

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

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NATIONAL LABOR RELATIONS BOARD,		:
		:
	Petitioner,	:
	v.	:
		:
		No. 14-70118
		Appellate Commissioner
UNITED STATES POSTAL SERVICE;		Peter Shaw
JOSEPH S. CHENG,		:
		:
	Respondents.	:
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**JOINT MOTION**

Petitioner National Labor Relations Board (the “Board”), by its counsel, and Respondents United States Postal Service and Joseph S. Cheng, by their counsel, hereby jointly move for approval of the annexed Stipulation for Entry of Consent Order and entry of the proposed Consent Order, also annexed, in settlement of the contempt case initiated by the Board.

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NATIONAL LABOR RELATIONS BOARD

Date March 5, 2018

  
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Date Feb 16, 2018

  
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JOSEPH S. CHENG

Date March 5, 2018

  
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**STIPULATION FOR ENTRY OF  
CONSENT ORDER**

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

1. On February 26, 2014, this Court entered a judgment requiring “[the USPS], 1400 Pine Street, San Francisco, California, its officers, agents, successors, and assigns” to cease and desist from violating the National Labor Relations Act by:

- (a) Threatening employees with discipline, suspension, discharge, or unspecified reprisals because they engaged in Union activities or because they have filed unfair labor practice charges and/or cooperated with the National Labor Relations Board.

(b) Informing employees that their filing of unfair labor practice charges with the National Labor Relations Board affected how managers handled matters involving them.

(c) Instructing employees that they cannot discuss Union business on the workroom floor.

(d) Disciplining employees because they engaged in Union activities or because they filed unfair labor practice charges and/or cooperated with the National Labor Relations Board.

(e) Interrogating employees regarding their cooperation with the National Labor Relations Board.

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

3. The Court's February 26, 2014 judgment has been in full force since its entry and at all material times the USPS and Cheng have had notice and knowledge of the terms thereof.

4. In or around March 25, 2015, the Board's Contempt, Compliance & Special Litigation Branch (the "CCSLB") commenced an investigation into whether the USPS and its agent, Cheng, had violated the Court's February 26, 2014 judgment by threatening to retaliate against an employee, and later putting the same employee on an emergency placement, for engaging in union activity and seeking assistance from the Board. These allegations are outlined in the contempt petition filed by the Board on June 23, 2016 and the first amended contempt petition filed on September 22,

2016. USPS filed its Response to the Petition(s) on November 16, 2016, admitting in part and denying in part the allegations and objecting to many of the remedial demands made in the Petition(s). The USPS contends that whatever actions were taken against the employee were rescinded and cured almost immediately from the outset.

5. The Board, the USPS, and Cheng agree that the allegations in the contempt petition will be resolved and disposed of completely by entry of the attached proposed Consent Order, which has been agreed to by the parties.

6. 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 petition and first amended contempt petition 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, 29 U.S.C. §§ 151-169, 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 USPS 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.

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

National Labor Relations Board

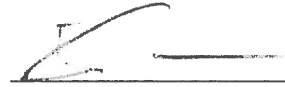
Date *March 5, 2018*



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United States Postal Service

Date: 2/16/18




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For Joseph S. Cheng:

Date: 3/5/18



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No. 14-70118  
Appellate Commissioner  
Peter Shaw

**CONSENT ORDER**

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

- ORDERED** that the Stipulation dated March 5, 2018 is approved and shall be filed.
- IT IS FURTHER ORDERED** that the USPS, 1400 Pine Street, San Francisco, California, its officers, agents, successors and assigns, shall: (a) fully comply with this Consent Order and the judgment entered by this Court on February 26, 2014, and not in any way, by action or inaction, engage in, induce, encourage, permit or condone any violation of said judgment or this Consent Order; (b) refrain from threatening employees with



unspecified reprisals for engaging in union activity or filing an unfair labor practice charge with the Board or otherwise seeking assistance from the Board; and (c) refrain from, in violation of the National Labor Relations Act, disciplining employees for engaging in union activity or for filing an unfair labor practice charge with the Board or otherwise seeking assistance from the Board.

3. **IT IS FURTHER ORDERED** that Cheng shall: (a) fully comply with this Consent Order and the judgment entered by this Court on February 26, 2014, and not in any way, by action or inaction, engage in, induce, encourage, permit or condone any violation of said judgment or this Consent Order; (b) refrain from threatening employees with unspecified reprisals for engaging in union activity or filing an unfair labor practice charge with the Board or otherwise seeking assistance from the Board; and (c) refrain from disciplining employees for engaging in union activity or filing an unfair labor practice charge with the Board or otherwise seeking assistance from the Board.

4. **IT IS FURTHER ORDERED** that to the extent it has not already done so, within ten (10) days after entry of this Consent Order, the USPS shall make Bradford Louis (“Louis”) whole for any loss of monies

caused by the USPS's emergency placement of Louis between January 10, 2015, and January 13, 2015.

5. **IT IS FURTHER ORDERED** that, to the extent it has not already done so, within ten (10) days after entry of this Consent Order, the USPS shall remove from Louis's personnel file any references to the alleged knife threat of January 6, 2015, and his emergency placement on January 10, 2015, and notify Louis in writing that this has been done and that the alleged knife threat and emergency placement will not be used against him in any way by the USPS.

6. **IT IS FURTHER ORDERED** that within ten (10) days after receipt of an appropriate notice drafted by the Board, the USPS shall post in conspicuous places where notices to employees are customarily posted at its Pine Street facility and at any other USPS facility where Cheng is assigned to work, for a period of sixty (60) consecutive days, copies of this Consent Order and the notice signed by appropriate representatives on behalf of the USPS and maintain such notices and copies of the Consent Order in clearly legible condition throughout the posting period; ensure that they are not altered, defaced, or covered by any other material; supply the Board's Region 20 with a signed copy of the notice and a certification of the dates

and locations of posting; and give agents of the Board's Region 20 unscheduled access to check the notice-posting at the Region's discretion.

7. **IT IS FURTHER ORDERED** that within twenty (20) days after receipt of the notice drafted by the Board, the USPS shall mail, e-mail, or hand-deliver copies of this Consent Order, the aforementioned notice drafted by the Board, and the February 26, 2014 judgment to all current supervisors and managers, including acting supervisors and managers, at its Pine Street facility, and to all other current supervisors, managers, officers, or agents of the USPS who have direct oversight over the operation of its Pine Street facility from other locations. The USPS shall also provide all future supervisors and managers at its Pine Street facility, including temporary supervisors and managers acting in that capacity for at least ten (10) consecutive calendar days, with copies of said Consent Order, notice, and judgment promptly upon their assuming those positions. Each person receiving copies of the Consent Order, the notice, and the judgment shall acknowledge in writing that he or she has been furnished with copies thereof and understands their contents. The USPS shall retain these acknowledgments and supply copies of them to the Board's Contempt, Compliance & Special Litigation Branch and/or the Board's Region 20 within ten (10) days of a request.

8. **IT IS FURTHER ORDERED** that within twenty (20) days after receipt of the notice drafted by the Board, the USPS shall convene during a paid-time meeting, in one or more sessions, at its Pine Street facility, and have the supervisor in charge of said facility read said notice to the employees. In this regard, the NALC, Branch 214, and the Board shall be afforded a reasonable opportunity to provide for the attendance of a NALC official and/or a Board agent at any assembly of employees called for the purpose of reading such notice.

9. **IT IS FURTHER ORDERED** that the USPS shall, within thirty (30) days after service by the Board's Contempt, Compliance, and Special Litigation Branch ("CCSLB"), file with the Regional Director for Region 20 and with CCSLB, a sworn certification of a responsible official on a form provided by CCSLB, attesting to the steps USPS has taken to comply with this consent order.

10. **IT IS FURTHER ORDERED** that in order to ensure against further violations of this Consent Order and the February 26, 2014 judgment, the Court shall impose a prospective non-compliance fine of up to \$30,000.00 against the USPS for each and every future act of interference, coercion or restraint in violation of Section 8(a)(1) of the National Labor Relations Act (29 U.S.C. § 158(a)(1)) that is not otherwise encompassed

within either Section 8(a)(3) or (4) of the Act (29 U.S.C. §158(a)(3) or (4)). A prospective non-compliance fine of \$50,000.00 shall also be imposed against the USPS for each and every future discharge or termination of an employee, in violation of said Section 8(a)(3) or (4) of the Act, as well as a fine of \$100.00 per day for each day the Court finds the violation has continued. A prospective non-compliance fine of up to \$50,000.00 shall be imposed against the USPS for each and every other species of violation of said Section 8(a)(3) or (4) of the Act, as well as a fine of up to \$100.00 per day for each day the Court finds the violation has continued. Lastly, except for Respondent's good faith and substantial efforts to comply, a prospective non-compliance fine of up to \$15,000.00 shall be imposed against the USPS for failure to comply with any of its affirmative obligations set forth in paragraph nos. 4-9 herein, as well as a fine of up to \$100.00 for each day the Court finds such failure has continued.

11. **IT IS FURTHER ORDERED** that in order to ensure against further violations of this Consent Order and the February 26, 2014 judgment, for a period of two years following entry of this order by the Court, the USPS's supervisors and managers at the Pine Street facility shall be subject to personal fines for engaging in retaliatory discipline or threats of retaliatory discipline against employees, or for placing employees on

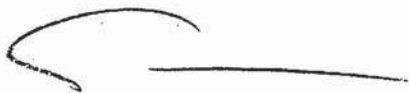
emergency placement status, because those employees engaged in activities protected by the National Labor Relations Act (29 U.S.C. §§ 151-169).

12. **IT IS FURTHER ORDERED** that in order to ensure against further violations of this Consent Order and the February 26, 2014 judgment, Cheng shall be subject to a personal civil contempt fine of up to \$1,000 for any future violation of Section 8(a)(1), (3), or (4) of the National Labor Relations Act (29 U.S.C. § 158(a)(1), (3), or (4)), this Consent Order, or the February 26, 2014 judgment, regardless of the USPS's role, if any, in such violation by Cheng.

Approved as to form:

United States Postal Service

National Labor Relations Board



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Dated this 16<sup>th</sup> day of February  
2018 in St. Louis, MO.

Dated this 5<sup>th</sup> day of March  
2018 in Washington, D.C.

For Joseph S. Cheng:



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Dated this 5 day of March  
2018 in Alameda, CA.

**IT IS SO ORDERED:**

Date: \_\_\_\_\_, 2018

\_\_\_\_\_  
Circuit Judge

Date: \_\_\_\_\_, 2018

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Circuit Judge

Date: \_\_\_\_\_, 2018

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Circuit Judge

FILED

UNITED STATES COURT OF APPEALS

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FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NATIONAL LABOR RELATIONS  
BOARD,

Petitioner,

v.

UNITED STATES POSTAL SERVICE,

Respondent.

No. 14-70118

NLRB No. 20-CA-065948  
National Labor Relations Board

ORDER

Before: SILVERMAN, CHRISTEN, and FRIEDLAND, Circuit Judges

The referral to the Appellate Commissioner is withdrawn. The Court is in receipt of (1) the National Labor Relations Board's contempt petition (Docket Entry No. 14) and (2) the parties' joint motion for approval of the stipulation and proposed consent order resolving the contempt petition. The parties' joint motion (Docket Entry No. 54) is granted. The parties' stipulation and proposed consent order are approved and are incorporated by reference into this order.