

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

**UNITED STATES POSTAL SERVICE**

and

Case 01-CA-176465

**AMERICAN POSTAL WORKERS UNION,  
AFL-CIO, BOSTON METRO AREA LOCAL 100**

**DECISION AND ORDER**

Statement of the Case

On January 25, 2018, the United States Postal Service (the Respondent), American Postal Workers Union, AFL-CIO, Boston Metro Area Local 100 (the Union), and the General Counsel of the National Labor Relations Board entered into a formal settlement stipulation, subject to the Board's 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, as amended, 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.<sup>1</sup>

After careful consideration, we find that it would not effectuate the purposes and policies of the Act to approve the settlement stipulation. As discussed below, we find that the formal settlement stipulation does not satisfy the reasonableness standard set forth in *Independent Stave Co.*, 287 NLRB 740 (1987).<sup>2</sup>

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<sup>1</sup> Chairman Ring is recused and took no part in the consideration of this case.

<sup>2</sup> In *UPMC*, 365 NLRB No. 153, slip op. at 1 (2017), the Board reaffirmed the reasonableness standard in *Independent Stave* for evaluating all settlement agreements, including consent settlement agreements. That standard includes, but is not limited to, examination of the following factors: "(1) whether the charging party(ies), the respondent(s), and any of the individual discriminates have agreed to be bound, and the position taken by the General Counsel regarding the settlement; (2) whether the settlement is reasonable in light of the nature of the violations alleged, the risks inherent in litigation, and the stage of litigation; (3) whether there has been any fraud, coercion or duress by any of the parties in reaching the settlement; and (4) whether the respondent

The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the Act by unreasonably delaying in furnishing relevant and necessary information to the Union, the exclusive collective bargaining representative of the Respondent's clerks and various other employees. The settlement stipulation contains typical remedies, including a cease-and-desist order and a notice posting. It also provides for the automatic entry of a consent court judgment enforcing the Board's order. However, unlike the vast majority of settlements that bind a respondent indefinitely, this settlement stipulation provides that the Respondent can file a motion with the court to seek modification or dissolution of the judgment, if the Respondent can establish that it has "substantially" complied with the judgment for five years.<sup>3</sup>

We acknowledge that the Respondent, the Union, and the General Counsel have voluntarily entered into the stipulation at issue here. We are equally mindful that there is no evidence of fraud, coercion, or duress. Therefore, *Independent Stave* factors 1 and 3 would favor approval of the settlement stipulation. However, factors 2 and 4 do not favor approval. While the parties reached agreement before any testimonial evidence was taken, thus sparing the expense and uncertainty of further adversarial proceedings, we find that the provision allowing the Respondent to seek modification or dissolution of a judgment enforcing the Board's order upon establishing substantial compliance for five years is not reasonable in light of the nature of the violations. The Respondent has a well-documented history of refusing to respond and delaying in responding to relevant information requests, which are the very violations that the parties seek to resolve by this settlement stipulation.<sup>4</sup> Indeed, the Board has issued numerous orders against the Respondent for such information request violations, resulting in judgments in every circuit court,<sup>5</sup> including three for violations involving this

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has engaged in a history of violations of the Act or has breached previous settlement agreements resolving unfair labor practice disputes." *Independent Stave*, 287 NLRB at 743.

<sup>3</sup> The settlement contains the following provision: "To the extent the Board applies for enforcement of its order with the United States Court of Appeals, the parties agree that Respondent may file a motion for modification or dissolution of paragraph VI of the Order [sic] to the extent that Respondent can establish that it has substantially complied with the terms of that paragraph for five years after entry of the Board's [sic] judgment enforcing the Order." Settlement Paragraph VI.

<sup>4</sup> See, e.g., *Postal Service*, 339 NLRB 1162 (2003) (citing 11 locations and finding the Respondent "has a [two-decade long] history of violating Section 8(a)(5) and (1) by failing to provide [and delaying in providing] requested relevant information at many of its locations"); *Postal Service*, 2012 WL 12068791 (unpub. Board Order dated Aug. 9, 2012), adopting in the absence of exceptions JD-34-12 (June 28, 2012) (collecting cases at fns. 1 and 2).

<sup>5</sup> See, e.g., a sampling of Court of Appeals decisions by circuit: *Postal Service*, Cases 01-CA-158352 et al., enfd. No. 16-2074 (1st Cir. Sep. 22, 2016); *Postal Service*, Case 34-CA-092726, enfd. No. 14-1777 (2d Cir. Jul. 10, 2014); *Postal Service*, Case 04-CA-

Union.<sup>6</sup> To allow for modification or dissolution after five years would incentivize compliance only for that period, leaving the Board with no recourse to contempt proceedings should this recidivist Respondent violate the Act in a similar fashion after the end of five years.

Further, although a consent decree, like any other final judgment or order, is subject to modification pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, the legal standard for modification or dissolution under Rule 60(b) requires more than substantial compliance over a five year period, as provided by the proposed settlement stipulation. See *Rufo v. Inmates of Suffolk County Jail, et al.*, 502 U.S. 367 (1992); *NLRB v. International Ass'n of Bridge, Structural, Ornamental and Reinforcing Ironworkers Union, Local 433*, 891 F.3d 1182, 1186 (9th Cir. 2018) (applying *Rufo*). On balance, we find that this settlement stipulation, with the provision for potential modification or dissolution of a court judgment enforcing the Board's order upon a showing of substantial compliance, is not reasonable in light of the nature of the violations alleged.

As the Board stated in *Pottsville Bleaching and Dyeing Co.*, 301 NLRB 1095 (1991) (citing *Independent Stave*, 287 NLRB at 741, and cases cited therein), “[t]he Board has a longstanding policy of encouraging the voluntary settlement of labor disputes. Settlement is not an end in and of itself, however. Of primary importance is the broad authority vested in the Board under Section 10(c) of the Act to prevent and remedy unfair labor practices.” In our opinion, enforcement of the Act would be weakened if the Board anticipatorily allowed for the modification or dissolution of the enforcement of its orders. Cf. *Wirtz v. Graham Transfer & Storage Co.*, 322 F.2d 650, 653 (5th Cir. 1963) (“[i]f a practice were made of vacating an injunction on a defendant’s promise to be good, enforcement of the [Fair Labor Standards] Act would be weakened and an undue burden of repeated investigation would be placed on enforcement officials, eventually increasing the burden on the courts”).

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035491, enfd. No. 13-3012 (3rd Cir. Dec. 3, 2013); *Postal Service*, Case 10-CA-156616, enfd. No. 16-1784 (4th Cir. Jul. 29, 2016); *Postal Service*, Case 15-CA-093761, enfd. No. 13-60306 (5th Cir. Jun. 21, 2013); *Postal Service*, Case 07-CA-146385, enfd. No. 16-2762 (6th Cir. May 10, 2017); *Postal Service*, Cases 13-CA-160069 et al., enfd. No. 16-3797 (7th Cir. Jan. 3, 2017); *Postal Service*, Cases 14-CA-030049 et al., enfd. No. 11-3684 (8th Cir. Feb. 6, 2012); *Postal Service*, Case 20-CA-065948, enfd. No. 14-70118 (9th Cir. Feb. 26, 2014); *Postal Service*, Case 28-CA-169508, enfd. No. 16-9554 (10th Cir. Nov. 8, 2016); *Postal Service*, Cases 10-CA-158384 et al., enfd. No. 16-16543 (11th Cir. Nov. 10, 2016); *Postal Service*, Case 05-CA-119507, enfd. Nos. 16-1313, 16-1383 (D.C. Cir. Jul. 17, 2017).

<sup>6</sup> See *Postal Service*, Case 01-CA-096790, enfd. No. 14-1218 (1st Cir. Apr. 15, 2014) (APWU, Local 100 and APWU, Local 2461); *Postal Service*, Case 01-CA-132315, enfd. No. 15-1973 (1st Cir. Oct. 13, 2015) (APWU, Local 100); and *Postal Service*, Case 01-CA-144694, enfd. No. 16-1989 (1st Cir. Sep. 8, 2016) (APWU, Local 100).

Accordingly, we reject the settlement stipulation, and we remand the proceeding to the Regional Director for further processing, without prejudice to further settlement negotiations consistent with this Order.

Dated, Washington, D.C., July 27, 2018

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Lauren McFerran, Member

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Marvin E. Kaplan, Member

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William J. Emanuel, Member

(SEAL)

**NATIONAL LABOR RELATIONS BOARD**