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United States Postal Service and American Postal workers Union, Local 1070, AFL-CIO. Case 24-CA-100739

January 24, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON
AND SCHIFFER

On September 30, 2013, Administrative Law Judge Michael A. Rosas issued the attached decision. The Respondent filed exceptions and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions¹ and to adopt the recommended Order as modified and set forth in full below.²

ORDER

The National Labor Relations Board orders that the Respondent, United States Postal Service, Aguadilla, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with American Postal Workers Union, Local 1070, AFL-CIO by unreasonably delaying in furnishing it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's unit employees.

¹ The Respondent does not except to the judge's findings and conclusions. Its exceptions are limited to "[t]he ALJ's recommendation that a cease and desist Order be issued against Respondent, United States Postal Service, Puerto Rico, its officers, agents, successors, and assigns." Respondent contends that the Order is overbroad. Although the judge limited the notice posting requirement to Respondent's Aguadilla Post Office in Aguadilla, Puerto Rico, the judge inadvertently neglected to include "Aguadilla" before "Puerto Rico" in the introductory sentence of the Order. We have modified the Order accordingly. See *Postal Service*, 356 NLRB No. 75 (2011), enf. denied on other grounds and remanded 660 F.3d 65 (1st Cir. 2011), and reaffirmed on remand 359 NLRB No. 115 (2013).

² We shall modify the judge's recommended Order to conform to his findings and to conform to the Board's standard remedial language. Specifically, we have removed the portion of the Order requiring the Respondent to furnish the Union with information requested on October 18, 2012, relating to certain personnel records of unit employee John Hernandez in light of the judge's undisputed finding that the information was provided to the Union on April 10, 2013. We shall substitute a new notice to conform to the Order as modified.

(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 necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Aguadilla Post Office, 50 Carr 459, Suite 1, Aguadilla, Puerto Rico, copies of the attached notice marked "Appendix"³ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Sub-Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. 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 October 18, 2012.

(b) Within 21 days after service by the Region, file with the Regional Director for Subregion 24 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. January 24, 2014

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Nancy Schiffer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

DECISIONS OF THE NATIONAL LABOR RELATIONS BOARD

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain collectively with the American Postal Workers Union, Local 1070, AFL-CIO (the Union) by unreasonably delaying in furnishing it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of our unit employees.

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

UNITED STATES POSTAL SERVICE

Enrique Gonzalez Quinones and Vanessa Garcia, Esqs., for the General Counsel.
Rebecca Horan, Esq., of St. Louis, Missouri, for the Respondent.
Juan Carlos Gonzalez-Del Valle, for the Charging Party.

DECISION
STATEMENT OF THE CASE

MICHAEL A. ROSAS, Administrative Law Judge. This case was one of eight related cases tried in San Juan, Puerto Rico on August 27, 2013.¹ The American Postal Workers Union, Local 1070, AFL-CIO (the Union) filed the charge and amended charge on March 19 and May 24, respectively.² A complaint issued on May 31. The complaint alleges that the United States Postal Service (the Postal Service or Respondent) violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act)³ by unreasonably delaying in providing the Union with relevant information pursuant to their collective-bargaining

¹ By Order, dated August 20, 2013, the Regional Director advanced the hearing from August 21 to August 20 in order for this case to be heard together with seven other consolidated information cases, led by Case 24-CA-090192. (GC Exh. 1(i).)

² All dates are in 2013 unless otherwise indicated.

³ 29 U.S.C. Secs. 151-169.

agreement. For a remedy, the Union seeks a broad cease and desist order and an affirmative bargaining order. The Postal Service denied the allegations in the complaint, but now concedes that it unreasonably 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.

Settlement discussions continued until just before the hearing commenced. I was informed that the Postal Service would amend its answer to admit all of the amended complaint allegations and that the only stumbling block was the remedy. The General Counsel insisted on a cease and desist order to be posted at every Postal Service facility within the Caribbean District.

The Postal Service expressed a willingness to agree to a cease-and-desist order, but only one that was limited to the facility at issue in this case.

Ultimately, the parties could not agree and the Postal Service proposed a unilateral settlement agreement for my approval pursuant to Board Rule 101.9(d). Since I was already at the hearing site and all parties prepared to proceed, I reserved decision on the Postal Service's application and received brief testimony relevant to a remedy.⁴ Upon review of the record, it is evident that the charging party did not agree as to the entirety of the proposed settlement. Moreover, the proposal was submitted to me only after I arrived at the hearing location in San Juan, Puerto Rico. Having heard all of the relevant, albeit brief testimony, I decline to accept the proposed unilateral settlement pursuant to *Independent Stave Co.*, 287 NLRB 740, 743 (1987).

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

FINDINGS OF FACT

I. JURISDICTION

The Postal Service provides postal services for the United States and operates various facilities throughout the United States, including a facility at 50 Carr Street, Aguadilla, Puerto Rico. 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.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Parties

The Postal Service's Caribbean District encompasses two Caribbean neighbors, the United States Commonwealth of Puerto Rico and the United States District of the Virgin Islands. The Caribbean District consists of approximately 132 facilities divided into 4 zip code clusters. Facilities and zip codes within the Virgin Islands fall under 008, while Puerto Rico is divided into 3 clusters: 006 for zip codes in the west; 007 for zip codes in the east; and 009 for zip codes in the San Juan metropolitan

⁴ R. Exh. 1; Tr. 15-20.

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area. Each cluster is managed by a Post Office Operations Manager (POOM). The Aguadilla facility is one of 52 facilities included within zip code cluster 006 and is managed by POOM David Carvajal.⁵

The following Postal Service employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act (the unit):

All employees in the bargaining unit for which it has been recognized and certified at the national level – maintenance, motor vehicle, postal clerks, mail equipment shop, and material distribution employees.

At all material times, the Union has been designated and has served as the unit's collective bargaining representative, and recognized as much by the Postal Service. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective, by its terms, from 2011 to 2015.

B. The Union's Information Requests

In furtherance of its obligations as the unit employees' labor representative, the Union has, since October 18, 2012, requested, in writing that the Postal Service provide it with the following information: (1) John Hernandez' 1412 for March 23, 2012; (2) copy of the unit's 1412 for March 23, 2012; (3) copy of Hernandez' PS Form 3368-P; (4) copy of Hernandez' PF Form 3977; (5) copy of Hernandez' count for February and March 2012; (6) copy of Hernandez' April 2012 count; and (7) copy of Hernandez' LOD for March 2012.

The information requested by the Union since October 18, 2012 was necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. The Postal Service, however, unreasonably delayed in furnishing the Postal Service with the information requested until April 10.⁶

After unreasonably delaying in providing the aforementioned information to the Union, the Postal Service implemented measures in order to avoid a recurrence of similar unfair labor practices. Rather than leave it to individual facility managers to respond directly to information requests, Carvajal implemented procedures to ensure that his office received a copy of every request within zip code cluster 006 and resolves or responds to them in a timely fashion.⁷

⁵ Juan Delgado, the Caribbean District's manager of human resources, provided credible and undisputed testimony regarding the district's organization structure. (Tr. 23.)

⁶ At the outset of the hearing, the Postal Service admitted the complaint allegations that it unreasonably delayed in furnishing the requested information, failed and refused to bargain collectively with the Union in violation of Sec. 8(a)(5) of the Act, and that such unfair labor practices affect commerce within the meaning of Sec. 2(6) and (7) of the Act. See Stipulation at GC Exh. 3, amending the Postal Service's answer to the amended complaint.

⁷ David Carvajal, the post office operations manager, provided credible testimony as to the measures taken *after* the violations occurred. (Tr. 42–45.)

Legal Analysis

The Postal Service admitted that it violated Section 8(a)(5) and (1) of the Act by unreasonably delaying until April 10 in furnishing the Union with information requested on October 18, 2012 relating to certain personnel records of unit employee John Hernandez. Moreover, the Postal Service does not object to issuance of a traditional cease-and-desist order. It does, however, object to the General Counsel's request for an Order directing the posting of such a notice at every Postal Service facility within the Caribbean District. The Postal Service argues that a broad cease-and-desist order is unnecessary and a traditional cease-and-desist order limited to the specific facility involved in this litigation is the appropriate remedy.

Broad cease-and-desist orders are appropriate when an employer 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 employee's fundamental statutory rights. *Hickmott Foods*, 242 NLRB 1357 (1979); *Postal Service*, 345 NLRB 409 (2005). The Board reviews the totality of the circumstances to ascertain whether the employer's specific unlawful conduct demonstrates an attitude of opposition to the purposes of the Act to protect the rights of employees generally. *Postal Service*, 345 NLRB at 410. Failure to respond to information requests, although unlawful and a persistent problem, does not necessarily amount to egregious or widespread misconduct, and a lack of regard for employees' fundamental statutory rights. See *Albertsons, Inc.*, 351 NLRB 254, 260 (2007).

The Postal Service produced testimony by managers explaining their efforts to avoid similar recurrences in the future. The remedial steps undertaken by the Postal Service in this instance, however, were insufficient to undo the harm caused by its failure to timely provide relevant information necessary for the Union to effectively represent the interests of unit employees. In *Postal Service*, 345 NLRB at 410, the Board considered the following factors in determining the scope of a cease-and-desist order: (1) the frequency of the failures to furnish information within a 2-year period at the same facility; (2) whether the violations occurred after issuance of a narrow cease-and-desist order (suggesting the inadequacy of the order to deter future violations); (3) whether the information requests related to grievance investigations (suggesting that repeated unlawful refusals to provide the information have the potential to hide other misconduct); (4) whether the Respondent presented a weak defense of its actions; (5) the extent of the history of information request violations at Respondent's locations nationwide within the past 2 decades; (6) whether the Board previously issued broad cease-and-desist orders against Respondent for similar repeated information request violations at facilities within the same district; and (7) whether the Board's issued a concurrent decision against Respondent for the same violation.

While there is a lengthy history of similar violations and Board orders at other Postal Service facilities around the country, the facility at issue in this case is not included in that record. Moreover, there is no indication that the information requested related to a grievance investigation. The General Counsel contends that the Board's recent decision in *Postal Service*,

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359 NLRB No. 115 (2013), along with a recent settlement agreement, evidence a pattern of similar violations.⁸ Vague reference to a settlement agreement, however, is hardly evidence of a violation. Moreover, in its recent *Postal Service* decision, the Board did order the Postal Service to furnish the Union with requested information and post notices at its San Juan area facilities. The Board issued its order, however, only after a remand from the United States Court of Appeals for the First Circuit on the contentious issue of confidentiality interests applicable to personnel records of unit employees and job applicants.

Only when an employer has an extensive history of violations, or a history of noncompliance with cease-and-desist orders, should a broad cease-and-desist order be granted. *Postal Service*, 345 NLRB at 411. The violations established here consist of delays in furnishing the Union with requested information relating to the personnel records of a particular unit employee. There is no evidence of a previous violation in connection with this facility, which is located in the western part of the Commonwealth. Because no proven pattern or practice of unlawful activity exists at this facility, facilities within zip code cluster 006 or other facilities within the Caribbean District, a broad remedy requiring a District-wide notice positing is unwarranted. See *Consolidated Edison*, 323 NLRB 910, 911 (1997) (Board reversed judge's finding that the cease-and-desist order should be posted at all of the employer's facilities, not just the facility where the improper conduct occurred, as the unlawful activity affected only one employee at that facility).

CONCLUSIONS OF LAW

1. By unreasonably delaying in providing the Union with information that was necessary and relevant to the performance of its duties as the exclusive collective-bargaining representative of unit employees, the Postal Service has engaged in unfair labor practices in violation of Section 8(a)(5) and (1) of Act.

2. The aforementioned unfair labor practices affected commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Postal Service has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. I shall recommend that the Postal Service be ordered to furnish the information requested to the Union and post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁹

ORDER

The Respondent, United States Postal Service, Puerto Rico,

⁸ The General Counsel alluded to a recent informal settlement agreement in a case involving the Aguadilla facility, but did not offer it into the record. (Tr. 12–13.)

⁹ 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.

its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unreasonably delaying in furnishing the American Postal Workers Union, Local 1070, AFL–CIO (the Union) with requested information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the employees in the appropriate unit specified in the collective-bargaining agreement between the Respondent and the Union, which agreement is effective through 2015.

(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 necessary to effectuate the policies of the Act.

(a) Promptly furnish the Union with the information requested on October 18 relating to certain personnel records of unit employee John Hernandez.

(b) Within 14 days after service by the Region, post at its Aguadilla Post Office, 50 Carr 459, Suite 1, Aguadilla, Puerto Rico, copies of the attached notice marked "Appendix"¹⁰ in both English and Spanish. Copies of the notice, on forms provided by the Regional Director for Sub-Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 18, 2012.

Dated, Washington, D.C. September 30, 2013

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

¹⁰ 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."

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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 in furnishing the American Postal Workers Union, Local 1070, AFL-CIO (the Union) with requested information that is relevant and necessary to its role as the exclusive collective-bargaining representative of employees

in the unit specified in our collective-bargaining agreement with the Union, which is effective through 2015.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights listed above.

WE WILL furnish the Union with the information requested on October 18, 2012 relating to certain personnel records of unit employee John Hernandez.

UNITED STATES POSTAL SERVICE