National Rural Letter Carriers Association (USPS) ***and*** **Tamara Newboles.** Case 19–CB–245120

February 13, 2023

DECISION AND ORDER

BY MEMBERS KAPLAN, WILCOX, AND PROUTY

On December 10, 2021, Administrative Law Judge Gerald M. Etchingham issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply 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 only to the extent consistent with this Decision and Order. For the reasons stated below, we reverse the judge's holding that the Respondent's agent violated Section 8(b)(1)(A) by threatening the Charging Party with workplace discipline.

I. FACTS

At all relevant times, Charging Party Tamara Newboles was a regular rural carrier at the Postal Service's Bend Detached Carrier Unit ("Bend DCU" or "Employer") and a member of the National Rural Letter Carriers Association ("NRLCA" or "Union"). In July of 2019, the Bend Main Post Office Supervisor issued an edict prioritizing Sunday delivery of city parcels over Sunday delivery of rural parcels. Employees at the Bend DCU were unhappy about the edict, which increased their workload. On the morning of July 15, 2019, many employees were loudly expressing their dissatisfaction while they sorted mail in their sorting cases.[1] Newboles discussed the edict with her coworkers and advised that they speak to Union Steward Carrie Firman-Berry about their concerns. For some of these discussions, Newboles left her mail sorting case to talk with coworkers who were in their sorting cases. The Bend DCU had a policy that prevented employees from talking while in their sorting cases, but this policy was not consistently enforced.

Later that morning, Bend DCU Supervisor Marsha Pickles called a general standup meeting to discuss the controversial edict. Newboles attended this meeting, as did Firman-Berry and many of Newboles' other coworkers. During the meeting, Firman-Berry said she didn't know of anything that could be done about the edict, and when Newboles responded that there must be precedent in the collective-bargaining agreement that could help, Firman-Berry told Newboles to send her any information about precedent in the collective-bargaining agreement she could find. After work, Newboles sent Firman-Berry two texts, one about grievance settlements and a second about a theory that management could be falsifying scans that marked packages as undeliverable. Firman-Berry did not answer the texts.

At around 9 a.m. on July 16, 2019, Supervisor Marsha Pickles called Newboles into a meeting. Pickles and Newboles were walking together to the meeting when Firman-Berry joined the group. Newboles saw Firman-Berry and said that "[a] little heads-up would be nice." Firman-Berry responded that "[w]ell, we just decided to do this." Pickles, Firman-Berry, and Newboles all sat down in an office and the meeting began.

Pickles opened by telling Newboles that she had been talking about union activities when she should not have been. Firman-Berry then said that Newboles was butting into matters that did not involve her. Newboles interrupted and stated that the two were about to violate her rights under the Act. Firman-Berry then complained that Newboles had upset one of her coworkers by discussing the edict and that the coworker had subsequently approached Firman-Berry multiple times. After Newboles responded to Firman-Berry's complaint, Firman-Berry told Newboles to "stop butting into stuff" that did not directly involve her. Firman-Berry appeared annoyed and mentioned that Newboles had been continually texting her information. Newboles protested that Firman-Berry was not sufficiently protecting employees. Again, Firman-Berry told Newboles to butt out of matters that did not concern her.

At this point, Newboles asked Pickles if the meeting was finished. Pickles said it was not. Pickles instructed Newboles to stop leaving her mail sorting case to talk with coworkers about the Union or the recent edict. Upset, Newboles said that she would not stop discussing those topics, she knew her rights under the Act, and she would not be silenced. Pickles then verbally warned Newboles that if she did not remain in her mail sorting case and cease discussing coworker problems or ongoing conditions at the Bend DCU, she would be disciplined. Firman-Berry remained silent when Pickles delivered this threat of discipline. Newboles walked out of the office, Firman-Berry followed her, and the meeting ended. In total, the meeting lasted between 10 and 15 minutes.

[1] A sorting case is described in the record as "a three-sided . . . very tall bookcase with slats in it that are for each mail delivery address on the route." Employees stand at their cases and sort mail to be delivered on their route.

Firman-Berry caught up with Newboles after leaving the meeting and they had a brief discussion. During this discussion, Firman-Berry told Newboles that their employer had every right to ask that she take her conversations off the workroom floor.

Newboles filed an unfair labor practice charge against the Union (initiating the instant case). In addition, Newboles filed a charge against the Employer, Case 19–CA–248772, alleging that Pickles' statements in the meeting constituted a 8(a)(1) threat. That charge was resolved by settlement.

II. THE JUDGE'S DECISION

The judge held that Firman-Berry's conduct communicated a threat that Newboles would be disciplined if she continued to engage in protected concerted activity. He found that at the July 16 meeting, Firman-Berry and Pickles issued joint instructions to Newboles that threatened her with discipline. The judge additionally relied on the tense atmosphere in Newboles' workplace and Firman-Berry's open annoyance with Newboles to find that a reasonable listener would construe the totality of Firman-Berry's conduct during and after the July 16 meeting as communicating a threat.[2]

III. DISCUSSION

Section 8(b)(1)(A) of the Act provides that it is an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of their Section 7 rights. 29 U.S.C. § 158(b)(1)(A). The test for whether conduct rises to the level of a threat is whether the union agent's conduct "can reasonably be interpreted by the employee as a threat." *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1066 (2007), enfd. per curiam 577 F.3d 467 (2d Cir. 2009) (quoting *Smithers Tire*, 308 NLRB 72, 72 (1992)). This is an objective test, and neither the speaker's subjective intent nor the employee's subjective reaction is relevant. See id.; *Longshoremen Local 333 (ITO Corp. of Baltimore)*, 267 NLRB 1320, 1321 (1983).

It is undisputed that Firman-Berry did not make any explicit threat of discipline to Newboles. Thus, finding a violation would require us to find either that Firman-Berry and Pickles were acting in concert at the July 16 meeting and Steward Firman-Berry adopted Supervisor Pickles' explicit threat, or that a threat by Firman-Berry arose by implication from the facts and circumstances surrounding her conduct at and after the meeting. The record does not support either theory.

Firman-Berry and Pickles did not operate as or speak as a single entity or party at the July 16 meeting. Though Firman-Berry did mention that the meeting was something that "we"—presumably Firman-Berry and Pickles—had decided to do, her statement is susceptible to multiple reasonable interpretations, including that Firman-Berry had only recently agreed to attend a spur-of-the-moment meeting. It is not unusual for an employer representative who wants to meet with an employee to arrange for the meeting to be conducted at a time agreeable to the union's representative. That alone would explain Firman-Berry's use of the word "we." In any event, we find the usage of a single word—"we"—insufficient to support a finding that Firman-Berry adopted or joined in every statement Pickles made in the course of the meeting. During the meeting, Firman-Berry and Pickles both told Newboles that she should stop leaving her mail sorting case to talk to coworkers, but aside from the shared content of their positions, Firman-Berry did not state or otherwise communicate that she was acting in concert with Pickles for the purposes of the meeting. Pickles did not indicate that her positions or instructions should be construed as also being delivered on behalf of the Union, and Firman-Berry did not indicate that she was speaking or acting for the Employer.[3] For these reasons, an objective attendee of the July 16 meeting would not consider Firman-Berry and Pickles to be operating as a unified party, and Firman-Berry did not adopt Pickles' threat of discipline.[4]

[2] The judge dedicated portions of his opinion to analyzing whether Steward Firman-Berry violated Sec. 8(b)(1)(A) by violating the duty of fair representation. Because the General Counsel neither alleged in the complaint nor argued to the judge that the Union violated the duty of fair representation, but instead, only alleged and argued that the Respondent violated Sec. 8(b)(1)(A) by restraining and coercing Newboles via a threat during the meeting in Pickles' office, we do not pass on whether the Union violated the duty of fair representation.

[3] Contrary to our dissenting colleague, we do not consider Pickles' claim that "we were told" Newboles had been discussing union activities to be an indication that Firman-Berry adopted Pickles' disciplinary threat. Pickles' use of the word "we" was entirely unremarkable in this context. No objective listener would have interpreted Firman-Berry's use of the word "we" prior to Pickles' use of the word "we" as expressing that Firman-Berry was adopting or joining Pickles' threats during the meeting.

[4] Our colleague cites *Service Employees Local 121RN (Pomona Valley Hospital Medical Center)*, 355 NLRB 234, 236 (2010), to suggest that the existence of multiple reasonable interpretations for Firman-Berry's statement that "we just decided to do this" statement is irrelevant. As cited in *Pomona Valley*, the Board has held that "[t]he test of whether a statement is unlawful is whether the words could reasonably be construed as coercive, whether or not that is the only reasonable construction." See id. at 235 (quoting *Double D Construction Group*, 339 NLRB 303, 303–304 (2003)). Here, no party asserts that the "we just decided to do this" statement was itself coercive or unlawful. The statement is, instead, an element of the broader context surrounding the July 16 meeting. Therefore, the statement's susceptibility to several reasonable interpretations is a relevant and permissible consideration when analyzing how an objective listener in Newboles' position would have understood Firman-Berry's conduct.

Nor were the facts and circumstances of the July 16 meeting sufficient to give rise to an implied threat by Firman-Berry. Her perceptible irritation with Newboles colored her conduct during the meeting, and the post-edict environment at the Bend DCU was undeniably tense. However, even accounting for these factors, an objective listener would not interpret Firman-Berry's statements that Newboles was "butting into" matters as threatening discipline. Firman-Berry did not allude to, invoke, or otherwise gesture to consequences that would occur if Newboles failed to cease her protected activity. Although Firman-Berry mentioned in the postmeeting discussion that the Bend DCU had the enforceable right to require Newboles to take conversations off the workroom floor, this was an accurate statement of the Bend DCU policy limiting discussion during working time, and case law distinguishes between accurate observation and coercive, baseless speculation. See *NLRB v. Construction & General Laborers' Local 534*, 778 F.2d 284, 291 (6th Cir. 1985), denying enf. in relevant part, 272 NLRB 926 (1984) (reversing Board's finding of an 8(b)(1)(A) violation and holding that a union does not violate Sec. 8(b)(1)(a) by objectively informing employees "of those consequences of the employees' actions that are beyond the [u]nion's control") and *Carpenters Local 180 (Condiotti Enterprises, Inc.)*, 328 NLRB 947, 950 (1999) (holding that threats violated Section 8(b)(1)(A) in part due to a lack of any evidence that union agents were "merely making truthful predictions or had some other reasonable basis for these threats"). Finally, Firman-Berry's silence after Pickles' threat of discipline is insufficient to communicate an implicit threat by Firman-Berry or an implicit adoption of the threat by Pickles. A reasonable listener could have several objective interpretations of what the silence connoted, including the interpretation that her silence demonstrated lack of agreement with Pickles' threat, but we do not agree that Firman-Berry's silence can reasonably be understood as an indication that Firman-Berry threatened Newboles or that Firman-Berry was impliedly adopting or joining the threat against Newboles.[5]

Our dissenting colleague suggests that we fail to consider the full context within which Firman-Berry's statements and silences occurred. We have given due consideration to the context surrounding the July 16 meeting, and have concluded that there are numerous contextual dissimilarities between this case and the Board's body of 8(b)(1)(A) threat cases, including cases the dissent relies upon. We are not aware of – and our dissenting colleague has not cited—a case in which the Board found a violation of 8(b)(1)(A) under circumstances like those present in this case. Certainly the Board has never found that a union representative violated 8(b)(1)(A) by, as the dissent puts it, failing to break her silence and take the "opportunity to disagree" with a supervisor's threat of discipline during a single pre-disciplinary meeting. Thus, we reject any suggestion of the dissent that Firman-Berry had an obligation to "disagree" with Pickles or "disabuse" Newboles of any concern that she was "siding with management" in order to avoid an implication that Pickles' threat was attributable to Firman-Berry. The dissent is far too ready – without any precedent supporting it – to find a reasonable tendency to coerce or threaten in a union representative's failure to affirmatively condemn or disagree on-the-spot with an employer's threat.

The dissent relies heavily on *Teamsters Local 735-S (Bemis Co.)*, 369 NLRB No. 97 (2020), a case involving an entirely different situation than the one present here. In that case, after learning that a unit employee had participated in an employer's investigation, a union official confronted the unit employee and using "accusatory language and gestures" promised to "get to the bottom" of what had happened. Id. at 2. The union official was yelling directly into the union employee's face. Id. In the context of the union official's confrontational conduct and the employee's recent contribution to the employer's investigation, the Board found that the union official's statement would be reasonably interpreted as "a personalized threat" to hold the employee accountable. Id. Thus, *Local 735-S* does not remotely stand for the proposition that a union can adopt an employer statement, or any statement, through a failure to disagree or take issue with it.[6]

The dissent suggests that *Battle Creek Health System*, 341 NLRB 882 (2004), demonstrates that a union's failure to express disapproval of employee misconduct can send a message that the union ratifies the conduct, and that by failing to express her disapproval of Supervisor Pickles' threats of discipline, Firman-Berry indicated her approval of such threats. This characterization of *Battle Creek* ignores the holding of that case: that the union had violated Section 8(b)(1)(A) by failing to disapprove of repeated threats against employees by the union's own agent, including threats of physical assault and vandalism of property made "on a daily basis" over the course of 2-1/2 months. See id. at 893–894. *Battle Creek* thus is far removed from the issue here, involving the question of whether a union agent's failure to actively disapprove of

[5] Our dissenting colleague claims that our recounting of the facts is "strained," but he fails to name even one inaccuracy. Rather, he simply disagrees with our assessment of how a reasonable listener would interpret those facts.

[6] Member Wilcox and Member Prouty were not a part of the Board when *Local 735-S* issued. They express no view on whether that case was correctly decided.

an employer's threat of discipline in a single meeting can violate Section 8(b)(1)(A).[7]

In sum, the facts here do not sufficiently support the conclusion that a listener in Newboles' position would reasonably believe that Steward Firman-Berry was adopting or delivering a threat at the July 16 meeting. The General Counsel and our colleague cite no precedent, and we are aware of none, where the Board has held that a union agent's mere disapproval of employee protected activity, or like conduct under similar circumstances, constituted a threat. Accordingly, we reverse the judge and hold that the Respondent did not violate Section 8(b)(1)(A).[8]

ORDER

The complaint is dismissed.

Dated, Washington, D.C. February 13, 2023

Gwynne A. Wilcox, Member

David M. Prouty, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER KAPLAN, dissenting.

In their decision, my colleagues reverse the judge's finding that the Respondent Union violated Section 8(b)(1)(A) because the Respondent's agent, union steward, Carrie Firman-Berry, threatened Charging Party Tamara Newboles, a unit employee. They assert that Firman-Berry's statements and actions did not rise to the level of a threat. In my view, however, the judge correctly found that any objective listener in Newboles' position would have believed that Firman-Berry threatened her with unspecified reprisals on July 16, 2019, and I therefore dissent.

I. RELEVANT FACTS

The judge fully recounts the facts of this case. In summary, the Postal Service announced in July 2019 that the Bend, Oregon Detached Carrier Unit (Bend DCU) would begin prioritizing the Sunday delivery of city parcels over rural parcels. The unit employees were extremely upset about this change because carriers on rural routes would have many more parcels to deliver on Mondays without any additional compensation.

On the morning of Monday, July 15, a "ruckus" took place on the sorting floor, with employees loudly and profanely expressing their dissatisfaction about the extra Monday parcels. As this transpired, many employees, including Newboles, left their mail sorting cases to complain to one another. Because Newboles had frequently helped other employees raise their grievances with the Union, several employees approached her to discuss their concerns about the extra Monday parcels. Newboles advised her coworkers to raise their concerns with Firman-Berry[1]; thereafter, multiple employees went to Firman-Berry with their complaints. Firman-Berry, however, did not seem to share the employees' concerns; she testified that she believed that the Bend DCU had "a lot of very loud, outspoken people" with many "opinionated comments flying around."

Later that morning, Supervisor Marsha Pickles called an employee meeting, during which she acknowledged everyone's anger about the new Sunday delivery priority policy but told them that they "just need[ed] to calm down." During the meeting, Firman-Berry announced that she had spoken with Postmaster Nate Leigh, who told her that there had been a miscommunication and that city parcels were not actually supposed to get preference for Sunday delivery. In response, the unit employees at the meeting insisted that the changes were not the result of any miscommunication. Pickles and Firman-Berry promised that they would try to figure out how to get the unit employees paid for the extra parcels, but Firman-Berry confessed that she did not know what she could do about the change in policy itself. When Newboles suggested that there must be something from the collective-bargaining agreement that they could use to challenge the policy, Firman-Berry

[7] The remaining cases cited by the dissent are similarly off the mark, as they involved direct, explicit, and often repeated threats made by the union or a union agent that bear no resemblance to Firman-Berry's conduct. See *Teamsters Local 391*, 357 NLRB 2330, 2330 (2012) (after unit employee filed charge alleging union had breached its duty of fair representation, union agent said, "the fucking scab needs to be stopped"); *Service Employees Local 121RN (Pomona Valley Hospital Medical Center)*, supra at 236 (union flyer falsely implied that all unit employees, including those who were not union members, were required to continue paying dues after expiration of collective-bargaining agreement containing union-security clause and threatened to collect owed amounts or more in a lump sum after new contract was ratified); *Peninsula Shipbuilders Assn. (Newport News Shipbuilding)*, 237 NLRB 1501, 1505–1507 (1978) (union steward threatened on multiple occasions to not represent unit employees and allow the unit employees to be fired after learning those employees had signed a rival union's representation cards).

[8] Because we hold that Steward Firman-Berry did not threaten Newboles, we find it unnecessary to pass on the Respondent's argument that Firman-Berry effectively repudiated any potential threat.

[1] Newboles presumably gave this advice because Firman-Berry was the union steward.

asked Newboles to pass along any relevant information she could find.

That evening after work, Newboles went online and found information about relevant grievance settlements, which she texted to Firman-Berry. Before work the next morning, Newboles sent Firman-Berry another text about how management was potentially falsifying scans to mark packages that were bumped from Sunday to Monday as undeliverable. Firman-Berry never responded to either of these texts.

On July 16 at approximately 9 a.m., Pickles called Newboles into a meeting in the station manager's office with Firman-Berry. On the way into the meeting, Newboles told Firman-Berry, "[A] little heads-up would be nice," to which Firman-Berry replied, "[W]ell, we just decided to do this." At some point in the meeting, Pickles said, "[W]e were told that you've been talking about Union activities and you shouldn't have been." Firman-Berry then complained that Newboles had upset other employees,[2] especially Andrea Aday, with her discussions of the new parcel delivery priority and that Firman-Berry was "annoyed" that Newboles had texted her about the grievance process for curtailed mail and the potentially falsified scans. Newboles asserted that "they were partaking in backdoor deals" and that Firman-Berry "wasn't protecting the employees or doing anything that she should be doing for them." Firman-Berry then "forceful[ly]" reiterated Pickles' earlier admonition that Newboles was "talking about Union activities when [she] shouldn't have been," telling Newboles that she "was butting into matters that didn't involve" her. Newboles asked Pickles if the meeting was finished, to which Pickles replied that the meeting was not over yet and reiterated that Newboles was "not supposed to talk to anybody about the . . . contract or the Union." Firman-Berry again concurred with Pickles, telling Newboles that she needed to stay out of these matters as well. Newboles became upset and warned them that they were about to violate her rights under the Act. Pickles nonetheless warned Newboles that she would be "disciplined" if she did not stay in her mail sorting case. In the face of this threat, Firman-Berry remained silent. Finally, as they were walking away from the meeting, Firman-Berry told Newboles that "management has every right to tell you to take a break and to take your conversations off the floor."[3]

Before work on July 17, Newboles approached Firman-Berry with highlighted copies of information from the Board's website regarding Sections 7 and 8, which noted that employers cannot threaten employees with adverse consequences for engaging in protected activities. Firman-Berry told Newboles that she spoke with Union District Representative Monte Hartshorn and Union Executive Committeeman Patrick Pitts, and they wanted her to tell Newboles that they had been "in no way" telling her what she could or could not say while at work. Newboles pointed to the highlighted paperwork and replied, "You might want to read that then."

II. DISCUSSION

A. The Respondent Unlawfully Threatened Newboles Both During and Directly After the Meeting on July 16

Under Section 8(b)(1)(A) of the Act, it is an unfair labor practice "for a union or its agents to restrain or coerce employees in the exercise of rights protected by the Act." *Teamsters Local 735-S (Bemis Co.)*, 369 NLRB No. 97, slip op. at 2 (2020) (citing *Consolidated Bus Transit, Inc.*, 350 NLRB 1064, 1066 (2007), enfd. per curiam 577 F.3d 467 (2d Cir. 2009)). The Board has recognized that, in analyzing alleged violations of Section 8(b)(1)(A), "a union agent's subjective intent is irrelevant. Rather, the appropriate test is whether the remark can reasonably be interpreted by the employee as a threat." Id.; accord *Longshoremen Local 333*, 267 NLRB 1320, 1321 (1983). In making this determination, the Board considers all of the surrounding circumstances. See *Teamsters Local 735-S (Bemis Co.)*, supra, slip op. at 2 (determining that a threat was made because a "reasonable listener would have construed the totality of [the union representative's] outburst . . . as a suggestion that adverse action could be taken").

Newboles clearly felt that Firman-Berry threatened her on July 16, and I believe the judge correctly concluded that any reasonable person in her position would have interpreted Firman-Berry's words and actions as a threat.[4] Newboles walked into a meeting in which Pickles and Firman-Berry projected a united front. It would appear to any reasonable employee that both of them jointly called the meeting, with Firman-Berry telling Newboles on the way in, "[W]ell, *we* just decided to do this," and with Pickles saying during the meeting that "*we* were told that you've been talking about the Union." (Emphasis added.)

[2] Based on the record, it is clear that Newboles did not "upset" other employees by anything she had said or done. Rather, the facts establish that Newboles had merely suggested to her fellow employees *who were already "upset" by the new priority delivery policy* that they should bring their complaints to Union Steward Firman-Berry.

[3] In making this statement, Firman-Berry was apparently referencing a policy requiring employees to stay at their cases while sorting the mail. The record does not indicate whether that was a written rule or a general policy. What the record does indicate, however, is that management at the Bend DCU did not consistently enforce that policy or in any way discipline employees for violating it prior to threatening Newboles on July 16.

[4] I agree with the judge's analysis only insofar as he applied the objective threat standard. Like my colleagues, I would not reach the judge's duty of fair representation analysis—a legal theory that was neither alleged in the complaint nor later argued by the General Counsel.

And they remained in lockstep throughout the meeting; Firman-Berry reinforced Pickles' message at every opportunity. When Pickles told Newboles that she "was talking about [u]nion activities when [she] shouldn't have been," Firman-Berry repeatedly concurred. To drive their point home, Firman-Berry emphasized that Newboles' actions had "annoyed" her, both by allegedly upsetting coworker Aday—an assertion that was not accurate, as discussed above—and by texting her the information about the grievance process for curtailed mail and the falsified scans. When Newboles asserted that Firman-Berry had been engaging in "backdoor deals" and, therefore, was not protecting employees consistent with her role as union steward,[5] Firman-Berry "forceful[ly]" told Newboles to stop "butting into matters that didn't involve [her]."

In this setting where Pickles and Firman-Berry were united against her, Pickles threatened to "discipline" Newboles if she continued engaging in protected concerted activities. Even though she was the union steward, Firman-Berry stood by silently, despite having every opportunity to challenge or disavow Pickles' threat to discipline Newboles. To the contrary, Firman-Berry informed Newboles after the meeting that "management has every right to tell you to take a break and to take your conversations off the floor." Again, based on the context in which it was made, any reasonable employee would perceive this as a final warning that she was in full agreement with management's position against Newboles. Both Firman-Berry's silence in the face of management's threat of discipline against Newboles and Firman-Berry's affirmative postmeeting statement would lead any reasonable person in Newboles' position to believe that if she continued engaging in protected concerted or union activity, the Union would not only refuse to defend her against the resulting discipline, but would, in effect, support management's decision to discipline her.

That Firman-Berry did not expressly state this threat is of no moment. See *Teamsters Local 391*, 357 NLRB 2330, 2330–2331 (2012) (finding that even in the absence of an "*express* threat," a remark can "be reasonably interpreted by an employee as a threat" (emphasis in original)); *Battle Creek Health System*, 341 NLRB 882, 893–894 (2004) (affirming that the union representatives' "repeated failure to express disapproval of misconduct" by one of its members "sent an implicit yet powerful message to bargaining unit members that the Union condoned and ratified the misconduct").[6] It is sufficient that Firman-Berry's July 16 conduct would lead an objective listener to think that the Union was siding with management to her detriment. Cf. *Peninsula Shipbuilders Assn. (Newport News Shipbuilding)*, 237 NLRB 1501, 1505–1507 (1978) (finding that the union violated Sec. 8(b)(1)(A) by threatening not to help unit employees if they supported a rival union).

B. Neither Legal Precedent nor a Reasonable Interpretation of the Facts Support Finding that a Reasonable Employee Would Not Have Viewed Firman-Berry's Conduct on July 16 as Coercive

I begin by noting that my colleagues go to great lengths to challenge the cases I cite, asserting that they are not relevant because they are factually distinguishable from the instant case. But my colleagues have also failed to cite a case presenting facts that are not distinguishable from those presented here, which is not surprising; it is highly unusual for a union steward to participate in a meeting where both the steward and a manager jointly berate an employee for exercising rights protected by Section 7. Indeed, other than cases stating the same general standards for reviewing allegations under Section 8(b)(1)(A) that I have included in my dissent, my colleagues cite only *one* Board case in support of their position: *Carpenters Local 180 (Condiotti Enterprises, Inc.)*, 328 NLRB 947, 950 (1999). They cite this case in support of their contention that Firman-Berry's statement to Newboles that the Respondent could "require Newboles to take conversations off the workroom floor" was not a violation but rather "an accurate statement of the Bend DCU policy limiting discussion during working time." In *Carpenters*, however, not only are the facts distinguishable, but the Board found that the union violated Section 8(b)(1)(A) because the union representatives' explanation of employees' loss of benefits could be viewed as coercive. In addition, in the only other case cited by the majority in addressing the facts of the case, *NLRB v. Construction & General Laborers' Local 534,*[7] the Board *found* the 8(b)(1)(A) violation in the underlying case, where the union had informed its members that filing charges with the Board could negatively affect employees' ability to obtain unemployment

[5] By this statement during the meeting, Newboles directly indicated to Firman-Berry that she was concerned that Firman-Berry was siding with management rather than with the employees she was supposed to represent. Firman-Berry, however, did not make any effort to disabuse Newboles of that concern. To the contrary, she responded by echoing Pickles' criticism that Newboles should not have been talking to fellow employees about union activities.

[6] It is irrelevant that Firman-Berry had no control over whether Pickles ultimately decided to discipline Newboles. See *Teamsters, Local 542*,), 368 NLRB No. 140, slip op. at 6 (2019) (finding that the union representative made an unlawful threat against an employee even though he "had no power to exercise his threats"). And in any event, Firman-Berry certainly did have control over whether she, as union steward, would defend Newboles if Pickles carried out her threat.

[7] 778 F.2d 284, 291 (6th Cir. 1985), denying enf. in relevant part, 272 NLRB 926 (1984).

benefits. *Laborers Local 534 (Butler County Contractors)*, 272 NLRB 926, 929 (1984). And, as my colleagues are well aware, it is Board precedent that is binding on us, not the Sixth Circuit decision. See, e.g., *Sunbelt Rentals, Inc.*, 372 NLRB No. 24, slip op. at 17 fn. 40 (2022) (recognizing that, under the Board's "longstanding policy of nonacquiescence," adverse appellate court decisions are not binding upon the Board). Finally, it is worth noting that, in the absence of cases finding that similar conduct does not violate the Act, the fact that the Board has found violations in cases involving distinguishable circumstances does not establish that the actions at issue here cannot also violate the Act.

Moving to the substance of my colleagues' position, they agree that Pickles threatened Newboles during the July 16 meeting, but they do not think Firman-Berry also threatened her. Their conclusion in this regard has two fundamental problems. First, it relies on an interpretation of the facts that might generously be described as strained. Second, their analysis in support of dismissing the alleged violation fails to apply the proper legal standard for assessing a threat under Section 8(b)(1)(A) because it does not take into account the context in which Firman-Berry's statements—and her silences—occurred.

As an initial matter, they assert that Firman-Berry's statement to Newboles that "*we* just decided to do this," is "susceptible to multiple reasonable interpretations" and therefore seem to contend that Newboles would not have reasonably believed that Firman-Berry and Pickles jointly decided to call the meeting.[8] With all due respect, any suggestion that a reasonable employee would interpret that statement as anything other than "we jointly called the meeting" is fanciful.

The majority next asserts that, even assuming Firman-Berry meant what she said, that statement alone is not sufficient to find that Firman-Berry joined in every statement Pickles made during the meeting. I do not suggest that it is.[9] Despite indicating at the outset that she and Pickles jointly called the meeting, Firman-Berry had every opportunity to disagree with Pickles throughout the meeting. She did not do so. Or she could have made it clear that Pickles was speaking only for herself. Again, she failed to do so. Instead, she and Pickles repeatedly, in tandem, criticized Newboles on similar grounds, echoing each other in admonishing her for talking about union matters when she shouldn't have been. Any reasonable employee would have believed that Firman-Berry and Pickles agreed with each other's statements at the meeting, including the threat of discipline should Newboles continue to engage in protected activity.[10]

Likewise, my colleagues embrace the Respondent's argument that Firman-Berry's post-meeting statement to Newboles that "management has every right to tell you to take a break and to take your conversations off the floor," was simply a benign expression of her good-faith understanding about what management could do. Perhaps I would find this argument more convincing if Newboles had not just left a meeting where any reasonable employee would have concluded that Firman-Berry was siding with management and if Firman-Berry's "accurate statement of the [Respondent's policy]" was not made in a situation where Newboles had been singled out for blame for coworkers' complaints about terms and conditions of employment. Most importantly, however, my colleagues' suggestion that Newboles would have interpreted Firman-Berry's statement as "an accurate statement of the Bend DCU's policy limiting discussion during working time" is difficult to swallow given that, as the record establishes, the policy had not been strictly enforced in the past.[10] In fact, prior to July 16, Firman-Berry had never been instructed that she should not leave her case to talk to other employees. As my colleagues are well aware, a statement that the Respondent would begin to enforce a rule, not previously enforced regularly, in response to protected

[8] Even if one were to find that Firman-Berry's words and actions were susceptible to multiple reasonable interpretations, Newboles' interpretation did not have to be the only reasonable one for there to be an unlawful threat. See *Service Employees Local 121RN (Ponoma Valley Hospital Medical Center)*, 355 NLRB 234, 235–236 (2010), enfd. 440 Fed.Appx. 524 (9th Cir. 2011)).

[9] And, as mentioned above, even assuming that Newboles could possibly have interpreted Firman-Berry's use of the pronoun "we" as anything other than referring to Firman-Berry and Pickles, any confusion would have been removed when Pickles also used the pronoun "we" during the meeting. Any reasonable employee would conclude that the two individuals were using "we" to refer to the same two people.

[10] My colleagues take the extreme position that Newboles would not reasonably have believed that Firman-Berry and Pickles were presenting a unified front at the meeting because "Pickles did not indicate that her positions or instructions should be construed as also being delivered on behalf of the Union" and "Firman-Berry did not indicate that she was speaking or acting for the Employer." Of course, as noted, it is hard to imagine that an employee would interpret the repeated use of "we" from both Firman-Berry and Pickles as signaling anything other than that the two were speaking jointly for each other at the meeting. But putting that aside, my colleagues' view ignores the obvious fact that an employee can reasonably feel coerced at a meeting even if she misunderstands the message the speaker is attempting to convey. See, e.g., *Smithers Tire*, 308 NLRB 72, 72 (1992) (finding that the speaker's ambiguous statement was reasonably interpreted as a threat without "pars[ing] the remark to ascertain what it really meant" and regardless of the "actual intent of the speaker"). Furthermore, my colleagues do not cite any cases in which the Board has required speakers to make express statements regarding how their words should, or should not, be interpreted in order to find that their statements constituted an unlawful threat under the Act.

[10] Andrea Aday, whose testimony the judge credited, explained that the rule preventing employees from talking while in their cases "ebb[ed] and flow[ed]" from month to month.

concerted activity is a violation under the Act.[11] See, e.g., *Miller Industries Towing Equipment, Inc.*, 342 NLRB 1074, 1074 (2004) (finding that the employer "violated Section 8(a)(1) by threatening that unionization would result in stricter enforcement of rules relating to lunch and break-times").

Two additional mischaracterizations of the July 16 meeting warrant discussion. First, my colleagues describe the meeting as one where both Pickles and Firman-Berry "told Newboles that she should stop leaving her mail sorting case to talk to coworkers," as if the threat at issue was based on a concern that Newboles was not staying on task rather than the *subject* of Newboles' discussions with coworkers. I am not sure how my colleagues reconcile this view with Firman-Berry's express statement that Newboles should stop "butting in" and talking to coworkers about matters that "do not concern her," but I cannot. Even more implausible is my colleagues' description of Firman-Berry's actions at the meeting as "mere disapproval" of Newboles' protected conduct, completely ignoring the fact that Firman-Berry's statements were made in the context of a meeting at which management, seemingly blaming Newboles for the employees' protected concerted activities, threatened to take action against Newboles for discussing terms and conditions of employment with her fellow workers. And at which Firman-Berry—ironically the union *steward*, whom one would expect to take issue with such a threat—failed to raise any concern whatsoever and indeed seemed to support the idea.

Overall, my colleagues' analysis of Firman-Berry's statements and actions on July 16 is piecemeal; they view every one of Firman-Berry's statements and actions in isolation and explain why each individual statement or action is not, on its own, sufficient to find that she adopted Pickles' threat. This method of analysis, however, fails to account for the context and circumstances in which each statement—or silence in response to a statement—was made, considerations which are crucial in interpreting threat allegations under Section 8(b)(1)(A). See id. As explained above, when the statements are properly interpreted in the context in which they were made, it is clear that Newboles reasonably believed Firman-Berry threatened her with unspecified reprisals.[12]

When one considers the events of July 16, it is clear that any reasonable employee would feel threatened by both Pickles and Firman-Berry. Although Firman-Berry did not *expressly* threaten Newboles, as discussed above, the Board does not require such an express threat. In fact, to do so would give a free pass to employers to threaten employees as long as they are careful to couch their words so they are not sufficiently specific.

Any reasonable employee would have understood that Firman-Berry supported the admonition from Pickles that if she did not cease discussing terms and conditions of employment with her coworkers, she would face discipline. And, as an agent of the Union, Firman-Berry was in effect communicating that the Union agreed that discipline would be proper under such circumstances and, presumably, would not support Newboles should that come to pass. My colleagues attempt to paint a different picture of what happened to Newboles by reviewing statements out of context and arguing that statements could be interpreted to mean something other than what the statements actually said. Although their picture sounds lovely, it is not representative of what actually happened.

Based on the foregoing, I would affirm the judge and find that the Respondent violated Section 8(b)(1)(A).

Dated, Washington, D.C. February 13, 2023

Marvin E. Kaplan, Member

NATIONAL LABOR RELATIONS BOARD

[11] But even assuming arguendo that Firman-Berry was genuinely trying to express a good-faith opinion, her subjective intent is irrelevant if a reasonable employee, having just been implicitly threatened by that same individual, would view this as coercive. See *Teamsters Local 735-S*, 369 NLRB No. 97, slip op. at 2 (finding that a "reasonable listener" would not have interpreted the statements in question "as a benign expression of the [union's] intent to fulfill its representative duties," and the speaker's "subjective intent [was] irrelevant").

[12] The implied reprisals could include failing to provide support to Newboles should management choose to disciple her as threatened, supporting management in such a decision, or even bringing any future conduct to the attention of management so that such adverse action might be taken.

On exceptions, the Respondent argues for the very first time that even if Firman-Berry had threatened Newboles, she repudiated that threat on July 17 when she told Newboles that she was "in no way" trying to tell her what she could and could not say at work. Not only is this argument untimely—repudiation is an affirmative defense that the Respondent should have raised in its answer—but it also fails as a matter of law. Instead of directly addressing or acknowledging the illegal threat she made on July 16 like the repudiation standard requires, Firman-Berry denied the substance of that threat. See *MPG Transport Ltd.*, 315 NLRB 489, 489 fn. 1 (1994) (rejecting the Respondent's repudiation argument in part because the attempted repudiation denied the substance of the initial threat), enfd. 91 F.3d 144 (6th Cir. 1996). Firman-Berry also failed to "give assurances" to Newboles that there would be no "future . . . interfere[nce] with the exercise of [her] Section 7 rights." *Passavant Memorial Area Hospital*, 237 NLRB 138, 138–139 (1978).

Jose R. Rojas, Esq., for the General Counsel.
Jean-Marc Favreau, Esq. (Peer, Gan & Gisler LLP), for the Respondent.

DECISION

STATEMENT OF THE CASE

GERALD M. ETCHINGHAM, Administrative Law Judge. This case was tried by videoconference on March 30, 2021. The complaint, based on a timely filed charge on July 18, 2019,[1] and an amended charge filed on September 24, by Tamara Newboles (Charging Party or Newboles)[2], alleges that National Rural Letter Carriers' Association (Union or Respondent) violated Section 8(b)(1)(A) of the National Labor Relations Act, as amended (the Act)[3] on July 16, 2019, when an agent of the Union, Union Steward Carrie Firman-Berry (Steward Firman-Berry), at a meeting in a supervisor's office with employer United States Postal Service (Employer or USPS) in which Steward Firman-Berry was tasked with representing Union Member Newboles, threatened Newboles against engaging in concerted and union activities, including by telling employees they could not discuss workplace concerns with their colleagues because Steward Firman-Berry spoke in support of, and added to, Employer warnings against prohibiting Newboles from voicing the many complaints of her co-workers about poor working conditions and other concerted activities for the purpose of mutual aid or protection.

The Respondent denies these allegations and argues that Steward Firman-Berry's conduct on July 16 was reasonable and made in good-faith to assist the Charging Party.

On the entire record,[4] including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent on May 18, 2021,[5] I make the following

FINDINGS OF FACT

I. JURISDICTION

The parties stipulate, and I find, that the Employer provides postal services for the United States of America. In performance of that function, the Employer operates facilities throughout the United States, including its main post office in downtown Bend, Oregon, and its auxiliary location also in Bend, Oregon, detached carrier unit facility at 836 SE Business Way, (the facility or Bend DCU). Based upon the above, the Board has jurisdiction over the Employer and the Respondent Union under Section 1209 of the Postal Reorganization Act of 1970. Respondent admitted, and I find, that the Respondent Union is a national labor organization within the meaning of Section 2(5) of the Act. Respondent also admits, and I further find that at all material times in 2019, Steward Firman-Berry held the position of union steward and has been an agent of Respondent within the meaning of Section 2(13) of the Act, acting on its behalf. (GC Exh. 1(e) at 1-3; GC Exh. 1(g) at 1–2.)

II. ALLEGED UNFAIR LABOR PRACTICES

This case turns on the disputed testimony from five witnesses about events that occurred over 3 days at the Bend DCU from July 14–16 and conversations between the Charging Party Newboles, Respondent's Steward Firman-Berry, and Bend DCU Rural Carrier Supervisor Marsha Pickles (Supervisor Pickles) who did not testify at the hearing. I find that Steward Firman-Berry was more aligned with Supervisor Pickles than union member Newboles at the July 16 investigatory meeting despite being Newboles' union representative. Steward Firman-Berry and Supervisor Pickles threatened Newboles with discipline if she continued with her prior day's union activity including sending Supervisor Pickles and Steward Firman-Berry language from the Union's contract with Employer. I further find that Steward Firman-Berry acted intentionally and in bad faith and in concert with Supervisor Pickles when they prohibited Newboles from any further union activity or from engaging in more concerted activities for the purpose of mutual aid or protection by raising concerns about poor working conditions.

A. General Background Facts

At the time of hearing, Charging Party Newboles had worked at the Employer for 26 years and 3 months with no discipline on her record before the events at dispute here. (Tr. 35.) From September 20, 2018, through January 15, 2021, Newboles worked as a full-time regular rural carrier (RRC) at the Bend DCU outside and away from the main post office in Bend.[9] (Tr. 35–37.)

RRCs are usually paid on an evaluated route salary or pay compensation structure at the Employer where their route is evaluated as 9 hours and a RRC is paid for 9 hours work whether it takes more or less than 9 hours to actually complete a route for a day. (Tr. 40.)

Generally, a typical day for Newboles was to case or slot her route's mail each morning when she arrived at the Bend DCU and get it ready for delivery.[10] (Tr. 39.) A case is typically a 3-

[1] All dates are in 2019 unless otherwise specified.

[2] Newboles also filed a related charge on September 24, 2019, against the USPS and became Case 19–CA–248772 and fully settled on February 28, 2020.

[3] 29 U.S.C. §§ 151–169.

[4] The transcripts and exhibits in this case generally are accurate. However, I hereby make the following corrections to the trial transcripts: p. 80, l.1: "contractor Union" should be "NRLCA contract or Union;" p. 124, l. 11: "on that Amazon Sunday?" should be "on that Monday, July 15, 2019;" and p. 125, l. 4: "Carrier" should be "Carrie;" p. 139, l. 19: "correctly" should be "correct."

[5] Abbreviations used in this decision are as follows: Transcript citations are denoted by "Tr." with the appropriate page number; citations to the General Counsel and Respondent exhibits are denoted by "GC" and "R.," respectively; "Jt. Exh." for the joint exhibit; "R. Exh." for Respondent's exhibit; "R. Br. For Respondent's closing brief; "GC Exh." for General Counsel's exhibit; and "GC Br." for the General Counsel's closing brief. Although I have included several citations to the record to highlight particular testimony or exhibits, my findings and conclusions are based not solely on the evidence specifically cited, but rather on my review and consideration of the entire record.

[9] Newboles transferred to the Bend main Post Office on January 16, 2021, and was working there at the time of hearing as an RRC.

[10] The Bend DCU is described as one big room with cases, a parcel-throwing area, a mail sorting machine, parcel bins, rest rooms, and break-room. Tr 186–187. Each mail carrier's route(s) is organized at a bookshelf-like case that has individual slots for each local resident's or business' USPS street or Post Office box address on a route and mail that has

sided open bookcase with slots in it that are for each mail address and help carriers organize their route delivery for the day so that the mail is organized to be delivered to each house or business in an organized fashion. (Tr. 51.) In more detail, RRC Andrea Aday (Aday) explains that an RRC does the following: "come in and case our mail up, . . . that would be magazines, letters . . . then we would go get our accountables at the accountable clerk [for] . . . certifieds, registered, express mails . . . then we would go and continue to case our mail . . . [w]e would walk over to get our parcel hamper . . . [w]e would go through our parcels and—and flag them with a card for all the deliveries in the order of our routes . . . [t]hen we would go load up our parcels in our vehicle . . . [c]ome back in . . . [p]ull our mail down . . . [t]ake it out to the car . . . [l]oad our vehicle again with the mail . .. [and g]o out on the route, deliver it, and then pick up what was coming back . . .[b]ring it back to the office . . . [p]ut it in the perspective spots . . . [c]lean up our area . . . [m]ake sure our equipment was put away, and then go home." (Tr. 113.)

Aday worked for the Employer at the Bend DCU for 17 years from approximately 2002–2003 through February 2020 when she resigned. (Tr. 111–112.) Aday became a RRC in 2005 and held that position at the Bend DCU and delivered Rural Route 4 for the last 5 years she worked at the Bend DCU. (Tr. 112, 114.) Aday recalled that she has known Newboles since about 2013 and Newboles had worked as Aday's RRC substitute on Aday's Route 4 when Aday had temporarily gone up to supervisor at the Bend DCU. (Tr. 119.)

Steward Firman-Berry has been an RRC since January 2009 at the Bend DCU and worked for Employer for 16 years by the time of hearing. (Tr. 184.) She was both the local and area steward for the Union since August 2018. (Tr. 185.) Steward Firman-Berry explained that a local steward in 2019, her role was to make sure that the carriers are being taken care of and she opines that if the carriers are feeling as though they have been wronged by management, then she tries to deescalate any situations before a grievance is filed or just talk with the carrier and ask them to let her speak with management and see if she can get them to come to some kind of agreement or fix the situation prior to a grievance being filed. (Tr. 187–188.) Steward Firman-Berry also states that she works with management to make sure that the collective bargaining agreement between the Employer and the Union (CBA) is being followed. If a grievance is filed by an employee, Steward Firman-Berry get involved at Step 1 and she requests a meeting with management and sit down with management and try to negotiate or figure out what the issue is and get that resolved. (Tr. 188.)

In 2019, Aday considered Steward Firman-Berry a "pretty close friend" who she would take cigarette breaks with outside once or twice a day for years while working at the Bend DCU. (Tr. 117–119.) Aday opined that she and Steward Firman-Berry talked about their relationships, marriages, and work and work issues that Aday or others were having at the Bend, DCU. Id.

In July 2019, the Bend DCU had approximately 40–50 employees including city carriers, city carrier assistants, mail handlers, supervisors, clerks, RRC's, rural carrier associates (RCAs), and sometimes associate rural carriers (ARCs).[11] (Tr. 37, 114.) This included approximately 15 city routes and 22 rural routes. (Tr. 185–186.) Newboles explained that everyone at the Bend DCU, except supervisors, were members of the Union including RRCs, RCAs, ARCs. Id.

In July 2019, Supervisor Pickles was the supervisor of rural carriers and customer service and she also supervised the entire Bend DCU carriers including Newboles. (Tr. 40–41, 115.) Supervisor Pickles became the rural carrier supervisor at the Bend DCU sometime between February 2018 to August 2018. (Tr. 115–116.)

Newboles further opined that the Bend DCU had one union steward in July and Steward Firman-Berry held the position for the Union members.[12] (Tr. 38, 185.) Over the years, Newboles would regularly ask Steward Firman-Berry for assistance for payroll issues or for other employees who might be very upset at work due to unfavorable working conditions, being forced to work when doing so allegedly violated the CBA, or if something was going on at the Employer involving management allegedly treating an employee unfairly. (Tr. 43–44; Jt. Exh. 1.)

In June 2019, Bend DCU Employer management for the first time initiated a process which allowed unit member employees to formally request time to speak with a steward during working hours—i.e., request union or steward time. (Tr. 44–45; Tr. 161–164; Tr. 174; Tr. 188.) As part of this process, by June 5, postal management distributed a form for unit employees to use to request union time. (Tr. 102–103; Tr. 162–164; Tr. 188–189; R. Exh. 1.)

Employer has allowed Unit member employees to request time to speak with a steward during working hours—i.e., request "union time" and Newboles formally requested steward or union time at least 10 or more times at the Bend DCU over 5–7 years beginning in 2014. (Tr. 44–45.)

Before July 17, however, Newboles described how Steward Firman-Berry and all the union employees would discuss union or steward time issues informally inside their cases or on the edge when they are working and casing their daily mail and people around them can hear them and discussions occur that way all the time while people are working. (Tr. 102–103.)

Newboles explained her understanding for filing grievances starting with an employee carrier initiating the process by having a discussion about an issue with management. (Tr. 100.) Next, management signs off on the grievance form that an employee presents to them filled out, management keeps a copy of the grievance, and then the employee gives the original grievance form to the union steward. (Tr. 100–101.)

Steward Firman-Berry describes the initial grievance process

accumulated since the last delivery is sorted each morning so that it is organized in such a way that at each stop of a delivery route, there is a specific bundle of letter mail, publications, and/or parcels for that specific residence, apartment, or business stop. These cases are organized by zip code and open up to an aisle at Bend DCU and the various mail carriers sort and organize routes for a day in the morning when they arrive for delivery by foot and/or vehicle later in the day at a particular route(s).

[11] RCAs and ARCs are paid an hourly wage and not salary.

[12] Newboles has known Steward Firman-Berry since she started at the Bend DCU in 2014. Tr. 43.

in her view as union steward as she would speak with management and request some union time and typically, she would ask for a union day so that somebody covers her route, so she could have the day to work on a variety of union grievances, talk to carriers, meet with management, and try to resolve them. (Tr. 189.)

Steward Firman-Berry opined that Newboles is very knowledgeable about the Union's CBA contract with Employer. (Tr. 189–190.) In fact, Steward Firman-Berry says that there have been several times when Steward Firman-Berry could not contact Respondent's district representative, Monte Hartshorn (Hartshorn) and she needed information and she couldn't find it, she would actually ask Newboles to help her find it. Id.

Newboles' schedule in July 2019 was that she would work 40–50 hours per week primarily delivering mail and parcels associated with her Route 28 which she has worked from September 19, 2018, through January 26, 2021. (Tr. 38.)

Newboles and Aday explained that carriers regularly talk to other employees while they work and case mail or load their vehicles about work-related matters and personal non-work-related matters. (Tr. 103, 122–124.) Specifically, Newboles and Aday opined that employees can talk inside their cases or on the edge when they are working on the edge of their cases and people can still hear them and these discussions are had all the time while people are still working. Id.

Prior to July 16, 2019, Newboles was never instructed by Employer management or her union steward that Newboles should not leave her case to talk to other employees or carriers. (Tr. 103–104.)

B. July 15 Complaints About Supervisor Orland's Improper Edict to Prioritize and Deliver City Parcels Over Rural Parcels on Amazon Sundays Leaving Accumulated Rural Parcels for Extra Monday Deliveries at Bend DCU

Aday recalled that the number of Amazon parcels needing delivery increased by a large amount in 2017 or 2018 including pallets and pallets of parcels and around this same time Bend, Oregon RCAs, not RRCs, started delivering Amazon parcels on Sundays. (Tr. 120.) Newboles has delivered Amazon parcels on Sundays when she was an RCA in 2015 until she became an RRC in September 2018. (Tr. 45–46.) Bend city carrier assistants (CCAs), other RCAs and ARCs, also regularly deliver Sunday Amazon parcels. (Tr. 46.) Sunday deliveries were distributed out of the Bend main post office and not the Bend DCU. (Tr. 47, 49.)

Amazon parcels are clearly marked that they are Amazon parcels as distinguished from USPS parcels. (Tr. 46.) Amazon parcels are treated by the Employer as a priority or preference for delivery item as compared to non-Amazon parcels and are usually sorted as soon as they arrive at the post office while other non-Amazon parcels and mail have to wait until the Amazon parcels get delivered or sorted. (Tr. 46–47.)

Newboles recalled working for Supervisor Orland at the Bend Main Post Office for some Amazon Sundays before she became a RRC and worked Sundays and delivered Amazon parcels. (Tr. 49.) On Amazon Sundays, Supervisor Orland oversaw all of the RCAs, ARCs, and city carriers, prepared the day's routes, printed them out and distributed them to the Sunday carriers along with car assignments and gas cards and if anybody had issues or problems, they would contact Orland as the responsible manager. (Tr. 49–50.)

Mail carriers delivering Amazon parcels scan the Amazon parcel at the point of delivery. (Tr. 47.) Newboles explained the purpose of scanning the Amazon parcels: (1) USPS has GPS locators in the scanners which gives the exact location of where the parcel was delivered; (2) it lets the mailer and the USPS know that the parcel was either delivered or attempted delivery. (Tr. 47.)

By late June 2019, Amazon Sundays, as the Amazon deliveries on Sunday became known eventually developed a new problem for RRCs and RCAs on Mondays when the Bend Main Post Office Supervisor Orland ordered that Main Post Office city parcels get delivered as a priority over Bend DCU rural parcels so that as a consequence of this new edict, Bend DCU carriers would frequently have on average 3 more parcel bundles of rural Amazon and USPS parcels to deliver on Mondays than anywhere else in Bend for a period of time through September 15. (Tr. 47–49, 121–122, 142.) These additional parcel bundles would add approximately 2 hours to a Monday route at the Bend DCU with no additional compensation paid to RRCs delivering the extra 3 parcel bundles. (Tr. 49–51.)

This specific edict and the extra rural parcels on Mondays at the Bend DCU was occurring by July where the amount of undelivered Sunday *rural parcels* had increased to a point where all rural parcels could not get delivered on a Sunday. Thus, it became more frequent that a Monday rollover would make for busier and heavier Monday route deliveries for rural carriers at the Bend DCU. (Tr. 47–48, 121–122.) Newboles and Aday explained that Supervisor Orland added city parcels deliveries to Amazon Sunday deliveries which took overtime away from city carriers during the week and added approximately 3 more *rural parcel* bundle deliveries or 2 more hours of unpaid work to rural carriers to their Monday routes which would normally be delivered on Sunday. (Tr. 49–51, 122–124, 142.)

Newboles further explained that curtailment of mail and rolling of mail means the same thing and usually involves a situation from Sunday going into Monday when the Sunday parcels or mail cannot all get delivered on a Sunday so it must curtail at some point of time on a Sunday into Monday and rollover to Monday for delivery. (Tr. 47–48.) Newboles opined that it is usually a temporary mail carrier or substitute mail carrier who does not get all of the Sunday parcels and mails out on time so that the regular RRC delivers the rolled-over mail when they come back after a day or weekend off work. (Tr. 48.)

In the first couple of weeks of July, the Bend DCU rural carriers became upset because they were not receiving more compensation to deliver these curtailed or rolled over parcels/mail from Sundays on what became a fairly frequent basis because Supervisor Orland had made *city parcels* a priority for Sunday deliveries over all *rural parcels* (collectively known as "Supervisor Orland's Sunday Parcel Delivery Edict"). (Tr. 49–51, 122–124, 142.)

Newboles and Aday specifically recalled how Supervisor Orland's Sunday Parcel Delivery Edict with subsequent added rural

parcel deliveries came to a head by Monday, July 15,[13] when many rural carriers at the Bend DCU complained about Supervisor Orland's directive to prioritize and deliver *city parcels* over *rural parcels* on Amazon Sundays. (Tr. 50–51, 122–123.)

Aday recalled that Supervisor Orland's Sunday Parcel Deliver Edict caused carriers to complain about its unfairness at least 5 times over multiple days or 1 or 2 weeks leading up to Monday, July 15, and that Aday spoke to Steward Firman-Berry about it while casing mail nearby, as usual, for voicing workplace concerns. (Tr. 123–125, 137.)

Aday also recalled that Newboles approached her case one time when Aday was casing mail for about 30 seconds to a minute for Newboles to ask Aday whether she had heard about how Supervisor Orland had set up parcel hampers one Sunday which required carriers to deliver city parcels and forced them to also allow rural parcels to accumulate on an Amazon Sunday. (Tr. 126.)

Aday also recalled that another RCA, "Jen," who worked on Route 16 near Aday was complaining to Steward Firman-Berry about Supervisor Orland's Sunday Parcel Delivery Edict one Monday on or before July 15. (Tr. 124–125.)

Aday also recalled that other carriers near her case including Tony, Sandy, and Jen were all complaining about Supervisor Orland's Sunday Parcel Delivery Edict while casing their mail and talking to Steward Firman-Berry about it at the same time. (Tr. 127–128.) Aday also recalled talking about the unfairness of the edict with Steward Firman-Berry during a smoke break at work. Id.

Throughout the Bend DCU on July 15, the carriers informally discussed their dissatisfaction with Supervisor Orland's Sunday Parcel Delivery Edict as a union or steward time issue informally inside their cases or on the edge when they were working and casing their daily mail and people around them could hear them and discussions occur that way all the time while people are working. Specifically, when the RRCs and RCAs came into the Bend DCU, they complained in masse at their morning case sorts about how Supervisor Orland continued to order the delivery of *city parcels* on Amazon Sundays so there were on average 3 additional *rural parcel* bundles for carriers at the Bend DCU to add to their routes the following Monday adding about 2 more unpaid hours to their Monday delivery day. (Tr. 44–45, 50–51, 102–103, 122–123.)

Newboles recalled that RCA Jessica Dickinson (Dickenson) first complained on July 15 for approximately 5 minutes about Supervisor Orland's Sunday Parcel Delivery Edict including the prioritized delivery of city parcels over rural parcels when she was working and sorting her case for Route 31 directly adjacent to Newboles' case and her Route 28. (Tr. 51–52.) Their 2 route cases are a couple of feet apart. (Tr. 51.)

Newboles observed that Dickenson "was upset" because of Supervisor Orland's Sunday Parcel Delivery Edict. (Tr. 52.) Dickenson also told Newboles that she had heard that Supervisor Orland had been instructed by Postmaster Nate Leigh (Postmaster Leigh) of the main post office and the Bend DCU to deliver city parcels only on Sunday July 14 and not rural parcels. (Tr. 52–53.)

Newboles also recalled overhearing complaints from other RRCs around Dickinson and Newboles on July 15 including Kevin Connell (Connell), Laurie Housley (Housley), William Merriman (Merriman), and a couple other RCAs. (Tr. 51–52.) Newboles estimated that Connell, Housley, and Merriman route cases are all with 2 feet of Newboles' route case. (Tr. 52.)

On July 15, Newboles also observed Dickenson speaking very loudly when she was complaining about the Supervisor Orland's Sunday Parcel Delivery Edict and also speaking with her hands to the group. (Tr. 53.) Newboles understood by Dickenson's body language that morning that Dickenson was upset. Dickenson also said to the group outside her route case that "I can't believe they–they told us we had to do this [follow Supervisor Orland's Sunday Parcel Delivery Edict] because now I have more parcels [to deliver] today too." Id.

That same morning, Newboles also saw Dickenson briefly step out of her route case and stopped working for a couple of minutes while complaining about Supervisor Orland's Sunday Parcel Delivery Edict. (Tr. 53.) In response and while still working her route case, Newboles commented that she agreed with Dickenson that carriers should be compensated for delivery on Mondays of extra parcels being rolled over from a Sunday because the undelivered rural parcels from Amazon Sundays are still considered curtailed mail. (Tr. 53–54, 101.)

Next, the other RRCs around Dickenson that morning, Connell, Housley, and Merriman, all expressed their displeasure toward the Supervisor Orland's Sunday Parcel Delivery Edict. (Tr. 54.) Newboles further described Connell also saying that "it was just not right" that he had to deliver a whole bunch more parcels on Monday July 15 and repeated that carriers needed to be compensated more for the extra rural parcels accumulated on Sunday into Monday due to Supervisor Orland's Sunday Parcel Delivery Edict. (Tr. 54.) Newboles also noted that Connell too voiced his displeasure toward the edict and stopped working and stepped outside his route case for a minute or two on the morning of July 15. (Tr. 54–56, 101.)

Later the morning of July 15, Newboles also recalled that Housley voiced her displeasure to the added rural parcels tied to her regular route due to Supervisor Orland's Sunday Parcel Delivery Edict and said in her unfiltered and very blunt and boisterous manner: "are you fucking kidding me, that now we have to do this [extra] work?" (Tr. 55.) Newboles saw that Housley also stopped working and stepped out of her route case to complain for about 2–3 minutes. (Tr. 55–56, 101.)

Also, the morning of July 15, Newboles recalled that Merriman voiced his displeasure to the added rural parcels tied to his regular route due to Supervisor Orland's Sunday Parcel Delivery Edict and said: "we need to do something about this [increased parcels from Supervisor Orland's Sunday Parcel Delivery Edict]—this isn't right." (Tr. 56–57.) Newboles described Merriman as being "a little bit more of a quiet person" who does not usually say much unless you get him really aggravated. (Tr. 56–57.) Newboles also noticed that Merriman stepped out of his route case to comment on July 15. (Tr. 57, 101.) Newboles also

[13] I take administrative notice that July 14 was a Sunday, July 15 a Monday, and July 16 a Tuesday in 2019.

explained that Merriman, Connell, and Housley each have bigger route cases than she does so she does not need to step out of her case to communicate but she thinks that the others do to see everyone else. Id.

Newboles further opined that Dickenson, Connell, Housley, and Merriman all complained about having to deliver extra parcels on Monday, July 15, due to Supervisor Orland's Sunday Parcel Delivery Edict because Housley, Connell, and Merriman each had a very large number of parcels on their routes before adding even more from Supervisor Orland's Sunday Parcel Delivery Edict. (Tr. 56, 99.)

Newboles also recalled that eventually on the morning of July 15, the carriers' fairly loud comments and complaints about Supervisor Orland's Sunday Parcel Delivery Edict eventually spilled over to the opposite side of the Bend DCU Office where zip code 97702 route cases are located including one for RRC Aday. (Tr. 57–58.)

Steward Firman-Berry's route case was also on the opposite side of the office from Newboles and right behind Aday's Route 4 case and Newboles opined that Steward Firman-Berry was aware of the carrier complaints about Supervisor Orland's Sunday Parcel Delivery Edict before the management stand-up meeting called by Supervisor Pickles the morning of July 15. (Tr. 58, 99, 116.)

Steward Firman-Berry also recalled the morning of Monday, July 15 and the "ruckus" that occurred due to Supervisor Orland's Sunday Parcel Delivery Edict as she recalled that many RCAs were complaining that morning and Steward Firman-Berry also opined that the Bend DCU has "a lot of very loud, outspoken people" and once one person gets going and they get somebody else going, it's a ruckus and very loud in there with many "opinionated comments flying around." (Tr. 200–201.) Specifically, Steward Firman-Berry recalled hearing from carrier Sean Carter (Carter) on her side of the office on July 15 who she described as having a loud normal voice that can be heard him over everybody. (Tr. 201.)

Aday was an RRC who cased and delivered Route 4 at Bend DCU on July 15 and it is another route with a higher number of parcels on average even before Supervisor Orland's Sunday Parcel Delivery Edict brought more rural parcels on Monday, July 15. (Tr. 58–60.) Aday had a medical restriction on July 15 so having more parcels to deliver on top of her usual heavy parcel Route 4 was something that made Aday very upset as Newboles observed on July 15. (Tr. 59–60.)

While Newboles was casing her mail, Aday walked by Newboles' case on her way to the restroom or breakroom on July 15, and Newboles stopped her or Aday just stopped as Newboles' case is in direct line with the breakroom and the bathrooms. (Tr. 105–106, 125–126, 145–147.)

For 1–2 minutes, they discussed the carriers' complaints and Newboles told Aday to talk to Steward Firman-Berry about the carriers' being unhappy about Supervisor Orland's Sunday Parcel Delivery Edict. (Tr. 59–60, 101.) Aday also was not happy about the edict and responded by telling Newboles that she would talk to Steward Firman-Berry about the edict and its increased parcel delivery impact on her Route 4 especially given her ongoing medical restrictions. (Tr. 60.)

Prior to July 15, Newboles recalled that other rural carriers at the Bend DCU had complained about the Supervisor Orland's Sunday Parcel Delivery Edict 2–3 times. (Tr. 64–65.) Newboles estimates that approximately 20 minutes went by from when a number of carriers complained about the Supervisor Orland's Sunday Parcel Delivery Edict before Supervisor Pickles drew everyone's attention at the Bend DCU and called a management stand-up meeting. (Tr. 98.)

Later the morning of July 15, approximately 20 minutes from when the Supervisor Pickles went around the office and gathered all regular rural carriers and RCAs and called the Bend DCU together to conduct a 10-minute management stand-up meeting outside on the breezeway by the vehicles. (Tr. 61–62, 129–130.) In addition to Supervisor Pickles, Steward Firman-Berry, Newboles, and all the other RRCs and RCAs attended the stand-up meeting. Id.

All of the RRCs and RCAs were upset at the start of the meeting on July 15 due to Supervisor Orland's edict. They were upset because it was not just a little workload that they were being asked to take care of but approximately 3 additional parcel bundles and 2 more unpaid hours which Newboles opines is "a pretty good extra workload." (Tr. 63.)

Supervisor Pickles started the management stand-up meeting by saying that she knew everybody was upset about Supervisor Orland's Sunday Parcel Delivery Edict and what was going on with the large increase in Monday morning rural parcels. Supervisor Pickles next told all the carriers that "we just need to calm down." (Tr. 63.)

Steward Firman-Berry had to speak over everybody at this management stand-up meeting so she was a little bit louder because she had to try to be heard over everybody else and she said that she had talked to Postmaster Leigh and he told her that there was a miscommunication with Supervisor Orland and that the city parcels were not supposed to get preference for Sunday deliveries. (Tr. 62–63.)

Next, in response, all of the RCAs that were there, including Deb Nichols (Nichols) and Dickinson, spoke up and said that is not what they were told, it was not a miscommunication because Supervisor Orland had given them specific directives to take the *city parcels* with priority over the *rural parcels* and that Postmaster Leigh had given Supervisor Orland that directive. (Tr. 62.)

Supervisor Pickles mentioned the general dissatisfaction with Supervisor Orland's Sunday Parcel Delivery Edict and acknowledged how all the rural carriers were trying to figure how they were going to get paid for all these extra parcels and Supervisor Pickles instructed the carriers to start keeping track of the extra delivered parcels on their Form 4240—their timesheets. (Tr. 129.) Steward Firman-Berry also spoke up and instructed the carriers to keep track of their scans. (Tr. 129–130, 196–198.) Both Supervisor Pickles and Steward Firman-Berry said they would figure out how to get the RRCs paid for the extra parcels. (Tr. 130, 198.)

In addition, Steward Firman-Berry said that there was nothing that she knew that she could do about the edict. (Tr. 62.)

Next, Newboles spoke up and said:

> well, there has to be some kind of past precedent in the [CBA] contract. There has to be something somewhere that we can go

> back on and get this taken care of.

(Tr. 62.)

Next, in response, Steward Firman-Berry tells Newboles at this management stand-up meeting, that if Newboles "could find any information that was relevant to the situation, to send it to her." (Tr. 62.) Newboles responds saying "okay" she would. Id.

With that interchange, all the carriers calmed down a little bit according to Newboles and the management stand-up meeting ended, and everyone went back to work. (Tr. 62–63.)

Newboles also opined that the carriers' complaints on July 15 differed from complaints made prior to July 15 because carriers were given specific directives to take the *city parcels* out and deliver them because the city carriers are paid hourly so if they would have delivered the extra city parcels on Monday, they would still be compensated for them whereas the rural carriers, since they are on evaluated pay, it was assumed that they would absorb the extra work involving the added 3 rural bundle parcels with no additional compensation. (Tr. 65.)

Newboles finished casing and loaded her vehicle, delivered her mail, returned to the facility and put up her equipment, put mis-sorted mail where it belonged, and signed out of her trip sheet and left the Bend DCU on July 15. (Tr. 64.)

Later, on July 15, when she returned home after work, Newboles researched a website called ruralinfo.net and the National Rural Letter Carriers Association (NRLCA) about the past precedent she mentioned at the management stand-up meeting earlier that day.[14] (Tr. 65–66.)

Later, that evening, Newboles also found on the ruralinfo.org website "a couple of steps for grievance settlements on the issue of full-day relief, which pertains to curtailed mail..." and "in those, it also states the contractual provisions that pertain to the same subject." (Tr. 67, 71.) Newboles explained that those are the Step 4 settlements on the curtailment of mail regarding a full-day relief. (Tr. 71.) Newboles shared this newly found information by sending it by text to Steward Firman-Berry later that night.[15] (Tr. 67; GC Exh. 2.)

Specifically, Newboles' text to Steward Firman-Berry on July 15 says:

> So I found Carriers full relief day in the [NRLCA] contract, step 4 settlement r-3, f-71 and f-71.70 that all address mail that should have been delivered but was curtailed for the regular carrier

(Tr. 65–70; GC Exh. 2 at 1.)

The next morning on July 16 at 7:10 a.m. before Newboles left her house for work, she texted another message to Steward Firman-Berry. (Tr. 71–72; GC Exh. 2.) This text provides:

> One more thing, if the scans were business closed no access then management ordered all those scans to be falsified which is trouble for management

(Tr. 72–73; GC Exh. 2 at 1–2.)

Newboles explains that she sent this text on July 16 so that Steward Firman-Berry would be aware that Newboles believed the scans that Steward Firman-Berry referenced the day before at the management stand-up meeting were being falsified and that it could actually result in trouble for management. (Tr. 72.) Newboles claims that she thought management was falsely scanning because Newboles had written down the barcode tracking information on some of the parcels that were left over from the July 14 Sunday delivery and Newboles apparently went to the Employer tracking website and tracked those packages. Id.

Newboles said that Steward Firman-Berry never responded to either the July 15 evening text or the July 16 morning text from Newboles. (Tr. 74.)

C. The July 16 Investigatory Meeting Between Charging Party Newboles, Respondent Steward Firman-Berry and Employer Supervisor Pickles

On July 16, when Newboles arrived at work at 7:45 a.m., she went to her case and started casing mail to take out for delivery until 9 a.m. (Tr. 74.) Newboles would leave her case only to get any mail that was not already at her case. (Tr. 75.)

At about 9 a.m. on July 16, Supervisor Pickles called Newboles into an investigatory interview in the station manager's office and Steward Firman-Berry came up behind the two as they walked to the office and also attended. (Tr. 42–43, 74–76, 191.) When Newboles first saw Steward Firman-Berry, she mentioned to her that "a little head's-up would be nice" and Steward Firman-Berry replied: "well, we [Supervisor Pickles and Steward Firman-Berry] just decided to do this." (Tr. 75.)

Steward Firman-Berry describes the same events leading to her pulling Newboles into an investigatory meeting on July 16 with Supervisor Pickles as Steward Firman-Berry was casing her mail, and Supervisor Pickles approached her case and Supervisor Pickles said that she needed to have a meeting with Newboles and she wanted Steward Firman-Berry to be there and Steward Firman-Berry next asked Supervisor Pickles what the meeting was about and "she said something along the lines of talking to people on the workroom floor or disrupting carriers." (Tr. 190.)

Steward Firman-Berry's attempt to explain why she attended the meeting is not believable as Steward Firman-Berry was annoyed by Newboles' conduct on July 15. Normally, Steward Firman-Berry would be expected to be present at this type of investigatory meeting as the Union's local and area steward to represent Newboles. Instead, Steward Firman-Berry puts forth unpersuasive and unbelievable reasons as her attendance was mandatory because her supervisor asked her and because of Newboles' alleged bad relationship with management, Steward Firman-Berry thought she should attend to help Newboles deescalate the situation. (Tr. 191.)

The meeting lasted between 10–15 minutes. (Tr. 76.) Newboles recalled that the meeting started out with Supervisor Pickles saying that they were told that Newboles had been talking about union activities when she should not have been. Next,

[14] Ruralinfo.net is a website dedicated to rural carriers outside of the Union where you can go and find—especially people that aren't union members—where you can go and find information that pertains to your job and they are very inclusive on the information that they provide according to Newboles. (Tr. 66.)

[15] Prior to July 15, Newboles and Steward Firman-Berry had communicated on their cellphones and/or texted each other at least 30 times using the same cellphones and cellphone/text numbers identified as "Carrie work" on Newboles' cellphone that Newboles sent Steward Firman-Berry the evening text, GC Exh. 2 on July 15. Tr. 68–70; GC Exh. 2.

according to Newboles, Steward Firm-Berry said that Newboles was butting into matters that did not involve Newboles. Id.

At this point, Newboles interrupted and warned them that they were about to violate Newboles' rights under the Act at sections 7 and 8 and that they needed to tread lightly. (Tr. 76.) Newboles next said this somewhat forcefully because she claims she "knew exactly where it was going." Id.

Next, either Supervisor Pickles or Steward Firman-Berry told Newboles that "they were told that [Newboles] had been talking to Andrea Aday and that Andrea had got [siq.] upset and then that got Carrie [Steward Firman-Berry] upset." (Tr. 76–78.)

Steward Firman-Berry describes how the meeting started as Supervisor Pickles telling Newboles that "there's been complaints about her [Newboles] disrupting other carriers—." (Tr. 191–192.)

I find Newboles' version of what transpired at the beginning of the July 16 investigatory meeting more believable given the significant number of complaints and overall office disruption on July 15 tied specifically to other carriers and not to anything that Newboles said or did but, instead, was directly in response to Supervisor Orland's Sunday Parcel Delivery Edict. I further find that Newboles did not disrupt the Bend DCU on July 15 and only provided encouragement to her co-workers and a suggestion to Steward Firman-Berry that the Union CBA contains some provisions relevant to improving work conditions to either rid themselves of Supervisor's Sunday Parcel Delivery Edict or get properly compensated for the extra rural parcels on Mondays.

Newboles replied to them that she had only instructed Aday to consult with Steward Firman-Berry particularly because of the Supervisor Orland Sunday Parcel Delivery Edict and the bad effect it had on Bend DCU carriers including Aday who was working under medical restrictions and could ill-afford to add 3 more parcel bundle deliveries to her Route 4. (Tr. 59–60, 76–78.)

Steward Firman-Berry responds saying that Aday approached her "like, four times." (Tr. 76.) Newboles next responds to Supervisor Pickles and Steward Firman-Berry reminding them that Supervisor Pickles previously told Newboles to stay away from matters that do not involve Newboles so in this instance, Newboles referred Aday to Steward Firman-Berry because Aday was more effected by the edict than most carriers at the Bend DCU due to her medical restrictions. (Tr. 76–77.)

Steward Firman-Berry was sitting in a chair and using her hands, and saying something to the effect of "if it doesn't involve you [Newboles], you need to just butt out of it" in a forceful manner when scolding Newboles and apparently trying to get her point across. Steward Firman-Berry repeated Supervisor Pickles' previous instruction to Newboles and more bluntly told Newboles at this meeting to "stop butting into stuff" that did not directly involve Newboles. (Tr. 77.)

Newboles had specific recollection that at one point Supervisor Pickles said: "we were told that you've been talking about Union [activity or] activities and you shouldn't have been." (Tr. 77.)

Steward Firman-Berry then mentions the texts that Newboles sent her on July 15 and earlier that morning saying that Newboles "kept sending her information" and Newboles reminded Steward Firman-Berry that she asked Newboles to get this information at the management stand-up meeting on July 15 and Newboles simply sent the requested information to Steward Firman-Berry who replies: "well, you just kept sending me more" appearing to Newboles to be annoyed because Newboles had sent Steward Firman-Berry the information she requested. (Tr. 78.)

Newboles also recalled discussing with Supervisor Pickles and Steward Firman-Berry and telling them that they were partaking in backdoor deals and doing things they should not be doing like not delivering rural parcels on time on Sundays and "not protecting—and Carrie [Steward Firman-Berry] wasn't protecting the employees or doing anything that she should be doing for them." (Tr. 78.)

Steward Firman-Berry again repeated her mantra to Newboles that if matters do not affect Newboles, she should butt out and mentioned RCA Dickenson. Newboles defended herself saying that RCA Dickenson being upset at work did affect Newboles because Dickenson is the carrier in the case right next to Newboles and if she is physically and emotionally upset about her work conditions, this also affects Newboles. (Tr. 78–79.)

Steward Firman-Berry's next response to Newboles was to say that these were matters that were being taken care of and that Newboles did not know about. Newboles replied that Newboles knew more than they thought she did. (Tr. 79.)

Newboles asked Supervisor Pickles if they were finished with their meeting and she replied that the meeting was not over yet and Supervisor Pickles told Newboles that Newboles needed to stay in her case and "you're not supposed to talk to anybody about the [NRLCA] contract or the Union . . . [j]ust pretty much stay in your case and be quiet." (Tr. 79–80.)

Next, Steward Firman-Berry, for probably the third time in their meeting, told Newboles that she needed to stay out of matters as well. Id.

Newboles became very upset with this meeting conversation and next responded that she was not going to stop talking about the union activities because she does know what her rights are and, basically, Supervisor Pickles and Steward Firman-Berry were not going to silence Newboles. (Tr. 80.) Newboles opined that her voice became elevated to a level just below a yell but definitely upset by Supervisor Pickles' and Union Steward's repeated instructions to Newboles to stay quiet and not help her coworkers by reporting improper work conditions and colleague's being upset and bothered by Employer's management and the Union steward's handling of the edict and other terms and conditions of employment. (Tr. 80.)

Supervisor Pickles verbally warned Newboles that if she did not stay in her case and stay quiet about co-worker problems or ongoing conditions at the Bend DCU, she would be disciplined. (Tr. 80–81, 104.) Steward Firman-Berry stood-by in silence and seemingly in support of Supervisor Pickles when Supervisor Pickles issued her verbal warning to Newboles. (Tr. 81, 104.) This was the only time in her postal service career that Newboles had been instructed to not leave her case to talk to other employees. (Tr. 104.)

Steward Firman-Berry recalled the remainder of the July 16 investigatory meeting as follows:

> So [Supervisor Pickles] told [Newboles] that she's had complaints about [Newboles] disrupting other carriers and that [Supervisor Pickles] needs to ask [Newboles] to—any discussions

> that [Newboles is] going to have needs to be off the workroom floor on a break, either in the breakroom or outside. [Newboles] then got defensive and a little upset and said that [Newboles] had every right to speak about the Union and [Newboles is] going to continue to do so. And at that point, [Steward Firman-Berry] had told [Newboles], management has every right to tell [Newboles] to take a break and to take your conversations off the floor, onto—you know, into the breakroom or outside. And that's when [Newboles] got really upset and said that [Supervisor Pickles and Steward Firman-Berry] are going against [Newboles'] rights. And so [Supervisor Pickles and Newboles] started to have a little bit of a bickering back and forth. [Steward Firman-Berry] kind of . . . gave [Supervisor Pickles] a look, like, enough is enough. And [Newboles] got really upset and said—you know, and [Supervisor Pickles] said, [Supervisor Pickles] just want[s] to reiterate that this is—you know, [Newboles] need[s] to take all conversations off the workroom floor. And [Newboles] said, okay, that's fine, [Newboles is] done, and walked out. (Tr. 192–193.)

I find that much of Steward Firman-Berry's general recollection of Newboles' statements at the July 16 investigatory meeting are closely related or equivalent to Newboles' own version of what occurred at the July 16 meeting without the same specific detail provided by Newboles. Once again, I further find Newboles' version of what transpired at the entire July 16 investigatory meeting is much more believable given the significant number of complaints and overall office disruption on July 15 tied specifically not to anything Newboles said or did but, instead, was directly in response to Supervisor Orland's Sunday Parcel Delivery Edict.[16]

I also find Newboles' version of facts more believable given her measured and precise demeaner at hearing when compared to Steward Firman-Berry's almost dismissive attitude toward Newboles and her admitted annoyance with Newboles. I further find that more than once at this July 16 meeting, Steward Firman-Berry acted more aligned with Supervisor Pickles than representative for Newboles and that Steward Firman-Berry forcefully demanded that Newboles butt-out of union matters17 and fellow carriers' complaints about poor working conditions at Employer and shut up and for Newboles to stay in her route case and be silent. Also, I find that by telling Newboles to take her discussions with co-workers off the workroom floor on a break, either in the breakroom or outside, Supervisor Pickles and Steward Firman-Berry were directly prohibiting Newboles from all carriers' regular practice of talking about the union during working time while casing her mail or walking to her vehicle with a coworker even though other employees are allowed to discuss union activities and nonwork-related subjects at these same working times.

I also reject Steward Firman-Berry's inconsistent testimony that it was not her intention to prevent Newboles from speaking about Union-related issues at work during working time despite specific instructions to Newboles on July 16 from Supervisor Pickles and joined in by Steward Firman-Berry that Newboles should not talk to her coworkers about the Union CBA contract or the Union and she must take all of her discussions with coworkers off the work floor and have them only on breaks or lunches or other nonworking time and Newboles must just stay in her case during working time and be quiet. (Tr. 199–200.)

Steward Firman-Berry also recalled walking Newboles out of the July 16 investigatory meeting and caught up with her and Steward Firman-Berry admits that she "was just trying to get [Newboles] to kind of relax and tell [Newboles], you know, I know you're upset, but take a breath. . . . You know, management has every right to ask you to take your conversations off the workroom floor. . . ." (Tr. 194.)

At no time during the meeting on July 16, did Supervisor Pickles or Steward Firman-Berry mention to Newboles that she was spending too much time talking at her case - talking to other employees. (Tr. 81.) Also, neither of them mentioned the topic of using union time or steward time during this meeting. (Tr. 81–82.) Newboles knows this to be especially true because she convincingly opined in a confident manner that "if those particular phrases, union time or steward time, would have been mentioned, I would not have hesitated, especially as mad as I was, to put them in their place on the situation and how it didn't pertain to what we were talking about." Id.

Immediately after Newboles left the meeting with Supervisor Pickles and Steward Firman-Berry, she encountered her colleague Connell on the way back to her case as Connell's case is adjacent to her case and he saw that she was upset and inquired what had happened to make her upset when Newboles responded:

> [T]hey [Supervisor Pickles and Steward Firman-Berry] just told me that I can't talk about the Union or anything else to anybody, and I'm supposed to be in my case and be quiet.

(Tr. 82,104.)

[16] I further find that the July 16 investigatory meeting discussion did not relate to any Employer rule or policy that employee complaints about poor working conditions must be made through a formal process of requesting union or steward time. This is Respondent's "red herring" argument. Instead, Supervisor Pickles and Steward Firman-Berry try to paint Newboles as the scapegoat for the Bend DCU's ruckus on July 15 when in actuality Newboles complained very little and did not disrupt at work though she tried to communicate her coworkers' complaints about the poor working conditions resulting from Supervisor Orland's Sunday Parcel Delivery Edict. Instead of listening to Newboles' recommendations at the July 15 stand-up meeting and her subsequent texts to Steward Firman-Berry, Supervisor Pickles and Steward Firman-Berry tried to silence Newboles by calling the July 16 investigatory meeting and warning her to stop talking about union contract matters and poor work conditions for no valid reason. I further find these statements attributed to Steward Firman-Beery to be intentional, arbitrary, and invidious and made in bad faith.

[17] Steward Firman-Berry denied using the phrase "butt-out." Tr. 194. Whether the phrase used by Steward Firman-Berry on July 16 to Newboles is exact or not is not significant as I further find that Aday convincingly opined that Steward Firman-Berry was annoyed by Newboles supporting her co-carriers especially in response to the materially unfair Supervisor Orland Sunday Parcel Delivery Edict. Once again, Steward Firman-Berry sided with management in this case when she was Newboles' Union representative and the complaints leading up to the July 16 meeting were primarily about poor work conditions caused by Supervisor Orland and not any disruption by Newboles.

Connell next responds telling Newboles that what Supervisor Pickles and Steward Firman-Berry told her was not right and that "They can't do that." (Tr. 82.)

Newboles responds to Connell "I know, but they still did it." (Tr. 82.)

Later, when they were outside loading their vehicles with mail for delivery that day next to each other in adjacent spots, Newboles also told Aday about her earlier meeting with Supervisor Pickles and Steward Firman-Berry. (Tr. 83–84.) Aday's response, like Connell's, was that by Supervisor Pickles and Steward Firman-Berry warned Newboles not talk to anyone about an upset coworker's problems at work such as Aday "wasn't right." (Tr. 83–84.) Aday further mentioned that all Newboles was doing on July 15–16 with her communicating co-workers' complaints about Supervisor Orland's Sunday Parcel Delivery Edict to Steward Firman-Berry and others was that Newboles was "just trying to make people aware of what they were entitled to" and trying to shut Newboles up was something Steward Firman-Berry and Supervisor Pickles "can't do . . ." and "[t]hat it [the verbal warning] wasn't right." Id.

Aday's specific recollection of her encountering Newboles outside in the parking lot at the Bend DCU to load their vehicles and discuss the meeting earlier meeting Newboles was called into with Supervisor Pickles and Steward Firman-Berry, was that Newboles told Aday that Supervisor Pickles and Steward Firman-Berry had called Newboles into the office and told her that she could not talk about Union stuff on the workroom floor. (Tr. 132–133.) Aday further recalled that Newboles told her that that was breaking the law. Id. Newboles further mentioned to Aday that Newboles did not have the article number with her, but she was going to print it out and show Supervisor Pickles and Steward Firman-Berry the exact wording, saying that Supervisor Pickles and Steward Firman-Berry cannot instruct carrier employees to not talk about Union stuff on the workroom floor. Id.

According to Aday, she responded to Newboles and said: "well, good. You know, I'm glad, you know, that you know the rules, and I want to see the paper too. . . ." (Tr. 133.)

The next day, Aday approached Steward Firman-Berry outside during a smoke break to inquire about Steward Firman-Berry's recent meeting with Newboles and Supervisor Pickles and Aday says "so I heard you [Steward Firman-Berry]—I heard you pulled Tammy [Newboles]—you and Marsha [Pickles] pulled Tammy into the office and told her she couldn't talk about Union stuff on the workroom floor." (Tr. 135-136.) Aday says that Steward Firman-Berry admits that she replied, "yeah, we did." Tr. 136.)

Furthermore, Aday confirms that Steward Firman-Berry "acknowledged it [telling Newboles that she could not talk about Union stuff on the workroom floor]." Id. Aday also mentions that Steward Firman-Berry told her: "that Tammy's [Newboles is] annoying, pretty much annoying." (Tr. 78, 136.)

Aday opined that Newboles has been a rural carrier for almost 30 years and that Newboles knows the rules and she knows what is allowed at work and what is not allowed. (Tr. 136.)

Later, on July 16 after she left work, Newboles had gone on the internet and printed off some paperwork from the NLRB.gov website regarding Sections 7 and 8 of the Act and Newboles printed 2 copies of them off. (Tr. 85; GC Exh. 3.)

The next morning on July 17, a few minutes before she clocked in at work, Newboles approached Steward Firman-Berry at the edge of her case at Bend DCU, and handed Steward Firman-Berry one set of the printed Sections 7 and 8 of the Act. (Tr. 85–91, 102, 195; GC Exh. 3.) Newboles specifically highlighted portions of this 2-page printed document as follows:

> You may not:
>
> Threaten employees with adverse consequences, such as closing the workplace, loss of benefits, or more onerous working conditions, if they support a union, engage in union activity, or select a union to represent them.
>
> Threaten employees with adverse consequences if they engage in protected, concerted activity. . .
>
> Prohibit employees from talking about the union during working time, if you permit them to talk about other non-work-related subjects. . . .

Id.

Newboles handed Steward Firman-Berry these highlighted provisions and as she turns to place it on her counter, Steward Firman-Berry tells Newboles "that Monte [Hartshorn] and Patrick [Pitts[18]] wanted [Steward Firman-Berry] to tell [Newboles] that in no way were they [Supervisor Pickles and Steward Firman-Berry] telling [Newboles] what [Newboles] could or could not say while [Newboles] was at work." (Tr. 89, 102, 195.)

Steward Firman-Berry's recollection of the same conversation is Steward Firman-Berry told Newboles that soon after the July 16 investigatory meeting with management, Steward Firman-Berry had spoken with Hartshorn, who had spoken with Pitts, and they wanted Steward Firman-Berry to reiterate to Newboles that we were in no way, shape, or form as part of the Union trying to tell her what she can and cannot say. (Tr. 195.)

What Steward Firman-Berry, Hartshorn, and Pitts conveniently omit from their cursory recap of the July 16 investigatory meeting, is that Supervisor Pickles' and Steward Firman-Berry's specific joint instructions to Newboles were that both were threatening Newboles with adverse consequences if she continued to discuss coworkers' complaints about poor working conditions or other protected concerted activities during working time while casing mail or walking to load her vehicle like all carriers, including Steward Firman-Berry, had frequently done prior to July 16 freely discussing union matters and nonwork-related subjects. Consequently, I find that Supervisor Pickles and Steward Firman-Berry specifically told Newboles that she could not discuss union matters or concerted activities like poor working conditions with coworkers while at work.

In response, Newboles looked at Steward Firman-Berry and Newboles, pointed to the paper on the counter, and tells Steward Firman-Berry that: "you might want to read that then [the

[18] Newboles identified Patrick Pitts (Pitts) as Hartshorn's immediate boss. Pitts is the executive committeeman for the Bend, Oregon area with the Respondent but Pitts, like Hartshorn, did not work at the Bend DCU in July 2019 when Newboles was working there nor has Newboles ever spoken with Pitts about the conversation she had with Supervisor Pickles and Steward Firman-Berry on July 16, or Newboles' conversation with Steward Firman-Berry on July 17. Tr. 90–91.

highlighted paper with Sections 7 & 8(a)(1) of the Act referenced …." (Tr. 89; GC Exh. 3.) And Newboles next turned around, and she walked away from Steward Firman-Berry. Id.

Newboles recalled that she told her colleagues Connell and Aday at separate times on July 17 about her delivering to Steward Firman-Berry the highlighted portions of her printed out Sections 7 & 8(a)(1) of the Act. (Tr. 93–94; GC Exh. 3.) Newboles told Aday outside loading their vehicles on July 17 that she had printed out, from the National Labor Relations Board, the sections in the Act that pertained to what they had told me I couldn't do. (Tr. 94.) Aday responded to Newboles saying simply "well, good for you." Id.

Newboles explained her understanding of how to formally request union steward time as being covered in one stand-up meeting presented by Employer management *after* July 17, 2019. (Tr. 106–107.) Newboles recalled attending this one stand-up meeting conducted by the station manager Scott McCullough (Supervisor McCollough) where the subject of the meeting was requesting Union or steward time (the McCollough Stand-up Meeting). (Tr. 106–107.) Newboles said the McCollough Stand-up Meeting was attended by all the RRCs and RCAs working that day. She also recalls that Steward Firman-Berry was present at this stand-up and remarked that she does not get paid unless requesting steward time is officially requested. (Tr. 107.)

After the McCollough Stand-up Meeting, Newboles recalled that if anybody needed to speak with the union steward about anything that they were to get the form from management and fill it out to request steward time. (Tr. 102–103; R Exh. 1.) Newboles describes the process as management has a form that you fill out and give back to them requesting time to speak with the union steward, just about whatever issue is involved and then management takes it, sets aside a time with the union steward, and then gives it back to you, notifying you of that time. (Tr. 45; R. Exh. 1.)

After July 17, Steward Firman-Berry similarly describes the new process for requesting union or steward time that new Station Manager Amy Swift (Supervisor Swift) had just started as the acting station manager with Supervisor McCollough that they were trying to put into place so that carriers didn't just come to Steward Firman-Berry's case with their work issues because a lot of times Steward Firman-Berry was trying to work and an hour or so out of her day would be taken from her so Supervisor Swift had just started trying to put into place a more official or form-involved paperwork asking for union time. (Tr. 188; R. Exh. 1.) Steward Firman-Berry further explained that the goal that she and management were trying to achieve with this new process after July 17 would result where there would be a set time where Steward Firman-Berry would conduct union work so that she could meet with union employees get their issues handled. Id.

Aday was not clear when exactly management at the Bend DCU called the McCollough Stand-up Meeting and carriers were instructed not to talk about union stuff on the workroom floor and carriers were instructed to not talk but to do their job. (Tr. 148.) Aday further opined that carriers were not supposed to talk and at other times they were allowed to talk on the workroom floor. Id. In response to being asked exactly when this particular McCollough Stand-up Meeting occurred, Aday described that this management rule "would ebb and flow . . . [o]ne month, it would be okay to talk. . . [o]ne month, it would be not okay to talk. Id. Management wanted performance numbers. Id. Management wanted the carriers to get the job done quickly and get things delivered and get back. Id. Management also wanted carriers' hours to go down so if the carriers just did not talk to anybody and they all put their earphones in, then maybe they would get an extra 30 minutes out of all the carriers but Aday was unsure if this was true. Id.

Not until on or about September 15, approximately 3 months later, did there become a local agreement between the Employer USPS and the Bend DCU rural carriers that they would actually receive more compensation for delivery of extra parcels that accumulate from Supervisor Orland's Sunday Parcel Delivery Edict for extra parcel bundles on Mondays at the Bend DCU that had begun in June. (Tr. 49.)

In November 2019, Supervisor Pickles disciplined Newboles for the first time in her long career at the Employer by suspending her for 14 days. (Tr. 41–42.) RRC Aday has never been disciplined for talking on the workroom floor at the Bend DCU. (Tr. 148.)

In early 2020, Supervisor Pickles reported to the entire Bend DCU that she had resigned from Employer and said that she was moving the Florida. (Tr. 41.) In August 2019, Supervisor Swift became the station manager at the Bend DCU. (Tr. 115, 154.)

In November or December 2020, Steward Firman-Berry resigned as union steward. (Tr. 43.)

Legal Analysis

I. CREDIBILITY

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed.Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, 335 NLRB at 622. Such is the case here.

Newboles and Aday were far more believable and credible witnesses than Respondent's three witnesses, none of which included Supervisor Pickles who was not shown to be unavailable.[19] As stated above, Newboles appeared to honestly respond

[19] The Board has held that "when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge." *International Automated Machines*, 285 NLRB 1122, 1123 (1987), enfd. 861 F.2d (6th Cir. 1988). Consequently, without credible testimony from Supervisor Pickles or evidence to the contrary, I find that Newboles' version that both Supervisor Pickles and Steward Firman-Berry acted as an aligned team with their

to questions posed to her and testified in a very measured and precise manner which instilled confidence that she was telling the truth as she easily recalled some specific events and conversations but not all given the 2-year delay from the events and the hearing. She had a soft-spoken personality and thoughtful demeaner and her coworkers and supervisors agree was most competent at her work as a RRC and generally in July 2019 as part of her long career as an RRC. Some of Newboles fellow carriers were described, in part, as loud, boisterous, and outwardly upset at times and Newboles was more of a quiet and thoughtful presence.

I further reject Steward Firman-Berry's self-serving statements at hearing that she had no intent to prevent Newboles from speaking about Union-related matters during working time by any of her statements at the July 16 investigatory meeting or afterwards. (Tr. 199–200.) I also reject Steward Firman-Berry's denial that neither she nor Supervisor Pickles told Newboles at the July 16 investigatory meeting that Newboles was not allowed to "speak Union" or talk about the Union during working hours or that Newboles must only discuss union matters or other protected concerted activities while on her break or in the lunchroom despite other employees being allowed to talk about non-work-related matters during working time. (Tr. 203.)

In addition, I do not believe Steward Firman-Berry when she claims that she did not see the relevance of the NLRB paperwork from Newboles on July 17. (Tr. 196; GC Exh. 3.) The language of the NLRB paperwork contains prohibitions of threats and instructions similar to Supervisor Pickles' and Steward Firman-Berry's warnings to Newboles on July 16.

I further find that Respondent's district representative, Hartshorn[20] testified in a cursory manner and his testimony is rejected as unreliable since he was not present at the July 16 investigatory meeting between Supervisor Pickles, Steward Firman-Berry, and Newboles. Moreover, his testimony is hearsay as to what Steward Firman-Berry told him about the meeting and what was specifically said by Supervisor Pickles and Steward Firman-Berry to Newboles and it is not the full picture of the threatening warnings from Supervisor Pickles and Steward Firman-Berry to Newboles. Hartshorn said that on July 16, Steward Firman-Berry gave him a call and told Hartshorn that she had been asked to come into the office by Bend DCU management for the purpose of management having a discussion with Newboles and Steward Firman-Berry further told Hartshorn that Bend DCU management "was instructing [Ms.] Newboles that if she wanted to have discussions with other employees during—you know, on the floor, that they actually needed to be lunch breaks and taken off the floor to either the breakroom or outside." (Tr. 176–177, 195.)

This omits a material portion of the threats by Supervisor Pickles and Steward Firman-Berry to Newboles on July 16. I also reject the rest of Hartshorn's testimony as hearsay, inaccurate, and intentionally misleading. In addition, the threats are discriminatory as Newboles, like all Bend DCU carriers, spoke to coworkers about union matters and other concerted activities while casing her mail and working as Employer regularly allows these types of discussions while at work whether they involve union matters or other concerted activities or non-work matters while at work and not on break or lunch.

Aday's testimony was believable as she testified in a confident manner and was forthright about matters she had forgotten over time. Aday's testimony was aligned with Newboles' testimony and Steward Firman-Berry only commented that she thought Aday talked too much at work but had no substantive reasons to impeach Aday or disregard her as a reliable witness.

II. Respondent Violated Section 8(b)(1)(A) of the Act by Threatening Newboles with Discipline on July 16, 2019

The General Counsel contends that Steward Firman-Berry with Supervisor Pickles unlawfully threatened Newboles with discipline at the July 16 meeting if Newboles continued with her prior day's union activities including sending Supervisor Pickles and Steward Firman-Berry specific language from the union contract or from engaging in more concerted activities for the purposes of mutual aid or protection by raising concerns about poor working conditions. The Respondent denies these allegations and avers that Employer's rule and instructions to Newboles governing discussions among employees on work time are lawful and Steward Firman-Berry acted in good faith when communicating Employer's rule to Newboles on July 16 and her conduct does not constitute a violation of Section 8(b)(1)(A).

Section 8(b)(1)(A) states that "it shall be an unfair labor practice for a labor organization or its agents . . . to restrain or coerce . . . employees in the exercise of their rights guaranteed in Section 7 of the Act." 29 U.S.C. § 158(b)(1)(A). Section 8(b)(1)(A) creates a duty, when a union is acting as an exclusive bargaining representative, to fairly represent all employees in the bargaining unit and to refrain from any action against an employee based upon considerations or classifications that are arbitrary, discriminatory, or in bad faith. *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); see also *Operating Engineers Local 181 (Maxim Crane Works)*, 365 NLRB No. 6 (2017). Something more than mere negligence, poor judgment or ineptitude in grievance handling is needed to establish a breach of a union's duty of fair representation. *American Transit Union, Local 1498,* 360 NLRB 777 (2014).

The Supreme Court has long held that a union is afforded wide

specific threats to Newboles is much more believable as to what occurred and what was said at the July 16 meeting between Supervisor Pickles, Newboles, and Steward Firman-Berry.

[20] Hartshorn testified at hearing that in July 2019, he was Respondent's Portland, Oregon district representative since May 10, 2016. (Tr. 170–171.) Hartshorn admits that he was not stationed at the Bend DCU in July 2019 and he relies on both union stewards and rural carriers at the Bend DCU to tell him about any issues at the Bend DCU. Tr. 179. Hartshorn further explained that a district representative is responsible for the steward system in the postal district—districts that they are assigned to. The district representative is responsible for training of the stewards underneath him or her. The district representative may be doing investigative interviews, may be doing grievances, or in larger districts may be doing more administrative work. Hartshorn also estimated that he received, on average, 3 or 4 phone calls a week from Steward Firman-Berry when she was a steward at the Bend DCU concerning happenings, concerns, or complaints or issues from RRCs, RCAs or any carriers at the Bend DCU. (Tr. 179–181.) Hartshorn further testified that in 2019 he was also the Respondent's labor relations specialist who gets involved when a grievance does not settle at the local level and reaches step 2 which is at the district level. (Tr. 181–182.)

latitude in carrying out its representational duties. See *United Steelworkers of America, AFL–CIO–CLC v. Rawson*, 495 U.S. 362, 374 (1990), citing *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953); *Vaca v. Sipes*, above at 191; see also *Operating Engineers Local 181*, above. As the Court stated in *Airline Pilots Assn. v. O'Neill*, 499 U.S. 65, 78 (1991), regarding a union's negotiated strike settlement, an examination of a union's performance "must be highly deferential, recognizing the wide latitude that negotiators need for the effective performance of their bargaining responsibilities."

A Union agent commits an unfair labor practice when he or she threatens an employee with loss of employment. See *Carpenters Local 180*, 328 NLRB 947, 948 (1999) (finding a violation when a union agent told a unit member that he was "going to lose all of [his employment] benefits" for leaving the union but staying with the company). The fact "[t]hat the actual loss or diminution of benefits results from actions taken by third parties [like an employer] is not an exculpatory factor under these circumstances." Id. at 950. See also *Bay Cities Metal Trade Council*, 306 NLRB 983, 985–986 (1992), enfd. 15 F.3d 1099 (9th Cir. 1993) (same). The test for whether this threat is an unfair labor practice is whether the threat would reasonably coerce the unit member into preventing him or her from exercising their protected activities. *Longshoremen ILA Local 333 (ITO Corp.)*, 267 NLRB 1320, 1321 (1983).

This duty of fair representation also requires a union to represent the interests of *all* bargaining-unit members, and to do so "without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). To be found arbitrary, the union's behavior must have been "so far outside a "wide range of reasonableness' that it is wholly 'irrational' or 'arbitrary."' *Airline Pilots Assn.*, above at 66, citing *Ford Motor Co.*, above at 338. Where a union representative departs from the normal practice due to their personal animosity toward a union member amounts to arbitrary behavior that violates Section 8(b)(1)(A). *Steelworkers (Inter-Royal Corp.)*, 223 NLRB 1184 (1976).

The fact that Supervisor Pickles' and Steward Firman-Berry's immediate reaction to its employees' valid concerns on July 15 about the inequities of Supervisor Orland's Sunday Parcel Delivery Edict and Newboles providing the information from the union contract as requested by Steward Firman-Berry was to first call an investigatory meeting with Newboles early on July 16 and then threaten and prohibit Newboles as messenger for other union member employees suggests invidious intent and bad faith conduct. Newboles acted no differently on July 15 and 16 than any of her coworkers and was not disruptive but merely provided measured statements and actions to management and Steward Firman-Berry. I find that to single Newboles out and make her a scapegoat for providing the requested union contract language and communicating her co-workers' dissatisfaction with the inequitable Supervisor Orland's Sunday Parcel Edict is discriminatory given Newboles' clean and untouched record of having no discipline over more than 25 years of service for Employer.

Here Steward Firman-Berry, Hartshorn, and Pitts conveniently omit from their cursory recap of the July 16 investigatory meeting, that Supervisor Pickles' and Steward Firman-Berry's specific joint instructions to Newboles were threatening Newboles with adverse consequences and discipline if she continued to engage in union activities such as providing specific union contract language as requested by Steward Firman-Berry on July 15 or continuing to engage in more concerted activities for the purposes of mutual aid or protection by raising concerns about poor working conditions.

For these reasons, a reasonable listener would have construed the totality of Steward Firman-Berry's July 16 instructions to Newboles not as a benign expression of the Respondent's representative's intent to fulfill her representative duties, but rather as a statement that adverse action could be taken against Newboles for continuing to voice union activities and her co-workers' complaints with others about Supervisor Orland's inequitable Sunday Parcel Delivery Edict and providing union contract information to Supervisor Pickles and Steward Firman-Berry as requested by them. Moreover, I further find that Steward Firman-Berry departed from the normal practice of union representation of Newboles due to her obvious and repeated personal animosity toward Newboles on July 16 and this also amounts to intentional, arbitrary, and bad faith behavior that violates Section 8(b)(1)(A).

The knock-out punch to Respondent's formal request for union time defense was the failure of Supervisor Pickles, the ultimate decisionmaker on July 16, to testify in its support. Respondent did not demonstrate that Supervisor Pickles, who worked at the very location from which the main witnesses here, Newboles and Steward Firman-Berry testified, was somehow unavailable. Where a respondent fails, as part of its defense, to present the decisionmaker was a witness, the Board will not hesitate to draw an adverse inference. *Southern New England Telephone Co.*, 356 NLRB 338 (2011) (failure to call decisionmaker warrants adverse inference); *Dorn's Transportation Co.,* 168 NLRB 457, 460 (1967) (failure of the decisionmaker to testify "is damaging beyond repair"), enfd. 405 F.2d 706, 713 (2d Cir. 1969); see also *Flexsteel Industries*, 316 NLRB 745, 758 (1995) (failure to examine a favorable witness regarding factual issue upon which that witness would likely have knowledge gives rise to the "strongest possible adverse inference" regarding such fact), affd. 83 F.3d 419 (5th Cir. 1996). The failure to produce Supervisor Pickles' testimony by Respondent leads to an adverse inference that she would fully support Newboles version of the facts.

Respondent tries to shift the focus away from what was actually said on July 16 at the investigatory meeting of Newboles' union activities and Newboles providing Steward Firman-Berry the union contract language she requested from Newboles on July 15 to some made-up noncompliance with a formal request for union or steward time that did not occur and had nothing to do with the actual events of July 15 or 16. Again, Respondent Union knew or had reason to know by the investigatory meeting on July 16, 2019, that Newboles' union activities included her providing Steward Firman-Berry with Union contract language in support of Newboles' and other union members' complaints about Supervisor Orland's Sunday Parcel Edict. That Steward Firman-Berry sided with Supervisor Pickles and abandoned Newboles as her representative due to her own personal animosity toward Newboles and her ongoing union activities including Newboles engaging in more concerted activities for the purposes

of mutual aid or protection under these circumstances was at best gross negligence, but I find was in fact intentional conduct made in an arbitrary and discriminatory manner in bad faith on the part of Steward Firman-Berry and thus a violation of Section 8(b)(1)(A).

I further find that because Steward Firman-Berry would side with Supervisor Pickles and not Newboles at the July 16 investigatory meeting and threaten Newboles with discipline if she continued her concerted activities for the purposes of mutual aid or protection so departed from the normal practice of a union steward due to Steward Firman-Berry's personal animosity towards Newboles amounts to arbitrary behavior that violates Section 8(b)(1)(A).

CONCLUSIONS OF LAW

1. The United States Postal Service is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

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

3. Steward Carrie Firman-Berry is an agent of the Respondent within the meaning of Section 2(13) of the Act.

4. Respondent violated Section 8(b)(1)(A) of the Act by threatening Tamara Newboles with discipline if she continued her Union activities and concerted activities for the purposes of mutual aid or protection.

REMEDY

The appropriate remedy for the 8(b)(1)(A) violation that I have found is an Order requiring the Respondent to cease and desist from such conduct and take certain affirmative actions consistent with the policies and purposes of the Act.

Specifically, to the extent that the Respondent has not already done so, the Respondent shall cease and desist from threatening or in any manner retaliating against Newboles or any other employee for talking about the union or poor working conditions during working time since the Employer permits employees to talk about other nonwork-related subjects during working time.

The Respondent shall also cease and desist, in any other manner, from interfering with, restraining, or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

The Respondent shall post an appropriate informational notice, as described in the attached Appendix. This notice shall be posted at the Respondent's business office or wherever the notices to members or registrants of the hall are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its members and registrants by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current members and registrants and former members or registrants of the Union. When the notice is issued to the Respondent, it shall sign it or otherwise notify Region 19 of the Board what action it will take with respect to this decision.

Accordingly, based on the foregoing findings of fact and conclusions of law, and on the entire record, I issue the following recommended[21]

ORDER

Respondent, National Rural Letter Carriers Association, its officers, agents, successors, and assigns, shall:

1. Cease and desist from

(a) Threatening employees with discipline because they engaged in union and protected concerted activities for the purposes of mutual aid or protection..

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

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

(a) Within 14 days after service by the Region, post at Employer's breakrooms at the Bend DCU and its main post office copies of the attached notice marked" Appendix"[22] as well as the appropriate Notice to Employee and Members. 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 thereafter in conspicuous places, including all places where notices to members 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 internet site, and/or other electronic means, if the Respondent customarily communicates with its members by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice for posting by United States Postal Service, at its two facilities in Bend, Oregon located at 836 SE Business Way, Bend, Oregon (the "Bend DCU") and at the Bend, Oregon main post office in downtown Bend, Oregon, if the Employer is willing, at all places where notices to employees are customarily posted.

(c) Notify the Regional Director for Region 19, in writing, within 14 days from the date of the Administrative Law Judge's Order, what steps have been taken to comply with the order.

Dated: Washington, D.C., December 10, 2021

APPENDIX

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

[21] 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.

[22] If this Order is enforced by a judgement of the 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 NationalLabor Relations Board."

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

In recognition of these rights, we hereby notify employees that:

WE WILL NOT threaten or coerce you, as part of a meeting with management where we are tasked with representing you, to "butt out" and not to engage in concerted conversations with coworkers about working conditions and/or contract terms.

WE WILL NOT imply, as part of a meeting with management where we are tasked with representing you, that you should stop encouraging coworkers to bring their workplace concerns to union stewards.

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

NATIONAL RURAL LETTER CARRIERS, ASSOCIATION, (USPS)

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/19-CB-245120 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.