

No. 03-60908

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

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

UNITED STATES POSTAL SERVICE, RESPONDENT.

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

1. **ORDERED** that the Stipulation dated April 29, 2010, is approved and shall be filed. This Consent Order supersedes the August 17, 2005 Consent Order in Case Number 05-60716.

2. **IT IS FURTHER ORDERED** that all Postal Service facilities in the city of Houston, Texas, and certain Postal Service facilities in the Houston District but outside of the city (both sets of facilities listed in Attachment A hereto), as well as any new or relocated facilities in the city of Houston which may be created following the entry of this Order, shall: (a) fully comply with this Consent Order and with the judgments entered by this Court on October 31, 2003, December 8, 2003 and March 4, 2004, and not in any way, by action or inaction, engage in, induce, encourage, permit or condone any violation of said Order or judgments; and (b) refrain from

failing to provide information, from unduly delaying in providing information, or from in any like or related manner failing or refusing to bargain in good faith with the National Association of Letter Carriers AFL-CIO ("NALC") or its constituent local unions, Branch Nos. 283 and 1757, and/or the American Postal Workers Union ("APWU") or its constituent local unions, Locals 185 and 6551.

3. IT IS FURTHER ORDERED that within ten (10) days of entry of this Consent Order, the Postal Service will identify to each labor organization representing employees working at any of the designated Houston District facilities and at all postal facilities in the city of Houston (Attachment A), including new or relocated facilities in the city of Houston which may be created following the entry of this Order, one or more individuals at each of these facilities to act as the Designated Management Official(s) ("DMO") to whom the labor organizations and its agents shall submit requests for information. This shall include the job title(s) of the official(s) so designated. Any updates of this list shall be supplied to the labor organizations promptly. The Postal Service will provide a complete list of DMOs in the city of Houston and the designated Houston District postal facilities on at least an annual basis by sending each union officer and steward a notice either electronically or by hard copy informing the officers and stewards of the DMOs. This provision shall not be construed to alter in any way the provisions of the collective bargaining agreements covering this subject.

4. IT IS FURTHER ORDERED that the Postal Service shall, within sixty (60) work days after entry of the Consent Order, implement a log at each facility listed in Attachment B hereto that (a) lists each request for information given to the Postal

Service DMO; (b) lists the date of receipt; (c) lists the name of the person making the request; (d) either attaches a copy of the request or generally describes what information is requested; and (e) lists the date the Postal Service responded to the request, as well as what information was provided. The Postal Service shall provide copies of such logs to Region 16 or the Contempt Litigation and Compliance Branch ("CLCB") upon request, within fourteen (14) days of the request.

In the event that information requests are received by or otherwise referred to offices beyond the station level for assistance, and information is provided by these offices in response to the request, for example, the Human Resources office, additional logs shall be maintained, in the same format and under the same terms described above, at these offices.

De minimis omissions of information from the log shall not be deemed contempt under this Consent Order unless it is accompanied by otherwise actionable failures or unreasonable delays in furnishing information which are being pursued in contempt proceedings.

5. IT IS FURTHER ORDERED that the Postal Service shall, within ten (10) days after entry of the Consent Order, provide a copy of this Consent Order to all current supervisors or managers, including acting supervisors, at all of the designated Houston District facilities and at all postal facilities in the city of Houston (Attachment A), along with written instructions directing those persons to comply with the provisions of the Consent Order. The instructions shall underscore that unprivileged or unwarranted refusals and unreasonable delays in supplying information required under the National Labor Relations Act to be provided to labor

organizations shall not be tolerated by the Postal Service, and that any unwarranted failure to provide or unreasonable delay in providing such information will subject the responsible supervisor or manager to discipline by the Postal Service as may be appropriate in light of the relevant facts and circumstances, up to and including discharge. The Postal Service shall also provide all future supervisors or managers, including temporary supervisors acting in that capacity for at least ten (10) consecutive calendar days, in the postal facilities referenced above, with a copy of said Consent Order and written instructions promptly upon their assuming those positions. Each person receiving these documents shall acknowledge in writing that he or she has been furnished with a copy 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 Consent Order; and the Postal Service shall retain and supply copies of those acknowledgments and the written instructions to CLCB and/or Region 16 within ten (10) days of a request.

6. IT IS FURTHER ORDERED that the Postal Service, on at least an annual basis, shall conduct training for all supervisors or managers, including temporary supervisors acting in that capacity for at least ten (10) consecutive calendar days when the training is provided, at all designated Houston District facilities and at all postal facilities within the city of Houston (Attachment A), as well as any new or relocated facilities in the city of Houston which may be created following the entry of this Order, regarding the Postal Service's obligation to provide information pursuant to collective bargaining agreements, the National Labor Relations Act, and the

judgments and orders of this Court. The training shall reference the Postal Service's intolerance for unreasonable refusals to provide or delays in providing relevant information to labor organizations and possible discipline for such infractions, as set forth in paragraph 5. Each individual provided with such training shall sign an acknowledgment that he or she understands the obligation to provide information, and that he or she will conduct himself or herself in all respects consistently therewith. Copies of the aforesaid acknowledgments shall be retained by the Postal Service and shall be furnished upon request to Region 16 or the CLCB.

7. IT IS FURTHER ORDERED that the Postal Service shall conduct semi-annual audits at the facilities listed in Attachment B to ensure that information requests are being handled in a timely and appropriate manner and that the logs referenced in paragraph 4 are being properly maintained. To the extent that such audits indicate that requests are not being responded to in a timely and appropriate manner, or that the logs referenced in paragraph 4 are not being properly maintained, remedial training shall be provided to all supervisors or managers who were or are involved in the process of providing information to the Unions at the applicable facility (including those who are acting in that capacity when the training is provided). The Postal Service shall maintain records of the audits and the remedial training, and shall provide the audit reports and records of training upon request of Region 16 and/or the CLCB.

8. IT IS FURTHER ORDERED that the Postal Service shall post a notice prepared by the Board in conspicuous places where notices to employees are customarily posted, in all designated facilities in the Houston District and at all

facilities in the city of Houston (Attachment A) for a period of sixty (60) consecutive days. The notice 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. The Postal Service shall further insure that the notices are not altered, defaced or covered by any other material. The Postal Service shall provide the Board's Region 16 with a signed copy of the notice and a certification of the dates and locations of the posting, and shall give the Board reasonable access to check the posting.

9. **IT IS FURTHER ORDERED** that the Postal Service shall mail the above notice to each bargaining unit employee who is employed at any of the designated Houston District facilities and the city of Houston postal facilities (Attachment A) at the time of mailing. The Postal Service shall provide the Board's Region 16 with a list of those persons to whom the notice was mailed together with proof of the mailing, within fourteen (14) days of mailing.

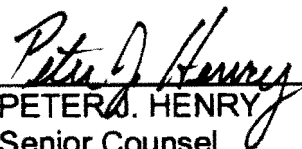
10. In order to assure against violations of this Consent Order, the Court **HEREBY IMPOSES** against the Postal Service a prospective fine of up to \$17,500 for each and every future violation of this Consent Order, and a further fine of up to \$300 per day for each day the Court finds the violations have continued. The amount of the fine, if any, to be imposed by the Court shall depend upon the scope and severity of the violations. The Board and the Postal Service will have the right to adduce evidence during any contempt proceeding as to the propriety and/or the amount of the fine the Board seeks. Fines may only be imposed as a result of the

Board instituting a new civil contempt proceeding in this Court, in which the Board shall be required to establish its allegations by clear and convincing evidence.

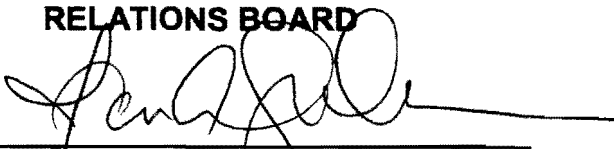
11. This Order shall not preclude the Board from requesting such other remedies as it deems appropriate to remedy contumacious conduct.

Approved as to form:

**UNITED STATES
POSTAL SERVICE**


PETER J. HENRY
Senior Counsel
Law Department, U.S. Postal Service
475 L'Enfant Plaza SW, Room 6346
Washington, DC 20260-1150
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**NATIONAL LABOR
RELATIONS BOARD**


JOAN A. SULLIVAN
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Contempt Litigation and
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Washington, D.C. 20005-3419
(202) 273-3740 (Main)
(202) 273-3742 (Direct)
joan.sullivan@nrlrb.gov

Dated this 29th day of April,
2010 in Washington, D.C.

Dated this 29th day of April,
2010 in Washington, D.C.

IT IS SO ORDERED:

Date: June 24, 2010

/s/ Rhesa H. Barksdale
Circuit Judge

Date: June 24, 2010

/s/ Emilio M. Garza
Circuit Judge

Date: June 24, 2010

/s/ James L. Dennis
Circuit Judge

[USPS 5th Cir Consent Order 2.doc]

ATTACHMENT A

FACILITIES IN THE CITY OF HOUSTON

ADDICKS BARKER
16830 BARKER SPRING RD #401
HOUSTON, TX 77218-9998

DEBRA SUE SCHATZ
2909 ROGERDALE RD
HOUSTON, TX 77042-9998

ALBERT THOMAS
14910 EL CAMINO REAL
HOUSTON, TX 77059-9998

DEMOSS
6500 DEMOSS
HOUSTON, TX 77036-9998

ALMEDA
3030 W. FUQUA
HOUSTON, TX 77045-9998

DENVER HARBOR
5901 MARKET
HOUSTON, TX 77020-9998

ANSON JONES
634 W. CALVACADE
HOUSTON, TX 77009-9998

EAST HOUSTON
8601 MESA RD
HOUSTON, TX 77028-9998

ASHFORD WEST
12655 WHITTINGTON
HOUSTON, TX 77077-9998

EASTWOOD
5415 LAWNSDALE
HOUSTON, TX 77023-9998

ASTRODOME
8205 BRAESMAIN
HOUSTON, TX 77025-9998

FAIRBANKS
7050 BROOKHOLLOW DR.
HOUSTON, TX 77040-9998

BEAR CREEK
16015 CAIRNWAY
HOUSTON, TX 77084-9998

FLEETWOOD
315 ADDICKS-HOWELL RD
HOUSTON, TX 77079-9998

BEECHNUT
11703 BEECHNUT
HOUSTON, TX 77072-9998

FOSTER PLACE
4025 GRIGGS
HOUSTON, TX 77021-9998

BROADWAY FINANCE
4020 BROADWAY
HOUSTON, TX 77207-9998

GALLERIA FINANCE
5015 WHESTHEIMER RD #1200
HOUSTON, TX 77056-9998

CIVIC CENTER
700 SMITH ST
HOUSTON, TX 77208-9998

GARDEN OAKS FINANCE
3816 N. SHEPHERD DR.
HOUSTON, TX 77206-9998

COMPUTER FORWARDING SYSTEM
4600 ALDINE BENDER
HOUSTON, TX 77315-9716

GENOA
10935 ALMEDA-GENOA RD
HOUSTON, TX 77034-9998

COPPERFIELD
8825 HWY 6 NORTH
HOUSTON, TX 77095-9998

GRANVILLE ELDER
550 MAXEY
HOUSTON, TX 77013-9998

CORNERSTONE
14403 WALTERS RD
HOUSTON, TX 77014-9998

GREENBRIAR
3740 GREENBRIAR
HOUSTON, TX 77098-9998

GREENS NORTH
1530 GREENSMARK DR.
HOUSTON, TX 77067-9998

GREENWAY PLAZA
3 E. GREENWAY PLAZA
HOUSTON, TX 77046-9998

HARRISBURG FINANCE
8330 MANCHESTER ST
HOUSTON, TX 77262-9998

HEIGHTS FINANCE
1050 YALE ST
HOUSTON, TX 77248-9998

HOUSTON (GMF)
401 FRANKLIN
HOUSTON, TX 77201

IRVINGTON
600 NORTHLINE MALL
HOUSTON, TX 77022-9998

JAMES GRIFFITH
9320 EMNORA LN
HOUSTON, TX 77080-9998

JENSEN DRIVE
3520 JENSEN DRIVE
HOUSTON, TX 77026-9998

JOHN DUNLOP
8728 BEVERLY HILLS ST
HOUSTON, TX 77063-9998

JULIUS MELCHER
2802 TIMMONS LN
HOUSTON, TX 77027-9998

LONG POINT
8000 LONG POINT
HOUSTON, TX 77055-9998

MARTIN LUTHER KING
9444 CULLEN
HOUSTON, TX 77051-9998

MEDICAL CENTER
7205 ALMEDA RD
HOUSTON, TX 77054-9998

MEMORIAL PARK
10506 TOWN & COUNTRY WAY
HOUSTON, TX 77024-9998

NASSAU BAY
18214 UPPER BAY RD
HOUSTON, TX 77058-9998

NORTH HOUSTON (GMF)
4600 ALDINE BENDER
HOUSTON, TX 77315

NORTH SHEPHERD
7511 NORTH SHEPHERD
HOUSTON, TX 77038-9998

OAK FOREST
2499 JUDIWAY
HOUSTON, TX 77018-9998

PARK PLACE
5302 OLD GALVESTON RD
HOUSTON, TX 77017-9998

RICH HILL
2950 UNITY DR
HOUSTON, TX 77057-9998

RIVER OAKS
1900 W. GRAY
HOUSTON, TX 77019-9998

ROY ROYALL
4206 LITTLE YORK RD
HOUSTON, TX 77016-9998

SAGE
3500 SAGE RD
HOUSTON, TX 77056-9998

SAM HOUSTON CARRIER
1500 HADLEY
HOUSTON, TX 77002-9998

SAM HOUSTON FINANCE
701 SAN JANCINTO
HOUSTON, TX 77052-9998

SOUTH POST OAK
5505 BELROSE
HOUSTON, TX 77096-9998

SOUTHMORE
1602 EAGLE ST
HOUSTON, TX 77004-9998

T. W. HOUSE
1300 W. 19TH ST
HOUSTON, TX 77008-9998

TWO HOUSTON CENTER
2 HOUSTON CENTER
HOUSTON, TX 77010-9998

UNIVERSITY
1319 RICHMOND AVE.
HOUSTON, TX 77006-9998

WESTBRAE
10910 S, GESSNER
HOUSTON, TX 77071-9998

WESLAYAN FINANCE
5340 WESLAYAN ST
HOUSTON, TX 77277-9998

WESTBURY PLACE
11805 CHIMNEY ROCK
HOUSTON, TX 77035-9998

WESTCHASE FINANCE
3836 S, GESSNER RD
HOUSTON, TX 77215-9998

WESTFIELD
17119 RED OAK DR.
HOUSTON, TX 77090-9998

WILLIAM RICE
5201 WAKEFOREST ST
HOUSTON, TX 77005-9998

WILLOW PLACE
12955 WILLOW PLACE
HOUSTON, TX 77070-9998

WINDMILL
9898 ALMEDA - GENOA RD
HOUSTON, TX 77075-9998

FACILITIES OUTSIDE THE CITY OF HOUSTON

**BRYAN GMF
2121 E. WM J. BRYAN PKWY
BRYAN, TX 77801-9998**

**FIRST COLONY STATION
3130 GRANTS LAKE BLVD
SUGAR LAND, TX 77479-9998**

**LA PORTE MAIN OFFICE
801 W. FAIRMONT PKWY
LA PORTE, TX 77571-9998**

**LIBERTY MAIN OFFICE
1515 SAM HOUSTON ST
LIBERTY, TX 77575-9998**

**SPRING MAIN OFFICE
1411 WUNSCHER LOOP
SPRING, TX 77373-9998**

**SPRING PANTHER CREEK
10800 GOSLING RD
SPRING, TX 77381-9998**

ATTACHMENT B**OUTSIDE THE CITY**

**BRYAN GMF
2121 E WM J. BRYAN PKWY
BRYAN, TX. 77801-9998**

**FIRST COLONY STATION
3130 GRANTS LAKE BLVD.
SUGAR LAND, TX. 77479-9998**

**LA PORTE MAIN OFFICE
801 W. FAIRMONT PKWY
LA PORTE, TX. 77571-9998**

**LIBERTY MAIN OFFICE
1515 SAM HOUSTON ST.
LIBERTY, TX. 77575-9998**

**SPRING MAIN OFFICE
1411 WUNSCH LOOP
SPRING, TX. 77373-9998**

**SPRING PANTHER CREEK
10800 GOSLING RD.
SPRING, TX. 77381-9998**

INSIDE THE CITY

**ALBERT THOMAS
14910 EL CAMINO REAL
HOUSTON, TX. 77059-9998**

**CORNERSTONE
14403 WALTERS RD.
HOUSTON, TX. 77014-9998**

**FOSTER PLACE
5210 GRIGGS RD.
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**JOHN DUNLOP
8728 BEVERLY HILLS ST
HOUSTON, TX 77063-9998**

**MARTIN LUTHER KING
9444 CULEN
HOUSTON, TX. 77051-9998**

**NORTH SHEPHERD
7511 NORTH SHEPHERD DR.
HOUSTON, TX. 77088-9998**

**ROY ROYALL
4206 LITTLE YORK RD.
HOUSTON, TX. 77016-9998**

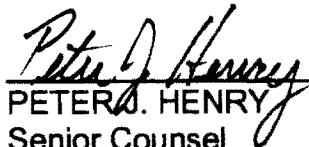
**SAM HOUSTON
1500 HADLEY
HOUSTON, TX. 77002-9998**

Board instituting a new civil contempt proceeding in this Court, in which the Board shall be required to establish its allegations by clear and convincing evidence.

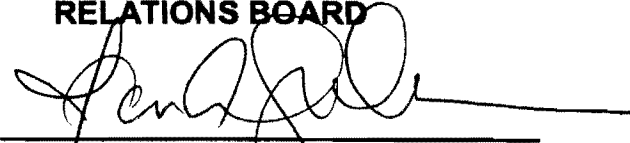
11. This Order shall not preclude the Board from requesting such other remedies as it deems appropriate to remedy contumacious conduct.

Approved as to form:

**UNITED STATES
POSTAL SERVICE**


PETER J. HENRY
Senior Counsel
Law Department, U.S. Postal Service
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**NATIONAL LABOR
RELATIONS BOARD**


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(202) 273-3740 (Main)
(202) 273-3742 (Direct)
joan.sullivan@nrlrb.gov

Dated this 29th day of April,
2010 in Washington, D.C.

Dated this 29th day of April,
2010 in Washington, D.C.

IT IS SO ORDERED:

Date: _____, 20__

Circuit Judge

Date: _____, 20__

Circuit Judge

Date: _____, 20__

Circuit Judge

[USPS 5th Cir Consent Order 2.doc]

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

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Petitioner	:	
	:	Case No. 11-60788
v.	:	
	:	
UNITED STATES POSTAL SERVICE	:	
	:	
Respondent.	:	

**JOINT MOTION FOR APPROVAL OF
STIPULATION AND PROPOSED CONSENT ORDER**

The National Labor Relations Board and the United States Postal Service, by their undersigned Counsel, hereby jointly move the Court to approve the annexed Stipulation and proposed Consent Order in settlement of the contempt matter commenced in this Court on July 15, 2016.

National Labor Relations Board

s/ Helene D. Lerner

Date: October 17, 2017

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Supervisory Trial Attorney
Contempt Compliance and
Special Litigation Branch
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Washington, D.C. 20003
(202) 273-3738
helene.lerner@nlrb.gov

United States Postal Service

s/ Roderick D. Eves

Date: October 17, 2017

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Deputy Managing Counsel
United States Postal Service
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St. Louis, MO 63155-9948
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Roderick.d.eves@usps.gov

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

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Petitioner	:	
	:	Case No. 11-60788
v.	:	
	:	
UNITED STATES POSTAL SERVICE	:	
	:	
Respondent.	:	

CERTIFICATE OF COMPLIANCE

This document complies with the word volume limit of Fed.R.App.P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed.R. App.P. 32(f), this document contains 53 words. This document also complies with the typeface requirements of Fed.R.App.P. 32(a)(5) and the type-style requirements of Fed.R.App.P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Times New Roman, 14 point font. I also certify that the word processing system used was Microsoft Word 2010.

s/ Helene D. Lerner

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

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Petitioner	:	
	:	Case No. 11-60788
v.	:	
	:	
UNITED STATES POSTAL SERVICE	:	
	:	
Respondent.	:	

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2017, I filed a true copy of the foregoing (excluding the Certificate of Compliance) with the court using the court’s CM/ECF system, which sent notification of such filing to the following:

Alice Lucille Covington, Attorney
Email: alice.l.covington@usps.gov
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Office of the General Counsel
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Washington, DC 20260

Stephan James Boardman, Esq., Chief
Counsel
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U.S. Postal Service
Office of the General Counsel
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Washington, DC 20260

Michael James Elston, Esq., Chief
Counsel

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Office of the General Counsel
475 L'Enfant Plaza, S.W., 6th Floor
Washington, DC 20260

s/ Helene D. Lerner

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

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Petitioner	:	
	:	Case No. 11-60788
v.	:	
	:	
UNITED STATES POSTAL SERVICE	:	
	:	
Respondent.	:	

STIPULATION FOR ENTRY OF CONSENT ORDER

Subject to the approval of the United States Court of Appeals for the Fifth Circuit, the National Labor Relations Board (“the Board”) and the United States Postal Service (“Postal Service”) hereby stipulate and agree as follows:

1. On January 4, 2012, this Court issued a Judgment that, in relevant part, requires the Postal Service, its officers, agents, successors and assigns to cease and desist from:

(a) Failing and refusing to bargain in good faith with the exclusive bargaining representative of its [American Postal Workers Union (“APWU”)]-represented employees in a unit appropriate for collective bargaining by failing and refusing to furnish Local 83 or Local 418, in a timely manner, information requested . . . which is relevant and necessary for Local 83 or Local 418’s representation of employees as local agents of the National Union.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, to file charges with or to give testimony before the Board, or to engage in concerted

activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. On May 6, 2014, the Court issued a Judgment that approved a Consent Order entered into by the Board and the Postal Service. (The January 4, 2012 and May 6, 2014 judgments are jointly referred to herein as “Judgments”). The May 6, 2014 Consent Order requires the Postal Service, among other things, to:

II. (a) fully comply with [the] consent order and the judgment entered by the this Court on January 4, 2012, and not any way, by action or inaction, engage in, induce, encourage, permit or condone any violation of said consent order or judgment;

(b) refrain from failing to provide relevant information, from unduly delaying in providing relevant information, or from in any like or related manner failing or refusing to bargain in good faith with Local 83, Local 418 or [National Association of Letter Carriers (“NALC”)] Branch 2730. . . .

* * * *

XII. To ensure against violations of this consent order, the court hereby IMPOSES on the Postal Service a prospective fine of up to \$17,500 for each future violation of this consent order and a further fine of up to \$300 per day for each day the court finds that the violations have continued. The Board and the Postal Service will have the right to adduce evidence during any contempt proceedings as to the propriety and/or amount of the fine that the Board seeks. Fines may be imposed only as a result of the Board's instituting a new civil contempt proceeding in this court, in which proceeding the Board shall be required to establish its allegations by clear and convincing evidence.

3. The Judgments have been in full force and effect since their entry and at all material times the Postal Service has had notice and knowledge of their terms.

4. On July 15, 2016, the Board filed a Petition for Adjudication in Civil Contempt, for the Assessment of Contempt Fines, and for Other Civil Relief, alleging that the Postal Service failed and/or unduly delayed in providing requested information to APWU Local 83 and Local 418 as required by the Court's Judgments, pertaining to the Postal Service's Shreveport and New Orleans, Louisiana locations. On August 24, 2016, the Postal Service filed its answer to the petition.

5. On November 23, 2016, the Board filed a Petition for Adjudication in Civil Contempt and for Other Civil Relief and for the Assessment of Noncompliance Fines, alleging that the Postal Service failed and/or unduly delayed in providing requested information to the NALC Branch 2730 as required by the Court's May 6, 2014 Consent Order, pertaining to the Postal Service's Gretna, Louisiana location.

6. Since the filing of the aforementioned contempt petitions, the Board's Contempt, Compliance and Special Litigation Branch ("CCSLB") has investigated two additional matters, Case Nos. 15-CA-187983 and 15-CA-191734, which each allege failures or delays in providing information to Local 83 concerning the Postal Service's New Orleans location.

7. The Board and the Postal Service agree that the allegations in both contempt petitions, as well as those within Case Nos. 15-CA-187983 and 15-CA-

191734, will be resolved and disposed of completely by entry of the attached proposed Consent Order, the terms of which have been agreed to by the parties.

8. The Board and the Postal Service agree that the Postal Service shall furnish the unions with documents solicited in paragraph II.A and B of the attached Consent Order, provided such documents exist. If no such documents exist or once existed but have been lost or destroyed, the Postal Service shall notify the requesting union of that fact and explain to the union the circumstances of their nonexistence or nonavailability. With respect to paragraph II.A.1., it is agreed that the Postal Service may produce a print-out of the eWHEP Package Status History identifying the same information that the hard-copy letter used in the past by the Postal Service formerly identified. Where a Request for Information seeks documentation compiled or maintained pursuant to the Federal Employees' Compensation Act, release of such records shall be governed by 2014 Memorandum of Understanding Regarding Release of FECA Records between the Department of Labor's Office of Workers' Compensation Programs, the Postal Service, and the Board.

9. This Stipulation and Proposed Consent Order contain the entire agreement between the parties, and there is no other agreement of any kind, verbal or otherwise, with respect to the subjects of this Stipulation and the proposed Consent Order. It is expressly understood that this Stipulation and Consent Order

resolve only the issues set forth in the contempt petitions and Board Case Nos. 15-CA-187983 and 15-CA-191734, and do not constitute a settlement of any other case(s) or matter(s). This Stipulation does not preclude persons from filing charges with the Board, the General Counsel of the Board from prosecuting complaints, or the Board from hearing and resolving any matter timely and properly presented under the National Labor Relations Act (“Act”) in other cases and matters regardless of whether such matters are known to the Board’s General Counsel or are readily discoverable. The General Counsel reserves the right to use evidence obtained in its investigation of this case for any relevant and material purpose in the litigation of any other case, and a judge, the Board, and the courts may make findings of fact and/or conclusions of law with respect to such evidence, provided the Postal Service has an opportunity to present evidence for consideration by a judge, the Board, and the courts which may also be the basis for findings of fact and/or conclusions of law.

10. The parties will jointly move the Court to approve and enter the attached Order.

11. The attached Consent Order, when entered, shall supersede the May 6, 2014 Consent Order.

National Labor Relations Board

Date: October 17, 2017

s/ Helene D. Lerner
Helene D. Lerner
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Contempt Compliance and Special Litigation
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United States Postal Service

Date: October 17, 2017

s/ Roderick D. Eves
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**UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Petitioner,	:	
	:	No. 11-60788
v.	:	
	:	
UNITED STATES POSTAL SERVICE	:	
	:	
Respondent.	:	

CONSENT ORDER

The National Labor Relations Board ("NLRB") 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 October 17, 2017, is approved and shall be filed. It is hereby

II. FURTHER ORDERED that the Postal Service shall comply with this Consent Order and with this Court’s January 4, 2012 Judgment and its May 6, 2014 Judgment approving a consent order, by ceasing and desisting from failing to provide information and/or engaging in undue delay in furnishing information requested by the American Postal Workers Union, AFL-CIO, or its constituent Local 83 and Local 418 (collectively the “APWU Unions”), in connection with their role as collective-bargaining representatives of employees at Postal Service

facilities located at 2400 Texas Avenue, Shreveport, Louisiana and 701 Loyola Avenue, New Orleans, Louisiana; and by the National Association of Letter Carriers, AFL-CIO, or its constituent Branch 2730 (collectively, the “NALC Union”), in connection with their role as collective-bargaining representatives of employees at Postal Service facilities in Gretna, Louisiana. The Postal Service shall:

A. Within thirty (30) days after entry of this Consent Order, furnish the APWU Unions with the following, provided such documents exist. If no such documents exist or once existed but have been lost or destroyed, the Postal Service shall notify the requesting union of that fact and explain to the union the circumstances of their nonexistence or nonavailability:

1. Documents requested by Local 83:

with respect to the current approved mechanization staffing package for the general mail facility located at 701 Loyola Avenue, and in lieu of the current staffing authorization letter from the approving authority, a print-out of the eWHEP Package Status History identifying the same information that the hard-copy staffing authorization letter from the approving authority used in the past by the Postal Service formerly identified.

2. Documents requested by Local 418:

(a) a copy of PS Form 2608 concerning step one grievance resolution dated April 8, 2015, regarding supervisors performing bargaining-unit work; and

(b) a copy of the payment of the step one resolution.

B. Within thirty (30) days after entry of this Consent Order, furnish the NALC Union with the following, provided such documents exist. If no such documents exist or once existed but have been lost or destroyed, the Postal Service shall notify the requesting union of that fact and explain to the union the circumstances of their nonexistence or nonavailability:

1. the names of all limited duty and light duty employees as requested by the NALC Union on July 22, 2015;
2. copies of any and all statements used to controvert employee Kevin Hawkins's claim filed with the Office of Workers' Compensation Programs ("OWCP"), as requested by the NALC Union on October 8, 2015;
3. copies of all Form 1017Bs from October 10 through October 16, 2015;
4. copies of all Form 3972s for 2015 and 2016;
5. copies of the schedules from August 8 through August 14, 2015;
6. copies of all Form 1017Bs from August 8 through August 14, 2015;
7. copies of all Form 3971s for refused overtime from August 1 through August 7, 2015; and
8. copies of all Form 1017Bs for the week August 1 through August 7, 2015.

C. In accordance with the parties' stipulation and the prospective fines schedule set forth in the Court's Consent Order entered on May 6, 2014, the Court imposes on the Postal Service fines in the amount of \$215,000,

representing a compromised determination of the fines sought for the Postal Service's alleged violations of the Judgment and May 6, 2014 Consent Order, and orders the Postal Service to pay this amount to the NLRB as follows: 20% (\$43,000) shall be remitted to the NLRB within sixty (60) days of the entry of the Order; the remaining 80% of the compromised amount (\$172,000) shall be payable as set forth in Section V. below.

III. FURTHER ORDERED that this Consent Order supersedes the Consent Order in 11-60788 entered on May 6, 2014, and applies to the Postal Service facilities located at 2400 Texas Avenue, Shreveport, Louisiana, 701 Loyola Avenue, New Orleans, Louisiana and 406 Gretna Boulevard, Gretna, Louisiana, and that the Postal Service shall: (a) fully comply with all terms of this Order, and those of the judgment entered by this Court on January 4, 2012, to the extent that they do not conflict with the terms of this Order, and not in any way, by action or inaction, engage in, induce, encourage, permit, or condone any violation of said judgment or this Order; (b) refrain from failing to provide information, or from engaging in undue delay in furnishing information, requested by the APWU Unions or the NALC Union in connection with their roles as collective-bargaining representatives of employees at Postal Service facilities at 2400 Texas Avenue, Shreveport, Louisiana, 701 Loyola Avenue, New Orleans, Louisiana and 406 Gretna Boulevard, Gretna, Louisiana as required by Section 8 of the National

Labor Relations Act (“the Act”), 29 U.S.C. § 158; (c) refrain from failing or refusing to bargain in good faith with the APWU Unions and the NALC Union vis-à-vis requests for information; and (d) refrain from, in any like or related manner, interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, 29 U.S.C. § 157.

IV. FURTHER ORDERED that for the purposes of ensuring and facilitating supervision of the Postal Service’s compliance with its obligations under this Order, and without limiting the APWU Unions’ or the NALC Union’s rights under the Act or the collective-bargaining agreements:

A. Within fourteen (14) days of any request, the Postal Service shall provide to the NLRB the name(s) of the installation head(s) or designee(s) tasked with overseeing the Postal Service’s handling of union requests for information (RFIs) concerning the covered facility(ies), including maintenance of the internal tracking system and logs described in paragraph IV.(B.).

B. The Postal Service shall maintain a functional internal tracking system for each facility covered by this Order that identifies and logs the following for each request for information submitted by the APWU Unions and the NALC Union:

- 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 position and identity of the responder;
- 6) if any request for information is denied in whole or 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 local 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 thirty (30) days of any request, the Postal Service shall provide, for the time periods so requested, the NLRB with copies of all applicable records from the internal tracking system referenced in paragraph IV.(B.) above.

D. Within thirty (30) days after entry of this Order, 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 Order, to each District Manager (or equivalent management official), Shreveport, New Orleans, and Gretna Postmaster (or equivalent management official), or other management official to whom other supervisors and managers at each facility covered by this Order report, and to all other supervisors and managers at each facility covered by this Order, including acting 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 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 15 or to the NLRB's Contempt, Compliance, & Special Litigation Branch ("CCSLB") within thirty (30) days of any request.

E. The Postal Service shall post, at all facilities covered by this Order in conspicuous places where notices to employees are customarily posted, a Notice to Employees, prepared by the NLRB, alongside this Order, for a period of three years. 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 three-year period. Copies shall also be sent to the Postal Service manager and supervisors at its Shreveport, New Orleans, and Gretna facilities. 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 at the Shreveport, New Orleans, and Gretna facilities the Postal Service customarily communicates with its bargaining-unit 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 15 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 NLRB reasonable access to inspect the notice postings.

F. Within thirty (30) days from the initial date of posting of the aforementioned Notice to Employees, the Postal Service shall mail a copy of said notice, together with a copy of this Order, to each bargaining-unit employee represented by the APWU Unions and/or the NALC Union at any of the Postal Service facilities covered by this Consent Order as of the date of its entry. The Postal Service shall, within fourteen (14) days of such mailing, provide Region 15 with a list of those persons to whom the notice was mailed, together with proof of the mailing.

G. Within forty-five (45) days after entry of this Order, and again within fourteen (14) days after completion of the notice-posting period referenced above, the Postal Service shall file with the Regional Director for Region 15 or with CCSLB, a sworn certification on a form provided by the Region attesting to the steps the Postal Service has taken to comply with this Consent Order.

V. FURTHER ORDERED that for conduct occurring during the twenty-four months after entry of this Consent Order, without limiting the NLRB's jurisdiction to proceed administratively on any violations of the NLRA, remedial relief for violations of this Consent Order, including all obligations of Sections II –

IV above, shall be limited to those set forth in this Section V. As a means of ensuring and encouraging the Postal Service's compliance with its obligations under this Order and the Court's earlier judgments during that twenty-four month period:

A. The Postal Service shall confer with the NLRB on at least a quarterly basis to review and discuss any concerns regarding its compliance with this Order. Such discussions shall include the operation and results of, and any significant changes in, any compliance program that, following discussions and any statutorily required negotiations with the affected union or unions, the Postal Service institutes to improve its compliance with its statutory obligations to timely provide to the unions relevant information as required by the Order.

B. For each of the eight three-month quarters following entry of this Consent Order, the NLRB's Assistant General Counsel for the Contempt, Compliance and Special Litigation Branch (CCSLB), or his or her designee, shall make a determination whether the Postal Service has been in substantial compliance with the terms of this Order. Substantial compliance shall be defined as the absence of allegations of unlawful failures, including refusals and undue delays, to respond to union RFIs at the Shreveport, New

Orleans, and Gretna facilities that CCSLB determines both to be meritorious and to allege substantial violations.

C. Without limiting the ability of either party to argue the relevance or irrelevance of any specific factor listed or any unlisted factors in future judicial proceedings, the NLRB's assessment as to whether a violation is substantial will be based on factors including, but not limited to:

(a) The number of RFIs that are the subject of the referred charges and their relation to the number of RFIs submitted by the unions to the facility at issue during the same period of time.

(b) Whether and to what degree the union was harmed by any alleged delay or refusal, e.g., if the information was relevant to a grievance, whether the parties agreed to extend deadlines for the grievance procedure, and whether the grievance was sustained.

(c) Where a charge alleges a refusal to provide information:

- The reason for the refusal, e.g., need to bargain over alleged confidentiality/privacy interests.
- Whether the request was not actually received.
- Whether the Postal Service has raised a valid concern as to relevance.
- Whether the requested information exists.

(d) Where a charge alleges a delay in providing information:

- The length of the delay.

- Whether the Postal Service kept the union informed of its efforts to locate the requested information.
- Any circumstances that may justify a delay.

D. If the determination of the NLRB's Assistant General Counsel or designee is that the Postal Service was not in substantial compliance during the referenced three-month period, the NLRB shall provide the Postal Service with a written explanation, showing the basis for its determination, including all factors considered, and requesting immediate compliance. The NLRB shall notify the Postal Service of this initial quarterly determination no later than 365 days after the end of each three-month period. The Postal Service shall have twenty-one (21) days from receipt of the NLRB's determination to file a written request, with all supporting evidence, to the NLRB Associate General Counsel for the Division of Legal Counsel for reconsideration of the determination. Absent a timely request for reconsideration, the determination of the NLRB's Assistant General Counsel shall be final; on reconsideration, the determination of the Associate General Counsel shall be final.

E. If the NLRB determines, either initially or following a reconsideration as provided in paragraph V.(D.), that during the referenced three-month period the Postal Service was not in substantial compliance, the Postal

Service shall remit 10% of the negotiated amount of \$215,000 (\$21,500) to the NLRB within sixty (60) days of notification. Otherwise, 10% of the total negotiated amount of \$215,000 (\$21,500) shall be considered waived and no longer owed by the Postal Service.

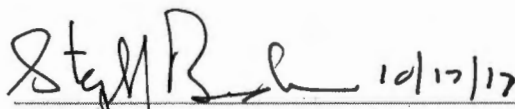
VI. FURTHER ORDERED that, to assure against violations of this Order following the two-year period referenced in Section V. above, the Court hereby imposes against the Postal Service a prospective fine of up to \$25,000 for each future violation of this Consent Order, and a further fine of up to \$100 per day for each day the Court finds that the violations have continued.

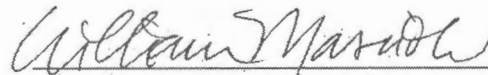
VII. This Order does not preclude the NLRB from requesting such other remedies as it deems appropriate to remedy contumacious conduct.

Approved as to form:

UNITED STATES POSTAL SERVICE

NATIONAL LABOR RELATIONS BOARD

 10/17/17
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Dated this 17th day of October
2017 in

Dated this 16th day of October
2017 in Washington, D.C.

IT IS SO ORDERED:

Date: _____, 2017

Circuit Judge

Date: _____, 2017

Circuit Judge

Date: _____, 2017

Circuit Judge

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 11-60788



NATIONAL LABOR RELATIONS BOARD,

Petitioner,

versus

UNITED STATES POSTAL SERVICE,

Respondent.

**A True Copy
Certified order issued Oct 27, 2017**

July W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

Petition for Review of an Order of
the National Labor Relations Board

Before DAVIS, SMITH, and PRADO, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the Joint Motion for Approval of Stipulation and Proposed Consent Order, dated October 17, 2017, is GRANTED and APPROVED. IT IS FURTHER ORDERED that any and all other pending motions, petitions, and requests are DENIED as moot.