

**United States Government  
National Labor Relations Board  
OFFICE OF THE GENERAL COUNSEL**

# Advice Memorandum

DATE: March 25, 2002

TO : Victoria E. Aguayo, Regional Director  
William M. Pate, Jr., Regional Attorney  
James Small, Assistant to the Regional Director  
Region 21

FROM : Barry J. Kearney, Associate General Counsel 596-0855  
Division of Advice 596-1685-6050

SUBJECT: California Redi-Date LLC  
Case 21-CA-34253

This case was submitted for advice as to whether the Employer was timely served with the unfair labor practice charge when the charge was mailed within the Section 10(b) period to the Employer's plant's street address. The plant has no mailbox at the street address, but the charge (and other letters) were not returned by the postal service. We conclude that the Employer was timely served, given the evidence that the postal service routinely routes mail addressed to the Employer's street address to the Employer's post office box, and that mail addressed to the street address is actually delivered to the Employer.

### FACTS

The individual Charging Party filed the original charge in this case on October 23, 2000, alleging that she and another employee were unlawfully terminated on May 2, 2000. The Region mailed a copy of that charge on October 25, within the Section 10(b) period of the terminations, via first class uncertified mail to the Employer's street address listed on the charge, according to a Board agent's affidavit of service. The charge was not returned by the USPS as undeliverable. A copy of an amended charge, filed December 26, was mailed to the Employer's street address via first class uncertified mail; it was not returned by the USPS.<sup>1</sup>

The Employer's street address is the address of a fruit packing facility in a rural desert area of Thermal, California. There is no mail receptacle at that facility.

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<sup>1</sup>Two other charges, subsequently dismissed, were also served by first class mail on the Employer at its street address on January 2 and February 2, 2001. Neither charge was returned by the USPS as undeliverable.

The Employer maintains a numbered post office box for mail delivery at the Thermal post office, which is approximately 200 yards away. The Thermal postmaster has stated, in a sworn declaration, that mail addressed to the Employer's street address is "generally forwarded" to the Employer's post office box. The postmaster states that there may be times when mail addressed to a physical address may be returned to the sender with a handstamped notation of "No mail receptacle," although that statement was not specifically linked to the lack of a mail receptacle at the Employer's plant.

There are examples of mail addressed to the Employer's street address being received by the Employer. The Board agent in the Region mailed a letter to the Employer's street address on January 2, 2001, asking for a response to the charge allegations. That letter was not returned by the USPS as undeliverable, and the Employer's attorney referred to that January 2 letter in a position statement dated January 19, 2001. In between those two dates the Board agent had mailed a letter dated January 3, 2001, to the Employer's post office box; it is unclear how or when the agent, who is no longer employed by the Board, obtained the Employer's post office box number.

Another example of the Employer receiving mail addressed to its street address is a certified letter mailed to the Employer's street address by the California Agricultural Labor Relations Board on January 8, 2002. That agency received a certified mail return receipt dated January 11, 2002, for that letter, signed by an Employer agent.

The Employer's attorney has stated that he first learned of the instant charge on January 4, 2001. On January 8, 2001, he wrote the Region, questioning whether the Employer had timely notice of the charge. He has not specifically raised the issue of the charge being served via mail within the Section 10(b) period only to the Employer's street address instead of to its post office box.

#### **ACTION**

We agree with the Region that the charge was timely served when it was mailed within the Section 10(b) period to the Employer at its street address, given the evidence that it was not returned as undeliverable by the postal service, that the postal service routinely routes mail addressed to the Employer's street address to the Employer's post office box, and that mail addressed to the street address is actually delivered to the Employer.

The Board has held that an affidavit of service from a Board agent constitutes proof of service.<sup>2</sup> The failure of the USPS to return documents indicates actual receipt of the documents by the addressee.<sup>3</sup> A respondent's failure to provide for receiving appropriate service by mail cannot defeat the purposes of the Act.<sup>4</sup>

Here, the original charge was served within the Section 10(b) period by mailing it to the Employer at its correct street address, even though there was no mail receptacle there. The charge, like numerous other mailings to that street address, was not returned by the USPS. The USPS states that it routinely routes mail addressed to the Employer's street address to its post office box, a method which is born out in fact by proof of the Employer's receipt of the January 2, 2001 letter regarding this case (as illustrated by the Employer attorney's reference to that letter) and by the certified letter return receipt dated January 11, 2002 from a mailing by the California state agency. In all these circumstances, we agree that the Board agent's proof of service of the original charge is adequate here to proceed with the complaint which the Region has determined is otherwise appropriate.

B.J.K.

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<sup>2</sup>See, e.g., Nathan Katz Realty LLC, 331 NLRB No. 22, slip op. at 1 n. 2 (2000); Electrical Workers Local 11 (Anco Electric), 273 NLRB 183, 191 (1981).

<sup>3</sup>See, e.g., DPC Construction, 332 NLRB No. 131, slip op. at 1 n. 3 (2000); Lite Flight, 285 NLRB 649, 650 (1987).

<sup>4</sup>See, e.g., I.W.G., Inc. d/b/a AAA Fire Sprinkler, 336 NLRB No. 106, slip op. at 1 n. 3 (2001) (copy of compliance specification mailed to IWG's closed post office box was returned, but letter sent to street address was not returned; service appropriate).