

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

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS BRANCH 1069, AFFILIATED
WITH NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS SUNSHINE BRANCH 504,
AFFILIATED WITH NATIONAL
ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

28-CA-125837
28-CA-126227
28-CA-128261
28-CA-133975
28-CA-136090

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS BRANCH 2990, AFFILIATED
WITH THE NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

David Garza, Esq. and Carlos Torrejon, Esq.,
for the General Counsel.

Roderick Eves, Esq., Deputy Managing Counsel
(Law Department – NLRB, U.S. Postal
Service), of St. Louis, Missouri, for the
Respondent.

DECISION

STATEMENT OF THE CASE

CHARLES J. MUHL, Administrative Law Judge. This is the latest in the never-ending stream of cases alleging that the United States Postal Service (the Respondent or Postal Service) has failed and refused to provide, or unreasonably delayed in providing, information to its

employees' collective-bargaining representative in violation of Section 8(a)(5) of the National Labor Relations Act (the Act). The Postal Service facilities involved here are located in Albuquerque, Gallup, and Roswell, New Mexico. The Charging Parties are the National Association of Letter Carriers (the Union or NALC) and its corresponding locals, Sunshine Branch 504 (Albuquerque), Branch 1069 (Roswell), and Branch 2990 (Gallup), for each location. Under a Consent Order issued by the Tenth Circuit Court of Appeals on May 24, 2013, the Respondent is prohibited from failing to provide, or timely provide, information to Sunshine Branch 504 in connection with the Union's role as collective-bargaining representative. Despite the order, the hearing in this case was the second involving the Postal Service and Branches 504 and 1069 in just a 6-month period in 2014.¹

I conducted a trial on the complaint from December 9 to 11, 2014, in Albuquerque, New Mexico. I have considered the posthearing briefs filed by the parties on January 15 and 16, 2015.² I conclude that the Respondent violated the Act in certain, but not all, of the manners alleged in the third consolidated complaint, and that at least one violation occurred at each of the three facilities involved. On the entire record, including my observation of the demeanor of witnesses, I make the following findings of fact and conclusions of law.³

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION STATUS

The Postal Service is subject to the jurisdiction of the National Labor Relations Board (the Board) pursuant to Section 1209 of the Postal Reorganization Act of 1970. The Respondent also admits, and I find, that the NALC and NALC Branches 504, 1069, and 2990 are each labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The General Counsel's Motion to Amend the Complaint*

Prior to the conclusion of the hearing, the General Counsel moved to amend certain complaint allegations. A judge has wide discretion to grant or deny motions to amend complaints under Section 102.17 of the Board's Rules and Regulations. *Rogan Bros. Sanitation, Inc.*, 362 NLRB No. 61, slip op. at 3 fn. 8 (2015). The factors to be evaluated in determining whether an amendment should be allowed are (1) whether there was surprise or lack of notice, (2) whether there was a valid excuse for the delay in moving to amend, and (3) whether the matter was fully litigated. *Stagehands Referral Service, LLC*, 347 NLRB 1167, 1171-1172 (2006); *CAB Associates*, 340 NLRB 1391, 1397-1398 (2003).

¹ See *Postal Service*, 2014 WL 6682336 (NLRB Div. of Judges, Nov. 25, 2014.)

² On January 16, 2015, counsel for the General Counsel filed a motion for acceptance of a brief to the administrative law judge. The brief was filed 1 day late due to an inadvertent, electronic filing error. The Respondent did not oppose this motion. Given the lack of opposition, I grant the motion.

³ The transcript erroneously lists the Albuquerque NALC local as "Sunshine Branch 594" in the case heading. The transcript also lists Case No. 28-CA-125577 as part of this case, but it was withdrawn prior to the hearing. Finally, a number of witness names are spelled incorrectly in the transcript. This decision contains the proper spelling of all witness names.

The Respondent opposes only two of the four complaint amendments sought by the General Counsel at the hearing. In paragraph 6(c) of the original complaint, the General Counsel alleged that NALC Branch 1069 had submitted a request for information to the Respondent seeking the ETC Everything Report, a timekeeping record, for employee Richard Briseno for February 14. The amendment seeks to add two additional requests for Briseno's February 15 and 18 reports, which were submitted to the Respondent at the same time as the original, plead request. The General Counsel also seeks to amend complaint paragraph 6(cc), which alleged that the Respondent unreasonably delayed in providing copies of leave donation forms for an employee from May 5 to August 28, 2014. The amendment seeks to change the end date of the delay to November 6, 2014.

As to these two amendments, I conclude that the notice provided by the General Counsel was sufficient. Counsel for the General Counsel raised the potential amendment to paragraph 6(cc) on the first day of the hearing and to paragraph 6(c) on the second day of hearing. (Tr. 138-141, 282-286.) The Respondent had the opportunity thereafter to present additional evidence addressing the potential amendments and the parties fully litigated the matters. While the allegations were supported by documents created and maintained by the Union and accessible to the General Counsel prior to the hearing, I find this lack of valid excuse as to the delay insufficient to override the other two factors. Thus, I grant the General Counsel's motion to amend complaint paragraphs 6(c) and 6(cc).⁴

In its post-hearing brief, the General Counsel seeks a fifth amendment to the complaint that was not raised at the hearing. Paragraph 6(x) alleges that the Respondent refused to provide Branch 1069 with access to PS 3971 forms used by employees to request leave since March 25, 2014. The General Counsel seeks to convert this allegation to an unreasonable delay claim, after Branch 1069 president Tom Nichols testified that he did receive the information approximately four weeks after he made the request. (Tr. 513-514.) Because this amendment was sought after the hearing, the surprise and lack of notice to the Respondent favors denying the motion. Moreover, no valid excuse exists for the delay in seeking this amendment. Nichols certainly should have been aware that he received the information from the Respondent and that fact should have been disclosed or discovered prior to the hearing. For these reasons, I do not find the amendment just and deny the motion in this regard. Because Nichols admitted that the Respondent provided this information, I recommend dismissal of complaint paragraph 6(x).

B. Factual Background

The Respondent and NALC are parties to a collective-bargaining agreement covering city letter carriers that, by its terms, is effective from January 10, 2013, until May 20, 2016. The national union delegates its authority as bargaining representative to local branches to enforce the contract, including Sunshine Branch 504 in Albuquerque, Branch 1069 in Roswell, and Branch 2990 in Gallup. In addition to the Roswell and Gallup stations, three of the Respondent's

⁴ Counsel for the General Counsel moved to amend complaint pars. 6(v) and 6(z) to reflect unreasonable delay in providing information allegations, instead of refusal to provide information allegations, with respect to ETC Everything Reports requested on March 11 and 29. As the Respondent does not oppose and the matters were fully litigated, I grant the motions.

Albuquerque facilities are involved in this case: the Main Office Carrier Annex, or MOCA, facility; the Five Points facility; and the Airport facility.

Article 15 of the contract contains a grievance and arbitration procedure, pursuant to which any alleged breaches of the contract first are addressed at the informal step A level. (GC Exh. 60.) At that step, the Union often utilizes a “Request for Documentation and/or Steward Time to investigate possible grievance” form, detailing any information requests it has related to the grievance. The form also contains an area where supervisors may document receipt of the information request and when any responsive documents were provided.⁵ The contract requires an aggrieved employee to meet with the immediate supervisor at the informal step A level and attempt to resolve the issue. If no resolution is reached, the Union has 7 days from the date of that meeting to appeal the grievance to the formal step A level. If no resolution is reached there, the Union has 7 days to send the grievance to Step B, where a dispute resolution team evaluates the grievance.

Article 31, section 3 of the contract contains the parties’ agreement on “information” and requires the Respondent to make available for inspection all information necessary for collective bargaining, and contract enforcement, administration, or interpretation. (GC Exh. 55.) The provision also obligates the Respondent to provide information upon request, subject to the reimbursement of reasonable costs by the Union. The provision specifically notes that “[n]othing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.”

Article 17, section 3 addresses the rights of stewards. The provision requires stewards to seek permission from their immediate supervisors for steward time and that such requests not be unreasonably denied. (R. Exh. 1.)

C. Legal Framework

An employer has a statutory obligation to provide to a union that represents its employees, on request, information that is relevant and necessary to the union’s performance of its duties as the exclusive collective-bargaining representative. *Endo Painting Service*, 360 NLRB No. 61 (2014), citing to *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967) and *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956). Information concerning wages, hours, and other terms and conditions of employment for unit employees is presumptively relevant to the union’s role as the bargaining representative. *A-1 Door & Building Solutions*, 356 NLRB No. 76 (2011). Relevant information also includes that which is necessary to decide whether to file or process grievances on behalf of unit employees. *Acme Industrial*, 385 U.S. at 435–439; see also *Disneyland Park*, 350 NLRB 1256, 1257 (2007). The Board uses a liberal, discovery-type standard in determining relevance, a burden that is not exceptionally heavy.

⁵ At the hearing and in the post-hearing brief, the General Counsel repeatedly suggested that this form was a joint form used by both parties and that, where the forms did not contain a signature of a supervisor and the details of what information was provided, it was indicative of the Respondent’s failure to provide the information. I do not agree. The form itself contains an NALC logo and the record evidence establishes that supervisors sometimes, but not always, use the form to document the information they provided. I find the absence of any supervisory notations on the form to be irrelevant to the legal issues presented in this case.

An employer must respond to a union's request for relevant information within a reasonable time, either by complying with it or by stating its reason for noncompliance. Failure to make either response in a reasonable time is, by itself, a violation of Section 8(a)(5) of the Act. *Quebecor World Mt. Morris, II, LLC*, 353 NLRB 1, 18 (2008), citing to *Ellsworth Sheet Metal*, 232 NLRB 109 (1977) and *Columbia University*, 298 NLRB 941, 945 (1990). In determining whether an employer has unlawfully delayed responding to an information request, the Board has not established a per se rule regarding a time period for production, but instead considers the totality of the pertinent circumstances. "What is required is a reasonable good-faith effort to respond to the request as promptly as circumstances allow. In evaluating the promptness of the response, the Board will consider the complexity and extent of information sought, its availability and the difficulty in retrieving the information." *West Penn Power Co.*, 339 NLRB 585, 587 (2003).

Finally, a union's interest in relevant and necessary information does not always predominate over other legitimate interests, including confidentiality. *Exxon Co. USA*, 321 NLRB 896, 898 (1996); *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 314 (1979). In dealing with union requests for relevant but assertedly confidential information possessed by an employer, the union's need for the information must be balanced against any legitimate and substantial confidentiality interest established by the employer. To trigger this balancing test, an employer must first timely raise and prove its confidentiality claim. Furthermore, an employer possessing the information and refusing to disclose it on confidentiality grounds has a duty to seek an accommodation, through the bargaining process, between the union's need for the information and the employer's justified confidentiality concern. When the relevance of requested information is not obvious, and when its disclosure implicates employee privacy, an employer is entitled to a statement of its relevance before producing the information.

D. Roswell Information Requests

The bulk of the General Counsel's complaint involves the Respondent's Roswell carrier annex. The postmaster there is Karla Murphy. Ralph Griffio is a supervisor who reports to Murphy. Tom Nichols is a city letter carrier, who also serves as the local president of NALC Branch 1069.

1. Requests for documents accessible at the Roswell facility⁶

The Respondent maintains a dizzying number of records documenting its daily operations. Clock rings record the hours that carriers work or are on leave. Play packets contain information verifying the specific work carriers have performed each day, either at the station or on their postal delivery routes. Those packets include PS 1571 forms, which show the actual mail associated with a carrier's route on a given day; PS 3996 forms, which document overtime or auxiliary assistance provided to a carrier; and work-hour workload status reports, which show the workload for a carrier each day and the expected number of hours needed to complete the work. PS 3189 forms are used by carriers to request a change to their work schedule, while PS 3971 forms are used to request leave.

⁶ This section addresses the information requests contained in complaint pars. 6(b), 6(d), 6(g), 6(h), and 6(i)(1).

The Union, through Nichols, made multiple requests in writing for these types of forms from February 14 to April 1, 2014, in support of grievances that he filed.⁷ On February 14, the Union requested access to PS 3189 forms for copying. On March 6, the Union requested access to play packets for copying. On March 25, the Union requested access to play packets and PS 3971 forms for copying. On March 28, the Union requested work-hour workload status reports for all city routes for January and February. Finally, on March 29, the Union again requested access to play packets for copying. (GC Exhs. 16, 18, 21, 22, 23, 35.) Of critical note is the fact that, in each of the requests, Nichols requested “access” to these forms, not actual copies. All of these requests were made in support of the processing of grievances.

The parties do not dispute that the Respondent maintains all of the aforementioned forms in unsecured boxes in different locations at the Roswell facility. Nichols can access the forms in those boxes at any point he is on steward time, without having to inform or seek permission from a supervisor.⁸

As a full-time carrier, Nichols works 8 hours a day, 6 days a week. Nichols’ steward time is recorded on his clock rings. Those rings show that, from February 14 to April 1 or a period of roughly 6 weeks, he received more than 53 hours of steward time. (R. Exhs. 2, 3.) He also received nearly 8 hours of steward time from April 2– 8. In addition, Nichols was on leave from March 12–18. Nichols conceded at the hearing that the documents he requested are readily available at the station and the issue, in his opinion, is that he is not given sufficient steward time to review them. (Tr. 530, 505, 344; R. Exh. 19.)

Analysis: The General Counsel’s complaint alleges that the Respondent failed and refused to provide the union with the clock rings, play packets, work-hour workload status reports and PS 3189 and 3971 forms requested by Nichols, as described above. The Postal Service admits the relevancy of this information, but argues it provided the information by giving Nichols access to these documents when he was on steward time.

An employer is obligated to provide information it has available, to compile it, or to give a union access to records from which the union can reasonably compile the information. *Safeway Stores, Inc.*, 252 NLRB 1323, 1324 (1980). In my view and based upon my crediting of Murphy’s and Griffo’s testimony, the Respondent has met its obligation to provide Nichols access to the requested records from which he can compile the information he needs. This dispute is not really about a refusal to provide information. It is about Nichols’ belief that the Respondent is not providing him with sufficient steward time to complete his representational duties. That issue is not before me. What cannot be disputed is that Nichols specifically and repeatedly requested access to these records. The Respondent responded to the requests by

⁷ All dates hereinafter are in 2014 unless otherwise specified.

⁸ I credit Murphy’s and Griffo’s testimony that Nichols could access these documents at any point he was on approved steward time. I do not credit Nichols assertion that he needed to obtain “permission” from a supervisor to do so. During his testimony, Nichols initially confirmed that he could access these documents when he was on steward time. (Tr. 502, lns 8–14.) He then attempted to add, upon prompting from counsel, that he had to get permission from the managers to access the documents. (Tr. 502, lns 15–25; 503, lns 1–7; 505.) Both Nichols and Murphy gave logical, believable testimony that they do not track what Nichols does when he is on steward time. I conclude that Nichols did have to get permission, but only to go on steward time as required by the collective-bargaining agreement.

granting him a significant amount of steward time during the period in question. Nichols could have used the time to access the records and compile the information he needed. Thus, no violation of the Act occurred in this regard.

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2. Requests for ETC Everything Reports⁹

10 The Respondent also creates, on a daily basis, computerized ETC Everything Reports showing a carrier's time worked or on leave and listing all of a carrier's clock rings. When Murphy or Griffio access such reports, it is logged in the Respondent's computer system under their user IDs.

15 On February 18, Nichols requested ETC Everything Reports for carrier Richard Briseno for February 14, 15, and 18. On March 11, Nichols asked for these reports for himself from March 1-11. On March 25, Nichols asked for these reports for all carriers from March 24 to April 1. On March 29, Nichols also requested his reports from March 17-29. Finally, on April 1, Nichols requested the ETC Everything Reports for two specific pay periods, up to March 31. (GC Exhs. 19, 21, 32, 33, 34, 36, and 37.) These information requests all were made in support of the processing of grievances.

20 The Respondent, through either Griffio or Murphy, routinely provides Nichols with ETC Everything Reports on Saturday morning for the prior week. However, both Griffio and Nichols agreed that the reports are not necessarily provided every week. With respect to these requests, neither Griffio nor Murphy testified that the ETC Everything Reports specifically were provided on the Saturdays between February 15 and April 5, which would have covered all of Nichols' requests. In addition and on April 2, Griffio provided Nichols with the ETC Everything Reports responsive to his March 29 request. (Tr. 344-345; R. Exh. 19.) On April 16 during a formal step A grievance meeting, Griffio also provided reports responsive to the March 11 request. (R. Exh. 28.)

30 **Analysis:** The General Counsel's complaint alleges that the Respondent failed and refused to provide the ETC Everything Reports requested on February 18, March 25, and April 1. As amended, the complaint also alleges that the Postal Service unreasonably delayed in providing the reports requested on March 11 and 29. In its answer, the Respondent admits to the relevancy of the information, but contends that it timely provided the requested ETC Everything Reports.

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40 Although no disagreement exists that the Respondent ordinarily provides ETC Everything Reports to Nichols on a weekly basis, the record evidence fails to establish definitively that the Respondent did so on each Saturday from February 15 to April 15. At the hearing, Griffio did not specifically recall giving the reports to Nichols in the relevant time period. The Respondent offered no documentation, such as computer records showing the reports had been retrieved during that period by Murphy or Griffio, to establish this. Griffio also conceded that he does not provide the reports if either he or Nichols is not present on a Saturday. Nichols' clock rings show that he was on leave from March 12 to 18. Moreover, on two separate occasions, Griffio specifically provided the reports that Nichols requested for himself. If Griffio

⁹ This section addresses the information requests contained in complaint pars. 6(c), 6(e), 6(g)(1), 6(i)(2), and 6(j).

had provided reports every week for the prior week on a timely basis, this would have been duplicative. Thus, I find the record evidence insufficient to establish that the Respondent provided this information and I conclude its failure to do so violated Section 8(a)(5).¹⁰

5 As to the unreasonable delay allegations, I do not find a violation with respect to the March 29 request, because Griffo provided responsive information on April 2, only 4 days later. However, the 36-day delay in responding to the March 11th request is unreasonable and violated the Act, given that the ETC Everything Reports could be retrieved in short order from the Respondent's computer system.

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3. Request for GATS reports of outstanding grievance settlements¹¹

15 On March 24, Nichols submitted a written request for information to Griffo for documentation showing all outstanding grievance settlements that had been paid or processed. (GC Exh. 20.) Nichols sought this information to verify that carriers received any money they were to be paid pursuant to the settlements.

20 The Postal Service uses its Grievance and Arbitration Tracking System (GATS) to document the processing of grievance settlements. At the Roswell station, only Griffo knew how to access information in GATS. After Nichols submitted this request, Murphy took Nichols to Griffo and had Griffo look up in GATS the names of employees that Nichols provided them to determine if their grievance settlements had been processed. One of the inquiries was for Nichols himself. Griffo retrieved information from GATS showing that Nichols had received a settlement payout, which Nichols then confirmed by looking at his paystub also showing the payment. Griffo then gave copies of the GATS records they looked at to Nichols.¹²

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30 **Analysis:** The General Counsel's complaint alleges that the Respondent failed and refused to provide documents for all outstanding grievance settlements that had been paid and processed, as requested on March 24. The Postal Service again concedes the relevancy of the information, but denies that it failed and refused to provide it.

¹⁰ The Respondent contends that some of the requested ETC Everything Reports were provided to fellow union steward Ruth Silva and constituted a timely response to Nichols' requests. (R. Br., pp. 14, 37.) However, I find the fact that Silva received some of the requested reports irrelevant. Irrespective of whether giving the records to Silva, rather than Nichols, constituted a sufficient response, the Respondent concedes not all of the reports requested by Nichols were provided to Silva.

¹¹ This section addresses the information request contained in complaint par. 6(f).

¹² I again credit the testimony of Murphy and Griffo in this regard, which was consistent, detailed, and appeared genuine. (Tr. 46, 73, 305, 310.) I do not credit Nichols claim that he never received the information. Nichols did not specifically deny that Murphy and Griffo showed him the GATS records on a computer, instead providing this brief, unclear testimony elicited by leading questions (Tr. 509-510): "Q-Have you ever been shown the GATS results that were responsive to this request? A-No. Usually, they're provided with a copy of the grievance settlement. Q-Okay. And in this instance it wasn't with regard . . . to your request? A: No, it wasn't." Nichols appeared to be denying nothing more than that he got the GATS information with a copy of the grievance settlement. This does not contradict Murphy's and Griffo's testimony, as neither contended that was how they provided the information to Nichols. Moreover, the record contains no indication that Nichols ever followed up with respect to his request, which would be expected if the information had not been provided and Nichols had not been paid money he himself was owed under a grievance settlement.

Based upon my credibility determination as to the testimony of Murphy, Griffo, and Nichols, I conclude that the Respondent did provide the GATS information to Nichols. Griffo pulled up the information in GATs that Nichols said he needed. Griffo then printed out the relevant forms and gave them to Nichols. Thus, no violation of the Act occurred in this regard.

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E. Albuquerque Information Requests

The Respondent operates 11 postal stations in Albuquerque with carriers represented by the NALC, including the MOCA, Five Points, and Airport stations. Ed Arvizo is a labor representative for the Respondent in Albuquerque. At material times, John Trujillo was a carrier at MOCA and the chief union steward for Albuquerque. Martin Garcia is a supervisor at the Airport station.

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1. Information requests regarding claims of abuse by Garcia¹³

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In September 2013, the Respondent adopted a nationwide protocol for the handling of union information requests involving Equal Employment Opportunity (EEO) records of employees. (R. Exh. 23.) Based upon EEO records typically being covered by the Federal Privacy Act, the protocol detailed the following process for handling such requests:

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- Local management must forward the information request upon receipt to the district manager of labor relations.
- District labor relations evaluates the relevancy of the request. If relevancy is not obvious, the union will be asked to explain the relevance.
- Once relevancy is established, district labor relations will communicate with the regional manager of EEO Compliance and Appeals regarding the availability of the records and how they can be retrieved.
- The district manager will advise the union of the Postal Service's confidentiality concerns and attempt to reach an agreement balancing those concerns with the union's need for the information.

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The protocol identified a nondisclosure agreement signed by an appropriate union official as one of the means to address confidentiality concerns.

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On March 29, Trujillo submitted a request for information to Arvizo. (GC Exh. 2.) In that request, Trujillo sought:

¹³ This section addresses the information requests contained in complaint pars. 6(a)(1) and 6(a)(2).

- All other claims of abuse in which Martin Garcia is alleged to be the abuser and all investigations related to any such allegation of abuse, to include any PS Form 1767s, PS Form 2564As and PS Form 2565s as generated by any employee or subordinate within the last 5 years.
- All measure (sic) taken in the last 2 years to address the threats and conduct of managers in the Albuquerque Installation to include but not limited to all training received and all certifications of completion.

PS 2564A and PS 2565 forms are used by employees to file informal or formal EEO complaints; PS 1767 forms are used to report unsafe hazard conditions. Trujillo submitted this request as part of his grievance processing for three carriers who alleged that Garcia had abused them. While investigating the grievances, Trujillo learned of the possibility that prior allegations of abuse had been made against Garcia. Trujillo wanted to determine if a pattern of abuse existed.

Via letter dated April 4, Arvizo questioned the relevancy of the two requests and asked that the Union clarify it for him. Trujillo responded on April 9 and asserted that the Union was investigating a proclivity of abuse on Garcia's part, in support of multiple pending grievances.

On April 17, Arvizo sent a letter to Trujillo stating he needed further information from the Union in order to "define the specific EEO complaint categories" in which to conduct a search. He also indicated that he forwarded the information request to the Respondent's Arizona/New Mexico Labor Relations Office for a determination as to whether the information was relevant and whether the Union's need for the information outweighed the privacy interests of employees who previously filed EEO complaints against Garcia. Arvizo also included a nondisclosure agreement to "ensure no unnecessary time lapses," which he requested that the Union sign. Trujillo previously had signed the identical nondisclosure agreement in August 2013, when he made a separate request for his own and one other employee's EEO forms.

Trujillo responded via letter dated April 18. With respect to the requested training information, he stated that any uncorrected abuse, or abuse that was corrected but did not serve as a deterrent, was relevant to the pending grievances.

On May 6, Arvizo responded by letter and noted the protocol which the Respondent had established for responding to requests for EEO forms and his actions that fit into that protocol. He also provided Trujillo with an EEO "matrix" showing all of the EEO complaints filed by Albuquerque bargaining unit employees alleging nonsexual harassment, sexual harassment and/or creation of a hostile work environment by Garcia. Arvizo asked the Union to review the records, identify which of the complaints were responsive to the Union's request, then explain in each circumstance why the Union needed to identify the complaining employee and why it needed information on any matters that had already been resolved. Arvizo indicated that the Respondent then would make a determination as to whether it lawfully could provide the Union with the PS 2564A and PS 2565 forms, without any assurances from the Union that it would maintain the confidentiality of the information.

On May 12, Trujillo responded via letter and repeated his contention that the Respondent was refusing to provide all of the requested information. He did not provide any of the responses sought by Arvizo, nor did he include a signed nondisclosure agreement. Via letter dated May 14, Arvizo responded and reiterated his requests contained in his May 6 correspondence.

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On May 29, Arvizo and Trujillo met to discuss multiple pending grievances. Arvizo's notes from that meeting state: "[Trujillo] will review letter to him regarding nondisclosure sign off." (R. Exh. 6.)

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From May 30 until September 15, a period of more than 4 months, the Union took no further steps regarding the requested information. However, at a meeting on September 15, Trujillo provided a signed nondisclosure agreement to Arvizo. The executed agreement did not contain any changes to the language initially proposed by Arvizo on April 18.¹⁴

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Via letter dated October 1, Trujillo confirmed to Arvizo that the nondisclosure agreement had been signed and reiterated his request for the EEO complaint forms. However, he did not ask again for any training documentation. Arvizo responded via letter dated October 3, stating that he had forwarded the nondisclosure agreement to the western area law department and that the Union's information request had been forwarded to the manager of EEO compliance and appeals for response. Arvizo also provided Trujillo with a copy of the one responsive PS 1767 form the Respondent had.

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On October 20, a representative from the Respondent's law department emailed Susan Johnson, a manager of EEO compliance and appeals, to request that she provide the EEO complaint forms in light of the executed nondisclosure agreement. Johnson then ran an updated matrix of EEO complaints involving Garcia. She also contacted an EEO specialist, Alfonso Gutierrez, about obtaining the underlying forms. Gutierrez only had been in this position for 3 to 4 months, so Johnson also contacted EEO specialists in four additional cities to assist in obtaining the underlying forms. In an attempt to expedite this process, one of the specialists contacted the National EEO Investigative Services Office about getting the forms electronically, but was unable to do so. Ultimately, the specialists submitted extensive documentation to Johnson, including records that went beyond the requested forms. Johnson had to review the documents to determine which ones were responsive to the Union's request.

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On October 27, Arvizo provided to Trujillo a second EEO complaint matrix run by Johnson showing 30 complaints against Garcia.

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Finally, via letter dated November 13, the Respondent provided the Union with the underlying EEO complaint forms and additional documentation, totaling 300 pages. The Respondent never provided any documents concerning training that had been given to managers.

¹⁴ Although Trujillo suggested in his testimony that the Union had issues with the language of the non-disclosure agreement (Tr. 610), the record evidence contains no indication that Trujillo ever objected to the language in his communication, written or otherwise, with Arvizo or asked to bargain over the language.

Analysis: The General Counsel's complaint alleges that the Respondent unreasonably delayed, from March 29 to November 13, in providing the EEO complaint forms involving Garcia. The complaint also alleges the Respondent refused to provide any information regarding measures the Respondent took, including training, to address threats and conduct of managers in Albuquerque in the 2 years preceding the information request.

The Union sought the information in these requests in support of three grievances by three different unit employees alleging abuse by Garcia. I conclude that any pattern of abuse by this supervisor, and corrective measures taken or not taken by the Respondent, is information relevant to those grievances. Although it denied the relevance of this information in its answer, the Respondent made no argument in support of the denial in its brief.

As to the unreasonable delay allegation, the Respondent argues that it had a legitimate and substantial confidentiality interest to protect with respect to other employees' EEO complaint forms and it timely attempted to bargain with the Union over an accommodation to that interest. I find merit to this contention. EEO complaint forms can contain an employee's medical information and details supporting a harassment claim allegation, information in which an employee has a legitimate privacy interest. The Respondent timely provided the Union with a nondisclosure agreement on April 18, 3 weeks after the initial March 29 request and only 9 days after Trujillo first explained to Arvizo that the Union was investigating a pattern of abuse by Garcia. In the period prior to that, Arvizo sought information on the relevancy of the requests, because Trujillo's March 29 request did not explain why the Union needed 5 years of EEO complaints against Garcia and his grievance forms did not contain any information on the allegations being made against Garcia.

After being provided with the agreement, the Union took no steps to bargain with the Respondent over an appropriate accommodation. Trujillo knew very well that the Respondent might ask for such an agreement before disclosing EEO complaints, as he had executed one less than a year earlier. Yet Trujillo said nothing about the agreement in subsequent written communication. He also did nothing about the agreement for 5 months after it was provided and for more than 3 months after discussing it with Arvizo on May 29. Trujillo signed the agreement on September 15 as it was originally offered, having not expressed any issues with or asking for any changes in the language contained therein before doing so.

The General Counsel argues that the nondisclosure agreement was unnecessary, because the EEO forms contain a Privacy Act statement informing employees that the Respondent may disclose their information "to labor organizations as required by law." (GC Exhs. 10, 11.) I do not agree. The statement on the form contains no limitations on what a union can do with information in EEO forms after they are disclosed. The Respondent has a legitimate interest in ensuring that its unions do not misuse private information contained on those forms. I conclude that the Respondent's protocol conforms to Board law on balancing privacy interests with a union's need for information. Arvizo's actions followed that protocol.

The General Counsel also argues that the Union's prior execution of a nondisclosure agreement in August 2013 is distinguishable, because Trujillo himself was both one of the grievants and also the union representative in that case. If anything, Trujillo's dual role diminishes, not enhances, the need for a nondisclosure agreement, because the Respondent

would be disclosing Trujillo's own EEO forms to Trujillo himself. In any event, that situation involved at least one other carrier besides Trujillo.

5 Accordingly, I conclude that the period from March 29 to September 15 cannot be considered a delay attributable to the Respondent.

10 The issue then is reframed as a question of whether the delay from September 15 to November 13 was unreasonable. What is clear from the record evidence is that, once this request found its way to Johnson on October 20, she put forth a reasonable good-faith effort to respond and did so by November 13. Despite having to obtain the information manually from multiple different locations and then having to review a significant amount of documents that were submitted to her, Johnson was diligent and expeditious in her efforts to respond. In contrast, the record does not make clear why Arvizo waited from September 15 to October 3 to contact the Respondent's law department, nor does it explain why the Respondent's law department took 15 from October 3 to 20 to send the request on to Johnson. Nonetheless, I do not find those facts sufficient to override Johnson's effort thereafter and establish, independently, an unreasonable delay. Under the totality of the circumstances, I conclude the Respondent timely provided the information, once the Union executed the nondisclosure agreement.

20 As to the Respondent's admitted failure to provide any documents responsive to the request dealing with managerial training on harassment, the Postal Service argues that Trujillo abandoned his request when he did not explain the relevancy of the information to the Respondent and, thereafter, only followed up regarding the EEO complaint forms. As to the first contention, Trujillo did explain the relevance of the requested training information in his April 25 18 correspondence. He stated that the Union wanted to know if corrective measures had been taken to address any possible pattern of abuse and the impact, if any, that those measures had on the pattern. As to Trujillo's failure to follow up, the Respondent's argument amounts to a claim that the Union waived its right to this information by inaction. *Quality Building Contractors, Inc.*, 342 NLRB 429, 432 (2004). A union can relinquish its statutory right to information, but 30 only through a "clear and unmistakable" waiver. Here, once Trujillo submitted the request for the training information and explained its relevance, the burden was on the Respondent to provide a response to the request, not on Trujillo to follow up. Thus, Trujillo's inaction does not constitute a clear and unmistakable waiver of his right to the information, and the Respondent's failure to provide it was unlawful.

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2. Information requests regarding donated leave for employee Valerie Chacon¹⁵

At the Five Points station in Albuquerque, Art Martinez is the station manager and Chuck Meadows is one of his supervisors. Troy Chacon is a union steward there.

40

The Respondent maintains a leave sharing program that permits its employees to request leave donations from other employees. A donating employee must complete a PS 3970-D form and then submit the form to a supervisor for approval. The supervisor then verifies that the donating employee is eligible to donate the leave by checking the employee's earned leave 45 balance. If eligible, the supervisor signs off on the request, then submits the form to the Postal

¹⁵ This section addresses the information request contained in complaint par. 6(l).

Service's Human Resources Shared Service Center (HRSSC) in North Carolina for processing. The actual leave transfer is completed by the Respondent's payroll department in Minnesota. Richard Jones works in that department.

5 On November 7, 2013, a request for leave donations for Valerie Chacon, a carrier at Five Points, was posted.

10 On May 5, Troy Chacon submitted a grievance and written request for information to Meadows. (GC Exh. 24.) Troy Chacon requested "copies of all PS Forms 3970-D for Valerie Chacon." The request was prompted by certain employees at Five Points telling Troy Chacon that they had submitted leave donations for Valerie Chacon, but the requests had not been processed.

15 In his initial May 10 response to the Union's information request, Meadows did not provide any PS 3970-D forms and incorrectly stated that those forms were not submitted by local management.

20 On June 6, Troy Chacon and Meadows held an informal step A meeting on the matter, but did not resolve the situation. Thus, the Union appealed the grievance to a formal step A meeting.

25 On June 16 following this meeting, Terri Hartsfield, a labor relations representative for the Respondent, emailed Jones and asked for "the total number of hours donated and the dates the PS 3970 Ds were received from November, 2013 to present" for Valerie Chacon. Jones provided pay journals showing generally that Valerie Chacon had received 108 hours of donated leave in November 2013, and another 16 hours in January 2014. However, Jones did not provide the names of the donating employees, citing the Privacy Act. Moreover, the Respondent did not immediately provide the pay journals to the Union.

30 On July 17, Troy Chacon filed a second grievance and submitted a second written request to Meadows for the same information.

35 On July 24, Art Martinez provided Troy Chacon with PS 3970-T forms that had been processed for six employees from the Five Points facility. These forms contain the same information as the PS 3970-D forms, as well as information on when the leave transfer was processed. (R. Exhs. 14 and 15.)

40 At some point thereafter, Troy Chacon notified Arvizo that carriers John Trujillo and Dave Pratt had submitted leave donations to Valerie Chacon which had not been processed. Arvizo emailed Jones on August 6 and asked for verification of the status of these leave donations. Jones responded the next day that no leave donations had been processed for Trujillo or Pratt. Arvizo forwarded Jones' email to Trujillo the same day.

45 On August 12, Art Martinez provided PS 3970-D forms corresponding to the same six Five Points employees for whom PS 3970-T forms had been provided on July 24, along with the pay journals which Jones provided to Hartsfield back on June 16. The Respondent did not provide any PS 3970-D forms for employees at other Albuquerque facilities. Meadows

previously emailed those facilities and requested copies of those forms, but did not receive any responses.¹⁶

5 On November 6, the Respondent and the Union resolved the grievances with the Postal Service's agreement to pay Valerie Chacon \$250 for the issues in processing leave donations made to her. The parties' executed grievance settlement form stated: "[i]nformation requested in [Chacon's two grievances] is considered as provided as of this signing." (GC Exh. 14.)

10 **Analysis:** The General Counsel's amended complaint alleges that the Respondent unreasonably delayed in providing the Union with Valerie Chacon's PS 3970-D forms from May 5 to November 6.

15 The information requested by the Union concerned leave donations to a bargaining unit employee which had not been processed. The Union sought the information to support grievances that certain donations had not been processed. Thus, the requested information was presumptively relevant.

20 In its brief, the Respondent concedes it did not provide all of the submitted PS 3970-D forms until August 12, but offers a variety of defenses to this delay. Even if those defenses are accepted at face value, the delay in providing the requested information was unreasonable. The Respondent argues that it effectively supplied the information when Art Martinez provided the PS 3970-T forms to Meadows on July 24. At that point, 80 days, or almost 3 months, had passed since the Union's initial May 5 request. The Respondent made no attempt to locate the forms until Hartsfield's June 16 e-mails to HRSSC and Jones. This was 42 days or 6 weeks after the initial request. The Respondent then did nothing until after the grievance meeting held on July 25 17. This information was not complex or difficult to retrieve. The Respondent could have obtained the forms much sooner simply by emailing HRSSC and/or Jones earlier in the process. When Jones received email communication here, he responded either the same or the next day. The Respondent's lack of activity from May 5 to July 24 is not indicative of a good faith effort to supply the requested information. *Postal Service*, 308 NLRB 547, 551 (1992) (four week delay unreasonable where information was not complex and was readily accessible).

30 The Respondent also points to its supervisors' efforts, beginning in August 2014, to insure that unprocessed leave donations would be processed and credited to Valerie Chacon's leave balance. These efforts are irrelevant because, by the time they were initiated, the delay in providing the information already was unreasonable.

40 Finally, the Respondent's contention that it could not produce forms that it was unable to locate misses the point. The Respondent only needed to provide all of the PS 3970-D forms that had been processed. Once it did that, the Union could determine which employees had

¹⁶ To the extent Troy Chacon's testimony suggests he did not receive the PS 3970-T forms on July 24 or the PS 3970-D forms on August 12 (Tr. 388-390, 395), I do not credit that testimony. His testimony regarding what he actually received from Art Martinez was confusing and contradicted by the documentary evidence in the record. (R. Exhs. 9 and 15.) I also find Meadows' testimony regarding his attempts to locate forms at stations beyond Five Points to be credible. It is logical that Meadows would have made such attempts, given that Troy Chacon had identified employees at other stations who allegedly had submitted leave donation forms which had not been processed.

submitted leave donations that had not been processed. Yet, the Respondent did not provide that information until, at the earliest, July 24.

5 Accordingly, I find that the Respondent unreasonably delayed from May 5 to July 24 in providing the submitted and processed PS 3970-D forms to the Union.

F. Gallup Information Requests

10 At the Respondent's Gallup station, Thelma Malone was the postmaster and Linda Alonzo was the carrier supervisor at all times material to this case. Malone and Alonzo were the only two supervisors at Gallup. Suzy Yarbro, the manager of post office operations in 72 offices in the northwestern part of New Mexico and northeastern part of Arizona, supervises Malone and Alonzo. Patrick Fuller is the shop steward for the Union at Gallup.

15 1. Grievance settlements for carrier route adjustments¹⁷

20 On November 22, 2013, the Respondent and the Union entered into a grievance settlement, pursuant to which the Postal Service agreed to make minor adjustments to the routes of six carriers by the end of January 2014. This grievance settlement occurred at the formal step A level of processing and is reflected in the record by a one-page, unsigned document. (GC Exh. 53.) The issue resolved was the Union's contention that the routes were overburdened and needed to be reduced to as close to 8 hours a day as possible.

25 The parties concur that the Respondent did not adjust those routes in the agreed-upon timeframe. Thus, on February 11, the Union filed six grievances for each of the adjustment routes that had not been made, alleging that the Postal Service failed to comply with the grievance settlement. On April 3, the step B team found all six grievances untimely and denied them. (R. Exh. 31.) In its written decision, the step B team rejected the Union's contention that the Postal Service had not complied with the November 2013 settlement. Its basis for doing so
30 was that the grievance settlement was unsigned by either party and thus, the step B team could not determine if the settlement was valid.

35 On April 15, Fuller submitted a written request to Malone for copies of the work-hour workload reports from January 1 to April 11, as well as copies of the prior November 2013 grievance settlements, both for all six carriers.¹⁸ (GC Exh. 54.) At no point thereafter did Malone or any other manager respond by saying the Union already had signed copies of the settlements.

40 Rather, on April 29, Alonzo provided the work-hour workload reports and stated that she would provide the grievance settlements once she received copies. On May 22, Yarbro sent a letter to Richard "Smiley" Martinez, the state president of the Union, in which she stated that the minor route adjustments would not be implemented until June 22. On June 13, Malone provided copies of each of the six grievance settlements to Fuller, which totaled 12 pages.

¹⁷ This section addresses the information request contained in complaint par. 6(k).

¹⁸ This exhibit contains requests for only five carriers, but the parties stipulated at the hearing that the request encompassed all six routes. (Tr. 322.)

Analysis: The General Counsel's complaint alleges that the Respondent unreasonably delayed in providing copies of the six grievance settlements first requested by Fuller on April 15. The Postal Service asserts two defenses to the allegation, claiming its 59-day delay in providing the information was not unlawful.

5

First, the Respondent denies that the information requested was relevant to the Union's representational duties, allegedly because the step B denials of the Union's grievances on April 3 rendered the issue moot. I do not agree. The grievance denial decisions all noted that the step B panel could not determine if the Union and the Respondent had entered a valid settlement agreement in November 2013, because no signed document was a part of the record. After that decision, Fuller almost immediately requested copies of each of the six grievance settlements, which ostensibly would include and ultimately did include the signed copies. Fuller did so in an effort to advance future grievances concerning the nonadjustment of the carrier routes, which still had not been made when he requested the information on April 15. The parties' subsequent actions further solidify that the issue was not moot, given Yarbro's May 22 letter concerning the timing of the route adjustments, Malone's providing of the responsive information on June 13, and the routes ultimately being adjusted on June 22.

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Second, the Respondent contends that the Union already was provided all of the requested documents when the grievance was settled in November 2013. The Respondent presented no witness, in particular Malone, to substantiate this claim. Thus, Fuller testified without contravention that the Union first received these documents on June 13. (Tr. 481-482.) I conclude, prior to then, the Union did not have copies of the signed settlements for each of the six grievances. The Respondent argues it defies logic that Malone would have provided only the one-page, unsigned settlement agreement, and not the signed, underlying documents. (R. Br., p. 38.) However, if the Union had these documents in its possession, it certainly would have included them when it appealed the route adjustment grievances to step B. It did not do so and lost the grievances, because no signed settlement agreements had been included in the appeal. Logic indicates that the Union's failure to include them was the result of it not being in possession of the documents.

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The record evidence also establishes that this information was not voluminous or difficult to obtain. The Respondent offered no explanation as to why it took Malone more than 8 weeks to provide it.

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Under the totality of these circumstances, I find that the delay was unreasonable and violated Section 8(a)(5).¹⁹

¹⁹ In its brief, the Respondent moved for sanctions due to the failure of Branch 2990 to respond, in any fashion, to a subpoena duces tecum served upon it by the Respondent. (R. Br., pp. 41-43.) On the first day of the hearing, the noncompliance issue was raised (although incorrectly identifying Branch 1069 as the noncomplying party). (Tr. 9-10.) I noted on the record that the failure to comply was due to a misunderstanding as to the obligation imposed by the subpoena, and that counsel for the General Counsel had made a representative from the branch aware of the obligation to comply. Nonetheless, at the hearing conclusion, no responsive documents had been provided. While I agree that the lack of any response is unacceptable, I decline to impose sanctions. First, the Respondent has not identified any prejudice to its case presentation due to the noncompliance. See *CPS Chemical Co.*, 324 NLRB 1018, 1019 (1997). Second, the Respondent did not object to the presentation of Fuller's testimony regarding

2. Request for copies of GATS information for grievance settlements²⁰

On July 31, Fuller submitted a written information request to Alonzo asking for “copies of the G.A.T.S.” for 14 grievances. (GC Exh. 56.) As with Nichols in Roswell, Fuller needed this information to verify that carriers had been paid properly for their prior grievance settlements, as well as to determine if the settlements had been processed in a reasonable amount of time. Fuller intended to pursue noncompliance grievances depending on what the information showed. Alonzo gave the July 31st request to Malone for processing, because only Malone had access to GATS at the Gallup station.

In mid-August, Smiley Martinez called Yarbrow and informed her of the request and the lack of a response from Gallup management. On August 14, Yarbrow emailed Malone and asked what was going on with the information request.

Having not received a response, Fuller submitted a second written request to Alonzo for the same information on August 21. Alonzo again turned the request over to Malone for processing. On that same date, Smiley Martinez faxed the information request to Yarbrow. In addition, Yarbrow sent an email to Malone and Alonzo asking if the information had been provided. When Alonzo replied that she was working on it and would furnish the information by close of business that day, Yarbrow wrote back:

Why did it take so long? It is my understanding they requested it at the end of July. They are going to file labor charges on you, not a good thing.

(R. Exh. 34.) Less than an hour after sending that email, Yarbrow sent another demanding a response. Malone replied “While taking care of the Medal of Honor ceremony, it must have been put aside. [Alonzo] signed for it and it was put in our to do pile.” Thereafter, Yarbrow took over the responsibility of responding to the request.

On August 22, Malone did not report to work and remained in leave status continuously through at least the dates of the hearing in this case.

On August 26, Fuller made a third written request for the information.

On August 28, the Respondent, through Yarbrow, provided Fuller with the requested information, 4 weeks after he first submitted the request. (GC Exh. 57; R. Exh. 16.)

the information requests or to the offering of the unsigned settlement (GC Exh. 53) during that testimony. It also did not question Fuller regarding the branch’s failure to comply with the subpoena. Third, the sanctions sought by the Respondent appear to be designed to address the fact that Malone, the Respondent’s own supervisor, did not testify at the hearing. For all these reasons, I deny the motion.

²⁰ This section addresses the information request contained in complaint par. 6(m).

Analysis: The General Counsel’s complaint alleges that the Respondent unreasonably delayed, from July 31 to August 28, in providing the Union with the GATS information for the 14 grievances. The Postal Service admits that the request was made and that the information is relevant to the Union’s duties as the bargaining representative. However, the Respondent argues that the 4-week delay was not unreasonable, because Alonzo did not have GATS access and Malone was, “for reasons unknown, unresponsive.” (R. Br., p. 40.)

Accepting this argument would require a high degree of credulity. Malone was the postmaster of the Gallup station and responsible for responding to information requests, this one in particular since she was the only supervisor with access to GATS at the station. Malone did not testify at the hearing and her only e-mail communication claims that she could not respond because of other, unspecified work duties. Malone also did not go on leave until August 22, more than 3 weeks after the request was made. Having not taken any steps to respond in that time period, Malone obviously did not make a diligent effort to obtain the information. As previously noted, the GATS information is computerized and can be easily retrieved. Finally, and of particular note, the Respondent’s own supervisor, Yarbrow, refuted the contention that the delay was reasonable with her actions and her testimony. Once she took over the processing of the response, Yarbrow put together the necessary information and provided it to the Union in one week. She also chided Malone and Alonzo for the delay. The manner in which Yarbrow handled the response to the information request is one which the Respondent should demand from all of its supervisors. I conclude the delay was unreasonable and violated the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Respondent has violated Section 8(a)(5) and (1) of the Act by:
 - a. Failing and refusing to provide NALC Sunshine Branch 504 with information the Union requested on March 29, 2014, specifically all measures taken in the prior 2 years to address threats and conduct of managers in the Albuquerque installation to include but not limited to all training received and all certifications of completion.
 - b. Failing to timely provide NALC Sunshine Branch 504 with information the Union requested on May 5, 2014, specifically all PS 3970-D forms for Valerie Chacon.
 - c. Failing and refusing to provide NALC Branch 1069 with information the Union requested on February 18 and April 1, 2014, specifically the ETC Everything reports for Richard Briseno for February 14, 15, and 18, 2014, and for pay periods 7-2, 8-1, and up to March 31, 2014.

d. Failing to timely provide NALC Branch 1069 with information the Union requested on March 11, 2014, specifically the ETC Everything Reports for Tom Nichols for March 1 through March 11, 2014.

5

e. Failing to timely provide NALC Branch 2990 with information the Union requested on April 15 and July 31, 2014, specifically copies of the November 22, 2013 union/management grievance settlement regarding adjustment of six routes and a copy of the GATS for grievances G04042014A, G04052014A, G04072014A, G04082014A, G04112014PF, G05032014PF, G05072014PF, G05082014PF, G05122014PF, G05172014A, G05272014PF, G06052014A, G06232014A, and G06272014A.

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All of the information requested above is necessary and relevant to the Union's performance of its duties as the collective-bargaining representative of employees in the unit identified in article 1 of the national collective-bargaining agreement between the Respondent and the Union.

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3. The above unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

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4. The Respondent has not violated the Act in any of the other manners alleged in the complaint.

REMEDY

25

Having found that the Respondent 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. Specifically, to the extent the Respondent still has not furnished any of the information where its failure to do so was found to be a violation, it must provide that information to the Union now. In addition, the Respondent will be required to post a notice at its facilities in Albuquerque, Gallup, and Roswell, New Mexico.

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On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²¹

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ORDER

The Respondent, United States Postal Service at Albuquerque, Gallup, and Roswell, New Mexico, its officers, agents, successors, and assigns, shall

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1. Cease and desist from

²¹ 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.

- 5 (a) Failing and refusing to bargain collectively with the National Association of Letter Carriers (NALC) and NALC Sunshine Branch 504, Branch 1069, and Branch 2990, by failing to provide, or failing to timely provide, information requested by the Union that is necessary and relevant for the Union's performance of its duties as the collective-bargaining representative of employees in the unit identified in article 1 of the national collective bargaining agreement between the Respondent and the Union.
- 10 (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.
- 15 (a) Within 14 days, provide NALC Sunshine Branch 504 with the information the Union requested on March 29, 2014, specifically all measures taken in the prior 2 years to address threats and conduct of managers in the Albuquerque installation to include but not limited to all training received and all certifications of completion.
- 20 (b) Within 14 days, provide NALC Branch 1069 with the information the Union requested on February 18 and April 1, 2014, specifically the ETC Everything Reports for Richard Briseno for February 14, 15, and 18, 2014, and for pay periods 7-2, 8-1, and up to March 31, 2014.
- 25 (c) Within 14 days after service by the Region, post copies of the attached "Appendix A" at its facilities in Albuquerque, copies of the attached "Appendix B" at its facilities in Roswell, and copies of the attached "Appendix C" at its facilities in Gallup, New Mexico.²² Copies of the notices, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 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 facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice
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- 35
- 40

²² 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."

to all current employees and former employees employed by the Respondent at any time at the closed facility since February 14, 2014.

- 5 (a) 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 Regional Director attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C., June 26, 2015.

Charles J. Muhl
Administrative Law Judge

APPENDIX A

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 fail and refuse to bargain in good faith with the National Association of Letter Carriers, Sunshine Branch 504 (the Union) by failing to provide, or failing to timely provide, the Union with information that is necessary and relevant to the Union's performance of its duties as the collective bargaining representative of employees in the unit identified in Article 1 of the national collective bargaining agreement between the Respondent and the Union and located in Albuquerque, New Mexico.

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, within 14 days of this order, provide the Union with the information it requested on March 29, 2014, specifically all measures taken in the prior 2 years to address threats and conduct of managers in the Albuquerque installation to include but not limited to all training received and all certifications of completion.

UNITED STATES POSTAL SERVICE

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/28-CA-125837 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.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.

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 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 fail and refuse to bargain in good faith with the National Association of Letter Carriers, Branch 1069 (the Union) by failing to provide, or failing to timely provide, the Union with information that is necessary and relevant to the Union’s performance of its duties as the collective bargaining representative of employees in the unit identified in Article 1 of the national collective bargaining agreement between the Respondent and the Union and located in Roswell, New Mexico.

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, within 14 days of this order, provide the Union with the information the Union requested on February 18 and April 1, 2014, specifically the ETC Everything reports for Richard Briseno for February 14, 15, and 18, 2014, and for pay periods 7-2, 8-1, and up to March 31, 2014.

UNITED STATES POSTAL SERVICE

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board’s Regional Office set forth below. You may also obtain information from the Board’s website: www.nlr.gov.

2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004-3099

(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/28-CA-125837 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.



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APPENDIX C

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 fail and refuse to bargain in good faith with the National Association of Letter Carriers, Branch 2990 (the Union) by failing to timely provide the Union with information that is necessary and relevant to the Union’s performance of its duties as the collective bargaining representative of employees in the unit identified in Article 1 of the national collective bargaining agreement between the Respondent and the Union and located in Gallup, New Mexico.

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.

UNITED STATES POSTAL SERVICE

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board’s Regional Office set forth below. You may also obtain information from the Board’s website: www.nlr.gov.

2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/28-CA-125837 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.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

- 5 THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 640-2146.