

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

Directions: Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

| | |
|--------------------------------------|---|
| Appeal No. & Caption | 20-1792, NLRB v. USPS |
| Originating No. & Caption | USPS and APWU, AFL-CIO, Local 168, No. 10-CA-239552 |
| Originating Court/Agency | National Labor Relations Board |

| | |
|--|---|
| Jurisdiction (answer any that apply) | |
| Statute establishing jurisdiction in Court of Appeals | 29 U.S.C. § 160(e) |
| Time allowed for filing in Court of Appeals | na |
| Date of entry of order or judgment appealed | July 14, 2020 |
| Date notice of appeal or petition for review filed | July 22, 2020 |
| If cross appeal, date first appeal filed | |
| Date of filing any post-judgment motion | |
| Date order entered disposing of any post-judgment motion | |
| Date of filing any motion to extend appeal period | |
| Time for filing appeal extended to | |
| Is appeal from final judgment or order? | <input checked="" type="radio"/> Yes <input type="radio"/> No |
| If appeal is not from final judgment, why is order appealable? This is a petition to enforce a final agency order pursuant to Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. §§ 151, 160(e)). | |

| | |
|--|---|
| Settlement (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-731-9099.) | |
| Is settlement being discussed? | <input type="radio"/> Yes <input checked="" type="radio"/> No |

| Transcript (transcript order must be attached if transcript is needed and not yet on file) | | |
|---|---------------------------|-------------------------------------|
| Is transcript needed for this appeal? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| Has transcript been filed in district court? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| Is transcript order attached? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |

| Case Handling Requirements (answer any that apply) | | |
|---|---|-------------------------------------|
| Case number of any prior appeal in same case | | |
| Case number of any pending appeal in same case | | |
| Identification of any case pending in this Court or Supreme Court raising similar issue | | |
| | If abeyance or consolidation is warranted, counsel must file an appropriate motion. | |
| Is expedited disposition necessary? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| | If yes, motion to expedite must be filed. | |
| Is oral argument necessary? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| Does case involve question of first impression? | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party | <input type="radio"/> Yes | <input checked="" type="radio"/> No |
| | If yes, notice re: challenge to constitutionality of law must be filed. | |

| Nature of Case (Nature of case and disposition below. Attach additional page if necessary.) |
|---|
| <p>On May 28, 2020, United States Postal Service, the American Postal Workers Union, AFL–CIO, Local 168, and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation authorizing the Board to enter an order embodying the stipulation's terms. On July 14, 2020, the Board entered an order pursuant to the terms of the settlement agreement. Paragraph VI of the stipulation authorized the Board to apply to this Court of Appeals for a judgment enforcing the Board's order and provided that the United States Postal Service waived all defenses to the entry of the judgment. The Board now seeks enforcement of its order.</p> |

Issues (Non-binding statement of issues on appeal. Attach additional page if necessary)

The parties have an agreement and the Board's order reflects the terms of that agreement. The parties contemplated, and the Board seeks, enforcement of the Board's order which reflects the terms of the agreement.

Adverse Parties (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

Adverse Party:

Attorney: Roderick D. Eves, Esq.
Address: United States Postal Service
Law Dept. - NLRB Unit
1720 Market St., Rm. 2400
Saint Louis, MO 63155-9948

E-mail: uspsnlrb@usps.gov

Phone: (314) 345-5864

Adverse Party:

.

Attorney:
Address:

E-mail:

Phone:

Adverse Parties (continued)

Adverse Party:

Attorney:
Address:

E-mail:

Phone:

Adverse Party:

Attorney:
Address:

E-mail:

Phone:

Appellant (Attach additional page if necessary.)

Name: National Labor Relations Board

Name:

Attorney: David Habenstreit
Address: National Labor Relations Board
1015 Half Street, S.E.
Washington, D.C. 20570

Attorney:
Address:

E-mail:

E-mail:

Phone:

Phone:

Appellant (continued)

Name:

Name:

Attorney:
Address:

Attorney:
Address:

E-mail:

E-mail:

Phone:

Phone:

Signature: s/ David Habenstreit **Date:** 7/23/2020

Counsel for: National Labor Relations Board

Certificate of Service: I certify that on 7/23/2020 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below (Attach additional page if necessary):

Roderick D. Eves, Esq.
United States Postal Service
Law Dept. - NLRB Unit
1720 Market St., Rm. 2400
Saint Louis, MO 63155-9948

Signature: s/ David Habenstreit

Date: 7/23/2020

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

UNITED STATES POSTAL SERVICE

and

Case 10-CA-239552

**AMERICAN POSTAL WORKERS UNION,
AFL-CIO, LOCAL 168**

DECISION AND ORDER

Statement of the Case

On May 28, 2020, the United States Postal Service (the Respondent), American Postal Workers Union, AFL–CIO, Local 168 (Postal Workers Local 168), and the General Counsel of the National Labor Relations Board entered into a Formal Settlement Stipulation, subject to Board approval, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act and the Board’s Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Formal Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Formal Settlement Stipulation.¹

¹ We note that the remedy to which the parties have agreed differs in some respects from previous broad orders that the Board has issued against the Respondent in cases alleging that the Respondent has violated Sec. 8(a)(5) of the Act by failing and refusing to provide relevant information. See, e.g., *United States Postal Service*, 345 NLRB 426 (2005), enfd. 486 F.3d 683 (10th Cir. 2007); *United States Postal Service*, 28-CA-017383 et al., unpublished order issued November 4, 2002, enfd. Case 02-9587 (10th Cir. 2003). These broad orders, as enforced by the United States Courts of Appeals, remain in effect, and the Board’s approval of this stipulation does not modify these orders in any respect.

Member Emanuel would not approve the parts of the Order that require the Respondent to take action with respect to “any other union with which the Respondent has an exclusive collective-bargaining relationship, or its servicing representative, at its Greenville Processing and Distribution Center,” because no violations against other unions are alleged as part of this case.

Based on the Formal Settlement Stipulation and the entire record, the Board makes the following

Findings of Fact

1. The Respondent's business

The Respondent provides postal services for the United States and operates various facilities throughout the United States in performing that function, including its Greenville Processing and Distribution Center located at 204 Fairforest Way in Greenville, South Carolina (Greenville Processing and Distribution Center). The Board has jurisdiction over the Respondent and this matter by virtue of Section 1209 of the Postal Reorganization Act (PRA), 39 U.S.C. § 101 et seq.

2. The labor organizations involved

At all material times, Postal Workers Local 168 has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times, American Postal Workers Union, AFL-CIO (Postal Workers) has been a labor organization within the meaning of Section 2(5) of the Act.

ORDER

Based on the above findings of fact, the Formal Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, the National Labor Relations Board orders that:

The Respondent, United States Postal Service, Greenville, South Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from the following in connection with the Respondent's employees employed in the Respondent's Greenville Processing and Distribution Center.

(a) Refusing to bargain collectively and in good faith with the American Postal Workers Union, AFL-CIO, by failing to furnish, or by unduly delaying furnishing, information that is relevant and necessary to the American Postal Workers Union, AFL-CIO, Local 168 in performing its duties for the American Postal Workers Union, AFL-CIO, the exclusive bargaining representative of the unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by the National Labor Relations Act.

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

(a) Upon request, furnish the American Postal Workers Union, AFL-CIO, American Postal Workers Union, AFL-CIO, Local 168, or any other union with which the Respondent has an exclusive collective-bargaining relationship, or its servicing representative, at its Greenville Processing and Distribution Center, with necessary and relevant information in a timely and appropriate manner.

(b) Waive, for 30 days following issuance of the Board's Order, any contractual deadlines for filing and pursuing grievances, including supplementing the grievance record, related to the requested information that the American Postal Workers Union, AFL-CIO, Local 168 missed due to the Respondent's delay in providing the information requested as described in Paragraph 9 of the April 2, 2020 Amended Complaint.

(c) Maintain a log at its Greenville Processing and Distribution Center, in which the Respondent will immediately record each information request that the American Postal Workers Union, AFL-CIO, American Postal Workers Union, AFL-CIO, Local 168 or any other union with which the Respondent has an exclusive collective-bargaining relationship, or its servicing representative, at its Greenville Processing and Distribution Center, tendered to the Respondent orally or in writing. These logs shall include the following information: a brief description of the information requested; the name of the individual who is making the request; the union and unit involved; the name of the manager or supervisor who received the request; the date the request was made; and the date that the Respondent's manager or supervisor provided the American Postal Workers Union, AFL-CIO or American Postal Workers Union, AFL-CIO, Local 168 or other such union with which the Respondent has an exclusive collective-bargaining relationship, or its servicing representative, with the requested information. If the manager or supervisor, having reviewed the documents requested, believes that the Respondent will need additional time to furnish the information, the manager or supervisor will inform the American Postal Workers Union, AFL-CIO, or American Postal Workers Union, AFL-CIO, Local 168 or any other such union or its servicing representative, in writing, requesting additional time and explaining the need for additional time. Union stewards will be granted reasonable access to the logs, upon request.

(d) Provide for each manager and supervisor who is designated to receive union requests for information at its Greenville Processing and Distribution Center, annual training that encompasses how to maintain the log and how to tender the relevant information the American Postal Workers Union, AFL-CIO, American Postal Workers Union, AFL-CIO, Local 168 or any other such union, or its servicing representative, requested; require that each such manager and supervisor sign an acknowledgment form attesting to the fact that he or she has completed this training. A copy of this acknowledgment form shall be maintained in the manager's or supervisor's training and history files. Managers or supervisors who fail to supply relevant information, or who unreasonably delay in supplying such information to the American Postal Workers

Union, AFL-CIO, American Postal Workers Union, AFL-CIO, Local 168 or other such union, or its servicing representative, will have this fact mentioned in the “corrective action” column of the semi-annual audit report provided to the district manager and district manager of human resources. The Respondent shall take disciplinary action, up to and including termination, for any managers or supervisors who repeatedly fail to respond appropriately or timely to union requests for information.

(e) Provide to union stewards of any union with which the Respondent has an exclusive collective-bargaining relationship, or its servicing representative, at its Greenville Processing and Distribution Center, the name of the manager or supervisor in each location who is designated to receive union requests for information at the facility, and when that designated manager or supervisor has changed.

(f) Require the Respondent’s legal or labor relations department to conduct semi-annual audits of the logs at the Respondent’s Greenville Processing and Distribution Center to ensure that the information requests of the American Postal Workers Union, AFL-CIO, American Postal Workers Union, AFL-CIO, Local 168 and other such unions, or their servicing representatives, are being handled in a timely and appropriate manner, and to ensure the logs are being properly maintained. Following the audit, the legal or labor relations department shall tender, in writing, a written report that will be forwarded to the district manager and district manager of human resources.

(g) Within 14 days of service by the Region:

(i) Post at the Respondent’s Greenville Processing and Distribution Center, copies of the Notice to Employees that the Acting Regional Director for Region 10 shall provide to the Respondent for posting. The Region will provide copies of the notice that the Respondent will be required to duplicate in color, at its own expense, before posting. The duplicated copies 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 are customarily posted;

(ii) Electronically post the Notice to Employees for employees at the Respondent’s Greenville Processing and Distribution Center, if the Respondent customarily uses electronic means such as an electronic bulletin board, email, website, or intranet to communicate with those employees;

(iii) Send a copy of any Board Order and Notice to Employees to all its managers and supervisors at the Respondent’s Greenville Processing and Distribution Center.

(h) Within 60-day Notice posting period, hold a meeting or meetings, scheduled to ensure the widest possible attendance on each shift, at which a responsible management official will read the Notice to Employees for employees at the Respondent’s Greenville Processing and Distribution Center, in front of a union official

for the American Postal Workers Union, AFL-CIO, Local 168. The reading will take place at a time when the Respondent would customarily hold meetings and must be completed prior to the completion of the 60-day Notice posting period. The dates and times of the reading, and the management official who will read the notice, must be approved by the Acting Regional Director. The announcement of the meeting will be in the same manner the Respondent normally announces meetings and must be approved by the Acting Regional Director.

(i) Within 21 days after service, file with the Acting Regional Director a signed and sworn Certification of Compliance, Part I form certifying that it has complied with this Order. The certification shall include a copy of the documents signed by a responsible official attesting to the dates that the notices were received at each facility, the dates that the notices were posted, where the notices were posted, and date(s), time(s), and the management official who read the Notice to Employees; the certification shall also include the dates the Respondent sent the Board Order and Notice to its managers and supervisors, a list of the names and job titles of the individuals to whom the Respondent sent them, and the method the Respondent employed to send them.

(j) Upon request, provide to the Acting Regional Director of Region 10, or his designee, copies of the logs described above in subparagraph (c); the acknowledgment forms, audit reports, and discipline described above in subparagraph (d); and the semi-annual audits and reports from the Respondent's legal or labor relations department described above in subparagraph (f).

Dated, Washington, D.C., July 14, 2020.

John F. Ring, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

**PURSUANT TO A STIPULATION PROVIDING FOR A BOARD ORDER
AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS**

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose a representative to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of the above rights.

The American Postal Workers Union, AFL-CIO, is the exclusive collective-bargaining representative of the employees in the bargaining unit set forth below. **American Postal Workers Union, AFL-CIO, Local 168** services certain employees at the South Carolina facilities listed below on behalf of the National Union.

All employees in the bargaining unit for which each has been recognized and certified at the national level, including maintenance employees, motor vehicle employees, postal clerks, the special delivery messengers, mail equipment shops employees, material distribution centers employees, and operating services and facilities services employees; 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, employees in the supplemental work forces as defined in Article 7 of the Collective-Bargaining Agreement, rural letter carriers, mail handlers, and letter carriers.

WE WILL NOT fail to provide, or unreasonably delay in providing, the American Postal Workers Union, AFL-CIO, or American Postal Workers Union, AFL-CIO, Local 168 or any other union with which we have an exclusive collective-bargaining relationship, or its servicing representative, at the Greenville Processing and Distribution Center located at 204 Fairforest Way in Greenville, South Carolina, with information that they or their National Unions need to represent you.

WE WILL NOT in any like or related manner interfere with your rights under the National Labor Relations Act.

WE HAVE provided the American Postal Workers Union, AFL-CIO, Local 168 with the information it initially requested on January 22, 2019.

WE WILL, upon request, provide any union with which we have an exclusive collective-bargaining relationship or its servicing representative with necessary and relevant information in a timely and appropriate manner.

WE WILL waive for 30 days following the issuance of the Board's Order, any contractual deadlines for filing and pursuing grievances related to the requested information that the American Postal Workers Union, AFL-CIO, Local 168 missed due to our delay in providing the information requested.

WE WILL maintain a log in which we will immediately record each information request that any union with which we have an exclusive collective-bargaining relationship, or its servicing representative, make, either orally or in writing, at the Greenville Processing and Distribution Center.

WE WILL provide union stewards with reasonable access to those logs that pertain to their requests.

WE WILL provide annual training for each manager and supervisor who is designated to receive requests for information at the Greenville Processing and Distribution Center. Such training will encompass how to maintain the log and how to tender the relevant information to any union with which we have an exclusive collective-bargaining relationship, or its servicing representative, at the Greenville Processing and Distribution Center.

WE WILL take disciplinary action, up to and including termination, for any managers or supervisors who repeatedly fail to respond appropriately or timely to union requests for information.

WE WILL provide union stewards for any union the name of the manager or supervisor who is designated to receive union requests for information at the Greenville Processing and Distribution Center and when that designated manager or supervisor has changed.

WE WILL require our legal or labor relations department to conduct semi-annual audits of the logs to ensure that the information requests of any union with which we have an exclusive collective-bargaining relationship, or its servicing representative, are being handled in a timely and appropriate manner and to ensure the logs are being properly maintained.

UNITED STATES POSTAL SERVICE

The Board's decision can be found at www.nlrb.gov/case/10-CA-239552 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.

