United States Postal Service *and* National Association of Letter Carriers, Branch 233. Case 10–CA–129726

April 17, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON AND MCFERRAN

On January 16, 2015, Administrative Law Judge Keltner W. Locke issued the attached bench decision. The General Counsel filed an exception and a supporting 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 exception and brief and has decided to affirm the judge's rulings, findings, and conclusions, and to adopt the recommended Order as modified.[1]

ORDER

1. Insert the following as paragraph 2(a) and reletter the subsequent paragraphs.

"(a) Waive any contractual deadlines for filing and pursuing grievances related to the requested information, where the Union missed those deadlines due to the Respondent's delay in providing the information."

2. Substitute the attached notice for that of the administrative law judge.

[1] In the remedy section of his decision, the judge recommended that the Board order the Respondent to waive any contractual deadlines the Union missed for filing and pursuing grievances because the Respondent unlawfully delayed in providing it with information requested between March 14 and May 5, 2014. The judge, however, did not include this remedy in his recommended Order. The General Counsel excepts, requesting that the Board correct this apparent inadvertent omission by the judge. The Respondent did not except to the judge's recommended remedy or file an opposition to the General Counsel's request.

The Board has broad authority to fashion appropriate remedies that effectuate the purposes of the Act. See *NLRB v. J. H. Rutter-Rex Mfg. Co.*, 386 U.S. 258, 262–263 (1969). We find that the judge's recommended remedy is appropriate here. If the Respondent's delay in providing the requested information prevented the Union from timely processing grievances, the Respondent's unfair labor practice will have frustrated the Union's ability to perform its grievance-processing duties. Accordingly, we shall modify the Order to require the Respondent to waive any grievance processing deadlines that the Union missed due to the Respondent's delay in providing information specified in the complaint. We shall also substitute a new notice to conform to our modified Order.

APPENDIX B

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 the Federal labor law and has ordered us to post and obey by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to furnish, in a timely manner, information requested by the National Association of Letter Carriers, Branch 233, which information is relevant to the Union's performance of its duties as exclusive bargaining representative of an appropriate unit of our employees, and necessary for that purpose.

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

WE WILL furnish, in a timely manner, information requested by the National Association of Letter Carriers, Branch 233, which information is relevant to the Union's performance of its duties as exclusive bargaining representative of an appropriate unit of our employees, and necessary for that purpose.

WE WILL waive any contractual deadlines for filing and pursuing grievances related to the requested information, where the Union missed those deadlines due to our delay in providing the information.

UNITED STATES POSTAL SERVICE

The Board's decision can be found at www.nlrb.gov/case/10-CA-129726 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.

Carla L. Wiley, Esq., for the General Counsel.
Rebecca Horan, Esq., for the Respondent.

BENCH DECISION AND CERTIFICATION

STATEMENT OF THE CASE

KELTNER W. LOCKE, Administrative Law Judge. The hearing in this matter opened by telephone conference call on November 10, 2014. After receiving the formal documents, I adjourned the hearing at counsels' request so that they could complete a stipulation of facts which would obviate the need for testimony. When the hearing resumed on December 2, 2014, the parties submitted the stipulation into evidence and counsel presented oral argument. I then recessed the hearing until December 5, 2014.

On December 4, 2014, the General Counsel filed a motion to strike portions of the Respondent's oral argument. When the hearing resumed on December 5, 2014, counsel presented oral argument concerning this motion. On December 8, 2014, I issued a bench decision, pursuant to Section 102.35(a) (10) of the Board's Rules and Regulations, which addressed the General Counsel's motion and the issues raised in the complaint. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach hereto as "Appendix A," the portion of the transcript containing this decision.[1]

REMEDY

The General Counsel has proven that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by undue delay in furnishing requested information relevant to and necessary for the Union's performance of its duties as exclusive bargaining representative. The customary remedy for such a violation is a notice posting, and I recommend that the Board order the Respondent to post the notice attached hereto as Appendix B.

In view of the Respondent's past history of unfair labor practices, and more particularly the numerous instances in which it has been found guilty of violations similar to those present here, the General Counsel seeks further remedy. Based on the present stipulated record, I hesitate to conclude that an extraordinary remedy is warranted and do not recommend such a remedy.

However, I am concerned that the Respondent's delay in furnishing the requested information potentially may result in the Union's failure to meet the contractual deadlines for filing and pursuing grievances related to the information. Therefore, I recommend that the Board require the Respondent to waive any filing deadlines related to such grievances. However, I do not recommend that the Board order the Respondent to waive deadlines for grievances unrelated to the requested information.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Respondent pursuant to Section 1209 of the Postal Reform Act.

2. The Charging Party, National Association of Letter Carriers, Branch 233, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all relevant times, the Charging Party has been the exclusive bargaining representative, within the meaning of Section 9(a) of the Act, of the following unit of the Respondent's employees, which is an appropriate unit within the meaning of Section 9(b) of the Act:

> All city letter carriers, excluding managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375, 1201(2); all postal inspection service employees; employees in the supplemental work force as defined in Article 7 [of the collective-bargaining agreement between Respondent and National Association of Letter Carriers]; rural letter carriers; mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish, in a timely manner, information requested by the Charging Party which was relevant to the Charging Party's performance of its duties as exclusive bargaining representative of the unit described above and necessary for that purpose.

5. The unfair labor practices described in paragraph 4, above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

On the findings of fact and conclusions of law, and on the entire record in this case, I issue the following recommended[2]

ORDER

The Respondent, United States Postal Service, Columbia, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish, in a timely manner, information requested by the exclusive bargaining representative of an appropriate bargaining unit of its employees, which in-

[1] The bench decision appears in uncorrected form at pp. 77 through 95 of the transcript. The final version, after correction of oral and transcriptional errors, is attached as Appendix A to this Certification.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, these 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.

formation is relevant to and necessary for such union's performance of duties as exclusive bargaining representative.

(b) In any like or related manner 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) Post at its Northeast Station facility in Columbia, South Carolina, and at all other places where notices customarily are posted, copies of the attached notice marked "Appendix B."[3] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees customarily are posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, noticed 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. *J. Picini Flooring*, 356 NLRB 11 (2010).

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX A

BENCH DECISION

This decision is issued pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations. Based on the admissions in Respondent's Answer and the Stipulation of the Parties, I conclude that Respondent violated Section 8(a)(5) and (1) of the Act, as alleged.

Procedural History

This case began on May 30, 2014, when the Charging Party, National Association of Letter Carriers, Branch 233, which I will call the "Union" filed its initial charge against the Respondent, the United States Postal Service. On July 18, 2014, the Union amended this charge.

On September 19, 2014, the Regional Director for Region 10, acting for the Board's General Counsel, issued a Complaint and Notice of Hearing. The Respondent filed an Answer on October 3, 2014, an Amended Answer on November 6, 2014, and a Second Amended Answer on November 10, 2014. For brevity, I will refer to this Second Amended Answer simply as the Answer.

Before the scheduled hearing, counsel reached agreement that the evidence in this case could be presented by stipulation, without calling any witnesses to testify. The parties further agreed that the hearing could proceed by telephone conference call.

When the hearing opened by telephone on November 10, 2014, the Respondent orally amended its Second Amended Answer. After receiving into the record the pleadings and related formal documents, I recessed the hearing to allow counsel additional time to reach a stipulation of facts.

The hearing resumed on December 2, 2014. The parties offered and I received into evidence the stipulation and other joint exhibits related to the stipulation. Counsel then delivered oral argument and I recessed the hearing until December 5, 2014.

On December 4, 2014, the General Counsel filed a "Motion to Strike Respondent's Defense to the Merits or, In the Alternative, For Evidentiary Hearing." When the hearing resumed on December 5, the parties addressed the motion in further oral argument. After considering those arguments, I stated on the record that I would grant the motion to strike.

Today, December 8, 2015, I am issuing this bench decision. It will include a clarification and explanation of my ruling on the General Counsel's motion to strike. This ruling affects some, but not all, of the findings of fact. I will begin by discussing those findings which granting the motion did not affect.

FINDINGS OF FACT

Based on the stipulation and the admissions in Respondent's Answer, I make the following findings:

> The Union filed and served the charge and amended charge as alleged in the Complaint.

Respondent provides postal services at various facilities throughout the United States, including a facility at 8505 Two Notch Road, Columbia, South Carolina, which I will refer to as the "Northeast Station." Additionally, I find that the Board has jurisdiction over Respondent by virtue of Section 1209 of the Postal Reorganization Act, as alleged and admitted.

Respondent has admitted that certain individuals are its supervisors within the meaning of Section 2(11) and its agents within the meaning of Section 2(13) of the Act. The parties also entered into a stipulation setting forth the correct job titles for these individuals. Based upon Respondent's admissions and the stipulation, I find that the following persons are Respondent's supervisors and agents within the meaning of Section 2(11) and (13), respectively: Customer Services Manager Arietta Melodick, Labor Relations Specialist Sharon Keels, and Acting Supervisor Umar Hameed. Additionally, based on the stipulation, I find that Melodick was the highest-ranking management official at the Northeast Station facility and head of that installation.

Complaint paragraph 4 alleges that at all material times, "the Union has been a labor organization within the meaning of Section 2(5) of the Act." Considering the complaint as a whole, I conclude that the word "Union" refers here not merely to Branch 233 but to the National Association of Letter Carriers, of which Branch 233 is a part. Thus, complaint paragraph 8 alleges that at all times "since in or before 1962, by virtue of Section 9(a) of the Act, the International Union has been and is the exclusive collective-bargaining representative of employees in the unit described above in paragraph 6, for the purpose of

[3] If this Order is enforced by a judgment of the 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."

collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment."

Thus, complaint paragraph 7 alleges that since "in or before 1962, and at all material times, the Union's International union, (National Association of Letter Carriers the International Union), has been the designated exclusive collective-bargaining representative of the nationwide unit employed by Respondent and during that time, the International Union, and its affiliated Branches on behalf of the International Union, including Branch 233, have been recognized as such representative by Respondent."

Respondent's Answer admits that at all material times "the National Association of Letter Carriers ('NALC') has been the exclusive collective bargaining representative" for the bargaining unit described in the complaint and that Respondent "recognizes Branch 233 as an agent of the NALC, with representational authority over Unit employees domiciled at Respondent's Northeast Station, located at 8505 Two Notch Rd., Columbia, SC." Based on the admissions in Respondent's Answer, I find that the National Association of Letter Carriers is the exclusive bargaining representative of the employees described in this unit and that Branch 233 exercises its representational authority at the facility involved in this proceeding.

In sum, based on Respondent's admissions, I find that, at all times material to this case, the National Association of Letter Carriers, including its Branch 233, has been and is a labor organization within the meaning of Section 2(5) of the Act and that it is the exclusive bargaining representative, within the meaning of Section 9(a) of the Act, of the following unit of employees, which is an appropriate unit within the meaning of Section 9(b) of the Act:

> All city letter carriers, excluding managerial and supervisory personnel; professional employees; employees engaged in personnel work in other than a purely non-confidential clerical capacity; security guards as defined in Public Law 91-375, 1201(2); all postal inspection service employees; employees in the supplemental work force as defined in Article 7 [of the collective-bargaining agreement between Respondent and National Association of Letter Carriers]; rural letter carriers; mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

Allegations Affected by the Grant of Motion to Strike Respondent's Defense

Because of its status as exclusive bargaining representative, the Union has the right to receive from Respondent, on request, information relevant to its duties as representative and necessary for that purpose. The Act requires Respondent to furnish the Union with such information within a reasonable time after its request, and an undue delay in providing the requested information breaches Respondent's duty to bargain in good faith with the Union, thereby violating Section 8(a)(5).

All of the unfair labor practice allegations in this case concern whether Respondent took an unreasonably long time to provide information the Union had requested. Respondent eventually provided all of the requested information to the Union, but the Government contends that Respondent waited too long before doing so.

In determining whether an employer has unlawfully delayed responding to an information request, the Board does not apply a per se rule but rather considers the totality of the circumstances surrounding the incident. See, e.g., *West Penn Power Co.*, 339 NLRB 585 (2003).

It may be noted that one issue sometimes litigated in duty-to-provide information cases is not present here. As part of the Government's burden of proof, the General Counsel must establish, as alleged in complaint paragraph 10, that the information requested by the Union is relevant to the Union's performance of its duties as exclusive bargaining representative and necessary for that purpose. Respondent has admitted these allegations and I so find.

Rather, the central issue in this case concerns the amount of time Respondent took to furnish the requested information and two complaint paragraphs, 9 and 11, allege the details. Complaint subparagraphs 9(a) through (i) describe nine occasions when the Union allegedly requested that Respondent furnish certain information. Complaint subparagraphs 11(a) through (h) assert how long it took Respondent to provide the requested information in each instance and also allege that these intervals were unreasonably long.

Complaint Paragraph 9

Respondent filed an initial Answer on October 3, an Amended Answer on November 6, a Second Amended Answer on November 10, and then amended it orally when the hearing opened on December 2, 2014. In its initial Answer, Respondent admitted that the Union had filed the information requests as alleged in complaint paragraph 9. Likewise, Respondent's November 6th Amended Answer admitted that the Union had "submitted information requests as set forth in this paragraph."

In its November 10 Second Amended Answer, Respondent added a "clarification" with respect to the information requests described in complaint subparagraphs 9(c) through (h). Respondent continued to admit that the Union had submitted the information requests described in those subparagraphs, but added that it "clarifies that the subject requests were submitted to Acting Supervisor Umar Hameed, not the facility's installation head."

After the hearing opened on December 2, 2014, Respondent orally amended the Answer to delete this "clarification." Thus, Respondent's counsel stated the following on the record:

> With regard to the Second Amended Answer that was submitted this morning, November 10th, the Respondent has agreed to strike portions of paragraph 9(c) to (h). The stricken portion will be beginning with "but clarifies" through the end of the sentence "with installation head." So paragraph 9(c), the Second Amended Answer should now read, "Respondent admits that the Union submitted information requests as set forth in this paragraph," period.

Respondent's amendment likewise eliminated the "clarification" of its answer to complaint subparagraphs 9(d) through (h). Respondent's Second Amended Answer, as amended orally at the hearing, therefore admits that the Union submitted the in-

formation requests described in complaint paragraphs 9(a) through (h) but without any language about which management official received the requests.

Both Respondent's original October 3 Answer and its November 6 Amended Answer admitted the allegations in complaint subparagraphs 9(a) through (i). However, Respondent's Second Amended Answer did not mention complaint subparagraph 9(i), which raises a question as to whether Respondent continues to admit the allegation raised in this subparagraph. However, the joint stipulation which was received into evidence on December 2, 2014, establishes the facts alleged in complaint subparagraph 9(i) and represents Respondent's last word on this subject. Therefore, I find that the General Counsel has proven all the allegations in complaint subparagraphs 9(a) through (i).

Complaint Paragraph 11

As noted, complaint paragraph 11 alleged the date on which the Union made each of the information requests, the date when it received the information in each instance, and how long it had to wait. Complaint paragraph 11 also alleged these delays to be unreasonable. Respondent's original October 3 Answer denied these allegations. Respondent's November 6 Amended Answer simply stated, with respect to complaint subparagraphs 11(a) through (h), "Respondent admits that it delayed in providing much of the identified information to the Charging Party." Respondent's November 10 Second Amended Answer made a significant change which I will discuss shortly. However, I first will note some additional facts which place the change in context.

Before the November 10 scheduled hearing date, I spoke with counsel in several conference calls. The last of these calls took place on Friday, November 7, the day after Respondent filed its Amended Answer admitting "that it delayed in providing much of the identified information to the Charging Party." Respondent's original Answer had admitted many of the complaint allegations and Respondent also expressed willingness to enter into a stipulation of facts. Therefore, counsel agreed that it would be possible to submit this matter on a written record, with no need to call witnesses to testify.

However, there appeared to be one potential problem. Respondent had added, at the end of its November 6 Amended Answer, certain affirmative defenses which it had not raised in its original October 3 Answer. It appeared that these newly-asserted defenses might raise factual issues requiring testimony.

The affirmative defenses asserted an explanation for management's delay in furnishing the Union with the requested information. One of the affirmative defenses stated, in effect, that the collective-bargaining agreement between Respondent and the Union provided rules for the filing of information requests and the Union's failure to follow these rules caused the delay. More specifically, the affirmative defense stated that the parties' collective-bargaining agreement mandates that "request for information relating to purely local matters should be submitted by the local Union representative to the installation head or designee." According to the affirmative defense, the Union deviated from this requirement by giving some of the information requests to an acting supervisor and thereby "contributed to any delay."

Another affirmative defense stated, in part, "Respondent acted promptly and in good faith upon the discovery of the outstanding information requests by Manager and installation head Arietta Melodick."

Determining whether a delay in providing information was lawful entails an examination of the specific facts and circumstances to ascertain whether a respondent made "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). Clearly, Respondent's affirmative defenses might well raise factual questions which could not be answered by referring to the pleadings and the contemplated stipulation.

When I brought up this matter during the November 7 conference call, Respondent's counsel stated that Respondent would be amending its Answer to eliminate the affirmative defenses. In this circumstance, it appeared that a written stipulation of facts would suffice.

On Monday, November 10, Respondent filed its Second Amended Answer and the hearing opened. Respondent orally amended its Second Amended Answer. After receipt of that amendment and the formal documents, I granted an adjournment so that counsel would have time to finalize the contemplated stipulation of facts. On December 2, the hearing resumed. The parties offered and I received into evidence the stipulation. Then, counsel presented oral argument.

Respondent's argument focused on the same matters previously raised in the affirmative defenses which had appeared in Respondent's November 6 Amended Answer and which did not appear in Respondent's November 10 Second Amended Answer. Two days after the oral argument, the General Counsel filed the motion to strike.

The General Counsel's motion argued that when Respondent amended its Answer on November 10, it thereby waived the defense that it later asserted in oral argument, namely, that the Union had contributed to the delay by failing to follow the negotiated information request procedure. For reasons I am about to discuss, I agreed with the General Counsel. First, however, I will modify and clarify my ruling on the motion in light of further consideration.

In granting the General Counsel's motion, I do not strike Respondent's oral argument physically from the record but rather conclude that Respondent has waived its right to make certain arguments about the causes of its delays in providing the requested information to the Union. This waiver withdraws these issues from my consideration, and therefore I disregard Respondent's arguments pertaining to the causes of the delays.

It is well settled that the Board will not lightly infer a waiver of a statutory right. Similarly, I regard the waiver of the right to present an argument during a formal proceeding to be highly serious and consequential and will find such a waiver here only if Respondent's statements and actions clearly and unequivocally manifest an intent to abandon the right.

Here, I consider two separate actions by Respondent. Its November 10 Second Amended Answer omitted all affirmative defenses which Respondent had raised in previous pleadings, including those which first appeared in its November 6 Amend-

ed Answer. Then, Respondent further amended the November 10 Second Amended Answer when the hearing opened.

The affirmative defenses raised in Respondent's November 6 Amended Answer and then omitted from its November 10 Second Amended Answer sought to blame the Union for part of Respondent's delay in providing the requested information. In these defenses, Respondent asserted that the Union had failed to follow the agreed-upon procedure for filing information requests which was part of the current collective-bargaining agreement. If the Union had followed this procedure, the defenses asserted, it would have filed the information requests with the installation head, Manager Melodick, but instead filed some of them with an acting supervisor who did not pass them up the chain of command. The defenses further argued that Manager Melodick had acted promptly once she learned about the information requests.

The November 10 Second Amended Answer omitted these arguments from the portion of the pleading entitled "Affirmative Defenses"—indeed, the November 10 document did not include any section called "Affirmative Defenses"—but in answering specific complaint allegations, it included statements about how the information requests had been filed. For example, in answering complaint subparagraphs 9(c) through (h), the document had added, after its admission of these allegations, that it "clarifies that the subject requests were submitted to Acting Supervisor Umar Hameed, not the facility's installation head."

Likewise, the Second Amended Answer admitted, in answering complaint subparagraphs 11(c) through (h), "only that its Acting Supervisor, Umar Hameed, to who[m] the requests were submitted, did not provide the requested information, and that only when the requests were brought to Manager Melodick's attention, on or about May 25, 2014, the information was provided."

Thus, although the Second Amendment Answer had omitted the labeled affirmative defenses, it left room for Respondent to raise these same arguments. However, when the hearing opened, Respondent orally amended the pleading to delete these vestiges of the defenses.

In effect, these oral amendments served the same purpose as a good software removal program, cleaning up any lingering traces which the initial uninstalling had missed. In other words, Respondent's willingness to expunge all references to the manner in which the Union had made the information requests leaves no doubt about its intention to abandon these defenses.

Therefore, I need not consider or decide whether the Second Amended Answer, by itself, would waive the defenses. That Answer, plus the cleanup effected by the oral amendments at hearing, together totally uninstalled the defenses. I conclude that Respondent clearly and unequivocally waived them.

Conclusions about Unfair Labor Practice Allegations

By its Answer, as amended, and the Joint Stipulation, Respondent has admitted that the Union filed the information requests as alleged in the various subparagraphs of complaint paragraph 9 and that the requested information was relevant to and necessary for the Union's performance of its duties as exclusive bargaining representative, as alleged in complaint paragraph 10, and I have so found.

Additionally, examining the information requests, I find that they pertain to the terms and conditions of employment of bargaining unit employees and, accordingly, that the requested information is presumptively relevant. See generally *Coca-Cola Bottling Co. of Chicago*, 311 NLRB 424 (1993). Respondent has not tried to rebut this presumption and has not done so.

Moreover, by amendment at hearing, Respondent has admitted, flatly and without qualification, the allegations raised in complaint subparagraphs 11(a) through (h). Each of these allegations states that Respondent "unreasonably delayed" in providing requested information. Respondent has thus admitted the unreasonableness of the delays as well as the delays themselves.

In sum, I conclude that Respondent has admitted all elements necessary to establish a breach of its duty to bargain in good faith and a violation of Section 8(a)(5) and (1) of the Act. I recommend that the Board find that Respondent committed all violations alleged in the complaint.

Respondent's Proposed Unilateral Settlement

Respondent has proposed a settlement agreement to which the General Counsel does not give its assent. Respondent has moved that I approve this proposed agreement unilaterally. I deny the motion.

The proposed settlement does not, in my view, provide a full remedy for the unfair labor practices. it concerns me that Respondent's delays in providing the requested information may have prejudiced the rights of bargaining unit employees to file and pursue grievances based on the information sought. Therefore, I believe that the remedy should include a requirement not in the proposed settlement, namely, that Respondent must waive any time limitation for the filing and processing of grievances which result from the information now provided. Accordingly, the motion to approve the settlement unilaterally is denied.

The General Counsel also has raised arguments concerning the appropriate remedy. I will address these arguments in the Certification of Bench Decision.

More specifically, when the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, Remedy, Order and Notice. When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

I appreciate the professional and civility demonstrated by counsel in this proceeding. The hearing is closed.