

**United States Postal Service and Manchester Area
Local 320, American Postal Workers Union,
AFL-CIO.** Case 01-CA-102755

July 21, 2014

DECISION AND ORDER

BY MEMBERS MISCIMARRA, JOHNSON, AND SCHIFFER

On April 8, 2014, Administrative Law Judge Raymond P. Green issued the attached decision, and the judge issued an erratum on April 22, 2014. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.¹

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 briefs and has decided to affirm the judge's rulings, findings,² and conclusions as modified below and to adopt the recommended Order as modified.³

For the following reasons, we adopt the judge's finding that the Respondent violated Section 8(a)(5) of the Act. The Union submitted three requests for information. All three requests sought information pertaining to staffing of unit positions. The requests encompassed presumptively relevant information as to any unit employees who may have applied for those positions, and if any unit employees had applied, the Respondent would have been obligated to furnish that information without requiring any further demonstration of relevance by the

¹ The General Counsel also resubmitted its posthearing brief to the administrative law judge.

² The Respondent has implicitly excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. Member Johnson finds no basis to reverse the judge's crediting of shop steward Philip Randall and implicit discrediting of Manager Tom Wood regarding whether Wood disclosed the names of applicants to the tool and parts clerk and auto mechanic positions. Thus, while the record corroborates the Respondent's assertion that Randall did not ask for the names of the tool and parts clerk applicants, and that Randall would not have recognized the names even if Wood disclosed them, that testimony does not contradict Randall's additional testimony that he did not recall being told the names of job applicants. Similarly, Wood's testimony that he told Randall the names of auto mechanic applicants was undermined by his later testimony that he merely told Randall the veteran status of a few of the applicants.

³ We shall modify the judge's recommended Order to conform to the violation found and to the Board's standard remedial language, and we shall substitute a new notice to conform to the Order as modified and in accordance with *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001), enf. 354 F.3d 534 (6th Cir. 2004), and *Durham School Services*, 360 NLRB 694 (2014).

Union. See, e.g., *Knappton Maritime Corp.*, 292 NLRB 236, 238 (1988). However, as to nonunit employees encompassed by the Union's information requests, the information was *not* presumptively relevant, and the Union bore the burden of establishing the relevance of that information to the performance of its duties as collective-bargaining representative. See, e.g., *Hertz Corp.*, 319 NLRB 597, 599 (1995), enf. denied 105 F.3d 868 (3d Cir. 1997). Here, it so happened that none of the applicants for the positions were unit employees, but the Union was not in a position to know that. Because the Union's requests encompassed presumptively relevant information to the extent any unit employees had applied, the Respondent was required, at a minimum, to communicate to the Union that none had, which would have enabled the Union to understand that its requests required a further demonstration of relevance. The Respondent did not tell the Union that no unit employees had applied; it merely said that the requested information did not exist and the Respondent had no duty to "create such documents." For these reasons, the judge properly concluded that Respondent violated Section 8(a)(5).

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, United States Postal Service, Manchester, New Hampshire, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

"(a) Refusing to bargain collectively with the Union by failing and refusing to respond appropriately to information requests made by the Union."

2. Delete paragraph 2(a) and reletter the following paragraphs accordingly.

3. Substitute the attached notice for that of the 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 refuse to bargain collectively with the Union by failing and refusing to respond appropriately to information requests made by the Union.

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

UNITED STATES POSTAL SERVICE

The Board's decision can be found at www.nlr.gov/case/01-CA-102755 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



Don Firenze, Esq. and *Robert Redbord, Esq.*, for the General Counsel.

Dallas Kingsbury, Esq., for the Respondent.

DECISION

RAYMOND P. GREEN, Administrative Law Judge. I heard this case in Boston, Massachusetts, on February 20, 2013. The charge and the amended charges were filed on April 12, May 15, and June 18, 2013. The complaint which issued on July 31, 2013, alleged that the Respondent has failed to furnish to the Union the following information.

1. A list of USPS employees who submitted 991 forms for the tools and parts clerk position.
2. A list of USPS employees who submitted 991 forms for the garage man position.
3. The current hiring roster for LDC 32 mechanics.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS AND CONCLUSIONS

I. JURISDICTION

The Respondent is subject to the jurisdiction of the National Labor Relations Board pursuant to Section 1209 of the Postal Reorganization Act of 1970. It also was conceded and I find that the Union is a labor organization as defined in Section 2(5)

of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The facility involved in this case is located in Manchester, New Hampshire. The manager of this facility is Tom Wood. The two union people involved in this case are Mike Lafayette, whose title is the "Motor Vehicle Director" for the local union and Philip Randal who is a shop steward.

The Union, Local 320, is party to a collective-bargaining agreement with the Postal Service and represents a unit of about 30 employees employed in the Vehicle Maintenance Facility, (VMF). Adjacent to this facility is a mail handling operation that employs about 450 people, some of whom are also represented by Local 320.

a. Information requests for the tool and parts and the garage man positions

On February 22, 2013, a position for a tool and parts person was posted at the VMF. On March 23, chief steward Lafayette learned from a steward at the other facility that Jeannie LaVigne had bid for this position on March 22. At the time, LaVigne was employed as a plant worker in the mail handling operation. Also, unbeknownst to Lafayette there was another plant employee, Lorianne Long, who had also applied for this job. Thus, as of March 23, there were two employees who had filed 991 forms.

On March 3, 2013, a job as a garage man at the VMF was posted. As a result of this posting, two plant employees, Deb Stegall and Jason Oulette applied for this one job. However, as only VMF employees were eligible to apply during the first 10-day posting, the applications of Stegall and Oulette were disregarded. Nevertheless, after the initial 10 days passed and no VMF employee applied, the job was again posted, this time throughout the entire installation. At this time, Deb Stegall was the only applicant. Presumably, she got the job.

On March 27, Lafayette sent a written request for information. Insofar as the tools and parts job, he asked for (a) a "list of USPS employees who submitted 991 forms for the tool and parts clerk position," and (b) a "list of USPS employees that submitted 991s for the open Garage Man." A 991 form is essentially the employee's bid for the job opening. Lafayette testified that the reason he wanted this information was because he wanted to find out who had bid for the jobs so that he could keep tabs on the number of vacant position at the VMF and to make sure that the jobs were filled consistent with the contractual seniority and bidding provisions.

On March 28, Woods, after consulting with and being advised by the Respondent's labor relations department, sent a letter to Lafayette stating that the information requested did not exist and that the Respondent had no obligation to "create such documents."

In the ensuing months, there were a number of discussions between Wood and shop steward Randall regarding the tool and parts position as to when and whether it would be filled. Randall credibly testified that he was never told the names of the two job applicants. In the end, the job was initially offered to Lorianne Long, but when she failed the qualifying test, it was then offered and accepted by LaVigne in June 2013.

With respect to these positions, there were no complaints by any applicant that she was being unfairly treated or that she was not given the appropriate consideration based on seniority. No grievances were filed as to these situations and it does not appear that any grievances were contemplated by any of the employees who applied for these jobs. At the same time, it should be noted that it would not have been any burden for Woods to simply let Lafayette know who the applicants were. Indeed, Woods testified that he would have done so but for the fact that he was advised to the contrary by the Labor Relations Department.

b. Information request relating to auto technician hirings

At some time in the past, the Postal Service had contracted out certain vehicle maintenance work to outside companies. However, in 2010, the Union and the Postal Service entered into a memorandum of understanding, whereby the Postal Service agreed to bring back some of that work and have it done in-house. Thus, the Postal Service agreed to hire a total of 740 auto mechanics on a nationwide basis. It was also agreed to allocate those jobs to the various locations and as a result, the Manchester VMH was awarded six positions that are classified as LTC-32 auto technicians. The agreement states;

The Employer shall seek to fill duty assignments not filled through the bid procedure via the normal hiring process including the terms of Article 39.2.A.11. When applicable, the Employer will proceed with the normal hiring process as expeditiously as possible.

The agreement does not call for the immediate hiring of any particular number of auto technicians at any specific location. It contemplates filling these positions over a period of time. Moreover, the process, would of necessity, be somewhat complicated by the normal turnover of people in this job classification and the fact that existing local Postal Service employees, if qualified, would be entitled under the contract, to a preference for these jobs before outsiders could be solicited and hired.

According to Woods, he commenced the process of filling these positions soon after Memorandum of Understanding was signed. He testified that he posted the positions of auto mechanic but did not receive any applications from the existing complement of Manchester employees. Therefore, he started the process of hiring from the street, by advertising in local newspapers and online.

Woods testified that as of March 2013, he had received applications from six people who had, on paper the requisite qualifications. At this time, there were four open positions.

In his March 27 request for information, Lafayette requested the "current hiring roster for LDC 32 mechanics." Lafayette testified that he wanted this information because he felt that the facility was perhaps dragging its feet in filling these positions and therefore he wanted to make sure that the Memorandum of Understanding was being complied with. However, this explanation was not contained in the letter. Nor did Lafayette ever communicate to Woods the reason why he wanted a hiring roster for the LDC mechanics.

According to Woods, there did not exist a hiring roster at the time of this request. He testified that although he could recall

that some time in the remote past, there had been such a thing as a hiring roster when the Postal Service was more actively involved in hiring people, such a roster hadn't existed for a good long time before he assumed his present position.¹ Thus, he testified that when he received Lafayette's letter, he didn't understand what the latter meant by a "hiring roster." He did not understand that the request may have been to provide a list of those people who had applied for the auto mechanic jobs and who were being considered for employment.

In his response dated March 28, 2013, Woods wrote that the information requested did not exist and that the Postal service was not required to create such documents. Lafayette did not respond to this letter or explain why he wanted a hiring roster. He did not at any time say that what he wanted was a list of those people who had applied for the mechanic jobs and who were being considered to hire.²

III. ANALYSIS

Assuming a valid collective bargaining relationship in accordance with Section 9(a) of the Act, where information is sought for the purpose of enabling a union or an employer to administer a collective-bargaining agreement, including the evaluation and processing of actual or potential grievances, the legal test is whether the information is relevant. In this regard, the determination of relevancy is based on a liberal, discovery type of standard. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967); *National Broadcasting Co.*, 352 NLRB 90, 97 (2008); *Knappton Maritime Corp.*, 292 NLRB 236 (1988). Additionally, the fact that the information sought may tend to disprove a grievance is as equally relevant as those situations where the information would tend to support a grievance. This is because the process of resolving grievances is best served by the disclosure of information which would tend to resolve grievances one way or the other, at the earliest stage of the procedure and not burden the parties with unwarranted arbitrations. *NLRB v. Acme Industrial Co.*, supra, *Square D Electric Co.*, 266 NLRB 795, 797 (1983); *Ohio Power Co.*, 216 NLRB 987, 991 (1975).

Although there was no actual grievance filed (or even contemplated) by any of the employees who applied for the tool and parts position or the garage man position, it is my opinion, that Lafayette's request, which essentially was for the names of those individuals who applied for the jobs, was relevant to his responsibility to make sure that the seniority and bidding provisions of the collective-bargaining agreement were followed to the extent applicable. In my opinion, the response that no such list existed is an insufficient reason to deny this information. There were four applicants for these two jobs and a short list could easily have been prepared and turned over. I therefore

¹ Although not contained in the collective-bargaining agreement, there is a joint manual for contract interpretation that has the following entry.

Question 10: Is management responsible for making reasonable efforts to maintain an adequate hiring roster to fill motor vehicle vacancies?

Response: Yes

² Ultimately, in June 2013, Woods did hire four people to fill this job classification.

conclude that the Postal Service did not meet its obligation to furnish relevant information to the Union in a timely manner. *Yeshiva University*, 315 NLRB 1245, 1248 (1994).

With respect to the Union's request for the "hiring roster," this is a little more complicated. In my opinion, the Union had a right to know what effort (or lack of effort), the employer was making to fulfill its obligation to hire auto mechanics under the terms of the 2010 Memorandum of Understanding. And in this regard, Lafayette's information request could have been clearer. But even though he did not explain that he was seeking the names of people applying for and being considered for these jobs, Woods did not, in turn, ask Lafayette what he wanted or why. In this situation it is hard for me to say who was more at fault for failing to resolve an ambiguous request for information. My own inclination is that the person asking for the information has the obligation to clarify the request if there is a legitimate question about its meaning. But it seems that where an ambiguous information request is made, it is the Board's view that the requestee is the one that has the obligation to ask for a clarification. See *Yeshiva University*, supra, citing *Keauhou Beach Hotel*, 298 NLRB 702, (1990), and *La Guardia Hospital*, 260 NLRB 1445 (1982).

In light of the above, it is my opinion that by failing to seek clarification of the union's request for information regarding the potential hiring of applicants for the auto mechanic positions and by refusing to furnish such information, the employer has violated Section 8(a)(5) and (1) of the Act.³

REMEDY

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

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, the United States Postal Service, Manches-

³ In its Brief, the Respondent very reasonably asserts that this case is "much ado about nothing." While not earth shaking, it seems to me that the violations are "enough about something," so that it cannot be said that the matter is "de minimus."

⁴ 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.

ter, New Hampshire, its officers, agents, successor, and assigns, shall

1. Cease and Desist from

(a) Refusing to furnish relevant information to Manchester Area Local 320, American Postal Workers Union, AFL-CIO, in connection with bids for jobs within the Manchester facility or in relation to the hiring of auto technicians in accordance with the requirements of the 2010 Memorandum of Understanding.

(b) In any like or related manner, interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request, furnish to the Union the information requested in the letter sent by the Union dated March 27, 2013.

(b) Within 14 days after service by the Region, post at its Manchester, New Hampshire facility copies of the attached Notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by 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 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 March 28, 2013.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps Respondent has taken to comply.

⁵ 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."