

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

UNITED STATES POSTAL SERVICE,

and

**Cases 7-CA-085557
7-CA-086758**

**BRANCH 434, NATIONAL ASSOCIATION
OF LETTER CARRIERS (NALC), AFL-CIO.**

*Kelly A. Temple, Esq. (NLRB Region 7),
of Detroit, Michigan, for the Acting General Counsel*

*David F. Wightman, Esq. (U.S. Postal Service Law Department),
of Chicago, Illinois, for the Respondent*

DECISION

DAVID I. GOLDMAN, ADMINISTRATIVE LAW JUDGE. These cases involve the alleged unlawful delay by the United States Postal Service in furnishing information in response to three sets of union information requests. As discussed herein, I find that the Postal Service violated the Act in response to two of the information requests. As a remedy, the General Counsel seeks a broad cease-and-desist order. As further discussed herein, under the circumstances presented here, I decline to recommend the broad cease-and-desist order and recommend a traditional order.

STATEMENT OF THE CASE

On July 18, 2012, Branch 434, National Association of Letter Carriers (NALC), AFL-CIO (Union or Branch 434) filed an unfair labor practice charge against the United States Postal Service (Postal Service), docketed by Region 7 of the National Labor Relations Board (Board) as Case 07-CA-085557. On August, 8, 2012, the Union filed another unfair labor practice charge against the Postal Service, docketed by Region 7 of the Board as Case 07-CA-086758.

On September 27, 2012, based on an investigation into the charge filed by the Union, in Case 07-CA-085557 the Board's Acting General Counsel (General Counsel), by the Board's Regional Director for Region 7, issued a complaint and notice of hearing alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act (Act) by the Postal Service for unreasonably delaying the furnishing of relevant information requested by the Union. The Postal Service filed a timely answer to the complaint in which it denied all violations of the Act.

On October 12, 2012, the General Counsel, by the Board's Acting Regional Director for Region 7, issued an order consolidating Cases 07-CA-085557 and 07-CA-086758, and a consolidated amended complaint and notice of hearing alleging further violations of Section 8(a)(1) and (5) of the Act by the Postal Service, including failing to furnish and unreasonably delaying the furnishing of relevant information requested by the Union. The Postal Service filed

a timely answer to the amended consolidated complaint in which it denied all violations of the Act.

5 A hearing in this case was conducted November 27, 2012, in Detroit, Michigan. At the outset of the trial, counsel for the General Counsel moved to amend the complaint so that all allegations of violation concerned unlawful delay in furnishing requested information and none alleged a failure to furnish information. Counsel for the General Counsel also moved to amend the remedy requested in the complaint to seek a broad order requiring the Respondent to cease and desist from engaging in the alleged violations of the Act as well as in “any other manner.”
10 These motions were granted. Counsel for the General Counsel and the Postal Service filed briefs in support of their positions by January 16, 2013. On the entire record, I make the following findings, conclusions of law, and recommended order.

15 JURISDICTION

The Respondent provides postal services for the United States and operates various facilities throughout the United States in performing that function, including at its Saline, Michigan facility, located at 108 North Maple Road, Saline, Michigan. Branch 434 and the National Association of Letter Carriers, AFL-CIO (the National Union) are each labor
20 organizations within the meaning of Section 2(5) of the Act. The Board has jurisdiction over the Respondent and this matter pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. §101 et. seq.

25 UNFAIR LABOR PRACTICES

The National Union is the recognized collective-bargaining representative for a bargaining unit of city letter carriers employed by the Postal Service at its Saline, Michigan facility. There are currently eight city letter carriers employed in the unit. The Union (i.e., Branch 434) is the designated servicing representative of the National Union for the bargaining
30 unit employees employed at the Saline facility.

Denise Marie Ten Eyck is employed as a city letter carrier by the Postal Service at its Saline, Michigan facility. She is a union steward. In her capacity as union steward she investigates potential grievances, seeks documentation relevant to these matters, and files
35 grievances if informal efforts do not resolve the matter in question.

The consolidated complaint in these cases, as amended at trial (the complaint), alleges three distinct unlawful delays by the Postal Service in providing information requested by Ten Eyck on behalf of the Union.
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First, as described in paragraphs 7 and 11 of the complaint, as amended at trial) the General Counsel alleges that since about April 25, and continuing to October 31, 2012, the Postal Service unreasonably delayed providing the Union repeatedly requested relevant information, specifically, the medical restrictions in effect for employee Sue Slagle for week one
45 of the second pay period of 2012 (i.e., the week ending December 31, 2011). The allegation is slightly misstated: as described below, the requested information was never provided as the Respondent misplaced and could not find the requested documents. As discussed below, at some point this was conveyed to the Union.¹

¹In her brief, counsel for the General Counsel explained that she had “represented throughout pre-trial discussions that [she] would amend [the] complaint to only allege delay

Second, as described in paragraphs 8 and 12(a) and (b) of the complaint, the General Counsel alleges that since about May 30, and continuing to about August 3, 2012, the Postal Service unreasonably delayed furnishing the Union requested overtime-related information, specifically, the requested weekly schedule, the carrier route report, the employee everything report, and the work hour/workload report. Further, it is alleged that from May 30, to August 4, 2012, the Postal Service unreasonably delayed providing the Union requested overtime-related information called form 3996s.

Third, as described in paragraph 9 and 12(c) of the complaint, it is alleged that from June 19, to about late August 2012, the Postal Service unreasonably delayed furnishing the Union with requested relevant information, specifically, forms 8038 and 8039 for employee Carol Schneider.

The General Counsel alleges that in each of these three incidents the Respondent violated Section 8(a)(5) of the Act.² Below, after describing the generally applicable precedent, I set forth my findings of fact and conclusions regarding each of these three allegedly unlawful delays.

Precedent

Section 8(a)(5) of the Act provides that it is an unfair labor practice for an employer "to refuse to bargain collectively with the representatives of its employees." 29 U.S.C. §158(a)(5). "An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative in contract negotiations and administration." *A-1 Door & Building Solutions*, 356 NLRB No. 76, slip op. at 2 (2011). See *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-153 (1956). As the Board explained in *A-1 Door & Building Solutions*, supra:

An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative in contract negotiations and administration. See *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152-153 (1956) [parallel citations omitted]. Generally, information concerning wages, hours, and other terms and conditions of employment for unit employees is presumptively relevant to the union's role as exclusive collective-bargaining representative. See *Southern California Gas Co.*, 344 NLRB 231, 235 (2005). By contrast, information concerning extra unit employees is not presumptively relevant; rather, relevance must be shown. *Shoppers Food Warehouse Corp.*, 315 NLRB 258, 259 (1994). The burden to show relevance, however, is "not exceptionally heavy," *Leland Stanford Junior University*, 262 NLRB 136, 139 (1982), enfd. 715 F.2d 473 (9th Cir. 1983); "[t]he Board uses a broad, discovery-type standard in determining relevance in information requests." *Shoppers Food Warehouse*, supra at 259.

"An unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) of the Act as a refusal to furnish the information at all." *Monmouth Care*

regarding this allegation, and since Ten Eyck believed up until a few days prior to trial that she had the correct document, Counsel for the Acting General Counsel amended this allegation and only alleges delay from May 25 to October 31." (GC Br. at 7 fn. 3.)

²In addition, an employer's violation of Section 8(a)(5) of the Act is a derivative violation of Section 8(a)(1) of the Act. *Tennessee Coach Co.*, 115 NLRB 677, 679 (1956), enfd. 237 F.2d 907 (6th Cir. 1956). See *ABF Freight System*, 325 NLRB 546 fn. 3 (1998).

Center, 354 NLRB 11, 51 (2009) (citations omitted), reaffirmed and incorporated by reference, 356 NLRB No. 29 (2010), enfd. 672 F.3d 1085 (D.C. Cir. 2012). "[I]t 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." *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). "In evaluating the promptness of the employer's response, 'the Board will consider the complexity and extent of information sought, its availability, and the difficulty in retrieving the information.'" *West Penn Power Co.*, 339 NLRB 585, 587 (2003) (quoting *Samaritan Medical Center*, 319 NLRB 392, 398 (1995), enfd. in relevant part 394 F.2d 233 (4th Cir. 2005)).

Like a flat refusal to bargain, "[t]he refusal of an employer to provide a bargaining agent with information relevant to the Union's task of representing its constituency is a per se violation of the Act," without regard to the employer's subjective good or bad faith. *Brooklyn Union Gas Co.*, 220 NLRB 189, 191 (1975); *Procter & Gamble Mfg.*, 237 NLRB 747, 751 (1978), enfd. 603 F.2d 1310 (8th Cir. 1979).

As referenced, above, the General Counsel alleges that the Postal Service unreasonably delayed—and therefore unlawfully delayed—the furnishing of (1) the Slagle medical restrictions; (2) the overtime related information (weekly schedule, carrier route report, employee everything report, work hour/workload report, and form 3996s); and (3) the forms 8038 and 8039 for Carol Schneider. I consider each in turn.

A. The December 31, 2011 Medical Restrictions for an Employee

In March 2011, a settlement was reached on a grievance filed by Ten Eyck over the Postal Service's observance of medical work restrictions for Saline Letter Carrier Sue Slagle. The settlement stated that "Management [reaffirms] their commitment to carrier Sue Slagle['s] work restrictions."

In researching overtime grievances in spring 2012, Ten Eyck came to believe that Slagle had been required to work beyond her medical restrictions during the last pay period in 2011 (i.e., the two-week pay period ending December 31, 2011).

On April 25, 2012, Ten Eyck requested in writing from Saline Postal Service supervisor, Marge Ratkowski, inter alia, a "copy of Sue Slagle's most current work restrictions that limit hours per week." The stated purpose of this request, preprinted on the "Request for Information" form, was "to process or determine whether to process a grievance on behalf of: Branch #434[.]"

When Ten Eyck did not receive anything in response to this request, on June 13, 2012, Ten Eyck made another request for a "copy of medical restriction for Sue Slagle," this time asking for this information for the date of "PP 02-01-2012." This designation indicated that the desired time period was the first week of the second pay period of 2012, which covered the week ending December 31, 2011. Ten Eyck's undisputed testimony was that this reference to pay periods is used to identify Postal Service pay periods and she referred to pay periods rather than dates to "make it easier for [management] to access it through the pay period because that's mostly how they work, not necessarily by date."

According to Ten Eyck's testimony, this was re-requested by submitting another copy of the June 13 request on June 23, and again on June 29, when the document request was

provided directly to then Saline Postmaster Sheryl Jones. At Jones' request, Ten Eyck recopied all of her outstanding information requests to provide to Jones the next day. The next morning this request (and others) were provided to Sheryl Hahn (who is admitted by the Respondent to have been an acting supervisor on that day), who signed a copy of the request for the purpose of acknowledging receipt. Later in the day, Ten Eyck saw Jones and told her that she had provided a packet of information requests to Hahn.

At this point, Ten Eyck threatened to file a grievance over the failure to provide the documentation if she did not receive the requested information by July 2. She did not receive it by July 2, and Ten Eyck filed a grievance dated July 11, 2012, on the issue of "[p]roviding documentation timely." At an informal July 12 step meeting with Ratkowski over this grievance, Ten Eyck discussed her desire for the Slagle medical documentation and resubmitted the June 13 request for documentation. Ratkowski signed for this. In addition, at this meeting Ratkowski and Ten Eyck reached a settlement of the July 11 grievance. The settlement read:

On July 12, 2012[,] the subject grievance was discussed at Step Informal A of the grievance procedure. Based upon the facts and arguments presented by the parties and without prejudice to the position of the Postal Service or the NALC in this or any other grievance the following resolution is entered into:

As per our discussion during the Informal Step A meeting, we have agreed to the following:

1. Marge [Ratkowski] has agreed to, by whatever means, provide requested documentation on Information Request Form for Sue Slagle's medical restrictions for pp. 02-01-2012 (December 31, 2011) by July 19, 2012.
2. Cease and desist past practice.

The information regarding Slagle was not received on July 19, and Ten Eyck filed a grievance over the failure to provide the information. In a July 26 grievance meeting, Ratkowski left the meeting and returned with a copy of a doctor's medical restrictions note for Slagle dated just the week before, July 17, 2012. However, Ten Eyck had been requesting the work restrictions in effect December 31, 2011.

This grievance was resubmitted to Postmaster Jones on July 31. There was no response to this resubmission. On August 1 or 2, Ten Eyck talked again with Ratkowski about the Slagle documentation issue. Ratkowski asked for "a couple of days" to provide the information. Ratkowski testified that her intention was to ask Sue Slagle to provide a duplicate from her doctor, and that Ratkowski would submit that to Ten Eyck, but, according to Ratkowski, Slagle would not cooperate. The medical restrictions information was not provided.

On August 6, Postmaster Jones showed Ten Eyck an email she had sent to Kenneth Bunch, a supervisor in HR, in which she stated:

The union, Denise Ten Eyck, has requested a copy of Sue Slag[]e documentation for February 2012. I provided her with a copy of the last[] but she wants the one in the past. I tried to contact your office (313) 226-8071, and left a message twice. I am not aware who the specialist for Ms. Slagle [is]

because the assignment of specialist have changed. No one returned my call. Please fax (734) 429-0888 or email me a copy.

5 On August 10, Ten Eyck submitted two additional requests for this information, directed to Postmaster Jones. Since her August 6 email to Bunch, Jones had learned that Mildred Arnett was the specialist assigned to Slagle's case. Jones showed Ten Eyck an August 10 email from Mildred Arnett of HR stating that she could not locate any documentation "for 2/1/12." Ten Eyck told Jones that she was not looking for Slagle's documentation from February 1, 2012, but rather for December 31, 2011.

10 Ten Eyck submitted an additional information request to Jones on August 14, 2012, stating:

15 On August 10, 2012, I submitted a document request form requesting the medical restrictions for Sue Slagle during pay period 2012-02-01. Your response dated August 10, 2012 says, "I could not locate any document for 2/1/12." Does this mean that there is no medical documentation on file for Sue Slagle during pay period 2012-02-01?

20 I will also need any changes or updates to Sue Slagle's medical documentation between pay period 2012-02-01 through her most current known medical documentation dated July 17, 2012.

25 This request was repeatedly submitted by Ten Eyck. It was submitted August 14, 20, and 25, and September 1, and 8. A new request was submitted September 18 and 22, asking, "Did Sue Slagle have any medical restrictions on 12/31/11? If so, please provide me with the certified medical documentation/doctor's note verifying any and all medical restrictions for that day." Another copy of this same request was submitted October 2 (signed for by Ratkowski on October 10).

30 On October 13, Ten Eyck received a restriction for Sue Slagle dated August 14, 2012, from Chris Martin, the officer in charge of the Saline facility. Ten Eyck did not notice this was an August 2012 restriction (and presumably thought it was an August 2011 restriction). Until she noticed the 2012 date, she believed that it satisfied her request.

35 Ten Eyck's futile effort to obtain the restrictions from December 31, 2011, was interlaced with the fact that, at some point in the process, "eventually," according to Ten Eyck, Jones and Ratkowski told her that they did not have the information that was being sought.

40 Precisely when Ten Eyck was told this is hard to determine on the record. Clearly, the information existed—by all evidence there was some medical restrictions in effect for Slagle as of December 31, 2011. The March 2011 settlement had been based on an agreement to abide by her medical restrictions and, thus, there were medical restrictions in March 2011, and then, later in 2012, newly obtained documentation of medical restrictions generated during 2012 were provided to Ten Eyck as discussed above. But although I find that medical restrictions were in place in the latter part of December 2011, the testimony of Ratkowski and Jones convinces me that it could not be found.

45 Both Jones and Ratkowski testified that they looked for the requested medical restrictions but could neither find nor obtain it, and that they told Ten Eyck this "on several occasions." However, the testimony of both is vague—at best—but mostly nondescriptive of

when they were making an effort to look for it, and when they finally told Ten Eyck that they could not obtain it.

5 According to Jones and Ratkowski, medical restrictions notes from doctors are sent “downtown”—meaning to the human resources office in Detroit. Typically, the Saline post office facility would maintain a copy. However, in this case, efforts to find a copy of the restrictions in effect for Slagle on December 31, 2011—either on file at the HR offices in Detroit or in Saline—were unavailing.

10 In determining when Jones and/or Ratkowski learned that they could not produce the requested restriction, it is notable that, according to Jones, initially Ratkowski was responsible for responding to this (and other) information requests and that Jones only got involved
15 sometime after June 5, when she met with union Vice President John Odegard, who told Jones that, despite the personal nature of the medical restrictions, she was required to provide this information to Ten Eyck. The date of this meeting was not clear (after June 5, according to Jones), but Jones recalled that at the meeting she telephoned health and resource
20 management in an effort to find the HR specialist who was in charge of Slagle’s case. Jones left a message but it was not returned. She testified that she tried again a few days later, but that no one responded. According to Jones, “eventually” she sent an email to the manager of the health and resource department, Kenneth Bunch. That email was sent to Bunch on August 6, 2012. Bunch responded and Jones learned from him that Mildred Arnett was the specialist assigned to Slagle’s claims. This leads me to conclude that the meeting with Odegard at which Jones first attempted to seek information from health resources management about Slagle’s
25 restrictions—i.e., first attempted to obtain the information sought by Ten Eyck—most likely occurred sometime in July, in the weeks before she followed up with the email to Bunch. However, by August 10, when Jones received the email from specialist Arnett stating that there were no restrictions for February 1, 2012, it is clear that Jones was still seeking the records covering the wrong period of time.³

30 The vagueness of all witnesses as to when the Postal Service’s inability to produce the correct information was conveyed to Ten Eyck leads me to rely on documentary evidence to determine the most likely date that these matters were conveyed. As discussed above, in August 2012, Jones was still searching for medical restrictions from February 1, and had not learned from health and resource management that documentation was unavailable for
35 December 31, 2011. The first indication in the documentary evidence of the requested

³Jones testified that at this point—after communicating with Arnett—she talked with Odegard and he told Jones that he had spoken with Ten Eyck and told her “it was a moot issue.” Odegard testified and confirmed telling Jones something to the effect that if Slagle received new medical restrictions the failure to find the old restrictions would be a “moot” point going forward, for prospective restrictions and grievances. Odegard was vague on when this conversation occurred. He suggested it might have been in April or May, which seems unlikely, given that Jones was not involved in this matter until some months later, and recalled the conversation happening after Arnett was involved, which was not until August. In any event, whether in May, July, or August, the evidence is that Jones did not understand Odegard’s comments as a reason to stop looking for the December 31, 2011 medical restrictions. In August, she made inquiries and looked for the documents without any indication in the documentary evidence, or in her testimony, that she suddenly considered the matter moot based on a conversation with Odegard.

information not being available is dated September 1, 2012. Ten Eyck's request for information (dated August 14, 2012) (GC Exh. 16) clearly references her August 10 request for "medical restrictions for Sue Slagle during pay period 2012-02-01" and appears to quote Arnett's email—shown to Ten Eyck by Jones—stating, "I could not locate any document for 2/1/12." In the
 5 August 14 request, Ten Eyck asks, "Does this mean that there is no medical documentation on file for Sue Slagle during pay period 2012-02-01?"

Based on the testimony of Ten Eyck and Jones regarding their conversations about Arnett's email, I believe that they both knew that Arnett's email was referring to February 1, 2012, and that, after talking about Arnett's email with Ten Eyck, Jones thereafter finally understood that Ten Eyck was seeking medical restrictions in effect on the second week of the first pay period in 2012, i.e., the week ending December 31, 2011. It is in response to this inquiry, that Jones hand wrote on the August 14 request (GC 16) that "Health and Resource Mgmt does not have this information—notified Ms. Ten Eyck 9/1/12 and previously." Although
 10 this states that Ten Eyck was notified previously, there is no record evidence of such communication predating this notice. In addition to this written declaration, there is the handwritten notation "no medical dated 12/31/11" signed by Andrea D. Porter, and dated October 1, 2012. Porter is an admitted agent of the Postal Service and a specialist in the health and resource management department in the Detroit District.
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Analysis

Union Representative Ten Eyck first requested Slagle's "most current work restrictions" on April 25, 2012. It is undisputed she heard nothing back for several weeks and on June 13, 2012, requested Slagle's restrictions for the first week of the second pay period in 2012 (i.e., the week ending December 31, 2011). Whether the same documents would be responsive to this request depends on whether Slagle's restrictions had been renewed as of April, 2012, and since there was no answer to either request, it is impossible to say. Ten Eyck kept pressing and by late July received Slagle's recent July 17, 2012 doctor's note, but that was not what she was
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 30 requesting.

As discussed above, Ten Eyck never received the information she was seeking. The General Counsel, and perhaps Ten Eyck, seem to accept that the Postal Service could not find the information. As noted, I accept that the Postal Service, ultimately, sought but could not find the requested information. But a reasonable search for the information required inquiry with human resources, where the Postal Service agrees such information was normally maintained if it could not be found at the local office. The record shows that by August 6, Jones was in email correspondence with the human resources group that should have had this information, but nothing suggests earlier contact with human resources. Indeed, the August 6 email indicates no earlier contact on this issue. The first indication that Ten Eyck may have been told that the information—for the date she sought—could not be found is the note indicating "Health and Resource Mgmt does not have this information—notified Ms. Ten Eyck 9/1/12 and previously." Since it does not appear that human resources was contacted until August, and since Jones was still requesting the wrong information as of mid-August, it appears that mid- to- late August was the earliest time Ten Eyck could have been told, based on any actual search, that the
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 45 December 2012 information she sought could not be found. It may have been later, but August is, in any event, an unreasonable delay, considering the request was for a single employee's medical restrictions, originally made in April and then revised in June.

Had the Postal Service gotten back to Ten Eyck in May and said, "we have had human resources look for the most current work restrictions for Slagle and we cannot find it," there
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would be no violation here. But August is an unreasonable delay, and the record demonstrates that there was no effort even to reach out to human resources until sometime in July and no actual contact with human resources until August. As of mid-August, Jones, through human resources Official Arnett, was still looking for medical restrictions from dates other than that requested by Ten Eyck.

Ratkowski and/or Jones could have quickly determined that they did not have a copy of restrictions on file at Saline, and contacted human resources forthwith. This would have taken a few minutes to accomplish. Human resources could have, similarly, quickly determined that it did not have the medical restrictions information sought by Ten Eyck.

I note the lack of merit to two defenses to the General Counsel's claim: one raised by the Respondent at trial (but not advanced on brief), the other not raised at all by the Respondent but warranting reference.

First, I note that the contention of the Respondent's counsel at the hearing that the request for medical restrictions was not relevant because, by the time Ten Eyck began seeking the information in April 2012, any grievance to be filed by the Union would be untimely. However, a union's right to information does not turn on the Board's, much less the Respondent's, view of the merits of a potential grievance. As stated by Judge Clifford Anderson in *Albertson's Inc.*, 351 NLRB 254, 353 (2007), in reasoning adopted by the Board:

It simply does not matter if a labor organization's grievance is perceived as nonmeritorious or if the union's theory of a contract violation is murky or even ambiguous. A request for information while connected to a grievance in the instances involved herein, is not purely related to that portion of a collective-bargaining agreement. Conceptually, the duty to produce information relates to the labor organization's need for information to fulfill its duty to represent the employees.

As the Board affirmed in *W-L Molding Co.*, 272 NLRB 1239, 1240 (1984), quoting *NLRB v. Rockwell-Standard Corp.*, 410 F.2d 953, 957 (6th Cir. 1969), and *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967), in considering an information request, it is not the Board's role to pass on the merits of the Union's claim: "[t]he Board's only function in such situation is in 'acting upon the possibility that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities.'"

Second, I note that the facts of this case do not fall within the ambit of the rule announced by the Board in *Raley's, Supermarkets*, 349 NLRB 26, 28 (2007), in which the Board dismissed an allegation that an employer unlawfully failed to provide the union with a copy of a report where, it turned out, no such report existed. The Board majority in *Raley's* stated that in order to find a violation in the employer's failure to respond to the information request by informing the union that no such report existed, the General Counsel must amend the complaint to specifically allege that the employer failed to timely inform the union that were no such reports. *Raley's* applies where a document that does not exist is requested by a union. Slagle's medical restrictions existed—the Postal Service had them, routinely maintained them, and should have been able to produce the requested information. Its inability to retrieve and produce a document that it surely had at one time is not the situation described in *Raley's*. The Postal Service misplaced this information, which does exist, and was unable to retrieve the requested information. Under these circumstances, the General Counsel allegation that the Postal Service untimely delayed providing the requested information covers the Postal Service's

unreasonable and unlawful delay in searching for, determining that it could not find the requested document, and conveying this to the Union.

5 I find that the failure to inform Ten Eyck of this until sometime in mid- to- late August is a violation of the Act.

B. The May 30 Information Request for Overtime-Related Information

10 In her testimony, Ten Eyck described having filed “[m]any, many, many” overtime grievances against the Postal Service. Under the Saline Postal Service procedures, route carriers signed up to be eligible for overtime assignments. Employees could sign up to be eligible for overtime assignments on their own route and, those interested in receiving even more overtime assignments could sign up to be eligible to be assigned to overtime on someone else’s route as well. Ten Eyck filed grievances over the Postal Service at Saline “[n]ot working the overtime desired list properly, [and] mandating people not on the list to work the overtime.” 15 Ten Eyck was also concerned that “for those people who are on their own assignment overtime list,” they were being assigned “also overtime off their assignment.” According to Ten Eyck, “If they work overtime off their assignment, they have to be on the overtime desired list” and the Union considered a failure of the Postal Service to abide by this to be a violation of article 8 of the labor agreement. 20

After meeting with Ratkowski on May 26, 2012, over the overtime concerns, Ten Eyck requested, inter alia, as of May 30, 2012, the overtime desired list (OTDL), the weekly schedule, the “Employee Everything Report,” the “Work Hour/Workload Report,” and all of the form 3996s. 25 Ratkowski’s initialed and dated the request, indicating her receipt.

When the information was not received by June 30, Ten Eyck made copies of these requests (and others) and provided them to Ratkowski, Jones, and Sheri Hahn. Ten Eyck testified that Jones said she would try to provide those for her that morning. However, they 30 were not received. They were requested again on July 12, and again on July 26. With the exception of the form 3996s, the requested materials were provided August 3, 2012. Ten Eyck testified that no reason for failing to provide them sooner was provided. Ratkowski testified and did not offer a reason for the delay, but agreed with the suggestion of her counsel that “this is the type of information that normally you are able to provide fairly quickly.” Jones testified that 35 she became involved in answering information requests at some point in June or July to alleviate what she described as the burden on Ratkowski from the large number of information request being filed by the Union. Her testimony was far from clear, but it appears that on this set of requests she became actively involved in the latter part of July, as indicated by her initialed receipt of the resubmission of the request on July 31, 2012. Jones testified that “I can’t 40 explain why it was [not] provided before August. I can only say once I took over, I said, ‘Denise, give me all the requests you have.’”

Analysis

45 As discussed above, this routine, and easily-accessible overtime-related information was requested May 30, 2012. It was not provided until August 3 and 4, 2012. No explanation for the delay is offered. Indeed, Jones admitted, “I can’t explain why it was [not] provided before August.” Unlike the medical restrictions information request discussed above, all of this information was maintained locally at Saline and had to do with local Saline office personnel 50 assignments.

Given that it was the Respondent's duty to make "a good faith effort to respond to the request as promptly as circumstances allow" *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993), it is clear that the Respondent's unjustified delay constitutes a violation of the Act.

5 I note that generally, and also with regard to this request in particular, I put little stock in the Respondent's suggestion that the delay was a result of being "bombarded" with information requests during April and May that—as counsel stated in a suggestion agreed to by Jones—put a "strain on managerial resources." According to Jones, she learned of an uptick in grievances and information requests in June and assumed responsibilities for responding to information requests, but still, did not offer any explanation for the delay. Notably, the suggestion that the Respondent's managers were too overwhelmed with grievances and information requests to respond promptly was backed by no records of contemporaneous accounts or evidence. There is no evidence in the contemporaneous written responses of the Respondent that it told the Union it was too busy to respond. Rather, the record shows a lackadaisical response as Ten Eyck repeatedly sought information that was readily available from the Saline office. Being "bombarded" by grievances might be a weighty defense and excuse for the slow response to information requests in some cases, but in my view, this is not that case. The defense is unproven factually, unsupported by contemporaneous evidence demonstrating that this was a problem causing delay, and, in any event, does not explain the delays that have been demonstrated on the record.

C. The Request for the 8038 and 8039 Forms for Retiree Schneider

25 Third, as described in paragraphs 9 and 12(c) of the complaint, from June 19 2012, to about late August 2012, the Postal Service unreasonably delayed furnishing the Union with requested relevant information, specifically, forms 8038 and 8039 for former employee Carol Schneider.

30 Schneider was a beneficiary of a mid-March 2012 settlement reached on a grievance that was pending at the time she retired from the Post Office in December 2011. Schneider worked at Saline from 1990 to early 2009, until she was required to transfer to the Fort Shelby Station, the main downtown post office in Detroit. Schneider filed a grievance through Branch 434 over the transfer. The grievance, resolved in March 2012, provided for Schneider to be paid backpay and benefits for lost wages and benefits for a nearly 22-month period in 2010 and 2011.

40 As a means of receiving payment, the settlement provided for Schneider to be sent a USPS form 8038 ("Employee Statement to Recover Back Pay") which was to be completed by Schneider. In addition, the settlement provided that management would complete and submit a completed USPS form 8039 ("Back Pay Decision/Settlement Worksheet").

45 Schneider testified that she received the form 8038 in the mail in March from Branch 434 President Bill Dawson "promptly" after the settlement was reached. Dawson told Schneider to complete the form and submit it in a timely manner to the postmaster at the office where the grievance was initiated. Schneider testified that she filled out the 8038 on March 28, 2012, and drove the form to the Saline post office. She put it in a manila envelope with stamps, where she gave it to one of the clerks, telling her to "mail this to the postmaster." The envelope containing the 8038 was addressed to Sheryl Jones, the Saline office Postmaster. After 10-12 weeks, hearing nothing, Schneider contacted the branch 434 secretary and told her she had not received anything on the grievance settlement.

Ten Eyck was at union meeting, probably in May or June 2012, when she was asked by Branch 434 President Dawson whether anything was “going on” with Schneider’s back pay award. Dawson told Ten Eyck about the settlement and said that the 8038 needed to be provided to the Employer and that management needed to fill out the 8039 and “we need to find out where that is because Carole Schneider currently has not been paid.” Ten Eyck called Schneider and Schneider told Ten Eyck she had filled out the 8038 and mailed it to Sheryl Jones but that she had not heard anything else.

In mid-June, Ten Eyck questioned Marge Ratkowski about Schneider’s backpay award. On June 22, Ten Eyck submitted a request for information seeking, among other things, copies of the 8038 and 8039 for Schneider. Ratkowski told Ten Eyck she that did not know about Schneider or anything about the grievance. Ratkowski testified that she had never dealt with an 8038 or 8039 form, from Schneider or anyone else and did not know Schneider and was not involved in processing her backpay. Ten Eyck spoke to Jones about it. Ten Eyck told Jones that it had been months since Schneider had received pay and that these forms needed to be completed so that Schneider could receive her pay. Jones told Ten Eyck that she did not have this information in the office. Jones told Ten Eyck that she had not received any documents or package from Schneider. Jones testified credibly that she asked Ten Eyck to have Schneider send it again.

Ten Eyck repeatedly requested the information in later June and July, obtaining management signatures to document each request. On July 25, Ten Eyck was resubmitting the request, and Ratkowski told her that the labor relations department had the documentation. Jones also told Ten Eyck at some point that she had not received the 8038 from Schneider and that it would not be something that Jones would “have anything to do with.” On July 31, Jones wrote a response on the information request. The copy produced for the record (GC Exh. 23) is difficult to read due to the copying process and the fact that the note was written on top of earlier notes. It says “per Mona Patel, Labor Relation,” this is handled by their Department. Explained this to Ten Eyck.”⁴ Ten Eyck’s response was to make the following request:

For Carole Schneider

Let me be clear

I am asking for a copy of the form 8039 showing that at least this part of the process has been completed—or a record transmittals of such documents completion.

On August 8, Sheryl Jones wrote an email to Mona Patel, regarding Schneider, which she showed to Ten Eyck. The email stated:

Denise Ten Eyck, union representative, is still requesting the 8039 for Carole Schneider. I communicated the information you gave me about everything being taken care [of] to both Ms. Ten Eyck and John Odegard, union representative. I also provided Mr. Odegard with the union representatives['] names you gave to me. Mr. Odegard understands but Ms. Ten Eyck continues to request the same information. Please help.

⁴That is probably not entirely accurate, but it is the best I can make out. No party or witness offered any suggestion as to the text, although Ten Eyck testified that at the time she received it, she read it and understood it to say that the department of human relations did not have this information.

On August 10, Ten Eyck once more requested the 8039 form for Schneider, among other items, from Postmaster Jones.

5 On August 20, Jones received an email from Mona Patel, asserting that she had not received Schneider's 8038. She attached a blank 8038 and an 8039 "that I had filled out months ago. I do not have any forms from Ms. Schneider and without her filling out the required forms, I can not send in anything for processing." Jones testified that she gave these forms to Ten Eyck.

10 Although the email stated that Patel was sending Jones a blank 8038, Jones' testimony—although uncertain and hard to follow—seems to contradict this. Jones testified that the 8038 that came to her from Patel on August 20—the first time that day that Patel sent it she forget to attach it—had "had a lot of writing like it had been completed." Jones also testified that the 8038 she received from Patel had "handwritten information on there . . . [and] stuff
15 written in." Jones testified that she thought, "Well, maybe this is [Schneider's] copy."

20 Later, at a union meeting, probably on August 20,⁵ someone at the Union provided Schneider and Ten Eyck with copies of the 8038 form filled out by Schneider and a copy of the 8039 form, at least partially filled out by management. They had been mailed to the union office and were in a manila envelope. Whether or not this was the same manila envelope that Schneider dropped off at the Saline post office in March, I cannot say, but it might have been. Whether this was the completed 8038 form that Jones seems to believe she received from Patel the afternoon of Monday, August 20, I am unsure. In any event, Ten Eyck testified that at this
25 point she considered her information request satisfied.

A union national business representative, Pat Carol, took the completed 8038 form and the 8039 form and provided them by fax to USPS labor relations specialist Mona Patel the next day. Patel could not read part of the faxed copy of the 8038, so Schneider drove to her office in Detroit and handed Patel copies of the 8038 and 8039 in the lobby. Patel signed the 8039 on or
30 about that day, August 22, 2012. When Schneider received the completed 8039, she filled it out on September 6, 2012, and faxed it back to Mona Patel.

Analysis

35 The Government alleges that the Respondent unreasonably delayed providing the forms 8038 and 8039 for Carol Schneider's grievance settlement—forms that needed to be completed in order for her to receive the money owed to her under the settlement.

40 I have no doubt and I credit Schneider's testimony that she brought her part of the paperwork to the Saline post office in later March 2012. I am less certain what happened to it once it was left there. Both Jones and Ratkowski testified credibly that they knew nothing about it, and it is true, as the Respondent stresses, that Schneider was transferred from the Saline office before either Jones or Ratkowski was on the scene. She retired from the downtown
45 Detroit office.

In any event, Schneider's inquiry to the Union about what happened with her settlement led Ten Eyck to question Ratkowski about Schneider's back-pay award in mid-June, and to

⁵Ten Eyck testified that the meeting was on a "Monday" which she dated as August 25, 2012. Based on other record evidence, I find that the meeting was, indeed, held on a Monday, but that it likely would have been August 20. (August 25, 2012, did not fall on a Monday.)

request the 8038 and 8039 on June 22. In this case, Ratkowski forthrightly told Ten Eyck that she that did not know anything about Schneider or her grievance, had never dealt with an 8038 or 8039 form, and was not involved in processing back-pay. When Ten Eyck spoke with Jones, Jones told her that she did not have this information and had not received any documents or package from Schneider. Jones testified credibly that she asked Ten Eyck to have Schneider send it again. This did not happen. However, Ten Eyck requested the information from Jones and Ratkowski again on July 25, and this time Ratkowski told Ten Eyck that the labor relations department had the documentation. Jones' seconded this in a written response to Ten Eyck a few days later. At this point (the end of July), Ten Eyck appears to have dropped her request for the 8038 and now was seeking the 8039, the portion of the settlement papers that needed to be filled out by management representatives. By August 8, Jones was in contact with Patel, who was handling the matter for Labor Relations and she showed this communication to Ten Eyck. Somehow, and the record does not allow me to determine how, Schneider's completed 8038 showed up at a union meeting. The next day the completed 8038 form and a 8039 form were provided to Patel, who was immediately in contact with Schneider. Within days the appropriate forms were completed.

I find no violation here. The evidence is difficult to follow, and it does not allow me to conclude that there was an unreasonable delay on anyone's part. I do not believe Jones or Ratkowski knew that Schneider delivered the 8038 to the Saline office in late March and they first became aware of that in mid- to-late June when Ten Eyck asserted this. Jones and Ratkowski quickly took the position that theirs was the wrong office to be handling or providing these matters. They clearly had no knowledge of this matter. They identified the right office—labor relations—and Ten Eyck initiated conversation with Patel of labor relations. As soon as Schneider's completed 8038 was "found"—where it was found, who found it, where it had been, I do not know—the process moved swiftly and within a couple of days Patel and Schneider were putting together the appropriate paperwork.

If there is an unreasonable delay here, I cannot see it. There is a murkiness to the record account of all of this that leads to me find that the alleged violation is unproven.

CONCLUSIONS OF LAW

1. The Respondent United States Postal Service violated Section 8(a)(1) and (5) of the Act by failing to timely furnish requested information concerning overtime-related information and the employee medical restrictions information described above in this decision.

2. The unfair labor practices committed by the Respondent affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist there from and to take certain affirmative action designed to effectuate the policies of the Act.

With regard to the cease-and-desist portion of the remedy, the General Counsel contends that a broad cease-and-desist order requiring the Respondent to cease and desist from abridging the rights of employees (and from refusing to bargain) "in any other manner" is appropriate for this case.

I decline to recommend a broad order here. The decades-long history of this Respondent's repeated failure to provide requested information or to provide it after unreasonable delay is indisputable. However, I am not aware of any cases in which the Board has ordered a broad cease-and-desist remedy where the postal service facility at issue had no history of violations, where the violations were limited to failure to provide or a delay in providing information, and where the information violations were limited to just two incidents.

In this case there were only two incidents of delay that were found to violate the Act, and no other misconduct. Both of the incidents were the product of a less than adequate response to information requests by officials at the Saline, Michigan post office. But there is evidence that many other requests for information were complied with in a timely manner during this same period. Moreover, the General Counsel cites no prior cases—including cases resolved through a settlement agreement—which involved alleged or found violations of the Act involving actions taken (or not taken) by officials of the Saline office.

Although I am cognizant of the long history of the Respondent's violations around the country, I am hopeful that the traditional remedy will serve to deter the Saline branch of the Respondent, at least, from further violations of the Act.

The Respondent shall be ordered to refrain from, 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.⁶

The Respondent shall be ordered to post an appropriate informational notice as described in the attached appendix.

⁶As referenced, the General Counsel seeks a remedial order requiring, not only that the Respondent cease and desist from abridging employee rights "in any other manner" but also from refusing to bargain "in any other manner." In recent cases the Board has deleted the latter language from the recommended order and included the former, on the opaque grounds of "conforming" the order "to the Board's customary remedial language." *Dresser Rand*, 358 NLRB No. 97 (2012); *Wellington Industries*, 358 NLRB No. 90 (2012). However, in a case such as this one that concerns an 8(a)(5) violation, and only a derivative violation of 8(a)(1), it is unclear why a cease-and-desist order directed toward any like or related bargaining violation is not superior to one directed to any like or related 8(a)(1) violation. Whether future misconduct limited to 8(a)(1) violations can be "like or related" to the present violation is a difficult question. The Supreme Court's decision in *NLRB v. Express Publishing Co.*, 312 U.S. 426 (1941), suggests that in a case substantively involving only an 8(a)(5) bargaining violation (and an 8(a)(1) violation only as a derivative violation), that the cease and desist order ought to be directed toward future bargaining violations. *Express Publishing*, supra at 438 ("An appropriate order in the circumstances of the present case would go no further than to restrain respondent from any refusal to bargain and from any other acts in any manner interfering with the [Union's] efforts to negotiate"); See also *May Department Stores Co. v. NLRB*, 326 U.S. 376, 386-393 (1945). In any event, the General Counsel has pled but not argued the point and I will follow the most recent Board treatment of the issue.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁷

ORDER

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

1. Cease and desist from:

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a. Refusing to bargain collectively with Branch 434, National Association of Letter Carriers (NALC), AFL-CIO (Union), by unreasonably delaying in furnishing the Union with requested information that is relevant and necessary to the Union's performance of its functions as the servicing representative for the collective-bargaining representative of the Respondent's unit employees.

15

b. 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 which is necessary to effectuate the purposes of the Act:

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a. Within 14 days after service by the Region, post at its Saline, Michigan facility copies of the attached notice marked "Appendix."⁸ 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, 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. If 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 April 25, 2012.

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⁷If 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.

⁸If 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."

b. Within 21 days after service by the Region, file with the Regional Director for Region 7 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.

5 Dated, Washington, D.C. February 19, 2013.

10

David I. Goldman
U.S. Administrative Law Judge

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 delay furnishing the Union with requested information that is relevant and necessary to the Union's performance of its duties as the servicing agent for your collective-bargaining representative.

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

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.