

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**UNITED STATES POSTAL SERVICE
Respondent**

and

**Cases 07-CA-145159
07-CA-159684**

**BRANCH 256, NATIONAL ASSOCIATION
OF LETTER CARRIERS (NALC), AFL-CIO
Charging Party**

**COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF TO
RESPONDENT'S RESPONSE TO THE GENERAL COUNSEL'S CROSS-
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

Counsel for the General Counsel Jennifer Y. Overstreet,¹ pursuant to Section 102.46(h) of the Board's Rules and Regulations, respectfully submits this reply brief in response to Respondent's Response to the General Counsel's Cross-Exceptions to the Administrative Law Judge's Decision (Respondent's Response), which was filed February 9, 2017.²

I. SUMMARY OF RELEVANT FACTS

A. Background

Respondent is a nationwide employer of many thousands of employees.

Respondent is divided into several Regions that cover certain states. Within each Region, Respondent is divided into Districts. Within each District, Respondent classifies groups of postal locations into "installations," which typically refer to all of the postal locations within a certain city and surrounding suburbs. One postmaster oversees all of the facilities within a particular installation. (Tr. 23, Tr. 69) The Flint, Michigan installation,

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² Respondent's Response appears to be an "answering brief" as defined by Section 102.46 of the Board's Rules and Regulations. On February 9, 2017, in addition to Respondent's Response, Respondent filed "Respondent's Reply to General Counsel's Answering Brief to Respondent's Exceptions to the Decision of the Administrative Law Judge." (Respondent's Reply)

which is the installation at issue in this case, is located within the Great Lakes Region and the Detroit District.³ (Tr. 217) The Flint installation consists of seven locations. (Tr. 68, 72)

The National Association of Letter Carriers (NALC), AFL-CIO represents Respondent's letter carriers throughout the nation. (GC 1) NALC designated the Charging Party as its servicing representative for postal offices in the Flint, Michigan area, including those in Davison, Attica, Imlay City, Lapeer, Clio, Mt. Morris, Durand, Fenton, Swartz Creek, Holly, and surrounding areas. (GC 1; Tr. 72)

Other labor unions, such as the American Postal Workers Union (APWU), AFL-CIO and the National Postal Mail Handlers Union, (NPHU), AFL-CIO represent certain other employees at Respondent's facilities throughout the nation, including those within the Flint Installation and those serviced by the Charging Party. (Tr. 241)

B. Sixth Circuit Consent Order, Creating a Centralized System for Respondent to Respond to its Unions' Information Requests

In August 2012, the United States Court of Appeals for the Sixth Circuit issued a Consent Order that ordered Respondent to take certain action within the Detroit District to remedy its failure and unreasonable delay in providing APWU with information relevant to the union's collective bargaining responsibilities. In addition, the Consent Order set forth action that Respondent should take in responding to information requests submitted by all of its unions representing employees in the Detroit District (GC 23). As a result of the Consent Order, Respondent instituted a number of policies to respond to its unions' information requests, including those initiated by the Charging Party, such as the implementation of a dedicated fax line for information requests and the creation of a

³ Respondent's Detroit District covers zip codes starting with 480, 481, 482, 483, 484, 485, and 492.

Detroit RFI Coordinator. In the instant case, Detroit RFI coordinator Andrea Porter responded to the Charging Party's information requests (Tr. 217-218, 239) These policies and procedures did not just affect those locations listed in the Consent Order, but also other locations throughout the entire Detroit District.

II. RESPONDENT'S RESPONSE

Respondent's Response asserts that Counsel for the General Counsel's request for a Michigan state-wide remedy, as advanced in Counsel for the General Counsel's Post-Hearing Brief (CGC Post-Hearing Brief) and Cross-Exceptions to the Administrative Law Judge's Decision and Brief in Support (CGC Cross-Exceptions), should not be granted because the ALJ issued her decision without considering the objective, substantive evidence showing that Respondent responded to the Charging Party's information requests and incorporates, by reference, the evidence and argument set forth in Respondent's Exceptions #1-3, including Respondent's Reply. In addition, Respondent asserts that a state-wide remedy is inappropriate based on the nature of Respondent's operations and the alleged unfair labor practices. Respondent's Response raises the identical arguments, with *de minimis* modifications, that Respondent raised in its Post- Hearing Brief and Respondent's Exceptions to the Administrative Law Judge's Decision.

III. ARGUMENT

State-Wide Remedy:

Despite Respondent's arguments, a state-wide remedy is appropriate for the same reasons advanced in CGC's Post-Hearing Brief and CGC's Cross-Exceptions.

Accordingly, this reply incorporates the arguments presented in Counsel for the General Counsel's previous filings in this matter.

Additionally, Counsel for the General Counsel notes that Respondent misrepresented a statement made in CGC's Cross-Exceptions. On page 2 of Respondent's Response, Respondent avers that Counsel for the General Counsel asserted that the Sixth Circuit's Consent Order (GC 23), affected locations throughout the entire Detroit District. In fact, the CCG's Cross-Exceptions specifically states that, as a result of the Consent Order, Respondent implemented policies that applied to the entire Detroit District, such as establishment of a dedicated fax line for information requests and the creation of a Detroit RFI Coordinator. (See CGC Cross-Exceptions p. 3-4) Moreover, the record establishes and the ALJ found that the Sixth Circuit's Consent Order resulted in Respondent's creation of a centralized and dedicated office, with telephones and fax lines, logs, and a centralized computer tracking system for processing its unions' information requests which also included Designated Management Official(s) (DMO) along with a Request for Information (RFI) Coordinator for the **entire Detroit district**. (Tr. 240-242; GC 23; JD 4/42-46)

In its Response, Respondent disingenuously argues that the alleged unfair labor practices, which occurred within the Flint installation locations are not connected to those arising out of other facilities within the state of Michigan, and that there is no evidence that any of the Flint managers played any role in the other violations cited by Counsel for the General Counsel in her prior filings. That the Flint managers may not have been directly involved in the other instances involving Respondent's refusal to provide information within the State of Michigan is irrelevant because Respondent's responses to information requests were coordinated at the District level, not within the Flint postal

installation. In light of the 2012 Consent Order, it is disingenuous for Respondent to assert that its managers do not have a centralized role in responding to information requests. Since the 2012 Consent Judgment, every information request (and every violation that occurred) within the Detroit District is part of the Detroit District centralized and dedicated RFI response system and its RFI Coordinator and DMOs. Moreover, the violations arising out of the Flint installation are the same 8(a)(5) information violations found within the Detroit District and Greater Michigan District, the two districts within the State of Michigan.

Although the ALJ's order that the remedy be applied to the Detroit District is logical, based on Respondent's well-established proclivity to violate the Act, the Board should order a state-wide remedy. While the ALJD correctly cited *Hickmott Foods*, 242 NLRB 1357 (1987) and *United States Postal Service*, 339 NLRB 1162, 1162 (2003), the ALJ failed to recognize the clear pattern or practice of unlawful conduct and find that Respondent had proclivity to violate the Act as to warrant a state-wide remedy.

The number, timing, and location of the Sixth Circuit Judgments against Respondent, within the State of Michigan, establish a clear pattern of unlawful conduct and warrant a state-wide remedy. See *Service Merchandise Co.*, 299 NLRB 1132 (1990). Respondent has had at least **20** United States Court of Appeals Sixth Circuit Judgments against it within the State of Michigan. Of these judgments **18** occurred since 2010. **Sixteen** judgments occurred within the Detroit District and **10** of these judgments occurred since 2012 and the creation of the centralized Detroit District dedicated RFI response system. Clearly, the Sixth Circuit Consent Judgment's creation of the Detroit District dedicated RFI response system has failed to deter Respondent's unlawful conduct. Thus, the Board should require a state-wide remedy.

Likewise, the number of informal settlement agreements with proclivity language weighs in favor of a state-wide remedy. See *Sequoia District Council of Carpenters (Lattanzio Enterprises)*, 206 NLRB 67 (1973). While Respondent asserts that only one of the eight informal settlement agreements cited by Counsel for the General Counsel involves the Flint facilities; as noted above, this is irrelevant. All of the settlements contain proclivity language that does not limit the remedy to a particular facility.⁴

Finally, Counsel for General Counsel asserts that *Beverly Health and Rehabilitation Services*, 335 NLRB 635 (2001) supports a finding for a state-wide remedy despite Respondent's assertion that the case is distinguishable. In *Beverly Health and Rehabilitation Services*, the Board ordered a remedy that extended to 20 facilities where there was evidence that the respondent negotiated a single contract for multiple locations and enforced centralized human resource policies. Respondent's Response asserts that the holding in *Beverly Health and Rehabilitation Services* does not apply because the standard articulated therein has not been applied to a "massive, far-flung and decentralized operation" like the Postal Service. Respondent's assertion is again misleading. The Board has repeatedly ordered remedies *against the Postal Service* affecting multiple locations. Of poignant note is the August 14, 2012, Consent Judgment (GC 23) which covers, not 20, but 43 locations.

"Any Other Labor Organization:"

Respondent asserts that a Board Order including "any other labor organization" would be inappropriate because the Board orders that included this language resulted from approval of formal settlement agreements, and not in cases where the facts were litigated. This argument is untenable. A Board order is authoritative regardless of

⁴ The proclivity language states: The Charged Party (United States Postal Service) agrees that this settlement stipulation may be used in *any proceeding before the Board* or an appropriate court to show proclivity to violate the Act for purposes of determining the appropriate remedy. (Emphasis added)

whether it results from the approval of a formal settlement agreement or as the result of litigating an unfair labor practice. Respondent correctly notes that the Board declined to order such language in *United States Postal Service*, 354 NLRB 2009 (2009). However, the Board has also ordered that the language be approved in subsequent cases. See *United States Postal Service*, Case 07-CA-099915, October 17, 2014 (not reported in Board volumes), enfd. *National Labor Relations Board v. United States Postal Service*, Docket no. 14-2388 (6th Cir, December 3, 2014); and *United States Postal Service*, Case 07-CA-113734, November 25, 2014 (not reported in Board volumes), enfd. *National Labor Relations Board v. United States Postal Service*, Docket No. 14-2575 (6th Cir, January 30, 2015).

“In Any Other Manner:”

Respondent asserts that a Board Order including “in any other manner” would be inappropriate because the Board cases, cited by the undersigned, involve formal settlement agreements, and not in cases wherein the facts were litigated. For the same reasons as stated above, this argument is untenable. Respondent also distinguishes the cases cited by the undersigned by stating that the remedies were limited to a certain number of facilities. Presumably, Respondent argues that, in the instant case, wherein Counsel for the General Counsel requests a broad state-wide remedy the inclusion of “in any other manner” language would be inappropriate because it would expand the scope of the remedy even more. However, Respondent does not point to any case law to support its claim.

Lastly, Respondent’s argument that *Somerset Valley Rehabilitation and Nursing Center*, 364 NLRB No. 43 (2016) does not apply should not be credited. In fact, in that case, the Board held, that based on the employer’s demonstrated proclivity to violate the

Act, a broad cease and desist order was appropriate. *Id.* at 5. Respondent’s proclivity to violate the Act is notorious and well-documented. Accordingly, a broad cease and desist order that includes “in any other manner” language should be included in the Board’s order.

IV. CONCLUSION

Respondent has established a clear pattern on violating the Act, as it pertains to abiding by its obligation to promptly provide information. For the foregoing reasons, Counsel for the General Counsel submits that the Board should grant CGC’s Cross-Exceptions for the reasons set forth therein.

Dated this 23rd day of February 2017.

/s/ Jennifer Y. Overstreet

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CERTIFICATE OF SERVICE

I certify that on the 23rd day of February 2017, I e-filed a **COUNSEL FOR THE GENERAL COUNSEL'S REPLY BRIEF TO RESPONDENT'S RESPONSE TO THE GENERAL COUNSEL'S CROSS-EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**, and served a copy by electronic mail on the following parties of record:

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