

August 9, 2017
ECO-043

**UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

No. 17-2561

v.

UNITED STATES POSTAL SERVICE

Respondent.

Before: HARDIMAN, NYGAARD and RENDELL, Circuit Judges
CONSENT ORDER

The National Labor Relations Board ("Board") and the United States Postal Service ("Postal Service"), having entered into a Stipulation for the entry of this Consent Order, it is hereby

I. **ORDERED** that the Stipulation dated July 5, 2017 and July 11, 2017, is approved and shall be filed.

II. **IT IS FURTHER ORDERED** that the Postal Service shall, at all facilities listed in Attachment A and at all facilities in the city of Philadelphia, Pennsylvania at which employees represented by the American Postal Workers Union, AFL-CIO ("APWU"), and/or its constituent local union, Local 0089 ("Local 89"), and/or any other labor organization are employed, including, but not limited to, the Philadelphia main postal office, the Philadelphia city stations, and the processing and distribution center located at 7500 Lindbergh Blvd.,

Philadelphia, Pennsylvania (collectively referred to as the "Philadelphia Installation")¹ shall:

(a) fully comply with this Consent Order and the judgment entered by this Court on November 28, 2008 ("2008 Judgment"), and not in any way, by action or inaction, engage in, induce, encourage, permit or condone any violation of said Consent Order or Judgment;

(b) within fourteen (14) days of entry of this Consent Order, provide to Local 89 the following information requested by the union on March 30, 2016, August 24, 2016, and September 13, 2016, to the extent not already provided.

Specifically:

- 1) notes taken by Supervisor Eric Lilly on March 22, 2016 (04-CA-176793, RFI P-2016-250 and 04-CA-176829, RFI P-2016-253);
- 2) emails to Supervisor Eric Lilly pertaining to the events that occurred on March 19, 2016 (04-CA-176415, RFI P-2016-251);
- 3) the names of all mail handlers working "190 break-up" on tour 3 and the supplemental overtime list for pay period 17 of 2016 (04-CA-184881, RFI P-2016-725);
- 4) the posted call sheets and overtime desire list for Monday/Tuesday Drop days from May 2 to July 4, 2016 (04-CA-184896, RFI P-2016-755); and

¹ A non-exhaustive list of the Philadelphia Installation facilities covered by this Consent Order is contained in Attachment A hereto. Facilities not listed in Attachment A but otherwise located within the city of Philadelphia, Pennsylvania are deemed part of the Philadelphia Installation.

- 5) the list of all Tour 2 employees that operate a DBCS machine from May 2 to September 13, 2016 (04-CA-184896, RFI P-2016-756).

III. IT IS FURTHER ORDERED that the Postal Service Philadelphia Installation, its officers, agents, successors, and assigns, shall cease and desist from:

(a) Refusing to bargain in good faith with APWU, Local 89, and/or any other labor organization representing employees at the Philadelphia Installation (collectively, “the Unions”), by failing to provide information or unduly delaying in providing information to the Unions that is relevant and necessary to the performance of their duties as the collective bargaining representative(s) of unit employees at those facilities;

(b) In any like or related manner, failing or refusing to bargain in good faith with the Unions in contravention of its obligations under the National Labor Relations Act, as amended (the “Act”), 29 U.S.C. §§ 151-169.

IV. IT IS FURTHER ORDERED that this Consent Order shall supersede the previous consent order entered by the Court on December 3, 2013, and applies to any new or relocated facilities in the city of Philadelphia, Pennsylvania which may be created following the entry of this Order as well as any Philadelphia Installation facility that may be relocated outside of the city of Philadelphia, Pennsylvania following the entry of this Order.

V. IT IS FURTHER ORDERED for the purposes of ensuring and facilitating supervision of the Postal Service's compliance with its obligations under this Consent Order and, and without limiting the Union's rights under the Act or the collective bargaining agreements, that:

(a) Within fourteen (14) days of any request, the Postal Service shall provide, for the time periods so requested, the Board with the name(s) of the Postal Service RFI coordinator and/or any other representative(s) responsible for ensuring compliance with identified information requests, bargaining obligations and/or other particular terms encompassed by this Consent Order and the 2008 Judgment.

(b) The Postal Service shall maintain a functional internal tracking system for each facility covered by this Consent Order that identifies and logs the following for each request for information submitted by the Unions:

- 1) the date listed on the request;
- 2) the date of receipt by the Postal Service;
- 3) the name of the person and union making the request;
- 4) a general description of the requested information;
- 5) the date(s) the information was provided with a description of the information provided and the identity of the responder; and
- 6) if any request for information is denied in whole or in part, the date(s) of denial together with the reason(s) for each such denial and the position(s) and identity(ies) of the official(s) denying the request.

The internal tracking system shall be maintained in a manner that, at a minimum, will permit retrieval according to the date listed on the request. In the event that an information request is received by or otherwise referred to offices in facilities beyond the station level for assistance, and a response to the request is provided by these offices, the internal tracking system for the facility or office to which the referral is made shall include all the above information pertaining to the request referred to that facility or office.

(c) Within fourteen (14) days of any request, the Postal Service shall provide, for the time periods so requested, the Board's Region 4 or the Board's Contempt, Compliance and Special Litigation Branch ("CCSLB") with copies of all applicable records from the internal tracking system referenced in Section V(b) above.

VI. IT IS FURTHER ORDERED that the Postal Service shall, within fourteen (14) days after entry of this Consent Order, provide a copy of this Order and a copy of the Notice to Employees referenced below, together with written instructions directing that each shall comply with the provisions of the Consent Order, to each District Manager (or equivalent management official), Postmaster (or equivalent management officials), or other Postal Service representative as referred to under Section V(a) above, and to all other supervisors and managers at each facility covered by this Order, including acting supervisors and temporary

supervisors working in such capacity for at least ten (10) consecutive calendar days. Hereafter, the Postal Service shall provide a copy of this Order and a copy of the Notice to Employees referenced below, together with written instructions directing that each shall comply with the provisions of the Consent Order, to any individual appointed, promoted or designated to serve in any of the foregoing positions, within fourteen (14) days of such appointment, promotion or designation. Each person receiving copies of this Order and the Notice to Employees shall acknowledge in writing that he or she has been furnished with copies thereof, understands them, and will conduct himself or herself consistently therewith, and will not in any way commit, engage in, induce, encourage, permit, or condone any violation of this Order. The Postal Service shall retain copies of these acknowledgments and written instructions and shall provide copies to Region 4 or to CCSLB within fourteen (14) days of any request.

VII. IT IS FURTHER ORDERED that the Postal Service shall conduct annual training for all managers and supervisors designated to receive union requests for information, both centralized and at each facility within the City of Philadelphia, as well as any new or relocated facilities which may be created following the entry of this Order.

VIII. IT IS FURTHER ORDERED that the Postal Service shall post a Notice to Employees drafted by the Board, alongside this Consent Order, at all

facilities covered by this Order in conspicuous places where notices to employees are customarily posted for a period of sixty (60) consecutive days. The notices shall be signed by an appropriate representative on behalf of the Postal Service, and shall be maintained in clearly legible condition throughout the 60-day period. Copies shall also be sent to the Postal Service manager and supervisors at all facilities covered by this Order. In addition to physical posting of paper notices, the Postal Service shall distribute notices electronically, by email, posting on an intranet or internet site, and/or other electronic means, if the Philadelphia facilities customarily communicate with their employees by such means. The Postal Service shall further insure that the posted notices are not altered, defaced or covered by any other material. The Postal Service shall, within fourteen (14) days from the initial date of posting, provide Region 4 with a signed copy of the notice and a certification regarding the posting dates and posting locations. The Postal Service shall also provide agents and representatives of the Board reasonable access to inspect the notice postings.

IX. IT IS FURTHER ORDERED that the Postal Service shall mail a copy of said notice, together with a copy of this Consent Order, to each bargaining unit employee represented by the APWU, Local 89, and/or any other labor organization at any of the Postal Service facilities covered by this Consent Order as of the date of its entry. This mailing shall be accomplished within fourteen (14) days from the

initial date of posting of the aforementioned Notice to Employees. Thereafter, the Postal Service shall provide Region 4 with a list of those persons to whom the notice was mailed, together with proof of the mailing, within fourteen (14) days of the mailing.

X. IT IS FURTHER ORDERED that the Postal Service shall, within twenty-one (21) days after entry of this Consent Order, file with the Regional Director for Region 4 and with CCSLB, a sworn certification by a responsible official on a form provided by CCSLB attesting to the steps the Postal Service has taken to comply with this Consent Order. The Regional Director and CCSLB shall be supplied a copy of the documents signed by the district manager of labor relations, attesting to the dates when the notices were received at each facility and the dates when the notices were posted.

XI. In order to assure against violations of this Order, the **COURT HEREBY IMPOSES** against the Postal Service a prospective fine of up to \$20,000 for each future violation of this Consent Order, and a further fine of up to \$100 per day for each day the Court finds the violations have continued.

XII. This Consent Order shall not preclude the Board from requesting such other remedies as it deems appropriate to remedy contumacious conduct.

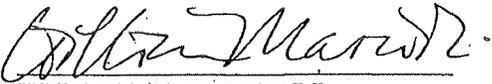
Approved as to form:

UNITED STATES POSTAL SERVICE NATIONAL LABOR RELATIONS



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Dated this 11th day of July
2017 in St. Louis, MO.

BOARD


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Dated this 11th day of July
2017 in Washington, D.C.

IT IS SO ORDERED:

Date: August 25, 2017

s/ Thomas M. Hardiman
Circuit Judge

Date: August 25, 2017

s/ Richard L. Nygaard
Circuit Judge

Date: August 25, 2017

s/ Marjorie O. Rendell
Circuit Judge



Certified as a true copy and issued in lieu
of a formal mandate on August 25, 2017

Teste: Marcia M. Waldron
Clerk, U.S. Court of Appeals for the Third Circuit

ATTACHMENT A

Main Office Delivery	3000 Chestnut Street Philadelphia, PA 19104
Boulevard Station	2801 Levick Street Philadelphia, PA 19149
Bustleton Station	9925 Bustleton Avenue Philadelphia, PA 19115
Fox Chase Station	7232 Rising Sun Avenue Philadelphia, PA 19111
Hunting Park Station	4350 N. Front Street Philadelphia, PA 19140
Logan Station	6150 N. Broad Street Philadelphia, PA 19141
Tacony Station	4620 Longshore Avenue #2 Philadelphia, PA 19135
Torresdale Station	10380 Drummond Road Philadelphia, PA 19154
East Falls Station	4130 Ridge Avenue Philadelphia, PA 19129
East Germantown Station	2031 66 th Avenue Philadelphia, PA 19138
Germantown Station	5209 Greene Street Philadelphia, PA 19144
Kingsessing Station	5311 Florence Avenue Philadelphia, PA 19143
Manayunk Station	4431 Main Street Philadelphia, PA 19127
Market Square Station	7782 Crittendon Street Philadelphia, PA 19118
North Philadelphia Station c/o Roxanne Jones Station	2601 N. 16 th Street Philadelphia, PA 19132