

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

UNITED STATES POSTAL SERVICE

and

Case 28-CA-22816

**AMERICAN POSTAL WORKERS UNION,
LOCAL NO. 402, AFL-CIO**

DECISION AND ORDER

Statement of the Case

On May 7, 2010, the United States Postal Service (the Respondent), the American Postal Workers Union, Local No. 402, AFL-CIO (APWU Local 402), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to the Board's approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

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

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.¹

¹ Chairman Liebman notes that the remedy to which the parties have agreed 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 See, e.g., *United States Postal Service*, 28-CA-17383 et al., unpublished order issued November 4, 2002, enfd. Case 02-9587 (10th Cir. 2003); and *United States 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. However, because all parties have agreed to the terms of this Formal Settlement Stipulation, Chairman Liebman has determined that approval of the parties' settlement will effectuate the purposes of the Act. The Board's approval of this stipulation does not modify these orders in any respect.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following:

Findings of Fact

1. The Respondent's business

The Respondent 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 the facilities located in Las Cruces, New Mexico, which facilities are located in the Respondent's Albuquerque District in New Mexico.

The Board has jurisdiction over the Respondent and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 101, et seq. (PRA).

2. The labor organization involved

The American Postal Workers Union, AFL-CIO (the National Union), is a labor organization within the meaning of Section 2(5) of the Act and within the meaning of the PRA.

APWU Local 402 is a labor organization within the meaning of Section 2(5) of the Act and within the meaning of the PRA.

APWU Local 402 is a constituent local of the APWU National Union.

3. The appropriate unit

The following employees of the Respondent, referred to in the parties' collective-bargaining agreement described below, which include the Respondent's employees employed at the Respondent's Las Cruces facilities, and which is herein called the Unit, constitute a unit appropriate for the purposes of collective-bargaining within the meaning of Section 9(b) of the Act and Chapter 12 of the PRA:

All employees in the bargaining unit for which the National Union has been recognized and certified at the national level as set forth in Article 1 of the collective-bargaining agreement effective February 3, 2007, through November 20, 2010, including maintenance employees, motor vehicle employees, postal clerks, equipment shop employees, and distribution center employees; excluding all managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1202(2), all postal inspection service

employees, employees in the supplemental workforce as defined in Article 7 (of the collective-bargaining agreement), rural letter carriers, mail handlers or letter carriers.

Since on or about 1971, and at all material times, the National Union has been the designated exclusive collective-bargaining representative of the Unit and since then the National Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from February 3, 2007, through November 20, 2010, herein called the Agreement.

At all material times, the National Union, based on Section 9(a) of the Act and Chapter 12 of the PRA, has been the exclusive collective-bargaining representative of the Unit.

At all material times the National Union has designated APWU Local 402 as its designee for the purpose of conducting certain of its functions as the exclusive collective-bargaining representative of the Unit, including, but not limited to, the filing and processing of grievances, and requesting information pursuant to said grievances, under the Agreement at the Respondent's Las Cruces facilities, located in the Respondent's Albuquerque District.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that:

The Respondent, United States Postal Service, Las Cruces, 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, AFL-CIO, (the National Union) or its designee, American Postal Workers Union, Local No. 402, AFL-CIO (the Union), herein collectively referred to as the APWU, as the exclusive-collective-bargaining representative of the employees in the following appropriate unit (the Unit):

All employees in the bargaining unit for which the National Union has been recognized and certified at the national level as set forth in Article 1 of the collective-bargaining agreement effective February 3, 2007, through November 20, 2010, including maintenance employees, motor vehicle employees, postal clerks, equipment shop employees, and distribution center employees; excluding all managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined

in Public Law 91-375, 1202(2), all postal inspection service employees, employees in the supplemental workforce as defined in Article 7 (of the collective-bargaining agreement), rural letter carriers, mail handlers or letter carriers.

(b) Delaying in providing information requested by the APWU which is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of Unit employees at the Respondent's facilities located in Las Cruces, New Mexico.

(c) In any like or related manner interfering with, restraining or coercing its employees in the exercise of their right to self-organization, to form labor organizations, to join or assist the APWU or any other labor organization, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative actions necessary to effectuate the policies of the National Labor Relations Act, as amended:

(a) Upon request, bargain collectively with the APWU as the exclusive representative of the Unit employees at the Respondent's facilities located in Las Cruces, New Mexico, including by promptly furnishing information requested by the APWU which is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of the Unit at the Respondent's facilities located in Las Cruces, Mexico.

(b) Within 14 days of service by Region 28 of the National Labor Relations Board (Region 28), post at all of its Las Cruces, New Mexico, facilities, copies of the attached notice marked "Appendix". Copies of the attached notice, on a form provided by 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. The Respondent will take reasonable steps 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 notices to all current employees and former employees employed by the Respondent at any time since December 15, 2009.

(c) Within 14 days after service by Region 28, transmit by way of written or electronic means a copy of the Board's Order and the Appendix to all of its Postmasters in the Albuquerque District, with instructions to the Postmasters in the Albuquerque District to inform their managers and supervisors of the obligations set forth in the Notice.

(d) Within 21 days after service Region 28, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by Region 28 attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., July 8, 2010.

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, 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**

Posted pursuant to a stipulation providing for a Board order and a consent judgment of any appropriate United States Court of Appeals.

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; and
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the American Postal Workers Union (APWU or National Union), or its designee, the American Postal Workers Union, Local No. 402, AFL-CIO (the Union), regarding the wages, hours, and other terms and conditions of employment of the employees in the following appropriate unit (the Unit):

All employees in the bargaining unit for which the National Union has been recognized and certified at the national level as set forth in Article 1 of the collective-bargaining agreement effective February 3, 2007, through November 20, 2010, including maintenance employees, motor vehicle employees, postal clerks, equipment shop employees, and distribution center employees, excluding all managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1202(2), all postal inspection service employees, employees in the supplemental workforce as defined in Article 7 (of the collective-bargaining agreement), rural letter carriers, mail handlers or letter carriers.

WE WILL NOT fail or refuse to bargain collectively with the APWU, or its designee, the Union, by delaying in providing information requested by the APWU, or its designee, the Union, which is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of Unit employees employed at our facilities located in Las Cruces, New Mexico.

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

WE WILL, upon request, bargain collectively with the APWU, or its designee, the Union, as the exclusive representative of the Unit employees at our facilities located in Las Cruces, New Mexico.

WE WILL promptly furnish information requested by the APWU, or the Union, which is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of Unit employees at our facilities located in Las Cruces, New Mexico.

UNITED STATES POSTAL SERVICE

(Employer)

DATE: _____ BY: _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Albuquerque Resident Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

National Labor Relations Board, Region 28
2600 North Central Avenue, Suite 1800; Telephone: 602-640-2160
Phoenix, AZ 85004
Hours of Operation: 8:15 a.m. to 4:45 p.m.

Si quiere, usted puede hablar con un agente de la Junta Nacional de Relaciones del Trabajo en confianza. [A Board agent who speaks Spanish can be made available to speak with you in confidence.] La página electrónica de red de la Junta Nacional de Relaciones del Trabajo también tiene información en español: www.nlrb.gov. [Information in Spanish is also available on the Board's website: www.nlrb.gov].

505 Marquette NW, Suite 1820 Telephone: (505) 248-5125
Albuquerque, NM 87102 FAX: (505) 248-5134

Hours of Operation: M-F 8:15 a.m. to 4:45 p.m.

Si quiere, se puede hablar con un agente de La Junta Nacional de Relaciones del Trabajo en confianza. [A Board agent who speaks Spanish can be made available to speak with you in confidence.] La pagina electronica de red de la

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WWW.nlr.gov]