

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 28**

**UNITED STATES POSTAL SERVICE**

**and**

**Case 28-CA-236666**

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

**GENERAL COUNSEL'S BRIEF  
TO THE ADMINISTRATIVE LAW JUDGE**

Respectfully submitted,

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## I. STATEMENT OF THE CASE

This case was heard before Administrative Law Judge Amita B. Tracy (the ALJ) on October 16, 2019<sup>1</sup> pursuant to a Complaint and Notice of Hearing (the Complaint) issued on August 27. GCX 1(c).<sup>2</sup> The Complaint is based on a charge filed by National Association of Letter Carriers, Sunshine Branch 504, AFL-CIO (the Union) on February 22. GCX 1(a). The Complaint alleges that United States Postal Service (the Respondent) violated Section 8(a)(1) and (5) of the Act by failing and refusing to furnish the Union with requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective bargaining representative of the Unit.<sup>3</sup> GCX 1(c).

On September 10, Respondent filed its Answer to Complaint and Notice of Hearing (the Answer) admitting that the Union requested the information at issue but nonetheless denying the information is relevant and necessary and denying that it failed and refused to furnish the requested information. GCX 1(e). On October 9, the General Counsel issued a Notice of Intent to Amend Complaint and Notice of Hearing to clarify the date the Union submitted its information request to Respondent. GCX 1(f). At the hearing, the ALJ granted the General Counsel's Motion to Amend Complaint. GCX 2; Tr. 6:19-7:12.

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<sup>1</sup> All subsequent dates are in 2019.

<sup>2</sup> JX means Joint Exhibit followed by the exhibit number; GCX means General Counsel Exhibit followed by the exhibit number; RX means Respondent's exhibit followed by the exhibit number; "Tr." refers to transcript page followed by line or lines of the transcript of the unfair labor practice hearing.

<sup>3</sup> The Union is the exclusive bargaining representative of city letter carriers and city carrier assistants. JX 1 at 1 16-17, 28, 134-147.

## **II. STATEMENT OF THE FACTS**

### **A. Background**

Respondent provides postal services for the United States and, in Albuquerque, New Mexico, Respondent operates a postal facility located at 1050 Sunset Road SW (Respondent's Five Points Station). GCX 1 at paragraph 2(a); 39 U.S.C. § 101. The Union is the longstanding exclusive bargaining representative of city letter carriers and city carrier assistants (CCA).<sup>4</sup> The parties' grievance and arbitration procedure is described in Article 15 of the parties' CBA. The CBA defines a grievance "as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment." The procedures require that at the Informal Step A level, the parties meet on a grievance within fourteen days after a contractual violation occurs. If the parties cannot reach an agreement at Informal Step A, the Union has seven days to advance the grievance to Formal Step A. Once a grievance has been appealed to Formal Step A, the parties have seven days to meet on it before the grievance becomes untimely. If the parties are unable to resolve the grievance at Formal Step A, the Union then has seven days to appeal the grievance to Step B. At Step B, the parties have fourteen days to meet on the grievance. If the parties still are not able to reach an agreement at Step B, they may send the grievance to arbitration. Each party has an obligation to fully develop its case before the grievance is advanced to Step B. If the Union wishes to add information to the Formal Step A record, it must do so in writing contemporaneously with its appeal to Step B. JX 1 at 67-70. Finally, in Albuquerque,

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<sup>4</sup> The Union is affiliated with the American Postal Workers Union, AFL-CIO (the National Union) which is the nationally recognized representative of the bargaining unit under the terms of the collective bargaining agreement (CBA). The National Union bargained for the CBA, which is a national agreement, enforced by the local unions affiliated with the National Union. JX 1 at 1; GCX 1 (c) at paragraph 3, paragraph 5.

management is supposed to provide the Union with requested documents 3 days from the date of the request. Tr. 69:16-18.

### **B. The Union's Request for Information**

On the morning of February 9, City Carrier Assistant Nastaran Ghazai (Carrier Ghazai), who is a member of bargaining unit, was involved in a motor vehicle accident. GCX 3; JX1 at 16-17, 28, 134-147; Tr. 44:11-25. At about Noon, Station Manager William Holtz (Manager Holtz) and Supervisor Customer Service Michael Vigil (Supervisor Vigil) visited the accident scene to investigate. Manager Holtz took photographs of the scene on his smart phone,<sup>5</sup> and Supervisor Vigil prepared an Accident Investigation Worksheet, PS Form 1700. (the Worksheet). GCX 3; Tr. 28:19-11; Tr. 45:1-46:22; 67:23-68-14. The Worksheet notes that photos were taken at the scene. GCX 3 at 1.

At about 1:30 p.m., management called in Carrier Ghazai for an investigatory “fact finding” meeting at the supervisor’s office at Five Points Station where management questioned her about the accident. Steward Charlotte Toledo (Steward Toledo) and Union President Angel Martinez (President Martinez) were present representing Carrier Ghazai, while Supervisor Vigil was present for management and conducted the questioning. Tr. 46:19-48:25, 69:3-14, 75:19-76:16; 86:7-87:3.

At about 1:45 p.m., Respondent placed Carrier Ghazai on “emergency placement in an off-duty status” pursuant to Article 16.7 of the parties’ CBA.<sup>6</sup> GCX 4; JX 1 at 79-83; Tr. 69:3-14. Supervisor Vigil claims that he did not rely upon the photographs as part of his decision making. Tr. 58:21-25. However, Supervisor Vigil was not credible in his testimony.

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<sup>5</sup> Manager Holtz’ phone is capable of emailing photographs via email as attachments. Tr. 29:12-30:10.

<sup>6</sup> While in an off-duty status, a carrier cannot return to their route or carry mail. Tr. 49:8-10.

At the outset, Supervisor Vigil testified that “So with this, we did not have any photos at any time.” Realizing that his answer was untruthful, Supervisor Vigil backtracked, stating “I didn’t have the pictures at the time.” Tr. 42:22-43:14. Finally, on direct examination by Respondent’s counsel, Supervisor Vigil finally admitted that he based his decision on the Accident Worksheet, which as described above notes that photos were taken of the accident scene. Tr. 64:20-21.<sup>7</sup>

At about 2:00 p.m., Steward Toledo handed a request for information form to Supervisor Vigil and both signed it. Tr. 77:1-19; 50:11-16. Steward Toledo requested “All materials relied upon and to justify placing Nastaran Ghazai on 16.7.” Notably, the information request form also contains a clarification that the Union was seeking “a copy of any and all documents, statements, records, audio/video tapes, photographs, or other information learned, obtained, developed or relied upon by the Postal Service in the issuance of 16.7 dated 2/9/19, involving employee Nastaran Ghazai.” The information request form also notes that the Union was requesting the information “to investigate a possible grievance.” GCX 5. At 3:56 p.m., Operations Support Specialist Frederick Hutchinson (Specialist Hutchinson) emails Supervisor Vigil a photograph of the accident scene location and GPS records. GCX 6; Tr. 51:11-52:18. At about 5 p.m., Supervisor Vigil hands Steward Toledo the Worksheet, a RIMS<sup>8</sup> report, and the letter placing Carrier Ghazai in off-duty status. Despite management obtaining photos during its investigation, Supervisor Vigil did not give Steward Toledo any photos. Tr. 77:20-78:4, 57:12:15, 69:19-22.

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<sup>7</sup> Specifically, Supervisor Vigil stated: “I based my putting her out on the fact-finding in the 1700.” Tr. 64:20-21. PS 1700 refers to the Accident Worksheet. GCX 3.

<sup>8</sup> RIMS reports contain vehicle movement data. JX 2 at 10-16; Tr. 57:24-58-2, 63:5-24.

Without the benefit of the photographs, the Union filed a grievance over Respondent placing Carrier Ghazai in off-duty status. Despite not providing the Union with the requested photographs, and disregarding the practice of providing requested documents within three days of the Union's request, Supervisor Vigil denied the grievance at Informal Step A. Tr. 52:19-53:14, 87:18-90-17; GCX 8. Notably, management did not tell the Union that management did not rely upon photographs to place Carrier Ghazai in off-duty status. Tr. 76:21-25, 91:1-23. The Union has never received the photographs. Tr. 91:24-25. The Union needs the photographs to investigate Carrier Ghazai's accident and to see if it was feasible to return her to work. Tr. 80:16-21, 92:1-11.

### **III. ANALYSIS**

#### **A. Legal Standard**

It is well established that “[a]n employer has the statutory obligation to provide, on request, relevant information that the union needs to the proper performance of its duties as collective bargaining representative.” *Disneyland Park*, 350 NLRB 1256, 1257 (2007) citing *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152 (1956); *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967); and *Detroit Edison Co. v. NLRB*, 440 U.S. 301 (1979). The duty to furnish information is not limited to the initial bargaining period and carries through the term of the parties' collective-bargaining agreement. *Acme Industrial Co.*, above. at 435-36.

Relevance is determined by a liberally broad “discovery-type standard.” *Acme Industrial Co.*, above at 437; *Disneyland*, above at 1258. A union's burden is “not an exceptionally heavy one.” *SBC Midwest*, 346 NLRB 62, 64 (2005). Information about terms and conditions of employment of employees represented by a union is presumptively relevant and necessary and is required to be produced. *Ohio Power Co.*, 216 NLRB 987 (1975), *enfd.*

531 F.2d 1381 (6th Cir. 1976). Likewise, information that would help the union determine how to proceed with a grievance or possible grievance is considered relevant even if no grievance currently exists or if the information requested would clearly dispose of the grievance. *Ohio Power Co.*, above at 991; See also, *Curtiss Wright Corp. v. NLRB*, 347 F.2d 61 (3rd Cir. 1965).

“An employer must timely respond to a union's request seeking relevant information even when the employer believes it has grounds for not providing the information.” *Pub. Serv. Co. of New Mexico*, 364 NLRB No. 86, slip op. at \*6 (2016) citing *Regency Service Carts, Inc.*, 345 NLRB 671, 673 (2005) (“When a union makes a request for relevant information, the employer has a duty to supply the information in a timely fashion or to adequately explain why the information will not be furnished”); *Kroger Co.*, 226 NLRB 512, 513-514 (1976)). See also *Spurlino Materials, LLC*, 353 NLRB 1198, 1200 (2010), remanded in light of *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010), 2010 WL 4069478 (7th Cir. 2010), *affd. and incorporated by reference* 355 NLRB 409 (2010), *enfd.* 645 F.3d 870 (7th Cir. 2011).

If an employer refuses to provide the requested information, the employer has a duty to adequately explain why it will not furnish the requesting labor organization with the requested information. See *Regency Service Carts, Inc.*, above. See also, *Spurlino Materials, LLC*, above at 1200. In evaluating whether an employer has adequately explained why information will not be provided, the Board looks at the totality of the circumstances. *Spurlino Materials, LLC*, above at 1200.

Moreover, the employer has a comparable obligation to timely inform the requesting labor organization that requested information does not exist. *Postal Service*, 332 NLRB 635, 638-39, 642 (2000). Likewise, if an employer contends that a request is unduly burdensome it

has an obligation to inform the union and work towards a mutually agreeable accommodation within a reasonable time. *Mission Foods*, 345 NLRB 788, 789 (2005). The same is true where the employer has concerns about privacy or confidentiality with respect to the requested information. See *Finley Hospital*, 362 NLRB 915, 922-23 (2015), *enf. denied on other grounds* 827 F.3d 720 (8th Cir. 2016); *National Steel Corp.*, 335 NLRB 747, 748 (2001), *enfd.* 324 F.3d 928 (7th Cir. 2003).

The burden to justify a failure to produce presumptively relevant information is on the non-requester, who must rebut the presumption of relevance. *Contract Carriers Corp.*, 339 NLRB 851, 858 (2003). That is, the employer has the burden of showing irrelevance. *Country Ford Trucks, Inc. v. NLRB*, 229 F.3d 1184, 1191 (D.C. Cir. 2000); *NLRB v. Associated General Contractors of California, Inc.*, 633 F.2d 766, 770 n. 4a (9th Cir. 1980). The Board will presume that union requests for presumptively relevant information are made in good faith, until the non-requestor can demonstrate otherwise. *Columbia Univ.*, 298 NLRB 941, 945 (1990).

**B. Respondent Violated Section 8(a)(1) and (5) of the Act by Failing to Furnish the Union with the Requested Information**

Here, applying the broad discovery like standard enunciated in *Acme*, it is clear that photographs obtained during the investigation of Carrier Ghazai's accident are relevant and necessary for the Union's performance of its representational duties. As the exclusive bargaining representatives of city carrier assistants, the Union is responsible for investigating and processing grievances. Photographs of the accident scene would aid the Union in its investigation.<sup>9</sup> The Board has found violations of Section 8(a)(5) of the Act by employers who failed to provide similar information. See e.g., *Albertsons, Inc.*, 351 NLRB 254, 325

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<sup>9</sup> Supervisor Vigil testified that management "can use pictures to assist with discipline." Tr. 28:9-10.

(2007). Moreover, the Union sought the information to see if it was feasible to return Carrier Ghazai to work. Tr. 80:16-21, 92:1-11. Thus, as the Union sought the information to determine whether to file a grievance, such information is presumptively relevant. *Acme*, above at 437; *In Re U.S.P.S.*, 337 NLRB 820, 822 (2002); *Leland Stanford Junior Univ.*, 307 NLRB 75, 80 (1992); *Knappton Mar. Corp.*, 292 NLRB 236 (1988). Respondent has not overcome the presumption that the information the Union requested is relevant.

Furthermore, Respondent never has raised an inability to produce the requested documents, has not raised a claim of confidentiality, and has not notified the Union that it would not produce these documents, as required under *Regency Service Carts Inc.*, 345 NLRB at 673 (employer duty to adequately explain why requested information not provided). Rather, consistent with its status as a recidivist violator of the Act, Respondent simply failed to furnish the Union with the requested information. See *Postal Service*, 364 NLRB No. 27 (2016); *Postal Service*, 363 NLRB No. 11 (2015); *Postal Service*, 362 NLRB 598 (2015); *Postal Service*, 361 NLRB 8 (2014); *Postal Service*, 360 NLRB 762 (2014); *Postal Service*, 360 NLRB 181 (2014); *Postal Service*, 360 NLRB 160 (2014); *Postal Service*, 354 NLRB 412 (2009); *Postal Service*, 345 NLRB 409 (2005); *Postal Service*, 337 NLRB 40 820 (2002).

Respondent contends that decision-maker did not see photographs until three days after they were taken, and did not rely upon them to place Carrier Ghazai on 16.7. Tr. 11:13-24; 58:1-59:6. Respondent also claims that photographs were taken for tort claims purposes. Tr. 26:4-25, 28:6-10, 56:1-12, 59:13-60-7, RX 2. These assertions are merely a belated attempt by Respondent to escape the consequences of failing to provide the Union with the requested information.

First, Respondent's argument is refuted by its own witness. Supervisor Vigil testified that his decision to place Carrier Ghazai on off-duty status was based on the PS Form 1700 Accident Worksheet, which as described above, notes that photos were taken of the accident scene. Tr. 64:20-21. Moreover, Specialist Hutchinson emailed Supervisor Vigil a photograph of the accident scene location on February 9, well before February 12, the date Respondent claims Supervisor Vigil received any photograph.

Second, the information request is not limited to information that Respondent "relied upon" to place Carrier Ghazai in off-duty status. Rather, the form also requests "all materials" that "justify placing Nastaran Ghazai on 16.7." As admitted by Supervisor Vigil, management uses pictures to assist with discipline.<sup>10</sup> Photos of an accident scene, which Respondent claims Carrier Ghazai fled after causing damage to a fence, are certainly responsive to a request for "materials" that "justify" Respondent placing her on off-duty status pursuant to Article 16.7 of the CBA. A camera is an unbiased observer and its photographs bear witness to events long after human memories fade.

Finally, the information request form clearly states that the Union was seeking "*photographs, or other information learned, obtained, developed or relied upon by the Postal Service in the issuance of 16.7 dated 2/9/19, involving [Carrier Ghazai].*" GCX 5. As Supervisor Vigil filled out the Accident Worksheet at the scene, which he admits he relied upon to place Carrier Ghazai in an off-duty status, and Manager Holtz took photographs of the scene, Respondent obtained the photographs during its investigation. The request is not

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<sup>10</sup> Supervisor Vigil claims that placing a carrier on an off-duty status, without pay, pursuant to Article 16.7 of the CBA is not discipline. Tr. 48 :22-49:2. However, Article 16, under which 16.7 falls under, is labeled "Discipline Procedure."

limited to what Supervisor Vigil obtained; rather it the request is directed to what the “Postal Service” obtained. Thus, Respondent’s defenses lack merit.

Therefore, as Respondent failed to furnish the Union with requested information that is relevant and necessary to its performance of its representational duties, Respondent violated Section 8(a)(1) and (5).

#### **IV. CONCLUSION**

Based on the foregoing reasons, and the credible record evidence, the General Counsel respectfully submits that Respondent has violated Section 8(a)(1) and (5) of the Act as alleged in the Complaint by failing and refusing to furnish the Union with information that is relevant and necessary for its representational duties. The ALJ should so find and recommend the Board fashion an appropriate remedy, including posting the Notice to Employees attached as Appendix A at its Albuquerque, New Mexico facilities. The General Counsel further seeks all other relief as may be just and proper to remedy the alleged unfair labor practices.

Dated at Albuquerque, New Mexico, this 20<sup>th</sup> day of November 2019.

Respectfully submitted,

/s/ Rodolfo Martinez

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## CERTIFICATE OF SERVICE

I hereby certify that the **GENERAL COUNSEL'S BRIEF TO THE ADMINISTRATIVE LAW JUDGE** in *United States Postal Service*, Case 28-CA-236666 was served via E-Gov, E-Filing, and E-Mail, on this 20<sup>th</sup> day of November 2019, on the following:

### **Via E-Gov, E-Filing:**

Honorable Amita B. Tracy  
Administrative Law Judge  
NLRB Division of Judges  
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**APPENDIX A**

**(To be printed and posted on official Board notice form)**

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative 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 in good faith with the **National Association of Letter Carriers, Sunshine Branch 504, AFL-CIO (Union)** as the exclusive collective-bargaining representative of our employees in the following appropriate unit (Unit):

[A]ll employees in the bargaining unit for which the National Association of Letter Carriers, AFL-CIO, has been recognized and certified at the national level, excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1201(2), all Postal Inspection Service Employees, employees in the supplemental work force as defined in Article 7, Rural Letter Carriers, Mail handlers, Maintenance Employees, Special Delivery Messengers, Motor Vehicle Employees and Postal Clerks.

**WE WILL NOT** fail or refuse to provide the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the Unit employees.

**WE WILL NOT** in any like or related manner interfere with your rights under Section 7 of the Act.

**WE WILL** provide the Union with the following information requested in writing on February 9, 2019: “all materials relied upon and to justify placing Nastaran Ghazai on 16.7”, including the photos taken at the scene of her alleged motor vehicle collision as noted in the accident report.

**UNITED STATES POSTAL SERVICE**

\_\_\_\_\_  
(Employer)

**Dated:** \_\_\_\_\_

**By:** \_\_\_\_\_  
(Representative) (Title)

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*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy 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 or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/tty> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.*

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**Telephone:** (602)640-2160  
**Hours of Operation:** 8:15 a.m. to 4:45 p.m.

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**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.