

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION,
BIRMINGHAM LOCAL 303

Cases 10-CA-158384
10-CA-158392
10-CA-158647
10-CA-160162

and

AMERICAN POSTAL WORKERS UNION,
NORTH ALABAMA AREA LOCAL 359

Cases 10-CA-166665
10-CA-166672
10-CA-166673
10-CA-166679

DECISION AND ORDER

Statement of the Cases

On May 5, 2016, the United States Postal Service (the Respondent), American Postal Workers Union, Birmingham Local 303 (APWU Local 303), American Postal Workers Union, North Alabama Area Local 359 (APWU Local 359) (collectively, the Unions), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to Board approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

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

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.¹

¹ We note that the remedy to which the parties have agreed differs in some respects from previous broad orders that the Board has issued against the Respondent in cases alleging that the Respondent has violated Sec. 8(a)(5) of the Act by failing and refusing to provide relevant information. See, e.g., *United States Postal Service*, 345 NLRB 426 (2005), enfd. 486 F.3d 683 (10th Cir. 2007); *United States Postal Service*, 28-CA-017383 et al., unpublished order issued November 4, 2002, enfd. Case 02-9587 (10th Cir. 2003). These broad orders, as enforced by the United States Courts of Appeals,

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

Findings of Fact

1. The Respondent's business

The Respondent is and has been, at all times material herein, an independent establishment of the Executive Branch of the Government of the United States and operates various facilities throughout the United States and the State of Alabama in the performance of its basic function to provide postal services to the Nation, including its facilities in Birmingham, Decatur, and Vincent, Alabama, and certain other facilities throughout the State of Alabama (the Respondent's facilities), the facilities involved in this settlement and the underlying proceedings. The Respondent is now and has been, at all material times, an entity subject to the Board's jurisdiction by virtue of Section 1209 of the Postal Reorganization Act (PRA) (39 U.S.C. § 101 et seq.).

2. The labor organizations involved

At all material times, American Postal Workers Union (APWU) has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times, APWU Local 303 and APWU Local 359 have been agents of APWU, acting on behalf of APWU, within the meaning of Section 2(13) of the Act.

At all material times, by virtue of Section 9(a) of the Act, APWU has been, and is now, the exclusive bargaining representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of employees in an appropriate unit as set forth in Article 1 of the current National Agreement between the Respondent and APWU, including employees employed by the Respondent at its facilities set forth in Appendix 2.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that:

The Respondent, United States Postal Service, at various locations in Alabama as set forth in Appendix 2, its officers, agents, successors, and assigns, shall

remain in effect, and the Board's approval of this stipulation does not modify these orders in any respect.

1. Cease and desist from

(a) Refusing to bargain collectively and in good faith with APWU Local 303 and APWU Local 359, and/or any other labor organizations (collectively referred to as “the Unions”) representing bargaining unit employees at any of the Respondent’s facilities set forth in Appendix 2, by refusing or unduly delaying furnishing information that is relevant and necessary to the performance of the Unions’ duties as the exclusive bargaining representatives of employees at the facilities described above.

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

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

(a) Upon request, provide the Unions with necessary and relevant information in a timely and appropriate manner.

(b) Waive, for 30 days following issuance of the Board’s Order, any contractual deadlines for filing and pursuing grievances related to the requested information, where the Unions missed contractual deadlines due to the Respondent’s delay or refusal in providing the information.

(c) For the Respondent’s facilities set forth in Appendix 2, the Respondent will maintain a log in which it will immediately record each information request tendered by the Unions upon receipt of such requests, orally or in writing. These logs shall include the following information: a brief description of the information requested; the name of the individual who is making the request; the name of the supervisor, manager, or designated management official (DMO) who received the request; the date the request was made; and the date that the Respondent provided the Unions with the requested information, or upon which the Respondent’s manager, supervisor, or DMO responded to the Union with an explanation for any anticipated delay. If the Respondent, having reviewed the documents requested, believes that the Respondent will need additional time, the manager, supervisor, or DMO will inform the Unions in writing, requesting additional time and explaining the need for the additional time. Such responses shall be recorded in the information request logs.

(d) Each manager, supervisor, or DMO who is designated to receive union requests for information for the Respondent’s facilities set forth in Appendix 2 will receive annual training that encompasses how to maintain the log and how to tender the relevant information requested by the Unions, and each such management official will sign an acknowledgement form attesting to the fact that he or she has completed said training. A copy of this acknowledgement form shall be maintained in the official’s training and history files. Union stewards will be granted access to the logs, upon request. Supervisors, managers, or DMOs who unreasonably fail to supply relevant information to the Unions will have this fact mentioned in the “corrective action” column of the quarterly audit report provided to the USPS district manager, the USPS District manager of human resources, USPS labor relations, the USPS Law Department NLRB

Unit, and to the Compliance Officer for NLRB Region 10. Repeated violations could lead to discipline of said supervisor or manager.

(e) The Respondent will formally assign responsibility for monitoring its information request response process to a designated management official and will hold such official(s) accountable for adherence to the provisions of this agreement. The DMO(s) will report, on a quarterly basis, to the Respondent's District Manager (DM) and to the Respondent's Law Department NLRB Unit, every request for information to which the Respondent has not made a response within seven days, with a copy of each such request, copies of any responses made to the requesting union, and an explanation as to why the information has not been provided, or a response made, within seven days. Failure by the Respondent's supervisors and managers to adequately cooperate with the assigned DMO(s) or any failure by the assigned DMO(s) that causes either an unprivileged or unwarranted failure to provide requested information or causes an unreasonable delay in providing such information to the requesting union, will subject the responsible DMO(s), supervisor and/or manager to discipline by the Respondent as may be appropriate in light of the relevant facts and circumstances, consistent with applicable state and federal laws and regulations.

(f) Union stewards at the Respondent's facilities set forth in Appendix 2 must be notified when the manager, supervisor, or DMO who is designated to receive requests for information for their particular facility has changed.

(g) The Respondent's legal department or its labor relations department shall conduct quarterly audits of the logs at each of the Respondent's facilities set forth in Appendix 2 to ensure that the information requested by the Unions is being handled in a timely and appropriate manner, and to ensure the logs are being properly maintained. Within ten days following each audit, the legal department or labor relations department shall tender, in writing, a written report setting forth for each request that did not receive a complete response within seven days: the identity of the requesting party; a summary of the request; the location for which the request was made; the name of the supervisor or manager responsible for responding to the request; the number of days from request to initial response; the number of days from request to complete and/or final response; and any action taken to address and/or correct unreasonable failures and delays by supervisors and managers. This audit report will be forwarded to the USPS district manager, the USPS district manager of human resources, USPS labor relations, the USPS Law Department NLRB Unit, and the Compliance Officer for NLRB Region 10. To the extent that such audits indicate that requests are not being responded to in a timely and appropriate manner or that the logs recording information requests are not being properly maintained, remedial training shall be provided to all persons in a supervisory, managerial, or DMO capacity who were or are involved in the process of providing information to the Unions at the applicable facility. The Respondent will provide documentation of any such training to the NLRB Region 10 Compliance Officer upon completion of the remedial training.

(h) Within 14 days of service by the Region:

(i) Post at all of its facilities in the State of Alabama, copies of the Notice to Employees attached as Appendix 1.² 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 and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. The Respondent will electronically mail the Board's official notice to the manager in each facility;

(ii) Upon receipt of such notice, each manager will record the date said notice was received and the date on which the notices were posted at the facility, and each manager will submit to the Region's Compliance Officer, along with the signed certification, a digital photograph of the notice posted at the facility with metadata to include the date the image was taken and GPS coordinates of the location. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material;

(iii) Electronically post the Notice to Employees for employees at all its facilities in the State of Alabama if the Respondent customarily uses electronic means such as an electronic bulletin board, e-mail, website, or intranet to communicate with these employees;

(iv) Within ten (10) days after entry of the Board's Order:

(A) Provide a copy of the Board Order and Notice to Employees to all of its supervisors, managers, and DMO(s) including acting supervisors and managers, at all of its facilities in the State of Alabama.

(B) Provide all supervisors and managers, including acting supervisors and managers, with written instructions to comply with the provisions of the Order. The instructions shall underscore that:

1) Unprivileged or unwarranted refusals and unreasonable delays in responding to requests for information required under the Act to be provided to labor organizations shall not be tolerated by the Respondent.

² 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."

- 2) Any unwarranted failure to provide, or unreasonable delay in providing, such information will subject the responsible supervisor(s), DMO(s), and/or manager(s) to discipline by the Respondent as may be appropriate in light of the relevant facts and circumstances, consistent with applicable state and federal laws and regulations.
- 3) The Respondent shall also provide all future supervisory or management officials, including temporary supervisors acting in that capacity for at least ten (10) consecutive calendar days, in the postal facilities referenced above, with a copy of said Order and written instructions promptly upon their assuming those positions.
- 4) Each person receiving the Board Order and instructions described above shall acknowledge in writing that he or she has been furnished with a copy thereof, understands them and will conduct himself or herself consistently therewith, and will not in any way commit, engage in, induce, encourage, permit, or condone any violation of this Order; and the Respondent shall retain and supply copies of those acknowledgments and the written instructions to NLRB Region 10 pursuant to subparagraph (j) below.

(v) In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at the closed facility at any time since February 23, 2015.

(i) Within 14 days from the date of this Order, at each of the Respondent's facilities set forth in Appendix 2, convene meetings during work time, scheduled to ensure the widest possible attendance, at which the attached Notice to Employees is to be read to all employees, supervisors, and managers. The Respondent will advise the Regional Director of the dates and times of such notice readings, and the Union and the Region shall be afforded a reasonable opportunity to provide for the attendance of a union official and/or a Board agent at any assembly of employees called for the purpose of reading such notice. The Respondent shall maintain sign-in sheets for supervisors and managers at the readings at each location and submit copies of the sign-in sheets to the Region within seven days of the final notice reading.

(j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply. The certification shall include: (i) a copy of the documents signed by the district manager of labor relations, attesting to the dates that the notices were received at each facility, the dates that the notices were posted, and a digital photograph of each posted notice with metadata including date taken and

GPS coordinates; (ii) a certification by the installation head attesting to the dates that the notice was read at each facility; (iii) copies of the acknowledgements, signed by each of the Respondent's supervisors, managers, or DMO at each of the Respondent's facilities set forth in Appendix 2, that they may be subject to disciplinary action as may be appropriate in light of the relevant facts and circumstances, consistent with applicable state and federal laws and regulations; and (iv) copies of notice-reading meeting sign-in sheets for supervisors and managers.

(k) The Respondent agrees that while bargaining unit employees may be called upon to assist in gathering documentation and in other aspects of the information process, they shall not be considered responsible for the Respondent's legal obligations and they shall not be subject to discipline for the Respondent's failure to comply with the obligations described herein.

Dated, Washington, D.C., September 9, 2016

Mark Gaston Pearce, Chairman

Philip A. Miscimarra, Member

Lauren McFerran, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX 1

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

PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE UNITED STATES COURT OF APPEALS

FEDERAL LAW GIVES YOU THE RIGHT TO:

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

WE WILL NOT refuse to bargain collectively and in good faith by refusing or unduly delaying furnishing information requested by the APWU Local 303, APWU Local 359, and/or any other labor organization representing bargaining unit employees (collectively the Unions), that is necessary for and relevant to the performance of their duties as the exclusive bargaining representatives of the bargaining unit employees.

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, upon request, provide the Unions with necessary and relevant information in a timely and appropriate manner.

WE WILL waive, for 30 days following issuance of the Board's Order, any contractual deadlines for filing and pursuing grievances related to the requested information, where the labor organizations missed contractual deadlines due to our delay or refusal in providing requested information.

WE WILL, for the facilities on Appendix 2, maintain a log in which we will immediately record each information request, made orally or in writing, by the Unions at that facility. These logs shall include the following information: a brief description of the information requested; the name of the individual who is making the request; the name of the management official who received the request; the date the request was made; and the date the our official provided the Unions with the requested information. If our official, having reviewed the documents requested, believes that we need additional time, the official will inform the requesting Union in writing, seeking additional time and explaining the need for additional time.

WE WILL appoint a designated management official who will be responsible for reviewing the information request logs, providing guidance to supervisors and managers in consistently making timely responses to such requests, and managers will

recommend discipline as may be appropriate in light of the relevant facts and circumstances, consistent with applicable state and federal laws and regulations, for supervisors, managers or designated management officials (DMOs) whose delays in responding to Union requests for information are found to be unwarranted.

WE WILL provide annual training to each manager, supervisor or DMO who is designated to receive requests for information at the facilities described above which encompasses how to maintain the log, and how to tender the relevant information requested by the Unions; each such official will sign an acknowledgement form attesting to the fact that he or she has completed the training. A copy of this acknowledgement form shall be maintained in the official's training and history files. Union stewards will be granted access to the logs, upon request. Officials who fail to reasonably supply relevant information to the Unions will have this fact mentioned in the "corrective action" column of the quarterly audit report provided to the district manager and district manager of human resources. Repeated violations could lead to discipline of said official.

WE WILL notify Union stewards when the manager, supervisor or DMO who is designated to receive union requests for information at their facility has changed.

WE WILL, through our legal department or labor relations department, conduct quarterly audits of the logs at the facilities described above to ensure that the information requested by the Unions is being handled in a timely and appropriate manner, and to ensure the logs are being properly maintained. Following the audit, our legal department or labor relations department shall tender, in writing, a written report that will be forwarded to the district manager, the district manager of human resources, and the NLRB Compliance Officer.

WE WILL provide a copy of this Order and notice to all supervisors, managers or DMOs who are responsible for receiving Union requests for information, and we will require each such official to sign an acknowledgement affirming that they understand that they may be subject to disciplinary action as may be appropriate in light of the relevant facts and circumstances, consistent with applicable state and federal laws and regulations, if they fail to comply with the provisions of the Order.

UNITED STATES POSTAL SERVICE

The Board's decision can be found at www.nlr.gov/case/10-CA-158384 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



APPENDIX 2

COVERED LOCATIONS

Retail locations in Auburn, Jacksonville, Leeds, Vincent, and Birmingham, Alabama; and the Birmingham Processing and Distribution Center (P&DC) (including the Birmingham Annex)

USPS ALABAMA DISTRICT, POOM AREA 3 RETAIL LOCATIONS

Anniston	36201	HSV - West Station	35805
ANN - Blue Mountain	36204	HSV - Wynn Drive Station	35816
ANN - Oxford Branch	36203	Madison	35758
Bessemer	35020	Montgomery	36119
BES – Hueytown	35023	MGY - Carolyn Finance	36108
Decatur	35601	MGY - Cloverland Station	36105
Florence	35630	MGY - Downtown Station	36104
FLO - North Florence	35630	MGY – Eastbrook	36109
Gadsden	35901	MGY - Green Lantern	36111
GAD - Alabama City	35904	MGY - Lagoon Park	36121
GAD - East Gadsden	35903	MGY - Maxwell AFB	36112
GAD - Glencoe Finance	35905	MGY – Shakespeare	36123
Huntsville	35813	MGY - South Station	36116
HSV - Downtown Station	35801	MGY - Westside Station	36108
HSV - Haysland Station	35802	Tuscaloosa	35401
HSV - Mastin Lake	35810	TCL - Skyland Station	35405
HSV - Redstone Arsenal	35808		