

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH

UNITED STATES POSTAL SERVICE

and

Case 28–CA–236666

NATIONAL ASSOCIATION OF LETTER
CARRIERS, SUNSHINE BRANCH 504,
AFL–CIO

Rodolfo Martinez, Esq., for the General Counsel.
Dallas G. Kingsbury, Esq., for Respondent.

DECISION

STATEMENT OF THE CASE

AMITA BAMAN TRACY, Administrative Law Judge. This case was tried in Albuquerque, New Mexico, on October 16, 2019. The National Association of Letter Carriers, Sunshine Branch 504, AFL–CIO (Charging Party or Union) filed the charge on February 22, 2019, and the General Counsel issued the complaint on August 27, 2019.¹ The United States Postal Service (Respondent or USPS) filed a timely answer denying all material allegations.

The amended complaint alleges that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by failing to provide the Union with requested information.² As set forth below, I recommend dismissal of this complaint.

¹ All dates are in 2019 unless otherwise noted.

² At the hearing, I granted counsel for the General Counsel’s motion to amend the year of the information request in the complaint (GC Exh. 2).

FINDINGS OF FACT

I. JURISDICTION

5 Respondent provides postal services for the United States, and operates a facility located at 1050 Sunset Road SW, Albuquerque, New Mexico (the Five Points facility). The National Labor Relations Board (the Board) has jurisdiction over this matter under Section 1209 of the Postal Reorganization Act of 1970 (PRA). The National Association of Letter Carriers, AFL–CIO (the National Union) and the Union are labor organizations within Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICE

A. *The Parties' Collective-Bargaining Agreement*

15 Since at least November 21, 2006, and at all material times, based on Section 9(a) of the Act and Section 10(a) of the PRA, Respondent has recognized the National Union as the exclusive collective-bargaining representative of its employees, as described in article 1, Section 1 through 4 of the parties' most recent collective-bargaining agreement (the National Agreement) (Jt. Exh. 1). The employees of Respondent, as described in Article 1, section 1 through 4 of the National Agreement constitute a unit (the unit) appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since at least about November 21, 2006, based on Section 9(a) of the Act and Section 10(a) of the PRA, the National Union has been the exclusive collective-bargaining representative of the unit. The National Union designated the Union to conduct certain of its functions as the exclusive collective-bargaining representative of the bargaining unit, including, but not limited to, the filing and processing of grievances under the most recent National Agreement, which was effective from January 10, 25 2013, until May 20, 2016, at Respondent's Five Points facility.

B. *Background: The February 9 Events Concerning Employee Nastaran Ghazaei*

35 On Saturday, February 9, Five Points facility supervisor for customer service Mike Vigil (Vigil)³ asked William Holtz (Holtz), station manager,⁴ to pick up city carrier assistant (CCA) Nastaran Ghazaei (Ghazaei) and bring her back to the Five Points facility because she had allegedly been involved in a vehicular accident (Tr. 29, 67-68).⁵ Vigil then went to the scene of the accident and began an investigation by interviewing the customer who alleged that Ghazaei hit his fence with Respondent's vehicle (Tr. 29, 45, 68). At the location of the accident, Vigil began completing the accident investigation worksheet, which is known as a "PS form 1700"

³ Respondent admits, and I find that Vigil is a supervisor and agent within the meaning of Sec. 2(11) and (13) of the Act.

⁴ Respondent admits, and I find that Holtz is a supervisor and agent within the meaning of Sec. 2(11) and (13) of the Act.

⁵ After a vehicular accident occurs, the involved employee may not drive themselves back to the facility (Tr. 29).

(Tr. 45–46, 68; GC Exh. 3). Meanwhile, Holtz also left the Five Points facility to pick up Ghazaei at the accident scene.

5 Before Holtz drove Ghazaei back to the Five Points facility, he took pictures of the accident with his cell phone per Vigil’s instructions to him (Tr. 29, 46). After Holtz drove Ghazaei back to the Five Points facility, he went home (Tr. 29). Holtz sent the photos he took on February 9 to his email on Monday, February 11 in the late afternoon, and then sent the photos to Vigil’s email that same day (Tr. 29, 36; R. Exh. 1). Vigil did not open Holtz’ email until Tuesday morning, February 12, and thus, did not see any of the photos until that time (Tr. 43).

10 Upon returning to the Five Points facility around noon, Vigil continued his investigation of the alleged accident involving Ghazaei (Tr. 45–46, 68). Vigil conducted an investigatory interview of Ghazaei, known as a “fact finding,” in the presence of Union Representatives Angel Martinez (Martinez) and Charlotte Toledo (Toledo) (Tr. 47, 68–69, 75, 86).⁶ During this interview, the subject of photos from the accident scene did not arise (Tr. 76, 87). After the interview, at approximately 1:45 p.m., Vigil decided to place Ghazaei on a 16.7, which is an emergency placement of an employee in off-duty status as set forth in article 16.7 of the National Agreement (Tr. 48–49; GC Exh. 4).⁷ The emergency placement letter noted that Ghazaei could file a grievance under article 15 of the National Agreement within 14 days of receipt of the letter.

20 After Vigil placed Ghazaei on off-duty status per 16.7, at approximately 2 p.m., the Union handed Vigil a written request for information (Tr. 49–50, 77; GC Exh. 5).

25 C. *The Request for Information*

The Union’s request for information stated:

30 Pursuant to Article 17 and 31 of the National Agreement, I [steward Charlotte Toledo] am requesting the following information to investigate a possible grievance for Letter Carrier(s): Nastaran Ghazai [sic] Regarding Art 16.7. All materials relied upon and to justify placing Nastaran Ghazai [sic] on 16.7. This information is readily available and should be provide [sic] without delay [....] Also request a copy of any and all documents, statements, records, reports, audio/video tapes, photographs, or other information learned, obtained, developed or relied upon by the Postal Service in the issuance of the 16.7 dated 2/9/19, involving employee Nastaran Ghazai [sic].

35 (GC Exh. 5).⁸

⁶ Holtz did not attend the fact finding (Tr. 47).

⁷ National Agreement Article 16, discipline procedure, section 7, emergency procedure (16.7) states, “An employee may be placed on an off-duty status (without pay) by [Respondent], but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules or regulations [...].”

⁸ The Union filed a grievance on behalf of Ghazaei (Tr. 53; GC Exh. 7). Vigil denied the grievance at informal step B (Tr. 53). However, the grievance was later resolved in March (GC Exh. 8).

Thereafter, at 3:56 p.m., Vigil received an email from operation support specialist Fredrick Hutchinson (Hutchinson) regarding Ghazaei's alleged accident (Tr. 62–63; GC Exh. 6). In this email, Hutchinson included the RIMS report which is a spreadsheet containing Ghazaei's second-by-second GPS location coordinates via scanner signal on February 9 as well as a general photo of the address where the alleged accident occurred (Tr. 52, 63).

At approximately 5 p.m., Vigil responded to the Union's request for information by providing Toledo with Respondent's completed accident investigation worksheet, the fact-finding investigative interview notes, the RIMS report, and the 16.7 document given to Ghazaei from Vigil on February 9 at 1:45 p.m. (Tr. 77–78).⁹ Respondent's coversheet for the request for information indicated that its response was complete as Vigil provided the Union all the information he relied upon to place Ghazaei on the 16.7 (Tr. 60; Jt. Exh. 2). Vigil's accident investigation worksheet did indicate that photos were taken of the accident, but Vigil testified that he did not rely upon the photos since he did not see them until 3 days later (Tr. 58-59).¹⁰ Toledo signed receipt of the documents provided per the Union's information request, and Toledo did not object to the photos not being included in Respondent's response (Tr. 81).

Holtz and Vigil testified, uncontradicted, that photographs at an accident scene are always taken (Tr. 26, 56). These photographs are taken primarily for tort claims filed by customers whose property has been damaged by Respondent's employees (Tr. 26–28, 35, 42). These photographs are entered into the employee health system (EHS) since all accidents must be input into the EHS (Tr. 26, 35–36, 56). The photographs may also be used for vehicle maintenance and to support disciplinary action taken against an employee (Tr. 26–28, 35). Holtz testified that he sent the photos he took to Vigil because Vigil was the supervisor who entered the accident into the EHS (Tr. 35–36).¹¹

⁹ The RIMS report, which Vigil reviewed after he placed Ghazaei on the 16.7, confirmed that Ghazaei was at the scene of the accident at a certain time, left the scene, and returned later, as reported by the customer (Tr. 57–59, 64).

¹⁰ Counsel for the General Counsel argues that Vigil incredibly testified that he did not rely upon Holtz's photos of the accident scene (GC Br. at 3--). I disagree. To the contrary, the documentary evidence supports Holtz and Vigil's testimony. Holtz' emails with the photos to Vigil were not opened by Vigil until Tuesday, February 12—3 days after he placed Ghazaei on the 16.7. Furthermore, Holtz testified, without dispute, that he left the Five Points facility after dropping off Ghazaei and did not return until Monday, February 11 when he sent the photos from his phone to his email and then to Vigil. Counsel for the General Counsel argues that Vigil should be discredited because of certain statements he made during his testimony; however, these statements were taken out of context and do not discredit Vigil's testimony. In sum, I credit Vigil's testimony that he did not rely upon the photos when deciding to place Ghazaei on the 16.7.

¹¹ On Tuesday, February 12, Vigil received an email from Respondent's tort claims adjuster asking that the photos of the accident needed to be emailed to a specific email address (Tr. 59–60; R Exh. 2).

After placing Ghazaei on the 16.7, the Union never informed Respondent that the photos were missing from the response they received from Respondent nor did the Union make a separate information request for the photos (Tr. 81, 95). Accordingly, Respondent never refused to provide the accident scene photos. Toledo and Martinez testified at the hearing that the Union needed the pictures to investigate what happened at the accident scene (Tr. 80, 92). The Union subsequently filed a grievance on February 21 regarding Respondent’s placement of Ghazaei on the 16.7, and an unfair labor practice charge on February 22 alleging that Respondent failed to provide the photos (Tr. 53, 71).¹²

III. LEGAL ANALYSIS

Section 8(a)(5) provides it is an unfair labor practice for an employer “to refuse to bargain collectively with the representatives of its employees.” An employer’s duty to bargain includes a duty to provide the union with requested information that is relevant and necessary to contract administration, grievance adjustment and other representational duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967); *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152–153 (1956). If the information sought relates to the processing of a grievance or potential grievance, the legal test is whether the information is relevant to the grievance and the determination of relevancy is made based on a liberal, discovery type of standard. *Acme*, 385 U.S. at 437.

The Union sought all information Respondent relied upon when placing Ghazaei on the 16.7. This request included “any and all documents, statements, records, reports, audio/video tapes, photographs, or other information learned, obtained, developed or relied upon by the Postal Service in the issuance of the 16.7 dated 2/9/19.” Vigil, on behalf of Respondent, quickly provided all the information he relied upon when placing Ghazaei on the 16.7. This included the accident report, interview notes and timing of Ghazaei’s location on the morning of February 9. Vigil did not include the accident scene photos, although he checked off on the accident investigation worksheet that photos had been taken. Vigil credibly testified that he did not rely upon these photos, did not see these photos until 3 days after he placed Ghazaei on the 16.7, and had these photos taken for tort claims purposes only. Despite Vigil’s credited testimony, these accident scene photos would be presumptively necessary as they would assist the Union in evaluating the merits of a grievance, regardless of whether the photos were relied upon in making the decision. See *Acme*, supra at 437–438 (employer’s duty to furnish requested information constitutes obligation standing “in aid of the arbitral process,” in that it permits a union to evaluate grievances and sift out unmeritorious claims). The General Counsel argues that since Respondent did not provide the accident scene photos, Respondent violated the Act. However, under the specific circumstances of this matter, I cannot agree for a few reasons.

¹² As a follow-up, the witnesses all testified about various conversations about the accident scene photos which took place after the unfair labor practice in this matter was filed (Tr. 71, 80, 91). From their collective testimony, it appears that Respondent attempted to resolve the unfair labor practice by offering to provide the accident scene photos while the Union attempted to resolve the unfair labor practice and grievance by requesting that Ghazaei be made whole. Regardless, it is unnecessary to reconcile these various conversations as these conversations have no bearing on the issue to be resolved in this complaint.

Significantly, Respondent never refused to provide the accident scene photos. Respondent provided all the information Vigil relied upon when placing Ghazaei on the 16.7. The photos were not included since Vigil did not see or rely upon the photos prior to placing Ghazaei on the 16.7. Moreover, all the witnesses agreed that the subject of the missing accident scene photos from the response to the information request never arose during their conversations until after the unfair labor practice was filed. The Union could have cleared up any misunderstanding as to what it still needed by reiterating its request or by making a specific request to Respondent for the accident scene photos. See *LTD Ceramics, Inc.*, 341 NLRB 86, 87–88 (2004), petition for review denied 185 Fed.Appx. 581 (9th Cir. 2006) (finding that the employer did not refuse to provide information in violation of the Act, in part because the employer provided some information in response to the Union’s request, and any misunderstanding about what additional information the Union still wanted could have been resolved by further communication between the parties); *Barnard College*, 367 NLRB No. 114, slip op. at 1 fn. 1 (2019). The Union only made its dissatisfaction known regarding Respondent’s response by filing an unfair labor practice charge. See *Whitesell Corp.*, 352 NLRB 1196 (2008), affd. and incorporated by reference 355 NLRB 635 (2010) (no violation found by the Board when an employer responded to a union’s information request, the union did not renew its information request or indicate that it expected more information); *Day Automotive Group*, 348 NLRB 1257, 1262–1263 (2006) (no violation where employer had reason to believe that it had satisfied the union’s request for information and the union never said the information provided was insufficient or requested additional information). Thus, under these circumstances, I cannot find that Respondent refused to provide the photos to the Union.

Counsel for the General Counsel argues that since Respondent took photos of the accident scene and checked off that photos were taken on the accident investigation worksheet, and because the Union broadly asked for a “copy of any and all documents, statements, records, reports, audio/video tapes, photographs, or other information learned, obtained, developed or relied upon by the Postal Service in the issuance of the 16.7 dated 2/9/19, involving employee Nastaran Ghazai [sic]” that Respondent violated the Act by not including the photos (GC Br. at 9). However, the limited communication between the Union and Respondent regarding the information request supports Respondent’s position that it did provide all information relied upon when placing Ghazaei on the 16.7. I am not convinced that Respondent should have known that the Union sought the accident photographs when the subject never came up. Counsel for the General Counsel also argues that the photos would assist the Union in its investigation for any grievance (GC Br. at 7). While photos may have assisted the Union, the Union again never specifically requested these photos nor did the Union make another request with specificity as to why the photos were relevant and necessary even when Respondent did not rely upon them when placing Ghazaei on the 16.7. I cannot find that the General Counsel demonstrated by a preponderance of the evidence that Respondent violated Section 8(a)(5) and (1) of the Act as alleged.

Based on the above, I find that Respondent did not violate the Act as alleged, and this complaint allegation is dismissed.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over Respondent by virtue of Section 1209 of the PRA.

5 2. The National Association of Letter Carriers, Sunshine Branch 504, AFL–CIO (the Union), affiliated with National Association of Letter Carriers, AFL–CIO (the National Union), are labor organizations within the meaning of Section 2(5) of the Act.

10 3. At all material times, based on Section 9(a) of the Act and Section 10(a) of the PRA, the Union, affiliated with the National Union, has been the exclusive collective-bargaining representative of a unit of employees as described in article 1, sections 1 through 4, of the National Agreement.

15 4. The General Counsel failed to prove that Respondent violated Section 8(a)(5) and (1) of the Act, by since on or about February 9, 2019, failing and refusing to provide the Union with the information that the Union requested about all materials relied upon and to justify placing Nastaran Ghazaei on a 16.7.

20 On the basis of the foregoing findings of fact, conclusions of law, and the entire record, I issue the following recommended.¹³

ORDER

25 The complaint is dismissed.

Dated, Washington, D.C. December 10, 2019

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Amita B. Tracy
Administrative Law Judge

¹³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.