larson then

⁷The latter two directives appear to be inconsistent with the aforementioned June 14, 1993 letter from the Postal Service to Berg, which permitted Berg's access to other stations for the purpose of distribution of literature.

identified Berg as the individual who was responsible for the campaigning and the more stringent rules. Larson denies stating that Berg "ruined it for all of us"; nor did he ask Berg what her problem was. The minutes of this meeting state as follows with regard to this matter:

It looks like there will be a new policy on handing out fliers at the stations. If you are not on the clock and/or not on official union business, management does not have to allow you access to the workroom floor. There has been a problem with literature that has been distributed in the past.

Larson testified that he does not recall a phone call from Berg following the meeting, and denies telling her that the Union was in agreement with the restrictions set forth in the postmaster's new policy, or that he did not intend to file a grievance over it.

5. Incidents at the Powderhorn Station

On about September 28, 1993, at about 3 p.m., Berg posted a handwritten notice above the timeclock at the Powderhorn Station having to do with the possibility that the United Parcel Service's (UPS) employees may strike and the relationship between the interests of UPS employees and Postal Service employees. The notice did not bear Berg's name. It remained posted the following day, at least until 1 p.m. However, Berg observed that it was no longer posted at 2:45 p.m. that day. Berg asked Supervisor Phil Sazenski about her missing sign, and said that she was tired of people taking down the material she posted.⁸ As Berg was leaving the station that afternoon, Sazenski approached her with a crumpled piece of paper and said that he found it in the wastebasket; it was the notice she had posted.

Berg happened to ask a fellow worker, Duane Kerry, if he knew who was taking down her signs, and Kerry said that it was Union Steward Jerry Morey. He told Berg that Morey had said that the sign had been posted long enough, and that Morey had removed it and had discarded it in the wastebasket. Berg spoke to another letter carrier who also confirmed that Morey had removed her notice from the wall.

Duane Kerry testified that on one occasion⁹ Union Steward Morey was waiting to punch out and looked up on the wall and saw a "typewritten page" and said, "This has been up there long enough." He took it down and threw it in the wastebasket. According to Kerry, Berg had posted it the day before; he was certain that it was typewritten. When, at the hearing, he was proffered the handwritten document in question, written in large 1-inch block letters, he stated that he had seen it, but that it was not the one Morey had removed. Kerry indicated that he had observed more than one such incident when someone other than Berg had removed literature that Berg had posted on the wall.

Morey testified that he has never seen the handwritten document in question and never removed it from the wall. According to Morey, on about September 30, 1993, Berg approached him and accused him of removing some notice of

⁸Berg testified that there were at least three other occasions when material she had posted at the Powderhorn Station had been removed and discarded by unknown individuals.

⁹Kerry was not asked and therefore did not state the approximate date when the incident allegedly occurred.

hers from the wall. Morey denied it and said that he didn't want to have anything to do with her.¹⁰

In March 1994, Berg heard Steward Joe Bedor's voice over the public address (PA) system at the Powderhorn Station. He announced that Union Steward Ron St. Clair was going to the Mayo Clinic for a heart transplant, and that St. Clair would have to remain there perhaps 3 or 4 months waiting for a donor. He said that Union Steward Morey had resigned, and that he had been appointed to the position of alternate steward.

Immediately after Bedor's comments, Berg, without asking permission from management, used the PA system to address the carriers at Powderhorn. She explained to the carriers that Bedor had made a misstatement and that Bedor could not be an interim steward as there was no such thing as an interim steward, and that in fact Morey had not resigned and continued to be the alternate steward. She then pointed out that it could be determined whether Morey had indeed resigned, as he would have submitted a letter of resignation. At this point, Supervisor Sazenski came over to the PA system and pulled the plug.

Berg then approached Sazenski and asked to see the certification record that management receives from the Union when a steward is documented as the representative. Sazenski produced a letter from President Larson to the postmaster dated March 17, 1994, stating that Bedor was being certified as the interim steward to take St. Clair's place while he is in the hospital.

On reading this document, Berg got back on the PA system and announced to the carriers that it was just as she had suspected, as the letter from Larson stated that Bedor was being appointed as interim steward, and there is no such thing as interim steward, and that management had told her that Morey had not resigned. At this point Sazenski again came over and pulled the plug on the PA system while Berg was in midsentence. Then Berg heard Bedor yell out, "That a way, Phil [Sazenski]."

Berg again approached Sazenski, and asked why he pulled the plug. Sazenski said that he had told her she could not make announcements without prior permission.

Berg testified that she cared about the situation "Because rules aren't being followed. Our branch makes up their own rules, whatever they want to do, they do. They don't follow the . . . by-laws . . . and the by-laws haven't been followed in the past."

Berg filed a grievance over the matter and about the first week in April 1994, she observed, through a glass window, a meeting between Powderhorn Station Manager Ed Jensen and Union Steward Bedor. Bedor walked out of the meeting and said, "This is all Bev Berg's fault." About five carriers were present. At this point Station Manager Jensen came up to Berg and said he had come to a resolution on her grievance, namely, that "nobody can use the PA system for any reason, including the stewards for the Union announcements, or for any reason. It will be limited to business." He also indicated that the next morning there would be an announcement to this effect. Berg said that unless this proposed rule was rescinded, she would be filing another unfair labor prac-

tice charge against the Postal Service for retaliation against her. At the end of the day, Jensen apparently had reevaluated the matter and said that anybody could use the PA system for whatever reason they wanted, provided that management received advance notice and that the use of the system did not interfere with business.

Joe Bedor testified that in March 1994, he had recently been appointed interim steward in place of St. Clair who had been admitted to the hospital for a heart transplant procedure. Bedor announced this over the PA system at the Powderhorn Station, and went out on the dock for a cigarette break. Shortly thereafter, someone came out to the dock and told him that Berg was using the PA system. Bedor went back inside the building to find out what was going on. He approached Supervisor Phil Sazenski, and asked if Sazenski was aware of the policy regarding the use of the PA system. Sazenski said that he was aware of the policy, that Berg had not asked for permission to use the microphone, and that it had happened so quickly that he didn't have time to respond. He said that it would not happen again.¹¹

A short time later, Bedor heard Berg's voice on the PA system once again, and all of a sudden the system went dead. Bedor learned that Sazenski had pulled the plug on the system. Berg told Bedor that she wanted to file a grievance over management's refusal to permit her to use the PA system, and Bedor explained to her that there was no merit to such a grievance. Bedor testified that there has been a long-established unwritten policy at the Powderhorn Station regarding the use of the PA system: Only the steward and station management are to have access to the system, and if the steward needs to address an issue he must receive permission from management. Customarily, the steward will ask permission to use the system every 2 weeks, in order to give the carriers a synopsis of the biweekly union meetings. Only occasionally, according to Bedor, will some carrier use the system to perhaps sing happy birthday to someone, or to announce that there are doughnuts available.

Bedor denied that he made any comments about the incident, such as stating "That a way Phil," or "This is Bev Berg's fault."

Sazenski was formerly supervisor and acting manager at the Powderhorn Station. Sazenski testified that the general practice with regard to the use of the PA system was to permit the union steward, after requesting permission from management, to use the system the day after union meetings to

¹⁰It appears from various incidents specified in the record that none of the Powderhorn stewards wanted to have anything to do with Berg, and that they attempted to avoid her insofar as possible.

¹¹On the fourth and final day of the hearing, the General Counsel moved to amend the complaint based on this testimony by Bedor. The motion was denied. The General Counsel renews the motion in his brief. Thus, the General Counsel would amend the complaint to allege that Respondent has violated Sec. 8(b)(2) of the Act by causing or attempting to cause the Postal Service to discriminate against Berg in violation of Sec. 8(a)(3) of the Act by reporting alleged misconduct by Berg and requesting the Postal Service to stop it. I initially disallowed the amendment, which introduced new violations based on sections of the Act not previously alleged in the complaint, as being untimely. I reaffirm my ruling in this regard. In addition, this matter has apparently been resolved to Berg's satisfaction, and thus litigation of such an issue would not significantly affect the remedy here. Further, Bedor's testimony indicates that he simply asked Supervisor Sazenski whether Berg had requested permission to use the PA system in conformity with established policy, and Berg testified that the current policy, which she accepts, requires prior permission to use the PA system.

make relevant announcements. On occasion, when someone would bring sweet rolls or doughnuts for the work force, they would frequently, but not always, request permission to make a brief announcement that refreshments were available. Once, someone sang happy birthday and on the same occasion announced that there were sweet rolls available.

Sazenski testified that on about March 21, 1994, after he advised Station Manager Jensen about Berg's unauthorized use of the PA system, Jansen made an emotional response, out of frustration, that no one should use the PA system again. Sazenski left the station shortly thereafter, and was not aware of any meetings involving Berg's grievance over the matter.

6. Berg's suspension from membership

On April, 19, 1994, after an investigatory hearing and vote of the local branch membership, Berg was suspended from membership in the Union for 5 years for actively exposing fellow union members to possible discipline. On July 13, 1994, the National Association of Letter Carriers denied Berg's appeal, but reduced the suspension to 1 year; thus, Berg will be reinstated as a member on July 13, 1995. The facts underlying Berg's suspension are as follows.

On September 8, 1993, at the Powderhorn Station, Berg allegedly observed that Ron St. Clair, a fellow union member and union steward, was not doing his work and was talking to another carrier when he should have been working.¹² Berg believed that management had a practice of favoring certain carriers over others, and that she was not among the favored group. Thus, according to Berg, "at my station some carriers are picked on and others have lots of privileges, and I feel it is unfair that some people are allowed to get away with lots of things and other people, for doing minuscule things, are attacked. And I am one of those people that is attacked by management." Further, management had previously cautioned her about excessive talking, and Berg wanted to make a record of the fact that other employees were permitted to talk with impunity as "this would be useful to protect me . . . if I was picked on." With these beliefs in her mind, Berg immediately wrote the following "Routing Slip" to then Station Manager Phil Sazenski:

Ron St. Clair was at Doris Gbala's case chatting from 6:00 a.m. to 6:55 a.m. w/ Supervisor Rick MacDermott's knowledge. He strode by them 3 times & engaged in their conversation twice. The subject of the conversation ranged from politics to sweet corn.

I pointed out to Rick MacDermott at 6:54 of the situation & that all (Powderhorn) carriers have the same privileges management allows them. Rick did not respond.

Berg put a copy of the routing slip on Sazenski's desk, and also posted a copy on the wall above the timeclock in order

¹² St. Clair testified that, in addition to being a letter carrier, he is also a job instructor, and that during the time Berg alleged that he was standing around talking and being unproductive, he was training a new letter carrier and was standing off to the side watching him case mail. During this time, he was chatting with Gbala, another carrier, who was casing mail, and this conversation did not interfere with the work of either St. Clair or Gbala. I credit St. Clair's testimony.

to substantiate that the incident had happened and also so that other carriers could perhaps use it to their advantage if they were ever warned by management for talking.

The following month, on October 23, 1993, Berg wrote a letter to Postmaster Rich Lindsey in Milwaukee, Wisconsin, in support of the grievance of a close friend and fellow union dissident, Andy Crowbridge, who had been discharged by the Postal Service for misconduct. The body of the letter is simply a testimonial to Crowbridge's affability and character. As a postscript to this letter, Berg wrote the following:

P.S. If pokiness can be construed as delay of the mail, that in turn management considers grounds for removal, then some removals are in order here in Minneapolis. Note attached documentation of a "favored" carrier who cased less mail than Andy (0 letters in 55 minutes), without as much as a mention by management.¹³ If you're interested in whether like standards apply to management, I can provide documentation of management delaying dozens of feet of first class mail, then concealing it from their reports.

Barry Weiner is the regional administrative assistant for the Minneapolis region of the NALC. He is assistant to Gene McNulty, one of the regional national business agents. He is also a member of the Respondent here, namely, Branch 9 of the NALC. One of his responsibilities as administrative assistant is to represent employees at step three of the grievance procedure. Thus, Weiner was assigned to represent Andy Crowbridge who had been discharged by the Postal Service in Milwaukee. On reviewing the file in that matter, Weiner happened to read the letter and the attached routing slip that Berg had submitted to the Milwaukee postmaster in Crowbridge's behalf. Weiner testified that he was "outraged" by Berg's conduct in seemingly "ratting out two fellow union members."

In December 1993, during the "Good and Welfare" portion of a Branch 9 membership meeting, which meetings Weiner, as a Branch 9 member, customarily attended, Weiner explained to the membership what Berg had done and excoriated her for, as Weiner characterized it, "ratting out a couple of brother and sister Union members" He said that her conduct was reprehensible and that he felt that it probably violated the NALC constitution. Weiner testified that as a union official he believed it was incumbent on him to speak out in such situations, as there are standards of conduct to which union members should be held accountable.

According to Berg, Weiner told the membership that he learned about the situation during his handling of a grievance regarding Crowbridge, a carrier in Milwaukee, and that the Union believed that management had a weak case and that the Union could get Crowbridge reinstated with full backpay. However, he wanted to bring to the members' attention a document that he came across as he was reviewing Crowbridge's file, namely, a letter written by a Branch 9 member protesting Crowbridge's discharge, and advocating the discharge of certain Branch 9 union members. Weiner produced the aforementioned letter and routing slip, identified Berg as the author, and said:

¹³ Berg attached the aforementioned routing slip to the letter to Postmaster Lindsey.

I find this morally and ethically reprehensible to put fellow members, to put their situation in jeopardy. Sister Doris Gbala, who is a single—a struggling single working mother, and brother St. Clair, who had recently had heart surgery . . . I condemn this and I think we all should. I feel this is a violation of the constitution and I am not going to file charges, but if anybody else wants to, please do.

Weiner testified that as a result of his comments at the meeting, Vice President Charles Peasha told him that his wife felt very strongly about the matter and wanted to file charges against Berg for her misconduct, “but was really uncertain as to what provisions of the constitution to go by, what the procedures were, or even how to draft charges.” Weiner offered to help, and subsequently “drafted up, in handwriting, just a draft of possible charges,” and sent them to Charles Peasha to give to his wife. However, Weiner never had any direct communication with Emelyn Peasha.

As a result of Weiner’s comments, internal union charges were filed against Berg by Emelyn Peasha, who is a carrier at the Lake Street Station, an assistant union steward, and Charles Peasha’s wife. Emelyn Peasha testified as follows regarding her reasons for bringing the charges against Berg:

I was upset at what had gone on through the years and this was basically after hearing testimony from Barry [Weiner] at the December membership meeting, I felt that had been the last straw and I wanted to let Ms. Berg know that I for one wasn’t going to stand for her behavior any more and I wanted to do something about it.

Emelyn Peasha testified that no one directed her to file the charges against Berg, and that she voluntarily did so. Further, while she may have seen something drafted by Weiner, she was not influenced by it as she had already drafted the charges using the Union’s constitution “and just thoughts that I had in my head and then going through it again and rewriting it and going through a thesaurus and looking up the kinds of words I wanted to use.” Thus, Peasha was insistent that she had no assistance in drafting the charges. Her husband typed the charges for her as she had drafted them, and she then submitted them in the form of a letter, dated February 11, 1994, to Lenny Larson, president of the Respondent. The charges state as follows:

Pursuant to article 10 of the Constitution for the Government of Subordinate and Federal Branches, I hereby prefer the following charges against Sister Beverly Berg.

(1) In a written communication to Postal Supervisor Phil Sazenski, dated September 8, 1993, Sister Berg alleged that, on that date, letter carriers Ron St. Clair and Doris Gbala, both of whom were at the time and are, as of this date, members in good standing in NALC Branch 9, had spent 55 minutes engaged in nonproductive, nonwork-related activities. Sister Berg subsequently posted a copy of this written communication in a conspicuous location at the workplace of these employees. These actions exposed Brother St. Clair and Sister Gbala to potential adverse actions by postal man-

agement. By these acts, Sister Berg violated Article 1, Section 5 of the NALC Constitution which provides, in pertinent part, that: “The objects of the Association shall be to unite fraternally all letter carriers and other employees of the postal career service for their mutual benefit . . . and to strive at all times to promote the safety and welfare of every member.”¹⁴

Emelyn Peasha testified that she was aware of materials that Berg had distributed at stations or union meetings that contained negative statements about the officers of the Union and about the Union in general, and agreed that this literature may have entered into her determination to file the charges. She also recalled that at one membership meeting Berg attempted to “bring up old business or dirty laundry and at times people would boo her off the floor or tell her to sit down and shut up,” and on this occasion Peasha found a way, within Robert’s rules of order, to “bring that kind of stuff to a halt.”

On April 19, 1994, at a union meeting during which the charges were debated, *infra*, Emelyn Peasha spoke up and said that she believed that “turning in a fellow letter carrier was the last straw.” Explaining what she meant by that remark, she testified that Berg was “Very negative. And we’re a union. We all stick together to do what’s best for the membership and I didn’t feel that’s what she was doing. I felt that she was out for herself and she’ll drag down anybody along the way that she can. That’s what my feelings were.”

President Larson, on the receipt of Peasha’s letter, officially notified Berg of the charges against her and thereafter appointed a three-member committee, comprised of impartial members, to investigate the charges. A formal hearing was conducted by the committee on March 31, 1994. Berg was represented by a union member, Harold Myklebye. Witnesses were administered an oath by a certified court reporter and notary public, and a transcript of the proceeding was taken. The transcript, consisting of 125 pages and additional attachments, was made a part of the record here. Seven witnesses, including Berg, gave testimony, and Berg had the opportunity to call witnesses on her behalf. A careful reading of the transcript indicates that all ramifications of the matter were explored, and that Berg was well represented and was given the opportunity to thoroughly present her defense. There is no contention that the hearing was other than properly conducted. Essentially, Berg asserted that in writing the routing slip and the letter she was not attempting to subject either St. Clair or Gbala to possible discipline, as she knew that discipline would not be imposed on them by management since they were among the favored carriers.

The committee issued its factual findings and summary of the witnesses’ testimony in a report and presented this report, which makes no recommendation as to the merits of the charges, to the membership at a membership meeting on April, 19, 1994.¹⁵ After the report was presented to the

¹⁴The letter contains a second paragraph, similarly worded, in reference to the letter Berg sent to Postmaster Lindsey in Milwaukee, and states that Berg, in the letter to Lindsey, “maintained that the activities which she accused Brother Ron St. Clair and Sister Doris Gbala of engaging in could be grounds for their removal from the Postal Service.”

¹⁵The committee report is attached hereto as Exh. 1 [found in App. B].

membership, a motion was made by Joe Bedor, former interim steward at the Powderhorn Station and, from 1986 to 1993, past regional administrative assistant of the NALC, that Berg be suspended from membership for 5 years.¹⁶

The motion was debated. There were six or seven speakers, and Berg was given the opportunity to present her defense. During the debate, Weiner spoke, apparently at some length, in support of the motion, and attempted to focus the membership's attention on the issues in question. Thus, according to the unrebutted testimony of Larson and Weiner, several of the speakers were critical of Berg for things she had allegedly done in the past, and one speaker even negatively mentioned Berg's activities as a dissident and her disparagement of union officers and representatives. Weiner, when it was his turn to speak, stated that Berg's other activities that were critical of the Union or of the union officers and representatives should be disregarded, and that such activity was not the issue, as "politics . . . is part of the territory." Weiner told the membership that "the issue really was whether or not [Berg] ratted out two fellow employees, two fellow Union members, and if so, did that action violate the section of the constitution that Emelyn Peasha charged her with violating." After the debate on the issue a vote was taken, and Berg was overwhelmingly found guilty of the charges.¹⁷

As noted above, the membership voted to suspend Berg for 5 years. However, on appeal, in a lengthy letter dated July 13, 1994, explaining its reasons for upholding the suspension, the NALC committee on appeals concluded as follows:

The Committee wishes to strongly condemn Berg's conduct. Under the circumstances, it was clearly inappropriate. At the same time, the Committee finds the five-year suspension which the Branch ordered to be excessive. Accordingly, the Committee on Appeals denies Beverly Berg's appeal, but reduces the suspension to one year effective from the date of this decision.

David Noble is currently a letter carrier in Washington, D.C. For 12 years he served as an assistant to the president at NALC headquarters, and was indefinitely suspended from that position in August 1993. He is currently pursuing internal union charges against NALC's entire executive board for embezzlement of union funds, and has filed a charge with the Board regarding his subsequent suspension, which charges have resulted in the issuance of a complaint. In addition, he has filed a Federal lawsuit under Section 501 of the LMRDA claiming that NALC's officers breached their fiduciary duties to NALC's membership by embezzling funds,

¹⁶The day following the December 1993 general membership meeting, Bedor posted both Berg's letter to the Milwaukee postmaster and the routing slip on the wall at the Powderhorn Station, along with a letter signed by Bedor which denounced Berg for "telling a Postmaster that both Ron St. Clair and Doris Gbala should be fired!" Bedor's letter goes on to say that, "There is no acceptable excuse or reason for putting a fellow letter carrier at risk in this way, and as far as I'm concerned, no understanding or forgiveness." In the letter, Bedor refers to Berg as a self-serving and divisive individual "who will do anything to further her own cause regardless of the damage she might do to others."

¹⁷The Respondent has about 2500 members and there were approximately 150 to 170 members in attendance at the meeting.

and he is spearheading a dissident group for reformation of the NALC.

Noble testified that in early June 1993, at an NALC arbitration training seminar held near Baltimore, Maryland, he happened to be having lunch with Weiner, who was also attending the seminar. There were a total of four people at the table, according to Noble, and the matter of Andy Crowbridge came up. Weiner mentioned that he had been involved in planning and drafting internal union charges against Crowbridge.¹⁸ During the course of the conversation, according to Noble, Weiner said that he had been waiting for 12 years to have a shot at running for national business agent, and "that in order to insure that no real stumbling blocks were placed in the way of his effort to be elected in the election of 1994, that he was going to 'squash a few dissident bugs.'" Emphasizing this, Noble added, "[A]nd that is a quote." Weiner further said, according to Noble, that he had gotten the Milwaukee local to uphold charges against Crowbridge, and "that he was going to search for a suitable reason or suitable pretext to have charges filed against Bev Berg, the leading dissident in Minneapolis's Branch 9."

Noble also testified on behalf of Berg during the investigatory hearing on the charges against Berg that was held on March 31, 1994. Noble testified that during lunch with Weiner and another fellow, the subject of Andy Crowbridge came up. Weiner acknowledged that he was involved in the planning and drafting of the internal union charges against Crowbridge. When asked whether the subject of "Sister Berg and Branch 9" arose within the framework of that conversation, Noble testified:

Yes. Barry [Weiner] said that he was looking for an opportunity to file charges against Bev Berg or to have similar charges filed against Bev Berg.

On this occasion, Noble did not testify that Weiner said he was going to insure that no stumbling blocks (i.e., dissident members) were placed in the way of his being elected national business agent, or that he was going to "squash a few dissident bugs."

Michael Zagaros, whom Noble identified as being at the luncheon table during the discussion, is the Respondent's treasurer and also occupies the position of NALC representative to the UMPS process. Zagaros testified that at no point did Weiner make the statements attributed to him by Noble. However, according to Zagaros, Noble invited the Branch 9 representatives to his home for a barbecue during the seminar, and on this occasion there was general conversation regarding many union-related matters. Zagaros recalled that at one point, Weiner said, without specifically mentioning Berg, that, "We have our own 'fruitcake' in Branch 9."

Weiner denied that there was any discussion of Crowbridge or Berg during the aforementioned luncheon conversation. However, according to Weiner, at a barbecue at Noble's home, there was general talk of local union politics. Weiner mentioned that in Milwaukee, Crowbridge was

¹⁸The vice president of the local in Milwaukee had brought charges against Crowbridge for engaging in activity critical of local officers and for forming a rival organization in contravention of the constitution. These internal union charges were dismissed by the NALC, and have nothing to do with the Postal Service's attempt to dismiss Crowbridge for misconduct.

continuing to file internal charges against the union officers, and the vice president of the local had filed charges against Crowbridge. The conversation then turned to politics within Branch 9. During the course of this discussion Weiner stated that, "I think we got another fruitcake, like Crowbridge, in Minneapolis now." That, according to Weiner, was the only reference to Berg, and Weiner testified that although it was possible, he did not believe he mentioned Berg by name.

Weiner testified that although he was interested in running for the position of national business agent, Berg posed no challenge to him. Thus, he has never been certain that Berg ever actually intended to run for that position, and believed that by prematurely announcing her candidacy for national business agent to management, rather than to the Union, she was just trying to bring herself under some umbrella of protection that might flow from such candidacy. Moreover, according to Weiner, Berg would have had to obtain the endorsement of five individuals from five different locals, and Weiner doubted that Berg, who "is exceedingly unpopular amongst the membership in Branch 9," could obtain five signatures. Weiner testified that he has had 14 years of exposure as assistant to the national business agent and has thus had an opportunity to establish a record, and that although there might be other viable candidates for the position, he did not regard Berg as one of them.

C. Analysis and Conclusions

The complaint alleges that on about May 27, 1993, the Respondent entered into a grievance settlement with the Nokomis Station management that prevented employees from distributing literature critical of the Respondent's leadership.

The evidence shows that on that date an UMPS settlement was agreed on between the Union and management at the Nokomis Station which did not prevent employees from having their union-related literature distributed, but which required that the literature first be provided to management and that management would, in turn, give it to the steward "for distribution or posting." The settlement is vaguely worded and was revoked before it could be tested, and it is unknown whether a steward would have the right to determine whether the literature should be distributed or posted, or whether the steward would have the right to refuse to post certain material. In any event, whatever the interpretation of this language, it is clear that it interferes with the right of an employee to personally distribute his or her own literature at a time he or she chooses. There appears to be no valid reason for a steward to handle the material and thus to place this limitation on employees' rights to distribute literature. Indeed, it appears that such a limitation had never been previously imposed on the employees at the Nokomis Station. I agree with the contention of the General Counsel that this is an impermissible restriction on employees' Section 7 rights to engage in union activity, and is violative of Section 8(b)(1)(A) of the Act.

The Respondent argues that the restrictions were never enforced and were, in fact, rescinded shortly thereafter, and that no employee, including Berg, was significantly affected; moreover, the employees at the Nokomis Station were never made aware of the settlement. Therefore, the Respondent maintains that this entire matter should be considered to be de minimis and that no remedial order is warranted. I do not

agree, particularly as this is not isolated behavior but is similar to conduct which, I find *infra*, is also violative of the Act.

Regarding the alleged discarding of Berg's literature at the Normandale Station on about July 26, 1993, I find that Union Steward Wild, after conferring with the station manager, assumed the duty to responsibly deal with material that Berg had distributed and that management had collected from the carriers' cases because of its questionable content. Having assumed such responsibility, it appears that Wild, who believed that Berg was the person who had distributed the letters in the first instance, had an obligation to contact Berg and advise her of what had happened; namely, that management had collected the letters. The fact that Wild may have deemed the letters to be uncomplimentary and perhaps embarrassing to Berg did not give her the right to ignore Berg's attempt to distribute them. I credit the testimony of Watts, and find that Wild did not post a copy of the letter until several days later, after her conversation with Watts. By failing to advise Berg that management had confiscated the letters, and by destroying the letters rather than offering to give them back to Berg, I find that the Respondent has interfered with Berg's right to distribute literature and has violated Section 8(b)(1)(A) of the Act.

The complaint alleges that on August 3, 1993, at an officers' and stewards' meeting, President Larson told those in attendance that Berg had caused the Postal Service to restrict employees from distributing literature. Assuming *arguendo* that Berg's account of the meeting is accurate, I fail to see that any opinion expressed by Larson regarding management's reaction to Berg's activities, unaccompanied by any restraint or coercion by the Union, is violative of the Act. Thus, Section 8(c) of the Act provides as follows:

The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or promise of benefit.

Further, even assuming *arguendo* Berg's account of the subsequent alleged telephone conversation with Larson, it does not appear that advising an employee that the Union does not intend to file a grievance over a matter is violative of the Act. Accordingly, I shall dismiss these allegations of the complaint.

Regarding the complaint allegation that Union Steward Morey, at the Powderhorn Station, removed literature that Berg had posted on September 29, 1993, the record evidence shows that the document in question was handwritten by Berg in large block letters and was thus readily identifiable. The General Counsel's primary witness to this incident, however, was certain that he observed a typewritten document being removed from the wall by Steward Morey. In addition, the evidence shows that many documents posted by Berg had been removed by unidentified persons prior to this event. Steward Morey denied that he removed the document in question. I conclude that the record evidence is insufficient to warrant the finding of a violation here, and I shall dismiss this allegation of the complaint.

Assuming *arguendo* the accuracy of Berg's account of the events at the Powderhorn Station on about March 21, 1994,

regarding the use of the PA system, such facts do not make out a violation of the Act. Thus, Steward Bedor was allegedly expressing his opinion that Berg's insistence on using the PA system for the dissemination of her views had caused management to formulate a more restrictive rule regarding the use of the PA system. This new rule had the effect of limiting the long-established practice of permitting stewards to utilize the PA system for giving periodic summaries of union meetings to the carriers. The mere expression of opinion by Bedor, without any accompanying restraint or coercion, does not constitute a violation of the Act.¹⁹

Regarding Berg's suspension from membership, the record evidence is abundant that Berg had, for an extended period of several years, engaged in a variety of union-related activities, including the promulgation of literature that questioned the integrity of union officials, and that such activities caused the leadership of the Union to regard her with suspicion and ill feelings. Further, on November 23, 1993, Berg filed the initial unfair labor practice charge here against the Union. Clearly, the candid testimony of various union officers and representatives readily discloses that they harbored significant animus toward Berg for a variety of reasons, and were not reluctant to openly characterize her in uncomplimentary terms.

Nevertheless, Berg's abundant activities did not result in the bringing of internal union charges against her until after Berg had written the aforementioned routing slip and letter, which documents demonstrated that she had voluntarily reported alleged work infractions to management, and had, at least indirectly, advocated that fellow union members be discharged for such infractions. Emelyn Peasha, who brought the charges against Berg, characterized this conduct as "the last straw," and was candidly critical of all Berg's past activities. While it certainly appears from the sophisticated language used in the wording of the charges that Emelyn Peasha, wife of the vice president of the Union, had considerably more help in drafting them than she admitted, nevertheless, I find that she, admittedly in response to the entreaties from Regional Administrative Assistant Weiner who openly advocated the bringing of such charges,²⁰ elected to bring them of her own free will because, as she stated, Berg appeared to be an individual who was "out for herself and she'll drag down anybody along the way that she can. That's what my feelings were."²¹

Following the bringing of the charges, the Union engaged in a lengthy, formal, democratic process, during which Berg was given the opportunity to explain to the investigative

committee and to the membership her rationale for authoring and submitting the routing slip and the letter to management. The matter was debated by the membership and, during such debate, the members were urged to ignore Berg's political activities and confine themselves to the specific charges before them.²² There was no lack of due process, and the officers of the Union, who were particularly upset with Berg, comprised only an insignificant minority of the voting membership.

Assuming *arguendo* that the General Counsel has presented a prima facie case that the bringing of charges and the suspension of Berg was motivated by unlawful considerations, I find that the Respondent has sustained its burden of proof under *Wright Line*,²³ and has demonstrated that the entire process, culminating with Berg's suspension from membership, resulted from her activities which were potentially detrimental to the job security of her fellow workers,²⁴ rather than from political or other activities in which Berg may have been engaged.

The General Counsel argues that the entire process of bringing charges and subsequently suspending Berg from membership is per se unlawful, as Berg's activity was in furtherance of her right to protect herself from potential future retaliation by management and, in addition, was undertaken in support of the grievance of a fellow union member who had been discharged by management. Thus, it is argued, Berg's alleged attempts to protect herself and a fellow union member take precedence over the potential harm to other employees who may suffer as a result of her actions.

In *Carpenters Local 22 (Graziano Construction)*, 195 NLRB 1 (1972), the Board, quoting *Scofield v. NLRB*, 394 U.S. 423, 429-430 (1969), states as follows:

It is by now well settled that although Section 8(b)(1)(A) "leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest" and "impairs no policy Congress has embedded in the labor laws," it does not permit enforcement, by fine or expulsion, of a rule which "invades or frustrates an overriding policy of the labor laws"

Regarding the General Counsel's contention that Berg may not be suspended for attempting to protect herself from possible discipline by management, the Board, in *Communications Workers Local 5975 (Western Electric)*, 192 NLRB 556 (1971), sustained the dismissal of a similar complaint. Thus, the Board determined that the fining of a union member for, in effect, attempting to protect herself from potential discipline by reporting the discovery of a liquor bottle to super-

¹⁹ See Sec. 8(c) of the Act, *supra*.

²⁰ It appears unnecessary, under the circumstances, to make a credibility determination regarding the directly conflicting testimony of Weiner and Noble. However, it should be pointed out that, as set forth above, Noble's testimony at the hearing here differs from his testimony given to the union investigatory committee. Thus, before the union investigatory committee, Noble made no reference to Weiner's alleged intent to "squash a few dissident bugs."

²¹ The General Counsel points out that the routing slip was posted by Berg at the Powderhorn Station, and yet that no charges were filed against Berg until some 5 months later. While the Respondent has presented no direct evidence to explain why such charges were not filed by some interested party at an earlier date, the record evidence suggests various possible reasons for this, such as, for example, the reluctance of many individuals to have anything to do with Berg.

²² While this is much easier said than done, and while the 150 to 170 members in attendance may have had a variety of reasons for voting to uphold the charges, nevertheless a good-faith attempt was made to focus the attention of the membership on the specific charges under consideration.

²³ *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 403 (1983).

²⁴ During the investigation and debate of this matter, the harm or potential harm to the employees involved was considered at length, and it appears that the union membership, having on-the-job experience with the vicissitudes of the workplace and the degree to which they may be subject to discipline by management, is uniquely suited to decide such a matter.

vision, and implicating others by suggesting the name of the bottle's owner, was not violative of Section 8(b)(1)(A) of the Act. See also *Transit Union Local 1225 (Greyhound Lines)*, 285 NLRB 1051, 1059-1060 (1987).

The Board has found that in the context of a grievance process, a union may not discipline an employee for providing a statement, requested by the employer, in support of disciplinary action against a fellow employee, as such conduct is intimately related to the grievance machinery. *Oil Workers Local 7-103 (DAP, Inc.)*, 269 NLRB 129 (1984). See also *Amalgamated Transit Union (Transport of New Jersey)*, 240 NLRB 1267 (1979).

In contrast to the factual context in the above-cited cases, Berg's involvement with the grievance of Crowbridge is exceedingly tenuous: she was not a witness to any incidents that resulted in Crowbridge's termination, her participation in the matter was never solicited by management, and her testimonial letter in Crowbridge's behalf to the Milwaukee postmaster, in which she informs on fellow employees, was a voluntary undertaking. Thus, Berg was neither required nor requested to become involved in the Crowbridge grievance by either the Postal Service or the NALC; rather, she gratuitously involved herself in the matter. Unlike the circumstances in the cited case, I do not find that Berg's involvement with the grievance process is the type of involvement that should preclude the Union's suspension of Berg for violating its aforementioned constitutional provision.

On the basis of the foregoing, I do not find that the Respondent's action against Berg "invades or frustrates an overriding policy of the labor laws."²⁵ Further, it is clear that the constitutional provision which she was found to have violated, namely, "[T]o unite fraternally all letter carriers and other employees of the postal career service for their mutual benefit. . . . and to strive at all times to promote the safety and welfare of every member," is a provision which "reflects a legitimate union interest."²⁶ As the union membership had reasonable grounds for finding that Berg's conduct was violative of her obligations as a union member, and as the suspension of Berg is not per se unlawful as contended by the General Counsel, I shall dismiss this allegation of the complaint.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Employer, the United States Postal Service, and this matter by virtue of Section 1209 of the Postal Reorganization Act.

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

3. The Respondent has violated Section 8(b)(1)(A) of the Act by conduct which interferes with the rights of employees to post and distribute literature.

4. The Respondent has not violated the Act with respect to any other matters.

THE REMEDY

Having found that the Respondent has violated the Act by conduct which interferes with the rights of employees to post and distribute literature, the Respondent shall be required to cease and desist from such or related conduct and shall be

²⁵ *Scofield v. NLRB*, supra.

²⁶ *Id.*

required to post an appropriate notice attached hereto as Appendix A.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²⁷

ORDER

The Respondent, Branch 9, National Association of Letter Carriers, Minneapolis, Minnesota, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Entering into any agreement with any postal station management which limits the right of employees to engage in the lawful posting or distribution of union-related literature.

(b) Failing to advise employees that the literature they distributed had been confiscated by management.

(c) In any like or related manner interfering with the right or opportunity of employees to distribute or post union-related literature at any postal station.

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

(a) Post at its offices, meeting halls, and station bulletin boards, copies of the attached notice marked "Appendix A."²⁸ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²⁷ 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.

²⁸ 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."

APPENDIX B

EXHIBIT 1

REPORT OF COMMITTEE ON CHARGES AGAINST SISTER BEVERLY BERG

The committee conducted a hearing on March 31, 1994, to investigate the charges against sister Beverly Berg. The committee heard testimony from the following witnesses:

Barry Weiner	Wade Chilton
David Noble	Doris Gbala
Lenny Larson	Beverly Berg
Karen Schneider	

Harold Myklebye acted as sister Berg's representative.

The committee found the following facts regarding charge #1. A buck slip authored by sister Berg dated 9-8-93 was placed on Acting Station Manager Phil Sazensky's desk. A carbon copy was posted above the timeclock at Powderhorn Station. A carbon copy was sent to the Milwaukee Postmaster with a letter concerning letter carrier Andy Crowbridge. A final copy was retained by sister Berg. These facts were obtain[ed] after testimony from the witnesses working on 9-8-93 at Powderhorn Station. Sister Berg admitted that she was the author and testimony from Wade Chilton, Karen Schneider, and Doris Gbala confirmed the fact that it was posted above the timeclock. A statement from Ron St. Clair and testimony from Doris Gbala confirmed that fact that brother St. Clair was confronted by Acting Station Manager Phil Sazensky with the buck slip. When brother Myklebye asked Karen Schneider, "Does that sound to you like an attempt to get carriers in trouble?" She answered "Yes." Wade Chilton characterized the note as, "Slandrous, malicious, and vicious." Doris Gbala said the tone of the note was "it's attacking." When sister Donato asked Beverly Berg about how other carriers were interpreting her message, she answered, "They can have any feeling they want over how they perceive what I do. That doesn't mean that I don't have a legal right to communicate whatever opinion I have."

Barry Weiner, Lenny Larson, and David Noble all had experience in the area of discipline. The committee asked each

for their opinion regarding the possibility of discipline could have resulted from one carrier volunteering information concerning another carrier, but each had differing opinions as to the likelihood of that discipline being sustained.

The committee found the following facts regarding charge #2. Sister Berg admitted to being the author of the letter to the Milwaukee postmaster concerning Andy Crowbridge's removal. Sister Berg also admitted to attaching a copy of the previously mentioned buck slip to that letter.

Again, Barry Weiner, Lenny Larson, and David Noble were viewed as expert witnesses in the area of discipline. Each agreed that "delay of the mail" has been grounds for discipline. The committee asked each if discipline could result from the information provided by a carrier to a higher level of management even if management at its lower level did not initially pursue any discipline. All agreed that higher level management might pursue discipline even though it was not pursued at a lower level.

In her defense sister Berg stated she was being facetious when she suggested in the postscript that, "some removals are in order here in Minneapolis." Sister Berg also stated that she neither intended nor believed that brother St. Clair or sister Gbala would be subject to adverse actions by management because of her actions because in her opinion, they are "favored" carriers.