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American Postal Workers Union of Louisiana (United States Postal Service) and Brandie N. Lavergne.
Case 15–CB–286086

March 10, 2023

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS WILCOX
AND PROUTY

The General Counsel seeks a default judgment in this case on the ground that American Postal Workers Union of Louisiana (the Respondent) has failed to file an answer to the complaint. Upon a charge and an amended charge filed by Brandie Lavergne on November 11, 2021, and November 14, 2022, respectively, the General Counsel issued a complaint and notice of hearing on November 23, 2022, against the Respondent, alleging that it has violated Section 8(b)(1)(A) of the Act. The Respondent failed to file an answer.

On January 3, 2023, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. On January 4, 2023, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

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

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is received on or before December 7, 2022, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated December 9, 2022 (which enclosed a copy of the complaint), advised the Respondent that unless an answer was received by December 16, 2022, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service (the Employer) provides postal services for the United States and operates various facilities throughout the United States in performing that function, including its facility located at 3928 Highway 32, Leonville, Louisiana (the Employer's facility). The Board has jurisdiction over the Employer and this matter by virtue of Section 1209 of the Postal Reorganization Act (PRA), 39 U.S.C. § 101 et seq.

We find that the Respondent and American Postal Workers Union, AFL–CIO (the National Union) are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Steven P. Breaux – President (former)
Joshua Montgomery – President (current)

At all material times, by virtue of Section 9(a) of the Act, the National Union has been the exclusive collective-bargaining representative of the following employees of the Employer (the unit):

All employees in the bargaining unit for which the National Union has been recognized and certified at the national level: maintenance employees, motor vehicle employees, postal clerks, mail equipment shops employees, material distribution centers employees, and operating services and facilities services employees; excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1201(2), all Postal Inspection Service employees, employees in the supplemental work forces as defined in Article 7 of the collective-bargaining agreement between Employer and the National Union, rural letter carriers, mail handlers, and letter carriers.

At all material times, the National Union and the Employer have maintained and enforced a collective-bargaining agreement covering the terms and conditions of employment of the unit, including a grievance and arbitration procedure.

At all material times, the Respondent has been an agent of the National Union for administering the collective-bargaining agreement at the Employer's facility.

The following events occurred, giving rise to this proceeding.

1. (a) Since about April 8, 2021, the Respondent has failed to file a grievance concerning harassment and a 7-day suspension that Lavergne requested to file under the provisions of the agreement described above.

(b) Since about June 15, 2021, the Respondent has failed to file a grievance concerning a 14-day suspension that Lavergne requested to file under the provisions of the agreement described above.

(c) Since about June 16, 2021, the Respondent has failed to file a grievance concerning the posting of Lavergne's job that Lavergne requested to file under the provisions of the agreement described above.

(d) Since about June 29, 2021, the Respondent has failed to file a grievance concerning a letter of removal that Lavergne requested to file under the provisions of the agreement described above.

2. The Respondent's conduct described above in paragraphs 1(a) through (d) was arbitrary and perfunctory.

CONCLUSIONS OF LAW

By the conduct described above in connection with its representative status, the Respondent has failed to represent Lavergne for reasons that are arbitrary, discriminatory, or in bad faith and has breached the fiduciary duty it owes to Lavergne and the unit.

By the conduct described above, the Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act and within the meaning of the PRA.

REMEDY

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

In addition, we shall order the Respondent to permit Lavergne to be represented by her own counsel at any

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

ORDER

The National Labor Relations Board orders that the Respondent, American Postal Workers Union of Louisiana, Leonville, Louisiana, its officers, agents, and representatives, shall

1. Cease and desist from

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

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

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

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

(d) Post at its union office and meeting places copies of the attached notice marked “Appendix.”¹ Copies of the notice, on forms provided by the Regional Director for Region 15, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 14 days after service by the Region, deliver to the Regional Director for Region 15 signed copies of the notice in sufficient number for posting by the Employer at its Leonville, Louisiana facility, if it is willing, at all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 15 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 10, 2023

Lauren McFerran, Chairman

Gwynne A. Wilcox, Member

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If the Respondent’s office and meeting places are open and accessible to a substantial complement of employees and members, the notice must be posted within 14 days after service by the Region. If the office and meeting places involved in these proceedings are closed or not accessible by a substantial complement of employees and members due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notice must be posted within 14 days after the office and meeting places reopen and are accessible by a substantial complement of employees and members. If, while closed or not accessible by a substantial complement of employees and members due to the pandemic, the Respondent is communicating

APPENDIX

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

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

FEDERAL LAW GIVES YOU THE RIGHT TO

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

WE WILL NOT breach our duty of fair representation by failing or refusing to process a unit employee’s grievances for reasons that are arbitrary, discriminatory, or in bad faith.

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

WE WILL promptly request the United States Postal Service to consider Brandie Lavergne’s grievances and, if it agrees to do so, process the grievances with due diligence in accordance with our collective-bargaining agreement with the Postal Service.

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

WE WILL, in the event that it is not possible for us to pursue the grievances, and if the General Counsel of the National Labor Relations Board shows in a compliance proceeding that timely pursued grievances would have been successful, make Brandie Lavergne whole for

with employees and members by electronic means, the notice must also be posted by such electronic means within 14 days after service by the Region. If the notice to be physically posted was posted electronically more than 60 days before physical posting of the notice, the notice shall state at the bottom that “This notice is the same notice previously [sent or posted] electronically on [date].” 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.”

any increases in damages suffered as a consequence of our failure to process her grievances in good faith, plus interest.

AMERICAN POSTAL WORKERS UNION OF
LOUISIANA

The Board's decision can be found at www.nlr.gov/case/15-CB-286086 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor

Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

