

## **American Postal Workers Union, AFL-CIO**

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1300 L Street, NW, Washington, DC 20005

May 3, 2010

**To:** Local and State Presidents

**Re:** NLRB Settlement Agreement on Information Requested Concerning Ergonomic Issues Related to DBCS & Consolidation of Tour 2 Mail Processing Operations

I am writing for the purpose of seeking the assistance of local unions to ensure the Postal Service's compliance with the notification posting requirements of an NLRB Settlement Agreement concerning the above-referenced issues.

As background information, the APWU filed an unfair labor practice charge against the Postal Service in December 2008, and an amended charge in March 2009, for its failure and refusal to provide the Union with requested information concerning safety and ergonomic issues.<sup>1</sup>

In addition, the APWU filed an unfair labor practice charge against the Postal Service in November 2008 for its failure and refusal to provide the Union with requested information pertaining to management's plans to eliminate or greatly reduce Tour 2 operations.<sup>2</sup>

In both cases the NLRB issued a complaint against the Postal Service for (1) failing and refusing to provide the Union with the requested information in a timely manner, and (2) failing and refusing to bargain collectively and in good faith with the APWU.

The NLRB ordered that both cases be consolidated and scheduled for hearing on the same date. However, prior to the scheduled NLRB hearing on the complaints issued against the Postal Service, a Board Settlement Agreement was reached and signed by the parties (attached) concerning the information portion of the complaint which includes a posting notice.

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<sup>1</sup> The APWU has made many attempts to discuss and correct known ergonomic risks and hazards associated with the operations of the DBCS machines. Although we have had some success, the Postal Service continued to refuse to discuss identified ergonomic risks and hazards. It should be noted that in March 2009, we also asked locals to file OSHA Complaints in facilities with a DBCS within the installation.

<sup>2</sup> The national level dispute over the Postal Service's unilateral implementation of a nationwide two-tour initiative which is intended to eliminate or greatly reduce existing day shift Tour Two assignments, operations and/or staffing was heard in national-level arbitration and we are expecting a decision from arbitrator Das in July.

### Summary of Notice Posting Requirements

Two provisions of the settlement agreement are noteworthy. One is the extent of the posting requirement. The settlement specifies (emphasis added) in relevant part that:

**Posting of Notice** – Upon approval of this Agreement and receipt of the Notices from the Region, the Charged party will post promptly in conspicuous places, including all places where notices to employee/members are customarily posted, **in its facilities where delivery bar code sorter (DBCS) machines and/or its facilities where the consolidation of Tour 2 mail processing operations has taken place**, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice made a part hereof, said Notices to be signed by a responsible official of the charged Party and the date of actual posting to be shown thereon....

Please note that the notice posting requirement encompasses (1) each facility with a DBCS within an installation; and (2) each facility where the consolidation of Tour 2 mail processing operations has taken place. We will notify you when the Postal Service signs the Notice, and provide you the actual signed notice to be posted. Once posted, it must remain posted for 60 consecutive days.

The second provision to note is the compliance portion of the settlement agreement (italics in the original: emphasis added):

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice. *The Charged Party will notify the Region in writing upon completion of all affirmative obligations. In the event of non-compliance with this Settlement Agreement, the allegations in a Complaint issued with regard to the violations alleged in the Complaints herein and covered by the Settlement Agreement will be deemed admitted. Upon Motion for Summary Judgment the Board may, without the necessity of trial, find all allegations of the Complaint to be true, adopt findings of fact and conclusions of law consistent with the Complaint allegations, and issue an appropriate Order providing full remedy for the violations found, including but not limited to the provisions of this Settlement Agreement. Subsequently, a judgment from a U.S. Court of Appeals may be entered ex parte.*

This means that if the Postal Service fails to post the notice in all the facilities defined above for 60 consecutive days “in conspicuous places, including all places where notices to employees/members are customarily posted” the NLRB will automatically be able to get a summary judgment against the Postal Service for violating the terms of the settlement, which will result in a Board order against the Postal Service. The NLRB is also permitted to go to court to get the order enforced, which means that further non-compliance can result in contempt proceedings against the Postal Service and individually against postal managers who are responsible for the non-compliance.

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Re: DBCS & Consolidation of Tour 2 Mail Processing Operations  
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For these reasons, it is important to police the Postal Service's compliance with these provisions on posting and report any failures to comply to Industrial Relations immediately. We will notify you when the NLRB informs the Union of the date the notice should be posted, and in the event the Postal Service fails to post the required notice in any impacted facility within your installation, please contact my office.

### **Deferral of "Refusal to Bargain" Charge**

As noted in the attached April 14, 2010 letter, the NLRB deferred to the grievance-arbitration process the portion of the charge that alleges the Employer violated Section 8(a)(5) of the Act by failing and refusing "to meet and bargain in good faith" with the American Postal Workers Union, AFL-CIO, about ergonomic issues revealed in a report of the U.S. Occupational Safety and Health Administration. It should be noted that this dispute is entitled to priority scheduling under the terms of the deferral letter of NLRB, and under normal circumstances, upon request of the Union, placed at the head of the national arbitration docket in accordance with Article 14.2. A copy of the Step 4 dispute is attached with more details concerning the APWU's position regarding this matter.

Thank you in advance for your assistance.

In Union Solidarity,

  
Greg Bell, Director  
Industrial relations

Attachments

GB:jm  
OPEIU #2  
AFL-CIO

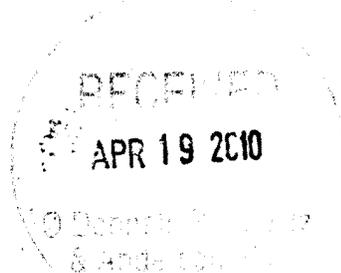


**United States Government**

**NATIONAL LABOR RELATIONS BOARD  
Region 5**

**103 South Gay Street - 8th Floor  
Baltimore, MD 21202-4061**

**Telephone: (410) 962-2822  
Facsimile: (410) 962-2198**



April 15, 2010

Anton Hajjar, Esq.  
O'Donnell, Schwartz & Anderson, P.C.  
1300 L Street, N.W., Suite 1200  
Washington, DC 20005

Re: United States Postal Service  
Case 5-CA-34638 and 5-CA-34671

Dear Mr. Hajjar:

The partial Settlement Agreement executed in the above case has been approved by the Regional Director for Region 5, and it is now appropriate for Respondent to proceed with the terms of compliance as set forth therein. Compliance with the Settlement Agreement will be overseen by Region 26 Compliance Assistant Anne Sampietro. Please communicate any concerns or questions to her using the contact information below:

**Telephone:** (901) 544-0012  
**Facsimile:** (901) 544-0008  
**Email:** anne.sampietro@nlrb.gov  
**Mail:** Ms. Anne Sampietro, Compliance Assistant  
National Labor Relations Board, Region 26  
80 Monroe Avenue, Suite 350  
Memphis, TN 38103-2416

A conformed copy of the Agreement and a copy of the Notice to Employees are enclosed herewith. Respondent has been directed to post copies of the Notice, signed by an official of the Charged Party, in conspicuous places for a period of 60 consecutive days and to take necessary steps to insure that the Notice is not altered, defaced or covered by other material.

It is expected the compliance period will be completed 60 days from the posting of the Notice. Under normal circumstances, the case will be closed as of that date. Again, any questions that may arise concerning compliance with the terms of the Settlement Agreement, including the posting of the Notice, should be directed to Compliance Assistant Anne Sampietro of Region 26 at (901) 544-0012 or Anne.Sampietro@nlrb.gov.

Very truly yours,

A handwritten signature in black ink that reads "Emily N. Hunt".

Emily Hunt  
Compliance Officer

Enclosures

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
REGION 5

**SETTLEMENT AGREEMENT**

**IN THE MATTER OF**

**UNITED STATES POSTAL SERVICE**

**CASES 5-CA-34638;  
5-CA-34671**

The undersigned Charged Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, **HEREBY AGREE AS FOLLOWS:**

**POSTING OF NOTICE** — Upon approval of this Agreement and receipt of the Notices from the Region, the Charged Party will post promptly in conspicuous places, including all places where notices to employees/members are customarily posted, in its facilities with delivery bar code sorter (DBCS) machines and/or its facilities where the consolidation of Tour 2 mail processing operations has taken place, and maintain for 60 consecutive days from the date of posting, copies of the attached Notice made a part hereof, said Notices to be signed by a responsible official of the Charged Party and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit forthwith signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for 60 consecutive days from the date of posting. Further, in the event that the charged union maintains such bulletin boards at the facility of the employer where the alleged unfair labor practices occurred, the union shall also post Notices on each such bulletin board during the posting period.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice. *The Charged Party will notify the Region in writing upon completion of all affirmative obligations. In the event of non-compliance with this Settlement Agreement, the allegations in a Complaint issued with regard to the violations alleged in the Complaints herein and covered by the Settlement Agreement will be deemed admitted. Upon Motion for Summary Judgment the Board may, without the necessity of trial, find all allegations of the Complaint to be true, adopt findings of fact and conclusions of law consistent with the Complaint allegations, and issue an appropriate Order providing full remedy for the violations found, including but not limited to the provisions of this Settlement Agreement. Subsequently, a judgment from a U.S. Court of Appeals may be entered ex parte.*

**BY ENTERING INTO THIS SETTLEMENT AGREEMENT**, the Charged Party does not admit to having violated the National Labor Relations Act as alleged.

**SCOPE OF THE AGREEMENT** — This Agreement settles only the allegations in the above-captioned case(s) against the Charged Party and does not constitute a settlement of any other case(s) or matters. It does not preclude persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters which precede the date of the approval of this Agreement regardless of whether such matters are known to the General Counsel or are readily discoverable. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

**REFUSAL TO ISSUE COMPLAINT** — In the event the Charging Party fails or refuses to become a party to this Agreement, and if in the Regional Director's discretion it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within 14 days thereof. This Agreement shall be null and void if the General Counsel does not sustain the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in the above captioned case(s), as well as any answer(s) filed in response.

**PERFORMANCE** — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

**NOTIFICATION OF COMPLIANCE** — The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charged Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above captioned case(s).

Charged Party <b>UNITED STATES POSTAL SERVICE</b>		Charging Party <b>AMERICAN POSTAL WORKERS UNION, AFL-CIO</b>	
By: Name and Title	Date	By Name and Title	Date
/s/ John Dockins, Manager	4/6/2010	/s/ Greg Bell, Industrial Relations Director	4/7/2010
Recommended By:	Date	Approved By:	Date
/s/ Sean Marshall Board Agent	4/8/2010	/s/ Wayne R. Gold Regional Director, Region 5	4/13/2010



# NOTICE TO EMPLOYEES



## POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

### 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.

### In recognition of our employees' rights:

**WE WILL NOT** refuse to recognize and bargain with the **AMERICAN POSTAL WORKERS UNION, AFL-CIO**, as your exclusive collective-bargaining representative in the bargaining unit recognized in our most recent collective-bargaining agreement.

**WE WILL NOT** fail and refuse to timely furnish the **AMERICAN POSTAL WORKERS UNION, AFL-CIO**, with requested information that is relevant and necessary to the performance of its duties as your exclusive collective-bargaining representative.

**WE WILL** timely furnish the **AMERICAN POSTAL WORKERS UNION, AFL-CIO**, with information that it requests which is necessary for, and relevant to, the performance of its duties as the exclusive collective-bargaining representative in the bargaining unit recognized in our most recent collective-bargaining agreement.

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

**UNITED STATES POSTAL SERVICE**  
(Respondent)

Dated:

Rv: