United States Postal Service and American Postal Workers Union, AFL–CIO, Portland Oregon Area Local 128. Case 19–CA–092096

July 29, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND HIROZAWA

On December 4, 2013, Administrative Law Judge Eleanor Laws issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent 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 the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions in part, to reverse them in part, and to adopt the recommended Order as modified and set forth in full below.[1]

This case concerns a series of incidents, occurring August 9 through September 27, 2012, involving employee Cheryl Walton, who served as a union steward, and supervisor Gina Babb. Citing the entire course of conduct, the Respondent issued a written warning to Walton; shortly thereafter, Babb, acting on her own behalf, separately sought and secured a protective order against Walton in state court. The General Counsel alleged that the Respondent violated Section 8(a)(3) and (1) of the Act by disciplining Walton for her conduct in performing her duties as a union steward, and violated Section 8(a)(1) of the Act by seeking and enforcing (through Babb) the state court order based on the same protected conduct. The judge, however, found that the Respondent violated the Act only insofar as it allowed Babb to enforce the broad terms of the protective order on the Respondent's premises, thereby interfering with Walton's service as a steward.[2] The General Counsel excepts to the judge's failure to find the additional violations alleged.

For the reasons explained below, we find, in agreement with the General Counsel and contrary to the judge, that the Respondent violated Section 8(a)(3) and (1) of the Act to the extent that it disciplined Walton for her conduct during the course of a protected grievance discussion on August 9, 2012. In all other respects, however, we affirm the judge's findings.[3]

I. BACKGROUND

The Respondent operates 25 postal facilities in the Portland, Oregon area. During the relevant time period, Babb was a supervisor in the finance unit at the Respondent's main office in Portland; Walton was a lead sales service associate at Midway Station, a facility several miles away, but she would occasionally visit the main office in her capacity as the Union's director of city stations. Walton's union position involved filing and processing grievances on behalf of bargaining unit employees and the Union, and performing the duties of shop steward at the main office and certain other designated locations.

By nearly all accounts, Walton was loud, aggressive, and confrontational when acting in her role as steward, and she was known for her regular use of profanity. Before the events at issue, however, Walton had never been disciplined for such behavior. Babb's approach had been simply to end meetings with Walton when she used profanity.

On August 9, 2012, Walton and Babb met at the main office to discuss a number of grievances involving employees working under Babb. In order to ensure privacy, they met in a break room away from the finance unit. The discussion proceeded without incident until they reached the fourth grievance, involving a leave request that Babb said she had already discussed with higher-level officials of both the Respondent and the Union. Babb told Walton that she (Babb) could not grant the leave request, given those prior discussions. Walton responded that Babb could grant the request if she adopted a different interpretation of the requesting employee's position. Babb refused to consider Walton's suggestion, saying, "Cheryl, this one I've already talked to Joe

[1] We have amended the judge's conclusions of law, remedy, and recommended order, to conform to our findings and to the Board's standard remedial language.

[2] There were no exceptions to the judge's finding of this 8(a)(1) violation.

[3] Specifically, we agree with the judge that the Respondent did not violate Sec. 8(a)(3) and (1) of the Act by disciplining Walton for her unprotected visits to the Respondent's Portland, Oregon main office *after* August 9, 2012, and particularly on September 8 and 11, 2012. Those visits, as the judge found, were unauthorized by the parties' collective-bargaining agreement and only tenuously, if at all, related to any bona fide representational purpose. See *NLRB v. City Disposal Sys., Inc.*, 465 U.S. 822, 840–841 (1984) (finding that grievance-related activity under the Act must be "based on an honest and reasonable belief that a right ha[s] been violated," and "if the collective-bargaining agreement imposes a limitation on the means by which a right may be invoked," any effort to enforce such a right "would be unprotected if it went beyond that limitation"). We further agree with the judge that the Respondent did not initiate and maintain an unlawful lawsuit against Walton, in violation of Sec. 8(a)(1) of the Act.

[Cogan, the Union's vice president]. This is against the contract. This one doesn't exist. So . . . [d]o you want to argue it this side and I'll deny her or do you want to argue this side and I'll deny?" Walton told Babb that she was "being an ass." Babb reiterated that she would deny the grievance "either way." Walton became frustrated and began to "pepper her language with profanity." According to Babb, whose testimony was credited by the judge, Walton used "the F word a lot." At that point, consistent with her usual practice, Babb said, "Okay . . . we're done. I'm just going to end this meeting."

As Babb stood and made her way toward the exit, Walton also stood up, tipping her chair back in the process, and stepped toward Babb. Walton shook her finger and said, "I can say anything I want. I can swear if I want. I can do anything I want." When Babb began to disagree with these statements, Walton took another step towards Babb and loudly repeated that she could say and do whatever she wanted, and added that Babb could not stop her. Babb responded by backing away from Walton and leaving the room.

Later the same day, Babb complained to Customer Service Manager Jeff White and other officials of the Respondent about Walton's behavior. After considering Babb's complaint, the Respondent determined that Walton had been engaged in protected activity, but established a "cooling off" period during which Walton would not meet with Babb to discuss grievances, but would meet with White instead[4]. White conveyed the Respondent's decision to Walton in mid-August and further told Walton that she could not work on grievances outside her regular work hours.[5]

As more fully detailed in the judge's decision, notwithstanding White's instructions, Walton began visiting the main office while off duty, sitting on a bench in the lobby, near the locked doors to the finance unit where Babb worked. On September 8, again while off duty, Walton appeared at the main office. From the lobby, Walton telephoned Babb and demanded to see her regarding unspecified grievances. When Babb reminded Walton that she was to communicate with White about grievances, Walton falsely claimed that one of the employees whom Babb supervised had requested a steward, and she attempted to enter the locked finance unit on that pretext—without the supervisory permission required under the parties' collective-bargaining agreement.[6] Matters came to a head 3 days later, on the morning of September 11, when Walton appeared at the main office and began closely watching Babb when she arrived for her shift. Babb complained to her superiors that Walton was stalking her and took leave from work to determine what she could do about the situation.

On September 27, the Respondent issued a letter of warning to Walton, expressly referring to her conduct on August 9, September 8, and September 11, as well as her "persistent" off-the-clock visits to the main office "to observe [Babb]." The warning noted that Walton's "actions were perceived to be intimidating and threatening" and identified specific Postal Service conduct rules that Walton allegedly violated. The warning ended by emphasizing the Respondent's zero-tolerance policy for "harassment, intimidation, threats, or bullying," and stated that violations of this policy could result in removal from the Postal Service.[7]

II. JUDGE'S FINDINGS

The judge found that the Respondent was privileged to discipline Walton because she forfeited the protection of the Act "by acting in a persistently insubordinate, obstinate, and disruptive manner designed to harass Babb." In reaching this conclusion, the judge relied in part on Walton's conduct during the August 9 grievance meeting referenced in the Respondent's letter of warning. The judge emphasized, however, that she had not considered Walton's conduct at that meeting "in isolation," but rather as part of a "course of conduct" that unfolded over time.

Taking this approach, the judge found that Walton's August 9 conduct was "the beginning of a connected and disturbing pattern of conduct . . . directed at Babb." According to the judge, the pattern included Walton's later visits to Babb's place of work—particularly on September 8 and 11, 2012—without authorization and with no purpose other than to harass Babb. Reasoning that Walton lost the protection of the Act during those later incidents, the judge found that the Respondent lawfully issued a written warning to Walton citing her conduct beginning on August 9 and continuing through September 11.

III. ANALYSIS

We do not agree with the judge's legal analysis of the August 9 incident and, in particular, the implication that

[4] This determination was made by the Respondent's own assessment team.

[5] The parties' collective-bargaining agreement (Article 17.3, "Rights of Stewards") does not give employee representatives the right to perform grievance-related duties outside their regular work hours.

[6] The agreement permitted stewards to enter any work area or facility of the Respondent to perform grievance-related duties, but only after obtaining permission from the supervisor in the area or facility involved.

[7] Walton filed a grievance over the warning, and it was eventually expunged.

an employee's protected conduct at a grievance meeting may lose its protection owing to separate events occurring days or weeks later. See *Carolina Freight Carriers Corp.*, 295 NLRB 1080, 1080 fn. 1 (1989) (rejecting administrative law judge's suggestion that past misconduct may be considered in determining whether employee's otherwise protected activity lost the protection of the Act). The judge cited no authority for that proposition, and we are aware of none. Nor do we perceive, as the judge did, a necessary link between Walton's August 9 outburst, in the heat of a grievance meeting, and her later unauthorized visits to Babb's office for no legitimate or protected purpose. We accordingly address the question—whether Walton lost the protection of the Act by her conduct during the August 9 grievance meeting—as an issue distinct from her loss of the Act's protection on later dates. See *DaimlerChrysler Corp.*, 344 NLRB 1324, 1329–1330 (2005) (separately analyzing each incident referred to in a written warning issued to employee union steward).[8]

Under well-established law, a four-factor balancing test applies where, as here, we must determine whether an employee acting in a representative capacity lost the protection of the Act on account of her outburst during an otherwise statutorily protected grievance discussion with the employer. See, e.g., *Postal Service*, 360 NLRB No. 74, slip op. at 1 fn. 2, 7–8 (2014) (applying *Atlantic Steel Co.*, 245 NLRB 814 (1979), to alleged steward misconduct). The four factors to be balanced are: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's outburst; and (4) whether the outburst was in any way provoked by the employer's misconduct or unfair labor practice. *Atlantic Steel*, 245 NLRB at 816. After considering those factors here, we find that Walton's conduct at the August 9 grievance meeting, albeit obnoxious, was not so opprobrious as to cause her to lose the protection of the Act.

In regard to the first factor, the place of the discussion, the August 9 grievance meeting took place in a break room away from the work floor. Babb and Walton were the only participants in the discussion, and the only occupants of the room at the time. There is no evidence that anyone else was within earshot of their discussion.[9] As a result, Walton's outburst during the course of that discussion could not have disrupted the work of others or undermined Babb's authority in the eyes of other employees.[10] The location of the discussion accordingly favors a finding that Walton retained the protection of the Act. See *Datwyler Rubber & Plastics, Inc.*, 350 NLRB 669, 670 (2007) (location of outburst, in break room, favored protection); *Stanford Hotel*, 344 NLRB 558, 558 (2005) (lunch room).

The second factor in the analysis, the subject matter of the discussion, strongly favors a finding that Walton did not forfeit the Act's protection. Walton's outburst occurred during a discussion with Babb about pending grievances under the parties' collective-bargaining agreement. Such discussions are "especially important to the effectiveness of contractual grievance-arbitration mechanisms," and therefore are protected as a critical aspect of collective bargaining under the Act.[11] *Postal Service*, supra, 360 NLRB No. 74, slip op. at 7 (citing cases).

Turning to the third factor, the nature of the outburst, there is no doubt that Walton became confrontational in the course of advocating the cause of a fellow employee and then protesting Babb's efforts to end the discussion. But "[t]he Board has repeatedly held that strong, profane, and foul language, or what is normally considered discourteous conduct, while engaged in protected activity, does not justify disciplining an employee acting in a representative capacity." *Hawaii Tribune-Herald*, 356 NLRB 661, 680 (2011), enfd. 677 F.3d 1241 (D.C. Cir. 2012) (citing cases); accord *Noble Metal Processing, Inc.*, 346 NLRB 795, 799 (2006). Indeed, "a certain

[8] Thus, we disagree with the dissent that the separate events here—on one hand, Walton's outburst during a grievance meeting and, on the other hand, her subsequent efforts to communicate with Babb outside the contractual grievance structure—are so similar in character as to warrant treatment as one "connected whole" under a "totality of the circumstances" analysis.

[9] Compare *Overnite Transportation Co.*, 343 NLRB 1431, 1437 (2004) (location favored protection where there was no evidence that any employees overheard work-floor outburst), with *DaimlerChrysler Corp.*, 344 NLRB 1324, 1329 (2005) (location favored *loss* of protection where "quite a few" employees overheard work-floor outburst), and *Piper Realty Co.*, 313 NLRB 1289, 1289–1290 (1994) (location favored *loss* of protection where two employees overheard outburst in supervisor's office).

[10] See *Plaza Auto Center, Inc.*, 360 NLRB No. 117, slip op. at 7 (2014) (noting that the Board has "regularly observed a distinction between outbursts under circumstances where there was little if any risk that other employees heard the obscenities and those where that risk was high" (internal quotation marks and citation omitted)); see also *United States Postal Serv. v. NLRB*, 652 F.2d 409, 412 (5th Cir. 1981) (recognizing the "established policy that in the context of grievance meetings the Act should be lenient with spontaneous employee insubordination that is not disruptive of other employees").

[11] Although Walton's outburst continued after Babb abruptly called an end to the grievance meeting and began to exit the room, we find that Walton's continuing protest of Babb's decision that day was part of the res gestae of the protected grievance discussion. See, e.g., *United States Postal Serv.*, 652 F.2d at 412 (upholding Board finding that heated argument immediately following grievance meeting was part of that protected meeting, and noting that "the Act's protection of employee participation in grievance meetings would be seriously threatened if the employer could at any emotional and argumentative point during [a] meeting call an immediate halt to the operation of the Act").

amount of salty language and defiance" is to be expected and "must be tolerated" in disputes over employees' terms and conditions of employment. *Severance Tool Industries,* 301 NLRB 1166, 1170 (1991), enfd. mem. 953 F.2d 1384 (6th Cir. 1992).

Applying these principles, we find that Walton, at the August 9 meeting, did not go beyond the measure of coarse language and defiance one might expect in a heated dispute over a grievance. Although Walton told Babb she was "being an ass" and proceeded to pepper her language with more vulgar outbursts, Walton said no more about Babb.[12] Nor is there any evidence that Walton threatened Babb, verbally or otherwise.[13] To be sure, when Babb called an end to the meeting, Walton stood up, declared that she could do and say what she wanted, pointed at Babb, and took two steps towards her as she left the room. But Walton never sought to touch Babb or prevent her from leaving, nor did Walton pursue Babb as she left. Applying, as we must, an objective test,[14] we find that Walton was not threatening, merely loud, profane, disrespectful, and obnoxious—none of which was unusual for Walton or beyond the bounds of what the Respondent had tolerated in the past. See *Severance Tool Industries,* supra at 1170 (employee did not lose protection of the Act by "disrespectful, rude, and defiant demeanor," including raised voice and vulgar language). In these circumstances, we find that the nature of Walton's outburst weighs, albeit not by much, in favor of finding that she retained the protection of the Act.[15] See *United States Postal Serv.*, 652 F.2d at 411 (noting that "both the Board and the courts have recognized that some tolerance is necessary if grievance meetings are to succeed at all," and "bruised sensibilities may be the price exacted for industrial peace" (internal quotation marks and citation omitted)).

As to the final factor to be considered, provocation, there is no evidence that Walton's conduct was provoked by misconduct or an unfair labor practice. See *Felix Industries*, 331 NLRB 144, 145 (2000), enf. denied and remanded 251 F.3d 1051 (D.C. Cir. 2001), on remand 339 NLRB 195 (2003), enfd. mem. 2004 WL 1498151 (D.C. Cir. 2004). Walton was frustrated and became agitated as a result of Babb's refusal to discuss a pending grievance. Although Walton's frustration is understandable, Babb refused to continue the discussion because, as she contemporaneously informed Walton, she had already discussed it with the Union's vice president. Babb committed no unfair labor practice or misconduct.

As shown, three of the four *Atlantic Steel* factors weigh in favor of a finding that Walton retained the protection of the Act notwithstanding her outburst in the course of the August 9 grievance meeting. Our analysis, of course, is not purely one of numbers. Two of the factors weigh very heavily in favor of protection: the location of the discussion and the subject matter. As discussed, the subject matter here involved a critical aspect of collective bargaining under the Act—pending contract grievances. While the lack of provocation weighs against protection, we find that the remaining factors—especially the subject matter—outweigh that one factor. We accordingly find that the Respondent was not privileged to discipline Walton based on that day's outburst, and that the Respondent therefore violated Section 8(a)(3) and (1) of the Act to the extent that it did so in its letter of warning.[16]

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[12] *Cf. Trus Joist MacMillan*, 341 NLRB 369, 371 (2004) (nature of outburst weighed against protection, where employee launched "a planned, vituperative personal attack, with foul language and obscene gestures, against [one supervisor] in the presence of other supervisors"); *Aluminum Co. of America*, 338 NLRB 20, 22 (2002) (nature of outburst weighed against protection, where employee directed "repeated, sustained, ad hominem profanity" at supervisors).

[13] *Cf. Crowne Plaza LaGuardia*, 357 NLRB 1097, 1101 (2011) (nature of employee conduct weighed against protection where employees made deliberate physical contact with manager's person, thereby reasonably threatening him); *Starbucks Coffee Co.*, 354 NLRB 876, 878–879, fn.13 (2009) (nature of employee conduct weighed against protection where employee participated in group that followed and taunted supervisor as he left work, telling him "we know where you live"; Board distinguishes this "deliberate intimidation" from cases involving "brief, spontaneous reactions to workplace stress, such as cursing and refusing to follow directions"), incorporated by reference in 355 NLRB 636 (2010), enfd. in relevant part 679 F.3d 70 (2d Cir. 2012).

[14] See *Plaza Auto Center, Inc.*, supra, 360 NLRB No. 117, slip op. at 3 (noting that "settled precedent tasks the Board with 'using an objective standard,' rather than a subjective standard, to determine whether challenged conduct is threatening" (quoting *Kiewit Power Constructors Co. v. NLRB*, 652 F.3d 22, 29 fn. 2 (D.C. Cir. 2011))).

[15] Our dissenting colleague takes issue with our analysis of this factor, emphasizing Babb's perception that Walton's behavior on August 9 was different from on prior occasions, and that Babb felt afraid. However, as shown above, we have carefully examined the credited evidence as to what Walton said and did, rather than how Babb felt, and based on that objective evidence we do not agree that Walton threatened Babb. Walton simply stood, moved two steps towards Babb, and ranted that she could say and do as she pleased. She neither pursued Babb nor prevented her from leaving.

[16] Contrary to our dissenting colleague, who contends that the Respondent did not discipline Walton for her conduct at the August 9 grievance meeting, we believe our finding is based on a reasonable and plausible reading of the Respondent's warning letter to Walton. That letter recited Walton's actions, beginning with the "grievance meeting in August that ended when [Walton] began yelling and cursing." The letter then stated that Walton's "actions"—without limitation as to the date or type of action—were "perceived to be intimidating and threatening" and "are in violation of postal rules." By those statements, the Respondent plainly implied that Walton's protected conduct during the August 9 grievance meeting was part of a course of conduct that formed the basis for her discipline.

AMENDED CONCLUSIONS OF LAW

The Respondent, United States Postal Service, has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act as follows:

1. By enforcing a state court stalking order that enjoined protected activity, the Respondent violated Section 8(a)(1) of the Act.

2. By issuing a warning to Walton based, in part, on her August 9, 2012 protected activity, the Respondent violated Section 8(a)(3) and (1) of the Act.

AMENDED REMEDY

Having found that the Respondent engaged in the 8(a)(3) and (1) violation described above, it must be ordered to cease and desist, and to take certain affirmative action designed to effectuate the policies of the Act. To the extent that it has not already done so, the Respondent shall be required to expunge from its records any reference to the unlawful discipline of Walton for her August 9, 2012 conduct. The Respondent shall further be required to inform Walton in writing that this has been done and that the unlawful discipline will not be used against her in any way.

ORDER

The National Labor Relations Board orders that the Respondent, United States Postal Service, Portland, Oregon, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Enforcing any State court order that enjoins activity protected by the Act.

(b) Disciplining any employee for engaging in activities on behalf of the American Postal Workers Union, AFL–CIO, Portland, Oregon Area Local 128.

(c) In any like or related manner interfering with, 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) Seek expungement of the State court Temporary Stalking Protective Order from Cheryl Walton's record, and notify the Union and Walton that this has been done.

(b) Within 14 days from the date of the Board's Order, to the extent that it has not already done so, remove from its files any reference to the unlawful discipline of Walton for her August 9, 2012 conduct, and within 3 days thereafter notify Walton in writing that this has been done and that such discipline will not be used against her in any way.

(c) Within 14 days after service by the Region, post at all of its Portland, Oregon facilities copies of the attached notice marked "Appendix."[17] Copies of the notice, on forms provided by the Regional Director for Region 19, 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 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 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. If 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 employees and former employees employed by the Respondent at any time since August 9, 2012.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 19 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.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. July 29, 2016

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, dissenting in part.

On August 9, 2012,[1] during a grievance meeting, employee Cheryl Walton unleashed a stream of profanity at supervisor Gina Babb. Walton, who was serving as a union steward, stepped toward the supervisor in a menacing manner and, while within striking distance, shook her

[17] 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."

[1] All dates are in 2012.

finger and repeatedly screamed, "I can say anything I want," "I can swear if I want," and "I can do anything I want." Afraid that Walton would hit her, the supervisor retreated, and Walton continued to scream that she could say and do whatever she wanted and Babb could not stop her. Subsequently, Walton engaged in persistent "stalking" behavior, repeatedly calling Babb's work and cell phones (on one day placing at least 13 calls within a 50-minute period), calling Babb a "fucking idiot," and banging on her office door, ultimately resulting in a court-issued protective order restraining Walton from continuing her "harassing, stalking, or threatening" conduct.

Based on "credibility determinations, both general and specific," the judge found that Walton's behavior was not protected by the National Labor Relations Act (NLRA or Act), and that her behavior on August 9 was "the beginning of a connected and disturbing pattern of [unprotected] conduct that Walton directed at Babb."

I agree with the judge's findings, and I respectfully dissent from my colleagues' recharacterization of the August 9 meeting. Contrary to the record and the judge's detailed credibility determinations, my colleagues conclude that Walton "was not threatening" at that meeting but "merely loud, profane, disrespectful, and obnoxious." My colleagues also find, inexplicably, that the nature of Walton's conduct during the August 9 meeting *favors* the Act's protection. Further, my colleagues conclude that a subsequent warning letter, which focused almost exclusively on Walton's *post*–August 9 misconduct, constituted unlawful antiunion discrimination and unlawful coercion, restraint or interference against Walton because the letter briefly mentioned her reprehensible conduct during the August 9 meeting.

This case resembles *Alice in Wonderland*: nothing is what it appears, and everything is what it shouldn't be.[2] I agree that our statute should rush to the defense of employees who exercise their right to engage in union and other protected concerted activity, even though it may be unwelcome and produce some significant degree of conflict. However, when Congress enacted the National Labor Relations Act, it did not grant absolute immunity to an employee who menacingly approaches a supervisor while repeatedly screaming "I can say anything I want," "I can swear if I want" and "I can do anything I want, and you can't stop me" and then proceeds to stalk the supervisor. Nor should the Board give its own cloak of approval to such conduct, which goes way beyond what anyone would reasonably deem acceptable in a civilized work setting.

I believe the warning letter issued by Respondent was clearly lawful and appropriate. My colleagues' contrary view improperly disregards both the content of the warning letter and the unprotected nature of Walton's actions on August 9. Regarding the first point, even if one could regard Walton's August 9 conduct as protected, I believe a reasonable reading of the warning letter establishes that it constituted discipline for acts committed *after* August 9—which my colleagues agree were unprotected—not for her misconduct on August 9; and the letter's passing reference to the August 9 meeting cannot reasonably be regarded as unlawful discrimination and restraint, coercion or interference with protected rights. Regarding the second point, I believe Walton's misconduct on August 9 was clearly unprotected under our statute, even if viewed in isolation. Accordingly, from the majority's finding that the September 27 warning letter violated the Act, I respectfully dissent.[3]

Facts

On August 9, employee Walton, serving as union steward, met with supervisor Babb in a break room to discuss grievances. When Babb informed Walton that one of the grievances was being denied, Walton said Babb was "being an ass." Babb stuck to her position, and Walton began to pepper her language with profanity, including frequent repetition of the "F" word. This was typical behavior on Walton's part, and Babb's usual response when Walton acted this way was to end the meeting. Babb attempted to end the meeting, but Walton became irrational and out of control. As Babb walked toward the door and was about to pass a seated Walton, Walton stood up forcefully, stepped toward Babb, shook her finger at Babb and began screaming: "I can say anything I want! I can swear if I want! I can do anything I want!" Babb testified that "it was a litany. She just kept doing this" (Tr. 84). Babb replied: "No, you can't. This meeting's over. You're going to need to leave" (id.). Walton took another step toward Babb—bringing her close enough to strike Babb—and continued shaking her finger and screaming over and over, "I can say anything I want," "I can swear if I want," and "I can do anything I want," and Walton added that Babb could not stop her and could not make her leave the building (id.). Babb testified that she had many times seen Walton "get very angry, yell, scream, slam doors, pound on tables," but

[2] In the 1951 Walt Disney movie, *Alice in Wonderland* – based on *Alice's Adventures in Wonderland & Through the Looking-Glass*, by Lewis Carroll—Alice says: "If I had a world of my own, everything would be nonsense. Nothing would be what it is, because everything would be what it isn't. And contrariwise, what is, it wouldn't be. And what it wouldn't be, it would. You see?" Wikiquote, Alice in Wonderland (https://en.wikiquote.org/wiki/Alice_in_Wonderland_%281951_film%29).

[3] I join my colleagues in adopting the judge's decision in all other respects.

this time "was completely different" (id.). Afraid that Walton was going to hit her, Babb backed her way to the door, exited, and enlisted the help of another supervisor to get Walton to leave the facility. By this time, Babb was "shaking" and "almost in tears" (Tr. 86).

Over the next month, Walton stalked Babb at her office repeatedly. As noted above, this stalking behavior included calling Babb's work and cell phones (placing at least 13 calls within one 50-minute period), calling Babb a "fucking idiot," and banging on Babb's office door. It culminated with Walton showing up at Babb's workplace—Walton worked at a different location—and staring disturbingly at Babb through the lobby window. Ultimately, Babb obtained a court-issued protective order restraining Walton from continuing her "harassing, stalking, or threatening" conduct. My colleagues concede that Walton's post–August 9 conduct was unprotected by the Act.

On September 27, Walton received the following letter of warning written by Customer Service Manager Jeff White:

> After a grievance meeting in August that ended when you began yelling and cursing, you have persistently focused on Ms. Babb's workplace, coming in to observe her actions from the lobby even on a number of times when you were off duty. You were notified that I would be meeting with you on grievances for Main Office, but on September 8th, you attempted to contact Gina Babb to set up step 1 grievance meetings. You were informed by Ms. Babb that she would not be meeting with you as the Step 1 designee and advised you to contact Manager Jeff White. Later that same morning you arrived at the Main Office Finance in person. Ms. Babb again informed you that she would not be meeting with you. After gaining access to the plant floor, you pounded on the back security door and rang the buzzer for an extended period of time. You also began yelling comments through to the door that were directed towards Mrs. Babb. When you were unable to gain access to the office, you began calling the Main Office Finance phone numbers repeatedly. At approx. 13:19 pm you then called Mrs. Babb on her personal cell phone. Your actions were disruptive and negatively affected the workplace environment.
>
> On September 10th, you were given instructions by myself that you were not to contact Gina Babb in any manner. You were instructed, again, that I am the step 1 designee for Main Office Finance and Central. You were also instructed that you were not to go to the Main Office without prior permission from myself and in my absence from [Manager of Customer Service] Anthony Spina-Denson.
>
> On Septemember [sic] 11th, you went to the Main office and at approx. 7:15 am you proceeded to stand outside of the windows that are in the window lobby and peered in, making your presence known to Ms. Babb.
>
> In investigative interviews you were questioned about your behavior. You were uncooperative in the interviews, and the explanations of your behavior were not credible. Your actions were perceived to be intimidating and threatening. Harassment is among the behaviors for which the zero tolerance policy applies. Moreover, you were previously put on notice that you need to refrain from unprotected disruption of the operation.
>
> Your actions are in violation of postal rules and regulations . . .
>
> . . .
>
> It is hoped that this official Letter of Warning will serve to impress upon you the seriousness of your actions and that future discipline will not be necessary.

Discussion

For two reasons, I believe Respondent's warning letter to Walton is appropriate and lawful under Section 8(a)(3) of the Act, which makes it unlawful for an employer to engage in "discrimination" with the intention "to encourage or discourage" union membership, and Section 8(a)(1) of the Act, which makes it unlawful for an employer to "interfere with, restrain, or coerce employees" in the exercise of their protected rights under Section 7 of the Act.

1. *The Warning Letter's Passing Reference to the August 9 Meeting Did Not Constitute Unlawful Antiunion Discrimination or Unlawful Interference with Section 7 Rights*. My colleagues agree with the judge's finding that Walton's "stalking" behavior *after* the August 9 grievance meeting was unprotected by the Act. They nonetheless find that Respondent's warning letter constitutes unlawful antiunion discrimination and interference with protected activity because (i) at the August 9 meeting, Walton was discussing grievances in her role as a union steward, and (ii) Respondent's warning letter made passing reference to the August 9 meeting. I disagree with the majority's analysis for several reasons.

First, Respondent's warning letter cannot reasonably be understood to impose discipline on Walton for her misconduct at the August 9 grievance meeting. The letter briefly mentions the grievance meeting in passing and clearly focuses on events that postdate the meeting. The first sentence of the letter contains the *only* reference to the August 9 meeting, and even that reference directs

Walton's attention to her post–August 9 conduct: "*After* a grievance meeting in August that ended when you began yelling and cursing, *you have persistently focused on Ms. Babb's workplace, coming in to observe her actions from the lobby even on a number of times when you were off duty*" (emphasis added). The remainder of the letter, consistent with this initial sentence, deals exclusively with Walton's irrational and outrageous "stalking" behavior that my colleagues and the judge agree was unprotected. The warning letter does not describe any specifics regarding Walton's conduct at the August 9 grievance meeting. It does not even specify the date of that meeting. In contrast, the letter describes in detail Walton's "stalking" behavior on specific dates—September 8 and 11—and at specific times on those dates. It then refers to "investigative interviews" in which Walton was "questioned about [her] behavior." There is *no* evidence that the "behavior" about which Walton was interviewed included her misconduct on August 9, and undisputed testimony supports a finding that these interviews exclusively dealt with Walton's actions occurring on September 8 and 11.[4] Therefore, when the letter concludes by informing Walton that her "actions are in violation of postal rules and regulations" and expresses the hope that "this official Letter of Warning will serve to impress upon you the seriousness of your actions," the "actions" at issue were those that occurred *in September*. Indeed, this point was conceded at the hearing, where the General Counsel's opening statement indicated that "Respondent issued Walton a letter of warning *based on her attempts to schedule contractually mandated grievance meetings with Ms. Babb*" (Tr. 10; emphasis added). This characterization precludes a view that the warning letter constituted discipline based on Walton's August 9 behavior because that misconduct occurred *during* a scheduled grievance meeting, not when Walton was purportedly "attempt[ing] to schedule . . . grievance meetings."

Second, the record provides no support for my colleagues' insistence that Walton's behavior on August 9, even if protected, can be separated from Walton's subsequent "stalking" conduct. Based on "credibility determinations, both general and specific," the judge concluded that "Walton lost the Act's protection by acting in a persistently insubordinate, obstinate, and disruptive manner designed to harass Babb." In so concluding, the judge "[did] not consider the August 9 meeting in isolation . . . , but rather as the beginning of a *connected and disturbing pattern of conduct* Walton directed at Babb" (emphasis added). Indeed, nobody argues that the August 9 meeting was unconnected to Walton's subsequent "stalking" behavior. By disconnecting the August 9 meeting and viewing it in isolation, my colleagues effectively overturn the judge's credibility-based finding that Walton's behavior at that meeting was part of a "connected and disturbing" whole.

Third, my colleagues' insistence on disentangling the August 9 grievance meeting from subsequent events is contrary to the Board's well-established practice of regarding as a totality related events that occur in reasonable proximity to one another. The Board has repeatedly considered the totality of circumstances—even though some may be distinct from the particular conduct challenged in a case—where they reasonably explain or shed light on matters in dispute.[5] Such an analysis is warranted here. My colleagues concede that Walton was "loud, profane, disrespectful, and obnoxious" during the August 9 grievance meeting; the record plainly supports the judge's finding that the grievance meeting commenced a "connected and disturbing pattern of conduct"; and my colleagues concede that Walton's post–August 9 conduct was unprotected. Viewing the totality of Walton's conduct as a connected whole, I believe the Board should affirm the judge's finding that Respondent lawfully issued Walton a warning letter even assuming her August 9 conduct, considered in isolation, retained the Act's protection.

2. *The Act Does Not Protect Walton's Outrageous Confrontational Conduct on August 9*. The above analysis warrants a finding that Respondent's warning letter is lawful under Section 8(a)(3) and (1), *even if* one assumes that Walton's actions on August 9 were protected under the Act. However, I also believe that Walton's behavior in the August 9 meeting lost her that protection.

[4] Jeff White, who wrote the September 27 disciplinary letter, testified that Babb told him "about the phone calls and the time that she [Walton] came to the office on a Saturday [September 8] demanding to speak with [Babb] and then also the incident where Ms. Walton was outside of our office early in the morning, pacing back and forth in front of the window. Q: Okay. And what did you do as a result of that? A: I—I've conducted I and Is with Ms. Walton. Q: And what is an I and I? A: That's an investigative interview." (Tr. 145.)

[5] See, e.g., *Rhodes-Holland Chevrolet Co*., 146 NLRB 1304, 1304–1305 (1964) (Board did not rely "solely on the positions taken by Respondent on substantive contract terms . . . which, standing alone, . . . might not have provided sufficient basis for the violation found, but . . . considered that factor as simply one item in the totality of circumstances . . . ."); *General Electric Co*., 150 NLRB 192, 197 (1964) ("[W]hen questions are raised . . . concerning the conformity of a . . . course of conduct with the requirements of the law, the Board must apply the law to the totality of that conduct in the interest of preserving and fostering collective bargaining itself."), enfd. 418 F.2d 736 (2d Cir. 1969), cert. denied 397 U.S. 965 (1970); *Darlington Mfg. Co*., 165 NLRB 1074, 1083 (1967) ("[W]e have relied upon what we consider to be fair inferences arising from the totality of the evidence, considered in the light of then-existing circumstances."), enfd. 397 F.2d 760 (4th Cir. 1968), cert. denied 393 U.S. 1023 (1969).

Preliminarily, I disagree, for the reasons expressed above, that this case can appropriately be resolved by looking at Walton's August 9 behavior in isolation. I believe the judge correctly found that Walton's behavior at the August 9 grievance meeting was "the beginning of a connected and disturbing pattern of conduct" properly viewed as a whole, and that "Walton lost the Act's protection by acting in a persistently insubordinate, obstinate, and disruptive manner designed to harass Babb."

Contrary to the judge's findings in this regard, my colleagues focus selectively on the August 9 meeting alone; and applying the four-factor balancing test set forth in *Atlantic Steel*, 245 NLRB 814 (1979), they conclude that Walton's conduct on August 9 retained the Act's protection. My colleagues find that three *Atlantic Steel* factors favor protection—(i) the place of the discussion, (ii) the subject matter of the discussion, and (iii) the nature of Walton's behavior—and they maintain that the only factor disfavoring protection is (iv) lack of provocation by Babb. Even if one applies the *Atlantic Steel* factors to the August 9 meeting in isolation, I disagree with my colleagues' conclusion that Walton's actions on August 9 retained the Act's protection. It is true that two factors, the place of the meeting and the subject matter being discussed, favor protection. My colleagues concede, however, that the lack of provocation weighs against protection, and I strongly disagree that the nature of Walton's behavior during the August 9 meeting favors the Act's protection. I believe the record and relevant precedent clearly establish that the nature of Walton's behavior during that meeting also weighs against protection. This factor plus the lack of provocation outweigh the other two factors, and I believe that Walton clearly lost the Act's protection as a result of her profane, out-of-control behavior at the conclusion of the August 9 meeting.

Contrary to my colleagues' characterization, Walton's abhorrent behavior went far beyond the "coarse language and defiance one might expect in a heated dispute over a grievance." The stream of profanities Walton unleashed at Babb was just the beginning. As Babb attempted to leave the room, Walton stood up so forcefully that she knocked the chair backward, stepped toward Babb twice (coming within striking distance), shook her finger at Babb, and screamed over and over again "I can say anything I want," "I can swear if I want" and "I can do anything I want." While Babb was backing toward the door, Walton continued to scream these words at Babb, adding to the "litany" that Babb could not stop her and could not make her leave the building. Especially combined with Walton's physically menacing actions, the repeated screaming of "I can do anything I want" and that Babb could not stop her would make any reasonable person apprehensive about his or her physical safety. And Babb was a reasonable person: she was "terrified" (Tr. 84) and "thought [Walton] was going to hit [her]" (id.), and after she made her escape from the room, she was "shaking" and "almost in tears" (Tr. 86).[6] Babb had experienced Walton's profanity-laced tirades before, but as she testified, "this was completely different." Walton's reprehensible conduct was far worse than conduct in other cases where the nature of an employee's outburst was found to weigh *against* the Act's protection. See, e.g., *Felix Industries, Inc.*, 251 F.3d 1051, 1054–1055 (D.C. Cir. 2001) (calling a supervisor "a f—ing kid" three times and saying that employee did not need to listen to the supervisor weighed against protection); *Stanford Hotel*, 344 NLRB 558, 559 (2004) (calling a manager a "f—ing son of a bitch" while angrily pointing finger weighed against protection); *Aluminum Co. of America*, 338 NLRB 20, 20, 22 (2002) (twice loudly stating, "Wonder how Kid Mitch [supervisor Mitchell] is going to fuck us now?" weighed against protection).[7]

I agree that grievance processing is a fundamental aspect of collective bargaining, and the Act broadly protects employees when they are acting in a representative

[6] My colleagues say that Walton's conduct was not "unusual for [her] or beyond the bounds of what the Respondent had tolerated in the past." This conclusion is flatly contradicted by Babb's testimony, credited by the judge, that Babb "had seen Walton become angry many times, but she . . . perceived something different this time and was scared." The August 9 confrontation was clearly beyond what Babb had previously experienced from Walton. Yet, even if Walton had acted in the same manner previously, I would still find that the nature of her conduct was unprotected under the Act. The fact that Respondent may have tolerated Walton's outrageous behavior in the past does not expand the scope of the Act's protection. Any past restraint exercised by an employer, in the face of such conduct, is irrelevant to an *Atlantic Steel* analysis.

[7] The cases cited by my colleagues are not in tension with this precedent and do not warrant finding the nature of Walton's outburst weighs in favor of protection. They compare Walton's conduct to the facts of only one case—*Severance Tool Industries*, 301 NLRB 1166 (1991), enfd. mem. 953 F.2d 1384 (6th Cir. 1992)—in which the Board found an employee retained the Act's protection. In that case, the employee raised his voice disrespectfully to the employer's president, told the president that he would "tell everybody what [the president's] true colors are and plaster it all over the place," and while walking away, said "son of a bitch," although perhaps only as a general curse not as a remark about the president. Id. at 1169–1170. Without question, Walton's profanity-laced tirade, aggressive demeanor, and menacing declaration that she could do anything she wanted and Babb could not stop her were far more severe. Otherwise, my colleagues describe in footnotes the facts of cases where the Board found the nature of the outburst *did* weigh against protection. Those cases may involve more egregious conduct than Walton's, but they do not stand for the proposition that conduct must rise to that level before it may be found to weigh against protection.

capacity to discuss grievances with management.[8] However, these considerations bear on the second *Atlantic Steel* factor, the subject matter of the discussion, which I agree weighs in favor of protection. At issue here is the third *Atlantic Steel* factor, whether the nature of Walton's conduct weighs against the Act's protection. I believe there can be no reasonable question that it does, and this factor in combination with the fact that Walton's outburst was entirely unprovoked require a finding that Walton lost the Act's protection on August 9. For this additional reason, I believe Respondent's warning letter to Walton was lawful under Section 8(a)(3) and (1) even if it disciplined her, in part, for her conduct on August 9.

CONCLUSION

Our statute does not give an employee *carte blanche* to invoke the Act's protection, on the one hand, while physically threatening another person, literally, with the other. In today's decision, my colleagues find that an employer cannot even give a *written warning* to an employee who directs abusive, profane speech at a supervisor, physically confronts the supervisor by advancing to within an arm's length, shaking a finger, and repeatedly screaming "I can say anything I want," "I can swear if I want" and especially "I can *do* anything I want, and you can't stop me," leaving the supervisor shaking and almost in tears. In my view, the record clearly establishes that Walton was physically threatening Babb.

There is no small irony in the fact that Walton's objectionable behavior occurred during a grievance meeting that, ostensibly, was devoted to the "peaceful resolution of disputes."[9] We live in a civilized society, and the D.C. Circuit has criticized the Board for being "'remarkably indifferent to the concerns and sensitivity' that lead employers to adopt rules intended "'to maintain a civil and decent workplace.'" *Medco Health Solutions of Las Vegas, Inc. v. NLRB*, 701 F.3d 710, 718 (D.C. Cir. 2012) (quoting *Adtranz ABB Daimler–Benz Transp., N.A. v. NLRB*, 253 F.3d 19, 25, 27 (D.C. Cir. 2001)). Our statute protects zealous union representation, which I fully support, but it also permits parties to have reasonable standards and expectations regarding verbal abuse, potentially violent threats and out-of-control confrontations in the workplace.

For the reasons stated above, I respectfully dissent from my colleagues' finding that the Respondent violated the Act by issuing Walton the September 27 warning letter.

Dated, Washington, D.C. July 29, 2016

Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

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 enforce any state court order that prevents you from exercising the rights stated above.

WE WILL NOT discipline you for engaging in activities on behalf of the American Postal Workers Union, AFL–CIO, Portland, Oregon Area Local 128.

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

WE WILL seek expungement of the State court Temporary Stalking Protective Order from Cheryl Walton's record, and notify the Union and Walton that this has been done.

WE WILL, within 14 days from the date of the Board's Order, to the extent that we have not already done so, remove from our files any reference to the unlawful discipline of Cheryl Walton for her conduct during an Au-

[8] As I indicated in *Babcock & Wilcox Construction Co*., 361 NLRB No. 132, slip op. at 15 fn. 1 (2014), grievance arbitration plays a central role in labor policy, which makes "[f]inal adjustment by a method agreed upon by the parties . . . the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement." Labor Management Relations Act Sec. 203(d). See also *Steelworkers v. American Mfg. Co*., 363 U.S. 564 (1960); *Steelworkers v. Warrior & Gulf Navigation Co*., 363 U.S. 574 (1960); *Steelworkers v. Enterprise Wheel & Car Corp*., 363 U.S. 593 (1960).

[9] *Associated Press v. NLRB*, 492 F.2d 662, 667 (D.C. Cir. 1974); *Plumbers & Pipefitters Local Union No. 520 v. NLRB*, 955 F.2d 744, 752 (D.C. Cir. 1992).

gust 9, 2012 grievance meeting, and within 3 days thereafter notify her in writing that this has been done and that such discipline will not be used against her in any way.

UNITED STATES POSTAL SERVICE

The Board's decision can be found at www.nlrb.gov/case/19-CA-092096 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.

Helena A. Fiorianti, for the General Counsel.
Dallas Kingsbury, for the Respondent.

DECISION

STATEMENT OF THE CASE

ELEANOR LAWS, Administrative Law Judge. This case was tried in Portland, Oregon, on August 27, 2012. The American Postal Workers Union (Union or Charging Party) filed the charge on October 24, 2012, and served it on the Respondent by regular mail on or about October 26, 2012. The General Counsel issued the complaint on January 28, 2013. The United States Postal Service (Respondent or Postal Service) filed a timely answer denying all material complaint allegations.

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

FINDINGS OF FACT

I. JURISDICTION

The Postal Service provides postal services for the United States and operates various facilities throughout the United States, including a facility at 715 NW Hoyt Street in Portland, Oregon. The Postal Service admits, and I find, that the National Labor Relations Board (the Board) has jurisdiction over this matter pursuant to Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. 1201 et seq., and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The complaint alleges that the United States Postal Service (Postal Service or Respondent) violated Section 8(a)(3) and (1) of the of the National Labor Relations Act (the Act) when it issued a written letter of warning to the employee and union shop steward. The complaint further alleges that the Respondent violated Section 8(a)(1) of the Act when a supervisor filed for and obtained in State court a stalking protective order against an employee who also worked for the Union as a shop steward and director of City Stations.

A. Background

The Postal Service operates 25 postal facilities in Portland, Oregon. At all relevant times, Shawneen Betha has been Portland's Postmaster.

Cheryl Walton has worked for the Postal Service since 2005. At the time of the hearing, she was a lead sales service associate at the Respondent's Midway Station, with a regular schedule from 10 a.m. to 7 p.m. Her first-line supervisor was Linda Soga, supervisor of customer service. Her second-line supervisor was Jeff White, manager of customer service for the following five Portland facilities: Midway, Central, main office Finance (main office), Airport Mail Facility, and Collections. White is not the immediate supervisor of any of the union-represented clerks.

Walton serves as the Union's director of City Stations, a position she has held since 2007 or 2008. In this capacity her supervisors are Brian Dunsmore, president of the Union's Portland chapter and Joe Cogan, vice president. Walton's position with the Union is paid, and it entails monitoring Portland's 25 city stations. Her duties include filing and adjusting grievances, conducting investigations on the Union's behalf, and meeting with members. To fulfill these duties, she visits all 25 city stations. During the time period at issue, Walton was the steward of record for the main office, among other facilities. Daniel Cortez, another shop steward, was the steward of record at the Oak Grove post office as well as some other facilities.

Walton has a hearing impairment that at times causes a high pitching sound in her left ear. When this occurs, she talks over herself to try to hear if she is speaking loudly enough.

The current collective-bargaining agreement (CBA) between the Respondent and the Union runs from November 21, 2010, through May 20, 2015. Article 15 is the grievance and arbitration procedure, which contains multiple steps. Either the aggrieved employee or the Union may initiate a step1 grievance. If the employee initiates the grievance, there is a step 1 meeting involving the employee and his or her immediate supervisor. Representation is addressed in article 17. Section 3 states:

> When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied.
>
> In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.

(Jt. Exh. 1.)[1]

[1] Abbreviations used in this decision are as follows: "Tr." for transcript; "Jt. Exh." for joint exhibit; "R. Exh." for Respondent's exhibit; "GC Exh." for General Counsel's exhibit; "GC Br." for the General Counsel's brief; and "R. Br. for the Respondents' brief. Although I

B. Babb and Walton Interactions

Gina Babb is a supervisor at the Respondent's main office. She reports directly to White. Babb and Walton have had many meetings over grievances. Walton is known to use foul language, and in particular the word "fuck" and its grammatical variants. Babb is offended by this and has notified Walton that she will end meetings if Walton starts swearing profusely. According to Walton, Babb often refuses to meet with her at step 1. When this occurs, Walton advances the grievance to step 2 and files a grievance over Babb's refusal to meet at step 1.

On August 9, 2012, Walton met with Babb in the supervisors' lounge at the main office to discuss eight grievances. The fourth grievance involved a Selena Smith, a clerk with low seniority who had been denied time off she had requested for an upcoming holiday weekend.

According to Walton's testimony, when discussing Smith's grievance, Babb became upset and proceeded to say, repeatedly, "So, is it this way or that way?" Walton did not know what Babb meant. After not receiving a response to the grievance, Walton said, "I can be a bitch or I can be nice, you know . . . which way would you like it?" Babb responded, "This way or that way, which way do you want it?" Walton said, "Okay, is this your decision?" Babb repeated herself and Walton said, "Okay, that's your decision" and proceeded to write it down. Walton moved on to the next grievance from lead sales service associate Marilyn Telfor, which asserted Babb was working as a lead sales associate in violation of the rules. Babb started fidgeting in her chair and stated, "I can't believe this" and told Walton she had nothing to support the grievance. When Walton disagreed, Babb began swaying in her chair and denied the grievance. When asked for a reason Babb said, "Because I said so."

Babb then stood up, leaned across the table pointing at Walton and said, "Cheryl, you're a fucking bitch." Walton responded, "Now, now, Gina, we shouldn't be talking that way." Babb went around and stood at the edge of the table toward where Walton was sitting. She ranted about the step 1 procedure and how Walton was always swearing, and said she was going to leave. She then leaned in toward Walton, who was sitting and doing paperwork. Walton moved off to the side and said, "Okay, just go then. If you're leaving, just go." Babb continued and Walton said, "I'm not going to take your fucking bullying or intimidating me. It's just not going to happen. If you're going to go, just go." Babb responded, "That's it, you're threatening me" and screamed at Walton to leave. Babb was standing at the exit door and Walton testified she continued to stand right where she was. When prompted, Walton said she was actually sitting, because Dunsmore had told her that there were times she may come across as aggressive because she is vocal, so she should keep seated. After Babb left, Walton grabbed her belongings and left. Walton proceeded to try to enter the secure main office finance area. Babb screamed to clerk Dayna Jones not to open the door and screamed at Walton to leave. Walton went out through the lobby area to clock out. As she was leaving, Babb and a male were right behind her. When they got to a swinging door, which is waist high, Walton said "excuse me" so the man backed up and she "just shut the door and went out the other door and went up and clocked out." She went to the Union hall and saw Dunsmore, who told her to write up what had occurred. (Tr. 22–27.)

Walton wrote a statement roughly 15 minutes after she left the main office. (GC Exh. 2.) According to the statement, when discussing Smith's grievance, Babb kept repeating, "One or the other Cheryl one or the other. What is your problem? You can't have it both ways." Walton responded, "Gina, now if you want me to be an ass continue with your sarcasm and I will be an ass. So you decide how do you want this meeting to go? Me to be nice and to the point or a bitch, you decide." Babb repeated, "One or the other," and when Walton asked for a decision and reason, Babb said, "How can I give a decision if you can't even figure out whether you want it one way or the other?" Walton then moved to Telfor's grievance which involved being denied her lead clerk (T-7) duties. Babb, very upset, stated, "Are you kidding? What T-7 duties am I denying her?" Walton responded that Babb was denying her all T-7 duties and just keeping her at the window. Babb raised her voice and said T-7s stay at the window. When Walton tried to explain this was not true, Babb interrupted her, began yelling, shook her head, sat back and forth in her chair, and said the grievance was denied. When asked for the reason, Babb said, "Because I said so." Walton asked if this was really her reason, and Babb replied that Walton could not provide any T-7 duties Telfor was not performing. Walton's notes are then a little unclear, but denote Walton saying, "Well I believe I did but you denied the grievance because (I looked at my notes) 'I said so' it appears you are not allowing her to work as a T-7 by you yelling at me with you answer then."

Babb then leaned forward in her chair and said in a low tone, "Cheryl, you are a fucking bitch." Walton responded, "Now, now Gina that is uncalled for and I will not accept that." Babb then stood up and said, "You file these grievances that aren't grievances." Walton replied, "Gina if you are done meeting then go, but I will not continue for you to yell at me, because I can yell louder." Babb said she was leaving, and Walton said she would send the remaining grievances up without a step 1. Babb walked to the edge of the table, within an arms' length, but because Babb had grabbed Walton before, Walton did not look at her. She was writing down what Babb stated. Babb then said, "You feel like you can file anything you want and say anything you want." Walton interrupted and told Babb to leave. Babb stated she did not have to and commented on Walton's swearing. Walton cut in, saying that Babb was the one who had called her a "fucking bitch." Babb replied that nobody would believe Walton because she has a problem. Walton, still sitting, looked at Babb and with her voice a little raised, stated, "Okay, Gina I am not going to be fucking berated by you any longer, Your [sic] mad, fine I really don't fucking care. But I will not continue with this bull shit of you standing there and venting, go fucking vent to someone else. I will continue to file fucking grievances because you continuously work in our

have included several citations to the record to highlight particular testimony or exhibits, I emphasize that my findings and conclusions are based not solely on the evidence specifically cited, but rather are based my review and consideration of the entire record.

craft[.] [W]hy? Because I am not scared or immediate [sic] by you one bit." Babb told Walton she could not swear at her, and Walton told Babb, "Gina understand English at no time did I swear at you, I used swear words in my sentences. Now on the other hand you swore at me (I pointed at myself), remember. Oh that's right you lie. I almost forgot." Babb again told Walton she could not swear and Walton responded, "Oh I can swear and there will be times I will swear, get over it." At that point Babb said Walton was threatening her, and told her to leave the facility immediately. Babb moved a little toward Walton, who said, "Gina, don't you touch me." Babb then screamed at Walton to leave immediately, so when Babb left the room, Walton gathered her things and left.[2]

Babb's account of what happened at the meeting differs from the discussion of Smith's grievance forward. By way of background, Babb testified that the clerks were going to be required to rebid their jobs. When discussing Smith's grievance, Babb asked Walton which job title the grievance denial should reflect: Smith's current position or the position she would be in at the time of the requested leave, assuming she would still be employed following the rebidding process. Walton initially wanted it to be based on Smith's then-current position. Babb explained to Walton that she had spoken to someone from the Respondent's labor department and Cogan from the Union, and they agreed it was against the contract to grant the leave based on her current position. Walton then said that Babb should grant the leave based on Smith's new job, noting that she may not even have a job. Babb responded that she could not grant the leave request based on a future job she may or may not obtain through the rebidding process. Walton continued to argue both sides, and Babb reiterated that she couldn't settle the grievance either way and asked her which way she wanted the denial to reflect. Walton told her she was being an ass. Babb again asked her how she wanted to argue the grievance, again stating she could not settle it either way. Walton then got very angry and proceeded to "pepper her language with profanity." Babb got up, told Walton the meeting was over, and walked toward the door. As she was passing by where Walton was sitting, Walton stood up, tipped back her chair, stepped toward Babb while shaking her finger at her, and said, "I can say anything I want. I can swear if I want. I can do anything I want." When Babb refuted this, Walton took another step toward her and Babb became fearful Walton was going to hit her. Babb started backing toward the door, and Walton continued to scream that she could say and do whatever she wanted and Babb could not stop her. Babb had seen Walton become angry many times, but she was perceived something different this time and was scared. Shaking and in tears, Babb went to get Supervisor Duncan Santoro and told him he needed help removing from the facility a shop steward who had gotten violent. She saw that Walton was trying to gain entrance to the secure main office finance area and said, "No Cheryl, you're not going into my unit. You're not allowed in my unit." She instructed Jones not to let Walton in. Walton proceeded to leave the area with Santoro and Babb following her. She opened a swinging door and when Santoro tried to walk through it, she slammed it on him. At that point, Walton was in the lobby, so she and Santoro let her go. (Tr. 78–89.)

In Babb's statement, dictated later the same day to Trish Adams, manager of customer service operations, she described asking Walton how she wanted to argue the Smith's grievance because Walton wanted to argue both current and future schedules. Walton got frustrated and, in a raised voice said Babb was "being an ass." Babb again asked which one Walton wanted to argue, and Cheryl started swearing, saying "fuck" several times. Babb told Walton the meeting was over and while she was walking away, Walton stood up in an aggressive manner, tipping her chair back, and screamed, "I can say anything I want, I can swear if I want, do anything I want." When Babb told her she could not, Walton approached her, shaking her hand aggressively, pointing and screaming, "I can say anything I want, I can swear if I want, do anything I want, you can't stop me." Walton was in an arms' length reach of Babb, who perceived a "crazy, out of control look in her eyes." Babb said she was removing Walton from the facility, and Walton took a step toward her and said Babb could not make her leave. Babb responded that Walton was being violent and she had to leave the facility. Babb went to get Santoro to assist her, and she then saw Walton trying to gain access to the secure main office finance area. Babb instructed Jones not to let Walton in and again told Walton to leave. Santoro and Babb followed Walton as she exited the building. When Santoro tried to follow Walton through a swinging door, she shut it directly in front of him. (Jt. Exh. 6.)

C. Postal Service's Response to Babb "Making the Call"

When an employee feels threatened at the Postal Service, they are to report it immediately. This is referred to as "making the call," and when it occurs the incident is referred directly to the district manager. Babb, who was upset and shaking, called White "in a pure panic, in a frantic mode" and told him she was "making the call." (Tr. 90, 143.) White came to the main office and they went to see Kim Anderson, the district manager. She was out of the office, so they explained what occurred to Mike Norbom, the acting human resources manager. Norbom went down to the workroom floor to interview potential witnesses. Babb dictated her statement to Adams. Walton was eating lunch in the cafeteria on the fourth floor with Cortez, so Babb was told to stay on the third floor, which is secure. Eventually, White walked Babb to her car and she went home.

A threat assessment team, which included Babb, met and determined that Walton was in a protected status during the events at issue. The team concluded that Walton and Babb would have a cooling off period and would not meet for awhile. In the interim, Walton was to meet with White rather than Babb about grievances at step 1. White conveyed this to Walton on or about August 11. (GC Exh. 12; Tr. 147.)

On August 17, White gave Walton an official discussion and told her she was not permitted to work on grievances outside of her regular work schedule, which was 10 a.m. to 7 p.m. She was to clock in and then White would authorize any steward time. Babb viewed this as a change because she had previously requested steward time on a weekly basis from her immediate

[2] The statement also recites what occurred after the meeting, which essentially mirrors Walton's testimony.

supervisor. (Tr. 29–30.) Babb's normal practice was to meet with union stewards while they were on the clock. (Tr. 106.)

D. Events Culminating in Letter of Warning and Stalking Order

Walton continued to contact Babb and show up at the main office outside her scheduled work hours. Walton sometimes just sat on the bench in the lobby, which is a public area. This caused Babb to become afraid.

On Saturday, September 8, Walton called Babb to work on some step 1 grievances. She had not received permission from her home office, Midway, to visit the main office. (Jt. Exh. 12, p. 6.) By Walton's account, Babb told Walton she would not meet with her. Walton then went and knocked lightly on the back security door. She claimed she would not have pounded because she has degenerative joint disease and it would have hurt. She also said she did not yell any comments through the door. Walton then called the main office phone number repeatedly, stating that her purpose was to get a steward for Bob Mullin, the main office window clerk, and to file a step 1 grievance over Babb denying Mullin a steward.[3] When she called, Babb hung up on her. (Tr. 33–35.) Walton told Mullin to ring the buzzer to get Babb, who appeared at the door and she said she did not need to talk to Walton because she was not on the clock. When Mullin rang the buzzer again, Babb did not come out. Mullin then went back and spoke with Babb, and reported to Walton that Babb would not be coming out. Walton called Babb repeatedly because Babb kept hanging up on her before she could speak. Finally, she called Walton's personal cell phone. She did not testify about what she said, but stated she did not laugh. (Tr. 48–50.)

Shortly after the incidents, Babb made notes of what occurred. She recalled Walton calling and asking to meet with her at 12:30. When Babb told Walton that White was the designee for step 1 meetings, Walton repeatedly called Babb, using profanity, including calling Babb a "fucking idiot," and telling her she had better come out and see her. Mullin came back and told Babb Walton wanted to speak to her, and said he didn't think she was going away. Walton continued to call, requesting a steward for Mullin. Babb checked with Mullin, who denied he requested a steward. When Walton's calls went unanswered, she banged on the back door and pressed the buzzer. Walton then called Babb's personal cell phone. According to Babb, Walton laughed and said, "Well, since you gave your personal cell phone out to the city, I thought I'd use it." Babb told Walton not to call her personal cell phone and then hung up. (Jt. Exh. 6; Tr. 108.) Between 12:33 and 1:19 p.m., Walton placed at least 13 calls to Babb.[4] Babb, who was scared, reported what happened to White. White talked to clerk Rachel Kelley-Yancey, who confirmed that Walton was pounding on the door. (Tr. 146.)

At Babb's request, Mullin walked her to her car after work. Mullin had not asked to talk to a steward that day. Instead, he wanted to talk to Walton briefly to ask when the union picket was. (Tr. 172.) Mullin recalled that one Saturday, Walton "hung around for quite a while in the front office" observing what was going on. (Tr. 169.)

At 4:22 p.m. on September 8, Babb sent an email to District Manager Kim Anderson.[5] She recounted the events of August 9, when she "made the call" and stated that Walton continued to demand to meet on step 1 grievances. Babb also noted that Walton watched her in the main office before work and has followed her. She expressed her belief that Walton was fixated on her and stalking her. Babb conveyed the events from earlier in the day, and said that after these incidents she was shaking, having heart palpitations, and was afraid to go in the lobby or out in the plant. She noted that she has been suffering for weeks from sleeplessness, nightmares, migraines, digestive problems, and migraines. Babb expressed that she felt threatened and opined that Walton should not be considered in a protected status on her days off from work. She expressed her belief that Walton was deliberately and maliciously threatening and intimidating her. Babb said she was terrified to come to work on Saturdays, stating she could not continue to perform her duties. She concluded with a plea for help. (GC Exh. 4.)

Anderson responded the morning of September 10, stating that she agreed Walton's behavior was unacceptable. She informed Babb that action was being taken, including a meeting that day. (GC Exh. 4.)

White met with Walton on September 10, told her not to have any contact with Babb, and reminded her that he was the step 1 designee for the main office. (Jt. Exh. 2; Tr. 147.) Walton recalled this was the first time she was instructed that White was the step 1 designee. Walton was also instructed not to go to the main office without permission from White or Anthony Spina-Denson, manager of customer service.[6] (Jt. Exh. 2; Tr. 32–37.) According to Walton, prior to this, she had called Babb to set up times for grievance meetings. Walton also recalled White told her she needed to be on the clock to schedule step 1 meetings and file step 1 grievances. At the time, she had performing these tasks while both on and off the clock because of scheduling issues. (Tr. 37.)

The morning of September 11, Walton was at the main office prior to her shift. She stood outside the window watching Babb set up the lobby prior to the clerks' arrival at work. Walton testified she was working in her capacity as director of City Stations investigating to see if Babb was working in the clerk craft. Babb, who had gone in early to catch up after the events of the previous Saturday, saw Walton, who appeared to be looking at her and laughing. She "freaked out," and ran into Supervisor Justin Lowe's office, crying and shaking. (Tr. 111.) She did not approach Walton to inquire about why she was there. Babb called White, wrote a statement, and then tried to

[3] The General Counsel asserts that Walton learned through the phone calls on September 8 that White was the step 1 designee. (R. Br. 10.) This is inconsistent with Walton's testimony.

[4] For some of the times Babb references, Walton called two separate phones. The 13 calls are reflected in Babb's log. On the printout of the phone records, 17 calls are flagged, but it is not clear whether the four calls not reflected in Babb's log were from Walton.

[5] Various people were copied, including Postmaster Betha, Adams, Norbrom, White, and other individuals not identified at the hearing. (GC Exh. 6.)

[6] Walton had two equal employment opportunity (EEO) complaints against Spina-Denson.

drive home. (Jt. Exh. 6.) Unable to drive, she went to her parents' house, and her husband picked her up and took her to the doctor. Babb took leave and proceeded to make calls to figure out what she could do.

Walton received a letter of warning (LOW) on September 27, 2012, charging her with misconduct. (Jt. Exh. 2.) The letter referenced the August 9 grievance meeting that allegedly ended with her yelling and cursing. It further stated that although Walton had been instructed to meet with White for grievances involving the main office, she attempted to contact Babb to set up step 1 meetings on September 8. The LOW recounted that when Babb told her to contact White, Walton pounded on the back security door, rang the buzzer for an extended time, yelled comments directed at Babb through the door, and repeatedly called Babb. Next, the LOW referenced Walton's discussions with White on September 10, when she was again instructed that White was the step 1 designee for the main office, and Walton was not to go there without permission from White or Spina-Denson. The LOW further noted Walton's repeated visits to the main office, and said she was uncooperative when questioned in interviews. Finally, the LOW cited to various provisions of the Respondent's employee and labor relations manual (ELM) allegedly violated, and offered to assist Walton with any problems she might be experiencing. Walton filed a grievance and the LOW was ultimately expunged. (GC Exhs. 3, 16.)

On October 9, while on her own time, Babb filed a petition for a temporary protective stalking order (stalking order) against Walton in Clackamas County Circuit Court.[7] All of the incidents listed in support of the petition occurred at the main office while Babb was working. (Jt. Exh. 5.) Circuit Court Judge Jeffrey S. Jones granted the stalking order on October 10. (Jt. Exh. 3.) The stalking order restrained Walton from "harassing, stalking, or threatening" Babb or engaging in conduct that would place her in reasonable fear of bodily injury. It further prohibited the use, attempted use, or threatened use of physical force against Babb or her children. Babb was also ordered to stop and avoid all contact with Walton, defined as:

> A. Coming into the visual or physical presence of the other person;
> B. Following the other person;
> C. Waiting outside the home, property, place of work or school of the other person or of a member of that person's immediate family or household and being at the following places: [left blank];
> D. Sending or making written or electronic communications in any form to the other person;
> E. Speaking with the other person by any means;
> F. Communicating with the other person, including through a third person;
> G. Committing a crime against the other person;
> H. Communicating with a third person who has some relationship to the other person with the intent of affecting the third person's relationship with the other person;
> I. Communicating with business entities with the intent of affecting some right or interest of the other person;
> J. Damaging the other person's home, property, place of work, or school; or
> K. Delivering directly or through a third person any object to the home, property, place of work or school of the other person.

(Jt. Exh. 3.) Babb notified the Postal Service that she had obtained the stalking order and remained away from work while Walton worked on an arbitration at the main office. When Babb returned to work she instructed employees to contact her if they saw Walton in the main office.

On Saturday, October 13, 2012, Walton visited the main office to mail a personal item. Babb, representing herself as a Postal Service supervisor, called the police to alert them that Walton was in violation of the stalking order. Walton was served with a temporary protective stalking order later that same day while at the union hall. She understood it as precluding her from going to the main office and prevented her from working on grievances with White or others. (Tr. 56–57.) Walton was ordered to appear in Clackamas County court on October 30. (Jt. Exh. 4.)

On October 15, while at work, Walton was approached by two Portland police officers who stated they were there to arrest her for violating the stalking order on October 13. When the officers learned that Walton had not received the stalking order until the evening of October 13, they did not arrest her.

On October 23, the Respondent settled eight grievances filed on Walton's behalf for denial of steward time and denial of union hall access in September and October. The step 1 decisionmakers for the grievances were Soga, White, and Chris Cornejo. Under the agreement, Walton was paid $900. The agreement provided that permission to enter Postal Service facilities was still required in accordance with article 17 of the CBA. Walton was to communicate on a daily basis with her supervisor with regard to steward activities, times, and locations.[8] (GC Exh. 7.)

Walton appeared in court on October 30 with Adam Arms, an attorney the Union hired for her. Babb was also present. On January 31, 2013, Arms filed a motion to dismiss the stalking order, based in part on an argument that it was preempted by the Act. (Jt. Exh. 10.) Babb, pro se, opposed the motion to dismiss on February 5. (Jt. Exh. 11.) The judge denied the motion. At some point, Arms went to talk to Babb about settling the stalking order matter. Babb told Arms that because she was unrepresented, she wanted to have someone accompany her, and asked if Kimberly Kelly, a labor relations specialist for the Postal Service, could join them. The three of them met, and Kelly proposed a global settlement of all outstanding matters. Kelly forwarded a settlement offer to Arms on March 19, 2013. (GC Exh. 5.) The parties ultimately reached a settlement, and the stalking order was lifted on March 22, 2013. (Jt. Exhs. 14–16.)

[7] The main office is in Multnomah County but Babb was told to file it in Clackamas County where she resides.

[8] There is also a settlement from 2009, but it is not clear which management officials were involved.

E. Other Employees' Interactions with Walton

Kathy Cooper is a lead clerk who, at the time of the hearing, was in an acting supervisor position. In late December 2012, she and Walton were both working as lead clerks at the Respondent's airport facility. Walton yelled at her while she was explaining something to a customer. Cooper asked her to please say anything she felt she needed to say to her in the back office. Walton replied, yelling, "I will say anything I want to you." (Tr. 160.) Cooper walked away and tried to call a supervisor. She eventually reached the Postmaster, and while they were still on the phone, Walton came around the corner, yelling at Cooper and using profanity. The postmaster sent Spina-Denson to the facility. He and Walton had words, and then Walton went home.

When Cooper worked as an acting supervisor at the main facility, she and Walton sometimes interacted for step 1 grievances. Cooper observed Walton tended to scream and yell and cuss. On one occasion, Cooper cut their meeting short because Walton would not settle down. Cooper went back to work at her computer, and Walton came behind her yelling and screaming. Some people from labor relations on the floor above them came down because they were concerned that the situation might be unsafe. Cooper has also heard Babb ask Walton to stop cussing and yelling, and Walton responding with a litany of profanity.

Mullin has heard Walton yell and curse to the point where his customers could hear her, causing him embarrassment. (Tr. 173–174.)

At the Oak Grove post office, Lyudmila Basarab is an acting supervisor and Julie Pimental is the manager. On one occasion in the fall of 2012, Pimental had scheduled an investigative interview for 11 a.m. with Union Steward Cortez and an employee. Walton came to the facility at 7:30 a.m., saying she was there to represent the employee. Pimental told Walton she had the meeting scheduled with Cortez later that day and asked if she had permission to be at the Oak Grove station. When Walton told her Cortez gave her permission to be there, Pimental asked her to leave because White is the only person, other than herself, who could grant the requisite permission. Walton refused to leave, became increasingly louder, and called Pimental stupid. Basarab heard Walton screaming at Pimental so she went to check on them. According to both Pimental and Basarab, Walton was running toward Pimental aggressively. Pimental thought Walton was going to attack her. Pimental put her hand up and told Walton to leave the station or she would call 9-1-1. Walton was yelling so loudly the customer Basarab was speaking to asked what was going on and asked if she needed to call the police.

According to Walton, she did not leave because White had told her to stay at Oak Grove for the day. She then called White and asked for written permission to leave Oak Grove and go back to Midway, but Pimental told Walton she would shred whatever White faxed over.

Another time, Walton noticed a new clerk was working and told Basarab she needed to talk with her. Basarab asked Walton to request a time, and she started screaming and cursing, using very bad language. She got 6 to 8 inches from employee Shelley Lifto's face. There were customers in the lobby and Basarab felt embarrassed. She was close to calling 9-1-1 because of how aggressively Walton was acting. On her way out, Walton smacked the door very hard.

During a telephone conversation about a step 1 grievance, Walton yelled at Pimental when she would not give her an answer right on the spot.

III. DECISION

A. Letter of Warning

The complaint, at paragraphs 6 and 7, alleges that the Respondent violated Section 8(a)(3) and (1) when, on September 26, 2011, White issued a written LOW to Walton.

It is a violation of the Act for an employer to discipline a union steward for "processing grievances, policing the collective-bargaining agreement or for engaging in other activities as a union steward." *Pacific Coast Utilities Service*, 238 NLRB 599, 606 (1978) (citations omitted.) A steward, however, does not have unfettered protection to carry out his union duties. *Pathe Laboratories, Inc.*, 141 NLRB 1290 (1963). Leeway for impulsive behavior when engaging in protected activity is subject to the employer's right to maintain order and respect in the workplace. See *Piper Realty Co*., 313 NLRB 1289, 1290 (1994); *NLRB v. Ben Pekin Co*., 452 F.2d 205, 207 (7th Cir. 1991). Accordingly, "activity is [not] protected if carried out in a manner that is abusive or unjustifiably disruptive of an employer's operations."[9] *Nynex Corp.*, 338 NLRB 659, 661 (2002). Section 7 "does not permit employees to use grievances as a sword to gain immunity from the consequences of harassment." *Caterpillar Tractor Co*., 242 NLRB 523, 530 (1979), citing *Rocket Messenger Service*, 167 NLRB 252 (1967); *Charles Meyers & Co.*, 190 NLRB 448 (1971). Moreover, the Board has found that persistent failure to follow a supervisor's instructions can remove a steward's actions from the Act's protection. *Carolina Freight Carriers Corp*., 295 NLRB 1080 fn. 1 (1989); *Marico Enterprises,* 283 NLRB 726 (1987).

I find Walton lost the Act's protection by acting in a persistently insubordinate, obstinate, and disruptive manner designed to harass Babb. In coming to this conclusion, I have made certain credibility determinations, both general and specific. In general, I found Babb and White were more credible than Walton, based both on demeanor and the plausibility of their respective versions of events. I found Babb's testimony to be thoughtful and sincere, and her demeanor was open and forthright, even when testifying about topics that were clearly difficult for her emotionally. White, who supervises both Babb and Walton, struck me as very matter-of-fact and sincere. Walton's testimony, particularly when discussing her interactions with Babb, came across as overly self-serving and orchestrated to downplay the more aggressive and flippant side of her personality. Specific credibility determination for these witnesses and other witnesses are discussed in context below.

With regard to the August 9 meeting, Walton's testimony that it began by Walton asking for an answer on Smith's grievance, and Babb repeatedly just saying "this way or that way" makes no sense. Babb's explanation, which was thorough and

[9] It is very clear the word "not" was inadvertently omitted.

open-ended, put the conversation into a plausible context. I credit her version, and find Walton's testimony that she had no idea what Babb was asking her lacks credibility. Regardless of how Babb and White began arguing, it is clear to me that Babb left the meeting shaken enough to "make the call." This was confirmed by White, who described her as "in a pure panic, in frantic mode" just after the meeting. Had Walton sat quietly in her chair the entire time as she stated (upon prompting after she initially said she was standing) it is extremely unlikely Babb would have reacted the way she did.

Babb's version of events is also more credible when considering witness testimony from both union members and supervisors regarding Walton's tendency to scream and yell, use disrespectful language, become physically aggressive, and loudly assert her right to do and say whatever she wants. In this regard, I found Cooper to be a reliable and credible witness, based both on her calm and straightforward demeanor, the open-ended nature of her testimony, and the quality of detail in her testimony. For the same reasons, and because their testimony was generally corroborative, I also found Basarab and Pimental to be reliable witnesses. Mullin, who I also found credible, testified that he has heard Walton yell and curse from an adjacent room, and that he was embarrassed because customers could hear. The testimony of these multiple witnesses more than sufficiently refutes Walton's uncorroborated statement that she does not scream in the course of her union duties. (Tr. 63.) Walton's testimony that she does not run and could not bang on a door is likewise refuted by testimony from Pimental and Basarab.[10] (Tr. 182, 184, 191, 146).

The General Counsel points out that Babb did not call any witnesses to support her assertion that Walton was screaming during the August 9 meeting, and argues that an adverse inference is warranted. I note, however, that Walton asserted Babb was screaming both during the meeting and after the meeting, and in particular that she screamed at clerk Jones, yet neither the General Counsel nor the Charging Party called any witnesses to corroborate this account. As noted, between the two versions of events, I credit Babb's.

The General Counsel argues that Walton was provoked by Babb stating "this way or that way" repeatedly, and calling Walton a "fucking bitch." I have addressed the "this way or that way" comments above. With regard to the "fucking bitch" comment, I credit Babb's testimony that, as a result of her upbringing and beliefs, she does not swear and finds it highly offensive. I also find that Walton's response to the alleged comment, either "Now, now Gina that is uncalled for and I will not accept that," or "Now, now, Gina, we shouldn't be talking that way," does not ring true. The record establishes that Walton is someone who, when challenged, reacts impulsively and does not take things quietly. Either version of this measured response upon being called a "fucking bitch" strains credibility. Given that I have credited Babb's description of events, the General Counsel's argument that Walton was provoked by Babb fails.

The General Counsel notes that the threat assessment team determined that Walton's conduct on August 9 was protected. Applying the factors set forth in *Atlantic Steel Co.*, 245 NLRB 814 (1979), the General Counsel asserts that Walton's conduct on August 9 was not sufficiently egregious for her to lose the Act's protection.[11] I am aware of and have considered the Board's case law, some of which is relied upon in the General Counsel's brief, holding that profane outbursts and other such conduct retains the Act's protection if it is part of the res gestae of protected activity. I do not consider the August 9 meeting in isolation, however, but rather as the beginning of a connected and disturbing pattern of conduct Walton directed at Babb.

Turning to the events of September 8, I credit the testimony of Babb, White, and Mullin, which was generally corroborative. Mullin, a bargaining-unit member, was very soft-spoken and, though confused at times, appeared to be genuinely trying to recall the events at issue and testify honestly. As to the specific question of whether Walton had been told White was the step 1 designee for main office grievances, I find that she was aware of this when she repeatedly attempted to speak with Babb. The cooling off period between Babb and Walton was the result of the threat assessment team's review of the August 9 events.[12] White testified he conveyed this to Walton. I find Walton's testimony to the contrary is unconvincing and riddled with problems. First, White's failure to convey this to Babb simply makes no sense in light of what occurred, and there was nothing in his demeanor when he testified to indicate he was being untruthful about giving Walton this instruction. Importantly, Walton admittedly had already been told, in line with the CBA, that she was to get permission from the supervisors at both her home office and the office she was visiting prior to using steward time for grievances. She likewise had been instructed not to schedule grievances when she was off the clock.

Yet, in contravention of these orders, she visited Babb's office, without permission, on a Saturday when she was not working.[13] In addition, Babb told Walton during their first brief phone call that White was the step 1 designee. Yet again, in contravention of this, Walton continued to call Babb repeat-

[10] White further testified that Kelley-Yancey saw Walton banging on the door. This is hearsay that is corroborated by Babb's testimony, and consistent with Pimental and Basarab's. See *RC Aluminum Industries,* 343 NLRB 939, 940 (2004). Because I would come to the same conclusion without it, I need not rely on it.

[11] I do not find the *Atlantic Steel* analysis applicable here, because this case does not present an "outburst" as is contemplated in two of the four evaluative factors. Nor does it involve a "moment of animal exuberance" as in *Milk Wagon Drivers Union of Chicago, Local 753 v. Meadowmoor Dairies*, 312 U.S. 287, 293 (1941), but rather a course conduct over time.

[12] Babb was part of this team, but even if Walton knew this, it did not give her license to ignore disregard White's directives.

[13] The General Counsel's brief, in the statement of facts, assert that White's instructions that he would need to approve her requests for steward time and he would serve as the step 1 designee for the main office were contrary to the CBA, though none of its arguments rest on contract interpretation. The Respondent's brief points to various parts of the CBA and argues they support White's directives. Disposition of this case does not depend on an arbitral-like interpretation of the CBA. White received no permission for her visit on September 8, and had no reason to request steward time from Babb on Mullin's behalf. Any ostensible disagreement with management's directives thus cannot serve as justification for her behavior.

edly and make repeated requests to see her. It is clear Walton did not care what instructions management had given her because, true to the words ascribed to her, she was going to do what she wanted. Finally, Walton's testimony that her continued attempts to contact Babb were to request steward time pursuant to Mullin's request has been squarely discredited by Mullin's own disinterested, credible, and corroborated testimony that he never requested a steward.

The fabrication of Mullins' request for steward time, along with the continued attempts to contact Babb, are very telling as to Walton's state of mind and lead to the conclusions that her actions by this point were, at best, only "tangentially related" to any legitimate grievance she was ostensibly pursuing.[14] *Calmos Combining Co*., 184 NLRB 914 (1970). It is clear to me Walton's purpose, at least as time progressed, was to harass Babb and it did not matter to her that she was acting in blatant defiance of White's orders. The multiple profane and taunting phone calls to Babb over the course of 45 minutes and the disingenuous attempts to have Babb come out of her work area to grant steward time that was never requested clearly caused Babb to panic, as shown by her email to Anderson. (GC Exh. 4.) To me, these actions are strong evidence that Walton was acting outside the boundaries of genuine steward activity, and was pursuing her own unprotected agenda. See *Roadmaster Corp. v. NLRB*, 874 F.2d 448, 453 (1989) (motive relevant in determining whether employee engaged in protected activity); *Newark Morning Ledger*, 316 NLRB 1268, 1271 (1995).

The remaining conduct cited in the LOW is Walton's repeated visits to the main office without permission while off duty to observe Babb. Walton's visit to the main office before her shift on September 11, peering in at Babb, was also cited. Walton asserts she was there in her role as director of City Stations to investigate whether Babb was performing clerk work. Under the CBA, permission is required to visit a facility "to investigate a specific problem to determine whether to file a grievance" and Walton has not refuted testimony and other evidence that management requires such permission. (Jt. Exhs. 1, 14; GC Exh. 7, p. 2; Tr. 100.) Though I have found that Walton's conduct lost the protection of the Act based on previous events, the continued visits are further evidence of Walton's intransigence.

The General Counsel argues that, because regional management determined the LOW failed to establish that Walton engaged in misconduct and her behavior did not rise to the level of a threat or violence, it is disingenuous for the Respondent to rely on the conduct cited in it to defend against the instant charges. I disagree. The Respondent's regional management is not charged with interpreting and applying the Act, and therefore their findings are unpersuasive. Moreover, it is a clear part of the problem internal management had with the LOW was the charge and the ELM rules alleged to have been violated in support of the charge. I am not evaluating whether the Respondent can support a misconduct charge governed by the ELM's rules. It is also not clear what evidence regional management considered. In any event, I have considered all of the evidence and carefully evaluated the content and credibility of witness testimony and, applying the Act and the Board's interpretive case law to the evidence, find Walton lost the Act's protection for the reasons set forth above.

B. The Stalking Order

Paragraphs 5 and 8 of the complaint allege that the Respondent violated Section 8(a)(1) of the Act when Babb filed for and received a temporary protective stalking order against Walton.

1. Babb's status as agent

To decide whether the Respondent can be held liable for Babb's actions in petitioning for and obtaining the stalking order, I must first determine whether Babb acted as an agent of the Postal Service. The Respondent asserts that Babb pursued the stalking order on her own time and the Postal Service was uninvolved except for assisting with settlement efforts after the fact. The General Counsel asserts that the Respondent is liable for the acts of its supervisor because Babb acted with actual or apparent authority from the Postal Service.

The Board applies the common law of agency to determine whether a supervisor's actions are within the scope of employment and thus binding on the employer. *Sea Mar Community Health Centers*, 345 NLRB 947, 950 (2005). The burden of proving agency status is on the party asserting it. Section 2(13) of the Act states that "[i]n determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

The Restatement (Third) of Agency, § 7.07(2), provides: "An employee acts within the scope of employment when performing work assigned by the employer or engaging in a course of conduct subject to the employer's control." Section 7.07 cmt b., elaborates: "If an employee undertakes a course of work-related conduct for the sole purpose of furthering the employee's interests or those of a third party, the employee's conduct will often lie beyond the employer's effective control." Babb's conduct of seeking and obtaining the stalking order was not work assigned by the Respondent. Based on her testimony, I find Babb's sole purpose in taking these actions was to further her own interests. Specifically, I am convinced it was an act of desperation concerned with trying to alleviate her own personal fears.

The General Counsel asserts that by using the main office address on the petition for the stalking order, identifying herself as a supervisor, and attaching documents supplied by the Respondent, she brought the petition within the scope of employment. Babb supplying the address and identifying herself as a supervisor, however, was not within the Respondent's control, as Babb took these actions without the Postal Service's knowledge. The General Counsel has not established that the Respondent was aware of any of the other information she supplied at the time of the petition. As will be discussed below, by the time she supplied White's declaration, I find liability had already attached.

[14] The later focus on needing access to Babb for Mullins' nonexistent steward request casts doubt on whether Walton was present at the main office to discuss legitimate grievances in the first place. None were identified and Babb's normal practice was to meet with stewards during their regular work hours.

I find, however, that when Walton was served with the stalking order on October 13, and Babb enforced it against her at the main office, Babb brought the stalking order within the scope of employment and potential liability for the Respondent attached. This is because, even if the Respondent did not actually authorize Babb to enforce the stalking order, it is clear that she acted with the apparent authority to do so. In determining whether an individual has apparent authority, the Board applies common law principles which it summarized in *Mastec Directv*, 356 NLRB 809, 809–810 (2011):

> Apparent authority "results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe the principal has authorized the alleged agent to perform the acts in question." . . . "Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or the principal should realize that his conduct is likely to create such a belief." [Citations and internal punctuation omitted.]

As the General Counsel points out, it is clear that after Babb obtained the stalking order, she informed the Postal Service about it. Thus, the Respondent knew about the stalking order and did nothing to prevent Babb from enforcing it. In addition, Babb notified employees about the stalking order and told them to let her know if Walton came to the main office. The employees who worked under Babb would reasonably believe she had the authority to issue and carry out this order.[15] As such, I find that as of October 13, the Respondent was liable for any unfair labor practices that arose from the stalking order.

2. Did the stalking order violate the Act?

Citing to *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983), *BE&K Construction (BE&K II)*, 351 NLRB 451 (2007), and other Board case law, the General Counsel first asserts that the stalking order violated Section 8(a)(1) because it lacked a reasonable basis and was filed with a retaliatory motive. Judge Jones granted Babb's petition and issued the stalking order, and I therefore find it had a reasonable basis. For the reasons detailed above, I find Babb's motivations in seeking it were genuine and not retaliatory. The fact that Babb and Cortez are able to work together productively to process grievances lends support to the Respondent's contention that Babb was not motivated by union animus but rather a desire to escape from the troubling behavior Walton had been directing at her. The General Counsel points out that Babb admitted she wanted her "pound of flesh." While this is true, I do not view this comment as evidence of retaliatory motivation toward Walton because of her union status or protected union activities. Instead, I see it as a secondary emotional response related to the unprotected actions that frightened Babb.[16]

For similar reasons, I do not find Babb had an illegal objective when she filed the petition. The conduct she cited to support the petition falls outside the Act's protection.[17] Moreover, there is nothing in the petition itself that requests Walton abstain from most of the behaviors the court ultimately enjoined. As such, this case is distinguishable from *Manno Electric*, 321 NLRB 278, 297 (1996). The General Counsel also points to *Teamsters Local 776 (Rite Aid)*, 305 NLRB 832 (1991), but that case involved a lawsuit aimed directly at achieving a result contrary to the Board's ruling in the very same matter. The present situation is therefore not analogous.

The General Counsel further asserts that had the stalking order proceedings not settled, Oregon law would have required the order's dismissal because Oregon law is not to be "construed to permit the issuance of a court's stalking protective order for conduct that is authorized or protected by the labor laws of this state or of the United States." O.R.S. § 163.755(1)(a). As I have found Walton's conduct was unprotected, this argument fails.

Next, the General Counsel asserts that Babb's stalking petition is preempted by the Act. The Supremacy Clause of the United States Constitution, Article VI, Section 2, provides that the "Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land." Thus, as a general rule, Federal laws preempt contrary to or conflicting state laws. Pursuant to the Supreme Court's decision in *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244 (1959):

> When it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by § 7 of the National Labor Relations Act, or constitute an unfair labor practice under § 8, due regard for the federal enactment requires that state jurisdiction must yield.

Following *Garmon*, the Court honed its preemption jurisprudence in *Sears, Roebuck & Co. v. Carpenters*, 436 U.S. 180 (1978), distinguishing between an employer's state action aimed to stop activity the Act arguably prohibits as opposed to a state action aimed to stop activity the Act arguably protects. In *Sears & Roebuck*, the employer demanded that the union remove picketing activity from its property. The union refused to stop picketing, claiming its actions were protected by Section 7. It did not file an unfair labor practice charge under Section 8(a)(1), but said instead it would continue the pickets unless compelled to stop through legal action. The employer responded by filing a trespass action in state court. There, like in the present case, at the time of the state court action, "the Union failed to invoke the jurisdiction of the Labor Board, and *Sears* had no right to invoke that jurisdiction and could not even precipitate its exercise without resort to self-help." Id. at 207. (Footnote omitted.) The Court held that in such cases, where the conduct at issue is "arguably protected" the state court is not deprived of jurisdiction. The Court noted, however, that preemption may be appropriate in some cases where there is a strong argument that the conduct is protected by Section 7 and

[15] I disagree with the General Counsel's contention that the restrictions the Respondent had placed on Walton prior to the stalking order affirmatively reinforced Babb's conduct. White's order to Walton not to contact Babb was much narrower than the stalking order and provided a designee for Babb in the grievance process.

[16] It is noted that after some reflection and the realization of the harm her actions inflicted on the Respondent, Babb's feelings changed.

[17] In her petition, Babb did not reference the August 9 incident as the most recent incident or as an example of "unwanted conduct" but rather as part of the reason the later unwanted conduct was "alarming or coercive." (Jt. Exhs. 5, 6.)

"the exercise of state jurisdiction might create a significant risk of misinterpretation of federal law and the consequent prohibition of protected conduct." Id. at 203.

Even though the conduct cited to support the petition was not protected, the stalking order enjoined Walton from a broader range of conduct.[18] The next inquiry, then, is whether the conduct the stalking order enjoined was "arguably protected" or whether there is a strong argument the conduct was protected. This determination "is within the exclusive province of the Board." *Beverly Health & Rehabilitation Services,* 336 NLRB 332, 334 (2001). It is clear that the stalking order enjoined both Walton's unprotected activity of harassing Babb as well as her protected activities attendant to her roles with the Union. This finding compels the conclusion that, at the time the court issued the stalking order, there was a strong argument that some of the conduct it regulated was protected. In this regard, the instant case bears similarities to *Youngdahl v. Rainfair*, *Inc.*, 355 U.S. 131 (1957), where a state court issued an injunction prohibiting unprotected behaviors connected to a strike as well as the protected conduct of peaceful picketing. The Court found that the state court "entered the preempted domain" of the Board by enjoining peaceful picketing. I likewise find that the state court's temporary protective stalking order entered the Board's preempted domain by enjoining Walton from engaging in protected Section 7 activity.

CONCLUSIONS OF LAW

1. By maintaining and enforcing the stalking order, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. The Respondents did not engage in any other of the unfair labor practices alleged in this proceeding.

REMEDY

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

The Respondent, having maintained and enforced a stalking order that violates the Act, must cease and desist from maintaining or enforcing a stalking order that enjoins Walton from engaging in protected activity.

I will order that the employer post a notice in the usual manner, including electronically to the extent mandated in *J. Picini Flooring*, 356 NLRB 11, 15–16 (2010). Also in accordance with that decision, the question as to whether a particular type of electronic notice is appropriate should be resolved at the compliance stage. Id., slip op. at p. 3. See, e.g., *Teamsters Local 25*, 358 NLRB 54 (2012).

The General Counsel requests reimbursement of legal costs the Charging Party incurred in defending against the stalking order. Based on the unusual circumstances present in the instant case, I decline to grant such an award. As previously stated, I have found that the lawsuit was not unlawful at its inception. This was a novel situation for the Respondent, which faced significant tension between the legitimate concerns of one of its supervisors and the bounds of a union agent's protection under the Act. Accordingly, I find an award of legal fees and expenses is not necessary to discourage the Respondent from permitting its supervisors to maintain preempted lawsuits enjoining conduct protected by the Act. I realize this does not make the Union whole for the fees it paid in defending against the stalking order. In this unusual case, however, where the Union's agent's unprotected activity was the catalyst for the state court action, I find it is not warranted. An order requiring the Postal Service to cease and desist and to post a remedial notice, is a "significant sanction" and, given the unique situation present here, is sufficient. *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 152 (2002); see also *J.A. Croson Co*., 359 NLRB No. 2 (2012).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.[19]

ORDER

The Respondent, United States Postal Service, Portland, Oregon, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Pursuing and enforcing any lawsuit that is preempted by Federal law;

(b) In any like or related manner interfering with, 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) Seek expungement of the Temporary Stalking Protective Order from Cheryl Walton's record, and notify the Union and Walton that this has been done.

(b) Within 14 days after service by the Region, post at all of its Portland, Oregon facilities copies of the attached notice marked "Appendix."[20] Copies of the notice, on forms provided by the Regional Director for Region 19, 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 physical posting of paper notices, the 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 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

[18] I agree with the General Counsel, however, that the conduct does not meet the standards to render Walton unfit to serve as the union representative in all contexts. See GC Br. pp. 29–30 and cases cited therein.

[19] 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.

[20] 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."

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 employees and former employees employed by the Respondent at any time since October 13, 2012.

(c) 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.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. December 4, 2013

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 maintain or enforce lawsuits that interfere with protected union activities.

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.

WE WILL seek the expungement of the temporary stalking protective order and associated official records and notify the Union and Walton that this has been done.

UNITED STATES POSTAL SERVICE

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CA-092096 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.