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**United States Postal Service and American Postal Workers Union, Local Union No. 380, AFL-CIO**

**United States Postal Service and American Postal Workers Union, Local Union No. 434, AFL-CIO. Cases 28-CA-21792, 28-CA-21815, and 28-CA-21816**

July 30, 2009

**DECISION AND ORDER**

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

On November 25, 2008, Administrative Law Judge John J. McCarrick issued the attached decision. The Respondent filed exceptions and a supporting brief. The General Counsel filed limited cross-exceptions, a supporting brief, and an answering brief. The Respondent filed an answering brief to the cross-exceptions and a reply brief to the General Counsel's answering brief. Finally, the General Counsel filed a reply brief to the Respondent's answering brief.

The National Labor Relations Board<sup>1</sup> has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order as modified and set forth in full below.

<sup>1</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), petition for cert. filed 77 U.S.L.W. 3670 (U.S. May 22, 2009) (No. 08-1457); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), rehearing denied No. 08-1878 (May 20, 2009). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petitions for rehearing denied Nos. 08-1162, 08-1214 (July 1, 2009).

<sup>2</sup> There are no exceptions to the judge's findings that the Respondent violated Sec. 8(a)(5) by failing on two occasions to timely provide information requested by American Postal Workers Union (APWU) Local 434, and that the Respondent did not violate Sec. 8(a)(5) allegedly by unreasonably delaying providing information requested by APWU Local 380. The judge recommended a broad cease-and-desist order for the two violations he found. Contrary to the judge, we substitute a narrow order requiring the Respondent to cease and desist from violating the Act "in any like or related manner." We shall also modify the recommended Order and substitute a new notice conforming remedial language to the violations found.

**ORDER**

The National Labor Relations Board orders that the Respondent, United States Postal Service, La Luz and Roswell, New Mexico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the American Postal Workers Union, Local No. 434, AFL-CIO, by failing and refusing to timely provide requested information that is relevant and necessary to the Union as the collective-bargaining representative of those unit employees described in the existing collective-bargaining agreement and found appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Within 14 days after service by the Region, post at its La Luz and Roswell, New Mexico post offices copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the no-

Chairman Liebman notes that the remedy is not fully consistent with previous broad orders the Board has issued against the Respondent in cases alleging that the Respondent has violated Sec. 8(a)(5) of the Act by failing and refusing to provide relevant information. See, e.g., *Postal Service*, Cases 28-CA-17383, et al., unpublished order issued November 4, 2002, enfd. Case 02-9587 (10th Cir. 2003); and *Postal Service*, 345 NLRB 426 (2005), enfd. 486 F.3d 683 (10th Cir. 2007). These broad orders, as enforced by the United States Courts of Appeals, remain in effect. The provisions of our narrow order do not modify these orders in any respect.

Member Schaumber did not participate in *Postal Service*, supra, Case 28-CA-17383, and he adheres to the view he expressed in *Postal Service*, supra, 345 NLRB at 427 fn. 4 (citing *Postal Service*, 345 NLRB 409, 412-415 (2005), enfd. as modified 477 F.3d 263 (5th Cir. 2007)), that information request violations are not the type of severe unfair labor practices for which broad orders must be reserved. *NLRB v. Express Publishing Co.*, 312 U.S. 426 (1941) (broad orders must be reserved for egregious cases in which the violations are so severe or so numerous and varied as to truly manifest a general disregard for employees' fundamental employee rights); *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

<sup>3</sup> 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."

tices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at such closed facilities at any time since January 29, 2008.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 30, 2009

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Wilma B. Liebman, Chairman

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Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with American Postal Workers Union, Local No. 434, AFL-CIO (the Union) by failing and refusing to promptly furnish information requested by the Union that is relevant and necessary to the Union's performance of its duties as your collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

UNITED STATES POSTAL SERVICE

*Chris J. Doyle, Esq.*, for the General Counsel.

*Peter Henry, Esq.*, of Dallas, Texas, and *Richard Mosher, Esq.*, of Washington, D.C., for the Respondent.

*Ken Fajardo, American Postal Workers Union Local 380*, of Albuquerque, New Mexico, for the Charging Party Local 380.

*Jane Crowder, American Postal Workers Union Local 434*, of Roswell, New Mexico, for the Charging Party Local 434.

DECISION

STATEMENT OF THE CASE

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried in Albuquerque, New Mexico, on June 17 to 19, 2008, upon the complaint in Case 28-CA-21792 issued on May 5, 2008, by the Regional Director for Region 28, the order consolidating cases and consolidated complaint in Cases 28-CA-21815 and 28-CA-21816 issued by the Regional Director for Region 28 on May 8, 2008, and the order consolidating Cases 28-CA-21792 with Cases 28-CA-21815 and 28-CA-21816 issued by Associate Chief Judge Mary Miller Cracraft on May 30, 2008.

The May 5, 2008 complaint alleges that the United States Postal Service (Respondent) violated Section 8(a)(5) of the Act by delaying furnishing the American Postal Workers Union, Local 380 (Local 380) with information it requested. The May 8, 2008 consolidated complaint alleges that Respondent violated Section 8(a)(5) of the Act by delaying in furnishing information requested by American Postal Workers Union, Local 434 (Local 434). By virtue of the alleged extensive history of unfair labor practices committed by Respondent, the General Counsel seeks a broad order requiring Respondent to cease and desist from engaging in further violations of the Act against the Unions herein and any other labor organizations that represent Respondent's employees at facilities within the Respondent's Albuquerque district.

Respondent filed a timely answer to both the May 5 and 8 complaint stating it had committed no wrongdoing and that a broad order is not warranted herein.

FINDINGS OF FACT

Upon the entire record herein, including the briefs from the counsel for the General Counsel (CGC) and Respondent, I make the following findings of fact

I. JURISDICTION

In its answers Respondent admitted it provides postal services for the United States of America, and in the performance of that function, has operated various facilities throughout the United States, including facilities located in Albuquerque, Roswell, and Cloudcroft, New Mexico.

Based upon the above, the Board has jurisdiction over Respondent under Section 1209 of the PRA.

II. LABOR ORGANIZATION

Respondent admitted and I find that the National Union, and Locals 380 and 434 are labor organizations within the meaning of Section 2(5) of the Act.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

## 1. Case 28–CA–21792

It is admitted that the employees of Respondent described in the parties' collective-bargaining agreement,<sup>1</sup> including employees employed at Respondent's Albuquerque, Cloudcroft, La Luz, and Roswell, New Mexico facilities constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act and the Postal Reorganization Act. It is also admitted that since about 1971, the National Union has been the designated collective-bargaining representative of the unit employees and that the National Union has designated Locals 380 and 434 as its designees for the purposes of conducting various functions as the exclusive collective-bargaining representative of unit employees.

Yolanda Vallejos (Vallejos) was employed at Respondent's Airport Station as a lead window clerk/sales and service associate. On about December 31, 2007, Vallejos was terminated for embezzlement of funds.<sup>2</sup> On about January 11, 2008, Local 380 filed a grievance on Vallejos' behalf. A step-2 grievance was filed on January 17, 2008,<sup>3</sup> and a step-2 grievance meeting was conducted on January 18, 2008. On January 17, 2008, Local 380 Steward Al Urquidez submitted an information request to Respondent through Respondent's Airport Station Manager Customer Services Suzy Yarbrow (Yarbrow). The information requested included:<sup>4</sup>

1. Proof that Grievant was aware of all rules/regulations cited in NOR.
2. Proof that Grievant was aware of the disciplinary consequences for violating said rules/regulations.
3. Proof of "progressive discipline" in respects to NOR, i.e.—official discussion(s), LOW(s), LOS(s), etc.
4. Proof that Grievant has been trained on all POS, NCR, back office training, etc., in order to fulfill her duties as Lead Sales and Service Associate.
5. Copies of any and all discipline incurred by other employees throughout the ABQ installation for "Improper Conduct". To include, but not limited to: Campbell, Kathy; Baldwin, Peter, etc.

Under the terms of the party's collective-bargaining agreement<sup>5</sup> Charging Party had to file its appeal to arbitrate within 15 days of a step-2 denial.

On January 26, 2008,<sup>6</sup> Yarbrow replied<sup>7</sup> to Local 380's information request by stating that some of the information requested was not at the local office and so the request was being forwarded to the district office. It was noted that the information requested in item 5 could take several days to fulfill, how-

ever, 6 pages of Vallejos' training records were provided. The information concerning the Campbell discipline was located in another Albuquerque office. On February 28, 2008,<sup>8</sup> Respondent provided 2 pages of information concerning the removal of Kathy Campbell in a letter dated February 21, 2008,<sup>9</sup> and in a 2-page letter dated February 25, 2008,<sup>10</sup> and also mailed on February 28, 2008, Yarbrow noted that Vallejos had attended training courses. In response to Local 380's information request at item 1, the response reflected that Vallejos had been trained in 26 different courses and had been in her position for over 12 years; with respect to information request 2, Respondent noted that Vallejos had received much training; with respect to item 3, Respondent stated that they were unaware of any previous discussions with Vallejos; with respect to item 4, Respondent said they had previously supplied all training records; and with respect to item 5, it was noted that the Kathy Campbell records had been provided and there was no information related to a similar violation concerning Peter Baldwin.

On March 3, 2008,<sup>11</sup> Respondent through Respondent's Albuquerque City Labor Relations Specialist Edward Arvizo (Arvizo) again responded to Local 380's information request. Arvizo summarized that Respondent had provided Vallejo's training records, the Campbell removal, that Vallejos' long history as a window clerk and her extensive training records were responsive to Local 380's information requests 1 and 2, that there was no history of progressive discipline of Vallejos in this case and that there was no discipline of Baldwin for a similar offense.

## 2. Cases 28–CA–21815 and 28–CA–21816

Wendy Giles (Giles) worked as a retail sales associate/window clerk at Respondent's Roswell, New Mexico postal facility. Local 434 filed a grievance on Giles' behalf concerning her rates of pay. Local 434 President Jane Crowder (Crowder) filed an information request<sup>12</sup> in the Giles grievance on February 14, 2008, requesting copies of PS Forms 1723 for all window clerks from January 1, 2008, to the present. According to Roswell Customer Service Supervisor Larry Fierro (Fierro), he provided the requested form to Crowder on February 15, 2008.<sup>13</sup> Crowder denied that Fierro gave her the requested forms on February 15, 2008. According to Crowder she spoke with Fierro on February 21, 2008, at the Roswell facility and he said that he had almost completed the Giles information request. The absence of a signed receipt for the information until March 11, 2008, together with Crowder's un rebutted testimony that Fierro said the information request was almost completed on February 21, 2008, leads me to credit

<sup>8</sup> GC Exhs. 22 and 23.

<sup>9</sup> GC Exh. 14.

<sup>10</sup> GC Exh. 15.

<sup>11</sup> GC Exh. 17.

<sup>12</sup> GC Exh. 10.

<sup>13</sup> R. Exh. 110 at 3. R. Exh. 110 is a summary of information requests filed by various unions. While R. Exh. 110 purports to establish that Fierro provided Crowder with the requested information on February 15, 2008, there was no receipt signed by Crowder for the information until March 11, 2008. See GC Exh. 11.

<sup>1</sup> GC Exh. 18.

<sup>2</sup> GC Exh. 19.

<sup>3</sup> GC Exh. 20.

<sup>4</sup> GC Exh. 12.

<sup>5</sup> GC Exh. 18.

<sup>6</sup> While Yarbrow's letter is dated January 23, 2008, it was not placed into the mail until January 26, 2008. See GC Exh. 21.

<sup>7</sup> GC Exh. 13.

Crowder's testimony. On March 11, 2008,<sup>14</sup> Respondent provided the requested forms, consisting of one page. On March 13, 2008, the step-1 grievance was filed and settled.

Jason Haas (Haas) worked in Respondent's Cloudfcroft facility as a part-time flex clerk. Haas received a 14-day suspension<sup>15</sup> on January 18, 2008, for failing to follow instructions. On January 29, 2008, Crowder called La Luz, New Mexico Postmaster Christopher Beatrice (Beatrice) and explained that Haas had been disciplined and she needed documents from the La Luz office to investigate Haas' discipline. Crowder said she could come to La Luz the following day to look at the timecards and records. Beatrice told Crowder to file an information request. Crowder filed an information request<sup>16</sup> on January 29, 2008 with Beatrice requesting all timecards and copies of all PS Form 1723s for Kathleen Schnepple for October 1, 2007, through January 18, 2008. On January 29, 2008, Beatrice sent Crowder a letter asking for the relevance of the requested information in the Haas case.<sup>17</sup> On January 31, 2008, Crowder wrote to Beatrice and explained the relevance of the requested information.<sup>18</sup> A step-1 grievance was filed for Haas on January 31, 2008, and a step-2 grievance was filed on February 15, 2008. On February 5, 2008,<sup>19</sup> Beatrice responded that the information would take some time to compile. On February 28, 2008, Respondent provided about 51 pages of requested records.<sup>20</sup> It took Beatrice 3.25 hours to locate and copy the requested records.<sup>21</sup>

#### B. Analysis

The Supreme Court has held that employers have a duty to furnish relevant information to a union representative during contract negotiations. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956). This obligation extends beyond contract negotiations and applies to administration of the contract, including grievance processing. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *Ormet Aluminum Mill Products*, 335 NLRB 788, 790 (2001); *Postal Service*, 332 NLRB 635 (2000). In order for the obligation to furnish information to attach there must be a request made and the information requested must be relevant to the union's collective-bargaining need. *Saginaw Control & Engineering, Inc.*, 339 NLRB 541 (2003). An ambiguous request may not be denied by an employer rather the employer is under an obligation to seek clarification. *International Protective Services*, 339 NLRB 701 (2003). In the instant case there is no contention that the information sought was irrelevant.

Further, an unreasonable delay in furnishing relevant information is a violation of Section 8(a)(5). The Board recently summarized the standard that it employs in assessing a claim of unreasonable delay:

In determining whether an employer has unlawfully delayed responding to an information request, the Board considers the

totality of the circumstances surrounding the incident. Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow. In evaluating the promptness of the response, the Board will consider the complexity and extent of information sought, its availability and the difficulty in retrieving the information. [Internal quotation marks and citations omitted.] *West Penn Power Co.*, 339 NLRB 585, 587 (2003), *enfd.* in pertinent part 349 F.3d 233 (4th Cir. 2005).

In *Regency Service Carts, Inc.*, 345 NLRB 671, 674 (2005), the Board found a 16-week delay in furnishing information unreasonable. The Board has found delays of 14 weeks, *Pan American Grain*, 343 NLRB 318 (2004), 6 weeks, *Bundy Corp.*, 292 NLRB 671 (1989), 7 weeks, *Woodland Clinic*, 331 NLRB 735, 737 (2000), 6 weeks, *Bituminous Roadways of Colorado*, 314 NLRB 1010 (1994), 5 weeks, *Postal Service*, 332 NLRB 635 (2000), 3 weeks, *Aeolian Corp.*, 247 NLRB 1231 (1980), 20 days, *Butcher Boy Refrigerator Door Co.*, 127 NLRB 1360 (1960), 2 weeks, and *Capitol Steel & Iron Co.*, 317 NLRB 809 (1995), unreasonable.

In *Postal Service*, 352 NLRB 1032 (2008), a two-member Board panel found a 2-month delay in furnishing information permissible where the union did not pursue the information request from a new manager who did not fully understand the information request system. After a vaguely worded unfair labor practice charge was filed, the union refused to specify what information they sought. For 2 months the union showed no interest in the requested information, then refused to tell the respondent what information they wanted.

In *Capitol Steel & Iron Co.*, *supra*, the Board concluded a 2-week delay was unreasonable where the information requested was simple, the information was close at hand, the respondent was able to put together the information together in a short time period and during those 2 weeks, a strike had begun which the Board concluded warranted extra effort by respondent.

Albuquerque district Human Resource Manager Christopher Castro (Castro) regularly sends form letters to union officials that ask if there are any information requests that have not been fulfilled.<sup>22</sup> Respondent contends that the Charging Parties somehow engaged in delaying tactics by not responding to Castro's form letters. In support of this position Respondent cites *Postal Service*, 352 NLRB 1032 (2008). Castro's form letters to union officials cannot shift the responsibility for producing information to the union. At any given time there are hundreds of information requests pending. Without specifying a particular information request in the form letters, Respondent cannot suggest that the unions' failure to reply constitutes the sort of lack of cooperation that the union demonstrated in *Postal Service*, 352 NLRB 1032 (2008).

In Case 28-CA-21792, while all of the information on the Vallejos grievance was not produced until 42 days had elapsed, the initial information, consisting of Vallejos' training records was given to the union in 9 days and was responsive to union

<sup>14</sup> GC Exh. 11.

<sup>15</sup> GC Exh. 24.

<sup>16</sup> GC Exh. 3.

<sup>17</sup> GC Exh. 4.

<sup>18</sup> GC Exh. 5.

<sup>19</sup> GC Exh. 7.

<sup>20</sup> GC Exh. 8.

<sup>21</sup> GC Exh. 9.

<sup>22</sup> R. Exhs. 207-210.

requests 1, 2, and 3. Respondent did not have any information regarding request 4 and the information responsive to request 5 was not created or maintained at Yarbro's facility. The Campbell disciplinary report had been created by a manager who had been transferred from the facility where the report was located. Ultimately the Campbell disciplinary report was found in an unmarked file cabinet. Under all of the circumstances, including the prompt delivery of the main portion of the requested information in 9 days and the difficulty in locating the Campbell disciplinary report, the provision of all of the information requested in 42 days was a good-faith effort by Respondent and did not constitute an unreasonable delay. I will dismiss this portion of the complaint.

In the Giles grievance in Case 28-CA-21815, it took Respondent 28 days to provide the requested forms, consisting of one page. There is no evidence that this information was difficult to locate. The information request was in the context of a pending grievance that had contractual time limits on appeals to the next step. I find that in this case 28 days was an unreasonable delay in providing one page of information, particularly since the Charging Party needed the evidence to assess whether to pursue a pending grievance. By failing to timely provide the requested information, Respondent violated Section 8(a)(1) and (5) of the Act.

In the Haas grievance in Case 28-CA-21816, it took Respondent 30 days to provide Charging Party with the information it had requested. The record reflects that the information was readily available at the La Luz, New Mexico Post Office and it took only 3.25 hours to locate and copy the 51 pages of requested records. Had Beatrice spent only 30 minutes a day looking for the records they could have been retrieved in 6 days. If he had spent an hour a day, the records could have been provided to the Charging Party in 3 days. Given that the information request was made in the context of a pending grievance, time was of the essence. I find that 30 days was an unreasonable delay in providing the requested information. By failing to timely provide the requested information, Respondent violated Section 8(a)(1) and (5) of the Act.

### C. Request for Broad Remedy

The General Counsel contends that Respondent's proclivity to violate the Act by failing to provide information in a timely fashion, as demonstrated by cited Board and Court orders as well as the three cases herein, warrants a broad cease-and-desist order. The General Counsel seeks a remedial order requiring Respondent to cease and desist from engaging in further violations of the Act against the Charging Party Union and any other labor organization that represents Respondent's employees at facilities within the Albuquerque district and to post a notice to employees at all facilities within the Albuquerque district. Respondent argues that a broad order is inappropriate as a result of Respondent's good-faith efforts to comply with previous Board and Court decisions and because the violations herein are isolated and unconnected to any unlawful policy.

Respondent has administratively divided its postal operations throughout the United States into several districts, including the Albuquerque district which includes post offices in the State of New Mexico and the eastern portion of Arizona. Matthew

Lopez is district manager for the Albuquerque district. The Albuquerque district consists of the Albuquerque installation (the City of Albuquerque) run by a postmaster and the district's 295 associate offices. The Albuquerque installation is further broken down into 12 postal stations throughout the City of Albuquerque and the processing and distribution center. The 12 postal stations are operated by station managers who report to the Albuquerque postmaster. The Albuquerque postmaster reports to the Albuquerque district manager. The processing and distribution center is run by a plant manager who reports directly to the Albuquerque district manager. The 295 associate offices are operated by postmasters who reports to one of three post office operations managers, who in turn report to the Albuquerque district manager.

Respondent has implemented a system of auditing information request logs in its Albuquerque district post offices. The record reflects that in the period August 2006, to June 2008, the Albuquerque district received 2,339 information requests.<sup>23</sup> In 2003, 2005, 2006, and 2007, the Albuquerque district has provided its managers with training concerning their legal responsibilities to provide unions with information promptly. Since August 2006, the Albuquerque district has implemented a new program for City of Albuquerque facilities to ensure prompt replies to union information requests.

In *Hickmott Foods*, 242 NLRB, 1357(1987), the Board stated that a broad cease-and-desist order is warranted "when a respondent is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." A proclivity to violate the Act is shown where a respondent has a history of similar violations of the Act. *Postal Service*, 339 NLRB 1162, 1163 (2003).

The Respondent has a long and checkered history throughout the United States and in the Albuquerque district particularly of violating the Act, including refusing to furnish information in a timely fashion.<sup>24</sup>

Respondent contends that it complied in a timely fashion in 99.9 percent of all information requests since GC has failed to prove any violations of the Act other than the two found above. Respondent reasons, therefore, that any violations found herein are de minimus. Respondent's logic fails to take into account the Board's finding in *Postal Service*, 345 NLRB 409 (2005), and *Postal Service*, 345 NLRB 426 (2005), where the Board issued broad orders and dismissed the dissent's contention that violations of the Act at individual post offices are "decidedly parochial" given the massive, farflung, and decentralized operations of the post office nationally. Rather the majority noted that:

[M]ore than a decade of repeated violations in various areas and at various facilities indicate that, absent effective orders aimed at higher management, not only are information request violations likely to recur in those places but it is also reasonably foreseeable that, as in Albuquerque, other unfair labor

<sup>23</sup> R. Exh. 201.

<sup>24</sup> See cases cited in *Postal Service*, 352 NLRB 923, 972 (2008); *Postal Service*, 345 NLRB 409 fn. 12 (2005).

practices will be committed by local officials who have demonstrated their disregard for the Act and prior Board orders.<sup>25</sup>

Again in *Postal Service*, 345 NLRB 426 (2005), the Board noted that the U.S. Court of Appeals for the Tenth Circuit had issued a broad order against the Respondent based upon a settlement agreement resolving information request violations occurring at the Respondent's Albuquerque facilities.<sup>26</sup>

In issuing a broad order against Respondent in *Postal Service*, 345 NLRB 409, 410 (2005), the Board considered seven factors: Respondent had committed 8(a)(5) violations by failing to furnish information twice in 2 years at the same facility and in the case before the Board had refused to furnish information four times; the violations occurred after the Board had issued a narrow cease-and-desist order which suggested the inadequacy of the order to deter future violations; when the information requests related to grievance investigations, the Respondent's repeated unlawful refusals to provide the information have the potential to hide other misconduct; Respondent presented a weak defense of its actions; the violations had to be considered against two decades of repeated information request violations by Respondent at several locations nationwide; the Board had issued broad cease-and-desist orders against Respondent for similar repeated information request violations at its Houston area facilities; and the Board issued a concurrent decision against Respondent for the same violation.

Here the Board and Tenth Circuit Court of Appeals have issued decisions against Respondent involving the same Albuquerque district in *NLRB v. USPS*, Case No. 02-9587 (unpublished consent judgment entered January 8, 2003); *Postal Service*, 350 NLRB 441 (2007); *Postal Service*, 345 NLRB 426 (2005). Now within 2 years of the Board's last decision, in this case Respondent, in its Albuquerque district, has committed two additional violations of Section 8(a)(5) of the Act in unreasonably delaying to furnish information. The most recent violations occurred after the Board has most recently issued a narrow cease-and-desist order in *Postal Service*, 350 NLRB 441 (2007). In this case both violations occurred in the context of grievance investigations, suggesting the potential to hide other misconduct. Respondent's defense of the two violations was weak. The violations must be considered against two decades of repeated information request violations by Respondent at several locations nationwide. The Board has issued a broad order in the past against Respondent at its Albuquerque district facilities in *Postal Service*, 345 NLRB 426 (2005).

Respondent's contention that its self-help remedial efforts in the Albuquerque district obviate the need for a broad order must be tempered by the reality of the repeated violations at two of its facilities despite its voluntary measures. As the Board noted in *Postal Service*, 345 NLRB 409, 411 (2005):

Obviously, the Respondent's voluntary measures failed to completely eliminate information request violations at the Waco facility involved here. Further, while we applaud any effort to prevent the recurrence of unlawful behavior, the Re-

spondent's history of past failures to address endemic resistance to these requests in various localities strongly suggests that neither self-help measures nor another narrowly-drawn Board cease-and-desist order will suffice to remedy this situation.

In balancing all of the factors set forth by the Board in *Postal Service*, 345 NLRB 409 (2005), I find that a broad order is justified herein.

With respect to the General Counsel's request that the order herein apply to Charging Party Union and any other labor organization that represents Respondent's employees at facilities within the Albuquerque district and that Respondent should post a notice to employees at all facilities within the Albuquerque district, I find that this remedy is overbroad. The complaint allegations herein are limited to only the Charging Party. It would not be appropriate to apply the order to other unions.

Moreover, in most of the cases involving Respondent, the Board's order has been limited to the facilities where the violations occurred. *Postal Service*, 339 NLRB 400 (2003); *Postal Service*, 345 NLRB 409 (2005); *Postal Service*, 345 NLRB 426 (2005); *Postal Service*, 350 NLRB 441 (2007); *Postal Service*, 352 NLRB 923 (2008). The only case cited herein requiring a districtwide posting, *Postal Service*, 339 NLRB 1162 (2003), involved the Board's finding that Respondent had made no affirmative steps to control its districtwide misconduct on a districtwide basis.

Here there is a history of Respondent's violations of Section 8(a)(5) of the Act in various offices throughout the Albuquerque district. *NLRB v. USPS*, Case No. 02-9587 (unpublished consent judgment entered January 8, 2003); *Postal Service*, 350 NLRB 441 (2007); *Postal Service*, 345 NLRB 426 (2005). Unlike the Houston area case, *Postal Service*, 339 NLRB 1162 (2003), here Respondent has made efforts to comply with the Board's orders and the Act's mandate to provide information in a timely fashion on a districtwide basis. Respondent has implemented a system of auditing union information request logs in its Albuquerque district post offices. The record reflects that in the period August 2006, to June 2008 the Albuquerque district received 2339 information requests.<sup>27</sup> In 2003, 2005, 2006, and 2007, the Albuquerque district has provided its managers with training concerning their legal responsibilities to provide unions with information promptly. Since August 2006, the Albuquerque district has implemented a new program for City of Albuquerque facilities to ensure prompt replies to union information requests. Given this effort to comply, I find that a districtwide order at this time is not warranted.

#### CONCLUSIONS OF LAW

1. The United States Postal Service is now, and at all times herein, has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The American Postal Workers Union, Local Nos. 380 and 434, AFL-CIO are labor organizations within the meaning of Section 2(5) of the Act.

3. By failing and refusing to provide the Unions in a timely manner with the information it requested on January 29 and

<sup>25</sup> *Postal Service*, 345 NLRB 409 fn. 19 (2005).

<sup>26</sup> *NLRB v. USPS*, Case No. 02-9587, unpublished consent judgment entered January 8, 2003.

<sup>27</sup> R. Exh. 201.

February 14, 2008, as found herein, the information being relevant and necessary to the Unions as the collective-bargaining representatives of the employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) of the Act.

#### REMEDY

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

Because the Respondent has a proclivity for violating the Act (see, e.g., *Postal Service*, 350 NLRB 441 (2007), 345 NLRB 426 (2005), 339 NLRB 1162 (2003), and because of the serious nature of the violations, I recommend issuance of a broad order requiring the Respondent to cease and desist from infringing in any other manner on rights guaranteed employees by Section 7 of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>28</sup>

#### ORDER

The Respondent United States Postal Service, La Luz and Roswell, New Mexico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the American Postal Workers Union, Local Nos. 380 and 434, AFL-CIO by failing and refusing to timely provide requested information that is relevant and necessary to the Union as the collective-bargaining representative of those unit employees described in the existing collective-bargaining agreement and found appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

(b) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Furnish the Unions in a timely manner with the information requested.

(b) Within 14 days after service by the Region, post at its La Luz and Roswell, New Mexico post offices copies of the at-

<sup>28</sup> 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.

tached notice marked "Appendix."<sup>29</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at such closed facilities at any time since January 29, 2008.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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

Dated, Washington, D.C. November 25, 2008

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to promptly furnish information requested by the Union that is relevant and necessary to the Union's performance of its duties as your collective-bargaining representative.

UNITED STATES POSTAL SERVICE

<sup>29</sup> 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."