JD(ATL)–19–12
Decatur, AL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

UNITED STATES POSTAL SERVICE

and	**CASES**	**10-CA-77588**
		10-CA-77593
AMERICAN POSTAL WORKERS UNION,		**10-CA-77638**
AFL-CIO, NORTH ALABAMA AREA		**10-CA-77640**
LOCAL 359		**10-CA-77645**
		10-CA-77650
		10-CA-77655
		10-CA-78075

Gregory Powell, Esq.,
for the General Counsel.
Steven Coney, Esq. of Dallas, Texas,
for the Respondent.
Mr. Raymond Allen,
for the Charging Party.

BENCH DECISION AND CERTIFICATION

Statement of the Case

KELTNER W. LOCKE, Administrative Law Judge. I heard this case on July 26, 2012, in Birmingham, Alabama. After the parties rested, I heard oral argument, and on July 27, 2012, issued a bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, setting forth findings of fact and conclusions of law. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach hereto as "Appendix A," the portion of the transcript containing this decision.[1]

[1] The bench decision appears in uncorrected form at pp. 157 through 167 of the transcript. The final version, after correction of oral and transcriptional errors, is attached as Appendix A to this certification.

Relevance of Requested Information

The consolidated complaint alleges that the Union, American Postal Workers Union, AFL-CIO, North Alabama Area Local 359, requested certain documents and that these documents were relevant to the Union's performance of its function as exclusive bargaining representative and necessary for that purpose.

Shop Steward Raymond Allen testified regarding the relationship of the information requests to grievances which the Union had filed on behalf of its members. Based on my observations, I conclude that Allen was a reliable witness. Moreover, in most respects his testimony was uncontradicted. Therefore, I credit it.

The information requested concerned bargaining unit employees and therefore is presumptively relevant. *Certco Food Distribution Centers*, 346 NLRB 1214, 1215 (2006). Moreover, based on the testimony of Shop Steward Allen, I find that Respondent did not contest the relevance of the requested information when it responded to the information requests. Accordingly, I conclude that the requested information was relevant to and necessary for the performance of the Union's functions as the employees' representative.

Complaint Paragraph 9(f)

Complaint paragraphs 9(a)—(e) describe the information the Union requested which Respondent ultimately provided, albeit after a delay. The complaint alleges, and I have found, that the delay was unreasonable and in violation of Section 8(a)(5) and (1) of the Act.

Complaint paragraph 9(f) describes information which the Union requested but which Respondent never provided. The complaint alleges this failure to provide the information to be a violation of Section 8(a)(5) and (1).

The record clearly establishes that Respondent did not provide the documents described in Complaint paragraph 9(f), but the bench decision did not resolve whether Respondent thereby violated the Act. Rather, I deferred that issue so that I could review the transcript. Having done so, I make the following findings and conclusions.

Complaint paragraph 9(f) specifically alleges that,

> Since on or about March 4, 2012, the Union has requested, in writing, that Respondent furnish the Union with the following information: original fiscal year 2009 job postings with the identification numbers 95404809, 95298506, and 95160386, and original fiscal year 2007 job postings with the identification number 95096761; copies of all clerk jobs listed and posted for bidding, including the dates posted and the dates the postings were removed from the employee board; documents showing any unsuccessful bidders; documents showing when jobs were first posted; documents showing the names of employees who held the jobs and when the employees vacated the jobs; and copies of documents showing the dates NTFT jobs were removed from posting.

Respondent admits the Union made this request, as alleged, and I so find. Further, for reasons discussed above, I conclude that this information about positions within the bargaining unit is presumptively relevant. Additionally, I find that Respondent never furnished these documents to the Union.

The postmaster of the Decatur, Alabama facility, Jane P. Harper, testified at the hearing. Based on my observations of her demeanor as a witness, I conclude that her testimony has a high degree of reliability, and I credit it.

Harper began as postmaster at the Decatur facility in November 2010. However, in May 2011, she accepted a temporary assignment which took her away from the facility. She remained on this "detail" until February 27, 2012, when she returned and resumed her management duties.

After her return, Harper learned from the Respondent's law department that the Union had filed unfair labor practice charges alleging a refusal to provide requested information. She also learned that the supervisor, who temporarily had been in charge of the post office during her absence, had failed to follow outstanding instructions concerning the handling of information requests, and had failed to provide the information.

Promptly, Harper located most of the information and furnished it to the Union. However, she could not find the documents listed in complaint paragraph 9(f), quoted above. On April 13, 2012, she told the Union's shop steward, Raymond Allen, that she could not find the documents. Based on Harper's testimony, which I credit, I find that Allen replied by saying that he understood.

For several reasons, I conclude that. Harper made a thorough search for the records, that they could not be found, and that she reasonably concluded that even if some of the documents still existed further searching would be unlikely to locate them. First, I note that the documents, which the Union had requested on March 12, 2012, were from the 2009 fiscal year.

Second, the record does not establish that Respondent had any obligation, contractual or otherwise, to retain such documents for several years, or that Respondent had an established practice of doing so. Shop Steward Allen's testimony on this point is somewhat difficult to follow and inconclusive.

For example, at one point, Allen testified, Somesupervisors put out a thing as to when the jobs were awarded, and also they put out when the jobs were removed. I don't know if they would keep that on hand or not. Successful bidders, again, should be kept on hand for at least six months." However, more than 6 months had elapsed before the Union requested the information.

Allen also testified, "Paperwork showing when a job is first posted. Again, that was probably part of the job itself. I don't know if they keep anything separate on that, but I needed to request that to make sure." This testimony certainly falls short of establishing that Respondent had retained the requested documents.

Third, Harper impressed me as being diligent in her job duties. Indeed, she has instituted disciplinary proceedings against the supervisor who, in her absence, failed to follow Respondent's procedures for handling information requests. It would be out of character for her not to make a thorough search. For these reasons, I conclude that the documents in question either did not exist or could not be located even with diligent efforts.

In these circumstances, I conclude that Respondent's failure to furnish the Union with the requested information did not violate the Act. It could not furnish what it did not possess and had no way of obtaining. *Kathleen's Bakeshop, LLC*, 337 NLRB 1081, 1082 (2002); *CalMat Co.*, 331 NLRB 1084 (2000).

Therefore, I recommend that the Board dismiss the allegation that Respondent violated the Act by failing to furnish the Union with the requested information described in complaint paragraph 9(f).

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act, including posting the notice to employees attached hereto as appendix B.

During the past three decades, Respondent has committed similar violations of the Act at many different locations. For example, in the following cases, the Board found that Respondent violated Section 8(a)(5) and (1) of the Act by failing to provide to a union which represented its employees with relevant information the union requested and needed to perform its representation function, or unreasonably delayed in furnishing that information: *Postal Service*, 276 NLRB 1282 (1985); *Postal Service*, 280 NLRB 685 (1986); *Postal Service*, 289 NLRB 942 (1988); *Postal Service*, 301 NLRB 709 (1991); *Postal Service*, 303 NLRB 463 (1991); *Postal Service*, 303 NLRB 502 (1991); *Postal Service*, 305 NLRB 997 (1991); *Postal Service*, 307 NLRB 429 (1992); *Postal Service*, 307 NLRB 1105 (1992); *Postal Service*, 308 NLRB 358 (1992); *Postal Service*, 308 NLRB 547 (1992); *Postal Service*, 308 NLRB 1305 (1992); *Postal Service*, 309 NLRB 309 (1992); *Postal Service*, 310 NLRB 391 (1993); *Postal Service*, 310 NLRB 530 (1993); *Postal Service*, 310 NLRB 701 (1993); *Postal Service*, 321 NLRB 1199 (1996); *Postal Service*, 332 NLRB 635 (2000), *Postal Service*, 337 NLRB 820 (2002); *Postal Service*, 339 NLRB 1162 (2003); *Postal Service*, 341 NLRB 655 (2004); *Postal Service*, 341 NLRB 684 (2004); *Postal Service,* 345 NLRB 409 (2005) [Board issued broad cease-and-desist order]; *Postal Service*, 352 NLRB 923 (2008); and *Postal Service*, 354 NLRB 412(2009). See also *Postal Service*, JD(SF)-36-04 (May 11, 2004); *Postal Service*, JD(SF)-56-04 (July 19, 2004); *Postal Service*, JD(ATL)-18-06 (April 26, 2006); *Postal Service*, JD(NY)-41-11 (October 25, 2011) [no exceptions taken, adopted by Board December 6, 2011]; *Postal Service*, JD(NY)-21-07 (April 18, 2007); and *Postal Service*, JD-34-12 (June 28, 2012).

Additionally, Federal courts have issued a number of orders requiring Respondent to furnish requesting unions with relevant and necessary information. See, e.g., *NLRB v. Postal*

Service, 888 F.2d 1568 (11th Cir. 1989), enfg. 289 NLRB 942 (1988); *NLRB v. Postal Service*, 841 F.2d 141 (6th Cir. 1988), enfg. 280 NLRB 685 (1986); *NLRB v. Postal Service*, 980 F.2d 724 (3rd Cir. 1992), enfg. 301 NLRB 709 (1991); and *NLRB v. Postal Service*, 17 F.3d 1434 (4th Cir. 1994).

The cases cited above do not represent all the instances in which the Respondent has failed to furnish a union with relevant necessary information requested by the union to perform its function as exclusive bargaining representative. In a number of such cases, particularly more recent cases, the Respondent has entered into formal settlement stipulations to remedy these violations. See *Postal Service*, Case 7-CA-52751; *Postal Service*, Cases 15-CA-18859, et al. (approved by Board on May 7, 2010); *Postal Service*, Case 5-CA-36088 (approved by Board on April 5, 2011); *Postal Service*, Cases 5-CA-36228, et al. (approved by Board on August 26, 2011); *Postal Service*, Case 5-CA-36390 (approved by Board on September 15, 2011); *Postal Service*, Cases 15-CA-19932, et al. (approved by Board October 17, 2011); *Postal Service*, Cases 7-CA-076394, et al.; *Postal Service*, Cases 14-CA-30049, et al. (approved by Board on November 29, 2011); *Postal Service*, Cases 15-CA-19535(P), et al., and *Postal Service*, Case 10-CA-38097(P) (approved by Board on June 29, 2012).

Even more significant than the sheer number of violations is the fact that they continue to occur. Considering the numerous Board cease-and-desist orders, by now Respondent should have ceased and desisted.

Other measures also have failed to cure the recidivism. Over the years, Respondent's management has taken steps to prevent further violations. For example, in July 1997, Respondent entered into a Memorandum of Understanding with the American Postal Workers Union to handle information request issues through an alternative dispute resolution procedure. Under this procedure, an unfair labor practice charge would be filed only if the alternative dispute resolution procedure failed. The Board's General Counsel established a special procedure for handling such charges. See Division of Operations-Management Memorandum OM 97-52.

However, the General Counsel ceased participating in this process effective January 1, 2001, because "the potential of the ADR [alternative dispute resolution] was no longer being realized." See Division of Operations-Management Memorandum OM 01-82.

Respondent's management took other steps to improve compliance with the law and informed the Board's General Counsel of those actions. In a January 13, 2003 memorandum, the Associate General Counsel, Division of Operations-Management, stated in part:

> The USPS has made a commitment to enhance its training program for managers and supervisors with respect to the duty to expeditiously supply information that is relevant and necessary for collective bargaining, and to underscore that unprivileged refusals to supply information will not be tolerated.

Division of Operations-Management Memorandum OM 03-18.

The present record includes a memorandum dated February 10, 2006, from the manager of Respondent's Alabama District concerning "Timely and Complete Responses to Union Information Requests." It stated as follows:

> The Alabama District has previously distributed to all District Management, the protocols for handling Union information requests. The Area Vice President requires these protocols to be implemented in every facility and installation. These protocols instruct that no information request is to be denied by line Management without prior approval from Labor Relations. When a request cannot be answered within roughly three business days, the responsible Manager Is to Inform the Union, In writing, in that same time frame for completion. Every Installation is to maintain comprehensive logs to ensure written proof that Information requests have been answered.
>
> Note in the Vice-President's memorandum, that delays of even a few weeks in supplying information could constitute violations of both the National Agreements and the National Labor Relations Act just as much as complete failure to supply requested information. Every effort must be immediately taken to obtain the needed Information from those who have it and follow up on their progress to secure and supply it to the union. The instructions state that even though the Union might fall to pay legitimate charges for the Information, no line Manager on that basis, may withhold the timely production of the requested information unless they have prior approval from Labor.
>
> Though these protocol have been previously issued, we are experiencing far too many instances in which these instructions were' not followed. As a result, the Vice-President is concerned that the National Labor Relations Board (NLRB) could be moved to take more stringent enforcement measures within the Area.
>
> I am, once again, issuing the attached Memorandum to ensure full compliance with the protocols. Every Manager and Supervisor, including 204Bs and new Supervisors, must assure they are in compliance and understand these Information Request Protocols. Therefore, each facility or installation head and Tour MDO, must personally go over these protocols with all EAS employees that report to them. The Labor Relations staff is available to assist you. The key is to contact them as soon as guidance is needed. If you need a Labor Relations Specialists to visit your office/facility/unit or attend a meeting to clarify the instructions, please contact AL Ward, Manager, Labor Relations at 205-521-0284 or Elizabeth White, Manager, Human Resources at 205-521-0205.
>
> Compliance is not optional. The Southeast Area and the Alabama District are under intense scrutiny by the NLRB because of previous failures by Management to be adequately responsive. Using a PS Form 1627 or your own tracking form, each Manager must submit a copy with EAS employees' signature indicating they have been made aware of the Information Request Protocols to their immediate Manager.

Although this memorandum included phrases such as "compliance is not optional" and "every effort must be immediately taken to obtain the needed information," the memorandum did not have the intended effect of preventing further breeches of the duty to provide requested relevant, necessary information to a requesting union without undue delay. Indeed, Respondent later entered into a formal settlement stipulation in Case 10-CA-38097(P) to remedy an undue delay in providing information requested at its Jacksonville, Alabama facility.

On a nationwide basis, Respondent and the Union have negotiated contractual provisions to address the problem and agreed upon procedures to follow in handling union information requests. Thus, Respondent and the Union not only are parties to a collective-bargaining agreement but also maintain a Joint Contract Interpretation Manual (JCIM) which offers guidance on how the collective-bargaining agreement should be understood and applied and explicitly recognizes the Union's right to receive relevant information necessary to perform its representation function:

> Article 31.3 [of the collective-bargaining agreement] provides that the Postal Service will make available to the union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of the agreement, including information necessary to determine whether to file or to continue the processing of a grievance. It also recognizes the union's legal right to employer information under the National Labor Relations Act.
>
> To obtain employer information the union need only give a reasonable description of what it needs and make a reasonable claim that the information is needed to enforce or administer the contract.

Thus, at many times and in many ways, the Respondent has acknowledged the Union's right to receive relevant, necessary information. Repeatedly, Respondent has affirmed its duty to furnish such information and professed an intent to comply with the law's requirements. Despite all these efforts, the violations keep occurring. Something is seriously wrong.

Each of the cases cited above represents a significant expense paid for by tax dollars. Respondent is a Federal agency. When its repeated misconduct continues to cost the taxpayers, it constitutes government waste, indeed, waste which can be and must be prevented.

The Board's usual remedies were designed for private-sector employers. As the cases cited above document, Respondent has behaved in a manner which would be quite unusual for any private-sector company. It is difficult to imagine a corporate board of directors allowing management to commit the same violation of law repeatedly for almost 3 decades, each time incurring legal expenses which reduced the Company's profitability.

The Respondent's institutional psychology must be considered abnormal when compared to other organizations within the Board's jurisdiction. Certainly, the Board's standard remedies have gained little traction over its behavior. Respondent floats along like a

ship with ripped and tattered sails, oblivious to the wind, and still more huffing and puffing seems unlikely to change its course.

Because Respondent's continued unfair labor practices constitute preventable government waste, and because it is a government agency subject to the Inspector General Act of 1978, I recommend that the Board order Respondent to request an investigation by the Postal Service's Independent Office of Inspector General. The Inspector General Act of 1978, as amended, empowers inspectors general "(1) to conduct and supervise audits and investigations relating to the programs and operations of the establishments listed in section 12; (2) to provide leadership and coordination and recommend policies for activities designed (A) to promote economy, efficiency, and effectiveness in the administration of, and (B) to prevent and detect fraud and abuse in, such programs and operations." 5 U.S.C. Appx § 2.

Respondent's efforts to train its managers and supervisors to avoid committing unfair labor practices and its pronouncements that such violations will not be tolerated have not been successful. The Inspector General, thoroughly familiar with Respondent's operations and charged with statutory responsibility for promoting "economy, efficiency, and effectiveness," may be uniquely situated to determine why Respondent's efforts have not stanched the 8(a)(5) violations. Even if the Postal Service's status as a government agency has affected its sensitivity to the customary remedies the Board applies to private sector employers, it may be responsive to the inquiries and recommendations of its own Inspector General.

It is not clear that the Board would have authority to order the Postal Service's Independent Office of Inspector General to undertake an investigation, but the Board certainly does have the power to direct Respondent to request such an investigation. I further recommend that the Board order Respondent to furnish to the Board, and to the Charging Party herein, copies of any report issued by the Inspector General as a result of such an investigation.

Additionally, I recommend that the Board order that Respondent's chief executive officer, the Postmaster General, read the notice to employees aloud to the employees at the one facility involved in this proceeding. The Postmaster General could do so by telephone rather than in person.

The Board clearly has the discretion to fashion a nonpunitive remedy that will be effective. Here, I recognize, I am recommending that the Board exercise this discretion in a way which departs from precedent, so it is particularly important to state clearly why I believe such a departure is warranted.

In *Postal Service*, 339 NLRB 1162 (2003), the Board found that this same Respondent violated the Section 8(a)(5) and (1) by failing and refusing to provide relevant information requested by a union to perform its representation function. The Board found that a clear pattern of violations warranted an order requiring the Respondent to post notices at all of its facilities in its Houston district.

In this same case, the Board further found that Respondent had a proclivity to commit violations of this sort which justified the imposition of a broad remedial order. However, the Board denied the General Counsel's request for an order requiring a management official to read the notice aloud to employees:

> We decline to require that the Respondent read the Board's notice based on the exercise of our discretion. Generally this remedy has been imposed where the violations are so numerous and serious that the reading aloud of a notice is considered necessary to enable employees to exercise their Section 7 rights in an atmosphere free of coercion, or where the violations in a case are egregious. See *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).
>
> Such circumstances are not present here. While the Respondent's violations were numerous, they were limited to sporadic refusals to provide requested information. Accordingly, these violations cannot be characterized as egregious. Our remedy of having the notice posted at all facilities within the Houston district is, at this time, adequate to reassure employees of their ability to exercise their Section 7 rights.

339 NLRB at 1163.

My remedy here appears to be inconsistent with the Board's reasoning, quoted above. If a "read aloud" order is never appropriate except to remedy violations so bad they are "egregious," then such an order certainly would not be appropriate here. The unfair labor practices alleged and proven here do not rise (or sink) to the level of "egregious."

Typically, egregious unfair labor practices make employees so afraid that simply posting a notice is not enough to dispel the fear. It is such persistent fear which makes it necessary for employees to hear a management official read the notice, with its solemn "we will not" promises not to violate the Act. Only then will the employees feel free to exercise their Section 7 rights. The Board has observed that requiring a manager to read the notice out loud is an "effective but moderate way to let in a warming wind of information and, more important, reassurance." See *Postal Service*, 339 NLRB 1162, 1163 at fn. 4, quoting *Service Industries*, 319 NLRB 231, 232 (1995), enfd.107 F.3d 923 (D.C. Cir. 1997) and *J. P. Stevens & Co. v. NLRB*, 417 F.2d 533, 540 (5th Cir. 1969).

As noted above, that typical reason for a "read aloud" order is not present here. The record does not indicate that Respondent's unfair labor practices at the Decatur, Alabama facility resulted in fear too strong to be overcome by posting a written notice. The individual violations were not "egregious" in that sense.

The everyday meaning of the word "egregious"—outrageously bad— might aptly describe Respondent's long history of violating Section 8(a)(5) by refusing to provide or unduly delaying in providing requested relevant information. However, when "egregious" is used as a term of art in labor law, the violations found in this case do not meet that standard.

It is true that, 9 years ago, in the case discussed above, the Board did not consider the Respondent's proclivity to violate the Act a sufficient reason to order that a management official read the notice to employees. The fact that Respondent continues to violate the Act in exactly the same manner today changes the situation.

Moreover, a possible alternative— a broad cease and desist order—might have little effect. Although the Board has issued broad cease-and=desist orders against this Respondent, including in the 2003 case quoted above, Respondent persists in violating Section 8(a)(5).

For example, the Board imposed a broad order on this Respondent *Postal Service*, 339 NLRB 1162 (2003), because of violations in respondent's Houston, Texas district. Two years later, on August 27, 2005, the Board imposed another broad cease-and-desist order because of violations at Respondent's Waco, Texas facility. See *Postal Service*, 345 NLRB 409 (2005), the case involving the Waco facility. Also on August 27, 2005, the Board found that this same Respondent had committed a number of violations at its Albuquerque, New Mexico facility, and imposed a separate broad order because of those unfair labor practices, which included a failure to provide the requesting union with certain relevant information. *Postal Service*, 345 NLRB 426 (2005).

Just as a settlement stipulation involving Respondent's Jacksonville, Alabama facility did not prevent a similar violation from popping up at Decatur, Alabama, a broad cease-and-desist order resulting from unfair labor practices at Houston did not prevent violations from popping up at Waco and Albuquerque. The Respondent should not be permitted to transform the Board's enforcement efforts into an expensive game of Whack-A-Mole.

Because past broad orders have not ended Respondent's recidivism, I do not believe it is realistic to assume that another such order will do so. Ordering the Respondent not to violate the Act in "any other manner" has not prevented Respondent from breaking the law again in the same old way. Therefore, I do not recommend that the Board impose a broad order in this case.

Just as a broad cease-and-desist order is an extraordinary remedy, so is requiring a senior management official to read the notice aloud to employees. However, in one way, the "read aloud" order is less onerous than a broad order. When a respondent is under a broad cease-and-desist order, which has been enforced by one of the Courts of Appeals, any kind of unfair labor practice, even one wholly unrelated to its previous conduct, could result in the respondent being held in contempt of court. Merely requiring a senior manager to read a notice aloud does not expose a respondent to such potential consequences.

Therefore, I believe an order to read the notice aloud would be a milder, but perhaps more effective remedy. It is true, as discussed above, that such a remedy typically is associated with the need to dispel employee fears and that here it would serve a different purpose, drawing top management's attention to the continuing recidivism problem. However, it is not a punitive measure and falls within the Board's wide discretion to fashion a remedy which is effective. Because no remedy so far has stopped the Respondent's recidivism, I recommend that it be tried.

Conclusions of Law

1. The Respondent, United States Postal Service, is subject to the Board's jurisdiction by virtue of Section 1209 of the Postal Reorganization Act.

2. The Charging Party, American Postal Workers Union, AFL-CIO, North Alabama Area Local 359, is a labor organization within the meaning of Section 2(5) of the Act.

3. At all material times, the Charging Party, by virtue of Section 9(a) of the Act, has been the designated exclusive collective-bargaining representative of a unit of Respondent's employees which is an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act, and has been recognized as such by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 21, 2010, through May 20, 2015.

4. The Respondent violated Section 8(a)(5) and (1) of the Act by unreasonable delay in furnishing to the Charging Party information which the Charging Party requested which is relevant to, and necessary for, the performance of its function as exclusive bargaining representative of a unit of Respondent's employees.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. The Respondent did not engage in the unfair labor practices alleged in the consolidated complaint not specifically found herein.

On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended[2]

ORDER

The Respondent, United States Postal Service, Decatur, Alabama, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Delaying unreasonably in furnishing information requested by the Union which is the exclusive representative of its employees in a unit appropriate for collective bargaining, which information is relevant to and necessary for the Union to perform its representative function.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist any labor

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

organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

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

(a) Within 14 days after service by the Region, post at its facilities in Decatur, Alabama, copies of the attached notice marked "Appendix B."[3] Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring*, 356 NLRB No. 9 (2010).

(b) The attached notice, marked "Appendix B," also shall be read aloud by Respondent's chief executive officer, either in person or by telephone, to bargaining unit employees at Respondent's Decatur, Alabama facility.

(c) Respondent's management shall request that the Independent Office of Inspector General (1) conduct an inquiry into the reasons why Respondent continues to violate the Act by unreasonable delay in providing, or by failing to provide, relevant necessary information requested by a union representing its employees and (2) based on that inquiry, make recommendations regarding steps to be taken to prevent such violations in the future. Respondent shall furnish to the Regional Director for Region 10 of the Board a copy of any such report together with a statement of the steps Respondent intends to take to prevent a recurrence of these violations.

(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 Regional Director attesting to the steps that the Respondent has taken to comply.

Dated Washington, D.C. August 29, 2012

Keltner W. Locke
Administrative Law Judge

[3] If this Order is enforced by a judgment of the 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."**

APPENDIX A

Bench Decision

This decision is issued pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations. I find that Respondent has violated Section 8(a)(5) and (1) of the Act by unreasonably delaying the furnishing of information requested by the Union which is relevant for and necessary to the Union in performing its representative function.

Procedural History

This case began on March 28, 2012, when the Union, North Alabama Local, American Postal Workers Union, AFL-CIO, filed the original charges in Cases 10-CA-077588(P), 10-CA-077593(P), 10-CA-077638(P), 10-CA-077640(P), 10-CA-077645(P), 10-CA-077650(P), and 10-CA-077655(P). On April 4, 2012, the Union filed its original charge in Case 10-CA-078075(P). After an investigation, the Regional Director for Region 10 of the Board issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which I will refer to as the "Complaint," on May 31, 2012. Respondent filed a timely Answer.

On July 26, 2012, a hearing opened before me in Birmingham, Alabama, at which both the General Counsel and Respondent called witnesses and introduced exhibits. After the presentation of evidence, counsel for both sides argued the case orally. Today, July 27, 2012, I am issuing this bench decision.

Admitted Allegations

Respondent has admitted the allegations raised in Complaint paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9(a) through 9(f), 11 and 13. Accordingly, I conclude that the General Counsel has proven these allegations.

I further conclude that Respondent is subject to the Board's jurisdiction pursuant to the Postal Reorganization Act as alleged, and that Postmaster Jane Harper and Customer Service Supervisor Brandlee Shadden are its supervisors within the meaning of Section 2(11) of the Act and its agents within the meaning of Section 2(13) of the Act.

Additionally, I conclude that since on or before November 21, 1990, and at all material times, the Union has been the designated exclusive collective-bargaining representative of a unit of employees employed by Respondent, and during that time the Union has been recognized as such representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from November 21, 2010, through May 20, 2015. The unit, which is appropriate for collective bargaining pursuant to Section 9(b) of the Act, is as follows:

> All maintenance employees, motor vehicle employees, postal clerks, mail equipment shops employees, material distribution centers employees, operating services and facilities services employees, excluding managerial and supervisory

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personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined by Public Law 91-375, 1201(2), all postal inspection service employees, employees in the supplemental work force as defined in Article 7, rural letter carriers, mail handlers or letter carriers.

Based on Respondent's admissions, I conclude that at all times since before on or before November 21, 1990, by virtue of Section 9(a) of the Act, the Union has been and is the exclusive representative of the employees in the Unit described above in paragraph 6, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Based on Respondent's admissions, I find that from September 29, 2011 to April 4, 2012, the Union requested, in writing, that Respondent furnish the Union with the following information: copies of all vacant and currently filled clerk jobs and copies of all investigative interviews concerning clerk jobs for the previous six-month period and that Respondent provided this information on April 4, 2012.

Further, I find that beginning on or about December 5, 2011, the Union requested, in writing, that Respondent furnish the Union with the following information: PSE clock rings for the period November 4 through December 5, 2011; copies of FTR clerk positions filled and vacant; and copies of investigative interviews concerning clerk jobs for the previous six-month period. Respondent furnished this information to the Union on April 4, 2012.

Additionally, I find that beginning on or about January 3, 2012, the Union requested, in writing, that Respondent furnish the Union with the following information: documents identifying Respondent's reasons for placing Ray Holland on restrictive sick leave, a list of all employees placed on restrictive sick leave for the previous 90-day period, and those employees who were on sick leave for three days for the previous 90-day period. Respondent furnished the Union with this information on April 4, 2012.

Beginning on or about January 13, 2012, the Union requested, in writing, that Respondent furnish the Union with a copy of Form 1723 showing Pat Shadden in a higher level 204B position since Shadden commenced working in Respondent's Decatur, Alabama, facility, including a copy of Shadden's time card and clock rings for the previous 14-day period. Respondent furnished this information on April 4, 2012.

Respondent further admits, and I find, that beginning on or about March 4, 2012, the Union has requested, in writing, that Respondent furnish the Union with the following information: copies of documents showing the original jobs held by Ginger M. Gilreath, Mark E. Gilreath, and Howard L. Rankin; copies of documents regarding the removal of Ginger M. Gilreath, Mark E. Gilreath, and Howard L. Rankin from their assignments in December 2011; copies of documents showing NTFT jobs posted, including the dates posted; and copies of all

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documents showing all job bids for NTFT postings. Respondent furnished this information to the Union on April 13, 2012.

Additionally, Respondent admits the allegations raised in Complaint paragraph 9(f). Based on that admission, I find that since on or about March 4, 2012, the Union has requested, in writing, that Respondent furnish the Union with the following information: original fiscal year 2009 job postings with the identification numbers 95404809, 95298506, and 95160386, and original fiscal year 2007 job postings with the identification number 95096761; copies of all clerk jobs listed and posted for bidding, including the dates posted and the dates the postings were removed from the employee board; documents showing any unsuccessful bidders; documents showing when jobs were first posted; documents showing the names of employees who held the jobs and when the employees vacated the jobs; and copies of documents showing the dates NTFT jobs were removed from posting.

Disputed Allegations

The General Counsel alleges, but Respondent denies, that the requested information was necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

Generally, information pertaining to employees within the bargaining unit is presumptively relevant. *CalMat Co.*, 331 NLRB 1084 (2000); *Caldwell Mfg. Co.*, 346 NLRB 1159 (2006). I conclude that the information requested pertained to employees within the bargaining unit, was presumptively relevant, and that no credible evidence rebuts the presumption that it is relevant.

The Complaint further alleges that Respondent unreasonably delayed in furnishing the Union with all of the information described in the complaint except for that described in paragraph 9(f), which I quoted above, and that Respondent has failed and refused to furnish the information described in paragraph 9(f).

The reasonableness of a delay depends on the complexity and extent of the information sought its availability and the difficulty in retrieving the information. *West Penn Power Co.*, 339 NLRB 585, 587 (2003).

With respect to the information which Respondent ultimately provided to the Union, the record does not establish that it was unavailable or so extensive and complex that such delay was justified. Likewise, the record does not establish that any difficulty in retrieving the information justified the delay in furnishing it. Accordingly, I conclude that the delay in furnishing the information was unreasonable and constituted a breach of the Respondent's duty to bargain in good faith with the Union. Accordingly, the delay violated Section 8(a)(5) and (1) of the Act, as alleged.

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With respect to the information described in Complaint paragraph 9(f), Postmaster Harper testified that she looked for such information and could not find it. Respondent cannot furnish information which does not exist. After a further review of the record, I will address, in the Certification of this Bench Decision, whether the failure to furnish information was consistent with Respondent's duty to bargain with the Union in good faith.

REMEDY

Respondent violated Section 8(a)(5) and (1) of the Act, must take certain action, including posting a notice to employees, to remedy the violations. The General Counsel seeks an order requiring Respondent to post a notice at each facility in Alabama, which Respondent vigorously opposes.

The General Counsel points to the Respondent's past record. Over the last 3 decades, the Board repeatedly has found that Respondent violated Section 8(a)(5) of the Act by failing to provide, or by unreasonable delay in providing, information requested by a union, when that information was relevant to and necessary for the union to perform its function as bargaining representative. The list of cases is far too long to be cited in this bench decision, but it indicates a persistent problem that has not been remedied.

Respondent argues, in a brief it submitted before oral argument, that the record does not justify a statewide posting. Respondent argues that these cases actually are a very small number when compared to the vast number of employees and the time period. Respondent further states, "The Postal Service's longstanding positive relationship with its unions makes any negative inference drawn from other case and/or settlement references improper."

Respondent assumes that it has a "positive relationship" with the Union but that term does not appear in the statute and the existence of a "positive relationship" - whatever that might mean - was not litigated in this case. For our purposes, there can be only one test, and that is whether Respondent has fulfilled its duty to bargain in good faith, as required by Section 8(d) of the Act. The plethora of cases indicates that Respondent repeatedly has failed to take its duty to furnish information seriously.

Indeed, Respondent's argument that it has a positive relationship with the Union suggests that it misses the point. Even if Respondent's managers go fishing or play golf or engage in other amicable activities with Union officials, and even if Respondent fulfills some other parts of its bargaining obligation more successfully, such relationships do not bring it into compliance with Section 8(d) of the Act.

Respondent's focus on some kind of "positive relationship" rather than on its obligations suggests that it has not taken those obligations seriously enough.

All the same, I do not conclude that a statewide posting, sought by the General Counsel, would remedy the problem here. The problem is not informing employees in other parts of the

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state that the Respondent will abide by its bargaining obligations, but rather getting Respondent itself to take those obligations seriously, and that requires the hearts and minds at the top of the pyramid.

Therefore, I recommend that the Board order the Respondent to post the notice at the one location involved here, but I also recommend that the Board require the Respondent's chief executive officer to read the notice to the employees, either in person at the facility, or by a speakerphone call.

Additionally, I recommend that the Board order the postmaster general to request that the Independent Office of Inspector General conduct an investigation to determine why the Postal Service continues to have such systemic difficulties in complying with the simple requirements imposed by Section 8(a)(5), specifically, the duty to furnish requested information in a timely manner.

The Inspector General reports to the Postal Service's Board of Governors, so I do not suggest an attempt to require the involvement of the inspector general. However, the Board certainly can order the Postmaster General to request such an investigation, and if the Inspector General does conduct an investigation and issue a report, it may shed light on why it has been so difficult for this Respondent to comply with such a simple duty.

When the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, Remedy, Order and Notice. When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

Throughout this proceeding, counsel have acted with the greatest professionalism and civility, which I recognize and appreciate. The hearing is closed.

APPENDIX B

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 the Federal labor law and has ordered us to post and abide by 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 refuse to bargain collectively with American Postal Workers Union, AFL-CIO, North Alabama Area Local 359, by failing and refusing to promptly furnish information requested by the Union that is relevant and necessary to the Union's performance of its duties as your collective-bargaining representative.

WE WILL NOT in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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.nlrb.gov.

233 Peachtree St., N.E., Harris Tower, Suite 1000, Atlanta, GA 30303–1531
(404) 331-2896, Hours of Operation: 8:00 a.m. to 4:30 p.m.

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, (205) 933–3013.