

United States Postal Service and American Postal Workers Union, East Bay Area Local. Case 32-CA-10209(P)

June 21, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND RAUDABAUGH

On November 22, 1989, Administrative Law Judge Jerrold H. Shapiro issued the attached decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed limited cross-exceptions, and a brief in answer and in support of the limited cross-exceptions.

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

The Board¹ has considered the decision and the record in light of the exceptions² and briefs and has decided to affirm the judge's rulings, findings,³ and conclusions⁴ and to adopt the recommended Order.⁵

¹The Board grants motions to intervene filed respectively by the American Postal Workers Union, AFL-CIO, and the National Association of Letter Carriers, AFL-CIO.

²The Respondent does not except to the judge's finding that the notice posted in an attempt to remedy the alleged violations did not obviate the need for additional remedial action.

³We correct certain inadvertent errors as follows: the spelling of the union steward's name is "Rodrigues"; the volume of the Postal Reorganization Act which grants the Board jurisdiction in this case is 3 U.S.C. § 1209.

⁴In finding that the Respondent violated Sec. 8(a)(1) of the Act when it refused to permit Union Steward Rodrigues to consult with employee Salvador prior to the resumption of the interview, the judge relied, inter alia, on *Climax Molybdenum Co.*, 227 NLRB 1189 (1977), enf. denied 584 F.2d 360 (10th Cir. 1978). Chairman Stephens expresses no opinion on the Board's interpretation of *NLRB v. Weingarten*, 420 U.S. 251 (1975), in *Climax Molybdenum*; however, for institutional reasons he joins his colleagues in sustaining the judge's finding that a violation occurred here.

Member Raudabaugh agrees that the refusal to permit consultation prior to the *Weingarten* interview was unlawful. With respect to the fact that the request for prior consultation was made by the union representative, rather than by the employee, Member Raudabaugh notes that the employee sought union representation and did not oppose the union representative's request for prior consultation. In these circumstances, there is a reasonable inference that the employee agreed with the request for prior consultation.

Member Raudabaugh also notes the absence of evidence that the Union had a policy or practice of routinely telling employees to refuse to cooperate with an investigation. Compare *Climax Molybdenum*, supra. Further, there is an absence of evidence that the Union took that position in this case. In Member Raudabaugh's view, if a union had such a policy or practice, an employer might well be privileged to forbid prior consultation.

⁵We agree with the employerwide posting remedy recommended by the judge, on the grounds that such posting conforms with the employerwide policy which resulted in the unfair labor practices found here and with the employerwide bargaining unit to which the policy applies. In such circumstances, the need for remedial action that will reach all the employees in the affected unit is not lessened by the fact that within that unit only the Fremont, California facility was involved in the violation here found. As long as the Respondent's policy remains in effect nationwide, the potential for similar violations to occur throughout the unit as a result of that policy still exists. Thus, it is appropriate that the employees in the unit be made aware of their Sec. 7 rights vis-a-vis that policy.

Because we thus are requiring the Respondent to post, at all its facilities where the Union represents employees, notices stating that it will not refuse to permit union representatives to consult with employees prior to investigatory interviews conducted by postal inspectors which the employees reasonably

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, the United States Postal Service, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

believe will result in disciplinary action and will not refuse to permit employees to speak with union representatives prior to such interviews, we deny as unnecessary the expunction remedy requested by the Charging Party and Intervenor.

Member Cracraft disagrees and would not order employerwide posting of the notice. Although this is the second occasion in which the Respondent has committed this violation, she notes that these violations both occurred at the Respondent's Fremont, California facility 7 years apart. There is no evidence that the unlawful conduct has been carried out or disseminated to employees at any other facilities. Under these circumstances, Member Cracraft believes that a remedy limited to the Fremont, California facility adequately remedies the violation found herein.

Ariel Sotolongo, Esq., for the General Counsel.

Beth McGarry and *Howard Kaufman*, for the Respondent.

Timothy M. Schooley (Mocine & Eggleston), for the Charging Party.

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge. This proceeding, in which a hearing was held June 14, 1989, and closed by my order issued September 15, 1989, is based on an unfair labor practice charge filed March 13, 1989, by American Postal Workers Union, East Bay Area Local (Local Union), and on a complaint issued April 21, 1989, by the Regional Director for Region 32 of the National Labor Relations Board (the Board), on behalf of the Board's General Counsel. The complaint alleges that on March 9, 1989, the United States Postal Service (Respondent), violated Section 8(a)(1) of the National Labor Relations Act (the Act), by refusing to allow a representative of the Union which represents employee Benjamin Salvador to consult with Salvador prior to an investigatory interview which Salvador had reasonable cause to believe would result in disciplinary action, and by refusing to allow Salvador's union representative to speak during the interview. The complaint further alleges that because of Respondent's "prior related unfair labor practices" and because the unfair labor practices alleged herein were based upon Respondent's "internal policies and guidelines to deny generally the types of requests set forth herein when made to the Postal Inspection Service," that to remedy the alleged unfair labor practices that an order issue which requires Respondent, "on a nationwide basis, to cease and desist from the type of unfair labor practices alleged herein and to post appropriate notices." Respondent filed a timely answer to the complaint denying the commission of the alleged unfair labor practices and, as an affirmative defense, alleged that no remedial order is warranted because Respondent has repudiated the alleged illegal conduct.¹

¹In its answer Respondent admits, as alleged in the complaint, that the Board has jurisdiction over Respondent by virtue of Sec. 1209 of the Postal Reorganization Act. Respondent's answer also admits, as alleged in the complaint, that the American Postal Workers Union and its affiliate local, the

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On the entire record, from my observation of the demeanor of the witnesses, and having considered the parties' briefs, I make the following

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Evidence*

Respondent provides postal service for the United States of America. It operates postal facilities in the several states of the United States, including one in Fremont, California. The American Postal Workers Union (the Union) represents employees employed in Respondent's customer service and mail processing facilities throughout the United States, in a nationwide bargaining unit, including the Fremont, California facility. The terms and conditions of employment of these employees are governed by a collective-bargaining agreement between Respondent and the Union effective July 21, 1987, through November 20, 1990, which at section 3 of article 17 provides: "If an employee requests a steward or union representative to be present during the course of an interrogation by the inspection service, such request will be granted."

The "inspection service" is the Postal Inspection Service. It is one of Respondent's subdivisions and its inspectors are Respondent's employees. The Postal Inspection Service is a law enforcement agency of the Federal government. One of its functions is to investigate alleged misconduct engaged in by Respondent's postal workers which involves possible violations of the law, i.e., theft, embezzlement. If, however, Respondent's management initially concludes that the alleged employee misconduct does not involve a possible violation of the law, management does not refer the matter to the Postal Inspection Service for investigation, instead the investigation is conducted by management.

When the Postal Inspection Service becomes involved in the investigation of alleged employee misconduct and discovers evidence which leads it to believe that the employee under investigation has violated a Federal law, the postal inspectors, after getting the approval of their superiors, place the employee under arrest. However, in those instances where the investigation fails to uncover evidence that a crime has been committed by the employee, the sole responsibility of the postal inspectors is to turn over all of the evidence to management, without recommendation or evaluation, and management has the sole responsibility to evaluate the evidence and decide whether or not to discipline the employee.

The Postal Inspection Service maintains an inspection service manual which, among other things, instructs postal inspectors what to do when a union representative requests permission to consult with an employee prior to the start of an inspector's investigatory interview of the employee (Tr. 182-183, 217-218; Jt. Exh. 1). In this regard, the parties stipulated (Jt. Exh. 1):²

The United States Postal Service maintains a written nationwide policy in its inspection service manual requiring United States postal inspectors, who are em-

Local Union, are labor organizations within the meaning of Sec. 2(5) of the Act.

²Jt. Exh. 1, the parties' stipulation, was admitted into evidence by my order issued September 15, 1989.

ployees and agents of the United States Postal Service, to deny all requests for consultations between employees and their collective-bargaining representatives prior to any interview by a postal inspector.

On April 5, 1982, Respondent enforced the aforesaid policy at its post office located in Fremont, California. In *Postal Service*, 288 NLRB 864 (1988), the Board affirmed its administrative law judge's findings and conclusions that on April 5, 1982, Respondent violated Section (a)(1) of the Act at its Fremont, California post office when its postal inspectors refused to permit a union representative to confer with an employee represented by the Union prior to an investigatory interview and by refusing to permit the Union's representative to participate in the interview. In connection with his conclusion that Respondent violated the Act when its postal inspectors refused to permit a union representative to confer with an employee prior to an investigatory interview, the administrative law judge, whose findings were adopted by the Board, noted that Respondent's refusal was based on a provision "of the postal inspection confidential field manual which precludes such pre-interview meetings." *Postal Service*, supra at 866.³

Benjamin Salvador, who has been employed by Respondent since 1977, on March 9, 1989,⁴ was employed at Respondent's Fremont, California main post office as a business reply clerk. One of his duties was to maintain business reply accounts, also known as postage due accounts, for approximately 200 customers who use business reply mail; each day Salvador credited to the customers' accounts the money received from them and debited to their accounts the dollar amount of their business reply mail received that day in the post office.

In March Salvador's supervisor, Albert Young, received a complaint from Allstate Insurance Company about their business reply mail account.

On March 8, Young told Salvador that Allstate complained there were approximately five instances where improper dollar amounts were applied to their account. Salvador replied by stating he did not have sufficient time to process all of his customers' accounts, that he was only allotted 1 hour a day to do that part of his job, that the Allstate account was very time-consuming because it required extra paperwork, and told Young it was for all of those reasons he had been unable to finish balancing the Allstate account, and further explained to Young that he had debited another customer's account, J. C. Penney, so as to keep the Allstate account in balance. Salvador, who first began work as a business reply clerk in February, told Young that the person who trained him to do the job advised him it was appropriate to do this. Young responded by stating he was not happy about the manner in which Salvador was doing his job and instructed

³I reject Respondent's contention that there is no evidence that on March 9, 1989, Respondent maintained a written policy pursuant to which its postal inspectors were required to deny all requests for consultations between employees and their collective-bargaining representatives prior to any interview by a postal inspector. Rather, based on *Postal Service*, supra, and the parties' above described stipulation, I find that this written policy has been maintained by Respondent continually since at least April 5, 1982, and was still being maintained in August 1989 when the parties entered into their stipulation in this proceeding, and presumably is still being maintained.

⁴All dates hereinafter refer to the year 1989, unless specified otherwise.

him to correct his errors.⁵ Young gave no indication to Salvador that he was thinking of disciplining him nor did he indicate to Salvador that he intended to refer the matter to the Postal Inspection Service.

On March 8, after speaking to Salvador, Young contacted Postal Inspector Michael Cassidy and arranged to meet with him the next day to discuss Salvador's misconduct.

On March 9, in the morning, Postal Inspectors Michael Cassidy and Scott Barry met with Young at the Fremont facility's main post office. Cassidy testified they were advised by Young that on approximately five separate occasions Allstate had made postage due mailings, yet no money had been debited to its postage due account, but instead the money had been debited to the account of another customer, J. C. Penney, and that Salvador, the business reply clerk responsible for maintaining those accounts, offered no explanation. Cassidy further testified that he decided to interview Salvador because, based on what Young told him, "There was a potential for [Salvador] to be working in collusion, to be getting a kickback, a favor, monies, or whatever, from one of the firms as a result of charging another company for a different company's mailings. . . . [so] I thought there was a potential criminality." Cassidy also testified that when supervisor Young contacted Cassidy about Salvador's misconduct, Young must have also assumed there was a potential crime involved because, as Cassidy testified, postal inspectors "are just involved in situations where there is a possible criminal offense." Salvador, who has been employed by Respondent for approximately 13 years, testified that whenever a postal worker is the subject of a Postal Inspection Service investigation it usually means that the employee is going to be the subject of some kind of discipline, and testified there is a saying among the postal workers that, "your ass is grass the minute you're involved with an inspector."

On March 9, when he returned to work at 12 noon from his lunchbreak, Salvador was called to the scheme training room, a room 15 feet by 20 feet with a table and several chairs, where he was met by Postal Inspectors Cassidy and Barry who identified themselves and asked Salvador to be seated. Barry sat on his left and Cassidy on his right. Barry commenced to question Salvador about his personal history. In the meantime, Cassidy had placed on the table the account ledger used by Salvador to perform his job duties. Salvador, at this point, asked "why am I here for?" Cassidy told him that the purpose of the interview concerned his job.⁶ Salvador asked that his union steward be present. Cassidy responded by stating that Salvador's union steward would only be present as a witness, and instructed Salvador not to look

at or speak to the steward, and stated that the steward would be seated behind Salvador. Salvador did not respond and the interview was adjourned for approximately 1 hour until Salvador's union steward, Anne Rodriguez, who was on her lunchbreak at another location, was available.

The above description of what occurred during the March 9 interview before Union Steward Rodriguez entered the room is based on Salvador's testimony.⁷ Barry did not testify. Cassidy testified that after he and Barry identified themselves, they told Salvador that he was going to be questioned about the postage due irregularities that Supervisor Young had spoken about to Salvador earlier. Cassidy further testified that when he started to question Salvador about his personal history, Salvador asked for his union steward to be present, and Cassidy stopped questioning him and adjourned the interview until the steward was available. Cassidy did not deny telling Salvador that the union steward would be present only as a witness, nor did he deny telling him he could not speak to nor look at the union steward, or that the steward would be seated behind Salvador. I credited Salvador's description of this portion of the March 9 interview because his testimonial demeanor, which was good, was better than Cassidy's. I considered that when Union Steward Rodriguez arrived, as I have found, *infra*, she was not told by Cassidy or Barry that she was there only as a witness and that she did in fact participate in the interview, without objection. This is not, however, inconsistent with Salvador's testimony that Cassidy told him his union steward would only be present in the capacity of a witness, and that Salvador could not speak to or look at the steward during the interview, for in my opinion when Cassidy stated this to Salvador he was attempting to intimidate Salvador and to discourage him from seeking the advice of his union steward prior to and during the interview. This conduct is not inconsistent with Cassidy's subsequent failure to object to Rodriguez' participation in the interview and is perfectly consistent with, as I have found *infra*, Cassidy's refusal to allow Rodriguez to consult with Salvador prior to the start of the interview.

On March 9 Salvador's union steward, Rodriguez, was working at a branch office located several miles from the main post office. During her lunch period that day, Rodriguez was notified by the Postmaster's secretary to come to the main post office after lunch because a union steward had been requested by an "employee" who was being questioned by postal inspectors.⁸ After receiving permission to leave her work station and finishing her lunch, Rodriguez left the branch station where she had been working and arrived at the main post office at approximately 1:15

⁵The description of Young's conversation with Salvador is based on Salvador's testimony. Young testified that on March 8 he asked Salvador why, on certain dates, Salvador had not debited Allstate's account, and Salvador answered by conceding he had failed to debit the account on those dates, but offered no explanation for his conduct. I credited Salvador's account because his testimonial demeanor, which was good, was better than Young's.

⁶Salvador testified that when he asked "why am I here for," Cassidy answered by saying, "Something like, dumbshit this is about your job." Salvador admitted he was not sure Cassidy, who was speaking rapidly, used the expression "dumbshit," but testified that whatever expression Cassidy used sounded like that expression. Cassidy testified he did not use any "curse words" when he spoke to Salvador. I have not decided whether Cassidy in fact used the expression "dumbshit." However, even if Salvador misunderstood what Cassidy said, I am of the view that Salvador, whose testimonial demeanor was good and who impressed me as a sincere witness, sincerely believe that Cassidy called him a "dumbshit."

⁷In its posthearing brief, Respondent states that when Salvador spoke to Cassidy about having a union steward present, that "Salvador asked for a Union steward *as a witness*" [emphasis by Respondent]. If, by this, Respondent is inferring that this is what Salvador said to Cassidy, it misstates the record. Salvador, whose testimony is corroborated by Cassidy's, testified he asked that a shop steward be "present"; Salvador did not indicate to Cassidy the role he expected the steward to play during the interview.

⁸During the approximately 45 minutes to an hour between his request for his union steward and Union Steward Rodriguez' arrival, Salvador was kept isolated in the main post office's supply room. In this regard, Salvador credibly testified that when Post Inspector Cassidy learned it would be awhile before Salvador's union steward was available, Cassidy instructed Supervisor Young to keep Salvador off of the work floor and to keep him away from the other workers, and that Young instructed Salvador to wait in the supply room, which he did.

p.m. She was promptly taken to the scheme training room by Salvador's supervisor, Young, who told Rodriguez that the employee being questioned by the postal inspectors was Salvador and explained to Rodriguez that the inspectors were questioning him about possible misappropriation or embezzlement of funds.

On entering the room, where Postal Inspectors Cassidy and Barry and employee Salvador were waiting, Young introduced Rodriguez to the postal inspectors, the inspectors introduced themselves to Rodriguez, and Young left. After the introductions, Cassidy informed Rodriguez that the reason she was present was Salvador had requested her presence and that the inspectors would now resume their interrogation of Salvador about postage due irregularities. Rodriguez responded by stating she wanted to speak to Salvador before the postal inspectors continued to question him.⁹ Cassidy answered "no," and when Rodriguez explained she was making her request in her capacity as Salvador's union steward and that his steward had the right to speak to him prior to "an investigation," Cassidy replied, "We are not investigating [Salvador], we are interviewing him." Rodriguez repeated that she wanted to speak to Salvador prior to the start of the interview and when Cassidy again refused, Rodriguez asked if he was denying the right of a union steward to speak to Salvador prior to his interrogation. Cassidy answered, "Yes," and then told Rodriguez, "you're to be seated over there"; he pointed to a chair located approximately 2 feet behind and to the left of the chair in which Salvador was seated, so that to look at Rodriguez, Salvador would have had to turn his head around.

During the interview which followed, Postal Inspector Cassidy questioned Salvador about the manner in which he kept his books of account for the customers' postage due mail, also known as business reply accounts, and asked why he had improperly debited the J. C. Penney account rather than the Allstate account. Salvador answered all of Cassidy's questions, and during the interview obeyed Cassidy's earlier instruction that he not look at or speak to his union steward; Salvador neither looked at nor spoke to Rodriguez because of Cassidy's instruction. Rodriguez, however, fully participated in the interview. Neither Inspector Cassidy nor Inspector Barry told her she was forbidden from speaking or otherwise participating in the interview, and on several occasions Rodriguez spoke up on Salvador's behalf. The postal inspectors listened to what she stated and after they understood the point she was making interrupted and indicated they felt it was unnecessary for her to continue, and Cassidy resumed questioning Salvador. Also, even though Cassidy at the beginning of the interview instructed Rodriguez to be seated behind Salvador in a chair away from the table, whenever it became necessary for Rodriguez to inspect the ledger books maintained by Salvador which were on the table, Rodriguez stood up and walked to the table so she could better observe

the particular section of the ledger book that Cassidy was talking about, and Cassidy did not object to her doing so.

The meeting ended with Cassidy indicating it appeared Salvador had not followed correct procedures and had engaged in certain conduct which made it appear as if he had been embezzling money or doing something of that nature. Cassidy stated he intended to submit a report to the Postmaster of the Fremont post office and suggested that Salvador submit a statement to Cassidy who would give the statement to the Postmaster. Salvador replied he would personally submit a statement to the Postmaster at a later date. Cassidy asked if Salvador was stating he did not intend to submit a statement, whereupon Rodriguez spoke up and informed Cassidy that Salvador was saying he would submit his statement to the Postmaster at a later date when he could collect his thoughts. This ended the interview and Rodriguez left the room. After she left, the postal inspectors spoke to the Postmaster who then, the same day, spoke to Salvador and told him he was being placed on administrative leave pending further investigation.

Rodriguez, Salvador, and Cassidy testified about what occurred on March 9 during Rodriguez' presence at the interview of Salvador by the postal inspectors. The aforesaid description of what occurred is based on a composite of their testimony with two exceptions: (1) where Cassidy's testimony was not consistent with Salvador's and Rodriguez' I rejected Cassidy's testimony and credited Salvador's and Rodriguez' because their testimonial demeanor was good, whereas Cassidy's was poor; and (2) I have not relied on any of Salvador's testimony concerning Rodriguez' participation in the interview because Salvador did not appear to be a reliable witness on that aspect of the meeting, inasmuch as he testified he did not pay attention to what was being said by Rodriguez because once the interview commenced he was so nervous about the fact that he was being interrogated about his job by postal inspectors that he devoted his entire attention to what they were asking him. Lastly, I note that Rodriguez' testimony that she was instructed by Cassidy to sit in a specific chair which was located behind Salvador's chair was corroborated by Salvador's testimony.

As described, supra, Inspector Cassidy on March 9 admittedly refused to allow Union Steward Rodriguez to consult with employee Salvador before Inspectors Cassidy and Barry resumed interrogating Salvador. Cassidy testified his reason for refusing Rodriguez' request had nothing whatsoever to do with any policy or instruction promulgated by Respondent, and testified he had no idea whatsoever whether other postal inspectors allowed union stewards to consult with employees prior to investigative interviews inasmuch as he was not aware of a company policy which prohibited them from allowing such preinterview consultations, and testified that he acted on March 9 pursuant to his own personal policy. Then when specifically asked whether the basis for his refusal to allow Rodriguez to consult with Salvador was based on instructions in the Inspection Service Manual, Cassidy testified, "no," and explained that his refusal was based entirely on his own "personal view-[his] own personal experience." When he gave the above-described testimony, Cassidy's testimonial demeanor was poor. Following his testimony, the hearing was adjourned to enable the General Counsel to apply to the United States District Court for the Northern District of California for the enforcement of a subpoena

⁹During her 2 years as union steward, Rodriguez had been called by employees to be present at approximately 10 other investigative interviews, none of which had involved postal inspectors, but had not previously asked for permission to consult with the employee prior to the start of the interview. Rodriguez testified the reason she previously had not made such a request was that "I knew what was going on, what the situation was about, prior to going into the meeting" on those occasions, whereas prior to the start of Salvador's March 9 interview, Rodriguez testified she felt she lacked sufficient knowledge so as to intelligently represent him.

seeking the production from Respondent of the section of Respondent's Inspection Service Manual which deals with the right of union stewards to consult with employees prior to investigative interviews. Respondent at the outset of the hearing in the instant case took the position that any and all provisions of the Inspection Service Manual were exempt from and privileged from disclosure or discovery. Subsequently, the parties to this proceeding entered into a stipulation shortly before the scheduled court subpoena enforcement proceeding, which stipulation, as described, supra, reads as follows:

The United States Postal Service maintains a written nationwide policy in its Inspection Service Manual requiring United States Postal Inspectors, who are employees and agents of the United States Postal Service, to deny all requests for consultations between employees and their collective bargaining representatives prior to any interview by a Postal Inspector.

In view of this policy I find inherently incredible Cassidy's testimony that when he refused to allow Union Steward Rodriguez to consult with employee Salvador prior to the resumption of the March 9 investigative interview, that he was not acting pursuant to the instructions in the Inspection Service Manual, but was acting pursuant to his own personal policy. In view of the aforesaid policy set forth in the Inspection Service Manual and considering Cassidy's poor testimonial demeanor, I find the truth is exactly the opposite from Cassidy's testimony; I find that when Cassidy on March 9 refused to permit Rodriguez to consult with Salvador, prior to the resumption of the investigative interview, that Cassidy implemented and acted pursuant to the above-described instruction contained in Respondent's Inspection Service Manual.

The Union represents approximately 61 employees at 5 different locations at the Fremont post office: 40 at the main post office; 15 at the Irvington station; one at the Niles station; two at the Misson San Jose station; and three at the Warm Springs station. On April 28 Respondent posted the following unsigned "Notice to Employees" on the employee bulletin board at the main post office:

NOTICE TO EMPLOYEES

A charge has been filed with the National Labor Relations Board by the East Bay Local of the American Postal Workers' Union alleging that the Postal Service has violated the National Labor Relations Act by failing to grant employees the right to confer with their union representative before an investigatory interview, and by failing to permit the steward to participate in the investigatory interview.

Without admitting any violation of law, we wish all employees in the Fremont, CA Post Office to be apprised of the following legal rights, and to be assured of the intention of the agents and officials of the Postal Inspection Service and United States Postal Service to comply with those rights.

The National Labor Relations Act gives employees these rights:

To engage in self organization;

To form, join or assist unions;
To bargain collectively through a representative of their own choosing;
To act together for collective bargaining or for other mutual aid or protection;
To refrain from any or all such conduct.

We will not intentionally interfere with any of these rights to the extent protected by the National Labor Relations Act.

We will not prohibit employees from conferring with their union representative, upon request, where the employee has invoked his or her right to have union representation present at an investigatory interview conducted by agents of the Inspection Service which the employee reasonably believes could lead to discipline. We also will not prohibit such union representative from participating in any such interview to the extent permitted by the Supreme Court's *Weingarten* decision.

On June 8 the identical unsigned notice was posted on the employee bulletin boards at the other four stations. Respondent failed to present competent evidence to establish that the notice was posted prior to June 8 at any one of these four stations.

B. Discussion

1. The applicable law

In *NLRB v. Weingarten*, 420 U.S. 251, 260-261 (1975), the Supreme Court sustained the Board's position that Section 7 of the Act vests an employee with the right of union representation at an interview by his employer which the employee reasonably fears may result in the employee's discipline. The Board has held that an employee's *Weingarten* right includes both the presence and the participation of the union representative; if the employer permits a union representative to attend an interview, but forbids the union representative to be anything more than a silent observer, the employer interferes with the employee's *Weingarten* right in violation of the Act. *Southwestern Bell Telephone Co.*, 251 NLRB 612 (1980), enf. denied 667 F.2d 470 (5th Cir. 1982); *Texaco, Inc.*, 251 NLRB 633 (1980), enf. 659 F.2d 124 (9th Cir. 1981); *Postal Service*, supra. The Board has also held that an employee has a right under Section 7 of the Act to consult with his union representative before any interview to which a *Weingarten* right has attached and it makes no difference whether the request for prior consultation comes from the employee requesting union representation or from the union representative furnishing the representation requested. *Climax Molybdenum Co.*, 227 NLRB 1189 (1977), enf. denied 584 F.2d 360 (10th Cir. 1978); *Pacific Telephone & Telegraph Co.*, 262 NLRB 1034 (1982); and *Pacific Telephone & Telegraph Co.*, 262 NLRB 1048 (1982), enf. 711 F.2d 134 (9th Cir. 1983); *Postal Service*, supra. The Board has rejected the argument that it is inappropriate to apply an employee's Section 7 right of prior consultation to a criminal investigation conducted by Respondent's postal inspectors. *Postal Service*, supra, citing, *Postal Service*, 241 NLRB 141 (1979); and *Postal Service*, 254 NLRB 703 (1981).

2. Respondent's refusal to allow Union Steward Rodriguez to consult with employee Salvador prior to Salvador's interrogation by postal inspectors

On March 8, employee Salvador's supervisor criticized his job performance. On March 9, in the middle of his work shift and without advance warning, Salvador was summoned to be interrogated by two postal inspectors. The postal inspectors are called upon by management to interrogate employees about their job performance only where there is a possible criminal offense involved. In view of this, employees assume that whenever they are interrogated by postal inspectors concerning their job performance, it usually means they will be disciplined. During Salvador's March 9 interrogation, as soon as he was informed that his job performance was the subject of the interrogation, he asked the inspectors for the presence of his union steward.

The aforementioned circumstances establish that on March 9, when Salvador requested that his union steward be present during his interrogation by the postal inspectors, Salvador had reason to fear the interview would result in disciplinary action. This is not in dispute inasmuch as Respondent's counsel during the hearing conceded that "Salvador based on objective facts, could have believed that he would be subject to discipline at the time he requested the shop steward." (Tr. 193-194, 158-159). Accordingly, under *Weingarten*, Salvador was at that time entitled under the Act to the presence of his union steward. Therefore, one of the questions for decision is whether, when Salvador's union steward arrived on the scene, Respondent was obligated under the Act to honor the steward's request that she be allowed to consult with Salvador prior to the resumption of Salvador's interrogation. As discussed, supra, with court approval, the Board has held that an employee has the right under Section 7 of the Act to consult with the employee's union representative before any interrogation to which the employee's *Weingarten* right has attached, and it makes no difference that the request for prior consultation comes from the union representative rather than from the employee. In the instance case, Respondent's postal inspectors denied the request of Salvador's union steward that she be allowed to consult with Salvador prior to the resumption of his interrogation. Respondent argues that by engaging in this conduct it did not violate the Act because: (1) Salvador's union steward, Rodriguez, would have instructed him not to answer any of the postal inspectors' questions because the Union has a policy of advising employees to remain silent during criminal investigatory interviews conducted by postal inspectors; (2) Salvador waived his right to a preinterview consultation with his union steward because Respondent previously had provided him with the opportunity to consult with his union steward, but Salvador chose not to seek the union steward's counsel; (3) Salvador limited himself to having his union steward present at the investigatory interview as only a witness; and (4) Salvador never requested that he be allowed to consult with his union representative. For the reasons below, each of these contentions lack merit.

In support of its contention that if Union Steward Rodriguez had been granted permission to consult with Salvador, that Rodriguez would have advised him not to answer the postal inspectors' questions, Respondent relies on Rodriguez' testimony that she received printed material from the Union which states that when an employee is the subject

of a criminal investigation and in connection with that investigation is questioned by postal inspectors, that "the best possible advice to an employee during this type of situation is to remain silent," and that the employee should advise the postal inspectors that he or she intends to seek legal counsel and, after having engaged a lawyer, the employee would then cooperate with the inspectors' investigation.¹⁰ Rodriguez further testified it was her "understanding" that the Union's policy concerning employee participation in investigatory interviews conducted by postal inspectors was as set forth above. No evidence was presented that the above-described printed material received by Rodriguez has been distributed generally to union members or to anyone other than Rodriguez; no evidence was presented that union representatives at Respondent's Fremont facility or at any of Respondent's other facilities have ever advised employees not to answer the questions of postal inspectors when questioned by them during investigatory interviews; Rodriguez' testimony indicates it would be highly speculative to predict what she would have done if the postal inspectors had allowed her to confer with Salvador prior to the resumption of the March 9 investigatory interview;¹¹ but, what in fact occurred during the March 9 interview—Rodriguez did not advise Salvador to refuse to cooperate with the postal inspectors, instead she assisted the inspectors in eliciting the facts from Salvador—warrants the inference that it is very probable that Rodriguez would not have advised Salvador to refuse to cooperate with the postal inspectors. In view of the foregoing circumstances, Rodriguez' "understanding" of the Union's policy, is insufficient to establish that Rodriguez, if allowed to consult with Salvador prior to his investigatory interview, would have instructed him not to answer the postal inspectors' questions or not to otherwise cooperate with the postal inspectors. In any event, even if the evidence warrants the inference that Rodriguez would have advised Salvador not to cooperate with the postal inspectors, it did not privilege Respondent's refusal to allow Rodriguez to consult with Salvador. For, in *Climax Molybdenum*, supra, the Board rejected such a defense where the record revealed that union officials, pursuant to a union policy, had on several occasions in fact urged union members not to cooperate with management in any in-

¹⁰ Although R. Exh. 3, the printed material which Respondent's counsel showed Rodriguez, was included in what purports to be a union booklet entitled "A Guide for the Craft Employee in Dealing with the United States Postal Inspection Service," there is no evidence this booklet was ever received by Rodriguez or otherwise distributed by the Union to either its stewards or members. Nor is there evidence that this booklet is in fact a union publication. Rodriguez did not testify she received this booklet or that the printed materials she received were included in such a booklet; she testified that while she received certain printed materials which contained some of the questions and answers set forth in R. Exh. 3, that she did not recall the form in which it was received. No other evidence was presented on this subject.

¹¹ In response to my questions, over the objections of counsel for all of the parties to this proceeding, Rodriguez testified that if postal inspector Cassidy had permitted her to consult with Salvador prior to the resumption of the March 9 investigatory interview, she would have gotten his understanding of what was going on and would have advised him to tell the truth to the inspectors. Then, in response to my further questions on the same subject, she testified she was unable to state what she would have done in that situation because it was her first experience with an investigative interview involving postal inspectors. Subsequently, in response to my further questions on the same subject, Rodriguez testified if Salvador had indicated to her he was innocent of criminal wrongdoing she would have advised him to answer the inspectors' questions, but if Salvador had indicated to her he was engaged in criminal wrongdoing she would have advised him not to answer the inspectors' questions.

vestigatory interviews. See *Climax Molybdenum Co. v. NLRB*, 584 F.2d 360, 363–364 (10th Cir. 1978). See also *Pacific Telephone & Telegraph Co.*, supra, 262 NLRB at 1049 fn. 11, where the Board rejected the contention that it was not appropriate to permit union representatives to consult with employees prior to the start of an investigatory interview because it would create the possibility that the union representatives would obstruct the employer’s investigation by advising employees to withhold the facts. In the instant case the evidence presented by Respondent, when viewed in the light most favorable for Respondent, establishes that if Rodriguez had been allowed to consult with Salvador, that there was only a possibility that she would have advised him to remain silent or not to have otherwise cooperated with the postal inspectors.

Respondent’s further contention that its postal inspectors were not obligated under the Act to grant Rodriguez’ request to consult with Salvador because Respondent previously provided him with an adequate opportunity to consult with a union representative on his own time is based on the court’s decision in *Climax Molybdenum Co. v. NLRB*, supra, where the Tenth Circuit affirmed the Board’s holding that the *Weingarten* right to union representation at an investigatory interview includes the right to confer with a union representative before the interview. The court held, however, that an employer is not required to permit such consultation on company time if the employer schedules the interview so as to afford the employee sufficient opportunity, prior to the interview, to confer with a union representative on the employee’s own time. The court disagreed with the Board’s finding that the company violated the Act by denying the union vice president’s request to confer with two employees on company time prior to an investigatory meeting which resulted in discipline to the employees. The court noted that the employees involved had made no request for union representation and that neither of the employees “manifested an interest in consulting with their union representative prior to the investigatory interview, notwithstanding a time lapse of 17-1/2 hours between the time they were advised of the pending investigation and the time it took place,” during which time “the employees could have, but elected not to, consult with their union representatives on their own time.” 584 F.2d at 363. The court concluded that to require union consultation on company time in these circumstances would be “to place a harsh and unfair burden upon the Employer.” 584 F.2d at 363. In the instant case, on the other hand, prior to Union Steward Rodriguez’ request that she be allowed to consult with Salvador prior to the resumption of Salvador’s investigatory interview, Salvador had requested the presence of Rodriguez and Salvador had been afforded no advance warning by supervision that his work performance was the subject of an investigation. As described, supra, no time at all was allowed by Respondent for Salvador and Rodriguez to confer after Salvador was first informed that his work performance was the subject of an investigation. In view of these circumstances, Respondent’s reliance on the court’s decision in *Climax Molybdenum*, supra, is misplaced.

Likewise without merit is Respondent’s contention that Salvador limited himself to having his union steward present at the March 9 investigatory interview solely as a witness. This contention is based upon Salvador’s testimony that when he asked the postal inspectors that his union steward

be allowed to be present, he was thinking to himself, “I’m paying dues to the union. I’d better ask for a witness, that way I don’t want to be alone with those people.” However, as described, supra, when Salvador requested the presence of his union steward he did not indicate to the postal inspectors he wanted the steward to be present only as a witness. Moreover, the fact that Salvador was thinking in terms of having the union steward present as a “witness” does not necessarily mean that Salvador did not also want to confer with the union representative, when she arrived on the scene, prior to continuing with the interview. Moreover, Respondent is precluded by its own conduct from urging that Salvador would not have sought to confer with Rodriguez prior to the resumption of the interview. For, if Postal Inspector Cassidy had not instructed Salvador that his union steward could be present only as a witness and that Salvador could not speak to or look at the steward, it is more likely than not that when Rodriguez arrived on the scene that Salvador would have expressed the desire to confer with her prior to the resumption of the investigatory interview.

Respondent’s final contention, “if there is a right to a pre-interview consultation that it is a qualified right and that only the employee—not the union representative—can invoke the right,” lacks merit because it has been rejected by the Board in *Climax Molybdenum*, supra, *Pacific Telephone & Telegraph Co.*, supra, and *Postal Service*, supra. Respondent’s position that those decisions were wrongly decided should be addressed to the Board in its exceptions to this decision. Moreover, even if a majority of the current Board or a court agrees with Respondent’s position regarding those decisions, I am of the opinion that where, as here, Respondent has made it plain to an employee that it would be futile for the employee to attempt to confer with his union representative prior to an investigatory interview, it would be inequitable to hold that the employee’s union representative is precluded from taking the initiative and asking for permission to confer with the employee prior to the start of the interview. For, as I have found, supra, when employee Salvador on March 9 asked for the presence of his union steward, Postal Inspector Cassidy replied by stating that Salvador’s union steward could be present only as a witness and instructed Salvador that when his steward arrived Salvador was not to speak to or look at the steward, and when steward Rodriguez arrived Salvador obeyed Cassidy’s aforesaid instruction. In other words, it is plain that Cassidy’s instruction was reasonably calculated to lead Salvador to believe that he was not able to confer with his union steward when she arrived on the scene prior to the resumption of the investigatory interview. Cassidy’s conduct in this respect constituted a further infringement of Salvador’s right under Section 7 of the Act to consult with his union representative prior to the resumption of the March 9 investigatory interview. Plainly by instructing Salvador he could not “speak” to Rodriguez when she arrived, Cassidy was in effect informing Salvador he could not “consult” with Rodriguez prior to the resumption of the interview.

It is for the foregoing reasons that I reject Respondent’s contention that it was privileged to refuse to permit Union Steward Rodriguez to consult with employee Salvador prior to the resumption of the March 9 investigatory interview, and further find Respondent violated Section 8(a)(1) of the Act when on March 9 it refused to permit Rodriguez to consult

with Salvador prior to the resumption of an investigatory interview which Salvador reasonably believed would result in disciplinary action, and also violated Section 8(a)(1) when it informed Salvador that he could not speak with Rodriguez prior to the resumption of said interview.

In its answer to the complaint, as an affirmative defense, Respondent asserts that because it posted a notice addressed to its Fremont post office employees, which repudiates its illegal conduct herein, this obviates the need for additional remedial action.¹² I disagree because: the notice was not specific in nature to the illegal conduct; the notice states in effect Respondent did not violate the Act; the notice was not posted until after the issuance of the complaint; the notice was unsigned; the unfair labor practices found herein were committed by Respondent despite the fact that less than one year previous to the commission of the unfair labor practices the Board issued a Decision and Order in *Postal Service*, supra, proscribing the identical conduct at Respondent's Fremont post office; and, the section of Respondent's Inspection Service Manual, pursuant to which Respondent engaged in the instant unfair labor practices, is still in effect thereby making it highly probable that Respondent will continue to engage in the unfair labor practices found herein. It is for all of these reasons that I find that the notice to employees posted by Respondent at the Fremont post office does not obviate the need for additional remedial action. See generally *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978), and *Broyhill Co.*, 260 NLRB 1366 (1982).

3. Respondent's alleged refusal to allow Union Steward Rodriguez to speak during Salvador's March 9 interrogation by the postal inspectors

As I have found, supra, on March 9 when employee Salvador requested that his union steward be present during his interrogation by the postal inspectors, Salvador reasonably believed that the interview would result in disciplinary action, thus, as discussed supra, Salvador's union steward was entitled to not only be present during the interview but to participate in the interview. The complaint alleges that Respondent violated Section 8(a)(1) of the Act by refusing to allow Salvador's union steward, Anne Rodriguez, to speak during the March 9 investigative interview. This allegation lacks merit because, as set forth below, Rodriguez was permitted to speak and to otherwise participate in the March 9 investigatory interview. It is for this reason that I shall recommend that this allegation be dismissed.

Rodriguez was not forbidden to speak or to otherwise participate in the March 9 investigatory interview, and in fact participated in the interview. She expressed herself on several occasions during the interview on Salvador's behalf, and the postal inspectors listened to her, and interrupted her only after they understood the point she was making. Also, even though Rodriguez was instructed to be seated behind Salvador in a chair away from the table, whenever it became necessary for her to inspect Salvador's ledger book which was on the table, she stood up and walked to the table so she could better observe the particular part of the ledger book that the postal inspector was referring to, and the postal inspectors did not object to her doing so. In view of the fore-

going, it is clear that Rodriguez was permitted by the postal inspectors to speak and to otherwise participate in the investigatory interview and in fact participated in the interview. I have considered that prior to Rodriguez' arrival, in order to intimidate Salvador, Postal Inspector Cassidy informed him that Rodriguez would be present only as a witness and instructed Salvador not to speak to nor look at Rodriguez, and Salvador complied with those instructions. I recognize that under certain circumstances such conduct might very well constitute a violation of Section 8(a)(1) of the Act, insofar as it was reasonably calculated to interfere with Salvador's right to Rodriguez' participation in the interview, but where, as here, the record reveals that Rodriguez, without objection, was permitted to participate in the interview on Salvador's behalf and in fact did participate on his behalf, this conduct did not violate the Act in that respect.

CONCLUSIONS OF LAW

1. Respondent is subject to the Board's jurisdiction by virtue of Section 1209 of the Postal Reorganization Act, 59 U.S.C. § 1209.

2. The Union and the Local Union are labor organizations within the meaning of Section 2(5) of the Act.

3. By refusing to permit Union Steward Rodriguez on March 9, 1989, to consult with employee Salvador prior to an investigatory interview which the employee reasonably believed would result in disciplinary action, Respondent violated Section 8(a)(1) of the Act.

4. By informing employee Salvador on March 9, 1989, that he could not speak to his union steward prior to an investigatory interview which the employee reasonably believed would result in disciplinary action, Respondent violated Section 8(a)(1) of the Act.

5. Respondent has not otherwise violated the Act.

THE REMEDY

Having found that Respondent violated Section 8(a)(1) of the Act by refusing to allow Union Steward Rodriguez to consult with employee Salvador and by informing Salvador he could not speak to Rodriguez, prior to an investigatory interview which Salvador reasonably believed would result in disciplinary action, and having also found that Respondent engaged in this conduct pursuant to a companywide policy which requires that its postal inspectors "deny all requests for consultations between employees and their collective bargaining representative prior to any interview by a Postal Inspector," I am persuaded that to effectively remedy Respondent's unlawful conduct it is necessary to recommend that Respondent be ordered to cease and desist on a companywide basis from engaging in the unfair labor practices found herein and to post at all of its facilities, where employees are represented by the Union, notices informing its employees that it will cease and desist from the unfair labor practices found herein. My reasons for recommending a companywide remedial order follow.

Respondent has a companywide policy, embodied in its Inspection Service Manual, which requires its postal inspectors to "deny all requests for consultations between employees and their collective bargaining representative prior to any interview by a Postal Inspector." It was pursuant to the enforcement of this policy that Respondent in April 1982 vio-

¹²The contents of the notice and the relevant facts concerning the posting of the notice have been set forth in detail, supra.

lated Section 8(a)(1) of the Act when one of its postal inspectors refused to allow a union representative to confer with an employee prior to an investigatory interview to which the employee's *Weingarten* right had attached. *Postal Service*, supra. Despite the issuance of the Board's Decision and Order in *Postal Service*, supra, and less than 1 year after its issuance, Respondent again enforced its aforesaid policy. This is evidenced by the fact that, as found supra, on March 9 Respondent violated Section 8(a)(1) of the Act when Postal Inspector Cassidy, pursuant to and because of Respondent's aforesaid policy, refused to permit Union Steward Rodriguez to consult with employee Salvador and informed Salvador he could not speak to Rodriguez, prior to an investigatory interview which Salvador reasonably believed would result in disciplinary action. I recognize that the sole evidence of the enforcement of Respondent's policy which prohibits consultation between employees and their collective-bargaining representative, prior to investigatory interviews to which employees' *Weingarten* rights have attached, involves just one facility, Respondent's Fremont, California post office. However, since the policy is a companywide policy which all of the Respondent's postal inspectors must obey, the postal inspectors presumably enforce this policy at all of Respondent's other facilities and, in view of Respondent's disregard of the Board's Decision and Order in *Postal Service*, supra, will presumably continue to enforce the policy at all of Respondent's other facilities. In this regard, I note that Respondent presented no evidence that the postal inspectors have been instructed not to enforce the policy at facilities other than the Fremont facility, or that it was due to special circumstances, applicable to only the Fremont facility or to Postal Inspector Cassidy, which resulted in the policy being enforced in this case at the Fremont facility.¹³ Therefore, in view of the Respondent's companywide policy, a remedial order limited to Respondent's Fremont, California post office would not effectuate the policies of the Act because of the likelihood that Respondent will continue to enforce this policy at its other facilities, thereby interfering with the Section 7 right of the employees employed at those facilities to consult with their union representative prior to investigatory interviews to which the employees' *Weingarten* rights have attached. It is for this reason that I shall recommend Respondent be ordered to cease and desist on a companywide basis from engaging in the unfair labor practices found herein.

I recognize there is an evident link between Respondent's above-described policy prohibiting preinterview consultations and the unfair labor practices found herein. In view of this direct causal relationship I have carefully considered whether it would be appropriate to recommend, as requested by the General Counsel and the Charging Party, that Respondent be ordered to cease and desist from maintaining its aforesaid policy insofar as that policy prohibits employees and union representatives from consulting prior to investigatory interviews by postal inspectors to which the employees' *Weingarten* rights have attached. In my opinion, however, I am precluded from recommending this type of remedial order because there is no evidence that the Respondent's employees whose Section 7 rights would be affected are aware

of the above policy. Cf. *Engineers & Scientists Guild (Lockheed-California)*, 268 NLRB 311, 311 (1983), and *Bricklayers Local 17 (California Tile)*, 271 NLRB 1571 fn. 1 (1984). Quite the opposite, the only persons who are aware of Respondent's policy are certain members of management or supervision and the postal inspectors. Cf. *Castaways Management*, 285 NLRB 954 (1987), citing, *Resistance Technology*, 280 NLRB 1004 (1986), where a Board majority held that "the mere issuance of instructions to supervisors to perform unlawful actions is not a violation if those instructions are neither carried out nor disclosed to the employees." Here, there is no evidence that any of Respondent's employees whose rights would be affected by the Respondent's policy are aware of that policy nor is there evidence Respondent has in fact actually implemented the policy at any of its facilities other than the one in Fremont, California. Under the circumstances and because of the Board's above-described decisions it would be inappropriate for me to recommend that Respondent be ordered to expunge the offending policy from its Inspection Service Manual, even though such a remedy seems to me to be the most effective way to insure that Respondent cease and desist from continuing to enforce its above-described companywide policy insofar as it interferes with employees' Section 7 rights. Instead, considering the circumstances, I have concluded it would be more appropriate to recommend Respondent post at all of its facilities, where employees are represented by the Union, notices informing its employees that it will cease and desist from the unfair labor practices found herein.

In recommending companywide posting, I considered there is no evidence that the unfair labor practices found herein occurred at any of the Company's facilities other than the Fremont, California facility, nor is there evidence that the unfair labor practices found herein had an impact on anyone employed in those other facilities. Nonetheless, because the record reveals a conscious companywide policy calculated to interfere with employees' Section 7 rights at all of Respondent's union-represented facilities, I am convinced that companywide posting is necessary to be sure that all of Respondent's employees employed in the bargaining unit represented by the Union, a companywide bargaining unit, are made fully aware of their Section 7 right to consult with their union representatives prior to investigatory interviews conducted by Postal Inspectors to which employees' *Weingarten* rights have attached, and by what process violated rights can be vindicated. I also note that, as admitted in Respondent's posthearing brief, it appears that Respondent's postal inspectors will continue to maintain Respondent's policy of not allowing employees to consult with their union representatives prior to investigatory interviews to which employees' *Weingarten* rights have attached, unless the inspectors fortuitously happen to see the Board's notice to employees posted as the result of this proceeding. See, Respondent's posthearing brief at page 4 and footnote 1. Obviously the chances of inspectors observing the notice will be greatly increased if the location of the posted notices conforms to the companywide policy which resulted in the unfair labor practices found herein, and conforms to the companywide bargaining unit to which the policy applies. It is for all of these reasons that I have concluded that companywide posting constitutes an appropriate remedy.

¹³The question of whether a companywide remedial order is appropriate in this case was posed by the complaint, thus, Respondent was afforded an opportunity to litigate this issue.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁴

ORDER

The Respondent, United States Postal Service, Fremont, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to permit union representatives to consult with employees prior to investigatory interviews conducted by postal inspectors which the employees reasonably believe will result in disciplinary action and refusing to permit employees to speak with union representatives prior to such interviews.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) Post at its facilities where employees are represented by the American Postal Workers Union, copies of the attached notice marked "Appendix."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 32, 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.

¹⁴If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹⁵If this Order is enforced by a judgment of a 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."

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint be, and it is, dismissed insofar as it alleges that the Respondent violated the Act other than found herein.

APPENDIX

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 National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to permit union representatives to consult with employees prior to investigatory interviews conducted by postal inspectors which the employees reasonably believe will result in disciplinary action and WE WILL NOT refuse to permit employees to speak with union representatives prior to such interviews.

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

UNITED STATES POSTAL SERVICE