

American Postal Workers Union, AFL-CIO, Wilmington, Delaware Local (United States Postal Service) and Lois A. Mitchell. Case 84-CB-6720-P

February 22, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed by Lois A. Mitchell, an individual, the General Counsel of the National Labor Relations Board issued a complaint on November 25, 1992, against American Postal Workers Union, AFL-CIO, Wilmington, Delaware Local, the Respondent, alleging that it has violated Section 8(b)(1)(A) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On January 19, 1993, the General Counsel filed a Motion for Summary Judgment. On January 21, 1993, 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 no response. The allegations in the motion are therefore undisputed.

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

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 23, 1992, notified the Respondent that unless an answer was received by January 4, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The United States Postal Service, the Employer, provides postal services for the United States and operates various facilities throughout the United States in the performance of that function, including a facility in

Wilmington, Delaware, which is involved in this proceeding. The Board has jurisdiction over the Respondent and this matter by virtue of Section 1209 of the Postal Reorganization Act, 39 U.S.C. § 101 et seq.

The Respondent is a labor organization within the meaning of Section 2(5) of the Act. The American Postal Workers Union, AFL-CIO, the National Union, is a labor organization within the meaning of Section 2(5) of the Act. The Respondent has been at all material times an agent of the National Union.

II. ALLEGED UNFAIR LABOR PRACTICES

The Employer and the National Union have been parties to a collective-bargaining agreement effective by its terms from June 12, 1991, midnight through November 20, 1994. Pursuant to this agreement, the Employer has recognized the National Union as the exclusive collective-bargaining representative of a unit of the Employer's maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks as described in article I, section 1 of the agreement. Based on Section 9(a) of the Act, the National Union has been the exclusive collective-bargaining representative of the employees in the unit.

During the summer of 1992, the Respondent required Lois A. Mitchell to seek approval of the Respondent's president in order to obtain approval of a request for temporary schedule change for personal convenience (PS Form 3189). On or about August 24, 1992, the Respondent delayed the approval of Lois A. Mitchell's PS Form 3189. The Respondent engaged in these acts because Lois A. Mitchell was not a member of the Respondent.

CONCLUSION OF LAW

By requiring Lois A. Mitchell to seek approval of the Respondent's president in order to obtain approval of a request for temporary schedule change for personal convenience and thereafter delaying that approval because Lois A. Mitchell was not a member of the Respondent, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we shall order the Respondent to make Lois A. Mitchell whole for any losses if any, attributable to its imposition of the requirement that its president approve a request for temporary schedule change for personal convenience and for its delay in that approval pursuant to *Ogle Protection Service*, 183

NLRB 682, 683 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, American Postal Workers Union, AFL-CIO, Wilmington, Delaware Local, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Requiring Lois A. Mitchell, or any other employee, to seek approval of its president in order to obtain approval of a request for temporary schedule change for personal convenience and thereafter delaying the approval of the request because Lois A. Mitchell, or any other employee, was not a member of the Union.

(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) Make Lois A. Mitchell whole, with interest, for any losses she may have incurred due to the requirement of seeking approval from the Union's president in order to obtain approval of a request for temporary schedule change for personal convenience and the delay in approval of the request.

(b) Post at its facility in Wilmington, Delaware, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 4, 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

¹ If 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."

the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

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

APPENDIX

NOTICE TO MEMBERS
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.

WE WILL NOT require that Lois A. Mitchell, or any other employee, obtain the approval of the president of American Postal Workers Union, AFL-CIO, Wilmington, Delaware Local, in order to obtain approval of a request for temporary schedule change for personal convenience because the employee is not a member of the Union.

WE WILL NOT delay the request for temporary schedule change for personal convenience of Lois A. Mitchell, or any other employee, because the employee is not a member of the Union.

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

WE WILL make Lois A. Mitchell whole, with interest, for any losses she may have incurred due to our requirement that she obtain the president's approval of a request for temporary schedule change for personal convenience and our delay in approval of the request.

AMERICAN POSTAL WORKERS UNION,
AFL-CIO, WILMINGTON, DELAWARE
LOCAL