

**United States Postal Service and Anthony Pappas,
Case 21-CA-25278(P)**

9 September 1987

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN AND BABSON**

On a charge filed by the Union on 6 March 1987,¹ the General Counsel of the National Labor Relations Board issued a complaint on 22 April 1987 against the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act.

The complaint alleges that the Respondent demoted Anthony Pappas from his supervisory position to a bargaining unit position because he testified on behalf of a unit employee at a contractually provided grievance arbitration hearing. On 4 May the Respondent filed its answer admitting in part and denying in part the allegations of the complaint and requesting that the complaint be dismissed.

On 15 July the Respondent filed a Motion for Summary Judgment with a supporting brief and exhibits. On 20 July the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Respondent's Motion for Summary Judgment should not be granted. On 4 August the General Counsel filed a brief in opposition to the Respondent's Motion for Summary Judgment.

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

Ruling on the Motion for Summary Judgment

In its Motion for Summary Judgment, the Respondent contends that there are no material issues of fact requiring a hearing and that the instant charge and complaint are barred by Section 10(b) of the Act. In support of its contentions the Respondent asserts the following facts. On 2 September 1986 Pappas received from the Respondent a "Notice of Proposed Adverse Action-Removal" advising him that the Respondent proposed to remove him after 30 days, based on charges that he testified falsely at the grievance hearing and undermined the efficiency of the Postal Service. The notice provided an opportunity to reply prior to the Respondent's final decision. On 7 October 1986 Pappas received a "Letter of Decision-Removal,"

advising him that the Respondent found the charges substantiated but decided to demote him to a unit employee position effective 25 October 1986, rather than remove him. Pappas filed the instant charge on 6 March. Based on the foregoing, the Respondent contends that the complaint is time-barred by Section 10(b) of the Act on the ground that the 6-month limitation period began on 2 September 1986 when Pappas received the Respondent's "Notice of Proposed Adverse Action." The Respondent requests that its motion be granted and that the complaint be dismissed as a matter of law.

The General Counsel, in opposition to the Respondent's motion, argues that the complaint is not time-barred because the 10(b) period commenced on 7 October 1986 when Pappas received the Respondent's "Letter of Decision." We agree with the General Counsel.

In *Postal Service Marina Center*, 271 NLRB 397 (1984), the Board dealt with the interpretation and application of Section 10(b) of the Act in a case involving the same employer and the same disciplinary procedure. The Board held that it would "focus on the date of the alleged unlawful act, rather than on the date its consequences become effective, in deciding whether the period for filing a charge under Section 10(b) of the Act has expired" and would begin the 10(b) period from the date "[w]here a final adverse employment decision is made and communicated to an employee" *Id.* at 399-400. In that case, the Board specifically held that the limitations period commenced on the date the charging party received the "Letter of Decision" identical in relevant part to the 7 October 1986 "Letter of Decision" in this proceeding. The Board, declining to begin the 10(b) period from the earlier date the Charging Party received a letter of charges and proposed removal, found that the "Letter of Decision" constituted "unequivocal notice of the Respondent's decision to terminate him" *Id.* at 400.

Under these circumstances, we find that the 10(b) period did not commence as of the date of the Respondent's "Notice of Proposed Adverse Action" but rather that it commenced on 7 October 1986 when Pappas received the "Letter of Decision."² The 6 March filing date for the underlying charge therefore falls within the 6-month limitation period set forth in Section 10(b) of the Act. Accordingly, the Respondent's Motion for Summary Judgment is denied.

¹ All dates are in 1987 unless otherwise indicated

² See also *Stage Employees IATSE Local 659 (Paramount Pictures)*, 276 NLRB 881, 882 (1985)

ORDER

The National Labor Relations Board denies the Respondent's Motion for Summary Judgment and

orders that the above-entitled proceeding is remanded to the Regional Director for further appropriate proceedings.