

FILED: February 28, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-1611,

NLRB v. USPS10-CA-151360,10-CA-151411,10-CA-151415,10-CA-
151479,10-CA-151560,10-CA-151653,10-CA-162476,
10-CA-162501

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: To be timely, a petition for certiorari must be filed in the United States Supreme Court within 90 days of this court's entry of judgment. The time does not run from issuance of the mandate. If a petition for panel or en banc rehearing is timely filed, the time runs from denial of that petition. Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons.

(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).

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No. 16-1611
(10-CA-151360)
(10-CA-151411)
(10-CA-151415)
(10-CA-151479)
(10-CA-151560)
(10-CA-151653)
(10-CA-162476)
(10-CA-162501)

NATIONAL LABOR RELATIONS BOARD

Petitioner

v.

UNITED STATES POSTAL SERVICE

Respondent

J U D G M E N T

The Board's consent order attached hereto is 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,	:	
	:	No. 16-1611
v.	:	
	:	
UNITED STATES POSTAL SERVICE	:	
	:	
Respondent.	:	

CONSENT ORDER

The National Labor Relations Board ("Board") and the United States Postal Service ("Postal Service"), having entered into a Stipulation for the entry of this Consent Order, it is hereby

I. ORDERED that the Stipulation dated February, 12, 2018, is approved and shall be filed.

II. IT IS FURTHER ORDERED that the Postal Service shall, at its facilities located in Winston-Salem, North Carolina ("Winston-Salem facilities") where employees represented by the National Association of Letter Carriers, AFL-CIO ("NALC"), and/or its constituent local union, Branch 461 ("Branch 461") are employed, shall fully comply with this Consent Order and the Judgment entered by this Court on June 16, 2016 in case number 16-1611 ("Judgment"), and not in any

way, by action or inaction, engage in, induce, encourage, permit or condone any violation of said Consent Order or Judgment;

III. IT IS FURTHER ORDERED that the Postal Service Winston-Salem facilities, its officers, agents, successors, and assigns, shall cease and desist from:

(a) Refusing to bargain in good faith with NALC, Branch 461, or any other labor organization (collectively, the "Union"), representing employees at the Winston-Salem facilities by failing to provide information or unduly delaying in providing information to the Union that is relevant and necessary to the performance of its duties as the collective bargaining representative of unit employees at the Winston-Salem facilities;

(b) In any like or related manner, failing or refusing to bargain in good faith with the Union in contravention of its obligations under the National Labor Relations Act (the "Act"), as amended, 29 U.S.C. §§ 151-169.

IV. IT IS FURTHER ORDERED that this Consent Order applies to any new or relocated facilities in Winston-Salem, North Carolina that may be created following the entry of this Order as well as any facility that may be relocated outside of Winston-Salem, North Carolina following the entry of this Order.

V. IT IS FURTHER ORDERED that for the purposes of ensuring and facilitating supervision of the Postal Service's compliance with its obligations

under this Consent Order, and without limiting the Union's rights under the Act or its collective-bargaining agreement, that the Postal Service shall:

(a) Within fourteen (14) days of any request, provide, for the time periods so requested, the Board with the name(s) of the Postal Service RFI coordinator and/or any other representative(s) responsible for ensuring compliance with information requests, bargaining obligations and/or other particular terms encompassed by this Consent Order and the Judgment;

(b) Maintain a functional internal tracking system for the facilities covered by this Consent Order that identifies and logs the following for each request for information submitted by the Union, contemporaneously with the receipt of each request:

- 1) the date listed on the request;
- 2) the date of receipt by the Postal Service;
- 3) the name of the person and union making the request;
- 4) a general description of the requested information;
- 5) the date(s) the information was provided with a description of the information provided and the identity and job title of the responder;
- 6) if any request for information is denied in whole or in part, the date(s) of denial together with the reason(s) for each such denial and the position(s) and identity(ies) of the official(s) denying the request; and

- 7) if a response to any request is provided more than fourteen (14) days from the date of receipt of the request, the date the Postal Service advised the Union of its need for additional time to satisfy the request and an explanation for the delay.

The internal tracking system shall be maintained in a manner that, at a minimum, will permit retrieval according to the date listed on the request. In the event that an information request is received by or otherwise referred to offices beyond the station level for assistance, and a response to the request is provided by these offices, the internal tracking system for the facility or office to which the referral is made shall include all the above information pertaining to the request referred to that facility or office.

(c) Within fourteen (14) days of any request from the Board's Region 10, or the Board's Contempt, Compliance, and Special Litigation Branch ("CCSLB") for information related to specific union requests for information, the Postal Service shall provide, for the time periods so requested, to the Board's Region 10 or CCSLB, copies of all applicable records from the internal tracking system referenced in Section V(b) above.

(d) Any failure to properly and accurately maintain a tracking system shall be construed as a rebuttable presumption that the requested information was not timely provided.

VI. IT IS FURTHER ORDERED that the Postal Service shall, within fourteen (14) days after entry of this Consent Order, provide a copy of this Order

and a copy of the Notice to Employees referenced below, together with written instructions directing that each shall comply with the provisions of the Consent Order, to each District Manager (or equivalent management official), Postmaster (or equivalent management officials), Postal Service RFI Coordinator or other Postal Service representative as referred to under Section V(a) above, and to all other supervisors and managers at the facility covered by this Order, including acting supervisors and temporary supervisors working in such capacity for at least ten (10) consecutive calendar days. Each person receiving copies of this Order and the Notice to Employees shall acknowledge in writing that he or she has been furnished with copies thereof, understands them, and will conduct himself or herself consistently therewith, and will not in any way commit, engage in, induce, encourage, permit, or condone any violation of this Order. The Postal Service shall retain copies of these acknowledgments and written instructions and shall provide copies to Region 10 or to CCSLB upon request.

VII. IT IS FURTHER ORDERED that the Postal Service shall post a Notice to Employees drafted by the Board, alongside this Consent Order, at the Winston-Salem facilities in conspicuous places where notices to employees are customarily posted for a period of sixty (60) consecutive days. The notice shall be signed by an appropriate representative on behalf of the Postal Service, and shall be maintained in clearly legible condition throughout the 60-day period. Copies

shall also be sent to all Postal Service managers and supervisors at the Winston-Salem facilities. In addition to physically posting the paper notice, the Postal Service shall distribute notices electronically, by email, posting on an intranet or internet site, and/or other electronic means, if the officials at the Winston-Salem facilities customarily communicate with their employees by such means. The Postal Service shall further insure that the posted notices are not altered, defaced or covered by any other material. The Postal Service shall, within fourteen (14) days from the initial date of posting, provide Region 10 and CCSLB with a signed copy of the notice and a certification regarding the posting dates and posting locations. The Postal Service shall also provide agents and representatives of the Board reasonable access to inspect the notice posting.

VIII. IT IS FURTHER ORDERED that the Postal Service shall, within twenty-one (21) days after entry of this Consent Order, file with the Regional Director for Region 10 and with CCSLB, a sworn certification by a responsible official on a form provided by CCSLB attesting to the steps the Postal Service has taken to comply with this Consent Order. The Regional Director and CCSLB shall be supplied a copy of the documents signed by a responsible official, attesting to the dates when the notice was received at the Winston-Salem facilities and the dates when the notice was posted.

IX. In order to assure against violations of this Consent Order and the Judgment previously entered by this Court, this **COURT HEREBY IMPOSES** against the Postal Service a prospective fine of up to \$17,500 for each future violation of this Consent Order, and a further fine of up to \$100 per day for each day the Court finds the violations to have continued. These fines shall be subject to the following provisos:

(a) No sooner than twelve months following the Court's entry of this Consent Order, the Postal Service may request in writing that the Board's Assistant General Counsel for CCSLB, or his or her designee, determine whether the Postal Service has been in substantial compliance with the terms of this Consent Order during the first six months after its entry. The Board shall notify the Postal Service of its determination no later than 90 days after receipt of the Postal Service's written request. If the determination of the Board's Assistant General Counsel or designee is that the Postal Service was in substantial compliance during this six-month period, the prospective fine structure outlined above will be reduced to up to \$12,500 for each future violation of this Consent Order and up to \$75 per day for each day the Court finds the violations to have continued.

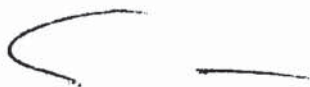
(b) *If* a determination of substantial compliance has been made after review of the six-month period described above, the Postal Service may again

request in writing, no sooner than 18 months after entry of the Consent Order, that the Board's Assistant General Counsel for CCSLB, or his or her designee, make a second determination whether the Postal Service has been in substantial compliance with the terms of the Consent Order during the 12-month period after its entry. The Board shall notify the Postal Service of its second determination no later than 90 days after receipt of the Postal Service's written request. If the determination of the Board's Assistant General Counsel or designee is that the Postal Service was in substantial compliance, both during the initial 6-month period following entry of the Consent Order, and the total 12-month period following its entry, the prospective fine structure outlined above will be reduced to up to \$7,500 for each future violation of this Consent Order and up to \$50 per day for each day the Court finds the violations to have continued.

X. This Consent Order shall not preclude the Board from requesting such other remedies as it deems appropriate to remedy contumacious conduct.

Approved as to form:

UNITED STATES POSTAL SERVICE



RODERICK D. EVES
Deputy Managing Counsel – NLRB
United States Postal Service

NATIONAL LABOR RELATIONS
BOARD



WILLIAM MASCIOLI
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Dated this 12th day of February
2018 in St. Louis, MO.

Dated this 12th day of February
2018 in Washington, D.C

IT IS SO ORDERED:

Date: _____, 2018

Circuit Judge

Date: _____, 2018

Circuit Judge

Date: _____, 2018

Circuit Judge