United States Postal Service *and* Branch 84, National Association of Letter Carriers, AFL–CIO. Case 06–CA–277831

November 27, 2024

DECISION AND ORDER

BY MEMBERS KAPLAN, PROUTY, AND WILCOX

On May 8, 2024, Administrative Law Judge G. Rebekah Ramirez issued the attached decision. The Respondent filed an exception with supporting argument pertaining only to the recommended remedy, and the General Counsel filed an answering brief.

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

The Board has considered the decision and record in light of the exception, argument, and brief and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the judge's recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United States Postal Service, Greensburg, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. November 27, 2024

Marvin E. Kaplan, Member

David M. Prouty, Member

Gwynne A. Wilcox, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Anne E. Tewksbury, Esq., for the General Counsel.
Austin D. Black, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

G. REBEKAH RAMIREZ, Administrative Law Judge. This case was tried in Pittsburgh, Pennsylvania, on December 4, 2023. The General Counsel alleges that on May 18, 2021, the United States Postal Service (Respondent or the Postal Service) violated Section 8(a)(3) and (1) of the National Labor Relations Act (the Act), by constructively discharging its employee Nicolas Montross because he invoked his right, pursuant to Respondent's collective bargaining agreement with Branch 84, National Association of Letter Carriers, AFL-CIO (the Union), to refuse to work over 60 hours in a work week. Additionally, the General Counsel alleges that during pre-disciplinary interviews on May 18, 2021, Respondent (1) threatened Montross with discipline, discharge, and criminal prosecution; (2) interrogated Montross and former union steward Donald Watkins about their protected concerted and union activities; and (3) implied that employees who engage in union activity are disloyal to the Postal Service. For the reasons described below, I have found that Respondent violated the Act as alleged.

The Union filed the charge giving rise to this case on May 28, 2021, and amended it on August 4, 2021.[1] The General Counsel issued the complaint on September 26, 2022. The Respondent timely filed an answer in which it denied committing any of the violations alleged in the complaint.

On the entire record,[2] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, [3] I make the following:

[1] In the absence of any exceptions, we adopt the judge's findings of fact and conclusions of law in their entirety.

[2] In accordance with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), enf. denied on other grounds 102 F.4th 727 (5th Cir. 2024), the judge ordered the Respondent to compensate employee Nicolas Montross for any direct or foreseeable pecuniary harms incurred as a result of his unlawful constructive discharge. For the reasons set forth in *Airgas USA*, *LLC,* 373 NLRB No.102, slip op. at 1 fn. 2 (2024), the Board's decision in *Thryv* remains valid precedent.

On exceptions, the Respondent argues that this make-whole remedy, which it calls "a form of compensatory damages," is beyond the scope of the National Labor Relations Act, is contrary to the Act's legislative history, and raises serious constitutional concerns. However, the Board considered and rejected each of these arguments in *Thryv*.

Unlike his colleagues, Member Kaplan would not order the extraordinary make-whole remedy ordered by the Board in *Thryv, Inc.*, 372 NLRB No. 22 (2022). Not only did he disagree with that remedy, for the reasons set forth in his partial dissent in *Thryv*, but the provision in the Board's Order in *Thryv* containing that remedy, upon which his colleagues rely, has been vacated by the Fifth Circuit. *Thryv, Inc. v. NLRB*, 102 F.4th 727, 748 (5th Cir. 2024). Accordingly, the novel make-whole remedy ordered in *Thryv* did not survive judicial vacatur. See *Airgas USA, LLC*, 373 NLRB No. 102, slip op. at 19–20 (2024) (Member Kaplan, dissenting).

[1] All dates are in 2021 unless otherwise indicated.

[2] The General Counsel's unopposed motion to correct transcript is granted.

[3] Abbreviations used in this decision are as follows: "Tr." for transcript, "Jt. Exh." for joint exhibits, "GC Exh." for General Counsel's exhibits, "R Exh." for Respondent's exhibits, "GC Br." for General Counsel's post-hearing brief, and "R Br." for Respondent's post-hearing brief. Although I have included several citations in this decision to highlight

FINDINGS OF FACT

JURISDICTION

Respondent provides postal services for the United States and operates various facilities throughout the United States, including Respondent's facility at 238 South Pennsylvania Avenue in Greensburg, Pennsylvania (the Greensburg facility). The Board has jurisdiction over the Respondent and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. §§ 101 et seq. (the PRA).

ALLEGED UNFAIR LABOR PRACTICES

A. Background

Michael Cialone has been the Postmaster (PM) at the Greensburg facility since 2018. (Tr. 192.) Danielle Meyers has been a supervisor since 2019 and Jacob Turner was a temporary supervisor at the Greensburg facility in 2021. (Tr. 138, 187.) Cialone, Meyers, and Turner are admitted supervisors within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

Nicolas Montross was a city letter carrier at the Greensburg facility from 2016 until the end of May 2021. (Tr. 14–15.) Donald Watkins is currently a city letter carrier and was the Greensburg facility's union steward from 2017 until 2020. (Tr. 74.) David Bugay is the vice president of the Union and was acting union steward at the Greensburg facility in May 2021. (Tr. 101.)

B. The Collective-Bargaining Agreement and the "12/60 Rule"

At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of its letter carriers. This recognition has been embodied in successive collective-bargaining agreements, with the relevant agreement in this case being in effect between 2019 and 2023 (the CBA). (Jt. Exhs. 1 and 13.) Article 8, Section 5 of the CBA governs overtime assignments. In pertinent part, Article 8 states the following:

> **Article 8.5.G** Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:
>
> 1. 2.may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay…);
>
> excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

(Jt. Exh. 1.)

Respondent and the Union are parties to a Memorandum of Understanding dated October 19, 1988 (the MOU) which establishes restrictions on the overtime provisions of the CBA. (Jt. Exh. 5.) In pertinent part, the MOU states:

> … with the exception of December, full-time employees are prohibited from working more than 12 hours in a single work day or 60 hours within a service week. In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at an additional premium of 50 percent of the base hourly straight time rate … The employment of this remedy shall not be construed as an agreement by the parties that the Employer may exceed the 12 and 60 hour limitation with impunity.
>
> … excluding December once a full-time employee reaches 20 hours of overtime within a service week, the employee is no longer available for any additional overtime work. Furthermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work, in accordance with Arbitrator Mittenthal's National Level Arbitration Award[4] on this issue…

(Jt. Exh. 5.) The MOU has not been rescinded or modified since it issued. (Jt. Exh. 13.) The above restrictions on overtime will be hereafter referred to as the 12/60 Rule. The12/60 Rule, including the MOU and Arbitrator Mittenthal's rulings, have been incorporated into the parties' Joint Contract Administration Manual (JCAM). (Jt. Exhs. 2 and 9.)

C. May 14 – Montross Invokes the 12/60 Rule

Montross regularly worked 40 hours a week delivering mail on a 10-mile route. (Tr. 15–16.) In 2021, the Greensburg facility was experiencing a workforce shortage, and due to the COVID-19 pandemic, a dramatic increase in mail and package volume and employee absenteeism. (Tr. 17, 145, 196.) Consequently, in the months prior to May 14, Montross was regularly working six days a week and often worked 60 hours per week. (Tr. 16, 49.) According to PM Cialone, all mail carriers were regularly working 55 to 65 hours per week. (Tr. 197.)

On May 13, Montross found out that he was scheduled to work on May 14, which was his scheduled day off and would be his twelfth working day in a row. (Tr. 18.) Montross felt exhausted and searched online for information concerning overtime at the Postal Service. He found an article from a 2015 Union newsletter explaining the 12/60 Rule, the MOU, and Arbitrator Mittenthal's rulings regarding overtime restrictions. (Tr. 18; GC Exh. 2 (a).) Montross realized that he would hit the 60-hour mark on May 14.

When he arrived at work on May 14, Montross ran into former union steward Watkins, and told him that he was thinking of invoking the 12/60 Rule. (Tr. 18–19, 79.) Later in the day, Montross and Watkins exchanged text messages. (GC Exh. 2.) Watkins asked Montross if he was getting close to 60 hours, and

particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather on my review and consideration of the entire record for this case and the demeanor of the witnesses.

[4] Arbitrator Mittenthal ruled that the 12- and 60-hour restrictions do not merely seek to discourage excessive overtime by imposing penalty overtime pay but seek to prohibit any work beyond the 12 or 60 limits. (Jt. Exh. 3, p. 7.) Further, Arbitrator Mittenthal ruled that if an employee is sent home on a regularly scheduled day before the end of his tour on account of the 60-hour ceiling, the Postal Service must pay the hours lost that day. (Jt. Exh. 4.)

Montross replied that "at exactly 1:30 I'll be at 59:97 hrs for the week. Bringing all the mail back and going home… I had petty discipline issued all the way up to a 14 day. Now they'll try to get me for failure to follow [instructions] on an absolute contract violation…" (Tr. 21; GC Exh. 2.) Montross texted Watkins a link to the document that he had found online. (Tr. 22.)

In the early afternoon, temporary supervisor Jacob Turner approached Montross while he was on his route to give him additional mail to deliver from "cut" mail.[5] (Tr. 23, 187–188.) Montross did not accept the cut mail. He asked Turner if he was familiar with the 12/60 Rule and told him that he planned on leaving early that day because he was approaching his 60-hour limit. (Tr. 23.) Turner did not know what Montross meant by invoking the 12/60 Rule, and called supervisor Meyers to report what Montross told him. (Tr. 188.) At the time, Meyers did not understand what Montross meant by the 12/60 Rule either and mistakenly thought that it related to the number on a form that concerns timecard issues. (Tr. 156.)

As he got closer to the 60-hour mark, Montross returned to the Greensburg facility with the mail that he had not had time to deliver. (Tr. 25.) He informed Meyers and another temporary supervisor present, Josh Yates, that he was approaching his "60th hour of work, here's the mail, I'm leaving for the day." (Tr. 25.) He left the mail inside the workroom floor near his mail case and his supervisor's office. (Tr. 25, 54.) Meyers, not understanding what Montross meant by the 60th hour of work, asked him to sign a Form 3971, which is a leave request form. Montross did not sign it. (Tr. 157–159.) According to Meyers, it was not unprecedented for a carrier to bring back undelivered mail from their route. However, she expected the carriers would provide reasons why they could not complete their routes, such as because they were having a family emergency or a medical reason, and she also expected the carriers to request leave to cover their absences. (Tr. 158.)

Montross returned to work on Monday, May 17. (Tr. 27.) Fully expecting to be disciplined for leaving early on May 14, Montross went to Watkins and thanked him for being a union steward over the years and shook his hand.[6] (Tr. 27–28, 82.) This exchange was in plain view of others in the workroom floor. (Tr. 28, 82.)

D. May 18 – Pre-Disciplinary Interviews

In May, Union vice-president David Bugay was serving as union steward over the Greensburg facility and would visit the facility every Tuesday, where he would typically attend multiple pre-disciplinary interviews (PDIs).[7] (Tr. 103–104.) It is undisputed that Respondent's practice was to advise Bugay of the PDIs scheduled for the day and provide him with an advance copy of the questions planned for the PDI. Bugay would take contemporaneous notes of employees' answers during the PDI. (Tr. 104–106.) PDIs were conducted in a closed-door office behind the workroom floor. (Tr. 30.) It is also undisputed that at the Greensburg facility, Respondent uses a uniform format for PDIs which includes a cover page with a heading and an introductory paragraph stating that the PDI is "the employee's "day in court" and is "their opportunity to explain their actions," a set of supervisor guidelines consisting of four preliminary questions, and a box to mark that the employee was informed that discipline can result from the interview. (GC Exh. 7.)

Montross' PDI

On May 18, Meyers informed Bugay that she would be conducting a PDI with Montross concerning "delaying of mail." (Tr. 106–107.) She gave Bugay a copy of the PDI which had 33 prepared questions. (Tr. 164.) It is undisputed that this PDI was not in the typical PDI format since it did not have the introductory paragraph nor the preliminary questions. (GC Exh. 3.) The questions Meyers asked at this meeting are not in dispute, and for the most part, neither are Montross' answers. (Tr. 31; Jt. Exh 7, GC Exh. 3.)[8] Meyers testified that when she investigates an allegation of the delaying of mail, she needs to determine whether the employee had an emergency or other justification for not delivering mail, and whether it was an intentional, willful, or malicious action. (Tr. 161–162.) However, it is evident from the questions she prepared and the subsequent PDI with Watkins, that Meyers was intent on finding out who informed Montross of the 12/60 Rule, and not whether he had a justified reason for his actions on May 14. For instance, Meyers asked Montross at the beginning of the PDI, "who is your employer, Branch 84, or the Postal Service?" At the hearing, Montross testified that she asked this question because she wanted to know where the information about the 12/60 Rule came from. (Tr. 170, 183–184.) The PDI then continued as follows:

> 6. On Friday March 14th 2021 you brought your route back to the office claiming the "1260" rule after being assigned more work by 204b[9] Jacob Turner is this correct?
> Response: Yes
>
> 7. Being a postal employee according to the elm[10] [sic] you are required to be loyal to the Postal Service, do you understand this?
> Response: Yes
>
> 8. Why did you fail to do this?
> Response: I did not fail to do this. I was adhering to the 12/60 rule to not work more than 60 hours a week due to a safety violation.
>
> 9. Explain this safety violation
> Response: Reads from phone an article from 2015 about

[5] Cut mail refers to mail that is not assigned to a letter carrier on any given day and is "cut" and assigned to others for delivery. (Tr. 52, 141.)

[6] Montross was, at the time, serving a 14-day suspension for being absent without leave. (Tr. 59.)

[7] PDIs are meetings conducted by Postal Service managers, with a union representative present, to investigate facts and determine if discipline is warranted against an employee suspected of misconduct. (Tr. 163.)

[8] Jt. Exh. 7 is Respondent's record of the PDI and GC Exh. 3 is the Union's record of the PDI. For the most part, both records are identical, and the few existing differences are immaterial. For purposes of my findings of fact, I am relying on Jt. Exh. 7.

[9] The designation "204(b)" is used to identify employees serving as temporary supervisors. (Tr. 45.)

[10] ELM stands for the Employer Labor Management manual. (Tr. 109.)

Arbitrator Mittenthal found in the Postal Record dated June 2015.

When Montross started reading from his phone the information he had found about the 12/60 Rule, Meyers instructed him to stop, and when he did not, she left the room and got PM Cialone. (Tr. 110.) Meyers testified that she got Cialone because Montross "wasn't cooperating with how he was answering the questions." (Tr. 172.) Cialone came into the room and asked Montross to put his phone away and answer the questions. (Tr. 33, 110.) Cialone asked Bugay to instruct Montross to stop reading from his phone, but Bugay said that there was no rule against Montross doing so. (Tr. 110.) Eventually, Montross put his phone away and Cialone left the room. Meyers continued with the PDI. (Tr. 110.)

10. You are to obey instructions from your supervisor, even if you have reason to question the propriety of a supervisor's order, you must nevertheless carry out the order and may immediately file a protest in writing to the official in charge or appeal through official channels like filing a grievance. Can you explain to me why you are unable to follow the instructions of your supervisor?
Response: My safety was compromised due to working 12 days in a row. I was physically and mentally exhausted.

11. You are expected to discharge your assigned duties conscientiously and effectively; can you explain why you have failed to do this?
Response: No, I reached my 60 hours for the week, so I did not fail.

12. According to the ELM 665.21 it is a criminal act for anyone who has taken charge of any mail to quit voluntarily or desert the mail before making proper disposition of the mail, did you realize by doing what you did on the 14th, you've committed a criminal act that will be turned over to the proper authorities?
Response: Call the postal inspectors, arrest me.

13. On July 11, 2016, you were given the opportunity to sign the following form (present 8139)[11] ask to read aloud, If he refuses, read.
Response: Carrier Montross reads the form 8139 aloud. He stops halfway and angrily puts the paper down and asks what this is relevant to. Carrier Montross is instructed to keep reading.

This form clearly states the following: "As a postal service employee you must preserve and protect the security of all mail in your custody from unauthorized opening, inspection, tampering, delay… Can you please give me the definition of delay?
Response: Can you give me the definition of failing to manage correctly?

14. Under the ELM 665.3 Employees must cooperate in any postal investigation, this means telling the truth, also given the situation you are now in being that you have an active 14 day suspension on file, you've violated the ELM in so many ways, and also you committed a criminal act I would recommend you being truthful, do you understand?
Response: I refuse to answer any more questions.

At this point, Meyers became angry and got up to get Cialone a second time. (Tr. 35.) Montross was standing and was upset, too. (Tr. 62.) Cialone came into the room and instructed Montross to sit down and answer the questions. (Tr. 36.) Meyers asked Montross to explain his conduct to Cialone. Montross said that he was refusing to answer any more questions. (Tr. 35–36, 111; GC Exh. 3.) Montross left the room and was followed by supervisor Brady Smith.[12] Smith told him to go back to work repeatedly and told him, "you are going to be arrested." (Tr. 37.) Smith followed Montross to his car before Montross left. (Tr. 37.)

Meyers was not able to complete the PDI. However, it is undisputed that her prepared questions included, in pertinent part, the following:

15. Who informed you of this so called "1260" rule?

17. Who told you to bring the mail back on May 14th?

19. … I hate to break it to you but the "1260" rule you are referring to is not a real thing. So, to benefit you in this situation please tell me who told you to do this?

25: You realize the contract doesn't say any of that, and who ever fed you this false information could be responsible for you losing your job, so again who told you to do this?

After the PDI, Meyers typed a statement summarizing the PDI. (R Exh. K.)[13] In her statement, Meyers explains that she would need to finish the PDI soon and conduct another one for "refusing to cooperate." Meyers testified that she did not have enough information to determine if Montross would be disciplined and "maybe there was a reason" for Montross' actions but she needed to complete the PDI. (Tr. 174.) However, Meyers could not recall what further information she needed from Montross and, even after PDI, she still did not understand what Montross meant by the 12/60 Rule. (Tr. 174.)

Watkins' PDI

Meyers also conducted a PDI with Watkins on May 18. (Tr.

[11] Form 8139 is a Postal Service acknowledgment form that Montross signed upon being hired concerning his duty to report any information about the theft, pilferage, unlawful delay of mail or evidence of intent to commit such a crime. (GC Exh. 3a.)

[12] Smith was not named in the complaint and did not testify. Montross testified that Smith was a regular supervisor like Meyers. (Tr. 28.) Meyers also referred to Smith as a supervisor. (Tr. 174–175.)

[13] Meyers wrote in her statement that Montross yelled at her to "go ahead call the postal police" and that he also yelled at Cialone when he came in saying "go ahead write the charges up." Respondent did not suggest that Montross' behavior at the PDI removed him from the protections of the Act. Nevertheless, I note that Montross did not engage in any profanity or threats, and that at most he yelled after being threatened with criminal prosecution. Therefore, I conclude that his behavior fell far short from what is required to lose the protection of the Act.

83.) Meyers told Bugay that the PDI concerned Watkins' "conduct". (Tr. 83.) The questions and answers made during this PDI are not in dispute. (Jt. Exh. 8.) The PDI had 19 prepared questions and was not prepared in a typical PDI format. In pertinent part, the PDI proceeded as follows:

> 4. Who pays you, the Union or the Postal Service?
> Response: Postal Service
>
> 5. Do you understand that you are to be loyal to the Postal Service?
> Response: Yes
>
> 6. What is the 12/60 rule?
> Response: If you work more than 12 hours a day or 60 hours in a week, you are not required to work beyond those limits, except December
>
> 7. Have you participated recently in anything that would not be considered favorable towards the postal service?
> Response: No
>
> 8. Have you instructed or given ideas to other employees that would cause the delivery of mail to be delayed?
> Response: No
>
> 11. On May 14th a carrier brought mail back claiming he was exercising his right to use the 12/60 rule. He clearly had no idea what he was talking about and was clearly walked through a process that was not proper. On May 17th you were witnessed shaking this carriers' hand near the parcel area. Were you the one that gave him this idea?
> Response: No. Emphatically no.
>
> 12: Do you understand the seriousness of trying to start a work stoppage?
> Response: Yes. I have no responsibility in trying to start a work stoppage.
>
> 13. Do you understand that by participating in this you could be charged with delaying the mail?
> Response: Yes
>
> 14. Can you explain to me why you shook this carrier' hand? Isn't covid a thing?
> Response: Nick came to me and said hey, I've been reading a lot on the contract, I should have listened to you long ago. Wish a lot of others would have too. Yes, covid is a thing.
>
> 16. You understand that you are required to be truthful during an investigation?
>
> Response: Yes, already asked and answered.

At the hearing, Meyers initially testified that she did not recall why she conducted a PDI with Watkins. However, after reviewing the PDI's questions and answers, she stated that she "was trying to determine who had instructed Montross that he was allowed to stop working after so many hours." (Tr. 184–185.) Bugay testified that he had never seen a PDI include questions about who pays you, about being honest and truthful, or about being loyal to the Postal Service. (Tr. 113–114.) This testimony was not disputed by Respondent's witnesses.

After the PDI, Watkins sent a text message to Montross asking him if he was alright. Montross replied that he was "totally fine other than management threatening to arrest me for the [sic] delaying the mail," followed by three laughing-out-loud emojis. Montross then texted "I told them to call the postal inspectors and take me out in handcuffs." Watkins replied "lol." (GC Exh. 4.)

Watkins did not receive discipline as a result of the PDI on May 18. (Tr. 94.)

E. Montross Resigns

Montross did not return to work after he left the PDI on May 18. (Tr. 38.) He testified that he feared that the Postal Service would have him arrested upon his return. (Tr. 38.)

On May 19, the Union filed a grievance stating that the Postal Service accused Montross of delaying the mail when he was only following the 60-hour limit in the CBA.[14] (Jt. Exh. 9.) The grievance cites pertinent provisions in the CBA, MOU, ELM, and JCAM.

On May 20, Meyers sent Montross a letter by certified mail with a notice to return to duty advising him that his absence from work since May 19 would be charged as an absence without official leave (AWOL) unless he contacted her, furnished acceptable documentation explaining his absence or report to duty by May 22. (Jt. Exh. 10.) Montross did not respond.

On May 25, Meyers sent another letter to Montross by certified mail advising him that she was scheduling a PDI with him for May 27 for "failure to follow instructions." (Jt. Exh. 11.) Meyers also sent Montross a "resignation from the Postal Service" form (resignation form). (Tr. 178–179.) When asked why she sent Montross a resignation form, Meyers testified that she sent it "to give him the option to resign as opposed to being removed." (Tr. 179.)

On May 28, Montross turned in the resignation form.[15] (Tr. 39, 64; Jt. Exh. 12.) Montross marked on the form that the reasons for his resignation were: pursuing full-time education, did not get along with supervisor, work hours not compatible, not enough recognition, skills not utilized, and "other."[16] (Tr. 64; Jt. Exh. 12.) Montross testified that he prepared a statement concerning his other reasons to resign but decided not to send it with

[14] The Union withdrew this grievance after Montross's resignation. Bugay testified that the Union does not customarily pursue grievances after an employee resigns. (Tr. 118.)

[15] At the hearing, Montross testified that he "believe[d]" he got the resignation form online or printed it from "somewhere." (Tr. 64.) However, Meyers testified that she mailed it to him along with the May 25 letter, and then "he brought it in and dropped his badge off." (Tr. 178.) Given that Meyers had a clearer memory of sending the resignation form and receiving it back from Montross, I credit her version of how Montross got the resignation form.

[16] Montross credibly testified that at the time of his resignation he was entertaining the idea of going back to school but was not enrolled in any school. (Tr. 66–67.)

the form.[17] (Tr. 65-66.) It is undisputed that Montross forgot to sign the form when he turned it in, that Meyers wrote on the form "refused to sign," and then sent the resignation form to Montross a second time so he could sign it. (Tr. 64–65, 179.) Montross signed the form and turned it in again. (Jt. Exh. 12.)

At the hearing, Montross testified that he resigned because he felt he was "between a rock and a hard place," he had contractual rights but "management essentially doesn't follow those rights," and he was in a tough position to "keep continuing working in this atmosphere or do I just leave and put it behind me." (Tr. 66.)

F. Comparable PDIs

According to PM Cialone, delaying mail is a serious offense which warrants discipline, the level of which depends on whether the employee has previous disciplinary action. (Tr. 209.) Cialone acknowledged that he was unaware of the 12/60 Rule prior to the instant matter and had never handled any discipline or PDIs concerning these overtime restrictions. (Tr. 210.)

Nevertheless, Respondent submitted into evidence documents purported to be comparable discipline for the delaying of mail. I have given little weight to this evidence since none relate to discipline issued by Cialone or Meyers, nor were they issued to employees working at the Greensburg facility. (Tr. 211–212.) Moreover, the comparator documents reflect that employees disciplined for delaying the mail did not invoke any contractual rights nor the 12/60 Rule, and in fact, were disciplined after failing to explain why they left undelivered mail unattended and/or failed to report that they had brought undelivered mail back from their routes. (R Exhs. A–J.) These examples are demonstrably different from the Montross situation since Montross invoked the 12/60 Rule, informed management that he was returning undelivered mail, and left the undelivered mail in their care.

Discussion and Analysis

A. Credibility Findings

In making credibility determinations, all relevant factors have been considered, including the context of the witnesses' testimony, their interests and demeanor, whether their testimony is corroborated or consistent with the documentary evidence and/or the established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. Credibility findings need not be all-or-nothing – indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. See *Daikichi Sushi*, 335 NLRB 622, 623 (2001), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003); *Jerry Ryce Builders*, 352 NLRB 1262, fn. 2 (2008), citing *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754 (2d Cir. 1950), reversed on other grounds 340 U.S. 474 (1951). To the extent that credibility issues arose in this case, my credibility determinations are detailed in the findings of fact above.

B. Analysis[18]

1. Did the Postal Service threaten, interrogate, and imply that employees who engage in union activity are disloyal in violation of Section 8(a)(1) of the Act?

As a preliminary matter, I find that Montross was engaged in protected, concerted activity when he invoked the 12/60 Rule. Pursuant to the Board's *Interboro* doctrine, an individual employee's assertion of a right grounded in a collective-bargaining agreement constitutes protected, concerted activity. *Interboro Contractors, Inc.*, 157 NLRB 1295 (1966), enfd. 388 F.2d 495 (2d Cir. 1967). As the Supreme Court explained in *NLRB v. City Disposal Systems, Inc.*, "an honest and reasonable invocation of a collectively bargained right constitutes concerted activity, regardless of whether the employee turns out to have been correct in his belief that his right was violated." 465 U.S. 822, 840 (1984). See also *King Soopers, Inc.*, 364 NLRB 1153, 1154 (2016). Here, there is no dispute that Montross asserted his right to not work more than 60-hours in a week on May 14 and again on May 18, and had an honest and reasonable understanding that his actions including invoking the 12/60 Rule were grounded in the CBA. Thus, he was unquestionably engaged in protected, concerted activity.

The complaint alleges three independent violations of Section 8(a)(1) of the Act involving the PDIs conducted by Respondent on May 18. First, the complaint alleges that Respondent threatened employees with discipline, discharge, and criminal prosecution during the PDIs. The basic test for a violation of Section 8(a)(1) is whether under all the circumstances the employer's conduct reasonably tended to restrain, coerce, or interfere with employees' rights guaranteed by the Act. See, e.g., *Stephens Media, LLC*, 356 NLRB 661, 672–73 (2011) citing *Mediplex of Danbury*, 314 NLRB 470, 472 (1994). The undisputed evidence established that Meyers informed Montross at his PDI that: (1) the PDI could "lead to discipline including removal"; (2) since he was on a 14-day suspension, the next step in discipline was "removal"; (3) "for doing what you did on the 14th, you've committed a criminal act that will be turned over to the proper authorities"; and (4) "given the situation you are in now in being that you have an active 14 day suspension on file, you've violated the Elm in so many ways, and also you committed a criminal act I would recommend you being truthful in this investigation..." As Montross was leaving the facility, Supervisor Smith also informed him that he would be arrested. There is no evidence that Respondent ever initiated a criminal investigation or referred the matter to the authorities.

[17] Montross' grievance package includes a typed statement titled "Why I Left USPS" which states that he was "appalled" when Meyers threatened him with arrest and that he feared for his safety within the facility; that he "loved being a mail carrier... but I will not subject myself to being treated like trash and threatened with arrest"; that Meyers was "increasingly frustrated that I was reading excerpts of my rights from the contract and this caused her to bring in Mike [Cialone]… who is afraid of educated carriers who know their rights…" (GC Exh. 5 and Jt. Exh. 9.) Montross prepared this statement a few weeks after the PDI pursuant to the Union's request. (Tr. 40, 117.)

[18] The General Counsel addressed Respondent's affirmative defense concerning deferral to the grievance and arbitration procedure in her post-hearing brief. (GC Br. at 34.) Although Respondent raised deferral in its answer to the complaint, it did not raise deferral as an affirmative defense at the hearing or in its post-hearing brief. Therefore, I find that Respondent waived this affirmative defense. See *Wisconsin Bell Telephone*, 346 NLRB 62, 64, n. 8 (2005).

As explained above, Montross was clearly engaged in protected concerted activity when he invoked the 12/60 Rule. Although Respondent's PDI process is a lawful means to investigate employee misconduct, it is evident that Meyers had already made up her mind prior to the PDI that by invoking the 12/60 Rule Montross had violated Respondent's rules, had committed a criminal act, and was facing termination. Therefore, at the PDI, Meyers plainly informed Montross of such. Even after the PDI, Meyers continued to insist that Montross did not provide a reason for his actions despite him repeatedly invoking the 12/60 Rule. Respondent did not address the 8(a)(1) allegations in its post-hearing brief; however, I find that Respondent indisputably threatened Montross with criminal prosecution and threatened him with discipline and termination. Meyers made these threats in direct response to Montross' protected concerted activity. Accordingly, I find that Respondent violated Section 8(a)(1) as alleged. See *Security Walls, LLC*, 371 NLRB No. 74, slip op. at 6 (2022) (the Board has consistently held that threats to bring legal action against employees or to prosecute them for engaging in protected concerted activity violate Section 8(a)(1)); *S&S Enterprises, LLC*, 370 NLRB No. 59, slip op. at 33 (2020) (threat in a termination letter to employee that he could be subject to criminal prosecution violated Section 8(a)(1)); and *Network Dynamics Cabling, Inc*., 351 NLRB No. 98 slip op. 8 (2007) (letter threatening employee with prosecution at a time when employee was preparing to participate in a Board hearing violated Section 8(a)(1)).

Second, the complaint alleges that Meyers unlawfully interrogated employees about their protected concerted and union activities. Whether questioning constitutes an unlawful coercive interrogation must be considered under all the circumstances and there are no particular factors "to be mechanically applied in each case." *S&S Enterprises*, supra at 16, citing *Rossmore House*, 269 NLRB 1176, 1178 (1984), enfd. 760 F.2d 1006 (9th Cir. 1985). The Board looks at five factors to determine whether the questioning of an employee constitutes an unlawful interrogation: (1) the background; (2) the nature of the information sought; (3) the identity of the questioner; (4) the place and method of the questioning; and (5) the truthfulness of the employee's reply to the questioning. *NCRNC, LLC*, 372 NLRB No. 35 slip op. at 11 (2022). The test is an objective one that does not rely on the subjective aspect of whether the employee was, in fact, intimidated. *Multi-Ad Services, Inc.*, 331 NLRB 1226, 1227–1228 (2000), enfd. 255 F.3d 363 (7th Cir. 2001).

Here, the record shows that Meyers scheduled a formal PDI with Watkins, advised him that the PDI could result in discipline, and asked him: (1) "have you instructed or given ideas to other employees that would cause the delivery of mail to be delayed?"; (2) "on May 14th a carrier brought mail back claiming he was exercising his right to use the 12/60 rule … he was clearly walked through a process that was not proper … you were witnessed shaking this carrier's hand … were you the one that gave him this idea?"; (3) "do you understand that by participating in this you could also be charged with delaying the mail?"; and (4) "can you explain to me why you shook this carrier's hand?" Although Montross stopped the PDI before Meyers was able to ask him all the questions she had prepared, Meyers was prepared to ask him: (1) "who informed you of this so-called "1260" rule"; (2) "who told you to bring the mail back on May 14th"; (3) "…the 1260 is not a real thing, so to benefit you in this situation please tell me who told you to do this?"; (4) "whoever fed you this false information could be responsible for you losing your job, so again who told you to do this?" Meyers candidly testified more than once that she wanted to know who had provided Montross with information about the 12/60 Rule. The credible evidence established that Watkins cooperated during his PDI and answered all questions truthfully.

Applying the analysis described above, Watkins' PDI was scheduled because Respondent saw him shaking hands with Montross just a few days after Montross had invoked the 12/60 Rule. Respondent called Watkins to a closed-door formal PDI, under the direction of the most senior member of management at the facility, to ask him if he informed Montross about the 12/60 Rule. Watkins did not violate any rule or policy, and Respondent had no legitimate reason for asking him whether he had helped Montross in learning about the 12/60 Rule. Therefore, I find that Respondent unlawfully interrogated Watkins in violation of Section 8(a)(1) of the Act. See *United Services Automobile Assn.*, 340 NLRB 784, 786 (2003) (interrogation of employees during employer investigative interviews violated Section 8(a)(1) because employees would reasonably perceive that the only objective in questioning them was to identify who was involved in protected activity).

Finally, the General Counsel alleges that Respondent implied that employees who engage in union activity are disloyal in violation of Section 8(a)(1) of the Act. In this regard, the evidence shows that Meyers asked Montross: (1) "Who is your employer, Branch 84 or the Postal Service?"; and (2) "Being a postal employee according to the elm you are required to be loyal to the Postal Service, do you understand this?" "Why did you fail to do this?" Additionally, Meyers asked Watkins: (1) "Who pays you, the Union or the Postal Service"; and (2) "Do you understand that you are to be loyal to the Postal Service?" The credited evidence demonstrated that these types of questions had not been included in any other PDI. Meyers had no legitimate reason to ask these questions. These questions were followed by questions accusing Montross of committing a criminal act and of violating Respondent's rules. Similarly, these questions were followed by questions to Watkins accusing him of telling Montross about the 12/60 Rule, of starting a work stoppage, and of delaying the mail. A reasonable employee hearing these "loyalty" questions would conclude that Respondent equated invoking the 12/60 Rule with disloyalty to the Postal Service. The Board has held such statements tend to interfere with, restrain, or coerce employees in the exercise of their Section 7 rights. See, e.g., *International Union of Operating Engineers, Local 12*, 237 NLRB 1556, 1557 (1978) citing *Oscar Enterprises, Inc. et al.*, 214 NLRB 823 (1974) and *Wilker Bros. Co*., 236 NLRB 1371 (1978) (informing employees that they had been "very disloyal" to employer by supporting the union conveyed the message that respondent equated engaging in union activity, which is a protected statutory right, with employee disaffection or disloyalty). Thus, I find that Meyer's statements to Montross and Watkins implying that they were disloyal for engaging in union and protected concerted activity violated Section 8(a)(1).

2. Did the Postal Service constructively discharge Nicholas Montross?

The complaint alleges that Respondent violated Section 8(a)(3) by constructively discharging Montross after he claimed his right to refuse to work over 60 hours in a week.

A constructive discharge "is not a discharge at all but a quit which the Board treats as a discharge because of the circumstances which surrounded it." *Remodeling by Oltmanns*, 263 NLRB 1152, 1161 (1982), enfd. 719 F.2d 1420 (8th Cir. 1983). Under a Hobson's Choice theory of constructive discharge, an employer confronts an employee with a choice between resignation on the one hand and continued employment conditioned on relinquishment of rights guaranteed by Section 7 of the Act on the other. See *Mercy Hospital*, 366 NLRB No. 165, slip op. at 4 (2018) ("[T]here are two elements to a Hobson's Choice constructive discharge: conditioning continued employment on the abandonment of Section 7 rights, and a quit that results from the imposition of that condition."). In determining whether an employee has been presented with a Hobson's choice, the Board views the circumstances from the employee's perspective. See *Zeigler North Riverside*, 370 NLRB No. 41 slip. op. at 3 (2020) citing *Intercon I (Zercom)*, 333 NLRB 223, 224 (2001). The Board does not require that an employer explicitly state that the employee must relinquish a statutory right to keep their job, so long as that message is "unmistakable." *Intercon I (Zercom)* at 224. Additionally, to establish that a constructive discharge violates Section 8(a)(3) of the Act, the General Counsel must show that the employer's discriminatory conduct was motivated by antiunion animus. *Lively Electric, Inc.*, 316 NLRB 471, 472 (1995); *Electric Machinery Co. v. NLRB*, 653 F.2d 958 (5th Cir. 1981).

Applying the above principles here, I find that Montross was constructively discharged. As noted above, Montross was engaged in protected concerted activity when he invoked his contractual right not to work more than 60 hours per week. Respondent scheduled Montross to a PDI, during which Respondent shut him down every time he tried to explain that he returned undelivered mail because he had reached the 60-hour limit provided by the CBA. Instead of learning more about the 12/60 Rule and how it may have applied to Montross' circumstances, Respondent's investigation focused on whether Watkins had told Montross about the 12/60 Rule. In addition, Respondent threatened Montross multiple times with criminal prosecution, including arrest, discipline, and termination, and implied that he was disloyal, in violation of Section 8(a)(1) of the Act. Although Montross continued to invoke the 12/60 Rule as the only reason why he returned undelivered mail, Meyers concluded that he provided "no reason" for his actions. In effect, Respondent conveyed to Montross that it would not abide by the CBA's overtime restrictions. Montross reasonably feared arrest, left the PDI midmeeting, and did not return to the facility. Consistent with its threats, Respondent sent Montross a resignation form and scheduled him to another PDI. Meyers admitted at the hearing that she sent the resignation form to Montross so he could resign as opposed to being terminated. In light of Respondent's actions, Montross turned in his resignation. Under these circumstances, a prudent person in Montross' position would reasonably believe that he would be discharged if he did not forgo his protected activity. See *Home Depot USA, Inc*., 373 NLRB No. 25 slip op. at 20 (2024) (constructive discharge found where employee resigned after employer conditioned their return to work on removing the letters "BLM[19]" from their work apron.) See also, *Goodless Elec. Co., Inc., Loc. Union No. 7, Int'l Bhd. of Elec. Workers, AFL-CIO,* 321 NLRB 64, 67–68 (1996) (Employees have the statutory right to union representation as well as the contractual benefits negotiated by their representative. They may not be forced to make the Hobson's choice of leaving their jobs or forfeiting their statutory rights in order to remain employed under the working conditions unlawfully set by their employer citing *Noel Corp*., 315 NLRB 905, 909 (1994) and *RCR Sportswear*, 312 NLRB 513 (1993)).

Respondent contends that Montross voluntarily resigned "because of his fear of being removed from the Postal Service" and because "he knew he was facing another discipline due to attendance," and not due to his "limited union activity" or alleged protected concerted activity. (R. Br. at 13.) Further, Respondent asserts that Montross was facing possible discipline for a multitude of issues: dropping the mail, leaving without filling out a Form 3971, not working his scheduled days after walking out, leaving the PDI early, and not returning to work after the attempted PDI. (R. Br. at 14.) Respondent's arguments miss the mark. The evidence establishes that Montross was not engaged in "limited" union activity. He invoked his contractual right to work no more than 60 hours a week, conduct which is clearly protected concerted activity. Montross also discussed this contractual right with Watkins, which was a continuation of his protected concerted activity. Respondent not only failed to recognize this contractual right, but threatened Montross with discharge, discipline, and criminal prosecution, unlawfully interrogated Watkins, and implied that they were disloyal, in response to this protected concerted activity. Thus, Respondent clearly had knowledge of and had animus against Montross' protected concerted activity.

In addition, the credible evidence demonstrates that Montross resigned not because he feared removal, but rather because he had no other choice than to resign or forego his contractual right to a 60-hour week. Further, Respondent's statements to Montross that his conduct violated the ELM and constituted a criminal act made it clear that he was in fact being discharged given the level of discipline he was at. The Board has found that "The test for determining 'whether [an employer's] statements constitute an unlawful discharge depends on whether they would reasonably lead the employees to believe that they had been discharged' . . . It is sufficient if the words or actions of the employer would logically lead a prudent person to believe his tenure had been terminated." *American Federation for Children, Inc.*, 372 NLRB No. 137 slip op. at 9, fn 26 (2023). Here, Respondent's words and actions logically led Montross to believe that he was being terminated.

Finally, Respondent failed to support with any evidence its argument that Montross was facing additional discipline for attendance and/or performance issues unrelated to him invoking

[19] "Black Lives Matter."

the 12/60 Rule. In this regard, all of the potential disciplinary issues asserted by Respondent directly relate to Montross' protected, concerted activity. For instance, there is no evidence that Montross had any pending attendance infractions prior to him leaving work on May 14, and leaving the PDI on May 18. Thus, any attendance issue was directly related to the issue of him invoking his right not to work more than 60 hours in a week. In addition, there is no evidence that Montross dropped the mail on May 14 in violation of any policy. He clearly informed management that he was leaving his mail under their care because he had reached 60 hours of work in the week, and Respondent failed to show how Montross' actions were any different from an employee returning mail because of falling ill or having a family emergency. Respondent's argument that Montross should have requested leave also fails because it ignores the 60-hour restriction provisions of the CBA.

Based on the foregoing, I find that the Postal Service constructively discharged Montross on May 18 because he engaged in union and protected concerted activities and to discourage other employees from engaging in these activities.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and this matter by virtue of Section 1209 of the PRA.

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

3. Respondent violated Section 8(a)(3) and (1) of the Act by constructively discharging Nicolas Montross on about May 18, 2021, because he claimed the right to refuse to work over 60 hours in a work week on about May 14, and to discourage other employees from engaging in these or other concerted activities.

4. Respondent violated Section 8(a)(1) of the Act on about May 18, 2021, in pre-disciplinary interviews at the Greensburg, Pennsylvania facility, by:

a. threatening its employees with discipline, discharge, and criminal prosecution;
b. interrogating its employees about their protected concerted and union activities;
c. implying that employees who engage in union activity are disloyal to the Respondent.

5. Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices at its Greensburg facility, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Regarding Respondent's violation of Section 8(a)(3) and (1) of the Act through its constructive discharge of Nicolas Montross, I shall require Respondent to offer Montross reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority and other rights and privileges previously enjoyed. Respondent shall make Montross whole, with interest, for any loss of earnings and other benefits he may have suffered as a result of the unlawful discharge.

Respondent will also be required to remove from its files any references to the constructive discharge of Montross, and to the May 18, 2021, pre-disciplinary interviews of Montross and Donald Watkins, and it shall notify them in writing that this has been done and that these actions will not be used against them in any way.

Backpay shall be computed in accordance with *F.W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as prescribed in *New Horizons,* 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). In accordance with the Board's decision in *Thryv, Inc.*, 372 NLRB No. 22 (2022), Respondent shall compensate Montross for any direct or foreseeable pecuniary harms incurred as a result of the unlawful adverse actions against him, including reasonable search-for-work and interim employment expenses, if any, regardless of whether these expenses exceed interim earnings. Compensation for these harms shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons,* supra, compounded daily as prescribed in *Kentucky River Medical Center*, supra. Respondent shall further compensate Montross for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 6, within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the proper calendar year. Respondent shall also, within 21 days of the date the amount of backpay is fixed by agreement or Board order, file a copy of Montross' W-2 forms reflecting the backpay award.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[20]

ORDER

Respondent, United States Postal Service, Greensburg, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with discipline, discharge, and criminal prosecution for engaging in union and/or protected concerted activities.

(b) Interrogating employees about their protected concerted and union activities.

(c) Implying that employees who engage in union and/or protected concerted activities are disloyal.

(d) Constructively discharging employees for engaging in union and/or protected concerted activities, and to discourage employees from engaging in these activities.

(e) In any like or related manner, interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act.

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

(a) Within 14 days from the date of this Order, offer Nicolas Montross full reinstatement to his former job or, if such position

[20] 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. 102.46 of the Rules be adopted by the Board and all objections to them shall be deemed waived for all purposes.

no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

(b) Make Nicolas Montross whole for any loss of earnings and other benefits, and for any direct or foreseeable pecuniary harms suffered as a result of his constructive discharge, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files any references to the constructive discharge of Nicolas Montross and the May 18, 2021 pre-disciplinary interviews of Montross and Donald Watkins, and within three days thereafter, notify them in writing that this has been done, and that the unlawful discharge and pre-disciplinary interviews will not be used against them in any way.

(d) Compensate Nicolas Montross for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 6, within 21 days from the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s).

(e) File with the Regional Director for Region 6, within 21 days from the date the amount of backpay is fixed, either by agreement or Board order or such additional time as the Regional Director may allow for good cause shown, a copy of Nicolas Montross' W-2 form(s) reflecting the backpay award.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records, and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at its Greensburg, Pennsylvania facility, copies of the attached notice marked "Appendix."[21] Copies of the notice, on forms provided by the Regional Director for Region 6, 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 are customarily posted. In addition to the physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by Respondent at any time since May 18, 2021.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 6 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. May 8, 2024

APPENDIX

NOTICE TO 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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten employees with discipline, discharge, or criminal prosecution for engaging in protected concerted activities and/or for attempting to enforce the collective bargaining agreement with Branch 84, National Association of Letter Carriers, AFL–CIO.

WE WILL NOT interrogate employees about their protected concerted and/or union activities.

WE WILL NOT imply that employees who engage in union activity are disloyal.

WE WILL NOT discharge employees or cause them to quit because they engage in union and protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights guaranteed you under Section 7 of the National Labor Relations Act.

WE WILL offer reinstatement to Nicolas Montross to his former position, or if such position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights and privileges previously enjoyed.

WE WILL make Nicolas Montross whole for any loss of earnings and other benefits resulting from his constructive discharge,

[21] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed or not staffed by a substantial complement of employees due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work. If, while closed or not staffed by a substantial complement due to the pandemic, the Respondent is communicating with its employees 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."

less any net interim earnings, plus interest, and WE WILL also make him whole for any direct or foreseeable pecuniary harms suffered as a result of his constructive discharge, including reasonable search-for-work and interim employment expenses, plus interest.

WE WILL compensate Nicolas Montross for the adverse tax consequences, if any, of receiving a lump-sum backpay award and WE WILL file with the Regional Director for Region 6, within 21 days of the date that the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar year(s), as well as a copy of the corresponding W-2 form(s) reflecting the backpay award.

WE WILL remove from our files any references to the unlawful constructive discharge of Nicolas Montross and to the May 18, 2021, pre-disciplinary interviews of Montross and Donald Watkins, and within 3 days thereafter, notify them in writing that this has been done and that these unlawful employment actions will not be used against them in any way.

UNITED STATES POSTAL SERVICE

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/06-CA-277831 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.