

American Postal Workers Union, AFL–CIO, Pensacola Area Local (United States Postal Service) and Barry Murray. Case 15–CB–133936

June 26, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA
AND HIROZAWA

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge and amended charges filed by employee Barry Murray, the General Counsel issued a complaint and notice of hearing on February 27, 2015, against American Postal Workers Union, AFL–CIO, Pensacola Area Local (the Respondent), alleging that it has violated Section 8(b)(1)(A) of the National Labor Relations Act. The Respondent failed to file an answer.

On April 15, 2015, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on April 16, 2015, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

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

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from the service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by March 13, 2015, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated March 19, 2015, advised the Respondent that the time limits for filing an answer had expired and requested an answer to the complaint. The March 19, 2015 letter, which is attached to the motion as Exhibit 3, further stated that unless an answer was received by March 26, 2015, a motion for default judgment would be filed. Nonetheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations of the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service (the Employer) provides postal services for the United States and operates various facilities throughout the United States in performing that function, including its facility in Pensacola, Florida. The Board has jurisdiction over the Employer and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101 et seq. (PRA).

We find that the Respondent is a labor organization within the meaning of Section 2(5) of the Act. We further find that American Postal Workers Union, AFL–CIO (the National Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Jim Dey	Director of Industrial Relations
Dan Miranda	Director of Industrial Relations
John Olive	Union President

At all material times, by virtue of Section 9(a) of the Act, the National Union has been the exclusive collective-bargaining representative of the following employees of the Employer (the unit):

All employees in the bargaining unit for which each has been recognized and certified at the national level, including maintenance employees, motor vehicle employees, postal clerks, mail equipment shops employees, material distribution centers employees, and operating services and facilities services employees; and 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 forces as defined in Article 7 of the Collective Bargaining Agreement, rural letter carriers, mail handlers, and letter carriers.

At all material times, the National Union and the Employer have maintained and enforced a collective-bargaining agreement covering the terms and conditions of employment of the unit, including a grievance and arbitration procedure.

At all material times, the Respondent has been an agent of the National Union for the purpose of servicing unit employees employed at the Employer's Pensacola, Florida facility.

Since about March 24, 2014, the Respondent, by Dan Miranda and John Olive, has refused to process a grievance concerning the Employer's application of the Family Medical Leave Act (FMLA grievance) that Murray filed under the provisions of the agreement described above.

On about May 14 and 29, 2014, Murray, who is a member of the unit, asked the Respondent in writing to provide information related to the status of his three overtime grievances and his one FMLA grievance.

Since about May 14, 2014, the Respondent has failed and refused to provide Murray with information related to the status of his three overtime grievances and his one FMLA grievance.

The Respondent engaged in the conduct described above because Murray was not a member of the Respondent. The Respondent's conduct described above was arbitrary.

By engaging in the above conduct, in connection with its representative status as described above, the Respondent has failed to represent Murray for reasons that are arbitrary, discriminatory, or in bad faith, and has breached the fiduciary duty it owes to Murray and the unit employees.

CONCLUSION OF LAW

By arbitrarily refusing to process Murray's FMLA grievance and by failing and refusing to provide Murray with information related to the status of his grievances because he was not a member of the Respondent, the Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act and has breached its fiduciary duty to unit employees, in violation of Section 8(b)(1)(A) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(b)(1)(A) by arbitrarily refusing to process Barry Murray's grievance concerning the Employer's application of the Family Medical Leave Act, we shall provide for the remedy prescribed in *Iron Workers Local 377 (Alamillo Steel Corp.)*, 326 NLRB 375 (1998). Accordingly, we shall order the Respondent to promptly request the Employer to consider Murray's grievance and, if it agrees to do so, process the grievance in accordance with the col-

lective-bargaining agreement between the Respondent and the Employer.

In addition, we shall order the Respondent to permit Murray to be represented by his own counsel at any grievance proceeding, including arbitration or other resolution proceedings that may follow from the Respondent's efforts on Murray's behalf, and pay the reasonable legal fees of such counsel. In the event that it is not possible to pursue the grievance, and if the General Counsel shows in compliance proceedings that a timely pursued grievance would have been successful, the Respondent shall make Murray whole for any increases in damages suffered as a consequence of its refusal to process his grievance, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). See *Iron Workers Local Union 377 (Alamillo Steel Corp.)*, supra.

Having found that the Respondent unlawfully failed and refused to provide Murray information concerning the status of his grievance, we shall order the Respondent to provide the information he requested on May 14 and 29, 2014, if that has not been done and the information is available.

ORDER

The Respondent, American Postal Workers Union, AFL-CIO, Pensacola Area Local, Pensacola, Florida, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Arbitrarily refusing to process employee Barry Murray's FMLA grievance, and failing and refusing to provide Murray with information related to the status of his grievances, because he was not a member of the Respondent.

(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) Promptly request the United States Postal Service (the Employer) to consider Barry Murray's FMLA grievance and, if it agrees to do so, process the grievance with due diligence in accordance with the collective-bargaining agreement between the Employer and the Respondent.

(b) Permit Barry Murray to be represented by his own counsel at any grievance proceeding, including arbitration or other resolution proceedings, and pay the reasonable legal fees of such counsel.

(c) In the event that it is not possible for the Respondent to pursue the grievance, and if the General Counsel shows in compliance proceedings that a timely pursued grievance would have been successful, make Barry Murray whole for any increases in damages suffered as a consequence of the Respondent's refusal to process his grievance, in the manner set forth in the remedy section of this decision.

(d) Provide Barry Murray the information he requested on May 14 and 29, 2014, if that has not been done and the information is available.

(e) Within 14 days after service by the Region, post at its Pensacola, Florida facility copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 15, 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 and members are usually 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 by other electronic means, if the Respondent customarily communicates with its members 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.

(f) Within 14 days after service by the Region, deliver to the Regional Director for Region 15 signed copies of the notice in sufficient number for posting by the Employer at its Pensacola, Florida facility, if it wishes, in all places where notices to employees are customarily posted.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 15 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.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO MEMBERS AND 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 on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT arbitrarily refuse to process your grievances or fail and refuse to provide you with information related to the status of your grievances because you are not a member of the American Postal Workers Union, AFL-CIO, Pensacola Area Local.

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

WE WILL promptly request the United States Postal Service to consider Barry Murray's grievance and, if it agrees to do so, process the grievance in accordance with our collective-bargaining agreement with the Postal Service.

WE WILL permit Barry Murray to be represented by his own counsel at any grievance proceeding, including arbitration or other resolution proceedings, and WE WILL pay the reasonable legal fees of such counsel.

WE WILL, in the event that it is not possible to pursue the grievance, and if the General Counsel of the National Labor Relations Board shows in compliance proceedings that a timely pursued grievance would have been successful, make Barry Murray whole for any increases in damages suffered as a consequence of our failure and refusal to process his grievance, plus interest.

WE WILL provide Barry Murray the information he requested on May 14 and 29, 2014, if that has not been done and the information is available.

AMERICAN POSTAL WORKERS UNION, AFL-CIO, PENSACOLA AREA LOCAL

Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.



The Board's decision can be found at www.nlr.gov/case/15-CB-133936 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations