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United States Postal Service and American Postal Workers Union National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL-CIO. Cases 16-CA-22766, 16-CA-22854, 16-CA-22855, 16-CA-22868, 16-CA-22931 16-CA-22961, and 16-CA-22989

April 30, 2004

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

On January 21, 2004, Administrative Law Judge George Carson II issued the attached decision. The Respondent filed exceptions and brief in support. The General Counsel filed a motion to strike Respondent's brief and an answering brief to Respondent's exceptions. Respondent filed a response to the motion to strike and a reply brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs¹ and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order as modified.⁴

¹ We deny the General Counsel's motion to strike the Respondent's brief in its entirety. However, we shall strike and disregard references in the brief to extra-record evidence. We assume, arguendo, that we may take official notice of the one-page excerpt of Respondent's Employee Labor Relations Manual (ELM) attached to its brief because the ELM is an official regulation of the Postal Service. This document does not affect our agreement with the judge's conclusion that Respondent violated Sec. 8(a)(5) by unilaterally changing its established policy of automatically granting the requests of Spring Area postal employees represented by the National Association of Letter Carriers to take leave without pay for their choice vacation period.

² The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ There are no exceptions to the judge's conclusion that the Respondent committed several violations of Sec. 8(a)(5) by failing to provide information requested by the Unions.

Member Schaumber notes that the issue of whether the relatively scant "impression" evidence presented at the hearing by two employees who were union stewards established a past practice with respect to granting requests for leave without pay is a close one.

⁴ We shall modify the order by limiting its provisions to the postal facilities involved in this case. In light of three Houston districtwide

ORDER

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

1. Substitute the following for paragraph 1(f).

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

2. Substitute the following for paragraph 2(d).

"(d) Within 14 days after service by the Region, post at its facilities within the Spring Post Office area and at its Windmill, Memorial Park, Jensen Drive, and North Shepherd Stations in Houston, Texas, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the no-

Board orders recently enforced by the Fifth Circuit, we find no need for the judge's recommended special remedies of districtwide notice posting and a broad order. *NLRB v. Postal Service*, Case No. 03-61059 (2004) (unpublished order enforcing 339 NLRB No. 150); *NLRB v. Postal Service*, Case No. 03-60908 (2003) (unpublished judgment granting application for enforcement of unpublished Board consent order in Cases 16-CA-22276, et al.); *NLRB v. Postal Service*, Case No. 03-60503 (2003) (unpublished judgment enfg. unpublished Board order in Cases 16-CA-21199, et al.).

Member Liebman agrees with her colleagues that a broad cease-and-desist order is unnecessary here in light of the multiple Board orders containing broad cease-and-desist language that have recently been enforced against this employer in previous cases, cited above. See *Beverly California Corp. (Beverly II)*, 326 NLRB 153, 157-158 (1998). However, she does not agree that the outstanding districtwide notice postings in two of those cases render a districtwide posting in this case similarly unnecessary. Rather, she finds that the greater remedial effect of successive districtwide postings, addressing distinct violations and visible to the employees over a greater period, is appropriate where, as here, an employer has demonstrated a proclivity to violate the Act. Thus, contrary to her colleagues, she would adopt the judge's order for a districtwide posting in this case.

⁵ 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."

tice to all current employees and former employees employed by the Respondent at any time since February 10, 1995.

3. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. April 30, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discipline for failing to comply with a procedure that we have unilaterally changed.

WE WILL NOT refuse to bargain collectively with the American Postal Workers Union by unilaterally altering the procedure by which the American Postal Workers Union maintenance craft steward at the Spring Post Office must obtain union time in order to carry out his representational responsibilities.

WE WILL NOT refuse to bargain collectively with the National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL-CIO, by unilaterally ceasing to automatically approve requests for leave that involve employees represented by that Union from taking leave without pay

(LWOP) for choice vacation at the Panther Creek branch and other locations of the Spring Post Office.

WE WILL NOT refuse to bargain collectively with the American Postal Workers Union by failing and refusing to provide requested information that is relevant and necessary to that Union as the collective-bargaining representative of the employees it represents.

WE WILL NOT refuse to bargain collectively with the National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL-CIO, by failing and refusing to provide requested information that is relevant and necessary to that Union as the collective-bargaining representative of the employees it represents.

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

WE WILL, upon request of the Union representing you, rescind the foregoing unilateral changes.

WE WILL promptly furnish the American Postal Workers Union the information it requested on April 24, 2003, and WE WILL promptly furnish the National Association of Letter Carriers Branch 283, affiliated with the National Association of Letter Carriers, AFL-CIO, the information it requested between January 10, 2003, and July 10, 2003.

UNITED STATES POSTAL SERVICE

Linda M. Reeder, Esq., for the General Counsel.
Ernest A. Burford, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

GEORGE CARSON II, Administrative Law Judge. This case was tried in Houston, Texas, on November 3, 4 and 5, 2003, pursuant to a consolidated complaint that issued on September 29, 2003.¹ The complaint, as amended at the hearing, alleges that the Respondent violated Section 8(a)(1) and (3) of the Act by threatening an employee and changing his working conditions in retaliation for his union activity and that the Respondent violated Section 8(a)(5) of the Act by making two unilateral changes and failing and refusing to provide relevant information.² The Respondent's answer denies all violations of the Act. I find that the evidence does establish that the Respondent violated Section 8(a)(1) and (5) of the Act substantially as alleged in the complaint.

¹ All dates are in 2003 unless otherwise indicated.

² The charge in Case 16-CA-22766 was filed on May 1 and amended on July 29, the charge in Case 16-CA-22854 was filed on June 9, the charge in Case 16-CA-22855 was filed on June 9 and was amended on June 19, the charge in Case 16-CA-22868 was filed on June 13, the charge in Case 16-CA-22931 was filed on July 14, the charge in Case 16-CA-22961 was filed on July 25 and was amended on September 30, and the charge in 16-CA-22989 was filed on August 11.

On the entire record,³ including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Board has jurisdiction of this matter pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209. The answer admits, and I find and conclude, that the United States Postal Service, hereinafter referred to as the Respondent or the Postal Service, is an employer subject to the jurisdiction of the National Labor Relations Board.

The Respondent's answer admits, and I find and conclude, that American Postal Workers Union, the APWU, is a labor organization within the meaning of Section 2(5) of the Act.

The Respondent's answer admits, and I find and conclude, that National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL-CIO, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Overview

This case arises in the Houston district of the Postal Service. The vast majority of the numbered complaint paragraphs allege that the Postal Service failed to provide or to provide in a timely manner requested relevant information at various postal facilities in that district. The answer admits all of the alleged requests and, at the hearing, the Respondent's Counsel stipulated to the relevance of the information sought in several requests. Grievances involving letter carriers represented by the Union are first addressed at an informal Step A meeting with the appropriate station supervisor. If the grievance is not resolved, a formal Step A meeting is held with the respective station manager. Grievances not resolved at the formal Step A meeting may be appealed to a joint management and union panel designated as the Dispute Resolution Team, the DRT. An appeal must be made within 7 days from the formal Step A decision. When an appeal file is sent to the DRT, it is supposed to be complete. The Union must appeal within the time limits to preserve the grievance even if requested relevant information has not been provided. The DRT will, depending upon the nature of the grievance, remand a grievance that is improperly documented or act upon it even in the absence of documentation. See *Postal Service*, 339 NLRB No. 150, JD slip op at 4 (2003).

In addressing the allegations of the complaint, I shall apply longstanding Board precedent as recently summarized in *Postal Service*, 337 NLRB 820, 822 (2002):

The legal standard concerning just what information must be produced is whether or not there is "a probability that such data is relevant and will be of use to the union in fulfilling its

³ The posthearing Stipulations of the Parties dated November 18 are hereby received as Joint Exhibit 1. The General Counsel's Motion to Strike the Respondent's brief is denied.

statutory duties and responsibilities as the employees' exclusive bargaining representative." *Bohemia, Inc.*, 272 NLRB 1128 (1984). The Board's standard, in determining which requests for information must be honored, is a liberal discovery-type standard. *Brazos Electric Power Cooperative*, 241 NLRB 1016 (1979). The Board, in determining that information is producible, does not pass on the merits of the grievance underlying a request.

The complaint identifies the respective case numbers followed by the allegations relating to that case. For clarity, this decision shall follow that format and shall address the specific complaint paragraphs in order except where information requests relate to similar issues or employees or where the paragraphs are interrelated as they are regarding the alleged unilateral changes and Section 8(a)(1) and (3) violations.

B. Case 16-CA-22766

This is the only case involving the APWU. Warzel Booty, a letter box mechanic with more than 18 years employment, was assigned to the Spring Main Office. The Spring Post Office, a part of the Houston District, has its own postmaster and includes four stations, the Spring Main Office, and the Klein, Woodlands Metro, and Panther Creek branches. To avoid any confusion, I shall refer to the Spring Area. The APWU represents employees in the following appropriate unit:

All maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, mail equipment shop employees and distribution centers employees; but excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1201(2), all postal inspection service employees, employees in the supplemental work force as defined in Article 7 [of the collective-bargaining agreement], rural letter carriers, mail handlers and letter carriers.

APWU Maintenance Craft Director James Clack explained that the APWU is "sectioned off by crafts," thus the clerk craft has a different steward than the maintenance craft. Booty served as Chief Steward for the APWU in the maintenance craft for the Spring Area for approximately 2 years. Although assigned to the Spring Main Office, Booty was the only steward for that craft in the Spring Area, and he, therefore, handled grievances at the outlying branches. Prior to April 23, when Booty needed time to investigate grievances or attend grievance meetings, he would verbally request the time from his craft supervisor. The APWU refers to the initial formal grievance meeting as a Step 1 meeting rather than Step A. On April 23, Booty received a letter addressed to him as APWU Steward/Letter Box Mechanic from Richard Osborne, Acting Station Manager of the Spring Main Post Office. The letter provides in pertinent part, as follows:

Effective immediately . . . [w]hen a need arises for you to utilize union steward time to investigate or present a grievance or rebuttal, you must immediately notify your immediate supervisor S. Keasling in writing. When . . . you must present a Step 1 [grievance], you also must notify your supervisor . . . in writing These instructions must be adhered to and any

deviations from such instructions will result in corrective action.

Upon receipt of the foregoing instructions Booty requested “[c]opies of the specific section of the handbooks and manual or directive that management . . . relied upon to change the procedure for requesting union time and Step 1” meetings and “[c]opies of the last 15 grievances filed where Richard Osborne was a Step 1 or Step 2 designee.” Booty testified that he made the second portion of the request in order to establish the change in the practice. Booty testified that he received no response to either of the foregoing requests for information.

Complaint paragraphs 8 through 16

These related complaint paragraphs allege that the reference to “corrective action” in the letter of April 23 constituted a threat of unspecified reprisals in violation of Section 8(a)(1) of the Act, that imposition of the requirement that Chief Steward Booty request time to conduct union business in writing constituted discrimination against him in violation of Section 8(a)(3), that this requirement was a unilateral change in violation of Section 8(a)(5) of the Act, and that the failure to provide the information that Booty sought violated Section 8(a)(5) of the Act.

There is no contention that the Postal Service bargained with the Union prior to imposing the requirement that Booty submit requests in writing. Maintenance Craft Director Clack testified without contradiction that other APWU craft stewards request and receive union time verbally. The Respondent, in its brief, argues that its “request that Mr. Booty put his request for union time in writing . . . did not amount to a unilateral change because it was a request directed only to him” and that this “instruction . . . to one employee” did not constitute “a material, substantial, and significant change,” that required bargaining. I disagree. If, as the Respondent asserts, the change did not constitute “a material, substantial, and significant change” the Respondent could, as phrased in its brief, have made a “request” that Booty put in his requests in writing. Contrary to the phrasing in the Respondent’s brief, there was no request. There was, as quoted above, an unequivocal direction accompanied by a threat of “corrective action.” Any contention that the foregoing did not constitute a material and substantial change is belied by the threat of discipline for violation of the unilaterally imposed requirement. The Respondent points out that all letter carrier stewards request union time in writing and that a written record would assure that there would be no disputes over whether union time had been requested by the APWU maintenance steward.

The Respondent’s rationales for the change are not the issue. The issue is whether the Respondent was obligated to bargain before making the change. The direction to submit requests in writing was made to Booty in his capacity as maintenance craft union steward. This was not an insubstantial change in the manner in which Booty carried out his job duties as a Postal Service employee. It was a material alteration in the manner in which he carried out his steward duties on behalf of maintenance craft employees represented by the APWU. In his representative capacity as steward, Booty was the APWU just as Manager Osborne was the Postal Service. Thus, although, the

letter of April 24 was from Osborne to Booty, effectively the Postal Service directed the APWU that, with regard to the maintenance craft, it must request time to conduct union business and Step 1 grievance meetings in writing and, concomitantly, wait until a Postal Service official responded in writing in order to carry out its representational responsibilities. Furthermore, if the representative of the APWU failed to do so, that representative would be subject to “corrective action.” I find that the foregoing change in past practice materially altered the manner in which the representative of the APWU could carry out that union’s representational responsibilities.

The Board, in *Carpenters Local 1031*, 321 NLRB 30, 32 (1996), held that a unilateral change affecting one employee did not preclude finding a Section 8(a)(5) violation, noting that the layoff of one employee in a unit of two employees “seriously undermines the union’s status as the employees’ collective bargaining representative.” The rationale regarding undermining the status of a union is even more apparent in this case where the employer totally ignored the APWU and sought to unilaterally impose its desired change in past practice upon that Union without negotiation by issuing a management directive to the one APWU maintenance craft shop steward at the facility. In so doing, the Respondent violated Section 8(a)(5) of the Act.

The General Counsel, citing *Advanced Installations, Inc.*, 257 NLRB 845 (1981), argues that a threat to discipline employees for violation of a rule established by a unilateral change violates Section 8(a)(1) of the Act. I agree and find that the threat of “corrective action” for violation of this unilaterally imposed requirement violated Section 8(a)(1). See *GHR Energy Corp.*, 294 NLRB 1011, 1048 (1989).

The General Counsel further argues that the imposition of the requirement that Booty request union time in writing constituted discrimination “because of Booty’s union activity” in violation of Section 8(a)(3) of the Act. The General Counsel does not discuss or explain how the imposition of the requirement that Booty submit a written request affected his hire or tenure of employment or the terms and conditions of his employment as an employee of the Postal Service. Although the requirement unilaterally altered the manner in which he could carry out his representational responsibilities in violation of Section 8(a)(5) and threatened corrective action in violation of Section 8(a)(1) if Booty did not comply, the requirement was a procedural requirement made to him in his representative capacity, not an adverse personnel action. If Booty had failed to comply and been disciplined, that discipline would have violated the Act. See *GHR Energy Corp.*, supra at 1048. Because Booty complied with the requirement, there was no adverse action taken against him that related to his hire or tenure of employment as an employee. I shall recommend that the Section 8(a)(3) allegation be dismissed.

As set out in paragraph 14 of the complaint, Booty sought both documents relied upon by the Postal Service in making the change and grievances relating to past practice. The Postal Service contends that it attempted to present the information sought by Booty within a week of his request and again on June 27. Acting Station Manager Osborne testified that a supervisor informed him that Booty had refused a proffer of the requested

information, but there is no direct evidence of this nor is there any document or notation reflecting any such refusal. I credit Booty that there was no response to his request. Booty was not questioned regarding an attempt to formally present this information to the Union at its main office.

On June 27, a delegation consisting of Carol Clark, secretary to the Spring Postmaster; Stephanie Keasling, Booty's supervisor; Jennifer Joseph, Station Manager of the Klein Branch; and Barbara Wright, Station Manager of the Panther Creek Branch; went together to the main office of the Union with a stack of documents that had been placed in sealed envelopes by Carol Clark. All members of the delegation agree that they spoke with a group of Union representatives and that Booty joined those representatives. All agree that the Union representative with whom they initially spoke, not Booty, refused to accept the stack of sealed envelopes. Supervisor Keasling recalls that, as they continued to talk, Booty asked to review the documents before signing for them, but this request was refused because "we couldn't open it [them]," presumably because they were sealed and designated as certified mail. No member of the delegation could testify regarding specifically what was in any of the sealed envelopes, and no member of the delegation asserted that she knew that any documents subject to the information request that is the subject of these complaint allegations were included. The refusal of the Union to accept the documents is noted with the date June 27 and the initials JJ. Jennifer Joseph was not recalled to identify the initials.

At the hearing herein, one of those sealed envelopes was opened. It contained none of the grievances that the Union had requested. Acting Station Manager Osborne, when he had initially been asked whether Booty was provided the information he requested, testified, "Yes, he was." After the envelope was opened, Osborne recalled that the requested grievances had to be tracked down because of a new computer system and that he "was able to retrieve them afterwards." Osborne admitted that he made no attempt to present the grievances to Booty after he retrieved them. The Respondent, by failing to provide copies of grievances at which Osborne served as its Step 1 or Step 2 designee, violated Section 8(a)(5) of the Act.

Prior to assuming his duties at the Spring Main Office, Osborne had been located in Katy, Texas. Katy is not in the Spring Area, thus the manner in which stewards requested union time at that location has no relevance to the unilateral change instituted in the Spring Area. I shall recommend that only copies of relevant grievances, i.e. grievances arising in the Spring Area in which Osborne served as the Step 1 or 2 designee, need to be provided to the Union.

The record does not establish whether there was any response to the request for "[c]opies of the specific section of the handbooks and manual or directive that management . . . relied upon to change the procedure for requesting union time and Step 1" meetings. Counsel for the General Counsel questioned Osborne only regarding the absence of any grievances in the envelope. Counsel for the Respondent did not question Osborne regarding the contents of the envelope, and no party asserted that there was any other document in it that was relevant to this proceeding. Thus, there is no probative evidence that the Respondent responded to the Union's request for documents that it

relied upon when making the unilateral change. By failing to respond to the request of the Union for the foregoing relevant information, either by providing it or acknowledging that it did not exist, the Respondent violated Section 8(a)(5) of the Act.

C. Case 16-CA-22854

This case involves requests for information submitted by Chief Steward Paula Papich, a letter carrier at the Windmill Station in Houston. The Station Manager is Gloria Solis.

Complaint paragraph 17

Letter carrier Marie Asscherick worked under a medical restriction limiting her to her assigned route. On January 13, due to a shortage of vehicles, Asscherick was required to carry part of another route and a portion of her assigned route was carried by a different carrier. On February 19, Papich requested a copy of the medical restriction, i.e., the "work only assignment restriction" for Asscherick. Papich made a second request for the same document on February 21. Although Station Manager Gloria Solis initially testified that she believed that supervisor Mary Warner provided the information, she later acknowledged that the Postal Service advised the Union in a letter dated October 3 that the Postal Service did not have a copy of Asscherick's work restrictions. By failing to provide a timely response to the foregoing request for relevant information the Respondent violated Section 8(a)(5) of the Act.

Complaint paragraph 18

On March 1, letter carrier Jim Hanratty received a notice of discipline for deviating from his assignment on January 27. He claimed that he was at lunch at the time in question. On March 15, Papich requested the 1080, which was the disciplinary package assembled by the Postal Service, any notes from a predisciplinary meeting held with Hanratty, a record of any prior discipline imposed upon him, and the Form 3996, a request for auxiliary assistance or authorization for overtime filed by Hanratty on January 27 that would have shown his lunch time and location. Papich received no response and requested the information twice more, on March 19 and 26. In late July, the disciplinary package, the 1080, was provided. Station Manager Solis testified that all of the requested information was provided and that she wrote on the third request "information was supplied to Ms. Papich already." Solis did not write down the date that the information was purportedly provided. The relevance of the information was not disputed. I credit Papich. The fact that she submitted a third request belies the assertion of Solis that the information was submitted on a date that she did not record when writing that the information had been "supplied . . . already." By failing to provide the 1080 in a timely manner as alleged in subparagraph 18(a) and by failing to provide the remaining information as alleged in subparagraphs 18(b), (c), and (d), the Respondent violated Section 8(a)(5) of the Act.

Complaint paragraph 19

On February 22, PTF (part time flexible) employee Hector Torres attempted to bid for a "T-6 vacancy." When a route is vacant for more than 40 hours, five regular workdays, it should be posted for bids to deliver the route on a temporary basis.

Chief Steward Papich testified that the Postal Service refused to permit Torres to bid on the vacancy. In further testimony, she acknowledged that the vacancy had not been posted. Notwithstanding the failure of the Postal Service to post the vacancy, Papich submitted an information request for a “Form 13 . . . to fill T-6 vacancy” that Torres informed her he had submitted. Station Manager Solis explained there was no such documentation, a bid, because the vacancy was not posted. I fail to see the relevance of a purported bid submitted for an unposted vacancy. The Postal Service refused to permit bids on the vacancy because it did not post the vacancy. There is no issue before me regarding the failure to post the vacancy. I note that, following the filing of the charge herein, the Postal Service provided the Union with a certified letter dated October 3 stating that it had no Form 13 from Torres. Thus, even if the information requested were found to be relevant, the Postal Service responded, albeit in an untimely manner, to the request, and no affirmative remedy is required. I shall recommend that this allegation be dismissed.

Complaint paragraphs 20 and 21

The foregoing two paragraphs relate to class action grievances concerning overtime. The Union contended that carriers not on the overtime desired list had been forced to work overtime on March 22 and March 28 and again on April 5 and 7 before the overtime desired list had been exhausted. Papich requested “everything reports,” computer generated documents that show the employees’ clock rings, i.e., the specific time worked including any overtime, for all carriers for the relevant days and whether they worked overtime, the overtime alert report for March 22 through March 28, the work assignment only list and “forced [overtime]” list for April. Counsel for the Respondent stipulated that the information requested was relevant.

Papich acknowledged that a portion of the everything reports was provided, but that there were “pages missing” because the submission was limited to the clock rings of carriers on the overtime desired list. The issue, as noted, was forcing carriers not on the overtime-desired list to work. Station Manager Solis testified that “the supervisors pulled the documentation off the computer, and they tell me they pulled it for her as soon as possible.” The report of supervisors to Solis regarding what they told her does not refute Papich’s testimony that the information initially provided to her was incomplete. The parties stipulated that all of the requested information was provided on July 19. By failing to provide all carrier everything reports, the overtime alert report for March, the work assignment only list and April forced overtime list in a timely manner, the Respondent violated Section 8(a)(5) of the Act.

D. Case 16–CA–22855

The charge in this case was filed on June 9. On August 13, the Regional Director, in a letter to all parties, stated that he had considered the charge and “decided that further proceedings . . . should be handled in accordance with the Board’s deferral policy.” Thereafter, in a paragraph designated “Decision to Defer,” the Regional Director states that he is “deferring further proceedings on the charge to the grievance/arbitration process” and

states that the issues raised by the charge involve an alleged unilateral change in the collective-bargaining agreement by “permitting the postal clerk craft to perform manual tertiary sorts.” Although the charge also alleges failure to provide information, the deferral letter does not mention the information requests, several of which related to the alleged unilateral change. The letter does not purport to be a partial deferral.

On August 29, the initial consolidated complaint herein was issued. Paragraphs 28 through 40 related to information requests contained in the charge in Case 16–CA–22855. On September 12, the Postal Service filed its answer to the foregoing complaint which includes several affirmative defenses. Paragraph 4 of the affirmative defenses states: “The Respondent received a Decision to Defer dated August 13, 2003 on Charge 16–CA–22855.” The instant complaint issued on September 29. It alleged, as did the initial complaint, in paragraphs 28 through 40, the failure to provide information. The Respondent’s answer, dated October 14, expands upon the affirmative defense set forth in paragraph 4: “The Respondent received a Decision to Defer dated August 13, 2003 on Charge 16–CA–22855, therefore the Board should dismiss the charge and sever it from the Consolidated Complaint.” At the hearing herein, the Respondent filed a Motion for Summary Judgment relating to the allegations arising from Case 16–CA–22855. That motion was untimely, and it is hereby denied.

The Region did not issue an amended deferral letter or otherwise respond to the issue raised by the Respondent’s affirmative defense.

The General Counsel argues that the Regional Director, by the terms of the deferral letter, retained authority to “revoke deferral and resume processing of the charge” and that the Respondent has not been prejudiced since it had notice from the presence of the allegations in the complaint that the General Counsel intended to litigate the refusal to provide information.

I do not agree. On August 13, the Region totally deferred Case 16–CA–22855 with no reservations or exceptions. The Respondent, upon observing that allegations from that case were included in the consolidated complaint, raised the deferral issue in its answer by pleading as an affirmative defense that those allegations were included in a charge that had been deferred and should, therefore, be dismissed and severed from the complaint. The Region took no action to clarify the situation. Cf. *Chatham Mfg. Co.*, 221 NLRB 760 (1975). No revised deferral letter issued. The Respondent has sustained its affirmative defense. I shall recommend that the allegations arising from that charge which has been deferred in its entirety to the parties’ grievance/arbitration procedure be dismissed from this complaint. This dismissal shall be without prejudice to any further proceedings or actions that may be appropriate upon completion of the arbitration process and review of the matters considered at arbitration.

Insofar as the Board should not agree with the foregoing recommendation, in order to avoid a potential remand, I shall address the allegations set out in the complaint. All of the information requests were made by Chief Steward Lana Park at the Memorial Park Station. Chief Steward Park acknowledges that all information except the items alleged in complaint subpara-

graphs 33(a) and (c) were provided, albeit not in a timely manner, on July 22.

Complaint paragraphs 28, 29, and 30

The foregoing paragraphs relate to three separate information requests filed on behalf of letter carrier B. B. Shelvin who felt that he was being harassed by his supervisor. The first, relating to January 28, sought carrier clock rings for Shelvin to show he was present, a Form 3996 requesting assistance or overtime submitted by Shelvin, and clock rings for other carriers sent to deliver mail on Shelvin's route. This request was initially submitted to the closing supervisor, John Johnson, on February 1. A second request for the same information was submitted to carrier foreman Samuel Eapen on February 11. The next request relating to Shelvin sought clock rings and the Form 3996 submitted on February 11 and 14, and the final request sought Shelvin's clock rings for February 3. These requests were all submitted to Supervisor Eapen.

Park denied receiving the foregoing information until July 22. Eapen testified that, when he received a request, he would seek to respond but that he would not do so if he was too busy. When asked whether he responded to the request to which Supervisor Johnson had failed to respond, Eapen testified, "at that time I might have been busy." Notwithstanding his failure to confirm that any of the specific information sought regarding Shelvin was provided, Eapen testified that Park "received all the information . . . [i]t may be late, but . . . my manager provided that to her." At the time of the foregoing requests, the position of Station Manager was filled by Benita Clark. The parties, in a posthearing stipulation, agreed that, if called as a witness, Clark would testify that she told Park that if she had not received needed documentation she should notify her before the Formal Step A meeting. The parties further stipulated that Park denied that there was any such agreement. Regardless of any agreement, the record establishes the foregoing requests for relevant information, and there is no probative evidence that the Union received the information in a timely manner. By failing to provide the foregoing relevant information in a timely manner, the Respondent violated Section 8(a)(5) of the Act.

Complaint paragraph 31 and 32

These two paragraphs relate to information requested in connection with the Union's grievances regarding "segmentation," i.e. the performance by clerks of "tertiary sorts," work that the letter carriers claimed and the issue that the General Counsel acknowledges was deferred. Notwithstanding the deferral, the complaint alleges the failure to timely provide the foregoing information. Paragraph 31 alleges that the Postal Service failed to provide a copy of the "regulation permitting clerks to perform manual tertiary sort of flats for routes 2417/2472." Chief Steward Park acknowledges that the Postal Service provided documents purportedly responding to that request. The information was provided to Park by Ricardo Johns, who had been assigned as Station Manager in early April. Johns acknowledged that he had no personal knowledge regarding what information he gave to Park, that what he gave her "came at [to] my level with the package from the supervisor." Park argued that the information provided was "information that I did not

request," and made a second request for the regulation. The Postal Service's timely response to the initial information request included no regulation, suggesting that no such regulation existed. No additional information was provided. The deferral of the grievance regarding segmentation establishes that the Postal Service contends that it was privileged to make the work assignment in question and that, although Park did not consider the documents provided to be responsive, the Postal Service did consider them responsive.

Although the complaint alleges that the Respondent failed "to timely furnish" the information sought in paragraph 31, I find that the Respondent made a timely response to that information request, and I shall recommend that paragraph 31 of the complaint be dismissed.

Station Manager Johns had no document reflecting that the Union received the information that is the subject of paragraph 32 of the complaint. He asserted that the documentation was provided because the grievance was submitted to the Dispute Resolution Team, but his testimony reflects no independent knowledge of what was in the package submitted. Park testified that the information was not received until June 22. I find that the Respondent failed to provide the information set out in paragraph 32 of the complaint in a timely manner in violation of Section 8(a)(5) of the Act.

Complaint paragraph 33

On May 24, Park requested information relating to a complaint that the Postal Service was working two casual employees, identified in the request as Nelson and Pasquale, in lieu of bargaining unit employees. The information sought included the Form 50 for the casual employees which would reflect their date of hire, the employee activity report showing the hours they worked, Form 3997, the weekly work schedule, and the carrier complement reports showing work hours including overtime for the regular workforce. On July 23, Park received a certified letter stating that the Form 50 was privileged from disclosure pursuant to the Privacy Act. On July 22, she received the activity report and carrier complement reports. She testified that she never received the Form 3997, the weekly work schedule for the date in question. Station Manager Johns had no independent recollection regarding what information was provided but asserted that Park received all of the information in a timely manner because Park signed off on "the package that was sent to the DRT" and it was not "her modus of operandi" to do so if the submission was insufficient. John's testimony is contradicted by the Privacy Act claim regarding the Form 50 and by the requirement that submissions must be made to the DRT in a timely manner even if the package is incomplete. I credit Park and find that the Respondent violated Section 8(a)(5) of the Act by failing to provide the relevant information sought in complaint subparagraphs 33(b) and (d) in a timely manner and failing to provide the relevant information sought in subparagraph 33(a) and (c). Insofar as the Form 50 itself is protected by the Privacy Act, the Respondent need only provide the hire dates of employees Nelson and Pasquale.

E. Case 16-CA-22868

This case involves information requests made at the Jensen Drive Station to Acting Station Manager Larry Edmond and 204(b) Supervisor Issia Carr by Steward Ramon Martinez.

Complaint paragraph 41

On January 10, Steward Martinez presented an information request to Supervisor Issia Carr seeking, among other items, carrier schedules for December 27, 2002, through January 3. Martinez made this request after hearing that letter carriers were not receiving their five o'clock window of operations pay. The five o'clock window is significant to employees because after that time employees receive an additional \$10 per hour. Martinez testified that Supervisor Carr informed him that the schedule could not be found. Insofar as the Postal Service responded, I shall recommend that this allegation be dismissed.

Complaint paragraph 42

In late January, the Union became concerned that carriers who were supposed to be receiving overtime were not being maximized because carriers who had not volunteered for overtime were being forced to work overtime in order to complete their routes by 5 p.m. On January 28, Martinez presented Supervisor Carr with an information request seeking, among other items all "time clock ring sheets from January 11 through 24." Martinez testified that the Union was also concerned that some clock rings were being changed. Carr testified that "nine times out of ten I go ahead and pull the information that he needs. If not, I put it in front of the computer, and in the mornings, the manager will pull it." Carr acknowledged that she had no record reflecting what information she did provide to Martinez. She did not keep a record of the occasions upon which she left the request for Edmond to complete. Despite the absence of any record, Carr testified that she provided the foregoing information to Martinez. I do not credit that testimony. Martinez specifically recalled, "I didn't receive the reports, so there was no way to prove the actual times." He therefore was unable to file a grievance. By failing to provide the foregoing information, the Respondent violated Section 8(a)(5) of the Act.

Complaint paragraph 43

On February 21, not having received the information requested on January 28, Martinez requested all carrier schedules from December 27, 2002, through February 21. He made this request in regard to the Union's continuing concern with the issue that employees on the overtime desired list and PTF letter carriers were not begin maximized. He received no response. Martinez recalled that a management official, he believes it was Acting Station Manager Edmond, informed him, "We'll get them to you." Carr, when asked whether she provided the foregoing information, answered, "Yes." Martinez, who was seeking to file a grievance based upon the information received, testified that the information was not provided. I credit Martinez. By failing to provide the requested relevant information, the Respondent violated Section 8(a)(5) of the Act.

Complaint paragraph 44

In February, the Union continued to be concerned that employees had not been properly compensated for the 5 o'clock window. On February 26, Steward Martinez presented an information request to Acting Station Manager Larry Edmond seeking "copies of all five o'clock window of operations pay authorizations" from October 2002 through February 21. After filing the charge herein on June 13, Martinez received the documents for the first 15 pay periods in 2003, covering the time period from December 25, 2002, through July 12. Consistent with the allegation in paragraph 56 of the complaint, I find that the Respondent violated Section 8(a)(5) of the Act by failing to timely furnish the foregoing information.

Martinez acknowledged that the Union had, pursuant to a prior request, received documentation for October and November 2002, but that he thereafter misplaced those documents. When he was unable to locate the documents, he included that time period in the request he made on February 26. At the hearing, Counsel for the General Counsel amended complaint paragraph 44, that initially alleged a time period of December 27, 2002, through February 21, 2003, to allege October 2002 through February 21, 2003. Although the Respondent failed to provide the same information a second time, no amendment was offered to paragraph 56 that alleges that the Respondent failed "to timely furnish" the information set out in paragraph 44. I have so found with regard to the information that was ultimately provided. In view of the foregoing, no further finding is warranted.

Complaint paragraph 45, 46, 48, and 49

Pursuant to its continuing claim that employees on the overtime desired list and PTF employees were not being maximized, Martinez, on March 12, presented Edmond with a request for "copies of carrier clock rings" for pay period February 22 through March 7. Martinez testified again that an additional concern of the Union was that clock rings were being changed. Martinez recalls that Edmond stated that he would "get it," but that he did not do so.

Acting Station Manager Edmond, when shown this information request at the hearing, testified that it would take a "day or two" to obtain this information from the computer. He did not testify that the information sought was provided. Rather, in response to Counsel for Respondent's questions, he testified that there was no reason that he would not provide the information and that, to the best of his knowledge, it was provided. Martinez's credible testimony that it was not provided contradicts Edmond's speculation, and I credit Martinez.

With regard to this same issue of maximization of overtime, Martinez, on April 19, presented Supervisor Carr with a request for carrier clock ring sheets from April 5 through 18 as well as the volunteer overtime list and overtime desired list for that same period. Martinez explained that after the overtime desired list and PTFs have been exhausted, the Postal Service is "supposed to ask for volunteers among the regular letter carriers not on the list before they force anyone to work overtime." Although the overtime desired list is available at some stations, Martinez testified that, at Jensen, it is kept in the manager's office.

On April 30, Martinez presented Supervisor Carr with a request for “carrier everything reports” for April 19 through 30. Martinez explained that, as with his prior request, he wanted the clock rings, he but had learned that the report upon which clock rings were shown was now a computer generated document referred to as the “carrier everything report.” As with his prior requests, Martinez did not receive the documents and, when he verbally reminded management of his request, he was told, “okay,” or, “we’ll get it,” but the documents were not produced.

On May 6, Martinez presented an information request to Carr seeking copies of the letter carriers’ schedule and the carrier reports for the pay period April 26 through May 2. He testified that this request, like the request for clock rings, related to maximization of overtime.

As already discussed, Carr, when summarily asked whether she provided the information at issue, answered, “Yes.” When asked how she knew she had done so, Carr answered, “I just remember.” In view of Carr’s acknowledgement that she maintained no record of what she provided, I have no confidence in that assertion. Martinez had a document, the information request, and a desire to act upon the information that he received. Although Carr asserted that she provided all of the information sought in the foregoing requests, except the request of March 12 which was handled by Edmond, I do not credit her testimony. I find that the Respondent, by failing to provide the information sought in paragraphs 45, 46, 48, and 48 violated Section 8(a)(5) of the Act.

Complaint paragraphs 47

In preparation for filing a class action grievance to create regular part-time positions for PTF letter carriers at the Jensen Drive Station, Martinez presented an information request to Supervisor Carr on April 30. The request seeks the total number of regular route carrier positions in the Houston District, the total number of regular route carrier positions that did not have regular carriers assigned as of April 30, and the total number of regular carrier positions in the Houston District filled by PTF carriers on “in-station or “hold down” bids. Martinez explained that the Postal Service was only allowed to have 12 percent of the total workforce as PTF letter carriers, that 88 percent should be regular letter carriers. The documents he sought would show whether this formula was being adhered to and, to assure accuracy, he wanted to assure that the figures provided did not count PTF employees holding temporary bids as regular letter carriers. Edmond informed Martinez, within a week, that he did not “have access to that information.” Edmond did not deny making the foregoing response. At the hearing he asserted that Martinez, as a steward at Jensen Drive, was not entitled to information concerning employees at other locations. No authority for the foregoing opinion was stated. Martinez testified that he was certain that Edmond “could have called somebody higher up the chain of command and gotten that information for me.” Although Carr testified to providing the carrier information at Jensen Drive, Martinez, who had the conversation with Edmond, denied receiving any other response.

Although, unless specifically requested, a steward at one facility cannot represent a unit member at a different facility,

there is no probative evidence before me that a steward is not entitled to information that must be obtained from other facilities that is relevant to representation of the employees at the facility of the requesting steward. The information requested by Martinez in connection with a potential class action grievance at the Jensen Drive Station sought information relating to unit employees in the same administrative entity, the Houston district. Failure of the Postal Service at a small facility to obtain requested relevant information from “the main facility in Poughkeepsie” was found to violate the Act in Postal Service, 303 NLRB 502, 308 (1991). The Respondent, by failing to provide the requested information relating to a potential class action grievance, violated Section 8(a)(5) of the Act.

Complaint paragraph 50

Martinez testified that the Union not only was concerned regarding the number of regular positions but also was concerned that “casual letter carriers were being used to the detriment of the regular workforce.” Martinez explained that casuals “can only be worked for two consecutive 90-day periods, except for a 21-day period during December, and also they can’t be worked 40 hours per week. The Union believed that some casuals “were working 40 hours or more per week.” With regard to the foregoing concern, Martinez, on May 6, presented Supervisor Carr with an information request seeking copies of the “time records of all casual letter carriers working in Houston District Area 1, and the total number of hours they worked each week for the time period March 22, 2003, through May 2, 2003.” Acting Station Manager Edmond did not deny that he again informed Martinez that “he had no access to those records.”

Although casual employees are not unit employees, the information sought by the foregoing request related directly to the working conditions of unit employees insofar as the information sought would potentially show that casual employees were being used impermissibly. I find the foregoing request relevant and that the failure of the Respondent to provide the information violated Section 8(a)(5) of the Act.

Complaint paragraph 51

On May 20, Martinez presented an information request to Edmond requesting FMLA (Family Medical Leave Act) documents for letter carrier Phillip Bridges for October 2002 and January and the supervisory “notes of [the] predisciplinary hearing for Phillip Bridges.” Bridges had informed Martinez that he had submitted the proper documentation but that his request for medical leave had not been accepted for those periods. The Postal Service contended that no documentation was submitted and Supervisor Carr informed Martinez that the Postal Service was considering taking action against Bridges for being absent without leave in connection with those absences.

In connection with this controversy, a predisciplinary interview was held with Bridges on a date not specified in the record. Martinez was present at the predisciplinary meeting and took his own notes. He testified that Phillips contended that he had submitted the appropriate paperwork, “and they [the Postal Service] were saying that he hadn’t.” The supervisory notes of

the predisciplinary interview would have confirmed the Postal Service's intention to discipline Bridges for failure to submit the paperwork and were clearly relevant to the Union. The failure of the Respondent to provide the supervisory notes violated Section 8(a)(5) of the Act as alleged in subparagraph 51(b) of the complaint. The basis for the intended discipline was the alleged failure of Bridges to have submitted the very paperwork that Martinez sought in the information request. In these circumstances I find no basis for exalting form over substance. Martinez was told that Bridges had not submitted the paperwork, and therefore he knew that the Postal Service was claiming that it did not have the requested documents when he made the information request. I shall recommend that subparagraph 51(a) of the complaint be dismissed.

F. Case 16-CA-22931

The case, like Case 16-CA-22854, concerns information requests made by Chief Steward Paula Papich at the Windmill station.

Complaint paragraphs 64, 65, and 66

All three of the information requests in the above paragraphs relate to class action grievances regarding overtime. As reflected in the discussion of complaint paragraphs 20 and 21, the Union alleged that carriers were being forced to work overtime before the overtime desired list had been exhausted. Paragraph 64 relates to a request for all carrier everything reports for March 8 through March 14, and paragraph 65 relates to a request for those reports for March 29 and April 4. Paragraph 66 relates to a request, on April 16, that repeats the April 9 request for the carrier everything reports for March 29 and April 4 and additionally seeks the overtime alert report for all carriers for March 29 through April 4. The Respondent stipulated that all of the requested foregoing information was relevant. Although the Union requested carrier everything reports for all carriers, Papich testified that the Postal Service did not provide all such reports. She testified that no overtime alert reports were provided.

Solis testified that she relied upon her supervisors to provide requested information to the Union. Supervisor Mary Warner was not specifically asked about any of these requests. Supervisor Warren Thornton was asked about the request submitted on April 16 and testified, "As far as I know" the documentation was provided. I credit Papich. The Respondent, by failing to provide the foregoing relevant information violated Section 8(a)(5) of the Act.

G. Case 16-CA-22989

The allegations in this case relate to information requests made by Mark Kessinger, Chief Steward of the Union at the Postal Service's North Shepherd Station in Houston in April and May. The first two such requests were submitted to Supervisor Jesse Guerrero. All subsequent requests were submitted to Elizabeth Owens, who became Station Manager in April and directed that all information requests be submitted directly to her. Neither Guerrero nor Owens testified. The answer admits the receipt of these requests and Kessinger's un rebutted credible testimony establishes that none of the requested information

was provided. Thus, the only issue is whether the requested information was relevant.

Complaint paragraph 71

On April 5, Kessinger presented to supervisor Jesse Guerrero an information request to support a grievance that he filed on behalf of unit employee Lathorn King. King had complained that he was being loaned to the Irvington Station while casual employees were being allowed to work hours that he would have worked as a part time flexible (PTF) carrier at the North Shepherd Station. The information request sought the North Shepherd PTF schedule for March 31 and April 2 in order to establish that King was assigned to another station on those days, the North Shepherd casual employee schedules for those two days in order to establish that casual employees did work at North Shepard, and the Irvington Station overtime desired list (ODL) in order to determine whether the assignment of King had deprived any Irvington employees of overtime in violation of the collective-bargaining agreement. I find that the requested information was relevant.

Complaint paragraph 72

On April 11, Kessinger presented to Supervisor Guerrero a request relating to a grievance he filed on behalf of employee Alexis Butler. Butler had received a 7-day suspension at the Fairbanks Station. Shortly thereafter he was transferred to the Windmill Station where, he informed Kessinger, he had requested to see a steward in order to grieve his suspension. He was then transferred to the North Shepherd Station where Kessinger filed the grievance on his behalf. The information request sought the suspension notice because Butler had misplaced the copy that had been given to him, the discipline package and notes relied upon to impose the discipline, Butler's request to see a steward at the Windmill Station in order to establish that the attempt to grieve the suspension was timely and the schedule for "Butler and Shop Steward while Butler was at Windmill Station" in order to establish that a steward was present on the day that Butler could have met with the steward. I find that the requested information was relevant.

Complaint paragraphs 73 and 74

On April 18, Kessinger presented two information requests to Station Manager Owens regarding grievances filed on behalf of Isaac Richard who claimed that he had been denied the opportunity to work overtime on April 8 and 16. The request relating to April 8 seeks the ODL (overtime desired list) for April 8, the ODL worksheet or "square sheet" for April 8 which would show who was assigned overtime, and the overtime report which would show how much overtime was worked by each carrier assigned overtime. The request relating to April 16 seeks the same information for April 16 as well as the unit schedule for April 16 that would have reflected which carriers were scheduled to work overtime, the crew list for "NSOT (nonscheduled overtime) for April 8 and 16 which would show employees who were off but were willing to work nonscheduled overtime, and the "[b]lack of the overtime desired list" which would show telephone calls to nonscheduled carriers offering them an overtime opportunity. The Respondent stipulated that all of the foregoing requests were for presumptively

relevant information and, I so find. The Respondent did not stipulate to the Union's request for a copy of "Ike Richard's restrictions." Kessinger testified that Richard reported to him that management had told him that he was not called on April 16 because "they didn't have any work within his restrictions." Kessinger testified that providing a response to that portion of his request would establish whether Richard had any restrictions and, if so, what they were relative to the claim that there was no work within his restrictions. I find the foregoing request relevant.

Complaint paragraphs 75 and 82

On May 6 and May 10, Kessinger presented information requests to Station Manager Owens that arose from an incident involving employee Leticia Angulo. Angulo had alleged that another employee had bitten her, and she filed a complaint pursuant to the Postal Service's "zero tolerance" for violence policy. Although Angulo participated as a witness in the investigation, she expressed concern to Kessinger that her complaint would not be taken seriously. Kessinger filed the May 6 request seeking the zero tolerance report in order to assure Angulo that her complaint had been fairly investigated. Angulo was taken off of the clock for the time she was away from her duties due to her participation in the investigation. When she was paid she discovered that she had been compensated as a PTF carrier whereas, on the date she was taken off of the clock, she had been assigned to a regular route pursuant to an in-station bid award. The May 10 request sought the in-station bid award to Angulo, the pay adjustment made for Angulo regarding the zero tolerance investigation, the hours worked by Angulo for the 14 days prior to the investigation, and part time flexible (PTF) hours worked during the period. Kessinger explained that if Angulo were not awarded pay for the in-station bid route, he needed the additional information to establish Angulo's proper compensation as a PTF carrier. I find that all of the foregoing requested information was relevant.

Complaint paragraphs 76, 77, and 80

In early May, letter carrier Shelia Miller-Brown complained to Kessinger that she had learned that other members of her crew had been making more money than she by working unscheduled days, that "she had been passed over too many times during the last two months for overtime on her nonscheduled day." Pursuant to her complaint, Kessinger, on May 8, requested the overtime desired list for the past 60 days, from May 6, 2003, the nonscheduled overtime desired list for the past 60 days from May 6, 2003, and Miller-Brown's assignments and unscheduled days during same period. The foregoing information was clearly relevant in order to establish whether Miller-Brown had been passed over as she was alleging.

At the same time on May 8, Kessinger presented Station Manager Owens with a second information request relating to Miller-Brown having been charged leave without pay (LWOP) when she was absent due to a medical emergency. This request sought Miller-Brown's pay stub to confirm that she was charged LWOP, and "medical documentation from hospital, from family practice and radiologist," documents that Miller-Brown had informed Kessinger that she had submitted in order

to obtain medical leave. When questioned regarding whether he had obtained Miller-Brown's authorization regarding the foregoing information, Kessinger testified that she signed the grievance form. He denied being aware of any special procedure regarding obtaining documents submitted by an employee in support of a claim for medical leave, and the Postal Service presented no testimony establishing any such procedure. The requested information was relevant.

On May 10, Kessinger presented Owens an information request relating to a complaint from Miller-Brown that she had missed an overtime opportunity on May 9. Kessinger requested the "everything report" for Miller-Brown that showed her clock rings, the overtime desired list, and the Form 3996 submitted by Miller-Brown requesting assistance or authorization for overtime. Counsel for the Respondent stipulated to relevance of the foregoing information.

Complaint paragraphs 78

On April 29, the Postal Service refused to accept documentation presented by employee Derrick Brown regarding sick leave. On May 10, Kessinger presented to Owens an information request seeking the Form 3971 (the leave request) submitted by Brown for April 25 and 26 and the policy relied upon to refuse the documentation that he attempted to present. Counsel for the Respondent stipulated to the relevance of the foregoing information request.

Complaint paragraph 79

Letter carrier Arthur Wiley, like Miller-Brown, complained to Kessinger in early May that he was being passed over for overtime opportunities. On May 10, Kessinger presented an information request to Owens for the overtime desired list that would have been in effect for April 22 and 30 and May 8. Kessinger explained that grievance packages must be complete, thus, the list requested on behalf of Miller-Brown for the 60 days prior to May 6, even if it had been provided, would have been with that grievance, thus the Union needed separate documentation regarding Wiley's grievance. Kessinger acknowledged that the current overtime desired list was posted and, if he had been told that he could make a copy, he would have done so, but "I needed permission to leave my unit and go do that." Kessinger also requested the call-in sheets for unscheduled overtime for April 22 and 30 and May 8 and the overtime reports for those same three days. I find all of the foregoing information relevant to the grievance that the Union filed on behalf of Wiley.

Complaint paragraph 81

At some time in the past, employee Richard Dowgun suffered an on-the-job injury. Thereafter he was assigned limited duty. In early May, Dowgun informed Kessinger that someone in management had told him that his limited duty assignment was going to change, but he received no written notification. Following their conversation, Kessinger, on May 10, presented an information request to Owens seeking a copy of Dowgun's limited duty position. Kessinger explained that the limited duty document is a letter from the Postal Service offering a limited job duty position to an injured employee that sets out the duties to be performed, where they will be performed, and the hours

involved. Kessinger explained that Dowgun was concerned whether the verbal information he received was correct and whether the Postal Service was going to change his assignment. Kessinger, although never receiving the requested document, filed a grievance and Dowgun's assignment was not changed. When Counsel for the Respondent questioned Kessinger regarding his knowledge of approval of limited duty positions by the Department of Labor, Kessinger pointed out that the request he made was made to the Postal Service and that he was aware that after any Department of Labor approval, "the Post Office has to make the offer of a limited duty position." Counsel stated that he would make "a legal argument at a later time." No such argument appears in the Respondent's brief. The Union having received information that comments had been made regarding changing Dowgun's assignment, its request for the document establishing that assignment was relevant.

Having found that all of the information requested by the Union as set out in complaint paragraphs 71 through 82 was relevant, I find that the failure of the Respondent to provide the information that did exist or respond regarding which specific items of requested information did not exist violated Section 8(a)(5) of the Act.

H. Case 16-CA-22961

Complaint paragraphs 96 through 99

Paragraph 99 alleges that the Postal Service unilaterally changed its procedure for approving leave for "Choice Vacation" time in that, prior to July, requests to use leave without pay (LWOP) for Choice Vacation were automatically approved but that, in July, the Postal Service, in its Spring Area, began granting approval on a case-by-case basis. Paragraph 96 of the complaint alleges the failure to provide requested information relating to that alleged unilateral change. Employees of the Postal Service bid for Choice Vacation for each upcoming year in December. Thus, in December 2002, employees at each post office wrote onto a master vacation schedule the days or weeks that they desired to take as vacation in 2003. The number of employees permitted to take vacation at a single time is controlled by local agreement. In the Spring Area the number cannot exceed 14 percent of the workforce at each station. Slots are awarded on the basis of seniority.

As previously stated, the Spring Area includes the Spring Maine Office and three branch offices. In July, the Postmaster of the Spring Area was Dave Critelli; however, he was on detail. From March until September, Matthew Lopez was "in charge of all four" stations. The evidence relating to these allegations come from the Panther Creek Branch. The Acting Station Manager at Panther Creek is Barbara Wright assisted by 204(b) Supervisor Donna Pease.

Michael Carew, Chief Steward of the Union at Panther Creek, testified that, prior to July, employees who had insufficient annual leave to take their Choice Vacation were automatically approved to take their Choice Vacation time using LWOP. In early July, letter carriers Pat Givens and Lena Gibson submitted leave requests on the appropriate form, Form 3971, to take their Choice Vacation using LWOP. On July 5, Supervisor Pease informed Carew that she had denied Gibson's

leave request, that "there was a new policy in Spring [i.e. the Spring Area post offices], that they were now going to examine the LWOP for [sic] a case-by-case basis." Carew responded that this "wasn't right because they had always approved it." Pease responded that "this is coming from Ms. Wright, . . . that's just the policy and you're going to have to take it up with her [Station Manager Wright]." Carew filed a grievance and a request for information. The grievance is currently pending arbitration.

Maryke Cudd initially testified that, when she was "effectively" the Panther Creek Station Manager from March 2000 until May 2002, all requests for LWOP were examined on a case-by-case basis. Thereafter she acknowledged that the supervisors, not she, handled all employee leave requests and that she could recall no instance in which she had acted on an employee leave request. Alternate Shop Steward Jackie Jackson, who has worked at Panther Creek for 20 years, testified that employees who wanted to take their Choice Vacation time but had insufficient annual leave were "granted leave without pay" and that this practice had been followed "[e]ver since I've been a letter carrier, since '83."

Supervisor Pease denied that there was any change of policy, testifying that "[w]e've always done it on a case-by-case basis." Pease later testified that employees turn in their leave slips and that she will "approve it or disapprove it," but that, pursuant to the vacation schedule, Choice Vacation time is "blocked for them so that they have the option of taking it or not taking it." Pease's acknowledgement that it is the employee who has the option is consistent with Carew's testimony that, prior to July, Choice Vacation was automatically approved. Significantly, Pease did not deny Carew's testimony that she told him "there was a new policy in Spring" and that requests for Choice Vacation using LWOP were now going to be examined on "a case-by-case basis."

Persuasive evidence that the Postal Service implemented a new policy in the Spring Area is established by the failure of the Postal Service to introduce any document showing any instance prior to July in which an employee's request for Choice Vacation using LWOP was denied. Pease's undenied statement to Carew reported a "new policy" in the Spring Area. Matthew Lopez, who was in charge of all four of the Spring locations, was not asked and did not deny that a "new policy" had been implemented. Acting Station Manager Wright was not asked and did not deny that a "new policy" had been implemented. I find that Pease correctly reported to Chief Steward Carew that there was a "new policy" and that implementation of that policy, reviewing requests to use LWOP for Choice Vacation time on a case-by-case basis, had resulted in the denial of employee Gibson's leave request.

Prissy Grace, President of Branch 283, testified without contradiction that there was no bargaining with the Union regarding the foregoing change in procedure and that the Union has protested whenever it has learned that leave for Choice Vacation has been denied because "people have the right to the leave they signed up for on that roster in December." She also explained the rationale behind automatic approval, noting that, on the basis of their selection of Choice Vacation, employees make cruise and hotel reservations for those dates.

The foregoing evidence establishes that the Respondent did, without notice to or bargaining with the Union, cease automatically approving requests for leave that involved employees in the Spring Area taking LWOP for Choice Vacation and began considering those requests on a case-by-case basis. The foregoing unilateral change related to employees' terms and conditions of employment and violated Section 8(a)(5) of the Act.

Following Carew's conversation with Supervisor Pease, he filed a grievance and a request for information. The information he sought included the original of the Form 3971 submitted by Lena Gibson, all Form 3971s for Choice Vacation time from 1990 to 2003 for Pat Givens, who Carew understood had, over that time period, been approved to take LWOP, Form 3971's for the last 5 employees in the Spring Area, excluding Givens, who had taken LWOP during their Choice Vacation time in order to show the extent of the practice, corresponding time and attendance reports for the same dates as in order to show that the carrier used LWOP for Choice Vacation time, and all Form 3971s for all employees in the Spring Area who used LWOP during their Choice Vacation time since 1970 to show the longevity of the practice.

Supervisor Pease testified that she gave Carew access to all records that she could locate, but admitted that she "only knew where the 3971s for the two previous years" were located. She acknowledged that, thereafter, a box appeared that contained documents from the years 1999 through 2001. She did not know where the box came from. She initially testified to providing only the time and attendance reports for Givens, but then asserted that she provided all time and attendance reports. Carew testified that he received only the time and attendance report for Givens for the year 2002. Carew acknowledged receiving access to documents that included the 3971 forms for employees at Panther Creek "for the past three years." He testified that he was not provided a copy of the Form 3971 for Lena Gibson showing the denial of her requested LWOP for her Choice Vacation time, and there is no claim that he was provided that document.

The evidence suggests that the Postal Service had additional documents to which the Union was not given access. Carew testified that, when being provided the Panther Creek documents, he was given access to four boxes of documents. He testified that there were 8 additional boxes at the post office, "under a conference table" that contained documents from prior years and that he knew this because, in connection with other grievances, he had been given access to some of the other boxes. On August 12, in the supply room, Carew discovered another box, the box that Pease acknowledged had appeared, and that it contained some Form 3971s. Carew recalled that manila envelopes were marked with the years 2000 and 2001. Pease recalled that they were for 1999, 2000, and 2001. Regardless of whose recollection is correct, any Form 3971s dated after June 2000 would, of course, have been in the 3 years preceding the information request.

Acting Station Manager Wright informed Carew that he was only being provided Form 3971s for three years because that is the specified retention period. Carew acknowledged that conversation and agreed that the Postal Service's manual provides that the foregoing documents must be retained for 3 years.

Wright contacted her superior, Matthew Lopez, who was in charge of the Spring Area in July. As a result of their conversation, Wright concluded that Carew was authorized to file grievances only on behalf of Panther Creek Branch employees and, therefore, did not provide Carew with documents other than documents relating to those employees. Notwithstanding the foregoing, the General Counsel argues that Carew was entitled to review documents for the entire Spring Area for prior years. Carew testified that, notwithstanding the 3 year retention requirement, he was familiar with arbitration decisions which reflected that "10 years seemed to be a common ground for establishing a past practice." That testimony is uncontradicted.

The foregoing testimony establishes that, although the Postal Service requires retention for 3 years, arbitrators consider evidence up to 10 years old when determining past practices. Thus, the record establishes that documents for a period of 10 years would be relevant in the presentation of a grievance. Chief Steward Carew's testimony relating to other boxes suggests that additional information relevant to the Union's request was available albeit not within the retention period required by postal regulations. There is no probative evidence that any records more than 10 years old would be relevant and I shall recommend that no documents earlier than 1993 need be produced and that the complaint allegations in that regard be dismissed.

The Union, through Supervisor Pease's statement to Chief Steward Carew, was informed that the new policy was a policy of the Spring Area. It was not limited to Panther Creek. The Union sought to establish that the new policy altered the long-standing past practice in the Spring Area and requested documents that it believed would show the consistent past practice. The requested time and attendance documents for the last five employees who took LWOP for their Choice Vacation in the Spring Area were, therefore, relevant. The failure to provide Gibson's Form 3971 request for LWOP for Choice Vacation that was denied is obviously relevant and the failure of the Respondent to provide it violated the Act. The Respondent's limitation of access to Form 3971s for only three years at Panther Creek violated the Act. By failing to fully provide all of the information sought by the Union as set out in paragraph 96 of the complaint, the Respondent violated Section 8(a)(5) of the Act.

CONCLUSIONS OF LAW

1. By threatening discipline for failure to comply with a unilaterally changed procedure, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By unilaterally altering the procedure by which the APWU maintenance craft steward must obtain union time in order to carry out his representational responsibilities and by unilaterally ceasing to automatically approve requests for leave that involve employees taking LWOP for Choice Vacation and approving those requests on a case-by-case basis in the Spring Post Office, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

3. By failing and refusing to provide the APWU with information it requested on April 24, 2003, and by failing and refusing to provide, or to provide in a timely manner, the Union with information it requested between January 10, 2003, and July 11, 2003, as found herein, said information being relevant and necessary to the APWU and the Union as the collective-bargaining representatives of the employees in the appropriate units, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel has requested special remedies. In view of the multiple facilities involved herein and the Board Order in *Postal Service*, 339 NLRB No. 150 (August 21, 2003), I shall, as requested by the General Counsel, recommend a broad order and district wide posting. Counsel has also requested the reading of the notice and reinstatement of grievances. None of the violations found herein occurred subsequent to the Board's Order in August, thus I shall not recommend the reading of the notice. Nor shall I recommend the reinstatement of grievances. In ordering the Respondent to reinstate a grievance, I would effectively be ordering the waiver of time limitations agreed upon by the parties and incorporated in their collective-bargaining agreement. Although I have found no case that states that I lack the authority to do so, that principle is implicit in *Northwest Pipe & Casing, Co.*, 300 NLRB 726, 736-737 (1990), and *Postal Service*, 307 NLRB 429 at fn. 2 (1992). Thus, I must deny the request.

The Respondent having made unilateral changes affecting the terms and conditions of unit employees, it must, upon the request of the unions representing employees in those units, rescind those changes.

The Respondent having failed and refused to provide the APWU with information it requested on April 24, 2003 and having failed and refused to provide the Union with information it requested between January 10 and July 11, 2003, it must promptly supply said information, as set forth below.

I shall recommend that the Respondent be required to provide any of the information that I have found to have been unlawfully withheld as set forth in paragraphs 14, 18(b), (c), and (d), 42, 43, 44, 45, 46, 47, 48, 49, 50, 51(b), 64, 65, 66, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, and 96, or inform the Union that the information does not exist. As my findings reflect, in some instances a portion of the information encompassed in some of those paragraphs has been provided. Information that has been provided need not be reprovided.⁴

⁴ If the Board should disagree with my recommend dismissal of Case 16-CA- 22855, the Respondent should be ordered to provide the dates of hire of the employees named in subparagraph 33(a) and the information set out in subparagraph (c) of the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

The Respondent, United States Postal Service, Houston, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening discipline for failure to comply with a unilaterally changed procedure.

(b) Refusing to bargain collectively with American Postal Workers Union by unilaterally altering the procedure by which the APWU maintenance craft steward at the Spring Post Office must obtain union time in order to carry out his representational responsibilities.

(c) Refusing to bargain collectively with National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL-CIO, by unilaterally ceasing to automatically approve requests for leave that involve employees taking LWOP for Choice Vacation at the Panther Creek branch and other locations of the Spring Post Office.

(d) Refusing to bargain collectively with American Postal Workers Union by failing and refusing to provide requested information that is relevant and necessary to that Union as the collective-bargaining representative of employees in the following unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, mail equipment shop employees and distribution centers employees; but excluding managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards as defined in Public Law 91-375, 1201(2), all postal inspection service employees, employees in the supplemental work force as defined in Article 7 [of the collective-bargaining agreement], rural letter carriers, mail handlers and letter carriers.

(e) Refusing to bargain collectively with National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL-CIO, by failing and refusing to provide, or failing and refusing to provide in a timely manner, requested information that is relevant and necessary to that Union as the collective-bargaining representative of employees in the following unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All letter carriers; but excluding managerial and supervisory employees, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards, Postal Inspection Service employees, employees in the supplemental workforce as defined in Article 7, rural letter carriers, mailhandlers, maintenance

⁵ If 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.

employees, special delivery messengers, motor vehicle employees, and postal clerks.

(f) In any other manner interfering with, restraining, and coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

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

(a) Upon the request of the American Postal Workers Union, rescind the unilateral alteration of the procedure by which the its maintenance craft steward at the Spring Post Office must obtain union time in order to carry out his representational responsibilities.

(b) Upon the request of the National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL-CIO, rescind the unilateral cessation of automatically approving requests for leave that involve employees taking LWOP for Choice Vacation at the Panther Creek branch and other locations of the Spring Post Office.

(c) Promptly furnish the American Postal Workers Union and the National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL-CIO, with the information found to have been unlawfully withheld from them as set forth in the remedy section of this decision.

(d) Within 14 days after service by the Region, post at all its facilities within the Houston, Texas, district, copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 16, 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. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at its North Shepard Station at any time since January 10, 2003.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. January 21, 2004

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discipline for failing to comply with a procedure that we have unilaterally changed.

WE WILL NOT refuse to bargain collectively with the American Postal Workers Union by unilaterally altering the procedure by which the American Postal Workers Union maintenance craft steward at the Spring Post Office must obtain union time in order to carry out his representational responsibilities, and WE WILL, upon the request of that Union, rescind the foregoing unilateral change.

WE WILL NOT refuse to bargain collectively with the National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL-CIO, by unilaterally ceasing to automatically approve requests for leave that involve employees represented by that Union from taking LWOP for Choice Vacation at the Panther Creek branch and other locations of the Spring Post Office, and WE WILL, upon the request of that Union, rescind the foregoing unilateral change.

WE WILL NOT refuse to bargain collectively with the American Postal Workers Union by failing and refusing to provide requested information that is relevant and necessary to that Union as the collective-bargaining representative of the employees it represents, and WE WILL promptly furnish the information it requested on April 24, 2003.

WE WILL NOT refuse to bargain collectively with National Association of Letter Carriers Branch 283, affiliated with National Association of Letter Carriers, AFL-CIO, by failing and refusing to provide, or failing and refusing to provide in a timely manner, requested information that is relevant and necessary to that Union as the collective-bargaining representative of the employees it represents, and WE WILL promptly furnish the information it requested between January 10, 2003, and July 10, 2003, as set forth in the remedy section of the decision.

WE WILL NOT in any other 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

⁶ 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."