

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES POSTAL SERVICE

and

Cases 10-CA-34974(P)
10-CA-35144(P)

NATIONAL POSTAL MAILHANDLERS UNION
LOCAL 317

and

Case 10-CA-35273(P)

EDWARD STEELE

UNITED STATES POSTAL SERVICE

and

Case 10-CA-36056(P)
(formerly 16-CA-23973(P))

NATIONAL POSTAL PROFESSIONAL NURSES

and

Case 10-CA-36057(P)
(formerly 16-CA-24128(P))

NATIONAL ASSOCIATION OF LETTER
CARRIERS, BRANCH 404

DECISION AND ORDER¹

Statement of the Cases

On June 17, 2008, United States Postal Service (the Respondent), National Postal Mailhandlers Union Local 317, Edward Steele, National Postal Professional Nurses, National Association of Letter Carriers, Branch 404, and the General

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

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 (except those allegations subject to the parties' motion to sever), and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

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.²

² In addition, the Board grants the parties' joint motion to sever certain allegations related to employee Annu Rajan, as described in the Formal Settlement Stipulation.

Member Liebman notes that the remedy to which the parties have agreed is not fully consistent with previous orders the Board has issued against the Respondent in cases alleging that the Respondent has violated Sec. 8(a)(1) of the Act by denying employees union representation at investigative interviews, including a nationwide order and a broad order, respectively. See, e.g., *United States Postal Service*, 303 NLRB 463 (1991), enfd. 969 F.2d 1064 (1992); *United States Postal Service*, 345 NLRB 426 (2005), enfd. 486 F.3d 683 (10th Cir. 2007). These 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, Member 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.

Chairman Schaumber adheres to the view he expressed in *United States Postal Service*, supra, 345 NLRB at 427 fn. 4 (citing *United States Postal Service*, 345 NLRB 409, 412-415 (2005), enfd. as modified 477 F.3d 263 (5th Cir. 2007)), that broad orders should be reserved for situations where a respondent "is shown to have a proclivity to violate the Act or has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for the employees' fundamental statutory rights." *NLRB v. Express Publishing Co.*, 312 U.S. 426 (1941); *Hickmott Foods, Inc.*, 242 NLRB 1357 (1979).

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 and operates various facilities throughout the United States in the performance of that function, including its four facilities located at 4500 1st Avenue South, Birmingham, Alabama; 351 24th Street North, Birmingham, Alabama; 401 DFW Turnpike, Dallas, Texas; and 112 South Dr. J.B. Riggs Drive, Groesbeck, Texas.

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

2. The labor organizations involved

National Postal Mailhandlers Union Local 317, National Postal Professional Nurses, and National Association of Letter Carriers Branch 404 are labor organizations within the meaning of Section 2(5) of the Act.

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, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Denying the requests of employees at its Birmingham Annex facility located at 4500 1st Avenue South, Birmingham, Alabama, and at its Birmingham Plant facility located at 351 24th Street North, Birmingham, Alabama, to meet and confer with a union representative prior to the commencement of an investigatory interview, when the employee has reasonable cause to believe that the interview will result in disciplinary action against him or her, and conducting the interview with the

employee even though the Respondent had denied the employee's request for union representation.

(b) Denying the requests of employees at its facilities located at 401 DFW Turnpike, Dallas, Texas, and 112 South Dr. J.B. Riggs Drive, Groesbeck, Texas, to be represented at an interview when the employee has reasonable cause to believe that the interview would result in disciplinary action against him or her, and conducting the interview at Groesbeck even though Respondent had denied the employee's request for union representation.

(c) Directing a union representative at its facility located at 401 DFW Turnpike, Dallas, Texas, to remain quiet throughout an interview of an employee, thereby denying the request of the employee to be represented by a union representative during his or her interview, when the employee had reasonable cause to believe that the interview would result in disciplinary action taken against him or her, and conducting the interview even though Respondent had denied the employee's request for union representation.

(d) 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 Act.

(a) Permit an employee to be represented by a union representative at an interview which the employee believes reasonably could result in disciplinary action.

(b) Permit an employee and a union representative to consult privately in advance of an interview to prepare for the interview which the employee reasonably believes could result in disciplinary action.

(c) Permit a union representative to speak at a predisciplinary meeting with the employee and at all other interviews with employees which the employee reasonably believes could result in disciplinary action.

(d) With respect to each of the interviews involved in this proceeding (excluding the allegations concerning the interview of Annu Rajan on October 15, 2004) which resulted in

discipline,³ and upon the request of the labor organization and/or the affected employee, made within thirty (30) days of receipt of notification from the Respondent of this right, conduct anew the meeting at issue, affording the employee involved full *Weingarten* rights, and advise the Board's Regional Director for Region Ten in writing of the date of such meetings. Such meetings shall be held no later than sixty (60) days from the entry of the judgment, except as otherwise agreed to by the Parties. If the Respondent determines after each of the new meetings that the discipline imposed after the earlier meeting was warranted, the discipline shall stand. If, on the other hand, the Respondent concludes that no discipline was warranted, or that a mitigation of the penalty is warranted, the Respondent shall take appropriate action rectifying the situation, which shall include a make whole remedy for any losses suffered by the employee to the extent consistent with the Respondent's decision on reconsideration.⁴ In no event shall any information obtained from the employee at the first meeting be used against the employee in any manner and the employee shall be so notified of this requirement in writing.⁵

(e) With respect to each of the interviews involved herein which did not result in discipline, or in which the discipline was ultimately rescinded, the Respondent shall:

- i. Notify the employee in writing that none of the information obtained from the employee at the meeting will be used against the employee in any way in any proceeding, that none of the information will be retained in the employee's

³ The term "discipline" as used in this Order refers to all removals from employment, all suspensions from work, (with or without pay), and all letters of warning, but does not include counseling or instruction.

⁴ The terms "conduct anew," "reaffirm," "redone," "reconsider," and "reconsideration" (or derivatives of such terms) as used in this Order do not mean or imply in any way that the original disciplinary action is rescinded, revised, or modified in any way, unless rescinded, revised, or modified in writing by the Respondent after the second meeting with the employee in accordance with *Weingarten*.

⁵ The Respondent may conduct a new meeting if no request is made by the employee or the labor organization. The meeting shall be conducted in the manner described in paragraph 2(d), including granting the employee full *Weingarten* rights.

personnel file and that, with the exception of attorney's files, none of the information will be retained in any other record, unless required by law or statutory regulation; or

- ii. Notify the employee that although no discipline resulted from the meeting (or where the discipline was rescinded), the Respondent will conduct anew the meeting if so requested by the labor organization and/or the affected employee within thirty (30) days of receipt of the notification by the Respondent. In such cases, the Respondent may conclude, after the new meeting, that the non-disciplinary action taken against the employee was appropriate or, if not, shall take appropriate actions, if any, to mitigate the non-disciplinary action, including elimination of any mention of the non-disciplinary action from the employee's personnel file and from other records, consistent with paragraph 2(e)(i), and its decision on reconsideration. In no event shall any information obtained from the employee at the first meeting be used against the employee in any manner; nor, absent special circumstances, shall any discipline be imposed based on information obtained from this reinterview.

(f) Provide all supervisors at the involved facilities with a copy of any court order that enforces any Board order in these matters and have the supervisors sign an acknowledgment that they received the copy of the court order. Said acknowledgment should be placed and maintained in the personnel file of the supervisor.

(g) Within 14 days after service by the Region, post at its facilities at 4500 1st Avenue South, Birmingham, Alabama; 351 24th Street North, Birmingham, Alabama; 401 DFW Turnpike, Dallas, Texas; and 112 South Dr. J.B. Riggs Drive, Groesbeck, Texas, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 10, 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 proceedings, the Respondent has gone out of business or closed any of the facilities 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 the since closed facility or facilities at any time since April 14, 2004.

(h) 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.

Dated, Washington, D.C., September 25, 2008.

Peter C. Schaumber, Chairman

Wilma B. Liebman, 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

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

WE WILL NOT deny your request to be represented at an interview when you have reasonable cause to believe that the interview would result in disciplinary action against you, and WE WILL NOT conduct the interview even though we have denied your request for union representation.

WE WILL NOT deny your request to meet and confer with a union representative prior to the commencement of an investigatory interview, when you have reasonable cause to believe that the interview will result in disciplinary action against you, and WE WILL NOT conduct the interview with you even though we denied your request for union representation.

WE WILL NOT direct a union representative to remain quiet throughout an interview with you, thereby denying your request to be represented by a union representative during your interview, when you have reasonable cause to believe that the interview would result in disciplinary action against you, and WE WILL NOT conduct the interview even though we have denied your request for union representation.

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

WE WILL permit you to be represented by a union representative at an interview which you believe reasonably could result in disciplinary action.

WE WILL permit you and a union representative to consult privately in advance of an interview to prepare for the interview which you reasonably believe could result in disciplinary action.

WE WILL permit a union representative to speak at a predisciplinary meeting with you and at all other interviews with you which you reasonably believe could result in disciplinary action.

WE WILL take certain actions with respect to investigative interviews held with David Callens on about April 14, 2004; William Amerson on about April 16, 2004; Tommy Jones on about April 21, 2004; William Amerson on about July 4, 2004; Tyrone Hendrix on about August 11, 2004; Annu Rajan on about October 18, 2004; Edward Steele on about October 26, 2004; and Deloris Snyder on about January 19, 2005, as described here.

WE WILL advise the employees whom we disciplined based on the events discussed in those interviews listed above, where such discipline has not already been rescinded, of our willingness to reconvene the interviews and interview any of these employees anew if requested by the employee and/or the employee's union within thirty (30) days of their receiving notification of this option and to then consider whether a lesser discipline or no discipline at all would be suitable while disregarding all information gathered in the initial interview.

WE WILL, with respect to those employees who attended investigative interviews listed above and did not receive discipline, or else the discipline has already been rescinded, elect either to notify the employee in writing that none of the information obtained from the employee in the first interview listed above will be retained in the employee's personnel file and that such information will not be used against him or her in any way, or to notify the employee that although there never was or no longer is discipline resulting from the original interview, the Postal Service will reinterview the employee if requested by the employee and/or the employee's union within thirty (30) days of their receiving notification of this option.

WE WILL, with respect to all employees whom we reinterview pursuant to this process, afford the employees the right to

representation by union stewards, including the right to confer with such stewards before the meeting, and the right to have active steward participation in the meetings.

WE WILL, in those instances where we do reinterview employees whom we disciplined based on events that were the subject of earlier interviews and when that discipline has not been previously rescinded, disregard all information obtained in the first interview and reconsider whether a lesser disciplinary action, or no disciplinary action at all, should be undertaken based on the reinterview; and in instances where we decide that a lesser disciplinary action or no discipline at all should issue; WE WILL afford a make-whole remedy commensurate with the new disciplinary decision by, as appropriate, the payment of backpay and the modification of the initial discipline or its expungement from our disciplinary files; and WE WILL provide the affected employees written notice of what we have done and notice that we will not use any discipline expunged as a result of this process against them in any way.

WE WILL, in those cases in which the original investigative interview listed above did not result in discipline, or in which the resulting discipline has been rescinded, and in which we do offer the reinterview option and the employee and/or the employee's union timely request that the employee be reinterviewed, conduct the new interview and reconsider whether any non-disciplinary action taken against the employee was or was not appropriate; if such action was not appropriate, WE WILL mitigate the non-disciplinary action consistent with our decision, including as appropriate elimination of its mention from the employee's personnel file and other files; and WE WILL refrain from using any of the information obtained from the employee's original interview listed above against the employee in any way, and WE WILL refrain from disciplining any employee based upon information obtained from the reinterview, absent special circumstances.

UNITED STATES POSTAL SERVICE
(Employer)

DATE: _____

BY: _____
(Representative) (Title)

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