

FILED: March 4, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 21-1202, NLRB v. USPS
10-CA-256947,10-CA-258263, 10-CA-258720

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a [Bill of Costs](#) within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN

BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

FILED: March 4, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1202
(10-CA-256947)
(10-CA-258263)
(10-CA-258720)

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

UNITED STATES POSTAL SERVICE

Respondent

J U D G M E N T

The Board's proposed judgment and order are attached hereto and are adopted as the judgment of this court enforcing an order of the National Labor Relations Board.

The court's mandate shall issue forthwith.

/s/ PATRICIA S. CONNOR, CLERK

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD	:	
	:	
Petitioner	:	Nos.
	:	
v.	:	
	:	
	:	Board Case Nos.:
UNITED STATES POSTAL SERVICE	:	10-CA-256947
	:	10-CA-258263
Respondent	:	10-CA-258720

JUDGMENT

THIS CAUSE was submitted upon the application of the National Labor Relations Board for the enforcement of a certain order on consent issued by it against Respondent, United States Postal Service, its officers, agents, successors, and assigns, on February 16, 2021, in Board Case Nos. 10-CA-256947, 10-CA-258263 and 10-CA-258720; and upon the record in that proceeding, certified and filed in this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Fourth Circuit that the order of the National Labor Relations Board be hereby enforced; and that the Respondent, United States Postal Service, 1040 Dale Earnhardt Boulevard, Kannapolis, North Carolina, its officers, agents, successors, and assigns, shall abide by and perform the directions of the Board set forth in its order. (See Attached Order and Appendix)

Mandate shall issue forthwith

NATIONAL LABOR RELATIONS BOARD

v.

UNITED STATES POSTAL SERVICE

ORDER

United States Postal Service, 1040 Dale Earnhardt Boulevard, Kannapolis, North Carolina, its officers, agents, successors and assigns, shall

1. Cease and desist from the following:
 - (a) Disparaging the Union, including by holding up a union-related document and asking employees, “Would you mind telling me what this nonsense is?”;
 - (b) Creating the impression of surveillance of employees’ protected activities by telling employees that the Respondent has “people in here watching” the employees;
 - (c) Threatening employees in any way — including telling employees that the Respondent is not playing games with them and that if the employees keep this up, it is not going to be good for them; telling employees that the Respondent cannot believe that the employees had the nerve to file a Labor Board charge; telling employees that they better straighten up and that if the employees did not straighten up and get their act together, the employees would have a long and rocky road ahead of them; telling employees that “all [they] want to do is to try to cause problems”; and making threats of unspecified reprisals and implied threats to retaliate against employees, including that the Respondent has “people in here watching” the employees — because the Respondent’s employees engaged in protected activities under the National Labor Relations Act, or because these employees filed unfair labor practice charges with the Board;
 - (d) Retaliating against employees because the Respondent’s employees filed Board charges, including by directing an employee to read an announcement out loud in front of other employees at the Respondent’s stand-up talk;

- (e) In any other manner, interfering with, restraining, or coercing employees in the exercise of their rights under the National Labor Relations Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
- (a) Within 14 days of service by the Region:
 - (i) Post at its facility located at 1040 Dale Earnhardt Boulevard in Kannapolis, North Carolina, copies of the attached notice marked "Appendix 1." Copies of the notice, on forms provided by the Region, 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 mail the Board Order and the official notice to all managers and supervisors at the Respondent's facility;
 - (iii) Distribute notices electronically, by email, posting on an intranet or internet site, and any other electronic means, if the Respondent customarily communicates with its employees by such means;
 - (iv) Take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In the event, during the pendency of these proceedings, the Respondent closes its 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 February 14, 2020.
 - (b) Within the 60-day Notice posting period, at a meeting or meetings scheduled to ensure the widest possible attendance on each shift, the Respondent's Postmaster Cherald Birch-Davis or, alternatively, a Board agent in the presence of Postmaster Cherald Birch-Davis, will read the notice to employees during worktime and in the presence of a union official and the managers and supervisors at the Respondent's facility in Kannapolis, North Carolina. The reading will take place at a time when the Respondent would customarily hold meetings for employees and

must be completed prior to the completion of the 60-day Notice posting period. The dates and times of the reading must be approved by the Regional Director. The announcement of the meeting will be in the same manner the Respondent normally announces meetings and must be approved by the Regional Director. If the Regional Director concludes that it is warranted, the notice-reading may be accomplished in full or in part by video-conferencing technology. The Regional Director must approve the details of any notice-reading by video-conference technology.

- (c) Within 21 days after service, file with the Centralized Compliance Unit at complianceunit@nlrb.gov and the 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, the dates that the notices were posted, where the notices were posted, and date(s) and time(s) the management official 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.

APPENDIX 1

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A JUDGMENT OF
THE UNITED STATES COURT OF APPEALS ENFORCING
AN 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

**SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT
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

Among these rights are the rights to engage in union activities free from threats and retaliation and to file unfair labor practice charges with the National Labor Relations Board.

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

National Association of Letter Carriers, Branch 2794 (the Union) is the exclusive collective-bargaining representative of those of you in the following appropriate unit:

City Letter Carriers, 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 workforce as defined in Article 7, rural letter carriers, mail handlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

WE WILL NOT make statements to you that disparage or undermine the Union, including by referring to union documents as “nonsense.”

WE WILL NOT make it appear to you that we are watching your activities protected by the National Labor Relations Act, including by telling you that we have “people in here watching” you.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10, SUBREGION 11

UNITED STATES POSTAL SERVICE

Cases 10-CA-256947

and

10-CA-258263

10-CA-258720

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO, BRANCH 2794

FORMAL SETTLEMENT STIPULATION

I. INTRODUCTION

Through this formal settlement stipulation, the parties to this proceeding, United States Postal Service (Respondent), National Association of Letter Carriers, AFL-CIO, Branch 2794 (the Union), and the General Counsel of the National Labor Relations Board (the Board) agree that, upon approval of this stipulation by the Board, a Board Order in conformity with its terms will issue and a court judgment enforcing the Order will be entered. The parties also agree to the following:

II. JURISDICTION

Respondent provides postal services for the United States and operates various facilities throughout the United States in performing that function, including its facility at 1040 Dale Earnhardt Boulevard in Kannapolis, North Carolina. The Board has jurisdiction over Respondent and this matter by virtue of Section 1209 of the Postal Reorganization Act (PRA).

III. LABOR ORGANIZATION STATUS

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the National Labor Relations Act (the Act).

IV. PROCEDURE

1) FILING AND RECEIPT OF CHARGES

The Union filed the charges, as set forth in the following table, and copies were served on Respondent by electronic means, based on Respondent's prior agreement, on the dates indicated:

CASE	DATE FILED	DATE SERVED
10-CA-256947	2/26/2020	2/26/2020
10-CA-258263	3/22/2020	3/23/2020
10-CA-258720	4/3/2020	4/3/2020

2) **ISSUANCE OF ORDER CONSOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING, AND ORDERS**

On June 15, 2020, the Acting Regional Director for Region 10 of the Board, by the Officer-in-Charge for Subregion 11, issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing in Cases 10-CA-256947, 10-CA-258263 and 10-CA-258720, alleging that Respondent violated the Act.

On August 12, 2020, Administrative Law Judge Christine E. Dibble issued an Order Scheduling Video Hearing and an Amended Order Scheduling Video Hearing in Case 10-CA-256947.¹

On August 19, 2020, the Acting Regional Director for Region 10 of the Board issued an Order Rescheduling Hearing in Cases 10-CA-256947, 10-CA-258263 and 10-CA-258720 from September 9, 2020 to January 19, 2021.

On December 16, 2020, Administrative Law Judge Christine E. Dibble issued an Order Setting Hearing to be Conducted by Video (Zoom Technology) in Case 10-CA-256947.²

3) **WAIVER**

Respondent withdraws its Answer to the June 15, 2020 Consolidated Complaint. The parties waive the following: (a) hearing before an administrative law judge; (b) administrative law judge's decision; (c) filing of exceptions and briefs; (d) oral argument before the Board; (e) the making of findings of fact and conclusions of law by the Board; and (f) all other proceedings to which the parties may be entitled under the Act or the Board's Rules and Regulations.

4) **THE RECORD**

The entire record in this matter consists of this Formal Settlement Stipulation, the attached Notice, and the following documents attached as exhibits:

- a) Charge in Case 10-CA-256947, filed on February 26, 2020.
- b) Charge in Case 10-CA-258263, filed on March 22, 2020.
- c) Charge in Case 10-CA-258720, filed on April 3, 2020.

¹ ALJ Dibble's August 12, 2020 Orders only listed Case 10-CA-256947 in the caption.

² ALJ Dibble's December 16, 2020 Order only listed Case 10-CA-256947 in the caption.

- d) Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, issued on June 15, 2020.
- e) Order Scheduling Video Hearing, issued on August 12, 2020.
- f) Amended Order Scheduling Video Hearing, issued on August 12, 2020.
- g) Order Rescheduling Hearing, issued on August 19, 2020.
- h) Order Setting Hearing to be Conducted by Video (Zoom Technology), issued on December 16, 2020.

Copies of the Charges, Consolidated Complaint, and Orders are attached as Exhibits A through H, respectively.

5) **ENTIRE AGREEMENT**

This stipulation constitutes the entire agreement between the parties and there is no agreement of any kind, verbal or otherwise, that alters or adds to it.

6) **SCOPE OF THE STIPULATION AND RESERVATION OF EVIDENCE**

This stipulation settles only the allegations in these cases and does not constitute a settlement of any other cases or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints or the Board and the courts from finding violations with respect to matters that precede the date of the approval of this stipulation, regardless of whether those matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of these cases for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and conclusions of law with respect to that evidence.

7) **EFFECTIVE DATE**

This stipulation is subject to the approval of the Board and it does not become effective until the Board has approved it. The Acting Regional Director, by the Officer-in-Charge of Subregion 11, will file with the Board this stipulation and the documents constituting the record as described above. Once the Board has approved the stipulation, Respondent will immediately comply with the provisions of the order as set forth below.

V. **ORDER**

Based on this stipulation and the record as described above, and without any further notice of proceedings, the Board may immediately enter an order providing as follows:

Respondent, its officers, agents, successors and assigns, shall:

1. Cease and desist from the following:

- (a) Disparaging the Union, including by holding up a union-related document and asking employees, “would you mind telling me what this nonsense is?”;
- (b) Creating the impression of surveillance of employees’ protected activities by telling employees that Respondent has “people in here watching” the employees;
- (c) Threatening employees in any way — including telling employees that Respondent is not playing games with them and that if the employees keep this up, it is not going to be good for them; telling employees that Respondent cannot believe that the employees had the nerve to file a Labor Board charge; telling employees that they better straighten up and that if the employees did not straighten up and get their act together, the employees would have a long and rocky road ahead of them; telling employees that “all [they] want to do is to try to cause problems”; and making threats of unspecified reprisals and implied threats to retaliate against employees, including that Respondent has “people in here watching” the employees — because Respondent’s employees engaged in protected activities under the National Labor Relations Act, or because these employees filed unfair labor practice charges with the Board;
- (d) Retaliating against employees because Respondent’s employees filed Board charges, including by directing an employee to read an announcement out loud in front of other employees at Respondent’s stand-up talk;
- (e) In any other manner, interfering with, restraining, or coercing employees in the exercise of their rights under the National Labor Relations Act.

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

- (a) Within 14 days of service by the Region:
 - (i) Post at its facility located at 1040 Dale Earnhardt Boulevard in Kannapolis, North Carolina copies of the attached notice marked “Appendix 1.”³ Copies of the notice, on forms provided by the Region, after being signed by Respondent’s authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted;

³ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice providing, “Posted by Order of the National Labor Relations Board” shall instead provide, “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

- (ii) Electronically mail the Board Order and the official notice to all managers and supervisors at Respondent's facility;
 - (iii) Distribute notices electronically, by email, posting on an intranet or internet site, and any other electronic means, if Respondent customarily communicates with its employees by such means;
 - (iv) Take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material. In the event, during the pendency of these proceedings, Respondent closes its facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since February 14, 2020.
2. Within the 60-day Notice posting period, at a meeting or meetings scheduled to ensure the widest possible attendance on each shift, Respondent's Postmaster Cherald Birch-Davis or, alternatively, a Board agent in the presence of Postmaster Cherald Birch-Davis, will read the notice to employees during worktime and in the presence of a union official and the managers and supervisors at Respondent's facility in Kannapolis, North Carolina. The reading will take place at a time when Respondent would customarily hold meetings for employees and must be completed prior to the completion of the 60-day Notice posting period. The dates and times of the reading must be approved by the Regional Director. The announcement of the meeting will be in the same manner the Respondent normally announces meetings and must be approved by the Regional Director. If the Regional Director concludes that it is warranted, the notice-reading may be accomplished in full or in part by video-conferencing technology. The Regional Director must approve the details of any notice-reading by video-conference technology.
3. Within 21 days after service, file with the Centralized Compliance Unit at complianceunit@nlrb.gov and the 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, the dates that the notices were posted, where the notices were posted, and date(s) and time(s) the management official read the Notice to Employees. The certification shall also include the dates 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 Respondent sent them, and the method Respondent employed to send them.

VI. ENFORCEMENT OF ORDER

The United States Court of Appeals for any appropriate circuit may enter, on application

by the Board, its judgment enforcing the Order of the Board in the form set forth above. Respondent waives all defenses to the entry of the judgment, including compliance with the Order of the Board and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words set forth above. However, Respondent shall be required to comply with the affirmative provisions of the Board's Order after entry of the judgment only to the extent that it has not already done so.

United States Postal Service

Respondent

By Mark F. Wilson Jan. 11, 2021
Date

Name and title (print): Mark Wilson, Attorney

National Association of Letter Carriers, AFL-CIO, Branch 2794

Charging Party

By Adam J. Brown 1-11-2021
Date

Name and title (print): Adam J. Brown, Union Steward NALC 2794

Approval recommended by

SBSch 1/12/2021
Date
Sarah B. Schafhauser, Field Attorney
National Labor Relations Board
Subregion 11

Approved by

Lisa Y. Henderson
Acting Regional Director
National Labor Relations Board
Region 10, by

Scott C. Thompson 12 January 2021
Date
Digitally Signed
Scott C. Thompson
Officer-in-Charge
National Labor Relations Board
Subregion 11