

**National Association of Letter Carriers, Branch #47
(United States Postal Service) and Kurtt E.
Bliden.** Case 27–CB–3769(P)

January 29, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX
AND HURTGEN

On October 16, 1998, Administrative Law Judge Albert A. Metz issued the attached decision. The Respondent filed exceptions, with supporting argument. The General Counsel filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and brief¹ and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, National Association of Letter Carriers, Branch #47, Denver, Colorado, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Insert the following paragraph as 2(b) and reletter the subsequent paragraph.

“(b) Deliver to the Regional Director for Region 27 signed copies of the notice in sufficient number for posting by the Employer at its Commerce City, Colorado facility, if it wishes, in all places where notices to employees are customarily posted.”

Barbara E. Greene, Esq., for the General Counsel.

Michelle Dunham Guerra, Esq., for the Respondent Union.

DECISION¹

ALBERT A. METZ, Administrative Law Judge. This case involves issues of whether the Respondent has violated Section 8(b)(A) of the National Labor Relations Act (the Act).² On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the parties' briefs, I find that the Respondent has violated the Act as alleged.

¹ We deny the General Counsel's motion to strike an incomplete case citation from the Respondent's exceptions.

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

¹ This case was heard at Denver, Colorado, on June 16, 1998. All dates refer to 1997 unless otherwise stated.

² 29 U.S.C. §158(b)(1)(A).

I. JURISDICTION AND LABOR ORGANIZATION

The Respondent admits that it is a labor organization within the meaning of Section 2(5) of the Act, and that the Board has jurisdiction over the United States Postal Service, the Employer, by virtue of Section 1209 of the Postal Reorganization Act.

II. BACKGROUND

The Respondent is the collective-bargaining agent for postal letter carriers in the Denver, Colorado area. Rick Andrews is one of the Respondent's stewards at the General Mail Facility (GMF) in Commerce City, Colorado. Charging Party Kurtt E. Bliden is an employee in the unit represented by the Respondent at the GMF. Bliden has never been a member of the Respondent union. Bliden has filed grievances with the Respondent in the past and had them processed.

In late September 1997, Bliden heard a conversation with Andrews in which Bliden complained that he was being harassed by another letter carrier. Bliden asked Andrews about filing a grievance over the matter. Andrews advised him that he should file an EEO complaint as there was nothing Andrews could do for him.

On October 7 Bliden was in the dock area of the GMF and had another conversation with Andrews about the matter. Andrews said, “What do you want, a pot of gold? If you think you're going to get that letter carrier in trouble, it's never going to happen.” Bliden explained he just wanted the harassment to stop.

Bliden then went into the collection office to speak to his supervisor about the matter. Bliden told the supervisor he wanted to meet with his union steward. As they were talking Andrews walked into the office along with employees Pete Collins and J. J. Martinez. Bliden was approximately 10 feet from the men and heard Andrews tell his companions, “I don't have to represent that scab.” Bliden said, “That scab?” Andrews said, “Yes, that scab.” Bliden told Andrews he wanted to meet with him to file a grievance. Andrews told him to submit the request in writing to his supervisor. Bliden wrote out the request and gave it to supervisor, Natulin Sidberry, who gave her approval for steward grievance time. Andrews denied ever telling Bliden that he did not have to represent him. Considering the demeanor of the witnesses and the record as a whole, I credit Bliden's version of what was said on this occasion.

Bliden subsequently met alone with Andrews in the supervisor's office. The door to that office was open to the outer office as the two men started to talk. There were several other workers in the outer office at the time. Andrews was angry and started yelling at Bliden, “What are you, 28 going on 13?” Bliden said he just wanted to file a grievance. Andrews then closed the office door and presented Bliden with a piece of paper to have union dues deducted from his paycheck. Andrews asked if Bliden wanted to join the Union. Bliden said he did not. Andrews then admittedly said, “Then you have no union.”

Bliden continued to complain about the harassment he was receiving from the other letter carrier. Bliden insisted that he wanted to file a grievance. Andrews asked if Bliden would drop the matter. Bliden replied that he would not ignore his complaint and wanted to file a grievance. Andrews then took some notes, and Bliden asked if he could have a copy of the grievance when it was filed. Andrews said that he was not obligated to provide Bliden with a copy of the grievance, but if Bliden could show where it was required in the collective-bargaining

contract that he had to give a copy to Bliden then he would. Eventually a grievance was filed on Bliden's behalf and a settlement reached.

III. ANALYSIS

The Government alleges that the Respondent violated the Act when Andrews told other workers in Bliden's presence that he did not have to represent "the scab." An additional violation of the same section is alleged to have occurred when Andrews told Bliden that he had no union.

The Board stated in *Steelworkers Local 1397*, 240 NLRB 848 (1979), the following principle regarding a violation of Section 8(b)(1)(A):

The test of misconduct is not what [a union official] may have subjectively intended by his comments, nor whether any employee was, in fact, coerced or intimidated by the remarks. Rather, the test is whether the alleged offender engaged in conduct which tends to restrain or coerce employees in the rights guaranteed them in the Act. We have held that union threats to employees that the union would not represent them . . . violates Section 7, particularly when made by a union officer with the apparent capability of effectuating the actions threatened. [Citations omitted.]

Andrews' statement that he did not have to represent the "scab" was made in the presence of Bliden and other employees. Andrews shortly thereafter angrily told Bliden he had no union and kept arguing that he did not want to accept his grievance. In the overall milieu of Andrews' remarks, I find that they did have the tendency to restrain and coerce employees. I find that the Respondent thus violated Section 8(b)(1)(A) of the Act. *Oil Workers Local 5-114 (Colgate-Palmolive Co.)*, 295 NLRB 742, 744 (1989).

CONCLUSIONS OF LAW

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

2. National Association of Letter Carriers, Branch #47, is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(b)(1)(A) of the Act.

4. The foregoing unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended³

³ 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.

ORDER

The Respondent, National Association of Letter Carriers, Branch #47, Denver, Colorado, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Telling nonunion bargaining unit employees that its agents do not have to represent them or that they do not have a union.

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

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

(a) Within 14 days after service by the Region, post at its business offices and meeting halls copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized 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) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS AND EMPLOYEES

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 tell nonunion bargaining unit employees that we do not have to represent them or that they do not have a union.

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.

NATIONAL ASSOCIATION OF LETTER CARRIERS
BRANCH #47

⁴ 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."