

United States Postal Service and American Postal Workers Union Local 4560, AFL-CIO. Cases 11-CA-13798(P) and 11-CA-13867(P)

May 13, 1991

ORDER DENYING MOTION

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

On July 13, 1990, the Regional Director for Region 11 of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent filed an answer, admitting in part and denying in part allegations of the complaint, pleading certain affirmative defenses, and requesting that the complaint be dismissed.

On October 9, 1990, the Respondent filed with the Board a motion to dismiss or to defer and a supporting memorandum. The Respondent contends that the matters alleged in the complaint should be dismissed or, alternatively, should be deferred to the grievance-arbitration procedure in accordance with the Board's decision in *Dubo Mfg. Co.*, 142 NLRB 431 (1963). On October 23, 1990, the General Counsel filed a motion in opposition to the Respondent's motion to dismiss or to defer.

On October 25, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Respondent contends that the refusal to provide information allegations in the complaint should be dismissed because it is undisputed that the Respondent has offered to furnish the requested information to the

Union conditioned on payment of costs. We disagree. The General Counsel does not concede in his opposition that such an offer has been made. The Respondent has denied the other unfair labor practice alleged in the complaint—that it unilaterally discontinued out-of-schedule premium pay to relief and pool employees, and he does not concede that the Respondent was privileged to condition the grant of information on the payment of costs.¹ There are, therefore, material issues of fact in dispute pertaining to both complaint unfair labor practice allegations.

We also reject the Respondent's request for deferral to arbitration. The Board has held that issues concerning a refusal to supply information are not subject to deferral to the grievance-arbitration process. See *Postal Service*, 280 NLRB 685 fn. 2 (1986). Hence, the information-refusal allegations in this case are not subject to deferral. The 8(a)(5) allegations pertaining to out-of-schedule premium pay are intimately connected to the information-refusal allegations, and hence they too are not subject to deferral. We thus find that the pleadings and submissions of the parties raise substantial issues of fact and law which can better be resolved before an administrative law judge.

IT IS ORDERED that the Respondent's motion to dismiss or to defer is denied.

IT IS ORDERED that the proceeding is remanded to the Regional Director for Region 11 for further appropriate action.

¹ Nor can it be established from the pleadings and submissions that the unilateral refusal to "pay out-of-schedule premium pay," as alleged in the complaint, is, as contended by the Respondent, at most a breach of contract that does not constitute an unfair labor practice. The General Counsel defines the "premium pay" allegation as a "unilateral refusal to compensate [the Respondent's] employees for overtime" by which the Respondent "repudiated the contract." Claims of unilateral alteration of contractual overtime schedules have been found to violate Sec. 8(a)(5) and (1) of the Act. See, e.g., *Alamo Cement Co.*, 277 NLRB 1031, 1034 (1985); *Architectural Woodwork Corp.*, 280 NLRB 930 (1986). Accordingly, we find that there are issues of fact and law to be resolved in connection with the Respondent's contention.