Central KY Branch 361, National Association of Letter Carriers, AFL-CIO (NALC) (United States Postal Service) *and* Leslie Denise Wells. Case 09–CB–202214

October 16, 2018

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

On May 4, 2018, Administrative Law Judge Andrew S. Gollin issued the attached decision. The General Counsel filed exceptions with supporting argument. The Respondent filed an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.[1]

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,[2] and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. October 16, 2018

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] Chairman Ring is recused and did not participate in the consideration of this case.

[2] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Member McFerran notes in particular that the judge did not credit the Charging Party's claim that the Union agreed to file grievances on her behalf. Given that finding, Member McFerran finds it unnecessary to pass on the judge's alternative reasoning that even if the Union had agreed to the Charging Party's requests, the Union still would not have breached its duty of fair representation.

Julius Emetu, Esq., for the General Counsel.
Joshua J. Ellison and *Hiram M. Arnaud, Esqs*., for the Union.

DECISION

INTRODUCTION[1]

ANDREW S. GOLLIN, ADMINISTRATIVE LAW JUDGE. This case was tried on March 27–28, 2018, in Cincinnati, Ohio, based on allegations that the Central KY Branch 361, National Association of Letter Carriers, AFL–CIO (NALC) (Union) breached its duty of fair representation when it failed to file and process grievances against the United States Postal Service (USPS) on behalf of carrier Leslie Denise Wells. On March 1, 2017,[2] Wells provided the USPS with medical documentation temporarily restricting her to standing/walking for no more than four hours a day because of pain and swelling in her left ankle. The USPS verbally agreed to reduce Wells' workload/schedule based on her restrictions. Over the next 3 months, Wells was regularly unable to complete her reduced workload within the time allotted, and she contends that management, at times, required her to work beyond her restrictions. On May 27, the USPS removed Wells from her reduced workload/schedule. Wells asked the Union to file grievances over these matters, but none were filed.

The General Counsel alleges the Union violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) when it failed to file and process grievances between March 2 and May 27 over Wells being required to work beyond her medical restrictions, and on around May 27 over Wells' removal from her reduced workload/schedule. The Union denies the allegations, contending Wells never requested that it file grievances over these matters, and, even if she had, its failure to do so was not arbitrary, discriminatory, or in bad faith. For the reasons stated below, I recommend that the complaint be dismissed in its entirety.

STATEMENT OF THE CASE

On about July 11, Wells filed an unfair labor practice charge against the Union in the above-referenced case. On November 21, following an investigation, the Regional Director for Region 9 of the National Labor Relations Board (the Board), on behalf of the General Counsel, issued a complaint alleging the violations at issue. On December 1, the Union filed its answer denying the alleged violations.

At the hearing, all parties were afforded the right to call, examine, and cross-examine witnesses, present any relevant doc-

[1] Abbreviations in the decision are as follows: "Tr." for transcript; "Jt. Exh." for Joint Exhibits; "GC Exh." for General Counsel's Exhibit; "R. Exh." for Union's Exhibit; "GC Br." for General Counsel's Brief; and "U. Br." for the Union's Brief.

[2] All dates hereinafter refer to 2017, unless otherwise stated.

umentary evidence, and argue their respective legal positions orally. The Union and the General Counsel filed post-hearing briefs, which I have carefully considered. Accordingly, based upon the entire record, including the posthearing briefs and my observations of the credibility of the witnesses, I make the following findings of fact, conclusions of law, and recommendations:

FINDINGS OF FACT[3]

Jurisdiction and Labor Organization Status

The USPS provides postal services for the United States and operates various facilities throughout the United States, including in Lexington, Kentucky. The Union admits, and I find, that the Board has jurisdiction over the USPS and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209. The Union admits, and I find, that it is a labor organization within the m of Section 2(5) of the Act.

Collective-Bargaining Relationship

The parties have stipulated that the National Association of Letter Carriers (NALC) is the exclusive collective-bargaining representative of employees of the USPS in the letter carrier craft, as described in Article 1, Union Recognition, of the collective-bargaining agreement between the USPS and the NALC (the National Agreement). At all relevant times, the NALC delegated to the Union certain collective-bargaining duties with respect to employees in the letter carrier craft who were stationed in and around Lexington, Kentucky, including but not limited to the negotiation of certain local agreements where permitted by the National Agreement, and the filing, processing, and settlement of grievances through Step A of the grievance process set forth in the National Agreement.[4] (Jt. Exh. 3.) With respect to the collective-bargaining agreement currently in force between NALC, the Union, and the USPS, the NALC's position is that a document that was published and ratified by its membership in August 2017 embodies the terms and conditions of employment for NALC-represented employees. The USPS, however, has refused to accept that document as the basis for publishing a collective-bargaining agreement, which has been the practice between the parties, and there is currently a dispute between the NALC and the USPS over this matter. (Jt. Exh. 3.)

The Union and the USPS also agreed to a Memorandum of Understanding supplementing the National Agreement. (Jt. Exh. 2.)

UNFAIR LABOR PRACTICES

Background

The USPS operates five post offices in the Lexington, Kentucky area: Brentwood, Beaumont, Bluegrass, Gardenside, and Liberty Road. The carriers working at these facilities are covered by the National Agreement and the local Memorandum of Understanding. Kenneth Becraft is the Union's President. David Blackburn is the Union's Vice President. Mark Whitcomb is the Union Steward for the Gardenside facility.

Leslie Denise Wells began working for the USPS in around November 2015. She began at the Beaumont facility. For the first month or so, she carried parcels out of a rented minivan. After the holiday season was over, she began carrying mail. Her supervisor and the station manager approached Union President Kenneth Becraft, who also worked at the Beaumont facility, about Wells, stating that she was having issues catching on to the job. Prior to the end of her 90-day probationary period, the USPS was prepared to remove Wells, but the USPS, the NALC, and the Union negotiated an agreement to keep her employed. (Tr. 478–479.)

Thereafter, Wells transferred to the Brentwood facility, and later to the Liberty Road facility. In March 2016, Wells fractured her left ankle while performing her route. Wells eventually returned to work full time. Union President Becraft assisted Wells with issues she was having getting paid following her injury, and later when she was injured following a dog bite. At around this time, Wells reported to Becraft that she was being harassed and discriminated against by a supervisor at the Liberty Road facility. (R. Exh. 4.) Union Vice President Blackburn (then a union steward), who worked at the Liberty Road facility, filed a grievance on Wells' behalf, and the matter was eventually resolved through the Equal Employment Opportunity (EEO) process. (Tr. 392.)

In February 2017, Wells bid on and was awarded a route out of the Gardenside facility. The route (Route 421) Wells bid on was a walking route, requiring her to walk approximately 8-11 miles a day. She initially worked an 8-hour shift, starting at 8 a.m.

Carriers' start and end times, hours of work, as well as their activities throughout the day, are documented by their coded clock rings. The carriers clock in at the beginning of their shift

[3] Although I have included record citations to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific citations, but rather on my review and consideration of the entire record. The findings of fact are a compilation of credible testimony and other evidence, as well as logical inferences drawn therefrom. To the extent testimony contradicts with the findings herein, such testimony has been discredited, either as having been in conflict with credited testimony or other evidence, or because it was in and of itself incredible and unworthy of belief.

[4] Art. 15, Sec. 2 of the National Agreement sets forth the Grievance Procedure. The procedure begins with the Informal Step A. At Informal Step A, any employee who feels aggrieved must discuss the grievance with their immediate supervisor within fourteen (14) days of the date on which the employee or the union first learned or may reasonably have been expected to have learned of its cause. The employee may be accompanied and represented by the steward or a union representative. The supervisor, steward, and union representative shall have authority to resolve the grievance in whole or in part at the Informal Step A. If no resolution is reached, the Union shall be entitled to file a written appeal to Formal Step A within seven (7) days of the date of the discussion. Such appeal shall be made by completing the Informal Step A portion of the Joint Step A Grievance Form and filing it with the installation head or designee within 14 days of the date on which the union or the employee first learned or may reasonably have been expected to have learned of its cause. The parties will then meet and discuss and possibly resolve the grievance. If there is no resolution, the grievance continues through the grievance-arbitration procedure. (Jt. Exh. 1.)

(BT), and they then attend a brief informational meeting. Following the meeting, carriers "case" their routes, which involves them sorting the mail on their route by street address. Carriers can case standing or, if requested, sitting. (Tr. 481–482.) Carriers then pull and load their mail and parcels into their delivery vehicle. Before leaving the facility, carriers clock over into a different status (MV), which signifies they are moving to out on the street. They drive to their route location and perform their deliveries. After completing their route, they drive back to the facility and clock back in as having returned from the street (MV). They unload their vehicle, return their equipment, and then clock out at the end of their shift (ET).

Medical Restrictions and Reduced Workload/Schedule

In late February 2017, Wells began experiencing pain and swelling in her previously injured left ankle. She made a doctor's appointment with her orthopedic surgeon (Dr. Steven Lawrence). On February 27, prior to going to her appointment, Wells met with USPS's Finance Manager, James Carl, at the Greenside facility. Wells told Carl about her ankle injury and explained that she was going to her doctor that day. Wells informed Carl she might not be able to perform her full route because of her ankle and asked about possibly switching routes, switching crafts, or moving into a management position. Carl informed Wells there were waiting lists for those management positions, and that she was doing well and should continue to give her current route a chance.

Later that day, Wells had her appointment with Dr. Lawrence. Dr. Lawrence concluded the X-rays of Wells' ankle appeared normal but recommended that she have an MRI done and then follow-up with him after. In the meantime, he issued Wells written restrictions limiting her to "4 hours of standing and walking per shift." (GC Exh. 2.) Wells testified her understanding from her conversation with Dr. Lawrence was that her restrictions were "supposed to have been 2 hours of standing and two hours of walking." (Tr. 120–121.)

On March 1, Wells gave a copy of her temporary restrictions to USPS Customer Service Supervisor Amanda Boblitt who supervised Wells at the Gardenside facility. Boblitt informed Wells there was no eight-hour light duty available, but she offered to reduce Wells' schedule to 4 hours a day based on her restrictions. Wells agreed. Wells later gave a copy of her medical restrictions to Union Steward Mark Whitcomb, who worked as carrier at the Gardenside facility, and informed him about her conversation with Boblitt.[5]

Each day the USPS "measures" the mail and sets up each route so it can be completed during an eight-hour shift. If on a particular day a carrier has less or more than eight hours of mail to deliver, the carrier is to inform management so that mail can be reassigned. After March 1, under her reduced workload/schedule, Wells remained responsible for casing her entire eight-hour route. However, after she finished casing, Wells was responsible for estimating and dividing up her route based on how long it would take to perform. She was assigned to perform 4 hours of the route, and the remaining four hours was divided up and reassigned to one or more other carriers who had volunteered to work overtime. These other carriers would deliver their own routes, plus a portion of Wells' route. (Tr. 349–352.) These reassignments were based on estimates, and there were instances in which it took carriers longer than estimated to complete their assigned portions.

Allegations Wells Required to Work Beyond Her Restrictions and Requests for Grievance

Almost immediately, Wells had issues delivering her allotted portion within four hours. When it appeared that Wells would not complete her allotted portion in time, she would call or text Boblitt. According to Wells, Boblitt would either tell her to complete her deliveries or to bring the portion she could not deliver back to the facility. Wells believed that whenever her timesheets reflect that she worked beyond 12 p.m., Boblitt had instructed her either at the start of the day or during her shift to work beyond her restrictions, because, according to Wells, she was only permitted to work 4 hours a day.[6] (Tr. 194–195; 204–206.)

Union Steward Mark Whitcomb's work station was about four feet from Wells' work station. The two spoke regularly and he was one of the carriers who volunteered to work overtime to help perform a portion of Wells' route. Wells testified that beginning on around March 2 through May 27 she regularly informed Whitcomb that she was being forced to work beyond her restrictions and asked him to file a grievance.[7] Ac-

[5] On March 1, when Wells spoke with Boblitt and Whitcomb, she presented her supposed restrictions as her actual restrictions. As for her conversation with Boblitt, Wells testified that: "I told her that I had restrictions. It was a total of four hours. It was two hours of standing and two hours of walking, a total of four hours, and she said okay, and we both agreed to it." (Tr. 298–299.) As for Whitcomb, Wells testified: "I just let him know that I had two hours of standing and 2 hours of walking. And I was informing him of these restrictions, and I told him that it was a verbal agreement between [Boblitt] and I that my workload would be reduced, and he said okay. (Tr. 124–125.) Boblitt testified she agreed to assign Wells "total work hours, walking, standing, four hours." (Tr. 347–348.) Whitcomb was not questioned about this conversation with Wells.

[6] Wells' timesheets from mid-March through late May are in the record. (GC Exh. 3.) Wells clocked in by 8 a.m. Following the morning meeting, she cased her route. Wells confirmed there were times when she sat to case her mail. (Tr. 255–256.) Wells typically completed casing and clocked over to begin performing her route between 8:45 a.m. and 9:45 a.m. She testified it took 10–15 minutes to drive to her route location, and the same amount of time to drive back to the facility. She typically returned to the facility between 11:45 a.m. and 12:45 p.m., and she clocked out for the day within 15 minutes after returning. In total, Wells usually worked between 4 and 5 hours a day, and she typically spent 4 hours or less out on the street performing her route. (GC Exh. 3.) There is a dispute as to whether Wells' restrictions limited her to working a total of 4 hours a day or limited her to standing/walking for a total of 4 hours a day. As discussed below, this dispute is immaterial to whether the Union's alleged failure to file and process grievances breached its duty of fair representation.

[7] The only agents of the Union alleged in the complaint are Mark Whitcomb and David Blackburn. However, Wells contacted several other (current and former) Union and NALC representatives between March and May. Wells called and texted Linda Dunn. Dunn worked with Wells at the Brentwood facility, where Dunn had been a union steward. Dunn suggested that Wells contact her supervisor while out on her route to state that she would not be able to complete her route

cording to Wells, Whitcomb would tell her he was talking with Manager Carl, and they had discussed possibly having Wells transfer to another facility or into another craft that involved less standing or walking. Wells informed Whitcomb that she still wanted him to file grievance about being required to work beyond her restrictions. According to Wells, Whitcomb told her, on multiple occasions, that he would file a grievance.

Whitcomb denies Wells told him management was requiring her to work beyond her restrictions, and denies she asked him to file a grievance. Whitcomb was a newer steward, and he had filed about four grievances. He testified that if an employee wants to meet with a steward to discuss filing a grievance, the employee must submit a written request so the steward can claim and be paid for union time under the contract. Whitcomb testified that during this period of time he never received any request from Wells to meet to discuss filing a grievance or any request from her to file a grievance. (Tr. 379–380.) Additionally, Whitcomb testified that under the contractual grievance procedure, the first step (Informal Step A) is for the employee to speak directly with a supervisor and attempt to resolve the issue, which does not require a steward's involvement.

The Wells' Removal from Reduced Workload/Schedule

Wells continued to have issues performing her reduced workload/schedule, and she states there were times when she called or texted Boblitt about what she should do, and Boblitt told her continue or complete her route.[8] Wells testified that on March 15 she had a telephone conversation with Union Vice President David Blackburn in which she informed him that she was being required to work beyond her restrictions, and that she had asked Whitcomb to file a grievance on her behalf, but he had not done so. According to Wells, Blackburn stated that he would contact Whitcomb about the matter. Blackburn acknowledged he had a telephone conversation with Wells, but he does not recall what was discussed.

Wells testified she had another telephone conversation with Blackburn on May 18. Wells told Blackburn that this has been going on way too long, that she needed a grievance filed on her behalf. Wells asked Blackburn if he would get with Whitcomb or if he could file a grievance on her behalf. Wells initially testified that Blackburn stated he would file a grievance. (Tr. 210–211.) But, on cross-examination, Wells testified Blackburn said he was going to get with Whitcomb. (Tr. 285–286.) Blackburn testified he spoke with Wells on May 18, but he does not recall what was discussed, and he does not recall her asking the Union to file a grievance.

Blackburn testified that on around May 26 he had a conversation with Manager Carl. (Tr. 394–395.) Blackburn asked Carl if the USPS was requiring Wells to work beyond her restrictions, and Carl said they were not. Blackburn said they could not work Wells beyond her restrictions.[9] Blackburn does not recall having any further conversations with Wells that day, and does not recall Wells asking him to file a grievance about working past her restrictions.

On May 27, Wells testified that prior to the start of her shift she had a telephone conversation with Blackburn. According to Wells, she informed Blackburn that she had been forced to work past her restrictions the day before, and that she had been asking for almost 3 months for a grievance to be filed on her behalf. According to Wells, she then asked Blackburn if he could file that grievance, and he said that he would.

That day, Wells was once again unable to complete her route within 4 hours. She spoke with Supervisor Mike Genncio to report this. She later texted Genncio to ask him what she should do. He texted her back that she should continue her route. She texted back to confirm that he wanted her to work beyond her restrictions, and he responded that he would call her back. Genncio initially called and told Wells to continue working, but then he told her that Manager Carl said for her to bring back the mail. Wells returned to the facility, and Genncio told her, "Jim told me to have you unload your vehicle, give me your keys, and that right now, you're not on the schedule until further notice." Wells then spoke with Blackburn, and Blackburn reported that Carl was stating that she did not have the necessary paperwork to work a reduced workload/schedule.[10]

within her restrictions and ask the supervisor what he/she wanted her to do—work beyond her restrictions or return to the facility with the mail. If the supervisor told Wells to complete her route in violation of her restrictions, Wells should inform her steward and ask him to file a grievance. Wells never asked Dunn to file a grievance on her behalf. Wells later informed Dunn that she had asked Whitcomb to file a grievance, and he had not done so. Dunn later had a conversation with Whitcomb at the union hall, and she asked him about Wells. According to Dunn, Whitcomb told Dunn that he was going to talk to Manager James Carl about the matter. (Tr. 61–62.) Also, Dunn gave Wells the telephone number of Denise Preston, a Union steward at the Beaumont facility, and told her to call Preston because Preston would get on Whitcomb to file a grievance. Wells later spoke with Preston in late May. There is no contention Wells asked Preston to file a grievance on her behalf. From March through late May, Wells also spoke with NALC representatives David Mudd, Chris Jackson, and David Likart about working beyond her restrictions. Wells did not contact Union President Becraft regarding these concerns until June (discussed below), even though he previously had assisted Wells when she had issues in 2016.

[8] On May 18, Boblitt sent Wells a letter informing her that it was her obligation to provide current medical documentation no less than every 30 days, or as otherwise instructed by her front-line manager. Boblitt requested Wells provide acceptable, updated medical documentation regarding her medical condition no later than the close of business on Monday, May 29. The acceptable medical documentation will, at a minimum, consist of the following elements: diagnosis of your condition; prognosis of your condition; any current medical restrictions you have, and anticipated date of maximum medical improvement. (R. Exh. 5.) Although the letter set May 29 as the deadline, Wells testified she had a conversation with Manager Carl, and he informed her that she could provide the documentation after that date. Carl does not recall this conversation, but he admits he likely would have made such a statement. Wells provided medical documentation on around June 27.

[9] The transcript incorrectly omits "not" from line 23 of p. 395, and that omission is hereby corrected.

[10] Manager Carl testified that the USPS attempted to accommodate Wells' restrictions, but, as time went on, she was being assigned "less and less work, but it was taking [her] more and more time [to get it done]." (Tr. 320.) By May 27, it became clear that the USPS "was accommodating a situation that [it] was not required to accommodate, that was not going to work out for Ms. Wells or the Postal Service, was not going to meet any mandate in the national or local agreement, was going to be very expensive to the Postal Service [because of paying

Blackburn testified that on May 27th, Wells sent him a text message stating she was just leaving the facility, and that she had asked Whitcomb to call, and she was not sure if he had. Blackburn responded to Wells that if she believed she was being asked to work beyond her restrictions, she should ask management if they are directing her to break her restrictions. Later that day, Wells called and informed Blackburn she had been escorted out of the building. (Tr. 419–420.) According to Wells, she asked Blackburn to file a grievance over her removal, and he said he would. Blackburn does not recall Wells asking him to file a grievance.

Later, Wells spoke with Whitcomb about what happened. Wells testified she told Whitcomb that she had been asking him for months to file a grievance because she sort of knew that this was going to happen, and he told her that he was going to file a grievance, but he never did. According to Wells, Whitcomb again said he would file a grievance. She asked him when he was going to do it, because it had not been done. Whitcomb denies that Wells asked him to file a grievance. Whitcomb recalls having a conversation with Wells on around May 27 in which Wells reported to him she was having issues with management, and she was being asked to work beyond her restrictions. Whitcomb testified he told Wells that she needed to contact her supervisor and ask if they wanted her to work beyond her restrictions. She later reported to him that she had done that, and that Mike Genncio told her to bring the mail back to the facility. (Tr. 382–383.)

There is no dispute the Union did not file a grievance over the USPS allegedly requiring Wells to work beyond her restrictions, or over the USPS's decision to remove Wells from her reduced workload/schedule on May 27.

Union Files and Processes Grievances Over USPS's Denying Wells Light Duty

In late May, Wells spoke with Union Vice President Blackburn, and he informed her that under the collective-bargaining agreement, she needed to submit a request for light duty in order to work a reduced workload/schedule.[11] On around June 1, Wells submitted a written request for light duty. (R. Exh. 9.) On June 9, Wells exchanged text messages with Union President Kenneth Becraft. Wells asked Becraft whether there was any news about her returning to her reduced schedule. (R. Exh. 4, pg 30.) Becraft responded that Blackburn should have discussed with her light duty. Wells replied that he had spoken to her about light duty, but she was not clear if they were calling her restrictions light duty. Becraft responded that light duty (which she had just applied for) meant she could not perform all the required activities of her normal day; and limited duty is the same only it is with an approved workers' compensation case, which Wells did not have. (R. Exh. 4, pg. 30.) He went on to state:

> What you were working for the last 3 months was neither light duty or limited duty[.] The post office was letting you work to your restrictions while waiting clearer instructions and a decision on your OWCP claim. In reality they should have never let you work then without giving you a light duty offer. I assume that's what you will get in your letter from the Postmaster. It's my understanding that you were violating the 4 hour restrictions you had either by direction of the post office or of your own accord. When I found out about that I instructed [Blackburn] to ensure your restrictions were not being violated. Which puts us where we are today.

(R. Exh. 4, pg. 30–31.)

Wells expressed confusion, stating "I thought my 4 hours (sic.) restrictions was I can do my [route] but only within the confines of my restrictions, and the other 4 hours would come from light duty. Making an 8 hour day. So are you saying a light duty offer could be 8 hours a day for regular employees[?]" Becraft replied that a light duty offer is "an offer that does not violate your restrictions." Wells responded, "Ok that's so clear now!" (R. Exh. 4, pg. 31.)

Wells later provided the USPS with forms Dr. Lawrence completed regarding her left ankle, stating that she was limited to no more than 2 hours of standing and 2 hours of walking, with a period of rest in between, per day. (R. Exh. 7.) On June 13, the USPS denied Wells' request for light duty based upon her limitations. (R. Exh. 10.) Following this denial, the Union, through Union Steward Mark Whitcomb, filed a Formal Step A

overtime to reassign her work], and could possibly result in another or a compounded injury to Ms. Wells." (Tr. 322–323.) As a result, Carl spoke to the Union about Wells, and he made the decision to remove her from her reduced workload/schedule.

[11] There are three duty statuses: regular duty, light duty, and limited duty. Limited duty is primarily governed by statute and is only available to employees who are temporarily or permanently incapable of performing their normal duties as a result of compensable (work-related) injury or illness. Light duty is governed by Article 13 of the National Agreement, and, pursuant to Article 30 of the National Agreement, Art. 17 of the local Memorandum of Understanding. Light duty is available to employees who are temporarily or permanently incapable of performing their normal duties as a result of a (non-work related) injury or illness. Under Art. 13 of the National Agreement, an employee seeking temporary reassignment to light duty work must submit a request in writing; the request must be supported by a medical statement from a licensed physician or licensed chiropractor; the employee bears any cost connected with the statement required; the employee must agree to submit to a further examination by a physician designated by the installation had, if requested; the USPS will be responsible for any costs when it requests a second medical examination; and the employee may specifically seek light duty or may seek "other assignment" within his/her medical limitations. Under Art. 17 of local Memorandum of Understanding, light duty assignments shall be considered on a case-by-case basis and all requests for light duty shall be submitted in writing to the Postmaster (or designee) accompanied by acceptable medical documentation. Management shall make every reasonable effort to accommodate light duty requests based on productive work available within the employee's work restrictions. Light duty assignments shall consist of up to 8 hours of work and may be assigned within the Installation, within normal work hours. Under Art. 13 of the National Agreement, an employee can apply for permanent light duty assignment as a result of an injury or illness, but only after 5 years of service.

Limited duty is available to employees who have successfully submitted a claim to the Department of Labor's Office of Workers' Compensation and found to have a compensable work-related injury or illness. Wells unsuccessfully filed an OWCP claim following her March 2016 injury to her left ankle. In around February 2017, she filed another OWCP claim, and that claim is pending.

grievance. (R. Exh. 11.) Carl spoke with Whitcomb regarding the grievance, and the grievance was eventually settled. The parties agreed that all requests for light duty will continue to be considered on a case-by-case basis based on the availability of productive work within the requesting employee's work restrictions, but, in Wells' case, there was no productive work available within her stated restrictions. Thereafter, Wells made a second request for light duty and included additional documentation from her doctor. On August 7, the Postmaster for Lexington, Kentucky denied Wells' second request for light duty, stating that the USPS was unable to identify any light duty assignments within her restrictions, and based on the medical documentation she provided it appeared that her condition was permanent. (R. Exh. 12.) The Union did not file a grievance over this denial, because Wells was ineligible under the contract for permanent reassignment because she did not have the required five years of service. (Tr. 496–497.)

CREDIBILITY

There are discrepancies in testimony that require credibility resolution. In assessing the witnesses' credibility, I have relied primarily on demeanor. I also have considered: the context of the witness' testimony; the quality of the witness' recollection; testimonial consistency; the presence or absence of corroboration; 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. See *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. sub nom., 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions. Indeed, nothing is more common in judicial decisions than to believe some, but not all, of a witness' testimony. *Daikichi Sushi*, supra at 622; *Jerry Ryce Builders*, 352 NLRB 1262, 1262 fn. 2 (2008), citing *NLRB v. Universal Camera Corp*., 179 F.2d 749, 754 (2nd Cir. 1950), revd. on other grounds 340 U.S. 474 (1951).

The key discrepancies in testimony are: whether Wells separately informed Whitcomb and Blackburn between March 2 and May 27 that she was being worked beyond her restrictions and asked them to file a grievance on her behalf; whether Wells asked Whitcomb and Blackburn to file a grievance over her May 27 removal; and whether Whitcomb and/or Blackburn agreed to file grievances over these matters.

Generally speaking, I found the testimony of Wells, Whitcomb, and Blackburn to be partially credible. I find Wells had a tendency to conflate her opinions and interpretations with facts, which cause me doubt the veracity of some of her testimony. One example concerns her statements about her restrictions. Her February 27 medical restrictions clearly state she was limited to "4 hours of standing and walking per shift." But Wells testified her restrictions were supposed to have been 2 hours of standing and 2 hours of walking, and she communicated those supposed restrictions as her actual restrictions when she spoke separately with Boblitt and Whitcomb on March 1, and later to Blackburn on May 18. Another example concerns her statements about being required to work beyond her restrictions. Wells testified that when it took her longer than four hours to perform her reduced route, and her phone records do not reflect that she called or texted Boblitt about what she should do, it was because in the morning she had been told to deliver her route, which Wells interpreted as instructing her to work beyond her restrictions. (Tr. 193–195.)

On the other hand, I find that Whitcomb was apprehensive, evasive, and less than fully forthright in his responses, particularly regarding his conversations with Wells in which she reported her concerns and asked for his assistance with the matters at issue. Blackburn had limited or incomplete recollection, and he often responded to questions, particularly regarding his communications with Wells, by claiming he could not recall, while simultaneously recalling conversations and events involving others at or around the same time. With these assessments in mind, I make the following credibility determinations on the discrepancies stated above.

I credit Wells told Whitcomb she believed she was being required to work beyond her medical restrictions and asked him for assistance, and eventually asked him to file a grievance. Wells' phone records reflect she contacted several (current or former) Union and NALC representatives to ask for their guidance or assistance on what she should do. Wells was told by at least one former union steward (Linda Dunn) to confront her supervisor about her concerns, and that if the supervisor instructed her to work beyond her restrictions then she needed to contact her steward to file a grievance. Whitcomb and Wells spoke to one another on a daily basis. I credit that, at some point, Wells told Whitcomb about what she believed was occurring and asked for his assistance, including asking him to file a grievance over the matter. That being said, I do not credit that Whitcomb agreed to file a grievance on her behalf. Whitcomb was not an experienced steward. He had filed four grievances in his tenure, and it was his understanding, correctly or incorrectly, that an employee needed to submit a formal request for him to be approved for steward time in order for him to be able to meet and discuss filing a grievance. I credit that when Wells approached Whitcomb about what was happening, Whitcomb told her (and later Dunn) that he would talk with Manager Carl about the possibility of Wells transferring to another facility or another craft that involved less standing or walking. But I do not credit Wells that he also agreed to file a grievance.

Similarly, I credit that Wells spoke with Blackburn about these matters and asked for his assistance. As stated, Wells made several calls to Union and NALC representatives seeking assistance, and I find it is more probable than not that she eventually would raise her issues with the Union vice president, particularly since he had helped her a year before with her EEO issue. However, I do not credit that Blackburn agreed to file a grievance on Wells' behalf over this matter. Wells' situation was unique: she had not been approved for light duty or limited duty, but the USPS was allowing her to work a reduced workload/schedule. Blackburn would have required more information about her restrictions and her status, as well as discussed the matter with management before agreeing to file a grievance. Blackburn later did communicate with Carl as to whether the USPS was requiring Wells to work beyond her restrictions, and Carl denied that it was. In light of these facts, I find Blackburn did not agree to file a grievance.

Finally, for these same reasons, I credit that Wells separately spoke to Blackburn and Whitcomb about her May 27 removal, but I do not credit her that either committed to filing a grievance over her removal, particularly when it became clear that Wells had not been approved for light duty and had no contractual right to work a reduced workload/schedule. When the Union learned that she been working this modified schedule without being approved for light or limited duty, Blackburn and Becraft separately informed her that she needed to apply and get approved for light duty in order to work a reduced workload/schedule under the collective-bargaining agreement.

DISCUSSION AND ANALYSIS

The General Counsel alleges the Union violated Section 8(b)(1)(A) of the Act: (1) from March 2 through May 27 when it failed to file a grievance over the USPS requiring Wells to work beyond her medical restrictions; and (2) on about May 27 when it failed to file a grievance over the USPS's decision to remove Wells from her reduced workload/schedule. The General Counsel further alleges the Union acted perfunctory by this conduct. A union owes a duty of fair representation to all of the employees it represents. *Vaca v. Sipes*, 386 U.S. 171 (1967). The union breaches its duty when its action or inaction is "arbitrary, discriminatory, or in bad faith." Id. at 190-191, 207 (1967). In *Airline Pilots Assn. v. O'Neill*, 499 U.S. 65, 66, 78 (1991), the Supreme Court held that actions are "arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a 'wide range of reasonableness' as to be irrational[,]" and "any subsequent examination of a union's performance, therefore, must be highly deferential . . ." Thus, a union has a broad range of discretion in carrying out its representational duties, including grievance handling, and an individual does not have an absolute right to have a grievance filed or have it processed through arbitration. *Vaca*, supra at 191. In addition, the Board has established that something more than mere negligence, poor judgment, or ineptitude in grievance handling is needed to establish a breach of the duty of fair representation. *Service Employees Intl. Union, Local 579 (Beverly Manor Convalescent Center)*, 229 NLRB 692, (1977); *Truck Drivers, Oil Drivers and Filling Station and Platform Workers, Local No. 705 (Associated Transport, Inc.),* 209 NLRB 292, 304 (1974). See also *Local Union No. 195, Plumbers (Stone & Webster),* 240 NLRB 504, 508 (1979); *General Truck Drivers, Chauffeurs & Helpers Union, Local No. 692 (Great Western Unifreight System),* 209 NLRB 446, 448 (1974). Similarly, a union does not violate the duty of fair representation where it refuses to file or process a grievance pursuant to a reasonable interpretation of the collective-bargaining agreement and/or a good-faith evaluation as to the merits of the employee's complaint. *Teamsters Local 814 (Beth Israel Medical)*, 281 NLRB 1130, 1146–1147 (1986). The duty, however, is breached when a union arbitrarily ignores a meritorious grievance or processes it a perfunctory fashion. See *Local 579 SEIU (Beverly Manor Center)*, 229 NLRB 692, 695 (1977); and *Local 76B Furniture Workers (Office Furniture Service),* 290 NLRB 51, 63 (1988).

I conclude the Union did not act in an arbitrary, discriminatory, or bad faith manner, or that it acted perfunctorily, when it did not file and process grievances over the USPS allegedly requiring Wells to work beyond her temporary medical restrictions and/or over the USPS removing Wells from her reduced workload/schedule.[12] Even if the Union had agreed to file grievances over these matters, I find there is no persuasive evidence in this record that those grievances would have been successful. It is immaterial whether the USPS was requiring Wells to work beyond her verbally-agreed upon temporary medical restrictions, because under the contract, there are three types of work status: regular duty, light duty, and limited duty. Wells was not working regular duty, and she had not been approved by the Department of Labor's Office of Workers Compensation for limited duty. And while Wells orally communicated with the USPS about her restrictions, and the USPS attempted to accommodate her, Wells had not applied for, or been approved to work, light duty in accordance with the National Agreement and/or the local Memorandum of Understanding. As a result, the USPS was not contractually obligated to allow Wells to work her reduced workload/schedule. Union President Becraft informed Wells of all of this in his June 9 text message. He told her that: what she had been working for the last three months was neither light duty nor limited duty; the USPS was letting her work within her restrictions while waiting clearer instructions and a decision on her workers' compensation claim; and that, under the contract, the USPS should never have let her work without giving her a light duty offer.

The General Counsel asserts in its post-hearing brief that the Union breached its duty of fair representation because it did not advance any compelling reason for its failure to file a grievance on Wells' behalf after repeatedly leading her to believe that it would do so. I reject this assertion. A union's duty to fairly represent includes the duty to neither willfully misinform employees about their grievance nor to willfully keep them uninformed about their grievance. See *American Postal Workers Union,* 328 NLRB 281 (1999); *Local 417 UAW (Falcon Industries),* 245 NLRB 527, 534 (1980); and *Groves-Granite*, 229 NLRB 56, 63 (1977). There is no allegation in the complaint, or evidence in the record, that the Union willfully misinformed Wells, or kept her uninformed, about any grievance. And, as stated, I do not credit that Whitcomb or Blackburn ever committed to filing a grievance on Wells' behalf over the USPS allegedly working her beyond her restrictions or over her removal from her reduced workload/schedule. Additionally, Wells testified that she knew as of May 27 that, despite her requests, the Union had not filed a grievance for her on these matters. And, even if Whitcomb or Blackburn had committed to filing grievances, Union President Becraft explained to Wells in his June 9 text why, absent being approved for light or limited duty, she was not contractually entitled to work a reduced workload/schedule, and the USPS should not have allowed her to do so. Wells then responded that Becraft's explanation clarified matters for her.

Moreover, following her removal, the Union advised Wells

[12] I find that Union Steward Mark Whitcomb was, at most, inept in his communications with Wells on these matters, likely due to his lack of experience and knowledge. However, as stated above, negligence or ineptitude is insufficient to breach the duty of fair representation.

to apply for light duty and provided her with information on how to do so. Later, after Wells applied for and was denied light duty, the Union filed and processed a grievance on her behalf. The Union eventually resolved the grievance because, under Wells' new restrictions (2 hours of standing, 2 hours of walking, with a break in between) there was no productive temporary work available for her, and she was not yet contractually eligible for permanent reassignment based on her years of service. As such, the Union reasonably concluded that there was nothing more it could do for Wells under the National Agreement or the local Memorandum of Understanding.

In light of the foregoing, I find the Union did not act in an arbitrary, discriminatory, or bad faith manner towards Wells as alleged. For the reasons stated, the Union did not arbitrarily ignore a meritorious grievance or act in a perfunctory manner. The Union's (in)action was based on a reasonable interpretation of the relevant agreements and a good-faith evaluation as to the merits of Wells' complaints. I, therefore, conclude that the General Counsel has failed to establish that the Union breached its duty of fair representation as alleged in the complaint.

CONCLUSIONS OF LAW

1. Respondent, Central KY Branch 361, National Association of Letter Carriers, AFL–CIO (NALC), is a labor organization within the meaning of Section 2(5) of the Act.

2. Respondent is subject to the National Labor Relations Board's jurisdiction pursuant to Section 1209 of the Postal Reorganization Act.

3. Respondent did not violate the National Labor Relations Act in any manner alleged in the complaint.

On these findings of fact and conclusions of law, and on the entire record, I issue the following recommended:[13]

ORDER

The complaint is dismissed.

Dated, Washington, D.C., May 4, 2018.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."