

United States Postal Service and Philadelphia PA Area Local, American Postal Workers Union a/w American Postal Workers Union, AFL-CIO. Cases 4-CA-18673-P and 4-CA-18745-P

August 26, 1994

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND DEVANEY

On September 30, 1992, the National Labor Relations Board issued its Decision and Order in the above-captioned case.¹ The Board found that the Respondent had violated Section 8(a)(5) and (1) of the Act by failing to bargain on request with the Intervenor, American Postal Workers Union, AFL-CIO, over the elimination of actual or suspected racial discrimination in the Respondent's hiring practices, and by failing and refusing to provide information requested by the Intervenor Union that was relevant to its concerns over possible hiring discrimination.

On March 14, 1994, the United States Court of Appeals for the Third Circuit issued an order enforcing the Board's Order in part and denying enforcement in part.² The court agreed with the Board that the Respondent had unlawfully failed to bargain and to provide requested information concerning the possibly discriminatory impact of a new selection process known as OPTEX.³ The court found that the Respondent had not acted unlawfully in failing to bargain or to provide information regarding a program of mail solicitation of job applicants, and it accordingly denied enforcement of the Board's Order concerning those matters. Because it found that the General Counsel had failed to show that the mail solicitation program was a mandatory subject for bargaining, and because it found no relevant connection between that program and OPTEX, the court found no basis on which it could enforce the Board's Order insofar as it required bargaining over the mail solicitation program or the production of related information.⁴

The court also denied enforcement of the affirmative portions of the Order concerning OPTEX, but for different reasons. The court found that, although the Respondent should have bargained over OPTEX on the basis of the information originally adduced by the Union, subsequent information had established that the Union's theory of how OPTEX might lead to hiring discrimination was unfounded. "Thus," according to the court, "the Board ordered bargaining and the production of information when it was apparently satisfied that OPTEX does not discriminate in the only way the

union has ever plausibly suggested it might."⁵ The court stressed that it was not prepared to find that the Board's affirmative remedies could not be enforced. However, on the record before it, the court was "reluctant to enforce such an order in the absence of an explanation of how the Board believes enforcement would further the purposes of the Act."⁶

The court therefore declined to enforce the Board's Order pertaining to OPTEX, but stated that, if the Board concluded that the purposes of the Act would be served by ordering the Respondent to bargain and to provide information concerning OPTEX, the Board should articulate its rationale, enter a new Order limited in scope to OPTEX, and petition anew for enforcement. If, in the alternative, the Board found that it would serve the purposes of the Act simply to enforce the portion of its Order requiring the Respondent to cease and desist from its unlawful practices and to post the appropriate notice, the court stated that the Board might renew its petition for enforcement, and that portion of the Order would be enforced.⁷

On May 18, 1994, the Board advised the parties that they might file statements of position concerning the issues raised in the court's decision. The General Counsel, the Respondent, and the Unions filed statements of position.

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

The Board accepts the court's decision as the law of the case. In view of the court's decision, the Board finds that it would not effectuate the purposes of the Act to order the Respondent to bargain with the Union or to provide information concerning OPTEX. As we find that all of the Union's information requests were related either to OPTEX or to the Respondent's mail solicitation campaign, we shall not order the Respondent to comply with any of the Union's information requests that are still at issue in this case.⁸ Accordingly, we shall issue a revised Order requiring the Respondent only to cease and desist from further violations, to post the appropriate notice, and to inform the Regional Director of the steps it has taken to comply with the revised Order. We shall also issue a new notice to conform with the provisions of the revised Order.

⁵Id. at 1104. The bases for the Union's suspicion that the Respondent's hiring practices were discriminatory are discussed in detail in both the Board's and the court's decisions.

⁶Ibid.

⁷Ibid.

⁸In its earlier decision, the Board found that certain requested items of information had been provided, and that the Respondent was not required to furnish certain other items. 308 NLRB at 1314-1315.

¹ 308 NLRB 1305.

² 18 F.3d 1089.

³ Id. at 1103.

⁴ Id. at 1102-1104.

ORDER

The National Labor Relations Board orders that the Respondent, United States Postal Service, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain on request with American Postal Workers Union, AFL-CIO (the Union) as the exclusive representative of its employees in the appropriate bargaining units set forth in article 1 of the parties' collective-bargaining agreement effective July 21, 1987, through November 20, 1990, concerning the elimination of actual or suspected discriminatory hiring practices.

(b) Failing and refusing to furnish the Union with requested information that is relevant to, and necessary for, the Union's performance of its functions as the representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed 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 in Philadelphia, Pennsylvania, copies of the attached notice marked "Appendix."⁹ 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

⁹If 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."

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.

(b) 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 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.

WE WILL NOT fail and refuse to bargain on request with American Postal Workers Union, AFL-CIO as the exclusive representative of bargaining unit employees concerning the elimination of actual or suspected discriminatory hiring practices.

WE WILL NOT fail and refuse to furnish information requested by the Union that is relevant to, and necessary for, the performance of its representative functions.

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.

UNITED STATES POSTAL SERVICE