



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 26

1407 Union Avenue, Suite 800

Memphis, Tn 38104-3627

901-722-2725

August 3, 1995

Dan Cassidy, President
APWU, CAAL
P.O. Box 15684 GMF
Little Rock, AR 72231

Re United States Postal Service
Case 26-CA-16792(P)

Dear Mr. Cassidy:

The above-captioned case, charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

As a result of the investigation, it does not appear that further proceedings on the 8(a)(1) and (3) charge are warranted, inasmuch as the evidence is insufficient to establish that the employer unlawfully required union officials to give depositions regarding threats allegedly made by an employee while filing a grievance.

This case arises out of the USPS Processing and Distribution Center on McCain Boulevard in North Little Rock, Arkansas. The clerk craft employees at that location are represented by Central Arkansas Area Local-American Postal Workers Union, the charging party herein.

In December of 1994, employee Arthur Banks filed a grievance through the union to protest an absenteeism warning. While he was meeting with union officials on that grievance, Banks is alleged to have made threats that he was "going to have to hurt somebody" and that he was "close to shooting someone." Local union officials later reported these alleged threats to USPS management. Based on that information, Banks was terminated. He thereafter filed a charge against USPS through the Merit Systems Protection Board. In connection with that case, USPS Labor Relations Specialist Shirley A. McIntosh notified several union

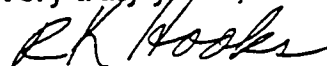
officials that they were to give depositions. The union thereafter filed a Motion with MSPB, seeking to quash those Notices of Depositions. The Motion was denied by Administrative Judge Marie A. Malouf in an Order dated May 3, 1995. Local union officials contend that they agreed to give depositions only after they were threatened with unspecified discipline by a Postal Inspector. In connection with the filing of the charge herein, the union sought to enjoin USPS from using the depositions or otherwise compelling them to testify in the MSPB proceeding concerning Banks termination.

The Union argues that this matter is controlled by the Board's decision in *Cook Paint and Varnish Co.*, 258 NLRB 1230 (1981). In that case it was concluded that the employer unlawfully threatened a union steward with discipline for refusing to submit to a pre-arbitration interview or make available notes taken while processing the grievance that was to be arbitrated. While acknowledging that stewards do not enjoy absolute immunity from employer interrogation, in *Cook* the Board noted that the steward had not been engaged in any misconduct, nor was he an eyewitness to the events underlying the grievance. Rather, the steward's involvement was solely the result of his having acted as a union representative in the processing of the grievance. In contrast to *Cook*, the union officials in this case were eyewitnesses to the alleged threats by Banks, for which he was terminated. Further, the employer did not seek to depose the union officials regarding the substance of their meetings with Banks concerning his absenteeism discipline grievance. Rather, the employer was seeking confirmation of the alleged threats, which were irrelevant to the grievance being discussed.

Based on the foregoing it does not appear that the USPS, by its demands that local union officials submit to depositions concerning the threats that were allegedly made by Banks at the time that he filed a grievance in December of 1994, sought to intrude on Section 7 rights of those individuals. Accordingly, I am refusing to issue a complaint in this matter.

Pursuant to the National Labor Relations Act, Series 8, as amended, you may obtain a review of this action according to the attached instructions.

Very truly yours,



Ronald K. Hooks
Acting Regional Director

Encis.

Certified Mail No. P008459947

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UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
PROCEDURES FOR FILING AN APPEAL

Pursuant to the National Labor Relations Board Rules and Regulations you may obtain a review of this action by FILING AN APPEAL WITH THE GENERAL COUNSEL of the National Labor Relations Board, 1099 14th Street, N. W., Washington, D.C. 20570, AND A COPY WITH ME. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C. by the close of business on August 17, 1995. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. A copy of any such request for extension of time should be submitted to me.

If you file an appeal, please complete the notice forms enclosed with the attached letter and send one copy of the form to each of the other parties whose names and addresses are listed. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal to me within the time stated above.