

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

UNITED STATES POSTAL SERVICE,

Postal Service

and

Case 07-CA-072873

LOCAL 307, NATIONAL POSTAL MAIL
HANDLERS UNION (NPMHU),
A DIVISION OF LIUNA, AFL-CIO

Charging Union

Robert Buzaitis, Esq., for the General Counsel.
David Wightman and Matthew Gowan, Esqs., of
Chicago, Illinois, for the Postal Service.

DECISION

STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was tried in Lansing, Michigan, on June 12, 2012. Local 307, National Postal Mail Handlers Union (NPMHU), a Division of LIUNA, AFL-CIO (the Union) filed the charge on January 20, 2012,¹ and the General Counsel issued the complaint on April 23, 2012. The complaint alleges that the United States Postal Service (the Postal Service) violated Section 8(a)(5) of the National Labor Relations Act (the Act)² by unreasonably delaying in providing the Union information under their collective-bargaining agreement. As a remedy, the Union seeks a broad cease and desist order and an affirmative bargaining order. The Postal Service denied the allegations in complaint, but now concedes that it delayed in providing information which the Union was entitled to under the collective-bargaining agreement. It objects, however, to a broad cease and desist order and bargaining order.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Postal Service, I make the following

¹ All dates are 2011 unless otherwise indicated.

² 29 U.S.C. Secs. 151-169.

FINDINGS OF FACT

I. JURISDICTION

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The Postal Service provides postal services for the United States and operates various facilities throughout the United States in the performance of that function, including a facility at 4800 Collins Road, Lansing, Michigan. The Postal Service admits, and I find, that the National Labor Relations Board (the Board) has jurisdiction over this matter pursuant to Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. 1201 et seq., and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

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II. ALLEGED UNFAIR LABOR PRACTICES

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A. The Postal Service's Operations

The Postal Service employs more than 645,000 persons who work at over 33,000 post offices and other facilities. It has two districts within the State of Michigan—the Detroit District and the Greater Michigan District. The Lansing facility is within the Greater Michigan District.

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B. The Parties' History Relating to Information Requests

The Union's various chapters throughout the country and its territories have submitted to the Postal Service many information requests over the years. In 2011 alone, the Union submitted 167 information requests relating to the Lansing facility. In 80 percent of those instances, the Postal Service provided the requested information within 5 days.³

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In many instances, however, delays in providing information have resulted in the Union filing unfair labor practice charges and the Board's General Counsel filing complaints alleging 8(a)(5) violations of the Act.⁴ Since 1985, 22 of those information request cases have resulted in Board orders directing the Postal Service to provide requested information.⁵ Only one of those cases involved a post office in Lansing, Michigan; the Board order in that case issued 20 years ago.⁶ Another case involved a post office in the Detroit District.⁷ In addition, between 2008 and 2011, the parties entered into settlement agreements disposing of 6 information request cases relating to post office facilities within Michigan.⁸

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³ Although Plant Manager DeVette Murphy generated these statistics in response to the filing of the instant charges and not in the ordinary course of business, their accuracy was not disputed. (Exh. 8.; Tr. 66-68.)

⁴ There is no assertion by the Postal Service that any of the information requests submitted by the Union were not relevant or otherwise appropriate for production pursuant to the collective-bargaining agreement between the parties.

⁵ In addition to the order listed at GC Exh. 33, GC Exh. 34 lists 22 orders. However, the order listed in 303 NLRB 463 (1991), involved a Weingarten investigation.

⁶ *Postal Service*, 309 NLRB 309 (1992).

⁷ *Postal Service*, 280 NLRB 685 (1986).

⁸ GC Exh. 34.

C. Information Request Relating to the Reversion of Certain Jobs

In September 2011, the Postal Service informed the Union of the reversion of seven (7) mailhandler positions that were already vacated or would soon be vacated.⁹ On September 26,
 5 Alicia Moore, the Union's branch president, submitted a written information request to Plant
 Manager DeVette Murphy for three items, including the data used to revert the jobs.¹⁰ Consistent
 with past custom and practice, however, the request was handled by her secretary, Leta
 O'Connor.¹¹ O'Connor placed some of the other requested information in the Union's mail slot.
 However, the reversion data was not provided.¹²

10 On October 11, the Union submitted a second request for the reversion job data and
 another item.¹³ Postal Service provided the other requested item in October but did not provide
 the job reversion data. Nor did it inform the Union when it would be provided.¹⁴ The Union
 submitted subsequent requests for the reversion job data on November 14–23; December 27; and
 15 January 5, 2012.¹⁵ During that period of time, O'Connor was on annual leave from the period of
 November 23–25.¹⁶

On January 20, 2012, Postal Service had still not provided the requested information and
 the Union filed an unfair labor practice charge.¹⁷ On January 26, 2012, the Postal Service finally
 20 provided a response—one page—answering the Union's request for job reversion related
 information.¹⁸

D. Information Request Relating to Notice Posted About the Reversion of Certain Jobs

25 On December 7, after filing a grievance, the Union requested copies of any notice that the
 Postal Service posted for the unit employees regarding the job reversions.¹⁹ On December 27 and
 January 5, 2012, the Union repeated its request.²⁰ On January 20, 2012, Postal Service responded
 in writing that no such notices were posted.²¹

⁹ GC Exh. 2.

¹⁰ GC Exh. 3; Tr. 12–13.

¹¹ It was evident from the testimony of O'Connor and Murphy that the latter rarely had any
 involvement in the processing of union information requests and delegated that responsibility to
 O'Connor. (Tr. 62, 69–71.)

¹² The testimony of Moore, a mail handler and forklift driver at the Lansing facility, was mostly
 credible and unrefuted by the Postal Service. (Tr. 14–15.)

¹³ GC Exh. 4.

¹⁴ Moore's testimony, once again, was undisputed. (Tr. 16–17.)

¹⁵ GC Exhs. 5–8.

¹⁶ The Postal Service failed to demonstrate how this 3 day leave period provided any justification for
 a much longer period of delay. (Tr. 100–101.)

¹⁷ GC Exh. 1(a).

¹⁸ The Union's contention that it took the Postal Service a mere 20 minutes to fulfill the request was
 not disputed. (GC Exh. 7, p. 2; GC Exh. 9; Tr. 21, 98.)

¹⁹ GC Exhs. 10–11; Tr. 22–23.

²⁰ GC Exhs. 12–13; Tr. 23–24.

²¹ GC Exh. 14; R. Exh. 5.

E. Information Relating to the a Unit Work Grievance

On October 24, the Union filed a grievance alleging that clerks were performing mail handler work in violation of the CBA.²² In that regard, on October 27, the Union requested information concerning the job slot identification (JSID)²³ for mail handler Pete Treleavan for the time period of July 30—September 9, 2008.²⁴ The Union requested the information in connection with the October 24 grievance. The Union repeated its request on November 14 and 23.²⁵ On November 23, the Postal Service partially provided the requested information, which included a two page employee history report.²⁶ On January 27, 2012, Moore again signed a receipt of the requested information.²⁷

F. Information Relating to Pit Trainer Qualifications

On October 27, the Union also requested three items of information related to PIV equipment, including the qualifications for Power Industrial Truck (PIT) trainers.²⁸ The Union requested this information again on November 14 and 23. Prior to December 12, the other information requested was provided but not the PIT trainer qualifications.²⁹ The Union made additional requests for PIT trainer qualifications on December 12; December 27; and January 5, 2012, respectively.³⁰ After multiple internal requests by O'Connor, including two to the safety manager for the Greater Michigan District, the Postal Service provided three pages on January 26, 2012.³¹

III. Legal Analysis

The General Counsel alleges that the Postal Service unreasonably delayed its responses to four different types of information requests from Local 307 in violation of 8(a)(5) and (1) of the Act. In remedying this violation, the General Counsel seeks an affirmative bargaining order and a broad cease-and-desist order on the ground that traditional cease-and-desist orders have been historically insufficient against this Postal Service. The Postal Service acknowledges the delays, but contends that it had a legitimate basis for responding to each of those information requests. Moreover, it contends that, if a violation is found, a bargaining order would be improper under

²² GC Exh. 15; Tr. 28–29.

²³ The Postal Service stopped generating JSID forms after September 2007. (GC Exh. 19.)

²⁴ GC Exh. 16, Tr. 29–30.

²⁵ GC Exhs. 17–18; Tr. 31–32.

²⁶ I base this finding on O'Connor's credible testimony and the documented receipt containing Moore's signature acknowledging receipt of the Treleavan's employee history on November 23. (R. Exh. 4, pp. 3, 8–9; Tr. 84–87.) Moore, although fairly credible as to the rest of her testimony, asserted that she never received that information. However, she failed to provide any explanation as to why she would have acknowledged receipt of the information on November 23 if she did not, in fact, receive it. (Tr. 32–33, 105; GC Exh. 19.)

²⁷ The Postal Service asserts in its brief that the information was received on January 20, but Moore's signed receipt indicates that she received it on January 27. (R. Exh. 4.)

²⁸ GC Exh. 20; Tr. 10, 33–34.

²⁹ GC Exh. 21–22; Tr. 35–36.

³⁰ GC Exh. 23–25; Tr. 37–39.

³¹ This finding is based on O'Connor's credible testimony. (GC Exh. 26; R. Exh. 2; Tr. 40–41, 98.)

the circumstances and that an appropriate remedy would be limited to a traditional cease-and-desist order.

A. Unreasonable Delay

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It is well established that a labor organization, which has an obligation under the Act to represent employees in a bargaining unit, is entitled to request information relevant to the proper performance of that duty. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149 (1956); *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979); *Disneyland Park*, 350 NLRB 1257 (2007). This includes information pertaining to contract negotiations, administration of the collective-bargaining agreement, and processing of grievances. *Central Soya Co.*, 288 NLRB 1402 (1988); *NLRB v. Acme Industrial Co.*, supra at 437-438; *Postal Service*, 354 NLRB No. 58, slip op. at 6-7 (2009). Correspondingly, an employer has a duty to furnish that information as promptly as the circumstances allow, which requires a reasonable good-faith effort. *Woodland Clinic*, 331 735, 737 (2000), citing *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993).

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In determining whether an employer unreasonably delayed its response to an information request, the Board considers the totality of the circumstances. *Earthgrains Co.*, 349 NLRB 389, 400 (2007), quoting *West Penn Power Co.*, 339 NLRB 585, 587 (2003), enfd. in pertinent part 349 F.3d 233 (4th Cir. 2005). The Board will consider the complexity and extent of information sought, its availability and the difficulty in retrieving the information. *Ibid*; *Postal Service*, supra at 6-7. Where the respondent shows the information is difficult to retrieve, voluminous, or time consuming to produce, by a preponderance of the evidence, a defense to unreasonable delay is established. *Yeshiva University*, 315 NLRB 1245, 1249 (1994); *Somerville Mills*, 308 NLRB 425, 1249 (1992).

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1. Job Reversion Data

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The initial request for this information was processed by Moore on September 26, 2011. Moore made five additional requests before finally receiving the information on January 26, 2012. The Postal Service concedes that this request only took 20 minutes to fill and produced one page of information. No justification was offered as to why this simple request took 4 months to fulfill. There was no evidence that the requested information was difficult to retrieve, time consuming, or voluminous. *Yeshiva*, supra at 1249. Accordingly, the Postal Service has no legal excuse for the unreasonable delay in fulfilling this request. *Regency Service Carts, Inc.*, 345 NLRB 671, 674 (2005) (16 week delay unreasonable); *Woodland Clinic*, supra (7 week delay unreasonable).

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2. JSID for Pete Treleaven

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Regarding the “JSID” request for Pete Treleaven, the Postal Service alleges that the delay was caused by confusion as to what “JSID” meant, since it no longer used this term to identify employee job descriptions after September 2007. However, the Postal Service never mentioned such confusion at any point during Moore’s three requests for this information. Moreover, O’Connor conceded that Moore provided clarification as to what “JSID” meant after the former provided the wrong information on November 23. Under the circumstances, the Postal Service’s

excuse for the 3 month delay in obtaining one page of information lacks merit. *Bundy Corp.*, 292 NLRB 671, 672 (1989) (6 week delay unreasonable); *Pan American Grain*, 343 NLRB 318 (2004) (14 week delay unreasonable).

5 3. Copies of the Reversion Notices

This information was initially requested on December 7, 2011, but Moore had to follow up with two subsequent requests. The Postal Service provided no explanation for the 6 week delay even though it admitted that this information was discovered 1 week after the request. The unexplained delay, coupled with the simplicity of the information requested, does not evidence a good-faith effort by the Postal Service. *Woodland Clinic*, supra at 737; *Yeshiva*, supra at 1249. Therefore, a delay of 6 weeks in providing the Union with this information was unreasonable. *Bundy Corp.*, supra at 672 (6 week delay unreasonable); *Capitol Steel & Iron Co.*, 317 NLRB 809 (1995) (2 week delay unreasonable).

15 4. PIT Qualifications

The PIT job qualification information was initially requested by Moore on October 27, but had to be requested again on 5 separate occasions. Although the Postal Service suggested that there was confusion within management as to who had access to this data and how to retrieve it, there is no credible evidence to support that assertion. *Yeshiva*, supra at 1249. The Postal Service did not produce evidence as to when O'Connor submitted internal requests for this information; nor did it submit evidence as to when O'Connor informed Moore of the access issue requests. Accordingly, I find this 3 month delay unreasonable. *Bituminous Roadways of Colorado*, 314 MLRB 1010 (1994) (6 week delay unreasonable); *Pan American*, supra (14 week delay unreasonable).

An unreasonable delay in furnishing information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all. As the Board explained in *B.F. Diamond Construction Co.*, 163 NLRB 161, 176 (1967), enfd. 401 F.2d 462 (5th Cir. 1969):

The same reasons that require reasonable diligence in scheduling meetings require reasonable diligence in furnishing information essential to intelligent bargaining. The effect of delay in supplying such information, like the delay in meeting, is to prevent the likelihood of significant progress toward agreement.

Valley Inventory Service, 295 NLRB 1163, 1166 (1989); *Amersig Graphics, Inc.*, 334 NLRB 880, 885 (2000); *Newcor Bay City Division*, 345 NLRB 1229, 1237 (2005). In failing to comply with all four of the Union's necessary and relevant information requests in a prompt and complete manner, the Postal Service violated 8(a)5 and 8(a)1 of the Act.

B. Special Remedies

The General Counsel asserts that a bargaining order and a broad cease-and-desist order are appropriate in this case because of the Postal Service's prior history of noncompliance with traditional cease-and-desist orders in these types of cases. I agree with Postal Service that these remedies are not applicable here.

The Board has not found a bargaining order appropriate for simple information cases. See, e.g. *Postal Service*, 356 NLRB No. 75, fn. 2 (2011), citing *H & R Industrial Services*, 351 NLRB 1222, 1222 fn. 3 (2007). Indeed, applying the three factor balancing test used by the Board and courts in determining whether an affirmative bargaining order is appropriate does not yield a different result. See, e.g. *Vincent Industrial Plastics v. NLRB*, 209 F.3d 727, 734 (D.C. Cir 2000) (balancing the employees' Section 7 rights, whether other purposes of the Act override the rights of employees to choose their bargaining representatives, and whether alternative remedies are adequate to remedy the violations of the Act).

The General Counsel fails to demonstrate why the alternative remedy of a traditional cease-and-desist order would be inadequate against the Lansing facility, which lacks any history of similar violations over the past 20 years. Furthermore, the Postal Service has already produced the requested information in its entirety and a bargaining order would be superfluous under the circumstances. Section 7 rights are sufficiently safeguarded in this instance by the issuance of a cease-and-desist order, as it will have the same effect of a bargaining order by requiring the Postal Service to comply with its contractual obligations to furnish the Union with relevant and necessary information as promptly as circumstances allow.

Similarly, a broad cease-and-desist order is unwarranted under the circumstances. These orders are appropriate when 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. *Hickmott Foods*, 242 NLRB 1357, 1357 (1979); *Postal Service*, 345 NLRB 409, 409 (2005).

While there is a lengthy history of similar violations and Board orders at other Postal Service facilities around the county, the Lansing facility has no such history. The General Counsel cites no prior violations or Board orders of any sort at the Lansing facility within the last 20 years. Beyond the fact that the Union represents employees at other facilities where the Postal Service has engaged in continuous unlawful behavior, those settlements and Board orders are not relevant to or indicative of repetitious unlawful conduct at the Lansing facility. To the contrary, the Lansing facility's 80% rate in 2011 in responding to Union information requests within five days strongly suggests a well functioning relationship with the Union.

Accordingly, even though the Postal Service has a long history of similar violations and orders at other postal facilities, for all the foregoing reasons, I deny the General Counsel's request for special remedies and find that a standard cease-and-desist order limited to the Lansing facility is appropriate in this case.

Conclusions of Law

By unreasonably delaying providing the Union with the relevant and necessary information it requested on September 26, October 11, October 27, November 14, November 23, December 7, December 12 and December 27, 2011, and January 5, 2012, 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.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³²

ORDER

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

1. Cease and desist from

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(a) Failing or refusing to bargain in good faith with Local 307 NPMHU, by failing or refusing to timely provide requested information that is relevant and necessary to the Union's duties as the National Postal Mail Handlers Union as servicing representative of the employees in the unit employees within the State of Michigan, including the Lansing facility.

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(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.

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(a) Within 14 days after service by the Region, post at its facility in Lansing, Michigan copies of the attached notice marked "Appendix."³³ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Postal Service's authorized representative, shall be posted by the Postal Service 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 Postal Service customarily communicates with its employees by such means. Reasonable steps shall be taken by the Postal Service 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 Postal Service has gone out of business or closed the facility involved in these proceedings, the Postal Service 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 September 26, 2011.

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35 Dated, Washington, D.C. August 16, 2012

Michael A. Rosas
Administrative Law Judge

³² 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.

³³ 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 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 Local 307, National Postal Mail Handlers Union (NPMHU), a Division of LIUNA, AFL-CIO servicing representative of the employees in the unit described in the 2006-2011 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.