

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

UNITED STATES POSTAL SERVICE

and

Cases 28–CA–222265
28–CA–224055
28–CA–227057
28–CA–227485
28–CA–227490
28–CA–227628
28–CA–229633
28–CA–229647

**AMERICAN POSTAL WORKERS UNION,
LOCAL 380, AFL-CIO**

Katherine E. Leung, Esq.,
for the General Counsel.
Dallas G. Kingsbury, Esq.,
for the Respondent.

DECISION

JEFFREY D. WEDEKIND, Administrative Law Judge. In 2017, postal clerk Daniel Diaz-Huerta was elected director of education and organization for Postal Workers Local 380, a local union representing various craft employees at the Postal Service’s facilities in Albuquerque, New Mexico. Over the next year and a half, Huerta spent many of his work hours—typically 2 to 6 hours and occasionally 8 hours a day—on paid “steward” time handling grievances rather than performing his clerk duties boxing mail and working the front sales counter. This included, among other things, submitting requests for information (RFIs) to the Postal Service before and after the first step of the grievance procedure. And Huerta submitted a lot of them. For example, during just the 7-month period from November 27, 2017 through June 15, 2018, he faxed or otherwise submitted a total of over 100 RFIs to 12 different Albuquerque facilities. Huerta also performed various other union duties, including filing unfair labor practice (ULP) charges against the Postal Service on behalf of the Union. And he filed a lot of them too—over 20 charges during the same 7-month period.¹

¹ Jt. Exh. 4; GC Exhs. 10, 11, 37; Tr. 173, 176–178, 185–186, 205, 378–386. Huerta had also been elected to two previous terms as Local 380 director of education and organization, in 2004 and 2007. Under the APWU national collective-bargaining agreement (Jt. Exh. 1, Art. 17, Sec. 4), the “steward” time Huerta spent handling grievances was paid by the Postal Service. The Postal Service also allowed Huerta “union official leave” for other union business; however, he was paid by the Union rather than the Postal Service during that time. (Tr. 69–71, 79–80, 407–409.)

The General Counsel alleges that, on June 18, 2018, the Postal Service retaliated against Huerta for submitting and filing so many RFIs and ULP charges by denying his request for 5 weeks of personal leave without pay (LWOP) to travel to Spain, in violation of Section 8(a)(3) and (4) of the National Labor Relations Act. The General Counsel further alleges that, a few months later, for the same or similar retaliatory reasons, the Postal Service unilaterally shut off or failed to maintain the fax machines at several of the Albuquerque facilities in violation of Section 8(a)(3), (4), and (5) of the Act. Finally, the General Counsel alleges that, around this same period, the Postal Service also refused to provide, or unreasonably delayed providing, certain information requested in several RFIs, in violation of Section 8(a)(5) of the Act.²

A hearing on these allegations was held on February 19–22, 2019. Thereafter, at the request of both the General Counsel and the Postal Service, the record was held open for the Postal Service to complete its search and production of subpoenaed electronically stored information (ESI) and for the General Counsel to review that ESI.³ Approximately 7 months later, on September 11, after completing their ESI production and review, the Postal Service and the General Counsel jointly moved to admit 20 additional exhibits and close the record. The unopposed motion was granted by order dated September 16, and the exhibits were received and the record was closed on that date. The General Counsel and the Company subsequently filed posthearing briefs on October 21.

As discussed below, the evidence establishes that the Postal Service failed to provide or unreasonably delayed providing certain requested information to the Union in violation of Section 8(a)(5) of the Act. However, the evidence fails to establish the other alleged 8(a)(3), (4), and (5) violations.⁴

I. ALLEGED UNLAWFUL DENIAL OF HUERTA’S LWOP REQUEST

Section 514 of the Postal Service Employer Labor Relations Manual (ELM) states that, except in certain circumstances not relevant here, the decision whether to grant LWOP “is a matter of administrative discretion” to be made “based on the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service” (See GC Exh. 12).

² See the January 30, 2019 consolidated complaint, GC Exh. 1(ah). The Board has jurisdiction over the matter pursuant to Section 1209 of the Postal Reorganization Act (PRA), 39 U.S.C. § 1209.

³ During a follow-up conference call on March 1, the Postal Service reported that it had recovered approximately 140,000 responsive emails and 100,000 attachments using the agreed-upon search terms, and that it would need an additional 4 weeks to conduct a privilege review and produce all nonprivileged documents. The request for additional time was granted by order the same day.

⁴ Citations to the record are included to aid review and are not necessarily exclusive or exhaustive. In making credibility findings, all relevant factors have been considered, including the interests and demeanor of the witnesses; whether their testimony is corroborated or consistent with the documentary evidence and/or the established or admitted facts; inherent probabilities; and reasonable inferences that may be drawn from the record as a whole. See, e.g., *Daikichi Corp.*, 335 NLRB 622, 623 (2001), *enfd.* 56 Fed. Appx. 516 (D.C. Cir. 2003); and *New Breed Leasing Corp. v. NLRB*, 111 F.3d 1460, 1465 (9th Cir.), *cert. denied* 522 U.S. 948 (1997).

Huerta first mentioned that he wanted 5 weeks of LWOP to go to Spain during a meeting with Albuquerque Acting Postmaster Daniel Corral on March 8, 2018. Corral had been Albuquerque's acting postmaster only a few months, since mid-January, and Huerta had a relatively good relationship with him. After discussing various grievances and RFIs, Huerta told Corral that he wanted to obtain Spanish citizenship under a law allowing Sephardic Jews with a connection to Spain to obtain dual citizenship in restitution for the expulsion of Jews in 1492. Huerta said it would take him only about a week in Spain to accomplish this, but he wanted an additional 4 weeks, for a total of 5 weeks LWOP, to vacation there given the amount of money he was going to spend on air fare. Huerta then showed Corral the 2018 clerk leave roster at the North Valley finance (retail) unit where he worked. The roster indicated that there were blocks of 5 weeks in July/August and beginning September 1 when neither of the other two North Valley clerks had previously requested annual leave. Corral told Huerta to let him know the specific dates he wanted and he would consider it. (Tr. 173, 185–186, 386–389; GC Exh. 8; Jt. Exh. 10.)

About 2 months later, at another grievance meeting on May 18, Huerta gave Corral a letter and formal leave form specifically requesting to take the 5 weeks of LWOP from September 1 until October 5. Corral told Huerta he would discuss the LWOP request with him at their next scheduled meeting on June 5. (GC Exhs. 4, 5; Tr. 391.)

Huerta and Corral subsequently met on June 5 as scheduled. When the LWOP request came up, Corral asked Huerta if he would be willing to exhaust his remaining 2–3 weeks of paid annual leave on the trip rather than taking leave without pay. The difference between the types of leave was significant from the Postal Service's perspective for two reasons. First, if Huerta used his annual leave instead of LWOP it would reduce the total number of weeks Huerta would not be available to work during the year and thereby also potentially reduce overtime costs. Second, if Huerta was on annual leave it would prevent either of the other two North Valley clerks from taking annual leave, as only one of the clerks there could take leave at a time. In contrast, if Huerta was on LWOP, either of the other two clerks could request annual leave during the same period with just 7 days' notice, and the Postal Service would be required to grant it. The Postal Service would then have to try and cover the position with clerks from other stations or temporary postal support employees (PSEs) if available. (Tr. 489, 520–524, 528–533, 529, 617–621; Jt. Exh. 2, p. 8; GC Exh. 16.)

Huerta did not want to exhaust his annual leave because he might want to use it for other reasons during the year. However, he told Corral he would be willing to do so. Corral replied that he was currently making plans to return to Idaho but would give Huerta an answer regarding the LWOP request at their next scheduled meeting on June 12. (Tr. 392, 488–489.)

Sometime before the June 12 meeting, however, Corral's secretary called and informed Huerta that Corral would not be able to meet on that date. She told Huerta that Corral was leaving for Idaho and that he was going to pass on any pending grievances and his LWOP request to the next postmaster. (Tr. 392–393, 647.)

Huerta met with the new Acting Postmaster, Christopher Yazzie, a few days later, on Friday June 15. Yazzie was a longtime postal employee with extensive managerial experience both in Albuquerque and other cities or towns. At the time he was appointed acting postmaster in Albuquerque, he was on detail as acting postmaster in Cedar Rapids, Iowa. Over the previous

15 years, he had also served as postmaster or acting postmaster in various other smaller cities or communities in New Mexico and Arizona. In addition, he had recently served, from 2016 through early 2018, as the manager of customer service operations (MCSO) for all of Albuquerque, and for about 4 years before that (2012–2016) as manager of the Richard Pino Station in Albuquerque. Thus, he was very familiar with Albuquerque’s facilities and operations and had previous experience specifically dealing with Huerta and other union stewards in Albuquerque regarding grievances or other issues raised by the Union.

Huerta began the meeting by handing Yazzie several RFIs that he had attempted to fax to different facilities but did not go through. He told Yazzie there were also numerous ULP charges that the Union had deferred filing with the NLRB to date only because of certain actions Corral had taken during the previous 6 months to improve the labor/management relationship. For example, prior to January 2018, step 1 and 2 grievances were handled by local supervisors and managers and they were always asking Huerta to provide a grievance list to justify taking “steward” time. Huerta told Yazzie that Corral had allowed him to bring all step 1 and 2 grievances directly to him and had also recently agreed at their May 18 meeting to allow him 40 hours a week of “steward” time. Finally, Huerta asked Yazzie about the pending request for 5 weeks of LWOP.

Yazzie responded that it was not his practice to meet with the Union on grievances at steps 1 and 2, and that Huerta should therefore resume meeting with the supervisors and managers at those steps. With respect to taking 40 hours a week of “steward” time, Yazzie said he needed to get an idea of Huerta’s grievance caseload before addressing that issue and asked Huerta to turn in a current grievance list. As for the LWOP request, Yazzie had seen it and discussed it with Corral the day before. However, he told Huerta that he was not yet prepared to make a decision on it and would let him know on Monday. (Tr. 19–22, 31, 54–58, 89–93, 394–395, 556–557; GC Exh. 6.)

Yazzie and Huerta met again on Monday morning, June 18, as planned. As at the previous meeting, Huerta began by giving Yazzie some RFIs that he had tried to fax to certain facilities but did not go through. He asked Yazzie to disseminate the RFIs to those facilities as he believed the fax machines there were not functioning. He also reminded Yazzie that the Union had previously filed ULP charges alleging that the Albuquerque managers had failed to timely respond to numerous RFIs submitted between April 2017 and March 2018. Huerta told Yazzie (who as noted above was Albuquerque’s MCSO during that period) that he should expect to be subpoenaed to testify at the upcoming July 2018 NLRB hearing on the allegations. (Tr. 57–58, 397–399, 534–535; Jt. Exh. 9; GC Exh. 3.)

Huerta then brought up his request for 5 weeks of LWOP and asked for Yazzie’s decision. Yazzie told Huerta that he was going to deny the request because of the “needs of the service.” He took out the leave request form, marked it disapproved because of the “needs of the service,” signed and dated it, and gave it to Huerta. Huerta asked if Yazzie would consider even 2 or 3 weeks of LWOP. Yazzie said no, he was just going to deny the current request for 5 weeks of LWOP. Huerta asked why, and Yazzie said because he didn’t know who would be on vacation during that time. (Tr. 58–59, 399; GC Exhs. 7, 86.)

Approximately 2 weeks later, on June 29, Huerta faxed an RFI to Yazzie requesting what specific circumstances or business requirements were included in the “needs of the Service.”

Yazzie responded by certified letter on July 2. The letter set forth the relevant LWOP provisions in Section 514 of the ELM. It also quoted the Postal Service’s 2017 Annual Report to Congress regarding the Postal Service’s mission and goals. Finally, it stated:

5 As a Sales and Service Associate you are tasked to provide service daily to our
customers on the window section ensuring the USPS achieves its mission of
providing prompt, reliable and efficient services to patrons in the Albuquerque
community. The USPS must continue its mission to Deliver a World-Class
10 Customer Experience, High-Quality Service, Excellent Customer Experiences and
achieve and improve the USPS Financial Health. Your absence away from work
will result in increased costs to the USPS by increasing overtime and inhibit the
mission and strategies of the USPS. As the [Acting] Postmaster I must balance the
needs of the employee, the needs of the service and the cost to the service and
respectfully I am unable to approve your request for five (5) weeks of LWOP.
15 [GC Exh. 12.]

Yazzie further elaborated on the “needs of the service” in his testimony at the February 2019 hearing, testifying:

20 Well, every day we—here in Albuquerque, we deliver to 370,000
addresses, we process and deliver about 70,000 packages every week, letters, and
flat magazine type of items, we deliver almost four million pieces every day. And
not only that, we accept packages over the window. So, you know, we’ve got to
continue to maintain, you know, our efficiencies, continue to provide services at
25 low cost.

And, you know, just last fiscal year, the Postal Service lost \$3.9 billion,
we had a deficit just last fiscal year. This past quarter we lost \$1.9 billion. So
we've got to make sure and ensure that, you know, we are keeping our costs
down.

30 So when we have someone on long-term LWOP, that impacts our bottom
line, it impacts service to our customers, it impacts overtime percentages, possibly
at a penalty rate, which is double the overtime rate. Then also, you know, it puts
us at risk of possibly not opening a unit by a couple hours when we're faced with
those challenges. [Tr. 617.]

35 The parties agree that the proper framework for analyzing whether Yazzie’s denial of
Huerta’s LWOP request violated Section 8(a)(3) and/or (4) of the Act is set forth in *Wright Line*,
251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989
(1982). Under that framework, the General Counsel must prove by a preponderance of the direct
40 and/or circumstantial evidence that the employee’s union or other protected activity was a
substantial or motivating factor for the adverse employment action, i.e., that a causal relationship
existed between the employee’s union or protected activity and the employer’s adverse action
against the employee. This necessarily includes, but is not limited to, establishing that the
employee engaged in union or protected activity and the employer knew or suspected it, and that
45 the employer had animus against such activity. If the General Counsel makes a sufficient
showing of causation, the burden shifts to the employer to establish by a preponderance of the

evidence that it would have taken the same adverse action against the employee even absent the union or protected activity. See also *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120 (2019).⁵

5 Here, there is no dispute that Huerta submitted numerous RFIs on behalf of the Union
 and that Yazzie knew it. As for the ULP charges, they identified Huerta as the union
 representative filing the charge and the Postal Service concedes that it knew Huerta had filed
 them (Jt. Exh. 10; R. Br. at 21). Under Board law, such employer knowledge is properly
 imputed to the decisionmaker absent an affirmative showing that doing so is unwarranted under
 the circumstances. See *G4S Secure Solutions (USA), Inc.*, 364 NLRB No. 92, slip op. at 3
 10 (2016), enfd. 707 Fed. Appx. 610 (11th Cir. 2017). The Postal Service made no such showing.
 Yazzie admitted that he was aware of the charges (Tr. 50). Although he testified that he could
 not recall whether he knew Huerta had filed them (Tr. 51), this is insufficient to establish that he
 did not know Huerta had done so.⁶ Further, Yazzie likely at least suspected that Huerta was
 involved in filing the charges since, like the more recent charges here, they included allegations
 15 that Albuquerque managers had unlawfully retaliated against Huerta because of his protected
 activities.⁷

Regarding animus and a discriminatory motive, the General Counsel effectively concedes
 that there is no direct evidence of either. For example, the General Counsel does not contend
 20 that Yazzie said anything during his June 15 and 18 meetings with Huerta that indicated animus
 and a retaliatory motive. While Yazzie said he would not continue his predecessor’s practice of
 meeting with Huerta on step 1 and 2 grievances, and that he would require Huerta to resume
 justifying his paid “steward” time, the General Counsel does not allege or argue that either was
 unlawful or otherwise evidenced animus against such activities. Nor does the General Counsel
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⁵ Although *Wright Line* was an 8(a)(3) case alleging retaliation for union activity, the Board applies the same analytical framework in 8(a)(4) cases alleging retaliation for filing ULP charges. *Newcor Bay City Division*, 351 NLRB 1034 n. 4 (2007).

⁶ See *Hemphill v. State Farm Mutual Auto Insurance Co.*, 805 F.3d 535, 541 (5th Cir. 2015) (“Lack of memory by itself is insufficient to create a genuine dispute of fact.”).

⁷ The NLRB Regional Director’s June 15, 2018 consolidated complaint on the charges (28–CA–200369 et al.) was introduced into the record as Jt. Exh. 9. Paragraph 6(a) and (c) alleged that the North Valley station manager unlawfully denied Huerta’s request for 8 hours of “union official leave” on May 31, 2017 to attend a union convention (consolidated case 28–CA–210464), and that the Postal Service unlawfully subjected Huerta to an Office of the Inspector General (OIG) investigation on July 18, 2017 because he had filed ULP charges, in violation of section 8(a)(4) of the Act (consolidated case 28–CA–205561). The consolidated complaint (par. 5) also alleged that a supervisor at the same facility threatened employees with discipline for how they met their union duties and obligations, in violation of Section 8(a)(1) of the Act. Finally, like here, the consolidated complaint alleged that Albuquerque managers unlawfully shut off the fax machines at several facilities because of Huerta’s union and protected activities in violation of 8(a)(3), (4), and (5) of the Act and unlawfully failed to timely respond to numerous RFIs in violation of 8(a)(5) of the Act.

allege or argue that animus is established by the Postal Service’s alleged unlawful conduct in Huerta’s prior ULP charges.⁸

5 Instead, the General counsel relies on the following circumstances to establish animus and a discriminatory motive:

10 (1) Yazzie denied the LWOP request after Huerta mentioned his recent RFIs and pending ULP charges alleging that managers had failed to timely respond to prior RFIs and told Yazzie that he would likely be subpoenaed to testify in an upcoming NLRB hearing regarding those charges;

15 (2) Huerta was spending approximately 40 hours a week handling grievances in June 2018 and thus was not performing any work related to the “needs of the service” as defined by Yazzie;⁹

(3) there were no other employees on the leave roster during the 5 weeks requested by Huerta for LWOP; and

20 (4) while the Postal Service could have incurred some overtime costs to cover the relatively few hours Huerta might have worked during his 5-week absence on LWOP, the Postal Service would save the wage costs it would otherwise incur to pay Huerta for the many hours of “steward” time he likely would spend handling grievances if he were not on LWOP.

25 The General Counsel argues that the foregoing circumstances demonstrate that Yazzie’s “needs of the service” justification for denying Huerta’s request for 5 weeks’ LWOP was “clearly pretextual.” (Br. 27–29.)¹⁰

⁸ I take administrative notice that: (1) by order dated July 9, 2018, the Regional Director approved the Union’s request to withdraw the charge allegation in paragraph 6(a) of the consolidated complaint regarding Huerta’s May 2017 request for 8 hours’ “union official leave”; (2) the following day, the Regional Director also approved an informal settlement of the allegations in paragraph 5 regarding the supervisor’s threat to discipline employees and paragraph 6(c) regarding the OIG investigation of Huerta; and (3) the same day the remaining information and fax machine allegations in the consolidated complaint were resolved pursuant to a formal settlement, which the Board subsequently approved by unpublished order, 2018 WL 5262935 (Oct. 18, 2018), enfd. No. 18–9590 (10th Cir. Jan. 3, 2019). The General Counsel has not relied on the informal and formal settlements or presented any evidence regarding the alleged unlawful conduct in those cases as support for the allegations in this proceeding.

⁹ As indicated above, Yazzie’s July 2 letter did not mention the Union’s grievance handling as one of the “needs of the service.” And Yazzie testified at the hearing that he did not view it as one (Tr. 77–79). While it is not clear that Yazzie’s view accurately represents the view of the Postal Service (which as discussed above pays union stewards for the time they spend handling grievances), the record indicates that Yazzie was the sole decisionmaker.

¹⁰ The General Counsel does not allege or argue that Yazzie’s refusal at the June 18 meeting to consider or address granting Huerta less than 5 weeks of LWOP was unlawful or evidenced animus and a discriminatory motive.

There are several problems with the General Counsel’s argument, however. First, while it is true that Huerta mentioned his recent RFIs and pending ULP charges regarding prior RFIs during his June 15 and 18 meetings with Yazzie, there was nothing particularly remarkable about them. Both the APWU and the National Association of Letter Carriers (NALC), one of two
 5 other unions representing postal employees, had been filing similar ULP charges for years alleging that Albuquerque managers had failed to respond or unreasonably delayed responding to RFIs.¹¹ Further, Huerta himself had been submitting RFIs and filing such ULP charges for over a year, and Yazzie was already familiar with them as the former Albuquerque MCSO. Moreover, Huerta was not the only one who did so. For example, another Albuquerque APWU
 10 steward (Sam Wood) submitted over 70 RFIs during the 7-month period ending June 15, 2018, and seven other APWU representatives submitted nearly 50 more. Albuquerque NALC stewards also submitted over 270 RFIs during the same period. (GC Exh. 37.) And as indicated above, there is no direct evidence that Yazzie considered Huerta’s most recent RFIs and pending ULP charges regarding prior RFIs as anything but union business as usual and all in a day’s work for a
 15 Postal Service manager.

Second, while Huerta had recently begun (in pay period 13, week 1 beginning June 9)¹² spending a full 40 hours a week on “steward” time to handle grievances, this was only because Corral, the former acting postmaster, had agreed to let him do so. During 2017, prior to Corral,
 20 Huerta had typically been allowed considerably less “steward” time, as little as 2 hours a day, to handle grievances. And Yazzie made clear at the June 15 meeting that he was not going to allow Huerta to continue taking 8 hours a day unless he resumed providing a list of his grievance caseload to justify it.¹³ Moreover, notwithstanding that Corral had liberally granted Huerta paid “steward” time to handle grievances since January 2018, Corral was himself apparently reluctant
 25 to approve Huerta’s request to take 5 weeks of LWOP for the trip to Spain. Huerta admitted that he only needed 1 week to get his Spanish citizenship when he first mentioned the trip to Corral, and Corral repeatedly put off making a decision on the LWOP request and asked Huerta if he would be willing to use his remaining 2–3 weeks of annual vacation leave for the trip instead.

¹¹ See, e.g., *Postal Service (NALC)*, 28-CA-169508, 2016 WL 5234917 (Sept. 21, 2016) (Board order approving formal settlement); *Postal Service (NALC)*, 28-CA-109760, JD(SF)–58–14, 2014 WL 6682336 (Nov. 25, 2014), adopted absent exceptions, 2015 WL 82932 (Jan. 6, 2015); *Postal Service (APWU)*, 354 NLRB 412 (2009), invalidated for lack of quorum by *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010); and *Postal Service (APWU)*, 345 NLRB 426, 441–445 (2005), enfd. 486 F.3d 683 (10th Cir. 2007), and other unpublished cases discussed there. See also Jt. Exhs. 7 and 8 (May 24, 2013 and October 19, 2017 consent orders issued against the Postal Service by the U.S. Court of Appeals for the Tenth Circuit pursuant to ULP charges filed by NALC and APWU and related contempt petitions filed by the NLRB).

¹² The 2018 pay periods are available at <https://about.usps.com>.

¹³ Postal Service time and attendance records indicate that Huerta was not regularly afforded a full 40 hours a week of “steward” time during the remainder of the year. See GC Exh. 11 (indicating that Huerta received an average of 30 hours a week of “steward” time per week from June 30 (pay period 14-2) through Dec. 21 (pay period 26-2)). See also the North Valley clerk and custodian schedule, GC Exh. 16. (Pay period 15-1 (0 hours) has been excluded from the average because the records indicate that Huerta was on “union official leave” during that entire week.) See also Huerta’s testimony, Tr. 484–486 (he has been expected to work about 10 hours a week to relieve the window since July 2018).

Third, as discussed above, the fact that the other two North Valley clerks had not previously scheduled vacation leave for September 1 through October 5 did not prevent them from requesting such leave at any time with only 7 days' notice. And if they did so, the Postal Service would be required to grant the requests if Huerta was on LWOP rather than vacation leave.

Fourth, while the Postal Service would save the cost of Huerta's regular pay if he took LWOP for the trip, it is not clear from the record that this would offset other potential labor costs. Huerta's absence on 5 weeks of LWOP would have a number of potential rippling economic effects. As indicated above, it would potentially reduce the number of available North Valley clerks to just one if either of the other two clerks requested vacation leave during the same period that Huerta was on LWOP. Further, it would at least double the total amount of weeks Huerta would be on leave during the year. This would not only reduce the number of available North Valley clerks during those extra weeks but would also likely require other union stewards to take more paid "steward" time to submit RFIs and otherwise handle grievances that Huerta would have submitted and handled during those weeks. See Union Steward Wood's testimony, Tr. 326, 332–334 (the Union has only 14 days to file a grievance, and RFIs must therefore be submitted immediately to obtain the necessary information to determine whether to file a grievance within the deadline); and Union President Fajardo's testimony, Tr. 580 (the Union tries to submit RFIs within a day or two of becoming aware of a possible violation). Thus, Huerta's additional weeks of leave would likely increase labor costs at other Albuquerque facilities as well to the extent other clerks or temporary PSEs would have to be assigned to cover those stewards' regular job duties.

Finally, there is no evidence that Huerta was treated disparately, i.e., that Yazzie has exercised his "administrative discretion" under section 514 of the ELM to grant other employees' requests for extended LWOP for similar or analogous purposes. Indeed, there is no evidence that Yazzie has ever granted any other employee's request for extended LWOP for any purpose.¹⁴

Accordingly, the allegations will be dismissed.

¹⁴ Both the General Counsel and the Postal Service attempted to introduce a few examples where LWOP requests by Huerta and other employees were granted or denied. I rejected the two examples offered by the General Counsel where Huerta had requested and been granted 1 to 3 months of LWOP as the requests were made over 20 years earlier, in 1989 and 1996, and the discretionary decisions to grant the requests were made by other managers in a different state or postal district (Tr. 401–405; Rejected GC Exhs. 47, 48). I likewise rejected the two examples offered by the Postal Service where employees at other Albuquerque facilities had requested and been denied 1 week and 1 year of LWOP in 2010 and 2014, respectively, as the discretionary decisions to deny the requests were made by different postmasters and there was no showing that any common Albuquerque managers or others in the chain of command were involved in both those decisions and Yazzie's June 2018 decision (Tr. 510–517; Rejected R. Exhs. 5, 6). See *Kinch v. Pinnacle Foods Group, LLC*, 758 Fed. Appx. 473 (6th Cir. 2018); *NLRB v. Fuyao Glass AM., Inc.*, 2018 WL 1166628 (S.D. Ohio March 5, 2018); *Rodriguez v. Long Island American Water, Inc.*, 2014 WL 4805021, at *11 (E.D. N.Y. Sept. 26, 2014); and *Willingham v. Ashcroft*, 226 F.R.D. 57, 61 (D.D.C. 2005), and cases cited there.

II. ALLEGED UNLAWFUL FAILURE TO MAINTAIN WORKING FAX MACHINES

As indicated above, the General Counsel also alleges that the Postal Service thereafter unilaterally shut off or failed to maintain the fax machines at various Albuquerque facilities on September 9, 12, and 15, 2018 for the same or similar retaliatory reasons in violation of Section 8(a)(3), (4), and (5) of the Act.¹⁵ However, the General Counsel failed to prove these allegations by a preponderance of the evidence as well.

The transmission reports from the Union’s fax machine confirm the following failed transmissions on September 9, 12, and 15:¹⁶

Sunday, Sept. 9. From about 5:54 to 6:40 p.m., Huerta attempted to fax RFIs to several Albuquerque stations. Although his faxes to some of the facilities were successful,¹⁷ his faxes to the Academy, Highland, Richard Pino, Rio Rancho Branch, and Uptown facilities failed. (GC Exhs. 58–60.)

Wednesday, Sept. 12. At 8:40 and 9:16 a.m., Huerta twice attempted to fax a few RFIs to the Steve Schiff facility that he had discussed on the phone earlier that morning with the manager. Both attempts failed. (GC Exhs, 63, 70.)

Saturday, Sept. 15. Between 10:22 and 10:40 a.m., Huerta unsuccessfully attempted to fax RFIs to the Steve Schiff, Five Points, and North Valley facilities. (GC Exhs. 66, 67, 69.)

As the General Counsel acknowledges, however, “[t]he key in this case is why the transmissions failed” (Br. 30.) And no substantial evidence was presented that they failed because the fax machines at the facilities were shut off or not adequately maintained.

For example, the Postal Service’s fax machines are multifunction (copy/print/scan/fax) and located on the workroom floor for everyone to use (Tr. 42–43, 187–188, 215–216, 301). Yet no union steward or member working at any of the facilities testified that the machines were shut off, unplugged, or inoperable due to lack of maintenance on September 9, 12, 15 or any other day.

¹⁵ Like the denial of Huerta’s LWOP request, the General Counsel alleges that the fax machines were unlawfully shut off or not adequately maintained because Huerta had faxed so many RFIs and filed so many ULP charges. The General Counsel also alleges that the fax machines were unlawfully shut off or not maintained because Huerta had recently publicized various alleged problems at the Albuquerque facilities due to staffing reductions and cost-cutting measures (delays in delivering and boxing mail, damaged and deteriorating facilities, and rat and bat infestations). See, e.g., GC Exhs. 22(a)–(d), 21, 49–54, 57, 62, 80. Finally, the General Counsel also alleges that the Postal Service unlawfully failed to bargain with the Union before shutting off or not maintaining the fax machines.

¹⁶ See GC Exh. 35 for the fax numbers associated with each Albuquerque facility.

¹⁷ Faxes were successfully sent to the Airport, Five Points, Foothills, Main Office, Manzano, and North Valley facilities on September 9.

Further, the Union’s fax transmission reports contain what appear to be failure codes (“NG” followed by the number 0040, 0052, or 0085). However, neither the General Counsel nor the Union presented any expert testimony, fax machine user guides or manuals, or other evidence to explain what those code numbers mean or whether they indicate a problem with the sending machine, the receiving machine, or the condition of the telephone fax line.¹⁸ See the uncontradicted testimony of Perry Dotson, the Postal Service’s district information systems specialist, Tr. 597 (“All a failure means is the two devices, they communicated, they never handshaked and agreed on any communications, so the call was dropped. And it could have been dropped from either end. After a certain time frame, depending on the machine, the call is dropped. Remember, we’re using analog phone lines, switching all of the phone company’s circuitry. Sometimes they just don’t go through.”), and 603 (even if the telephone line is plugged in, the fax may fail if the sending and receiving machines are “just not agreeing. They’re having a bad call. It’s like when you make a landline call and there’s a lot of static on the line, same thing . . . That’s a line problem.”).

Moreover, there is substantial evidence indicating that the machines were not shut off or inoperable at the time. All of the Postal Service managers who testified denied that the fax machines were shut off or were not maintained properly during September 2018 (Tr. 92, 95, 146, 158, 197–198, 217, 239–240, 640).¹⁹ And their testimony is supported by fax transmission records. For example, although Huerta’s faxes to the Academy, Highland, and Rio Rancho stations failed on Sunday evening, September 9, fax transmission records show that the fax machines there successfully received faxes from the Union or other senders earlier that day or early Monday morning, September 10 (GC Exhs. 38–40). Similarly, although Huerta’s faxes to the Steve Schiff facility failed on September 12, the records show that the fax machine there successfully received faxes from other senders that day and from the Union the following morning, September 13 (GC Exhs. 32, 64, 68, 70).²⁰ And while some of Huerta’s faxes to Five Points, Steve Schiff, and North Valley failed on September 15, other faxes that he or other union stewards sent to those facilities the same day or the previous day were successful. (GC Exhs. 31–33, 64, 68, 70.)

Accordingly, the allegations will be dismissed.

¹⁸ The Richard Pino station’s “fax journal report” indicates that “NG” means “poor line condition / out of memory” (GC Exh. 41). However, there is no information on the Union’s fax reports what the code numbers mean.

¹⁹ Melissa Keeran, the acting manager at the North Valley facility since August 2018, testified that one of the two fax machines there stopped working right before Thanksgiving 2018, was fixed, but then stopped working again in December and cannot receive faxes (Tr. 301–305, 314). However, the General Counsel does not allege in this proceeding that the Postal Service unlawfully failed to maintain that fax machine on those dates. (The General Counsel apparently did allege this in another similar but separate consolidated complaint against the Postal Service that issued on August 30, 2019. As with the earlier 2018 consolidated complaint discussed above in fns. 7 and 8, the allegations were settled. See *Postal Service*, 28–CA–232885, unpub. Board order approving formal settlement issued Dec. 5, 2019 (2019 WL 7584382), enfd. No. 19-9614 (10th Cir. Jan. 2, 2020)).

²⁰ The Postal Service’s fax records (GC Exh. 32) also show that a fax was successfully sent from the Steve Schiff facility to the Union at 9:50 a.m. on September 12.

III. ALLEGED UNLAWFUL FAILURE TO TIMELY PROVIDE REQUESTED INFORMATION

Finally, the General Counsel also alleges that various Albuquerque managers failed to provide, or unreasonably delayed providing, the Union with various information that it requested in four RFIs submitted between July 5 and October 1, 2018, in violation of Section 8(a)(5) of the Act. As discussed below, these allegations are well supported under Board precedent.

A. RPG Reports

On July 5, 2018, Union President Fajardo emailed an RFI to Mark Jones, the then-manager of a mail processing plant in Albuquerque, requesting the run program generator reports (RPGs) for 2017 and 2018.²¹ The RPGs forecast mail volume and are used to determine staffing levels or models. Fajardo requested the information because Jones had notified him that the Postal Service was planning some potential staffing changes and job reversions at the plant based on the RPGs. The parties had been discussing the matter over the past month, most recently at a labor-management meeting on June 27, and Jones had provided Fajardo with some current and proposed RPGs but not all the requested RPGs for 2017 and 2018 (GC Exhs. 13, 14; R. Exh. 1; Tr. 109–110, 115, 559–561.)

Over the previous 2 years, Fajardo had emailed Jones at least a hundred times and normally received a response. However, Fajardo did not receive a response to his July 5 email and RFI. On July 20, therefore, he filed a ULP charge alleging that the failure and refusal to provide the information violated the Act (case 28-CA-224055). (Tr. 560, 577; GC Exh. 1(c).)

After being informed of the ULP charge, Jones directed Casey Christophersen, the designated management officer (DMO) for handling RFIs at the plant, to send the requested information to Fajardo. Christopherson did so, mailing a compact disc with all the requested RPGs to Fajardo on August 1. (GC Exh. 78; Tr. 105–107, 566.)

In the meantime, the Postal Service announced that it would be reverting certain jobs effective July 21. The Union subsequently filed a grievance over the action and the parties met at step 1 of the grievance procedure to discuss it on August 2 and 8. The grievance was eventually settled about 6 months later, in February 2019. (GC Exh. 77; Tr. 577.)

It is well-established that an employer’s duty to bargain in good faith under Section 8(a)(5) of the Act includes the duty to provide the union with relevant and necessary information in a timely manner. *NLRB v. Ingedion Inc.*, 930 F.3d 509, 517 (D.C. Cir. 2019), enfg. 366 NLRB No. 74 (2018). In evaluating whether an employer’s response was timely, the Board applies an objective test, focusing not on the employer’s subjective good or bad faith, but on whether the delay was unreasonable under the circumstances. *KION-TV*, 367 NLRB No. 117, slip op. at 5 (2019); and *Management & Training Corp.*, 366 NLRB No. 134, slip op. at 3 (2018). The Board considers factors such as the nature of the information sought, including whether the requested information was time sensitive; the difficulty in obtaining the information, including its volume and complexity; the time the employer took to provide the information and

²¹ Specifically, in relevant part, the July 5 RFI requested: “1) Daily Run Program Generator (RPG) reports for tour 1 Automation (Pay Loc 171) for leave years 2017, 2018, [and] 2) Daily RPG reports for Tour 3 Automation (Pay Loc 371) for leave years 2017, 2018.”

the employer’s reasons for the delay; and whether the employer contemporaneously communicated those reasons to the union. See *General Drivers Local 89*, 365 NLRB No. 115, slip op. at 2 (2017), and cases cited there.

5 Here, there is no dispute that the information Fajardo requested on July 5 was necessary and relevant to the Union’s collective-bargaining duties. The Postal Service stipulated that it was (Tr. 562). The sole issue is whether the 4 weeks’ delay was unreasonable. The Postal Service does not contend that the delay was justified because the requested RPG information was
10 voluminous, complex, or otherwise difficult to obtain. Rather, it argues that the delay was not unreasonable or unlawful because: (1) Jones testified that he had already given the same information to Fajardo at previous meetings in May and June about the possible job reversions (Tr. 108–111, 114, 120, 126); (2) Fajardo did not send or copy the July 5 email and RFI to Christophersen, the DMO for receiving and responding to RFIs at the plant (Tr. 119); and (3)
15 Fajardo also did not follow up with either Jones or Christophersen to inquire about the status of the July 5 RFI before filing the ULP charge on July 20 (Tr. 576–577).

The first argument is clearly without merit. Although Jones testified that he had already given the requested information to Fajardo at the May and June meetings, his testimony was contrary to the overwhelming weight of the evidence. As discussed above, that evidence
20 indicates that Jones only gave Fajardo some current and projected RPGs at those meetings, not the RPGs for all of 2017 and 2018 that he requested on July 5 and eventually received in early August.

As for the second argument, the record confirms that Jones had previously advised
25 Fajardo in November 2017 that, “in order to improve [the Postal Service’s] response time,” Christophersen was being designated as the DMO at the plant to receive and respond to RFIs and all RFIs should therefore be submitted to him (R. Exh. 2).²² Fajardo, however, notified Jones the following month that the Union objected to this requirement on the ground that it was
30 inconsistent with the contract and the parties’ past practice, and that the Union would therefore continue to submit RFIs to supervisors, managers, or installation heads (GC Exh. 75).²³ Further, there is no credible evidence that Jones himself did not receive Fajardo’s July 5 email. Jones testified that he never saw the email and only later discovered, after learning of the ULP charge, that it had been transmitted into a “sync error” folder (Tr. 107). However, there is no
35 documentary or other evidence corroborating such a “sync error,” and neither Jones nor Christophersen ever told the Union that the delay was due to a “sync error.”²⁴ Moreover, as indicated above, Jones was not a particularly credible or reliable witness generally.

²² Jones’ November 2017 letter also referenced the Tenth Circuit consent order that had issued the previous month. However, the court’s October 2017 consent order did not explicitly require the Postal Service to identify a DMO at each Albuquerque facility or require the Union to submit its RFIs to the DMO at each facility. Although the court’s prior consent order in May 2013 contained such a provision, the October 2017 order superseded that May 2013 order. See Jt. Exhs. 7 and 8, previously mentioned in fn. 11, above.

²³ Article 31.3 of the May 21, 2015–Sept. 20, 2018 national contract (Jt. Exh. 1) stated that RFIs relating to purely local matters “should be submitted by the local Union representative to the installation head or his designee.”

²⁴ The Postal Service’s posthearing brief also does not mention the “sync error.”

The third argument is likewise without merit. “[I]t is well settled that a union is not required to repeat [its information] request.” *Chapin Hill at Red Bank*, 360 NLRB 116, 119 (2014), citing *Bundy Corp.*, 292 NLRB 671, 672 (1989) (rejecting the employer’s argument that its delay in providing requested information was not unlawful because the union had failed to repeat its information requests during numerous phone conversations during that period). See also *Postal Service*, 308 NLRB 547 n. 1, and 551 (1992) (finding that a Postal Service manager’s 4-week delay in providing requested information was unlawful notwithstanding that the union had not sent a second request).

Accordingly, the Postal Service violated Section 8(a)(5) of the Act by failing to timely provide the requested RPG reports as alleged.

B. Box Section Audit

On September 15, 2018, Huerta faxed an RFI to Samuel Pantoja, the manager of the Albuquerque Five Points station, requesting a copy of the July 2018 “box section audit” by September 19. Huerta wanted the information to determine if jobs in the box sections (where mail is inserted into customer P.O. boxes) had been abolished based on falsified documentation. However, he never received the requested information or any other response to the RFI. (GC Exh. 64; Tr. 460–464.)

As with the RPG reports, the Postal Service does not dispute that the requested box section audit was relevant and necessary.²⁵ Rather, the Postal Service argues that Huerta acknowledged that his attempt to fax the RFI to Pantoja failed. However, Huerta actually testified the opposite; that the September 15 fax to Pantoja was successful. And his testimony is corroborated by the fax transmission report.

The Postal Service also argues that the failure to provide the requested audit information was not unlawful because Huerta did not follow up with a second request by letter or email. However, as discussed above he was not required to do so.

Accordingly, the Postal Service’s failure and refusal to provide the requested box section audit violated Section 8(a)(5) of the Act as alleged.

C. Assignment of Craft Duties to Mail Carrier

On September 28, 2018, Union Steward Wood hand-delivered an RFI to Gurdeep Mann, a supervisor and step 1 grievance designee at the North Valley facility, requesting various information regarding work assignments to a city mail carrier. Wood wanted to determine if there was a “crossing-craft” violation, i.e., whether the mail carrier was performing clerk duties. He therefore requested that the following six types of information be provided by October 3:

²⁵ The Postal Service’s answer to the consolidated complaint denied that any of the four RFIs at issue sought relevant and necessary information. However, as indicated above, the Postal Service stipulated at the hearing that the RPG reports were relevant and necessary. And it offered no testimony or other evidence to dispute the testimony by Huerta and other union stewards regarding the relevance of the information requested in the other three RFIs. Nor has it contested the relevance of that information in its posthearing brief.

(1) clock rings/time cards for the mail carrier from September 15–28, 2018; (2) other job offers made to her within craft; (3) description of her job duties; (4) notification to APWU of light limited duty for her; (5) overtime desired list (OTDL); and (6) clock rings for OTDL clerks at the North Valley annex (delivery) unit from September 15–28, 2018. (GC Exh. 18; Tr. 190–191, 322–324.)

Wood received the information requested in items (1), (5), and (6) from Mann on or about the October 3 deadline. However, he did not receive the other requested information.

About 9 days later, on October 12, Wood filed a grievance alleging, based on the clock rings, that the mail carrier was crossing crafts and performing clerk duties in violation of the contract. In the “Background” section of the grievance, Wood specifically stated that the information received in response to the September 28 RFI was “incomplete [with] no description of job duties, job offers within craft, or notification to APWU of light limited duty.”

Mann denied the grievance the same day. However, he did not respond at that time regarding the unprovided information. The Union did not receive the information requested in items (2) and (3) until a few weeks later, on October 31, at the step 2 meeting regarding the grievance. And Mann did not respond regarding item (4) until November 5, in response to another similar RFI, indicating that he did not believe notice to the Union was necessary because the mail carrier was not working in the clerk craft. The grievance was settled at step 3 a few months later, in February 2019. (GC Exhs. 19, 20, 42; Tr. 326–327, 358–361, 364–365.)

As with the other RFIs, the Postal Service does not dispute that the requested information in items (2), (3), and (4) relating to the mail carrier’s work assignments was relevant and necessary.²⁶ Nor does it offer any other explanation or justification for the 5–6 weeks’ delay in providing that information or responding to the Union. Accordingly, the Postal Service violated Section 8(a)(5) of the Act as alleged. See *Postal Service*, above. See also *Columbia University*, 298 NLRB 941, 945 (1990) (“[A]n employer must respond to a union’s request for relevant information within a reasonable time, either by complying with it or by stating its reasons for noncompliance.”).

D. ETC/Clock Rings

On October 1, 2018, Union Steward Susan Naranjo emailed an RFI to Five Points Manager Pantoja requesting certain time and attendance information to determine if the Postal Service was violating the contract with respect to the OTDL and PSE limits at that station. Specifically, the RFI requested the ETC (electronic time card)/clock rings for all full-time clerks at the station and all PSE clerks working at the station from September 15–28, 2018; the clerk schedules at the station for the same dates; and the PS 3971 (request for or notification of absence) for all clerks FTR (full time regular) and PSE at the station for the same dates. (GC Exh. 23, 24; Tr. 342–344.)

Pantoja emailed the requested information to Naranjo a few days later, on October 4. However, after reviewing the information and comparing the clock rings to the schedules,

²⁶ See fn. 25, above.

Naranjo noticed that the clock rings for two of the nine scheduled clerks were missing. On October 12, she therefore emailed Pantoja, with copies to then-MCSO Janelle Aragon and Postmaster Yazzie,²⁷ advising him of the missing clock rings for the two clerks. Due to the incomplete information, she also asked Pantoja for an extension of the deadline to file a grievance. (GC Exhs. 26, 27, 34; Tr. 348.)²⁸

However, Pantoja did not receive Naranjo’s October 12 email because he was on vacation leave that week, went to training in Oklahoma the following week, and did not check his email during that time. Thus, he did not respond. Neither Yazzie nor Aragon did either. (Tr. 228–229, 350.)²⁹

Two weeks later, on Friday October 26, Naranjo happened to run into Yazzie at one of the postal stations. They had a brief conversation and Yazzie asked if she had received the missing clock rings. She said no, and Yazzie replied he would take care of it. Yazzie called Pantoja, who was still at training, shortly thereafter. Pantoja, in turn, contacted Naranjo later that afternoon. Eventually, after some further back and forth over the next few days, Pantoja emailed her the missing clock rings on October 30. He also extended the time to file a grievance, which was settled at step 1 on November 7. (Tr. 233, 350–354; GC Exh. 28–30, 45.)

As with the other RFIs at issue, the Postal Service does not dispute that the clock rings requested in the October 1 RFI were relevant and necessary. Rather, the Postal Service argues that (1) Pantoja promptly responded to the RFI on October 4 by providing what he thought was all the requested information, and (2) while there was some delay in providing the additional clock rings that were missing from his October 4 response, it was de minimis and nonprejudicial given that the deadline for filing the grievance was extended and it was settled at step 1.

²⁷ Yazzie had been promoted from acting postmaster to postmaster of Albuquerque in mid-September. Naranjo typically sends follow-up emails if she does not receive a complete response to an RFI by the requested deadline, and she will also sometimes notify Yazzie and Aragon (Tr. 341). In fact, Naranjo had previously sent a second email to Pantoja on October 3 because her October 1 email and RFI had requested the information by October 2 (GC Exh. 25).

²⁸ Pantoja testified that he also hand-delivered the same information to Naranjo on October 4, and that she looked through the information and said she was satisfied with it at that time (Tr. 230, 238.). However, Naranjo denied that Pantoja hand-delivered the information to her on October 4, testifying that she only got it by email (Tr. 366–367). And her subsequent email to Pantoja on October 12 seems to support her testimony. See GC Exh. 27 (“I received the RFI . . .”).

²⁹ Pantoja testified that he told Naranjo when he hand-delivered the requested information to her on October 4 that he was going to be out of the office for a couple weeks. He also testified that he directed two of his supervisors to handle any RFIs while he was gone. (Tr. 229–230.) However, as noted above, a preponderance of the evidence indicates that Pantoja did not, in fact, hand-deliver the information to Naranjo on October 4. Further, even if Pantoja did tell Naranjo at some point that he was going to be out of the office for a couple weeks (Naranjo never specifically denied this), there is no evidence that he told her that he would not be checking his email or that she should contact his two supervisors instead. Nor is there any evidence that he left an automatic “out of office” reply message in his email account stating that the supervisors should be contacted in his absence.

Neither argument provides a defense under Board precedent. An employer’s failure to timely provide relevant information on request is generally unlawful regardless of whether the delay was inadvertent or the result of error, *Lenox Hill Hospital*, 362 NLRB 106 n. 2, 115 (2015), and *Oak Hill*, 360 NLRB 359, 400 (2014), or whether the union suffered prejudice by the delay, *Albertsons, Inc.*, 351 NLRB 254, 351 (2007) (complaint par. 65(viii)), and *Beverly California Corp.*, 326 NLRB 153, 157 (1998), enfd. in relevant part 227 F.3d 817 (7th Cir. 2000), cert. denied 533 U.S. 950 (2001). And the circumstances here do not warrant a different conclusion or result. Pantoja admitted that he made no effort to cross-check the schedules and clock rings to ensure that the information he provided on October 4 was complete (Tr. 241). Further, as noted above (fn. 29), the record indicates that he also subsequently failed to take reasonable and necessary steps to ensure that any RFI issues or problems that arose would be promptly handled while he was on vacation and at training. Finally, Naranjo testified that she spent approximately 4 hours trying to obtain the missing clock rings—the maximum total amount of “steward” time she was typically allowed in an entire week—and that the 4-week delay in obtaining them compromised the credibility of both her and the Union in the eyes of the employees (Tr. 356–357).³⁰

Accordingly, the Postal Service’s failure to timely provide all of the requested clock rings violated Section 8(a)(5) of the Act as alleged.

CONCLUSIONS OF LAW

1. The Postal Service violated Section 8(a)(5) and (1) of the Act by failing and refusing to provide APWU Local 380 with the information it requested on September 15, 2018 regarding the July 2018 box section audit at the Albuquerque Five Points station.

2. The Postal Service also violated Section 8(a)(5) and (1) of the Act by its unreasonable delay in providing APWU Local 380 with the following:

a. The information the Union requested on July 5, 2018 regarding the Albuquerque mail processing plant RPG reports for 2017 and 2018.

³⁰ Compare *Albertson’s*, above, 351 NLRB at 256 (complaint par. 69) (dismissing a separate allegation on de minimis grounds because any delay in providing the requested information was due to a “simple mistake” that was “quickly and effectively corrected soon after the matter was brought to the Respondent’s attention” and “caused little, if any, actual interference with the Respondent’s timely production of the requested information to [the union] within the deadline the union imposed”). Compare also *Print Fulfillment Services LLC*, 361 NLRB 1243, 1286 (2014), where the ALJ found that the employer’s 1-month delay in providing certain requested information following the union’s election was not unlawful given that the president’s executive assistant was on business travel during the first part of the month, the HR director who had initial responsibility to gather the information took medical leave the remainder of the month and his employment terminated thereafter, and the employer was unfamiliar with the collective-bargaining process. However, while not clear from the Board’s decision, I take administrative notice that the General Counsel’s “limited” exceptions to the ALJ’s decision, which are published on the NLRB’s website, did not except to this finding.

b. The information the Union requested on September 28, 2018 regarding the assignment of craft duties at the Albuquerque North Valley facility to a mail carrier.

5 c. The information the Union requested on October 1, 2018 regarding the ETC/clock rings for all full-time and PSE clerks at the Five Points station from September 15–28, 2018.

3. The Postal Service’s foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

10 4. The Postal Service did not otherwise violate the Act as alleged in the consolidated complaint.

ORDER³¹

15 The Respondent, United States Postal Service, Albuquerque, New Mexico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

20 (a) Failing and refusing to provide APWU Local 380 with requested relevant and necessary information.

(b) Unreasonably delaying providing the Union with requested relevant and necessary information.

25

(c) In any like or related manner 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.

30

(a) Furnish to the Union in a timely manner the information it requested on September 15, 2018 regarding the July 2018 box section audit at the Five Points station.

35 (b) Waive any contractual deadlines for filing and pursuing grievances where the Union missed those deadlines due to the Respondent’s unlawful failure to timely provide the foregoing requested information.

40 (c) Within 14 days after service by the Region, post at its facilities in Albuquerque, New Mexico copies of the attached notice marked “Appendix.”³² Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent’s

³¹ If no exceptions are filed as provided by Section 102.46 of the Board’s Rules, the findings, conclusions, and recommended Order will, as provided by Sec. 102.48 of the Rules, be adopted by the Board and all objections to them will be deemed waived for all purposes.

³² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

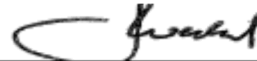
authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 5, 2018.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

It is further ordered that the consolidated complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., January 23, 2020



Jeffrey D. Wedekind
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives 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 fail and refuse to provide APWU Local 380 with requested relevant and necessary information.

WE WILL NOT unreasonably delay providing the Union with requested relevant and necessary information.

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

WE WILL furnish to the Union in a timely manner the information it requested on September 15, 2018 regarding the July 2018 box section audit at the Five Points station.

WE WILL waive any contractual deadlines for filing and pursuing grievances where the Union missed those deadlines due to our unlawful failure to timely provide the foregoing requested information.

UNITED STATES POSTAL SERVICE

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies 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. You may also obtain information from the Board's website: www.nlr.gov.

2600 North Central Avenue, Suite 1800, Phoenix, AZ 85004-3099

(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/28-CA-222265 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



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, (602) 640-2146.