

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5

RECEIVED  
APR 06 2015  
MURPHY ANDERSON PLLC

UNITED STATES POSTAL SERVICE

and

Cases 5-CA-140690  
5-CA-143686

AMERICAN POSTAL WORKERS UNION,  
AFL-CIO

**ORDER CONSOLIDATING CASES, CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 5-CA-140690 and Case 5-CA-143686, which are based on charges filed by the American Postal Workers Union, AFL-CIO (APWU) against the United States Postal Service (Respondent) are consolidated. This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., the Postal Reorganization Act, 39 U.S.C. § 101 et seq. (PRA), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Respondent has violated the Act as described below.

1. (a) The charge in Case 5-CA-140690, was filed by APWU on November 10, 2014, and a copy was served by e-service on Respondent on November 12, 2014.  
(b) The charge in Case 5-CA-143686, was filed by APWU on December 30, 2014, and a copy was served by e-service on Respondent on December 31, 2014.

2. (a) Respondent provides postal services for the United States and operates various facilities throughout the United States in performing that function, including its headquarters facility in the District of Columbia.

(b) The Board has jurisdiction over Respondent and this matter by virtue of Section 1209 of the PRA.

3. At all material times, APWU has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, Doug Tulino has held the position of Vice-President, Labor Relations, and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

5. (a) The following employees of Respondent (the Unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All maintenance employees, motor vehicle employees, postal clerks, mail equipment shop employees, material distribution center employees, and operating services and facilities services employees, employed by the Respondent.

**EXCLUDED:** All managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, Postal Inspection Service employees, employees in the supplemental work forces, rural letter carriers, mail handlers, letter carriers, guards and supervisors as defined in the Act.

(b) Since at least 1986, and at all material times, APWU has been the designated collective-bargaining representative of the Unit and, since then, APWU has been recognized as the representative by Respondent. This recognition has been embodied in

successive collective-bargaining agreements, the most recent of which is effective by its terms from November 21, 2010 to May 20, 2015.

(c) At all times since at least 1986, based on Section 9(a) of the Act, APWU has been the exclusive, collective-bargaining representative of the Unit.

6. Since about November 12, 2014, in writing, APWU has requested that Respondent provide it with the information included in Attachment A.

7. (a) To the extent the information requested by the Union in paragraphs 1, 1(a), 1(b), 11, 12, 13 and 14 of Attachment A relates to the Unit, the information is necessary for, and relevant to, APWU's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(b) The information requested by APWU in paragraphs 7 through 10 of Attachment A is necessary for, and relevant to, APWU's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) The information requested by APWU in paragraph 2 of Attachment A regarding "what investigation continues in regard to these files" as it relates to the Unit and Respondent's ongoing investigation, the information is necessary for, and relevant to, APWU's performance of its duties as the exclusive collective-bargaining representative of the Unit.

8. Since about November 12, 2014, Respondent has failed and refused to furnish APWU with the information requested by it, as described above in paragraphs 7 and 8.

9. About November 12, 2014, APWU requested that Respondent bargain collectively about the effects of a cyber security breach on the Unit.

10. Since about November 12, 2014, Respondent has failed and refused to bargain collectively about the subject set forth above in paragraph 9.

11. The subject set forth above in paragraph 9, relates to the wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

12. About November 12, 2014, Respondent granted employees one year of credit monitoring services and fraud insurance, at no cost to the employees.

13. Respondent engaged in the conduct described above in paragraph 12, without prior notice to APWU, and without affording APWU an opportunity to bargain with Respondent with respect to this conduct and the effects of this conduct.

14. The subject set forth above in paragraph 12, relates to the wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

15. By the conduct described above in paragraphs 8, 10, 12 and 13, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act and within the meaning of the PRA.

### **REMEDY**

In view of the extensive history of repeated unfair labor practice violations found by the Board and courts to have been engaged in by this Respondent, the similarity of the prior violations to the unfair labor practices alleged above in paragraph 8, and the unfair labor practices alleged in paragraphs 10, 12 and 13, the General Counsel seeks an Order requiring

Respondent to: (1) post in all its facilities where unit employees work any Notice to Employees that may issue in this proceeding; (2) electronically post the Notice to Employees on Lite Blue; (3) electronically post on Lite Blue a reading of the Notice to Employees by a high-level management representative; and (4) an Order requiring Respondent to: (1) bargain on request within 15 days of a Board Order; (2) bargain on request for a minimum of 15 hours a week until an agreement or lawful impasse is reached or until the parties agree to a respite in bargaining; (3) prepare written bargaining progress reports every 15 days and submit them to the Regional Director and also serve the reports on the Union to provide the Union with an opportunity to reply; and (4) make whole employee negotiators for any earnings lost while attending bargaining sessions. The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before April 14, 2015, or postmarked on or before April 13, 2015.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon

(Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on May 11, 2015, at 10:00 a.m., at Hearing Room 5600 East, 1099 14<sup>th</sup> Street, NW, Washington, DC, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint.

The procedures to be followed at the hearing are described in the attached Form NLRB-4668.

The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Baltimore, Maryland this 31<sup>st</sup> day of March 2015.

(SEAL)

/s/ CHARLES L. POSNER

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Charles L. Posner, Regional Director  
National Labor Relations Board, Region 5  
Bank of America Center, Tower II  
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Attachments

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### 7. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### 8. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing.



If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

## 9. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

## NOTICE

Cases 5-CA-140690 &amp; 5-CA-143686

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

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