UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE		
and	**Case**	**08-CA-197451**
AMERICAN POSTAL WORKERS UNION, LOCAL 170		

BRIEF OF COUNSEL FOR THE GENERAL COUNSEL TO ADMINISTRATIVE LAW JUDGE THOMAS RANDAZZO

Counsel for the General Counsel (General Counsel) respectfully files this brief with the Honorable Thomas Randazzo, Administrative Law Judge (ALJ). This matter was heard on March 7, 2018 by Judge Randazzo in Bowling Green, Ohio. In this brief, Counsel for the General Counsel will set forth the operative facts and legal theories upon which he relies on to sustain the allegations contained in the Complaint.[1]

This matter comes before Judge Randazzo based on a Complaint that issued on August 19, 2017,[2] and amended on February 12, 2018, alleging that Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally reducing the length of paid breaks for unit employees for a six-month period without bargaining with the Union. (GC Ex. 1(b), 1(k)) The Complaint is consolidated with a Compliance Specification alleging the make-whole remedy owed to unit employees for losses suffered as a result of Respondent's unlawful conduct. (GC Ex. 1(k)) At

[1] In this Brief, United States Postal Service will be referred to as Respondent and American Postal Workers Union, Local 170 will be referred to as the Union. References to the official transcript of this proceeding will be referred to as Tr. __. General Counsel's exhibits will be referred to as GC Ex. __; Respondent's exhibits will be referred to as R. Ex. __; Joint Exhibits will be referred to as J. Ex __.

[2] Unless otherwise noted, all dates are in 2017.

hearing, the parties stipulated to the back pay amounts owed to unit employees should Respondent be found liable for its unlawful conduct.[3] (J. Ex. 1; Tr. 10-15)

As explained below, the evidence in the record clearly demonstrates that Respondent violated Section 8(a)(1) and (5) of the Act, and the General Counsel urges the ALJ to issue the proposed conclusions of law, proposed order, as well as ordering the posting of the notice to employees and payment of the stipulated back pay amounts.[4]

I. ISSUE PRESENTED

Whether Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally reducing the duration of paid breaks from fifteen minutes to ten minutes for unit employees without providing the Union with notice and/or a meaningful opportunity to bargain?

II. CREDIBLITY

The General Counsel submits that its witnesses should be credited where conflict exists between the testimony of General Counsel's witnesses and Respondent's witnesses. General Counsel's witnesses testified in an honest and straightforward manner on direct and cross-examination, providing details of the events in which they participated or witnessed. The employee witnesses testified adversely to the Respondent at the hearing while in the presence of their current supervisor, Tom Baker. It is well-established that the testimony of current employees is entitled to considerable weight since it is "unlikely to be false when it is adverse to an employee's pecuniary interest, such as preservation of a job." Cal-Maine Farms, 307 NLRB 450, 454 (1999).

In contrast, Respondent's witnesses were vague, unreliable and should not be credited. Specifically, Vehicle Maintenance Supervisor Tom Baker testified that during a meeting on

[3] Joint Exhibit 1 replaces the back pay calculations contained in Compliance Specification ¶¶12-13. (Tr. 14)
[4] Attached as Exhibits A and B.

March 3, 2017 he informed employees that a weekly schedule would be posted and that the length of their paid break periods would be reduced from 15 to 10 minutes. (Tr. 69-70). Baker's testimony, however, is significantly undermined by his response to the Union's grievance filed on March 22. (GC Ex. 5) In this grievance, the Union alleged that on or about March 20, management posted a schedule with designated breaks and lunches no longer at the employees' discretion, and noted that the break times from 15 minutes to 10 minutes, in violation of past practice. Baker reviewed the Union's grievance before preparing his Step 1 grievance response. (Tr. 75-76) In this response, Baker stated in relevant part, "[o]n 3/3/17..all employees were notified the lunches and breaks would be scheduled." (GC Ex. 7; Tr. 77) Notably, however, nowhere in this grievance response does Respondent make any mention about any reduction in the length of employees' paid breaks. (Tr. 77-78)

Baker's lack of credibility is further demonstrated by his explanation for leaving out this critical information. Baker testified his failure to explain that employees' break times would be reduced was due to the fact that he was limited by space on the grievance response form. (Tr. 78) Baker, however, acknowledged that there were at least five more lines on the response form to place additional information. (Tr. 78)

The recollection of Respondent's other witnesses concerning the March 3 meeting was unclear. For example, on direct examination, lead technician Stephen Recknagel could not properly answer Respondent counsel's question of whether there was any discussion by Respondent's managers at the March 3 meeting about the reduction of employees' break times. (Tr. 93-94). On cross-examination, Rucknagel clarified that at the March 3 meeting, Respondent's managers only discussed the scheduling of lunch and breaks with employees and made no mention of the reduction in break periods. (Tr. 96-97)

III. EVIDENCE

A. Background and Collective-Bargaining Relationship

Respondent provides postal services for the United States and operates various facilities throughout the United States, including a Vehicle Maintenance Facility in Toledo, Ohio (Toledo VMF). (Answer, GC Ex. 1(n), par. 1) The Toledo VMF maintains a fleet of 900 postal vehicles, and employs seventeen technicians, three clerks and one custodian, all of whom are represented by the Union. (Tr. 23) Respondent and the Union's parent, the American Postal Workers Union, AFL-CIO, have had a long-standing collective-bargaining relationship, and are parties to a collective-bargaining agreement effective from May 21, 2016 through September 20, 2018. (GC Ex. 1(n), par. 6(B))

Michael Fincher is a lead automotive technician at the Toledo VMF and has been the Motor Vehicle Craft Director for the Union for at least three years. (Tr. 40-41) In his capacity as the Union's Motor Vehicle Craft Director, Fincher serves as the head Union official. (Tr. 42) Toledo VMF managers typically communicate with the Union by mailed letter. (Tr. 42-43). For example, by letter dated February 13, 2017, VMF Manager Tom Price sent a letter to the Union's President notifying the Union of a change in employees' work hours for one shift. (GC Ex 3) By certified letter dated November 15, 2016, Price responded to the Union's request for information. (GC Ex. 4).

By past practice, Respondent did not post work schedules at the Toledo VMF. Employees knew when to work based on their job bids. (Tr. 31) Toledo VMF employees' work shifts are eight and one-half hours, which includes an unpaid 30 minute lunch period and two paid breaks. (Tr. 54-55) Employees are entitled to an additional break if they work in excess of ten hours. (Tr. 16-17) Prior to March 2017, the Toledo VMF employees received paid 15

minute breaks and employees took these breaks as well as their unpaid lunch period during their shift at their discretion. (Tr. 24-26)

B. March 3, 2017 Safety and Service Talk

On March 3, Toledo VMF Manager Robert Price and Supervisor Tom Baker conducted a safety and service talk with the VMF unit employees. (Tr. 29) At this meeting, Baker addressed scheduling and other issues with employees. It is undisputed that Baker announced that Respondent was going to begin posting a work schedule with scheduled times for employees' breaks and lunches. (Tr. 47, 69, 116) Technicians Michael Fincher and Ronald Cowell attended the March 3 meeting and unambiguously testified at the hearing that Baker never told the employees that the length of the paid breaks would be reduced. (Tr. 48, 117) Both testified that had Baker mentioned that the paid break time would be reduced, the employees would have demanded that some immediate action be taken. (Tr. 48, 117)

While Respondent's witnesses claim that Baker informed employees at the March 3 meeting that the duration of breaks would be shortened, their testimony should not be credited for the reasons stated above. Moreover, there is no dispute that Respondent never provided the Union with any prior notice about changing the scheduling procedures as raised by Baker on March 3, 2017. (Tr. 31) Further, it is undisputed that prior to March 3, Respondent never informed the Union that the duration of breaks would be reduced. (Tr. 33)

C. **Reduced Breaks are Implemented and Remain in Place for Six Months**

Consistent with his announcement at the March 3 meeting, on March 20, Baker posted a work schedule for the Toledo VMF employees effective the week of March 25. (Tr. 33-34; GC Ex. 2) The schedule set forth each employee's start and end times, break times and lunch time. (GC Ex. 2) The scheduled break times were for 10 minutes rather than the 15 minutes that VMF

employees previously enjoyed. (GC Ex. 2; Tr. 35). The Union first learned about the reduction of break times through the posting of the March 25 work schedule. (Tr. 49)

On March 22, the Union filed a grievance requesting that Respondent return to its practice of allowing employees to take their breaks and lunches at their discretion during their shifts and to restore the 15 minute paid breaks. (GC Ex. 5) Respondent denied the grievance on the grounds that it was untimely and that management was permitted to schedule employees as necessary under the contractual management rights provision. (GC Ex. 7) After Step Two of the contractual grievance procedure, the grievance was no longer handled by Fincher or anyone at the Union local. (Tr. 51-52) On September 26, the APWU national business agent and USPS labor relations specialist resolved the grievance at Step Three by restoring the 15 minutes breaks. (Tr. 37-38; GC Ex. 6) As of September 28, the employees have received two 15 minute paid breaks. (Tr. 38)

For the period from March 25 through September 27, the employees worked ten additional minutes for each shift that they worked. When employees received 15 minutes breaks, prior to March 25 and after September 28, an eight and a half hour shift consisted of seven and one-half hours of work, a one-half hour unpaid lunch and two 15 minute paid breaks. From March 25 through September 28, an eight and one-half hour shift consisted of seven hours and forty minutes of work, one-half hour unpaid lunch and two 10 minute paid breaks. (Tr. 54-55) Even though the Toledo VMF employees provided additional work time to Respondent, to date, employees have not been compensated for the additional work performed. (Tr. 38, 54-55, 58) The amount owed to employees is significant – over $11,500 (without interest), with five employees being owed in excess of $800 each. (Jt. Ex. 1)

IV. LEGAL ARGUMENT

A. Respondent's Unilateral Reduction of Paid Breaks Constitutes a Material, Significant and Change in Terms and Conditions of Employment.

Section 8(d) of the Act specifies mandatory subjects of bargaining as "wages, hours and other terms and conditions of employment." An employer is obligated to provide a union with notice and a meaningful opportunity to bargain concerning changes in terms and conditions of employment that are mandatory subjects. NLRB v. Katz, 369 U.S. 736, 742, 747 (1962); Whitesell Corp., 357 NLRB 1159, 1171 (2011). The employer violates Section 8(a)(5) of Act if it makes unilateral changes in mandatory subjects of bargaining. NLRB v. Katz, *supra*. The Board broadly construes terms and conditions of employment and thus, mandatory subjects of bargaining are considered, "all emoluments of value or other benefits accruing to employees out of their relationship with their employer." Detroit Resilient Floor Decorators Local Union No. 2265 (Mill Floor Covering, Inc.), 136 NLRB 769, 771 (1962), *enfd*., 317 F.2d 269 (6th Cir. 1963); *see also*, United States Postal Service, 302 NLRB 767, 776 (1991). Only material, substantial and significant changes trigger a duty to bargain under the Act. Bath Iron Works Corp., 302 NLRB 898, 901 (1991); Alamo Cement Co., 281 NLRB 737, 738 (1986).

It is well-established that break times are a mandatory subject of bargaining that involve "rates of pay, wages, hours of employment, or other conditions of employment." *See, e.g.*, Kerry, Inc., 358 NLRB 980, 990 (2012); Xidex Corp., 297 NLRB 110 (1989). The Board has consistently held that the unilateral reduction in the duration of breaks is a material, significant and substantial change in terms and conditions of employment. Kerry, Inc., 358 NLRB 980, 990 (2012) (employer violated Section 8(a)(5) by changing the length of breaks); Xidex Corp., 297 NLRB 110 (1989) (employer violated Section 8(a)(5) by replacing 30 minute unpaid break with

a 15 minute break); *see also*, Kurdziel Iron of Wauseon, Inc., 327 NLRB 155, 156 (1998) (threat of reduction in lunch and break times violated Section 8(a)(5)).

It is undisputed that Respondent reduced employees' paid breaks from 15 to 10 minutes. Respondent's reduction constitutes a material, significant and substantial change in the VMF employees' terms and conditions of employment.

B. Respondent Unlawfully Failed to Provide the Union with Timely Notice and/or an Opportunity to Bargain about the Reduction in Paid Breaks.

Respondent violated Section 8(a)(1) and (5) of the Act by failing to give the Union prior notice of the reduction of employees' breaks and by presenting its decision to employees and the Union as a *fait accompli*. Prior to changing a mandatory subject of bargaining, an employer is required to provide a union with timely notice and a meaningful opportunity to bargain regarding the proposed change. NLRB v. Katz, *supra*. One of the purposes of requiring prior notice of a proposed change to mandatory subjects is to allow the union an opportunity to consult with unit employees and decide whether to acquiesce in the change, oppose it, or propose modifications. Roll and Warehouse and Distribution Corp., 325 NLRB 41, 41 (1997). A union's role in that process is undermined when it learns of the change incidentally upon notification to all employees and especially when management presides over the process by which unit employees critique the proposal. Id.

The Board has repeatedly held that where the manner of an employer's presentation of a change in terms and conditions of employment to the union precludes a meaningful opportunity for the union to bargain, the change is a *fait accompli*, and the failure by the union to request bargaining does not constitute a waiver. *See, e.g*, Pontiac Osteopathic Hospital, 336 NLRB 1021 (2001). The obligation to bargain requires that the employer at least inform the union of its proposed actions which affords the union a reasonable opportunity for counter arguments or

proposals. Intersystems Design & Technology Corp., 278 NLRB 759 (1986). Informing the union of a change in a manner which precludes meaningful bargaining divests the union of its obligation to demand bargaining or have inaction construed as a waiver. Id. at 759.

In order to determine whether a union is presented with a *fait accompli*, the Board considers objective evidence regarding the presentation of the proposed change and the employer's decision-making process. KGTV, 355 NLRB 1283, 1284 (2010); Bell Atlantic Corp., 336 NLRB 1076, 1087 (2001). While presenting a proposed change as a fully formulated plan or the use of positive language does not definitively establish a *fait accompli*, statements conveying an irrevocable decision constitute significant evidence that bargaining would be futile. *See, e.g.,* UAW-DaimlerChrysler National Training Center, 341 NLRB 431, 433 (2004) (employer presented *fait accompli* by telling union that layoff was a "done deal"); Pontiac Osteopathic Hospital, *supra.* at 1023-1024 (2001) (notice stating that changes "will be implemented" and other "unequivocal language" evidence of fait accompli). The Board also evaluates the timing of an employer's statements in relation to the actual implementation of the change, the manner in which the change is presented and other evidence pertinent to the existence of a "fixed intent" to make the change at issue which obviates the possibility of meaningful bargaining. Ciba-Geigy Pharmaceutical Div., 264 NLRB 1013 (1982).

Here, while the parties dispute when the decision was announced to employees, regardless of the timing, it was done as a *fait accompli* as management informed the Union and its employees, simultaneously. Id. at 1017 ("most important factor" dictating whether an employer's announcement of a change constitutes a *fait accompli* was that it was made without special notice in advance to the union and that the union's officers became aware of this because they themselves were employees.).

The Union first learned of the reduction of break times on March 20, when Baker posted the Toledo VMF work schedule for the week of March 25. Respondent's posting is strong evidence that its decision to change past practice was a *fait accompli*, and that bargaining would be futile. Pontiac Osteopathic Hospital, *supra.* at 1023-1024 (notice stating that changes "will be implemented" and other "unequivocal language"). While Baker's credibility is questionable as noted above, Baker testified that at the March 3 meeting, he told all of the employees including the union stewards that the breaks were being reduced to 10 minutes "due to the consistent abuse of the breaks." (Tr. 69-70; GC Ex. 7) Such definitive language is strong evidence that the decision was a presented as *fait accompli*.

Under either version of events, Respondent's decision was presented as a *fait accompli* to the Union. Thus, the Union was not required to make a futile demand to bargain. Accordingly, Respondent violated Section 8(a)(1) and (5) of the Act by failing to provide the Union with prior notice and/or an opportunity to bargain about the reduction of employees' paid break periods.

It is anticipated that Respondent will contend that it did not present the reduction in employees' paid breaks as a *fait accompli* and that it provided the required notice to the Union at the March 3 meeting. Notably, the parties' collective-bargaining agreement provides the Union fifteen days to file a grievance after it becomes aware of a contractual breach, and the Union filed its grievance over the changes to employees' schedules on March 22. The Respondent previously argued that the Union's grievance was untimely as it was filed 19 days after the Union was allegedly put on notice. It is expected that Respondent will claim that the Union waived its right to bargain over the scheduling issues because it filed an untimely grievance.

It is well-established, however, that the waiver of a statutory right must be clear and unmistakable. Metropolitan Edison Co. v. NLRB, 460 U.S. 693, 708-710 (1983). Establishing

waiver is a heavy burden, not to be lightly inferred. American Medical Response of Connecticut, Inc., 361 NLRB No. 53, *slip op.* at 1 (Sept. 26, 2014) Even assuming *arguendo* that Respondent provided the Union with notice of the changes at the March 3 meeting, the Union appropriately waited to file a grievance until any change was enacted as there was no testimony by Baker that he informed employees when such changes would be implemented. As noted in the record, the parties had already been down a similar road when at the December 2016 safety and service meeting, Toledo VMF management presented employees with a document called "VMF Expectations," which made changes to terms and conditions employment including works hours and uniforms. (R. Ex. 1) The Union immediately filed a grievance which was denied by Respondent for several reasons, including that the new policy had yet to be implemented. (Tr. 54, 65; R. Ex. 1, Step 2 Response)

Here, the Union only became aware that VMF employees' breaks were reduced on March 20, when Respondent posted its first work schedule for VMF employees. The Union acted reasonably and with due diligence by filing a grievance two days later. Under these circumstances, Respondent cannot establish that the Union clearly and unmistakably waived its right to bargain.

C. This Matter should not be Deferred; Alternatively, an Additional Hearing on the Deferral Issues should be Held.

It is also anticipated that Respondent will contend that Board should defer this matter to the grievance settlement reached by the parties. The record shows that at the time the Complaint issued, there was no resolution to the grievance filed by the Union. The Respondent summarily denied the grievance, asserting its management rights and the untimeliness of the grievance. Prior to the hearing, the grievance having been elevated to Step 3, was resolved by APWU national business agent William Wright and USPS labor relations specialist Eric Conklin,

without any consultation with the Charging Party or any of the impacted employees who were members of the class. (GC Ex. 6) The resolution reached at Step 3 provided that the 15 minute paid breaks would be restored, without any provision for notifying employees or remunerating them for the additional time worked without pay due to the Respondent's unlawful unilateral action.

Counsel for the General Counsel asserts that this matter should not be deferred to the grievance settlement as the resolution is repugnant to the purposes of the Act. In Alpha Beta, 273 NLRB 1546 (1985), the Board announced its intent to apply to settlement agreements, the deferral principles of Spielberg Mfg. Co., 1120 NLRB 1080 (1955) and Olin Corp., 268 NLRB 573 (1984). Accordingly, the Board considered the following factors in determining the appropriateness of a grievance settlement: (1) whether the settlement proceedings were fair and regular; (2) whether all parties agreed to be bound by the settlement; (3) whether the parties considered the facts underlying the unfair labor practice; and, (4) whether the terms of the settlement are repugnant to the Act. The record evidence supports that the settlement here is not appropriate as not all of the parties agreed to be bound, the facts underlying the unfair labor practice were not considered and the settlement itself is repugnant to the Act.

With respect to the first Alpha Beta factor, the settlement proceedings in this instance were fair and regular. That said, the grievance proceedings were limited to Steps 1 and 2 of the grievance procedure and at no time was the substantive issue considered beyond the alleged untimeliness of the grievance. Further the September 26 grievance settlement was entered after six months of the employees working additional time for no pay in clear derogation of past practice. In negotiation of the settlement at Step 3, the APWU national representative conceded

that the Employer could schedule employees' lunches and breaks, provided that the two 15 minute paid breaks were restored.

With respect to the second Alpha Beta factor, the Charging Party never agreed to be bound by the September 26 grievance settlement and there is no evidence to support that the employees consented to the resolution.

With respect to the third Alpha Beta factor, the record contains no evidence that parties considered the facts underlying the unfair labor practice. The grievance was settled on the regional level, without the involvement of local Union which represents the Toledo VMF employees. (Tr. 51-52) There is nothing in the record that when they settled the grievance, the business agent for the national APWU and the USPS labor relations specialist considered the fact that the employees had worked additional time without compensation.

With respect to the fourth Alpha Beta factor, deferring to the settlement is repugnant to the Act. As explained above, it is clear that Respondent unlawfully imposed the reduced breaks. To restore *status quo ante*, Respondent must rescind its unlawful action and any direct consequence from its unlawful conduct. While the 15 minutes have been restored, the settlement does not provide for any make-whole remedy to unit employees for the significant pecuniary losses they suffered as a result of Respondent's unfair labor practice. See Joint Ex. 1. A settlement providing no back pay for the employees, in light of the unlawfulness of Respondent's conduct, is repugnant to the Act.[5] Moreover, the settlement fails to provide for remedial notice posting, notifying employees of their rights under the Act, reflecting that Respondent will cease and desist from the commission of unfair labor practices and affirmatively remedying the unfair labor practices Respondent has committed. There is no evidence to show that the employees are

[5] See Dunham-Bush, Inc., 264 NLRB 1347, 1349 (1982) (not deferring to arbitration award which did not provide for back pay for unlawful discharge).

even aware of the grievance settlement, nor any accountability for the Respondent's unlawful unilateral change. To permit the Respondent to simply rescind its change without any accountability for its unlawful conduct does nothing to preserve employees' Section 7 rights. This is not merely a situation where the settlement is inadequate because it is not consistent with Board precedent, this settlement fails to let employees know that their terms and conditions cannot be changed without some involvement of their Union.

In sum, the Alpha Beta factors weigh against deferral. Accordingly the General Counsel urges the ALJ to find that deferral to the instant grievance settlement is inappropriate and fails to serve as a substitute for the Board's well-established remedial processes. See River Falls Healthcare, LLC, Cases 18-CA-106196, et. seq., 2014 WL 4090575 (Aug. 19, 2014, unreported) (affirming ALJ's denial of deferral to grievance settlement).

In the alternative, the General Counsel requests that the hearing be reopened so the parties may put forth evidence about what occurred at Step Three in the settlement of the grievance, including whether back pay was considered during the negotiations between the national APWU business agent and the USPS labor relations specialist. While deferral raises a question of law, "since the law frequently turns on the facts … the parties have a right to litigate this question." Dayton Power & Light Co., 267 NLRB 202 (1983) (remanding case for hearing on the merits and the question of deferral). Similarly, here, the record must be developed before deferral is granted. *See*, BCI Coca-Cola Bottling Co. of Los Angeles, 359 NLRB 988 (2013) (remanding the case to the ALJ to hold an evidentiary hearing to consider whether the settlement was repugnant to the Act).

D. The Compliance Specification

General Counsel requests the ALJ to consider the accompanying compliance specification and the parties' stipulation calculating the monetary losses suffered by unit employees given that as of September 28, Respondent restored Toledo VMF employees' fifteen minute paid break periods.

The objective in compliance proceedings is to restore, to the extent feasible, the status quo ante by restoring the circumstances that would have existed had there been no unfair labor practices. Mart's Way Vessels, Inc., 358 NLRB 1350, 1352 (2012).

From March 25 through September 27, Toledo VMF employees provided an additional ten minutes of work time to the Respondent for each day they worked. In order to make employees whole, Respondent must make whole employees for this additional time they were required to work without just compensation. *See,* Healthbridge Management, LLC, 365 NLRB No. 37, *slip op* (Feb. 22, 2017) (making employees who for any loss earnings as a result of unlawful changes on calculating overtime). As noted above, the parties stipulated to the net back pay.

IV. CONCLUSION

On the basis of the entire record, particularly the facts referred to above, and the applicable law, Counsel for the General Counsel request that the Administrative Law Judge issue the attached proposed conclusions of law and proposed order and posting of notice to employees.

Dated at Cleveland, Ohio this 27th day of April 2018.

Respectfully submitted,

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PROOF OF SERVICE

A copy of the foregoing Brief of Counsel for the General Counsel was sent this on April 27, 2018, to the following individual by electronic mail:

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EXHIBIT A

PROPOSED CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101 et seq.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By unilaterally reducing the duration of paid breaks from 15 to 10 minutes without providing the Union with timely notice and/or a meaningful opportunity to bargain, Respondent violated Section 8(a)(1) and (5) of the Act and within the meaning of the PRA.
4. The above unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

EXHIBIT B

PROPOSED ORDER AND PROPOSED POSTING OF NOTICE TO EMPLOYEES

The United States Postal Service, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Reducing the duration of paid breaks;

(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) Cease and desists from reducing the duration of paid breaks;

(b) Pay the individuals listed below the amounts specified after their names, plus accrued interest compounded daily to the date of payment as prescribed in New Horizons, 283 NLRB 1173 (1987), and Kentucky River Medical Center, 356 NLRB 6 (2010), minus tax withholdings required by Federal and State law:

Joseph Basile	$572.93
Tim Bennett	$563.24
Ronald Cowell	$558.94
Michael Fincher	$543.81
Dawn Hamilton	$309.83
Brandon Holly	$924.18
Anthony Horvath	$865.26
Junior Jackson	$544.86
Mark Mabry	$883.57
Ryan Perry	$504.80

Greg Piskula	$812.73
Joel Pitzen	$471.23
Stephen Recknagel	$840.57
Tom Robertson	$168.59
Robin Sanchez	$62.66
Eric Schneider	$607.08
Edwin Smith	$693.47
Rodriguez Strother	$154.62
Eric Weinrich	$624.99
Shelly Wittenauer	$878.54

(c) Post the Proposed Order at all bulletin boards and all places where notices to employees are customarily posted.

(d) Cease and desist from interfering with, restraining, coercing, threatening, retaliating against and interrogating employees because of the exercise of their Section 7 rights.

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with your employer 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 do anything to prevent you from exercising the above rights.

The American Postal Workers Union, Local 170 (Union) is the exclusive bargaining representative of United States Postal Service's employees in the following unit:

> All maintenance employees, motor vehicle employees, postal clerks, mail equipment shops employees, material distribution centers employees, operating services employees, and facilities services employees; excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined by Public Law 91-375, 1201(2), all postal inspection service employees, Article 7 supplemental work force employees, rural letter carriers, mail handlers, and letter carriers.

WE WILL NOT unilaterally change terms and conditions of employment for our unit employees by reducing break periods without giving the Union notice and an opportunity to bargain.

WE WILL, before implementing any changes in wages, hours or other terms and conditions of employment of unit employees, give the Union notice of such changes and an opportunity to bargain over such changes.

WE HAVE, as of September 27, 2017, restored our practice of providing two 15 minute paid breaks to unit employees.

WE WILL make whole all unit employees for any loss of pay that they suffered by our unlawful reduction of paid break periods for unit employees.

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

United States Postal Service
(Employer)

Dated: _____ **By:** _____