

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

UNITED STATES POSTAL SERVICE

and

Case 7-CA-65355

**MICHIGAN POSTAL WORKERS UNION,
AMERICAN POSTAL WORKERS UNION
(APWU), AFL-CIO**

Robert Buzaitis, Esq.,
for the General Counsel.

David F. Wightman, Esq., and Matthew J. Gowan, Esq.,
for the Respondent Postal Service.

Thomas Lothamer,
for the Charging Party Union.

DECISION

JEFFREY D. WEDEKIND, Administrative Law Judge. This is another in a long history of cases alleging that the Postal Service unlawfully failed to timely provide relevant and necessary information to the American Postal Workers Union (APWU), the exclusive bargaining representative of the Postal Service's clerks and various other employees, or its designated local servicing agents, in violation of Section 8(a)(5) of the Act. In many of these past cases, the Postal Service contested the allegations but lost.¹ In others it formally settled the allegations,

¹ See *Postal Service*, 345 NLRB 426 (2005), enfd. 486 F.3d 683 (10th Cir. 2007) (APWU Local 380, Albuquerque, New Mexico); *Postal Service*, 345 NLRB 409 (2005), enfd. as modified 477 F.3d 263 (5th Cir. 2007) (APWU Local 739, Waco, Texas); *Postal Service*, 341 NLRB 684 (2004) (APWU, Houston, Texas); *Postal Service*, 341 NLRB 655 (2004) (APWU Dallas, Texas Area Local); *Postal Service*, 332 NLRB 635 (2000) (APWU Local 390 and Mid-Hudson Area Local, Albany and Poughkeepsie, New York); *Postal Service*, 310 NLRB 701 (1993) (APWU Stamford, Connecticut Area Local); *Postal Service*, 310 NLRB 530 (1993) (APWU North Jersey Area Local); *Postal Service*, 310 NLRB 391 (1993) (APWU Stamford, Connecticut Area Local 240); *Postal Service*, 309 NLRB 309 (1992) (APWU Local 300, Lansing, Michigan); *Postal Service*, 308 NLRB 547 (1992) (APWU Kilmer GMF, Area Local 149, New Brunswick, New Jersey); *Postal Service*, 307 NLRB 1105 (1992), enfd. 17 F.3d 1434 (4th Cir. 1994) (unpub.) (APWU Greater Greensboro, North Carolina SCF Area Local 711); *Postal Service*, 307 NLRB 429 (1992) (APWU Local 320, Stockton, California); *Postal Service*, 305 NLRB 997 (1991) (APWU, Baton Rouge, Louisiana); *Postal Service*, 303 NLRB 502 (1991) (APWU Mid-Hudson, New York Area Local); *Postal Service*, 301 NLRB 709 (1991) enfd. mem. 980 F.2d 724 (3^d Cir. 1992) (APWU North Jersey Area Local, Paterson, New Jersey); *Postal Service*, 289 NLRB 942 (1988), enfd. 888 F.2d 1568 (11th Cir. 1989) (APWU Atlanta,

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agreeing to the imposition of a remedial Board order.² In this case, the Postal Service initially

5 Georgia Area Local); *Postal Service*, 280 NLRB 685 (1986), enfd. 841 F.2d 141 (6th Cir. 1988)
 (APWU Detroit District Area Local, Detroit and Royal Oak, Michigan); and *Postal Service*, 276
 10 NLRB 1282 (1985) (APWU Wilmington, Delaware Local). There are also a number of similar
 cases involving information requests by other unions. See *Postal Service*, 350 NLRB 441 (2007)
 (National Association of Letter Carriers (NALC) Sunshine Branch 504, Albuquerque, New
 15 Mexico); *Postal Service*, 339 NLRB 400 (2003) (NALC Branch 2037, Amarillo, Texas); *Postal
 Service*, 337 NLRB 820 (2002) (NALC Branch 442, Spokane and Tacoma, Washington); *Postal
 Service*, 308 NLRB 358 (1992) (National Postal Mail Handlers' Union, Hicksville, New York);
 and *Postal Service*, 203 NLRB 916 (1973) (NALC Branch 2420, Beckley, West Virginia). In
 addition, there are a number of cases where the Postal Service initially contested the allegations,
 20 but did not seek Board review of the ALJ's unfavorable decision. See, e.g., *Postal Service*, Cases
 25 25-CA-31726 et al., ALJ decision issued Oct. 25, 2011 (2011 WL 5072141), unpub. order
 adopting in the absence of exceptions issued Dec. 6, 2011 (APWU Local 210, South Bend,
 Indiana); *Postal Service*, Cases 7-CA-53579 et al., ALJ bench decision issued Sept. 15, 2011
 (2011 WL 4340963), unpub. order adopting in the absence of exceptions issued Oct. 27, 2011
 (NALC Branch 654, Mt. Clemens, Michigan); *Postal Service*, Cases 10-CA-38473 et al., ALJ
 bench decision issued Dec. 14, 2010 (2011 WL 5101107), unpub. order adopting in the absence
 of exceptions issued Feb. 1, 2011 (APWU Gadsden Branch Local 537, Jacksonville, Alabama);
 30 *Postal Service*, 354 NLRB 412 (2009) (APWU Locals 380 and 434, La Luz and Roswell, New
 Mexico); and *Postal Service*, 339 NLRB 1162 (2003) (NALC Branch 283, Houston, Texas). See
 also *Postal Service*, 7-CA-71165, ALJ decision issued June 22, 2012 (2012 WL 2393076),
 exceptions due July 20, 2012 (NALC Branch 122, Lansing, Michigan); and *Postal Service*, 34-
 CA-12912, ALJ decision issued April 16, 2012 (2012 WL 1309215), GC exceptions filed May
 14, 2012 (NALC Merged Branch 19, Mt. Carmel, Connecticut). This is not to suggest, however,
 that the Postal Service has never prevailed on the merits. See, e.g., *Postal Service*, 352 NLRB
 1032 (2008) (dismissing complaint). See also *NLRB v. Postal Service*, 660 F.3d 65 (1st Cir.
 2011), vacating 356 NLRB No. 75 (2011).

35 ² See, e.g., *Postal Service*, Cases 14-CA-30049 et al., unpub. Board order approving formal
 settlement issued Nov. 29, 2011 (2011 WL 5971223) (APWU St. Louis, Missouri Gateway
 District Area Local); *Postal Service*, Cases 15-CA-19932 et al., unpub. Board order approving
 formal settlement issued Oct. 7, 2011 (2011 WL 4912578) (APWU Locals 83 and 418,
 Northwest Louisiana); *Postal Service*, Case 5-CA-36390, unpub. Board order approving formal
 40 settlement issued September 15, 2011 (2011 WL 4352118) (APWU Nations Capital Southern
 Maryland Area Local 0140); *Postal Service*, Cases 5-CA-36228 et al., unpub. Board order
 approving formal settlement issued Aug. 26, 2011 (2011 WL 4015601) (APWU Virginia Beach,
 Virginia Area Local 1518); *Postal Service*, Cases 15-CA-19535 et al., unpub. Board order
 approving formal settlement issued May 2, 2011 (2011 WL 1665261) (APWU Playground Area
 45 Local 5643, Niceville, Florida); and *Postal Service*, Case 7-CA-52751, unpub. Board order
 approving formal settlement stipulation issued October 8, 2010, enfd. No. 10-2376 (6th Cir.
 2010) (unpub.) (GC Exh. 14) (AWPU Detroit, Michigan District Area Local). See also *Postal
 Service*, 345 NLRB at 426 (discussing prior settlement and unpublished consent judgment issued
 50 by the Tenth Circuit on January 8, 2003 covering the Postal Service's Albuquerque, New Mexico
 facilities). There is no indication in the Board's orders in any of these cases that the formal
 settlements contained an unqualified nonadmission clause. See *Sheet Metal Workers (Astoria
 Mechanical)*, 323 NLRB 204 (1997) (unlike ALJ decisions adopted in the absence of exceptions

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denied and litigated the complaint allegations, which allege that it unreasonably delayed providing information to the Michigan Postal Workers Union, the APWU servicing agent for the postal clerks at the Jonesville post office (where the Union's information requests were directed) and certain other post offices in Michigan. However, the Postal Service now acknowledges, in its posthearing brief, that the Jonesville postmaster's 3–6 month delay in providing the requested information to the Union was unreasonable.³ Thus, as there is no dispute that the information was relevant and necessary,⁴ I find that the Postal Service violated the Act as alleged.

This is not the end of the matter, however. As in several of the previous contested cases, there is an issue regarding the appropriate remedies for the violation. The General Counsel asserts that the following remedies are warranted in light of the Postal Service's history of similar violations: (1) a broad cease-and-desist order prohibiting the Postal Service from violating the Act in the same or any other manner at any of the Michigan facilities that the Union services for the APWU, including but not limited to the Jonesville facility;⁵ and (2) an affirmative order generally requiring the Postal Service to bargain in good faith with the Union as the APWU's servicing agent for the unit employees at the Jonesville and other Michigan facilities. The Postal Service, on the other hand, argues that only a "traditional" cease-and-desist order limited to the Jonesville facility is appropriate and that a general affirmative bargaining order is unwarranted.

I find that the Postal Service has the better argument under extant law. While there is a substantial history of similar violations and orders at other postal facilities around the country, there is no such history at the Jonesville facility or other facilities serviced by the Michigan Postal Workers Union. The General Counsel cites no prior violations or Board orders of any sort at any of these facilities and none are revealed by the record or other public sources. Although two previous Board orders have been issued covering various postal facilities in the Detroit, Michigan area, those facilities are serviced by a different APWU local. See *Postal Service*, 280 NLRB 685 (1986), *enfd.* 841 F.2d 141 (6th Cir. 1988) (APWU Detroit District Area Local, Detroit and Royal Oak, Michigan); and *Postal Service*, Case 7–CA–52751, unpub. Board order

and formal settlements without nonadmission clauses, formal settlements with nonadmission clauses may not be relied on to establish a proclivity to violate the Act); and *Electrical Workers Local 98 (Telephone Man, Inc.)*, 327 NLRB 593, 602 (1999) (formal settlement may be relied on where it contains a qualified nonadmission clause expressly stating that the settlement may be considered in determining the proper scope of an order in any future proceeding). Indeed, I take official notice, based on case documents available on the Agency's public website, that there was no nonadmission clause in Cases 15–CA–19535 et al., and that the Postal Service admitted the allegations in Case 5–CA–36390, Cases 5–CA–36228 et al., and Case 7–CA–52751.

³ See Br. at 4. The charge was filed on September 22, 2011, and the complaint issued on January 31, 2012. The hearing was held in Detroit, Michigan on March 20, and the General Counsel and the Postal Service filed posthearing briefs on April 24.

⁴ See Tr. at 12. Jurisdiction is also admitted and is well established pursuant to Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. Section 101 et seq.

⁵ The complaint (p. 3) specifically requests broad "in any other manner" cease-and-desist language. Although the General Counsel's posthearing brief (pp. 14–15) substitutes more narrow "in any like or related" language, it adds a separate provision at the beginning stating that the Postal Service will not "do anything that interferes with" employee Section 7 rights.

approving formal settlement stipulation issued October 8, 2010, enfd. No. 10-2376 (6th Cir. 2010) (unpub.) (GC Exh. 14) (AWPU Detroit, Michigan District Area Local), cited in nn. 1 and 2, above. See also Tr. 8-9 (most Michigan facilities are serviced by other locals).

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Further, the record indicates that the subject delay here was unique to the Jonesville facility and due in substantial part to the particular staffing situation and personal obligations confronting the postmaster (Gilpin) at that relatively small facility during the relevant period (Tr. 52-54). Indeed, APWU Local Business Agent Lothamer acknowledged that his similar information requests to numerous other Michigan post offices during the same period were answered promptly (Tr. 42-43).⁶ And while both Gilpin and Lothamer eventually sought help in obtaining the requested Jonesville information from the Postal Service's Detroit District Office (Tr. 27-28, 50-51, 56-57, 60-63), the record is insufficient to conclude that the district office was ultimately responsible for the unlawful delay. Nor does the General Counsel seek an order covering the district office and/or all of its associate facilities.

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Finally, no other concurrent violations are alleged. As indicated above, the only allegation is that the Postal Service unreasonably delayed providing various information the Union initially requested in July 2011. There are no other 8(a)(1), (3), or (5) allegations.

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The relatively few contested cases where the Board has issued broad cease-and-desist and/or multi-facility orders against the Postal Service are therefore distinguishable. See, e.g., *Postal Service*, 339 NLRB 1162 (2003) (issuing a broad "in any other manner" cease-and-desist order and requiring district-wide notice posting where there were multiple refusals to provide information and a prior history of similar 8(a)(5) violations in the Houston, Texas district, including at the same facility); *Postal Service*, 345 NLRB 426 (2005), enfd. 486 F.3d 683 (10th Cir. 2007) (limiting notice posting to the particular Albuquerque, New Mexico facilities at which the 8(a)(5) information violations occurred, but issuing a broad "in any other manner" cease-and-desist order given the Postal Service's other 8(a)(1) violations in that case and its previous consent to issuance of a similar broad order covering its Albuquerque facilities pursuant to a settlement); and *Postal Service*, 345 NLRB 409 (2005) (likewise limiting notice posting to the Waco, Texas facility at which the violation occurred, but issuing a broad "in any other manner" cease-and-desist order where the Board had already issued a narrow order in response to a prior 8(a)(5) information violation at the same facility), modified in relevant part 477 F.3d 263 (5th Cir. 2007).⁷ See also *Postal Service*, 303 NLRB 463 fn. 5 (1991), enfd. 969 F.2d 1064, 1073

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⁶ The requested information primarily related to a "global settlement," set forth in the 2010-2015 collective-bargaining agreement between the Postal Service and APWU, regarding the performance of unit work by postmasters and supervisors (GC Exh. 13, pp. 299-300). Lothamer's information request to Gilpin also sought certain additional documents, not requested from other facilities, relating to Gilpin's failure to continue utilizing a particular clerk who had previously been "borrowed" from the Coldwater post office (where Lothamer also works) (Tr. 16-17). However, like the other information requested by Lothamer, this information was eventually provided to the Union. Further, the General Counsel does not cite this as a reason for extending the order to all post offices serviced by the Union.

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⁷ The Board in the Houston and Waco, Texas cases also relied on various other factors to support issuing a broad order, including the Postal Service's history of similar violations at other facilities. In the Waco case, however, the Fifth Circuit rejected this history as a basis for a broad

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(D.C. Cir. 1992) (issuing a narrow but nationwide 8(a)(1) cease-and-desist order and notice-posting remedy where the 8(a)(1) violation occurred pursuant to a nationwide policy adopted by the Postal Service and a previous order limited to the subject facility in Fremont, California had already been issued). And compare *Postal Service*, 305 NLRB 997, 1009 (1991) (limiting notice posting to the Baton Rouge, Louisiana facility involved in the case and denying APWU's request for a broad and nationwide 8(a)(5) cease-and-desist order); and *Postal Service*, 350 NLRB 441 (2007) (rejecting the General Counsel's request for special remedies, limiting notice posting to the six Albuquerque facilities involved in the case rather than district-wide, and issuing only a narrow cease-and-desist order, despite finding several 8(a)(1) and (5) violations in addition to failing to provide requested information to the union (NALC Sunshine Branch 504)).⁸

Indeed, only one previous contested Postal Service case has been found where a broad order was issued absent other concurrent violations or a history of similar violations at the subject facility. Further, the decision in that case, which involved a Dallas, Texas area facility, relied heavily on the fact that the Board had very recently issued a similar broad order in the Houston, Texas case. See *Postal Service*, 341 NLRB 655 (2004) (issuing a broad cease-and-desist order in light of the recent broad order issued in the Houston case but, unlike in the Houston case, limiting notice posting to the subject Dallas area facility). In short, the case appears to be an anomaly. Compare also *Beverly Health & Rehabilitation Services*, 346 NLRB 1319, 1330 (2006) and prior cases cited therein (issuing a broad corporate-wide order given the repeated unlawful actions by respondent's corporate officials), with *Albertsons*, 351 NLRB 254, 260 (2007) (issuing a narrow order even though the respondent's failure to respond to information requests was a "persistent problem" and the respondent had also concurrently committed 8(a)(1) and (3) violations); and *Hospital Perea Unidad*, 356 NLRB No. 150 (2011) (likewise issuing only a narrow order even though the respondent had a history of similar 8(a)(5) unilateral change violations, inasmuch as the respondent continued to bargain and reach agreements with the union, and thus had "not demonstrated a general disregard for the employees' rights").

order, stating:

Given the sheer size of the Postal Service, the evidence relied upon by the Board shows that violations are relatively isolated incidents and rarely flagrant. Once properly understood in context, the record in this case does not demonstrate that violations of the Act at other facilities suggest that employees of the Postal Service-Waco are at risk of unfair labor practices beyond information request violations (477 F.3d at 270).

See also the Tenth Circuit's subsequent opinion in the Albuquerque, New Mexico case, 486 F.3d at 689-690 (emphasizing, in distinguishing the Waco case and enforcing the broad order, that the Board had not relied on the Postal Service's history of violations at other facilities).

⁸ The Board might have found it unnecessary to issue a broad cease-and-desist order in the 2007 Albuquerque case because of the broad orders already issued and enforced in the previous Albuquerque cases. Cf. *Postal Service*, 341 NLRB at 684 fn. 4 (limiting the order to the Houston, Texas facilities involved in the case and finding a broad order unnecessary in light of previous Houston district-wide broad orders issued by the Board and enforced by the Fifth Circuit); and *Postal Service*, 354 NLRB at 412 fn. 2 (Chairman Liebman concurring). However, no explanation was given in the decision. See 350 NLRB at 441 fn. 3, 488.

As indicated by the Postal Service, a general affirmative bargaining order is also unwarranted. The Board recently so held in *Postal Service*, 356 NLRB No. 75 fn. 2 (2011), vacated on other grounds 660 F.3d 65 (1st Cir. 2011), consistent with its decisions in all of the previous contested *Postal Service* cases, none of which issued such an order as a remedy for the information violations. Further, the cases cited by the General Counsel do not hold to the contrary. Although a general bargaining order was issued and enforced in the 2010 settled case cited above involving various Detroit area postal facilities, such consent orders have no precedential weight.⁹ As for *Postal Service*, Case 10-CA-35999, ALJ decision issued April 26, 2006 (2006 WL 1147331), the judge's decision in that case only required the Postal Service to bargain in good faith "by providing in a timely fashion requested information," i.e., it did not include a general bargaining order as requested in this case. In any event, the judge's decision has not been reviewed or cited with approval by the Board, and thus likewise has no precedential weight.¹⁰ Finally, in *Albertsons*, above, the Board's order only required the respondent to "offer to engage in good-faith bargaining . . . respecting alternative means and methods for the disclosure of requested relevant confidential information before [refusing] to disclose such information to the Unions" (351 NLRB at 261). Thus, it also was not a general bargaining order, but the standard order in cases, unlike this one, involving requested confidential information.¹¹

Accordingly, notwithstanding the history of similar violations and orders at other postal facilities, for all the foregoing reasons, I reject the General Counsel's request for special remedies and find that only a standard cease and desist order limited to the Jonesville facility is appropriate in this case.¹²

Conclusions of Law

By unreasonably delaying providing the Union with the relevant and necessary information it requested on July 15, 2011, and again on July 27, August 12 and 26, and October 7, 2011, the Postal Service 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.

ORDER

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

1. Cease and desist from

⁹ See *Big Sky Locators*, 344 NLRB 257, 261 (2005). See also *Kelley ex rel. Michigan Dept. of Natural Resources v. FERC*, 96 F.3d 1482, 1489-1490 (D.C. Cir. 1996), and cases cited there.

¹⁰ See, e.g., *Carpenters Local 370 (Eastern Contractors Assn.)*, 332 NLRB 174, 175 fn. 2 (2000); *Watsonville Register-Pajaronian*, 327 NLRB 957, 959 fn. 4 (1999); and *Colgate-Palmolive Co.*, 323 NLRB 515, 515 fn. 1 (1997).

¹¹ See, e.g., *Alcan Rolled Products*, 358 NLRB No. 11 (2012), and cases cited therein. See also *Postal Service*, 350 NLRB at 446, 486.

¹² 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.

5 (a) Failing or refusing to bargain in good faith with the Michigan Postal Workers Union by failing or refusing to timely provide requested information that is relevant and necessary to the Union's duties as the American Postal Workers Union (APWU) servicing representative of the employees in the unit described in the 2010-2015 collective-bargaining agreement.

10 (b) In any like or related manner restraining or coercing its 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.

15 (a) Within 14 days after service by the Region, post at its facility in Jonesville, Michigan copies of the attached notice marked "Appendix."¹³ 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 July 15, 2011.

30 Dated, Washington, D.C. June 28, 2012

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Jeffrey D. Wedekind
Administrative Law Judge

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¹³ If this Order is enforced by a judgment of a 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 fail or refuse to bargain in good faith with the Michigan Postal Workers Union by failing or refusing to timely provide requested information that is relevant and necessary to the Union's duties as the American Postal Workers Union (APWU) servicing representative of the employees in the unit described in the 2010–2015 collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of your rights described above.

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.