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American Postal Workers Union Local 238 (United States Postal Service) and Jana Kerley. Case 14–CB–253322

May 22, 2020

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS KAPLAN
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that American Postal Workers Union, Local 238 (the Respondent) has failed to file an answer to the complaint. Upon a charge and an amended charge filed by Jana Kerley (the Charging Party) on December 13, 2019 and February 12, 2020, respectively, the General Counsel issued a complaint and notice of hearing on February 27, 2020, against the Respondent, alleging that it has violated Section 8(b)(1)(A) of the Act. The Respondent failed to file an answer.

On April 1, 2020, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on April 7, 2020, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Default Judgment

Section 102.20 of the Board’s Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by March 12, 2020, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel’s motion disclose that the Region, by letter dated March 13, 2020, advised the Respondent that unless an answer was received by March 19, 2020, the Region would file a motion for default judgment. Nevertheless, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel’s Motions to Transfer Case to and Continue Proceedings Before the Board and for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service (the Employer) provides postal services for the United States and operates various facilities throughout the United States in performing that function, including the Network Distribution Center located at 4900 Speaker Road, Kansas City, Kansas (Speaker Road Facility), the only facility involved in this proceeding.

The Board has jurisdiction over the Employer and this matter by virtue of Section 1209 of the Postal Reorganization Act (PRA), 39 U.S.C. § 101 et seq.

We find that the Respondent and the American Postal Workers Union, AFL–CIO (National Union) are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been agents of the Respondent within the meaning of Section 2(13) of the Act:

Michelle Fitzpatrick		Local President
Mark Dempsey	–	Steward
Crystal Herriage	-	Steward

At all material times by virtue of Section 9(a) of the Act, the National Union has been the exclusive collective-bargaining representative of the following employees of the Employer, herein called the unit:

All maintenance employees, motor vehicle employees, postal clerks, including special delivery messengers merged into the clerk craft by memorandum of understanding dated November 20, 1997, mail equipment shops employees, material distribution centers employees, and operating services and facilities services employees employed by the Employer, but excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1201(2), all Postal Inspection Service employees, rural letter carriers, mail handlers, and letter carriers.

At all material times, the Respondent has been an agent of the National Union for purposes of servicing unit employees employed at the Employer’s Speaker Road facility in Kansas City, Kansas.

At all material times, the National Union and the Employer have maintained and enforced a collective-bargaining agreement, covering conditions of employment of the unit and containing, among other provisions, a grievance and arbitration procedure, the most recent of which was

effective by its terms from May 21, 2015, through September 20, 2018.

Beginning on or around June 13, 2019, and continuing to date, the Respondent has failed to process a class action grievance concerning Line H for fiscal year 2018 under the provisions of the collective-bargaining agreement.

Beginning on or around June 13, 2019, and continuing to present, the Respondent has misinformed employees about the status of the fiscal year 2018 Line H grievance in response to employee requests about the status of the grievance.

The Respondent's conduct described above was arbitrary and perfunctory.

CONCLUSIONS OF LAW

By the conduct described above in connection with its representative status, the Respondent has failed to represent the Charging Party and other unit employees for reasons that are arbitrary, perfunctory, discriminatory, or in bad faith and has breached the fiduciary duty it owes to said employee and the unit.

By the conduct described above, the Respondent has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act and within the meaning of the PRA.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent breached its fiduciary duty of fair representation owed to the Charging Party and other unit employees by failing to process the class action grievance concerning Line H for fiscal year 2018 and misinforming unit employees about the status of the grievance, in violation of Section 8(b)(1)(A) of the Act, we shall provide the remedy prescribed in *Iron Workers Local 377 (Alamillo Steel Corp.)*, 326 NLRB 375 (1998). Accordingly, we shall order the Respondent to promptly request that the Employer consider the class action grievance and, if the Employer does so, to process the grievance in accordance with the collective-bargaining agreement between the National Union and the Employer, including whatever settlement discussions or proposals may be consistent with the parties' processing of the grievance.

In addition, we shall order the Respondent to permit the unit employees who are members of the class to be represented by their own counsel at any grievance proceeding, including any arbitration that the Respondent authorizes or other resolution proceedings that may follow from the Respondent's efforts on their behalf, and pay the

reasonable legal fees of such counsel. Following exhaustion of any grievance processing in the prearbitration stage of the grievance procedure, the Respondent may exercise its discretion, consistent with its fiduciary duty of fair representation, and decide in good faith whether to pursue the grievance to arbitration. If it is not possible to pursue the grievance based on the Employer's unwillingness to do so, and if the General Counsel shows in compliance proceedings that a timely pursued grievance would have been successful in arbitration, the Respondent shall (1) make the unit employees who are members of the class whole for increases in damages, if any, suffered as a consequence of its failure to process their grievance in good faith as set forth in *Iron Workers Local 377 (Alamillo Steel Corp.)*, supra, with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Having found that the Respondent has been restraining and coercing employees and members in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(b)(1)(A) of the Act and within the meaning of the PRA by misinforming unit employees about the status of the fiscal year 2018 Line H grievance in response to employee requests about the status of the grievance, we shall order the Respondent to inform unit employees about the status of the grievance in response to their requests made since June 13, 2019.

ORDER

The National Labor Relations Board orders that the Respondent, American Postal Union Workers Local 238, Kansas City, Kansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Breaching its fiduciary duty of fair representation, as an agent of the American Postal Workers Union, AFL-CIO (the National Union), that is owed to employees and members in the unit below, by failing, in a manner that is arbitrary, perfunctory, discriminatory or in bad faith, to process a class action grievance concerning Line H for fiscal year 2018 under the provisions of the collective-bargaining agreement between the National Union and the United States Postal Service (the Employer), effective from May 21, 2015, through September 20, 2018. The unit is:

All maintenance employees, motor vehicle employees, postal clerks, including special delivery messengers merged into the clerk craft by memorandum of understanding dated November 20, 1997, mail equipment shops employees, material distribution centers employees, and operating services and facilities services employees employed by the Employer, but excluding

managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1201(2), all Postal Inspection Service employees, rural letter carriers, mail handlers, and letter carriers.

(b) Misinforming unit employees about the status of a class action grievance concerning Line H for fiscal year 2018 in response to employee requests about the status of the grievance.

(c) In any like or related manner restraining or coercing employees and members in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Promptly request, as an agent of the National Union, the Employer to consider the class action grievance concerning Line H for fiscal year 2018 and, if the Employer agrees to do so, process the grievance with due diligence in accordance with the collective-bargaining agreement effective May 21, 2015, through September 20, 2018.

(b) Permit the unit employees who are members of the class to be represented by their own counsel at any grievance proceeding, including arbitration or other resolution proceeding, and pay the reasonable legal fees of such counsel.

(c) In the event that it is not possible for the Respondent to pursue the grievance, and if the General Counsel shows in a compliance proceeding that a timely pursued grievance would have been successful, make the unit employees who are members of the class whole for any increases in damages suffered as a consequence of the Respondent's failure to process their grievance in good faith, with interest, in the manner set forth in the remedy section of this decision.

(d) Promptly inform employees about the status of the fiscal year 2018 Line H grievance in response to employee requests about the status of the grievance.

(e) Post at its Kansas City, Kansas facility copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 14, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places,

including all places where notices to employees and members are customarily posted. In addition to physical posting of paper notices, 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 members 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.

(f) Within 21 days after service by the Region, file with the Regional Director for Region 14 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.

Dated, Washington, D.C. May 22, 2020

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
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

¹ If the facility involved in these proceedings is open and accessible to a substantial complement of employees and members, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees and members have regained access, and the notices may not be posted until a substantial complement of employees and members have regained access. Any delay in the

physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its members by electronic means. 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."

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT breach our duty of fair representation, as an agent of the American Postal Workers Union, AFL-CIO (the National Union), by failing to process a class action grievance concerning Line H for fiscal year 2018 for reasons that are arbitrary or in bad faith.

WE WILL NOT misinform unit employees about the status of a class action grievance concerning Line-H for fiscal year 2018 in response to employee requests about the status of the grievance.

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

WE WILL promptly request, as an agent of the National Union, the Employer to consider the class action grievance concerning Line H for fiscal year 2018 under the provisions of the collective-bargaining agreement and, if the Employer agrees to do so, process the grievance with due diligence in accordance with the collective-bargaining agreement effective May 21, 2015, through September 20, 2018.

WE WILL permit the unit employees who are members of the class to be represented by their own counsel at any grievance proceeding, including arbitration or other resolution proceeding, and pay the reasonable legal fees of such counsel.

WE WILL, in the event that it is not possible for us to pursue the grievance, and if the General Counsel shows in a compliance proceeding that a timely pursued grievance would have been successful, make the unit employees who are members of the class whole for any increases in damages suffered as a consequence of our failure to process their grievance in good faith, with interest.

WE WILL inform employees about the status of the 2018 fiscal year Line H grievance in response to their requests about the status of the grievance.

AMERICAN POSTAL WORKERS UNION
LOCAL 238

The Board's decision can be found at <https://www.nlr.gov/case/14-CB-253322> 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.

