

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

UNITED STATES POSTAL SERVICE

and

Case No. 7-CA-71165

BRANCH 122, NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Eric Cockrell, Esq., Counsel for the General Counsel.

David Wightman, Esq., Counsel for the Respondent.

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on May 7, 2012 in Lansing, Michigan. The Complaint herein, which issued on March 28, 2012, and was based upon an unfair labor practice charge that was filed on December 21, 2011¹ by Branch 122, National Association of Letter Carriers, AFL-CIO, herein called the Union, alleges that the United States Postal Service, herein called the Respondent, violated Section 8(a)(1)(5) of the Act by unreasonably delaying in providing the Union with information that it requested of the Respondent, which information was necessary for, and relevant to, the Union as the collective bargaining representative for certain of its employees who were represented by the Union in the Lansing, Michigan area.

I. Jurisdiction and Labor Organization Status

Respondent admits, and I find, that the Board has jurisdiction over Respondent by virtue of Section 1209 of the PRA, and that the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. Findings of Fact

The National Association of Letter Carriers, AFL-CIO, herein called the National Union, has been the exclusive representative of letter carriers at various postal facilities throughout the United States; the National Agreement contains a grievance-arbitration provision, as well as a provision requiring the Respondent to provide the Union with information relevant to grievances and arbitrations. The Union has been the designated servicing representative for the National Union for letter carriers at the Lansing, Michigan processing and distribution center, and, in that capacity, represents approximately three hundred and fifty employees at nine facilities in the area, known as the Greater Michigan District. This hearing involves the following information requests which, it is alleged, the Respondent unreasonably delayed in providing the Union with the information it requested, in violation of Section 8(a)(1)(5) of the Act:

(a) On September 10 the Union, in writing, requested that Respondent provide it with the criteria used to deny bargaining unit carrier JoAnn Saucedo limited work duty, copies of

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2011.

Sauceda's 2499 form and form 50, and related information;

5 (b) On October 4, 2011, the Union, in writing, requested the overtime alerts, employee everything reports and bid slips for bargaining unit employees Aaron Ostrander and Mary Flood;

(c) On October 20, 2011, the Union requested, in writing, a time study, Form 3999, done over the course of the preceding two weeks, for carrier Brian Conklin, and related notes;

10 (d) On October 28, 2011, carrier Linda Stadal's 3971 documents for pay period 21;

(e) On October 29, 2011, the names of all Postal Support Employees (PSEs) at the facility, their pay level, job title, and related information, and any open positions in that classification; and,

15 (f) On November 4, 2011, employee everything reports for carriers listed on Labor Distribution Code (LDC) reports.

20 At the commencement of the hearing, Counsel for the General Counsel and the Respondent stipulated to the requests referred to above in (a), (b) and (c) and Respondent's Answer admits to the allegations contained in paragraphs (d), (e) and (f). Respondent's Answer also admits that the information requested in (a) through (f) above was relevant to, and necessary for, the Union as the servicing agent of the collective bargaining agent of the unit employees, with the exception of the information requested on October 20, referred to above in
25 paragraph (c). Finally, Respondent's Answer admits that the information requested on September 10, referred to in paragraph (a), was provided on February 8, 2012, the information requested on October 29, referred to in paragraph (e), was provided on November 18, and the information requested on November 4, referred to in paragraph (f), was also provided on November 18, while denying that the delay in providing this information was unreasonable.
30 Respondent denies that the information referred to in paragraph (b) was provided on about February 18, 2012, the information referred to in paragraph (c) was provided on about November 3, and the information referred to in paragraph (d) was provided on about November 18.

35 Patricia Bates, Union President and Steward, Andrea O'Hearon, Vice President and Steward, and Kimberly Craig, Steward, testified about these information requests.

40 (a) Pursuant to the stipulation of the parties, together with the Respondent's Answer, I find that the information requested by the Union for bargaining unit employee Saucedo on September 10, was relevant to, and necessary for the Union as the servicing agent for the unit employees, and that this information was not provided to the Union until February 8, 2012.

45 (b) Pursuant to the stipulation of the parties, together with the Respondent's Answer, I find that the information requested by the Union for bargaining unit employees Ostrander and Flood on October 4 was relevant to, and necessary for, the Union as the servicing agent for the unit employees, and pursuant to Craig's uncontradicted testimony, this information was provided to the Union on about October 27. She also testified that, in her experience, this information usually takes "a couple of days at the most" to comply with, but the Respondent never explained why it took seventeen days for it to supply with the Union with this information.

50 (c) Pursuant to the stipulation of the parties, I find that the information requested by the Union for bargaining unit employee Conklin was made on October 20. This information request

asks for “Brian Conklin’s 3999 done on R. 1536 within the last 2 weeks by Todd Davis” together with all notes and other paperwork. Form 3999 is a time study performed by the Respondent on a letter carrier’s route, such as Conklin’s, sometimes for the purpose of adjusting a route. Based upon the uncontradicted testimony of Bates and Craig, I find that this information was necessary and relevant to the Union as the servicing agent of these unit employees. Bates testified that, in the past, when she has requested 3999s she received them within one to fourteen days. Craig testified that Davis is Conklin’s supervisor and a grievance was filed by the Union regarding this time study that was performed by Davis. Bates was given this information on November 3, but she was never given an explanation by the Respondent about why they had not provided the information at an earlier time.

(d) Respondent’s Answer admits that this information request for bargaining unit employee Linda Stadal was made on October 28 and that it was relevant to, and necessary for, the Union as the servicing agent for the bargaining unit. Bates testified that in her experience, the information requested in this October 28 request was usually complied with “within a couple of days.” Craig testified that she received this information on November 18, but the Respondent never explained why it was not provided sooner.

(e) Respondent’s Answer admits that this information request for bargaining unit employees was made on October 29, that it was necessary for, and relevant to, the Union as the servicing agent for the bargaining unit, and that it was given to the Union on November 18, although the Information Request states that it was received by the Union on November 17. O’Hearon testified that, in the past, these information requests were responded to within a day or two; however, no explanation was given by the Respondent for the delay.

(f) Respondent’s Answer admits that this information request for employee everything reports for bargaining unit employees was made on November 4, that it was necessary for, and relevant to, the Union as the servicing agent for the bargaining unit employees, and that it was given to the Union on November 18. Craig testified that she had previously requested this information from the Respondent two or three times a week and Respondent usually complies with the requests within two or three days. Respondent never explained why it took fourteen days to comply with this request.

III. Analysis

The law is clear that when the collective bargaining representative of unit employees makes a request for information that is relevant to it as a bargaining representative, that information must be provided to the requesting union, and within a reasonable time. In *Detroit Newspaper Agency*, 317 NLRB 1071, 1072 (1995), the Board stated: “Once a union has made a good-faith request for information, an employer must provide relevant information reasonably promptly in useful form.” Similarly, in *Amersig Graphics, Inc.*, 334 NLRB 880, 885 (2001), the Board stated: “An employer must respond to the information request in a timely manner. An unreasonable delay in furnishing such information is as much a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all.” As the information requests that Bates, Craig and O’Hearon made were necessary and relevant to the Union as the servicing agent for the National Union of the Respondent’s letter carriers in the Lansing, Michigan area, the ultimate issue herein is what constitutes an *unreasonable* delay. In *West Penn Power Co.*, 339 NLRB 585, 587 (2003), the Board stated:

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 evaluation 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.

5

Bates, Craig and O’Hearon each testified without contradiction, that in the past the information requests that they made to the Respondent between September 10 and November 4 were usually responded to in between one to three days; in only one of the requests, the one dated October 20 regarding the Form 3999 performed on Conklin, was the usual retrieval time from one to fourteen days. *The Earthgrains Company*, 349 NLRB 389, 400 (2007). Five of the six requests were responded to in from fourteen to twenty three days without any explanation by the Respondent for the delay. Although the timing of these responses were not extreme, they were longer than they had to be and were not as prompt as circumstances allowed, and they therefore violated Section 8(a)(1)(5) of the Act, as did the five month delay in responding to request (a).

10

15

Conclusions of Law

1. The Board has jurisdiction over the Respondent pursuant to Section 1209 of the PRA.

20

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1)(5) of the Act by responding to the Union’s information requests from September 10, 2011 to November 4, 2011 in an untimely manner.

25

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. In that regard, I recommend that Respondent be ordered to respond to the Union’s relevant information requests in a timely manner, and that it post a notice at its Greater Michigan district facilities stating that it will do so.

30

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

35

ORDER

The Respondent, United States Postal Service, its officers, agents, successors and assigns, shall

1. Cease and desist from

40

(a) Refusing to provide timely responses to Union requests for information that are necessary for, and relevant to, the Union’s performance of its duties as the exclusive collective bargaining representative of certain of the Respondent’s employees.

45

(b) In any like or related manner interfering with, restraining or coercing employees in the

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.

50

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.

5 (a) Upon receipt of information requests from the Union that are necessary for, and relevant to the Union as the collective bargaining representative of certain of its employees, provide the Union with the information in a reasonable and timely manner.

10 (b) Within 14 days after service by the Region, post at its facilities in Lansing, Michigan copies of the attached notice marked "Appendix."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. 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
15 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
20 September 10, 2011.

(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.

25 **Dated, Washington, D.C., June 22, 2012.**

30

 Joel P. Biblowitz
Administrative Law Judge

35

40

45

50

 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."

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 provide timely responses to requests from Branch 122, National Association of Letter Carriers, AFL-CIO (“the Union”) for information that is necessary for and relevant to the Union’s performance of its duties as the exclusive collective-bargaining representative of certain of our employees.

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.

WE WILL promptly provide the Union with the relevant information that it requests and, if we are unable to locate any of the requested information, **WE WILL** explain the reasons for the unavailability to the Union.

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, Federal Building, Room 300
Detroit, Michigan 48226-2569
Hours: 8:15 a.m. to 4:45 p.m.
313-226-3200.

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.