

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA OFFICE

UNITED STATES POSTAL SERVICE

and

Cases 7-CA-53579
7-CA-53580
7-CA-53696

BRANCH 654, NATIONAL ASSOCIATION
OF LETTER CARRIERS, AFL-CIO

Robert Buzaitis, Esq.,
for the General Counsel.
David Wightman & Matthew Gowan, Esqs.
for the Respondent.

BENCH DECISION

STATEMENT OF THE CASE

MICHAEL A. MARCIONESE, Administrative Law Judge. This case was tried in Detroit, Michigan on August 9, 2011. Branch 654, National Association of Letter Carriers, AFL-CIO, the Union, filed the charges in Case Nos. 7-CA-53579 and 53580 on March 30, 2011.¹ The Union filed the charge in Case No. 7-CA-53696 on May 17 and amended it on May 31. Based upon these charges, the General Counsel issued a second order consolidating cases, second amended complaint and notice of hearing on July 19. The complaint, as further amended at the hearing, alleges that the United States Postal Service, the Respondent, violated Section 8(a)(5) and (1) of the Act by its unreasonable delay in responding to three information requests made by the Union. The Respondent filed its answer to the second amended complaint on August 2, admitting many of the complaint's allegations, including that the Union made two of the three information requests and that the information was relevant to, and necessary for, the Union's performance of its collective bargaining duties. The Respondent denied that it unreasonably delayed furnishing any information to the Union or that it committed any unfair labor practice in its dealings with the Union. The Respondent also denied that the Charging Party, Branch 654, was a labor organization.

¹ All dates are in 2011 unless otherwise indicated.

After hearing the testimony of witnesses for the General Counsel and the Respondent, reviewing the documentary evidence offered by the parties, and considering the arguments made by counsel at the hearing, I rendered a bench decision in accordance with Section 102.35(a)(10) of the Board's Rules and Regulations. For the reasons stated on the record, I found that Branch 654 is a labor organization within the meaning of Section 2(5) of the Act, that the Union made the information requests at issue and, as conceded by the Respondent, that all of the information requested was relevant and necessary. I found further that the delay in furnishing information in response to the three specific requests at issue was unreasonable and a violation of the Respondent's duty to bargain collectively with the Union. Based on these findings, I concluded that the General Counsel met his burden of proving that the Respondent violated Section 8(a)(5) and (1) of the Act as alleged in the second amended consolidated complaint.

I hereby certify the accuracy of the portion of the transcript, pages 125 through 137, containing my bench decision. A copy of that portion of the transcript is attached to this decision as "Appendix A."

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Respondent and this matter by virtue of Section 1209 of the PRA.

2. Branch 654, National Association of Letter Carriers, AFL-CIO, and its parent, the National Association of Letter Carriers, AFL-CIO, are each a labor organization within the meaning of Section 2(5) of the Act,

3. By its unreasonable delay in responding to the Charging Party's request for information that was relevant to and necessary for its representation of unit employees, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Because there is no dispute that the Respondent has already furnished all of the information in dispute, I shall not recommend an affirmative order requiring the Respondent to furnish any information at this time. Pursuant to the Board's decision in *J. Picini Flooring*, 356 NLRB No. 9 (2010), I shall also recommend that the Respondent distribute the notice electronically in addition to the customary posting in the workplace. Finally, in agreement with the Respondent, I have limited the order to the Mt. Clemons post office involved in this proceeding, for the reasons expressed in the attached bench decision. See also, *Postal Service*, 354 NLRB No. 58, fn. 2 (2009). The three instances of unreasonable delay here and the one that was subject to a settlement agreement in 2009, when considered in the context of the hundreds of information requests made by the Charging Party every year, does not show a proclivity to violate the Act, nor evidence any orchestrated pattern or practice of delay as a means of frustrating the bargaining process.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

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ORDER

The Respondent, United States Postal Service, Mt. Clemens, Michigan, its officers, agents, successors, and assigns, shall

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1. Cease and desist from

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(a) Refusing to bargain collectively with Branch 654, National Association of Letter Carriers, 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 purposes of collective bargaining within the meaning of Section 9(b) of the Act.

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(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.

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(a) Within 14 days after service by the Region, post at its facility in Mt. Clemens, Michigan, copies of the attached notice marked "Appendix B."³ Copies of the notice, on forms provided by the Regional Director for Region 7, 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. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. 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 facility 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 any time since December 22, 2010.

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² 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.

³ 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."

(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.

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Dated, Washington, D.C. , September 15, 2011.

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Michael A. Marcionese
Administrative Law Judge

Appendix A

As I indicated previously, I will be issuing a bench decision in this matter under the Board's rules and regulations. It's rule -- regulation at Section 102.35 -- I think it's (a)(10) of the Board's rules and regulations that authorizes an Administrative Law Judge to render a decision from the bench. Under the Board's rules, a bench decision essentially has to cover the same territory that a formal written decision would cover, and make the necessary threshold findings with respect to jurisdiction, et cetera. So I will also cover all of that.

Now, I've considered all of the arguments the parties have made during the closing arguments as well as during the hearing, and I've also considered the evidence that was presented, the testimony and the documents, and I'm now prepared to make my decision.

Now, this case was initiated by the Charging Party/Union through the filing of three charges. The first charge, 7-CA-53579, was filed March 30th. The second, 53580, was filed March 30th. Both 2011 -- all dates are 2011. And the last charge was filed, 53696, May 17th, and amended on May 31st of 2011. Based upon those charges, the General Counsel issued the complaint, and we have the second order consolidating -- second amended consolidated complaint, which was amended further at the hearing today.

And as amended, the complaint essentially alleges three incidents in which the Respondent allegedly unreasonably delayed in furnishing information.

The jurisdiction of the Board is pursuant to the Postal Reorganization Act, Section 1209. And I find, despite the denial of the Respondent, that the Branch 654, National Association of Letter Carriers, AFL-CIO, is a labor organization within the meaning of the Act, as is its parent, the National Association of Letter Carriers, AFL-CIO.

The evidence that was offered through General Counsel, the testimony of Mr. Blaze, clearly establishes that the local union does, in fact, negotiate with the Employer regarding terms and conditions of employment, even if only at the local level, and it does, in fact, process grievances and administer the contract, which is sufficient to establish that it is a

labor organization within the meaning of the Act.

Now, the case really is a factual one here. The parties all seem to be in agreement as to the law that should apply to whatever facts I might find. Clearly, as General Counsel has cited, the main case is NLRB v. Acme Industrial Company, 385 U.S. 432, at 435, 436, in which the Supreme Court held that a union is entitled to whatever information is relevant and necessary to its representation in the bargaining unit, not only for collective bargaining but for grievance adjustment and contract administration. And that certainly is the information that is being sought here by the Union.

And in Detroit Newspaper Agency, 317 NLRB 1071, at 1072, a 1995 decision, citing General Electric, 290 NLRB 1138, at 1147, the Board held that: "Once a union has made a good faith request for information, the Employer must provide relevant information reasonably promptly, in useful form."

And I think as the parties are in agreement, the test for whether a Respondent has supplied the information in a reasonable amount of time is that set forth by the Board in West Penn Power Company, 339 NLRB 585, at 587, a 2003 case, which was enforced in pertinent part at 349 F.3d 233 by the 4th Circuit in 2005, and subsequently confirmed in Earthgrains Company, 349 NLRB 389. And there, the Board said: "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."

And all parties agree that that's the test that I should apply in this case.

Now, applying the law to the facts, there is no dispute -- the Respondent, in fact, admitted in its answer that all of the information that was requested by the Union here is, in

fact, relevant to and necessary for its performance of its statutory functions as the exclusive collective bargaining representative of the unit.

The witnesses also essentially confirmed that. Mr. Sternad and Mr. Winters both acknowledged that the information request they were responding to was certainly something that the Union was entitled to receive.

So the only issue now, then, turns to whether there was a delay in furnishing the information, and if so, was it unreasonable or not? And there is three specific requests, and I'll take them one at a time.

If I can find my notes here.

Can we go off the record for a minute?

(Off the record.)

JUDGE MARCIONESE: Okay. Now, the first request was for clock rings of a specific bargaining unit employee for two dates, December 21st and 22nd.

Now, the testimony of Ms. Tulya Long, the vice president and steward of the Union, is that she made this request on December 22nd, to Donna Johnson, and Johnson did not give her the information within the 48 hours required under the parties' own local agreement dealing with furnishing of information requests, so that she asked Ms. Johnson again, and Ms. Johnson indicated at that time that, apparently, the reason she had not been able to provide the information is that she could not get access to a computer system for time and attendance, referred to as TACS, which I assume is T-A-C-S.

And Ms. Long testified that she agreed to extend the time period until December 27th, and when she had still not received the clock rings, she filed a grievance at the direction of the local branch president, Mr. Blaze, on December 28th.

Now, the grievance form that was filed, which is in evidence, does not indicate that there was ever any first step meeting held, informal or even a Formal Step A meeting, with respect to that grievance. Ms. Johnson did not testify, so Ms. Long's testimony is

essentially undisputed. Now, Ms. Long did not testify, though, whether she made any other efforts after submitting the grievance in order to get the clock rings.

And the testimony of Mr. Blaze is that he did not raise the issue again until he met with Joseph Sternad, the lead supervisor, on two occasions in February in which he and Mr. Sternad were reviewing, apparently, some pending grievances, and in the course of that review, Mr. Blaze testified that he explained on both occasions -- February 3rd, I think, was the first date, and February 25th -- what the grievance was about, specifically, the clock rings for the employee in question. And in both instances, he testified that Mr. Sternad said that he would take care of it. And, in fact, at the February 25th meeting, the parties agreed to extend the grievance that had been filed by the Union over the failure to furnish this information, and Mr. Sternad made some notes in reference to the grievance on the document itself.

But there's no dispute that, despite that explanation in February, the Union did not get the clock rings until April 12th, which was after the Union had filed the unfair labor practice charge.

Now, Mr. Sternad did dispute Mr. Blaze's testimony that Blaze told him that they had not received the clock rings at the February meeting, and according to Mr. Sternad, he testified that no one told him until March 30th that the clock rings had not been furnished.

But even if that were the case and he knew as of March 30th that the clock rings had not yet been furnished, they still were not furnished to the Union until April 12th, even though the printout of the clock rings is dated April 4th, a full eight days before it was turned over to the Union. And Mr. Sternad, in his testimony, acknowledged that the clock rings are easy to retrieve, it's a simple matter, and there was really no explanation for -- even if I were to credit Mr. Sternad -- why it took from March 30th until April 12th, you know, when he claims he became aware that the Union had not received it, to actually, finally, get the clock rings for those two days to the Union.

But in any event, I credit Mr. Blaze's testimony that he did, in fact, advise

Mr. Sternad at the meeting on February 25th, at the latest, when they were reviewing the grievance, that, in fact, that grievance was about the failure to furnish the clock rings.

So at least with respect to that, I would find that the delay is unreasonable, since there is really no reasonable explanation offered as to why it took until April 12th, after the unfair labor practice was filed, for the Union to actually get something that was so simple and easy to retrieve.

The next item requested, which is a little more difficult, are the 3999's, which is forms related to the audit of various routes. And the testimony is that Mr. Blaze made the request to Supervisor Winters on January 7th, and he admitted that, on the very same day that he made the request, he received an interoffice envelope from a bargaining unit employee that had been forwarded to him from Mr. Winters, which he did not review for several days. And it was only after he reviewed it that he realized that not all of the 3999 forms that he had requested were included within the packet. But he did not indicate that he went back to Mr. Winters to ask why he didn't get the rest of it nor directly talk to anybody else about it; instead, directing that a grievance be filed to allege that information was not furnished.

And the grievance was filed by Ms. Long on January 10th, and there is testimony from Ms. Long that's not disputed by the supervisor, John Tarian, that she, in fact, discussed the grievance and the information that was not provided with Tarian, who then moved the grievance up to the next step.

The next testimony is that the issue was raised again at that same February 25th, 2011 meeting, where the parties agreed to extend the grievances, including this one, and there was a notation from Mr. Sternad on the form, indicating -- noting that this grievance related to the 3999's.

And Blaze testified that he told Mr. Sternad exactly what was missing during the discussions at that February 25th meeting, and Mr. Sternad again denies that this was mentioned. According to Mr. Sternad, his belief was that the only issue with respect to

those grievances was whether the Respondent had furnished the information within the 48 hours and whether a monetary penalty should ensue.

But in this respect, as well, I will credit Mr. Blaze because I find it more believable that, if they were reviewing these grievances on February 25th, and the grievance, in fact, had the specifics attached which identify the omitted forms, that I find it more believable that he would have mentioned that to Mr. Sternad than that he would not have. It's unlikely he would have talked about the grievance without mentioning what it was about.

Okay. And Mr. Sternad's testimony, also, is that -- well, he claims he was not told at the February 25th meeting that there were forms omitted from the packet of information that Mr. Winters provided. He admits that he knew by the time the grievance was moved up to Step B on March 5th that there was a claim that not all of the 3999 forms had been provided.

Yet, nevertheless, there's no dispute that the forms were not furnished until just last week, August 4th, shortly before the hearing in this matter, and no explanation was given as to that delay, other than, perhaps, the Respondent's defense in this proceeding that the information had been provided.

But in any event, even if that were the case, the Respondent knew at the latest, on March 5th, that at least the Union was claiming it had not been provided, and yet there was no attempt to get the information to the Union until August 4th.

So, again, without any reasonable explanation for that delay, I would have to find, as the General Counsel has proven, that the Respondent unreasonably delayed in furnishing the 3999 forms. Again, also keeping in mind that the Respondent's own witnesses concede that all of these forms are kept in individual folders by route number. They're readily retrievable. I mean, the fact that Mr. Winters was able to duplicate and copy most of the forms, if not all of them, within the same day, indicates how readily available the information was.

Now, with respect to the last piece of information are the 3996 forms for Unit II.

Again, Ms. Long testified that she requested these as well as the 3996 for three other units on March 6th, from supervisor John Tarian, who did not testify, and that she, in fact, got the forms for all but Unit II from Mr. Tarian, and that she asked Mr. Tarian where the forms for Unit II were, and that Mr. Tarian told her that Mr. Sternad would take care of it, and that, again, when she still had not received it, the grievance was filed on April 23rd, alleging a failure to furnish information with respect to these particular forms.

Now, the branch president, Mr. Blaze, testified that he had a discussion with Mr. Sternad on May 3rd, at the final Step A meeting, indicating that he had still not received the 3996 forms for Unit II, yet they were not furnished until May 17th, which coincides with the date that the unfair labor practice charge was filed.

Now, Mr. Sternad, although he initially claimed that he did not learn that the 3996 for Unit II had not been furnished until he received a call from the Labor Department -- and I'm not sure if he was referring to the National Labor Relations Board or an internal department within the Postal Service -- and he did not specify what date he received this call -- he did admit on cross-examination he -- or even it might have been redirect -- that no later than the May 3rd meeting with Mr. Blaze, that he was aware that these forms had not been furnished to the Union, yet, again, he provided no explanation for why it took two weeks to provide those forms to the Union, and that it happened to coincide with the date the Union filed the unfair labor practice charge.

So based on the testimony of Mr. Blaze, which I find more credible than that of Mr. Sternad, I find that the General Counsel has met his burden in this case of establishing that the delay in furnishing the three specific types of information requested in this case was unreasonable under the totality of circumstances.

I note, as Respondent points out, that these are just three instances out of hundreds -- even Mr. Blaze admitted that there's at least 200 information requests a year. But, nonetheless, without a more specific explanation in each specific instance why it took as long as it did, once the Respondent became aware of the omissions, to actually get the

information to the Union, I am constrained to find that a violation has occurred.

Now, with respect to the remedy, I agree with the Respondent that I don't see this case as requiring a broader remedy. And I note that General Counsel is not seeking a broad order, nor is he seeking a nationwide remedy. But in this case, I think an order limited to a cease and desist at the Mount Clemens Post Office would be sufficient, since that's the only place that these three incidents occurred. There's no evidence that it's more pervasive than that, and as I indicated, it's already been pointed out that that's only three instances out of hundreds of information requests at this particular post office, so a narrow order limited to the particular bargaining unit at the Mount Clemens Post Office should be sufficient, with a posting at that facility, to remedy the violation.

Now, in due course, once I receive the transcript, I will be issuing a written order which will adopt the transcript portions of my bench decisions, and that written order will include the formal order and notice to be posted, and any party who is not happy with any of my findings, rulings, or decision or conclusions has the right to file exceptions. The time period for filing exceptions does not begin to run until you actually receive the written version of the bench decision with the formal order, which usually comes down shortly after the transcripts are received.

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 Branch 654, National Association of Letter Carriers, 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

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies 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 Regional Office set forth below. You may also obtain information from the Board’s website: www.nlr.gov.

477 Michigan Avenue, Room 300, Detroit, MI 48226-2569
(313) 226-3200, Hours: 8:15 a.m. to 4:45 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE’S COMPLIANCE OFFICER, (313) 226-3244.