UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

UNITED STATES POSTAL SERVICE **and** **NATIONAL ASSOCIATION OF LETTER CARRIERS, MERGED BRANCH 19**	**Case 34-CA-012912**

AFFIDAVIT OF SERVICE OF: COUNSEL FOR ACTING GENERAL COUNSEL'S REPLY BRIEF TO RESPONDENT'S ANSWERING BRIEF TO COUNSEL FOR ACTING GENERAL COUNSEL'S EXCEPTIONS

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, MERGED BRANCH 19	Case No. 34-CA-12912

COUNSEL FOR ACTING GENERAL COUNSEL'S REPLY BRIEF TO RESPONDENT'S ANSWERING BRIEF TO COUNSEL FOR ACTING GENERAL COUNSEL'S EXCEPTIONS

Pursuant to Section 102.46(h) of the Board's Rules and Regulations, Counsel for the Acting General Counsel files this Reply Brief to United States Postal Service's (Respondent's) Answering Brief to Counsel for Acting General Counsel's Exceptions and Supporting Brief concerning the Decision of Administrative Law Judge Ray Green, which issued on April 16, 2012 in the above case.

For the reasons set forth below, and based upon the record as a whole, Counsel for the Acting General Counsel (herein referred to as Counsel) urges the Board to reject the arguments raised in Respondent's Answering Brief and reject those portions of the judge's findings, conclusions, and recommended Order to which Counsel previously excepted.[1]

[1] Throughout this brief, the following references will be used:
Respondent's Answering Brief..... ....RAB (followed by page number)
Acting General Counsel's Exceptions.....GXE (followed by number)
Acting General Counsel's Brief Supporting Exceptions.....GCSB (followed by page number)
Administrative Law Judge's Decision.....ALJD (followed by page number)
Transcript..... .....Tr. (followed by page number)

Respondent in its answering brief challenges Counsel's arguments on the merits and as to the remedy. This reply brief focuses on the remedy issue, and refers the Board to Counsel's brief in support of exceptions concerning the merits.[2] Counsel seeks a remedy which, in short, includes an Order requiring a notice posting at all of the facilities which comprise the New Haven, Connecticut Post Office, and requiring Respondent to send a copy of any Order and Notice to all New Haven Post office managers and supervisors (GXE 13, GCSB 41).

Respondent contends that Counsel has not met its burden of establishing the need for what it describes as a remedy "far beyond the traditional remedy" (RAB 10), and a "special and extraordinary remedy". It asserts that a "special and extraordinary remedy" is justified only if there have been "numerous, pervasive and outrageous" violations and traditional remedies are inadequate to ameliorate their effect, citing *Albertsons, Inc.*, 351 NLRB 254 (2007) (RAB 10).

Contrary to Respondent's claim, the requested multi-location posting at the eight or nine New Haven Post Office facilities and the mailing to supervisors does not go "far beyond the traditional remedy (RAB 10)." The requested multi-location posting is a very modest expansion from the required posting at the one location ordered by the judge – or the two locations that would be involved if the Board finds merit to the exceptions (Tr. 689, 222; ALJD 3:13). Even if the

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[2] One point is addressed here. Respondent urges the Board to accept the judge's recommended conclusion that the one month delay in Respondent providing the information linked to Friedman's December 20, 1010 grievance was not violative (RAB 8, ALJD 12 at 43). It relies in part on the lack of case citation on this point in the Supporting Brief (GCSB). In short, as argued in the brief to the judge, a one month delay has been found violative, *United States Postal Service*, 308 NLRB 547 (1991), as have shorter delays, *Capitol Steel & Iron Co.*, 317 NLRB 809 (two week delay), *Aeolian Corp.* 247 NRLB 1231, 1244 (1980). See also reasoning of Judge K. Locke in *United States Postal Service*, 2010 WL 5101107 (December 14, 2010).

requested remedy is categorized as "special" within the Board's parlance, it is not so clear that it is properly labeled an "extraordinary" remedy.

Further, Respondent is incorrect in arguing that such a modest expansion of the Notice posting to multiple facilities can only be ordered if there have been "numerous, pervasive and outrageous" statutory violations.[3] In this regard, the Board stated the following in *United States Postal Service,* 339 NLRB 1162, 1163 (2003):

> When there is a "clear pattern or practice of unlawful conduct", the Board may find a broader posting appropriate, regardless of the egregiousness of the particular violations at issue. See *John J. Hudson, Inc.,* 275 NLRB 874 fn.2 (1985). Posting a notice at multiple locations may be appropriate where the employer has a history of engaging in unfair labor practices. See *Miller Group,* 310 NLRB 1235 fn.4 (1993), enfd. mem. 30 . 3d 1487 (3d Cir. 1994)

Also, in order to dodge the modest expansion of the Notice posting, Respondent contends that [n]o dispute exists that the Postal Service properly and timely responded to many other information requests that were pending during the same time period", and that Counsel's position is not based on a claim of widespread failure to supply or timely supply information at the New Haven facilities during the periods when the violations arose (RAB 10). However, Respondent's contentions count for little. Although there is evidence that it supplied some information in the last half of 2010 and early 2011, there is insufficient record evidence to establish what <u>percentage</u> of information requests

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[3] Indeed, in *Albertson*, supra, which included an information allegation, the Board replaced the judge's order, which contained a wide array of special remedies other than notice posting, with an order that actually did include an affirmative provision that one among several notices be posted at "all represented Rocky Mountain Division facilities". It is, however, not entirely clear whether that multi-location posting was based on a conclusion that the violations were "numerous, pervasive, and outrageous" or on the situs of the violations.

in that period were timely and adequately fulfilled by Respondent – as compared with the percentage which were not, as alleged herein.

Respondent also argues that the cases cited by Counsel in her brief in support of exceptions at page 45 are "largely irrelevant" because none of those cases concern the two New Haven, Connecticut facilities at issue here (RAB 10-11, GCSB 45). That argument misses the point. The Board, in determining the remedy in other Postal cases, has indeed looked to Respondent's recidivism at other facilities nationwide. That is precisely why Counsel cited those cases. Further, Respondent does not address the fact that Counsel cited *United States Postal Service*, supra 339 NLRB 1162 not only for the Respondent's "proclivity" to violate the Act, but also in support of a multi-location posting within the same Postal administrative division (GCSB 44).

Respondent, in another attempt to avoid the limited multi-facility posting, also claims that it receives about one-half to one million information requests each year [apparently nationwide], the "vast majority of which are fulfilled properly", and asserts that in the period of the cases cited by Counsel, has fulfilled over 12 million requests (RAB 11). Respondent also asserts a purported "longstanding, positive relationship with its union". Yet those "facts" are nowhere in evidence in this case. Respondent does not cite any Board findings to that effect in other cases. Those unsupported assertions should be disregarded.

Respondent then argues against reliance on its proclivity to violate the Act in other parts of the United States by casting its organizational structure as "massive, far flung, and decentralized" (RAB 11). However, Respondent does

not rely on any Board decision to that effect, but rather quotes from the Fifth Circuit decision in *NLRB v. U.S. Postal Service*, 477 F.3d 263 (5th Cir. Jan 26, 2007), enforcing only a modified Board order in *United States Postal Service,* 345 NLRB 409 (2005), and denying enforcement of the Board's broad cease and desist order. [4] Indeed, as Respondent acknowledges, the Fifth Circuit cited the opinion of a dissenting member in the Board's case.

Respondent goes on to characterize the instances in which the Board has ordered "company- or district-wide orders" (RAB 11) – or not—based on whether Respondent was acting as part of a nefarious scheme originating from a corporate center. Then, in a non sequitur, it points to its purportedly successful bargaining relationship with this Union, for which, once again, it does not provide any evidentiary support (RAB 12). As to the first point, there is no allegation here that Respondent has schemed to refuse to supply information. But Respondent does appear in the instances at issue in the instant complaint to be remarkably inattentive to, and cavalier about its bargaining obligations regarding information requests in New Haven. This behavior is unfortunately consistent with the findings in past cases in other parts of the country in a national bargaining unit (See cases cited in Brief in Support of Exceptions, GCSB 45).[5]

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[4] Counsel cited that case in her Supporting Brief with respect to the Respondent's proclivity to violate the Act. It is acknowledged that the Board therein, without an expressed rationale, limited the Notice posting to the one facility within a post office where the "information" violation occurred, thus rejecting the judge's order for posting at all facilities comprising that post office. *USPS, 345 NLRB 409,* supra note 3.

[5] As to Respondent's citation to two judges' decisions not to grant nationwide postings, the point is that Counsel is not seeking a nationwide posting here, but a local one involving just the New Haven Post office facilities.

Further, as to the judge's rejection of a 50-location posting in *The Earthgrains Co.*, 349 NLRB 389, 401 (2007), there the judge opted for a one-facility posting based

As to Respondent's argument that the violations at issue in the prior Postal Service cases are too remote in time to establish a propensity to violate the Act (RAB 12), the cases previously cited by Counsel included *United States Postal Service*, 352 NLRB 923 (2008) (GCSB 45). Indeed the portion of that Decision and Order that involved information requests was based on events occurring in 2005, and the facts in the instant case occurred several years later, during the period August 2010 to the spring of 2011. Thus, Respondent's conduct herein occurred just two to two and a half years after the Board's order in the 2008 case, in the context of a long history of Respondent's recidivism in information-based violations.

Further, Respondent ignores the fact that it again failed to provide and timely provide information after making its commitment in the Formal Settlement in 2009, having receiving the related Court order in early 2010, shortly before the violations in the instant case.

As to Respondent's assertion that Counsel is asserting facts not present at trial concerning interchange of employees among the New Haven branches (RAB 12-13), this is incorrect. See transcript citations at GCSB 44. As to supervisors and managers other than Soto, the point is not that they worked at

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on the fact that the General Counsel had only cited one prior "information" violation of that employer, and it was at only one facility, which thus failed to show a pattern of unlawful behavior. This Respondent has a different track record.

As to Respondent's reliance on the judge's rejection of a nationwide posting in *Beverly Enterprises, Inc.*, 341 NLRB 296, 308 (2004), and reference to his finding that there was no showing the normal posting requirements would be inadequate, the point here is that there is such a showing, given that Respondent within the New Haven Post Office again violated the Act with respect to information matters on the heels of the Court order that flowed from the Formal Settlement of the prior New Haven case.

locations covered by the Formal Settlement, but rather that they are involved in this case, and they (including Manager Bernardo), like many of Respondent's New Haven managers and supervisors, move about among the New Haven Post Office facilities.

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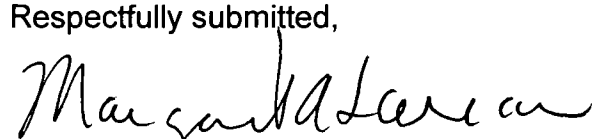
In view of all of the above, and in light of Respondent's cavalier disregard for the recent commitments it made in the Formal Settlement at other New Haven Post Office branches, and for the reasons set forth in Counsel's brief in support of Exceptions, the requested remedy should be granted. The modest increase in posting locations from the New Haven Post Office Branch facilities where the violations occurred to all of the eight or nine New Haven Post Office Branch facilities is warranted, as is mailing the Notices to the supervisors and managers (GCSB 41-46). The escalating remedy is clearly warranted to achieve a change in Respondent's unlawful behavior regarding information requests.

Dated at Hartford, Connecticut, this 11th day of June, 2012.

Respectfully submitted,



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