**United States Postal Service *and* American Postal Workers Union Albany, NY Local 390, APWU, AFL–CIO**

**United States Postal Service *and* Mid Hudson Area Local, American Postal Workers Union, AFL–CIO.** Cases 3–CA–19545–1(P), 3–CA–19832(P), 3–CA–20203(P), 3–CA–19856(P), and 3–CA–20333(P)

September 29, 2000

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS FOX AND HURTGEN

On December 31, 1997, Administrative Law Judge Howard Edelman issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order as modified.[2]

This consolidated case arises out of a dispute regarding the obligations of the Respondent to respond to information requests made by the Union. Over the course of several months, between 1995 and 1996, the Union requested from the Respondent various information which the Union contended was necessary to process grievances. Each of the Union's requests either demanded an existing document or expressly requested a response from the Respondent. The judge found that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing or otherwise failing to provide the requested information or by unnecessarily delaying its responses to the Union's requests. We agree with the judge that the Respondent has violated Section 8(a)(5) and (1).

1. Supervisor Frank Appio's attendance records

The Union requested copies of two forms related to attendance (Forms 3971 and 3972) for Supervisor Frank Appio for the preceding 12-month period, stating in its request that it had reason to believe that the Respondent was treating supervisors differently from "craft employees" with regard to attendance. The request was made in the course of handling a grievance for bargaining unit member Raymond Van Egghen, who had been issued a warning letter because of his absences. The Respondent offered to provide 6 months of Appio's records, as 6 months was the period that the Respondent had reviewed in determining to issue the warning letter to Van Egghen. However, the Union insisted on obtaining the full 12 months of records requested. The Respondent provided no records at all.

The judge found that the Respondent's failure to supply the requested information violated Section 8(a)(5) and (1) of the Act because the Respondent had an obligation to provide information pertaining to the alleged disparate treatment between bargaining unit employees and supervisory employees. He concluded that such information was relevant because 1) both supervisors and bargaining unit members are subject to the same "standards of behavior" with regard to attendance; and 2) the Union's request was based upon factual information in its possession and not mere suspicion. The judge rejected the Respondent's contention that the request was moot because the Van Egghen grievance had been resolved.

The Respondent excepted on the grounds that the attendance records were irrelevant to the Van Egghen grievance. The Respondent contends that the Union failed to provide objective facts to demonstrate that Supervisor Appio had the same or similar attendance problems as Van Egghen. Even if the requested information is relevant, the Respondent argues, the Union is entitled to no more than 6 months of records, since that is the time period relied upon in deciding to issue a warning letter to Van Egghen. Finally, the Respondent contends that the request for Appio's attendance records is now moot, because the Van Egghen grievance has been settled.

An employer has a statutory obligation to provide requested information that is potentially relevant and will be of use to a union in fulfilling its responsibilities as the employees' exclusive bargaining representative, including its responsibilities related to processing grievances. GTE California, Inc., 324 NLRB 424, 426 (1997); see generally

[1] We find in agreement with the judge that the documents requested in relation to the Szlamowicz grievance may be applicable to other members of the bargaining unit as well, and are presumptively relevant. The Respondent has not produced evidence to rebut that presumption, and the Union is therefore entitled to the information requested. Therefore we find that the issue is not moot.

Although he agrees with the judge that the Respondent violated the Act by its delay in responding to some of the Union's requests, Member Hurtgen does not concur with the conclusion that the Respondent violated the Act by failing to provide the other documents requested with regard to the Szlamowicz grievance. In this regard, he notes that the request was based solely on the Szlamowicz grievance. Since the Szlamowicz grievance was resolved in favor of the grievant, the requested documents are no longer relevant, and the matter is now moot.

[2] We have modified the judge's recommended Order to conform to the requirements of *Indian Hills Care Center*, 321 NLRB 144 (1996), as revised in *Excel Container, Inc.*, 325 NLRB 17 (1997).

In adopting the judge's Order we are not requiring that the Respondent produce any documents which it knows the Union already has. Thus, the Respondent is not required to supply the Union Supervisor John Fuschino's August 17, 1995 "investigative memorandum" with regard to the alleged improper behavior by Supervisor George Guerin.

NLRB v. Acme Industrial Co., 385 U.S. 432 (1967). Where, as here, the information sought concerns persons such as supervisors who are outside the bargaining unit, the union bears the burden of establishing the relevance of the requested information. See United States Testing Co., 324 NLRB 854, 859 (1997), rev. denied, enf. granted 160 F.3d 14 (D.C. Cir. 1998), rehearing en banc denied (1999); Reiss Viking, 312 NLRB 622, 625 (1993).

The Board uses a broad, discovery-type standard in determining relevance in information requests, including those, like the instant case, for which a special demonstration of relevance is needed. Under that standard, even potential or probable relevance is sufficient to give rise to an employer's obligation to provide information. United States Testing, supra, at 859; Shoppers Food Warehouse, 315 NLRB 258, 259 (1994).

We find that the Union has satisfied its burden of establishing the relevance of Appio's attendance records. The judge found that the attendance rules applicable to Appio were the same as those applicable to bargaining-unit members. In addition, he concluded that the Union had made its information request based upon objective evidence of possible disparate treatment of bargaining unit members in attendance matters. Appio's frequent absences had been directly observed by union members, both while he was a member of the bargaining unit and after he became a supervisor. Persons currently under Appio's supervision observed that Appio was "out quite a bit" and had a history of being out frequently. See *Postal Service*, 310 NLRB 701, 702 (1993) (supervisor information may be relevant where both supervisors and unit employees are subject to the same restrictions and union's request is based on more than "suspicion"); see also *United States Testing,* supra*,* at 859 (a union satisfies its burden when it demonstrates a reasonable belief supported by objective evidence for requesting the information.).

The Union's purpose in requesting Appio's attendance records was to determine whether Appio's absences were scheduled or unscheduled. That information would allow the Union to evaluate whether there was disparate treatment of supervisors and bargaining unit members with regard to attendance. Appio's records are clearly relevant to this inquiry.

We also agree with the judge that the Respondent is obligated to provide the Union the requested attendance records for the entire 12-month period requested. The records are relevant under the Board's broad discovery-like standards. Moreover, the record shows that in other instances management has issued warnings on the basis of unscheduled absences over a 12-month period.

Finally, we affirm the judge's conclusion that the Union's request is not moot. In its written request for Appio's records, the Union expressly stated that it had "reason to believe that management is treating supervisor(s) differently than [sic] craft employees concerning attendance (unscheduled absences)." The concern with disparate treatment was reiterated in a later letter dated July 1, 1996 from Union Vice President Joseph Harden to the Respondent. This request was relevant to all bargaining unit members, and was not limited to Van Egghen. Consequently, resolution of the Van Egghen grievance did not obviate the need for the information.

2. Supervisor John Fuschino's investigative report

We agree with the judge that the Respondent violated Section 8(a)(5) and (1) by its negative response to the Union's October 31 request for any investigative reports made by Supervisor Frank Fuschino. The Fuschino report addressed an incident that involved members of the bargaining unit, and was presumptively relevant. See *Calmat Co.*, 331 NLRB No. 141 (2000). The Respondent was therefore obligated either to produce the report or to provide the Union with some timely legitimate explanation for its refusal. The Respondent did neither. Having requested the Union to justify its October request in November, the Respondent advised the Union the following May that it probably would not allow it to have a copy of the report. We find the Respondent's conduct inconsistent with the obligation to bargain in good faith.

Unlike our dissenting colleague, we do not find it a defense to our finding of a violation that, during the entire period that the Respondent neither responded to the Union's request nor produced the document, both the Union and the Respondent were acting under a misapprehension: both were unaware that the report at issue had already been turned over to the Union as part of a response to an earlier Union request. The relevant point, insofar as our finding of violation is concerned,[3] is that the Union was unaware that it had the report and that the Respondent neither produced the report again nor advised the Union that it had previously provided a copy of the report. Because the Respondent made no timely appropriate response to the Union's request for a presumptively relevant document, we find that the Respondent violated Section 8(a)(5) and (1) of the Act.[4]

[3] We previously noted the remedial issue presented here. See fn. 2, supra.

[4] Member Hurtgen disagrees. The Respondent did not fail to reply to the Union's request. The Respondent told the Union that it was unlikely that it would grant the request. As all parties now agree, the information had already been provided to the Union at the time of the Respondent's reply. Based on the Respondent's reply, it appears that the replying official was unaware of this fact. The majority says that the Union was also unaware that it had the information. In these circumstances, where there is a material mistake of fact, Member Hurtgen

3. Lisa Lynch's report

In the fall of 1995, Plant Manager Jim Thero asked EAP Coordinator Lisa Lynch to conduct a "climate assessment" of Tour III in the maintenance department. The request was made in response to Lynch's report to Thero that employees had complained to her about poor interpersonal relationships and poor communication with George Guerin, a supervisor on that shift. The assessment involved the interviewing of Guerin and the employees under his supervision.

The "climate assessments" that Lynch performs for the Respondent include an evaluation of employee perceptions, a summary of those perceptions, and recommendations from employees to management officials. In interviewing employees, Lynch seeks to obtain an understanding of how the employees feel about working both with one another and with their supervisors. Copies of the assessments are provided to selected members of management

The focus of the assessment is on the "interrelationships with other employees and supervisors." According to Lynch, the climate assessments are not investigative reports because the purpose of an assessment and the subsequent report is not to assess blame. Lynch does, however, assure her interviewees of confidentiality.

The judge concluded that the Respondent was obligated to provide Lynch's report to the Union. He viewed the Respondent's claim regarding Lynch's report as one of confidentiality, but concluded that the claim was "pretextual." He also found that the claim was raised for the first time at hearing, and was therefore untimely. The Respondent excepts, asserting that the Lynch report is not subject to disclosure because: 1) the report was not relevant; 2) the report consisted of summaries of witness statements and was therefore privileged; and 3) the report was "self-evaluative," and therefore privileged on that basis.

We find no merit in the Respondent's arguments. The results of Lynch's "climate assessment" of Tour III under Guerin's supervision are relevant to the Union's investigation of the allegations regarding Guerin's treatment of bargaining unit members. As noted above, the Board uses a broad discovery-like standard to measure relevance. See *United States Testing,* supra. Information related to bargaining-unit members is presumptively relevant. Lynch's report contains data regarding unit members and their employment relationships, both among themselves and with their supervisor, and therefore is presumptively relevant.

Neither can the Respondent find refuge in claims of privilege. The Respondent contends that the material in the Lynch report consists of witness statements or summaries of witness statements and is therefore privileged. Generally, witness statements, at least those obtained through an investigation of alleged employee misconduct, are privileged from pre-arbitration disclosure. See *Anheuser-Busch, Inc.,* 237 NLRB 982 (1978) (general obligation to honor requests for information does not encompass the duty to furnish witness statements themselves). However, Lynch expressly testified that her climate assessment and subsequent report did not constitute an investigation. Neither the purpose nor the result of the report was related to any specifically identified event or circumstance witnessed by the interviewees. The interviewees were, in short, not witnesses and the summaries of Lynch's interviews with them are therefore not witness statements.

Even if the summary contained in Lynch's report were construed as a summary of witness statements, the Union would be entitled to obtain the summary. See *Pennsylvania Power & Light Co.*, 301 NLRB 1104, 1106 (1991). In *Pennsylvania Power & Light Co.*, the employer relied upon information from informants in conducting an investigation of employee drug use, which led to discipline and discharge of those who tested positive for drugs. The union sought a list of the informants who supplied the information that led to the investigation, as well as the statements themselves, which the employer declined to provide. The Board found that the employer was not obligated to identify the informants, but was obligated to provide a summary of the informants' statements. Id.

The Respondent also casts the climate assessment as a "self-evaluative" internal investigation for which it claims privilege. We reject the claim here. The case law indicates instances in which employers have been required under Section 8(a)(5) to provide to unions data "compiled voluntarily and for the employer's own purposes." *Asarco, Inc. v. NLRB*, 805 F.2d 194, 198 (6th Cir. 1986). The Board has addressed an employer's refusal to produce such internal documents by treating the employer's claim as one of confidentiality. The Board balances the union's need for the requested information against any "legitimate and substantial confidentiality interests" of the employer. *Detroit Newspaper Agency*, 317 NLRB 1071, 1074 (1995); see generally *Detroit Edison Co. v. NLRB*, 440 U.S. 301(1979).

There is no basis upon which to exclude the Lynch report from disclosure as a "self-evaluative" internal report. The mere fact that the employer generates an internal document does not per se make the document immune from disclosure. *Detroit Newspaper Agency* at 1073. Moreover, to invoke the balancing test for confidential information, which is the test applicable to such internal

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believes that there was no violation. And, if there was, there is no need for a remedial order.

documents, the employer must first prove its confidentiality claim, *id.* at 1074. This the Respondent has failed to do.

Finally, the judge also rejected the Respondent's possible claim of "confidentiality"[5] because the Respondent did not raise the issue until the hearing or seek to demonstrate that the balance of interests weighed against disclosure. Consequently, the judge found, and we agree, that the Respondent is now estopped from asserting the confidentiality issue.

Assuming arguendo that the Respondent is not estopped from asserting the confidentiality claim, the Respondent's claim must still fail.[6] A party claiming confidentiality must tell the union of its claim and bargain to seek accommodation of its interests. See *Minnesota Mining & Mfg. Co.*, 261 NLRB 27 (1982). Here, the Respondent did not advise the Union that it was declining to produce the Lynch report for reasons of confidentiality. Neither did it make any effort to approach the Union to bargain about limiting the information provided in order to protect the alleged confidentiality.

Accordingly, we adopt the judge's finding that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to provide the Union a copy of the Lynch report.

4. Union's request for reasons why Dorothy Holveg's absence documentation was insufficient under Employment and Labor Manual

We agree with the judge, for the reasons set forth in his decision, that the Respondent violated Section 8(a)(5) and (1) by failing to direct the Union to section 513.364 of the Employment and Labor Manual (ELM) and failing to explain why Dorothy Holveg's absence documentation was insufficient. We differ with our dissenting colleague on this point for the following reasons.

The Union's written request sought to learn all reasons why the documentation that Dorothy Holveg had provided for her absence "[did] not meet the criteria outlined in ELM 513." The Union was concerned that the Respondent had rejected a medical excuse of a type that it previously had considered sufficient and that by demanding more detail than Holveg's physician's statement that she was incapacitated, the Respondent was improperly seeking restricted information about her medical condition.

Merely referring the Union to the entire text of ELM 513 is not, in our view, a good faith response to the Union's request for an explanation why Holveg's documentation was insufficient under ELM 513. At a minimum, the Respondent needed to direct the Union to the particular portion of ELM 513 on which Respondent relied and to identify the alleged deficiencies of Holveg's documentation by reference to that section. The Respondent did not direct the Union to ELM 513.364, which states that "Normally, medical statements such as 'under my care' or 'received treatment' are not acceptable evidence of incapacitation to perform duties." Nor did the Respondent explain why a physician's express statement that an employee is incapacitated is not sufficient evidence of incapacitation. By failing to make an appropriate response to the Union's request for relevant information, the Respondent violated Section 8(a)(5) and (1) of the Act.[7]

5. Additional requests related to Holveg's absence

On October 10, 1996, the Union requested a written explanation as to 1) why Supervisor Ray Reilly contacted Dorothy Holveg's personal physician and 2) why Reilly insisted that Holveg provide him a specific diagnosis and prognosis of her medical condition. The judge concluded that the Respondent violated Section 8(a)(5) and (1) by delaying more than 4 months to respond to the Union's requests. Reilly testified that he responded orally to both requests, providing the information to another steward. However, the judge found that Reilly's response in February 1997, covered only the first inquiry regarding his contact with Holveg's physician and did not address the second request regarding Reilly's demand for a diagnosis and prognosis of Holveg's medical condition. The Respondent excepts, arguing that it had no duty to give the Union a written explanation of its reasons for insisting on a specific diagnosis and prognosis of Holveg's medical condition, since no such document existed.

We agree with the judge that the Respondent's delay of several months in responding to the Union's inquiry violated Section 8(a)(5) and (1). Where relevant information is requested, the employer is required to furnish it in a timely fashion. *Overnite Transportation Co.*, 330 NLRB No. 184 (2000). The Respondent provided no explanation which would justify the 4- or 5-month delay.

[5] The Respondent asserts that, contrary to the judge, it "never made a claim of confidentiality." Rather, it contends, it claimed privilege based on the fact that the Lynch report consisted of witness statements and that it was a "self-evaluative" report. However, the Respondent requests that, if the Board finds the report is relevant and not privileged, the parties be required to engage in "accommodative bargaining" regarding the report. Inasmuch as we reject the Respondent's claim of privilege, we deny the request.

[6] We agree with the judge, for the reasons set forth above, that the Respondent's possible claim of confidentiality is without merit.

[7] Member Hurtgen disagrees with his colleagues' conclusion that the Respondent violated the Act by simply advising the Union to see sec. 513 of the ELM when the Union asked why Dorothy Holveg's absence documentation did not meet the criteria of sec. 513 of the ELM. He would not require the Respondent to point out "chapter and verse" of the ELM. In his view, if the Union needed more information after reading sec. 513, it could have asked the Respondent for a clarification. Member Hurtgen does not view the obligation to supply information as extending to the giving of one's position on the merits.

Likewise, the Respondent's failure to respond at all to the second inquiry as to why a prognosis and diagnosis were demanded violated the Act.[8] The Respondent could not simply remain silent in the face of the Union's request for information. We therefore affirm the judge's finding that the Respondent's failure to respond to the Union's request violated Section 8(a)(5) and (1) of the Act.

6. Union's request for reason why Holveg was scheduled to report for September 28, 1996, and not paid

Holveg was scheduled to work on September 28, 1996. She reported to work, but was not paid for any time, despite the fact that persons reporting for work are generally guaranteed a minimum of two hours work. The Union requested the reason why Holveg was scheduled to report and not paid.

Reilly[9] testified that he orally provided the information requested, advising that necessary medical documentation had not been received prior to the scheduled reporting date, as required. Therefore he did not schedule Holveg to report. O'Neill, on the other hand, testified that she received no response at all from Reilly. The judge credited O'Neill's testimony and concluded that the Union never received a response. The judge further opined that even if Reilly's assertion that he had responded orally were to be credited, the failure to provide a written response, or at least an explanation that such information had been previously given, violated Section 8(a)(5) and (1).

We affirm the judge, but we do not pass on the judge's findings as to whether there would have been a violation if Reilly's testimony had been credited.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, U.S. Postal Service, Albany, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified:

1. Substitute the following for paragraph 2(a).

"(a) Furnish the Union the requested information as set forth in the decision herein."

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

"(b) Within 14 days after service by Region 3, post at all facilities in the Albany and Poughkeepsie, New York area, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 3 after being signed by Respondent's authorized representative, shall be posted immediately upon receipt and maintained by Respondent for 60 consecutive days in conspicuous places including all places where notices are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 29, 1995."

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

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain collectively with the American Postal Workers Union, AFL–CIO, and its aforementioned locals as the exclusive representative of all the employees in a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, composed of maintenance employees, special delivery messengers, motor vehicle employee, and postal clerks, by refusing to provide or delay providing the Union with information for the processing of grievances.

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

WE WILL furnish the Union the following information: (1) Forms 3971 and 3972 for Supervisor Frank Appio; (2) the climate assessment report of Lisa Lynch; (3) an explanation of why Supervisor Ray Reilly insisted that bargaining-unit member Dorothy Holveg provide him a diagnosis and prognosis of her medical condition; and (4) an explanation of why Holveg was scheduled to report for Septem-

[8] The judge found that Reilly did not respond to the second request notwithstanding Reilly's testimony to the contrary. The Respondent has not excepted to the judge's factual finding on that issue.

[9] The judge inadvertently refers to Reilly as "Lilly." Lilly was the Respondent's labor relations representative, while Reilly was the Officer in Charge who supervised Holveg.

ber 28, 1996, and not paid; (5) Forms 1412 for the period from May 28 to August 28, 1995, at the Albany GMF window, requested in regard to the letter of demand issued to bargaining unit employee Szlamowicz; (6) Forms 3320 for Szlamowicz for the period from May 28 to August 28, 1995; (7) Form 25 for the unit employees at the Albany GMF and for Szlamowicz; (8) Forms 1412 for the entire period of the letter of demand issued to Dorothy Holveg; (9) all Plateskill PTF schedules for pay periods 19-2, 20-1, 20-2, and from September 7-17, 1996; and (10) all "notes, directives, files, information, etc." concerning Dorothy Holveg's suspension, including notes and memoranda of Supervisors Picarello and Reilly.

UNITED POSTAL SERVICE

*Robert A. Ellison, Esq*., for the General Counsel.
*Geraldine Rowe* and *Charles J. Zudek, Esqs.,* for the Respondent.

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge. This case was tried before me on June 9 and 10, in Albany, New York.

On various dates in 1995 and 1996 American Postal Workers Union, Albany, New York Local 390, APWU, AFL–CIO (Local 390), and Mid Hudson Area Local, American Postal Workers Union, AFL–CIO (the Mid Hudson) filed charges against the United States Postal Service (Respondent). On February 28, 1997, a third amended consolidated complaint issued alleging violations of Section 8(a)(1) and (5) of the Act. The thrust of the complaint alleged that on various dates Respondent had refused to furnish certain information in response to various written requests from both Local 390 and the Mid Hudson.

Briefs were filed by counsel for the General Counsel and counsel for Respondent. On my consideration of the entire record, the briefs, and my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

Respondent provides postal service for the United States of America and operates various facilities throughout the United States in the performance of that function, including a general mail facility located at New Karner Road in Colonie, New York, and about 16 other facilities in the Albany, New York vicinity (the Albany facilities), general mail facilities located at Poughkeepsie, New York, and Arlington, New York (the Poughkeepsie facility), and a general mail facility located at Plattekill, New York (the Plattekill facility).

The Board has jurisdiction over Respondent and this matter by virtue of Section 1209 of the PRA.

It is admitted that Local 390 is a labor organization within the meaning of Section 2(5) of the Act.

It is admitted that Mid Hudson is a labor organization within the meaning of Section 2(5) of the Act.

It is also admitted that American Postal Workers Union, (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

Since on or about 1971, the Union and Respondent have been parties to successive collective-bargaining agreements for employees in the unit set forth below, the most recent of which is effective by its terms for the period November 21, 1994, through November 20, 1997.

All employees of Respondent employed nationwide in the following classifications of the collective-bargaining agreement referred to above, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

Maintenance employees, special delivery messengers, motor vehicle employees, postal clerks

Joseph Harden, Local 390 vice president, testified that his local represents approximately 1600 employees. He described the information requests in issue that pertain to his local as follows:

The information requested by letter on August 3, 1995, seeks the Forms 2608 and/or 2609 regarding 11 grievances. The documents indicates that while the request was approved on August 4, and that the information was provided except for grievances 7 and 8. The forms are management step 1 and step 2 decision summary forms. The Union never received items 7 and 8. On about January 1996, the Union received notification that the forms had not been compiled on these two grievances. Harden testified that there were step 1 meetings on these two grievances and were submitted to step 2 of the grievance procedure on May 1, 1996, but the grievances were subsequently resolved. Thus, at the time of the information requests, the grievances were pending. Normally, the form 2608 (step 1 summary) is prepared by management right after the step 1 meeting. The Union has routinely received the Forms 2608 and 2609 when requested.

Under the contractual grievance procedure, a grievance must be filed within 14 days from the incident. Management is required to provide its step 1 decision within 5 days. The step 2 form then has to be submitted by the Union within 10 days. After the step 2 answer is provided, the Union has 15 days in which to submit the matter to step 3.

The Board has held that the delayed and untimely submission of information does not fulfill the duty to bargain under the Act or obviate the need for a remedy. *Association of D.C. Liquor Wholesalers,* 300 NLRB 224, 229 (1990). In this regard, the Board has found delays of 5 weeks and 2 months to be excessive. See *Postal Service*, 308 NLRB 547, 550 (1992), *Postal Service,* 310 NLRB 530, 536 (1993). While most of the requested information was provided on a timely basis, I conclude that the delay of 5 months (August to January) in informing the Union that there were apparently no Forms 2608 and 2609 on item 7 and 8 is excessive, and violative of Section 8(a)(1) and (5) of the Act.

On August 28, 1995, the Union requested all maintenance craft assignment orders in accordance with a local memorandum of understanding. The request noted that the Union had not received the forms all year. Harden testified that these forms (Forms 1723) involve craft employees who are given higher-level assignments, and, pursuant to the local memorandum of understanding, the Union is to receive the forms each month. The Union received no response to the request until January or May 1996.

Manager of plant maintenance, Frank Fuschino, testified that there was a turnover in secretarial personnel and the new secretary was not aware that the assignment orders were supposed to be provided to the Union.

Respondent does not deny that it unduly delayed in providing the information. Thus, the information was provided 5 to 9 months after the request. I conclude such delay was violative of Section 8(a)(1) and (5) of the Act. To the extent the information was provided, the remedy would be limited to a cease-and-desist order.

The Union's August 29, 1995 request has six parts, and it was partly approved on August 30. The terms pertain to a letter of demand issued to window clerk Szlamowicz for a cash shortage. The employee had a cash shortage of $203, and management was seeking to have him reimburse the Postal Service for the shortage.

*Item 1* (Forms S71–3294–3368–3369) was provided on October 2, 1995.

*Item 2* (Szlamowicz check lists May 28–August 28) was received on October 2, 1995.

*Item 3* seeks Szliamowicz' form 17's (stamp requisition forms) for May 28–August 28. On October 2, the Union was only provided the forms for the period from July 25 to August 28.

*Item 4* requests the unit 1412s (employee continuous accountability records) from May 28 to August 28 at the General Mail Facility window. The request was denied on the asserted basis that the information was not relevant. The forms show employee balances, transfers of stock and other transactions by employees. According to Harden, the Union was attempted to ascertain where the cash shortage came about. In looking at these forms, the Union may have been able to ascertain if there was a paper error in connection with transfers of money and stamps from one employee to another. With this information the Union might have established a relationship between the transfer of stamps or money between employees and Szlamowicz' cash shortage. The Union never received this information.

*Item 5* seeks Forms 3320 for Szlamowicz during the May 28–August 28 period. Management wrote "What?" next to the request. In May 1996, Harden met with the Employer's labor relations representative, Dan Lilly, who advised that the 3320 was an all-purpose form. Harden learned that the steward had put down the wrong number, and he was actually seeking the Forms 3220 (envelope discount sheet). Apparently, it was never received by the Union.

*Item 6* requests the form 25 (stamp for record employee trust fund and record unit trust) for the unit and Szlamowicz. Management again wrote "What?" next to the request. The information was never provided. As of the time Harden met with Lilly in May 1996, the grievance had been settled based on management's withdrawing of the letter of demand.

According to Lilly, management did not have copies of the Form 17's for May 28–July 24, and the Union never indicated that the forms were still needed after it was informed of this. As to the Forms 1412 (item 4), Lilly determined the information was not relevant and the Union never indicated that this response was unsatisfactory. Lilly similarly stated that he was never informed by the Union that his responses to items 5 and 6 above were unsatisfactory. The grievances was withdrawn by the Union after step 2.

Argument

With regard to items 1, 2, and 3 above, I conclude that the 5-week delay in providing the information was excessive, and in violation of Section 8(a)(1) and (5). In addition, in regard to item 3, it appears that the information for the period from May 28 to July 25 was never provided. To the extent that the information does exist, I recommend Respondent be ordered to provide the information. With regard to item 4 (Forms 1412), the Union has clearly established their relevance, and Respondent's refusal to provide this information was violative of Section 8(a)(1) and 5. I conclude that Respondent should be ordered to make the information available to the Union. With regard to item 5, I conclude it would not have been difficult for Respondent to seek a clarification from the Union upon receipt of the request. In any event, after the Union corrected the request in May, the Union was never thereafter provided the information. Similarly, as to item 6, the information was never provided. In these circumstances, I conclude Respondent violated Section 8(a))(1) and (5) and that Respondent should be ordered to provide items 5 and 6 to the Union.

While the underlying grievance has since been settled, this does not render the issue moot. See *Metlox Mfg. Co.*, 225 NLRB 1317, 1328 (1976), ("[E]ven assuming that all three of the grievants are no longer employed by the Respondent or have lost all interest in their grievances it does not render the grievances moot and make the Union's need for the information academic, for, in processing grievances like the ones involved herein, the Union is 'safeguarding not only the particular employee's interest, but also the interest of the entire bargaining unit by exercising vigilance to make certain that the employer does not initiate or continue a practice of imposing punishment unjustly.'") *T. U. Electric*, 306 NLRB 654 (1992) (leave to compliance stage a determination of effect of withdrawal of grievance on affirmative relief provisions); *Postal Service*, 307 NLRB 429 fn. 2 (1192) (although arbitration concluded, respondent failed to show information only possibly relevant in proceeding to reopen arbitration to which arbitrator had no authority).

On September 11, 1995, the Union requested a "copy of the signed written agreement to extend the Local MOU Maint. Holiday Pecking . . . order beyond the one year test period," and a "copy of any notes made by verbal agreement pertaining to above." On September 14, the first part was approved, and the second part was disapproved on the basis that "personal notes are personal." On January 26, 1996, there was a further response that in fact there was no signed written agreement in existence, and, as to the second part of the request, personal notes are not required to be shared.

According to Harden, the Union was contending that if there was anything negotiated that the notes would "back up" the existence of such an agreement. He further noted that the notes were not personal in that they would have been notes concerning a meeting between the parties and they would have shown whether there was any agreement to extend the 1-year trial period.

Fuschino testified that he informed the Union that there was no written agreement to extend the MOU, and that he normally

would have done so 2 or 3 weeks after receipt of the information request. Fuschino further contends that, since there was no written or verbal agreement, there were no notes pertaining to such an agreement.

Lilly states that since there was no extention of the test period, there were in fact no "notes made by verbal agreement." However, Lilly never advised the Union of this in responding to the information requests.

As to the request for the "signed written agreement," Fuschino testified that he "would have" informed the Union within 2 or 3 weeks of receipt that there was no written agreement. While it appears that there is fact was not such written agreement, it is less than clear that Respondent ever expressly informed the Union of this. In these circumstances, I conclude that Respondent's failure to timely advise the Union of the nonexistence of such an agreement was unlawful, and violative of Section 8(a)(1) and (5). With regard to the request for any notes regarding such an agreement, I further conclude that Respondent's express denial of the request is also violative of Section 8(a)(1) and (5). Respondent appears to take the position that such notes are "personal." However, the Board has observed that such a claim of confidentiality is limited to a few categories, i.e., that which would reveal highly personal information, substantial proprietary information, could reasonably be expected to lead to harassment or retaliation and traditional privilege. *Detroit Newspaper Agency*, 317 NLRB 1071, 1073 (1995). None of those exceptions apply here. Accordingly, I conclude that Respondent refusal of the request for notes was violative of Section 8(a)(1) and (5). In this regard, it also appears that Respondent never even advised the Union that it apparently has no such notes. In these circumstances, I would conclude that Respondent should be ordered to provide the notes to the extent they exist and, if they do not exist, to timely inform the Union of that fact.

On October 11, 1995, the Union requested (1) all maintenance craft route sheets for all occupational groups and tours, (2) copy of all maintenance craft routes by-passed report for AP 13, showing total hours by-passed year to date, and, (3) copy of all maintenance craft routes reported with variance for AP 13, showing total hours year to date with reported variances." The exhibit reflects that the request was approved on October 12, and that items 2 and 3 were sent to the Union on October 27 and that Respondent was still working on item 1. In this regard, a memorandum dated October 17, Lilly instructed Maintenance Manager John Fuschino to have the Union identify which copies it needed, to which Harden replied to Lilly that "We need all copies requested." An October 26, 1995 memorandum from Fuschino to Lilly notes that the information was being forwarded to Lilly, but that item 1 was too numerous to copy, and suggesting that a union steward review the materials in maintenance control. Harden responded to Lilly that the route sheets are filed in folders, and the only time involved in making copies would be removing the routes sheets from folders and walking them down to Lilly's office. A December 14, 1995 notation indicates that Fuschino had informed Harden on October 24 that he would provide the requested information, but that it still had not been received as of December 14, 1995. Accordingly, on December 27, 1995, Harden informed Lilly that it was Harden, not a steward, who was handling the subject (improper staffing/by-passed routes); the routes sheets should be in folders and if there were only one copy in each file, Harden would make the copies himself, the route sheets are relevant to investigate a possible grievance on maintenance craft staffing, there had been a new staffing package completed by management. Harden further advised Lilly that, as to the request for "all maintenance craft routes by-passed report for AP 13, showing total hours by-passed year to date,'' he was seeking a copy of all maintenance craft routes by-passed Reports showing total hours bypassed for the year to date, and, if there was no such report, then the Union was seeking the total hours by-passed for each AP ([i.e., accounting period.)] Harden also noted that the Union was seeking the same information as to all maintenance craft routes reported with variances for the year to date.

Harden testified that there had been a number of grievances regarding maintenance staffing and routes. As to item (1) above, Harden states he never received this information. As to his December 27, 1995 note to Lilly, Harden received no response until May 1996, at which time he received the custodial route sheets. However, he still has not received the route sheets for other maintenance occupational groups, including electronic technicians, maintenance mechanics, stationery engineers, and electricians.

Fuschino acknowledged that only custodial route sheets were provided, and not those of other maintenance craft occupations, although they did exist, since normally improper staffing had been a custodian issue.

While it appears that Respondent timely provided some of the information covered under items 2 and 3 above, not all of it was provided. As to item 1, only the custodial route sheets were provided, and there was a delay of 7 months in providing it. As of this date, the route sheets for the remaining maintenance groups have still not been provided. Accordingly, I conclude that by causing a delay in providing such relevant information, and by failing to provide such other information Respondent violated Section 8(a)(1) and (5) of the Act. I further conclude that Respondent be affirmatively ordered to provide the remaining information.

On October 19, 1995, the Union requested: (1) copy of operating instructions pertaining to new plastic baler machine, including hooks or manuals, and (2) list of custodians trained on the machine.

On January 25, 1996, Harden was informed that his operating instructions were on order from the manufacturer. The information was requested pursuant to a grievance alleging that the custodians assigned to the machine were entitled to a higher pay rate for that work. Thus, the Union was trying to ascertain the extent of expertise or training that was required. Harden ultimately received the operating instructions and list of custodians in May 1996. Lilly asserts that the list of custodians was provided on January 23, 1996.

Harden noted that in general the delay in receiving requested information jeopardizes grievances in that the Union may believe it has a meritorious grievance but does not have the supporting documentation and there may be additional arguments that could otherwise have been advanced in support of the grievance. Also, even when the Union receives the information at a later step of the grievance procedure, Respondent could argue that the Union

is estopped from raising arguments on the basis that they should have been advanced at the initial stages of the grievance.

Fuschino testified that he informed the Union that the manual had been misplaced and that a request had been made to the manufacture for a copy. Although it was received, Fuschino did not know if it was provided to the Union until about 1 week prior to the hearing herein.

Although the information was received, I conclude that the delay was unlawful. Thus, the list of custodians was not provided until 3 months after the request (under Lilly's account) or 7 months (under Harden's account). Although Respondent had to order the instructions from the manufacturer, it appears that the Union was not informed of this fact and 3 months after the request. I conclude such delay in informing the Union violated Section 8(1)(1) and (5) of the Act.

On August 31, 1995, the Union requested copies of all blueprints for the Carrier Annex and Fort Orange Station, including exterior grounds, General Mail Facility and Vehicle Maintenance Facility (GMF and VMF), and the GMF and VMF exterior grounds, in connection with a maintenance staffing grievance.

Harden testified that custodial staffing is based largely on the interior and exterior square footage. The requested information would verify management's computation of area. The Union did not obtain access to the information until May 1996, when Harden met with Lilly and explained further the need for the information. Harden noted that he had previously discussed the need for this information.

The evidence shows that the Union's request for the blueprints as initially effectively denied. However, while Lilly asserts that he received no response from the Union as to relevance, Harden asserted that it had explained the need for this information to Respondent. In this regard, it would appear that the relevance is sufficiently set forth on the information request form. In any event, I conclude that the delay of over 8 months in providing this information is excessive and violative of Section 8(a)(1) and (5).

On August 31, 1995, the Union requested the "contract costs" reports showing total dollars and contractors for all fiscal year 1995 expenditures from the "MARS" reporting system.

Harden testified that this information pertained to the possible contracting out of bargaining unit work. On September 13, 1995, Lilly responded by questioning the relevance of the request. In March 1996, the Union was informed by Respondent that the report did not show total dollar expenditures. Lilly states that he learned on March 8, 1996 that there were no documents responsive to the request, and he passed on that information to the Union on March 11.

Fuschino testified that he submitted to Lilly what he viewed as a contract cost report. He states that Lilly told him that the Union felt what was provided was not responsive and that the Union was asked to clarify the request but never did so.

I conclude that such delay, of over 6 months in responding to the request was excessive, and violative of Section 8(a)(1) and (5).

On October 31, 1995, the Union requested (1) a copy of all investigation reports including recommendations made by Employee Assistance Program (EAP) Coordinator Lisa Lynch, postal inspectors, and Maintenance Manager John Fuschino regarding George Guerin, pertaining to alleged improper behavior (threats and harassment) by Guerin, a supervisor, toward the tour three shop steward and custodians, and (2) a copy of any actions including disciplinary action, taken against Guerin regarding these allegations.

On November 9, 1995, Lilly asked the Union to provide justification for the request.

According to Harden, bargaining unit employees had been disciplined for engaging in similar misconduct and the Union was attempting to establish that the Employer had treated them in a disparate manner. The Union had been advised by a shop steward that he had been threatened by Guerrilla on two occasions. The Union understood that supervisors were under the same standards of conduct as bargaining unit employees. In this regard, the Postal Service's "zero tolerance" policy against violence, and threats of violence, apply to all employees. Pursuant to this policy, which provides that such acts can result in termination of employment, a Crisis Team may be activated by contacting the EAP coordinator. A Postal Service newsletter provides that every incident involving threatened or actual assaults must be reported by supervision to threat assessment team members, who are trained to investigate such incidents "and to recommend appropriate action based on USPS policy."

Harden states that on May 23, 1996, Lilly told Harden that there were no disciplinary actions in Guerin's file pertaining to as alleged July 22, 1995 incident between Guerin and the steward. With regard to the request for investigation reports, Lilly told Harden at that time that it was unlikely they would be provided and were not provided. No other reason was given. Harden and Lilly had previously discussed this issue on several occasions.

Harden noted that among the bargaining unit employees disciplined for having engaged in alleged similar misconduct were Harden, Zebrowski, Slingerlands, Noska, and another whose grievance was headed for arbitration. Harden had been issued a letter of warning in June 1995 for uttering profanities, whereas the Union had been informed by unit employees that Supervisor Guerin had engaged in profanities and verbal threats.

EAP Coordinator Lisa Lynch (whose position now carries the title Workplace Intervention Analyst) testified that her duties including providing summarizations and recommendations to management. In doing so, Lynch undertakes work climate assessments after discussions with the appropriate managers, and then interviews the employees involved. Lynch testified that employees must be free from the fear of retaliation and therefore it is necessary to maintain confidentiality. In this regard, Lynch states that she does not take individual affidavits, and that the summaries that she prepares do not specify by name what employees who are interviewed by her have to say. Whatever notes Lynch has are considered by her to be personal and are not shared with anyone. The reports or summaries Lynch prepares, names the employees who were interviewed and summarizes their perceptions, and makes recommendations to the appropriate plant management official. The reports generally provides employees' perceptions and the basis therefor.

In the fall of 1995, Lynch was asked by the plant manager, Jim Thero, to conduct a climate assessment involving tour 3 in the maintenance department after Lynch reported to Thero that various employees had complained to her about Guerin. Thereupon,

Lynch interviewed employees under Guerin's supervision individually, as well as Guerin. Lynch knew that the Union was aware that she was interviewing these individuals. Lynch states she assured the employees that she would only provide summarizations to management and not identify by name what they said to her. While Lynch suggested the possibility that if her report were made available to the Union it might end up being posted, it is noteworthy that there is no evidence at all that the Union was approached at any time about limiting disclosure upon receipt of the information. Lynch's report was sent to Plant Manager Thero, Maintenance Manager Fuschino, labor relations, the manager of human resources, and the acting plant manager, as they were the persons responsible for taking corrective action.

On cross-examination, Lynch stated that her recommendations include whether discipline is necessary, although management makes the actual determination as to the issuance and type of discipline. Her practice is to advise individuals that what they tell her is considered confidential, unless it involves criminal activity, sexual harassment, *or a threat*. When asked whether she had ever asked individuals if they had any objection to releasing information to third parties, Lynch replied that that is an option that might be presented. In this particular instance, Lynch interviewed six or seven individuals, including Guerin. Lynch told them that she had been asked by Thero to conduct a climate assessment to provide recommendations and that only summarization's would be submitted by her to Respondent. The names of the individuals interviewed, however, are contained in her report. Lynch testified hat the zero tolerance policy against violence or threats of violence applies to all postal employees, supervisory and nonsupervisory, equally. Normally, Lynch would be notified by management as to any action taken against individuals.

Fuschino testified that, based on his investigation, he had made a determination that there was an incident involving Guerin and ascertained what he considered to be the facts. Fuschino complied investigative records within 2 to 4 weeks of the incident. In the investigation, Fuschino interviewed a number of bargaining unit employees, including Mannion, Zebrowski, Chapman, Halpin, Kennedy, as well as Guerin. Fuschino testified that he considered the report to be confidential and that he told those interviewed that the report would only be provided to Thero and the postal inspectors. Fuschino testified that, to the best of his knowledge, the Union never provided justification for the request.

Fuschino testified that he reviewed Lynch's report with Thero to be able to determine if the results of his own investigation were accurate. Fuschino expressed his belief that if such information was released to the Union, the employees who provided information might be ostracized by their coworkers. Fuschino states that in his report he recommended that both Guerin and the employee involved in the incident bother be given EAP counseling. He indicated that he was unaware that any of his investigative reports had been made available to the Union. However, Fuschino acknowledged that he had assumed that the investigative report in question had been provided to the Union because one of the employee statements appended to the report had been posted in the men's locker room.

On August 10, 1995, the Union had requested all witness statements concerning the Guerin incident. Lilly approved the request the same day. On August 17,m Fuschino's investigative memorandum, with attached witness statements, were provided to the Union. The report indicates that Fuschino considered both Guerin's and Zebrowski's behavior "unacceptable" and that "I will seek official reprimand for both employees."

According to Lilly, in addition to advising the Union to provide justification for the request, he search for documents that might be responsive and he discovered there were no "investigation reports" compiled by postal inspectors. Lilly states that he informed the Union on May 23, 1996 that this information request was not being honored by Respondent.

As set forth above, the Union has demonstrated that the requested information concerning Guerin is relevant to establish possible disparate treatment by Respondent against bargaining unit employees. In this regard, Respondent's "zero tolerance policy" applies equally to bargaining unit and supervisory personnel, unit personnel had been disciplined for the same conduct, including the steward, Zebrowski, who had been involved in the same incident with Guerin, and the Union was aware not only of Guerin's conduct, but also that Respondent had conducted an investigation into Guerin's conduct, as well as the identities of thos bargaining unit employees interviewed by management. It is further obvious that the information request provides justification on its face entitling the Union to receipt, i.e., improper behavior [threats and harassment] by Guerin toward the steward and custodians. The Union's suspicions that Guerin was in fact that beneficiary of disparate treatment against Zebrowski appears to have been borne out. Thus, while Fuschino claims that here merely recommended that both Zebrowski and Guerin receive EAP counseling, it appears that Zebrowski was also disciplined, while Guerin was not, even though Fuschino had recommended that both of them receive official reprimands.

Such investigative reports are generally disclosable. See, e.g., *NLRB v. New Jersey Bell Telephone Co.,* 936 F.2d 144 (3d Cir., 1991), enfg. 300 NLRB 42 (1990); *United Technologies Corp.,* 277 NLRB 584, 589 (1985). It is submitted that Lilly's admitted refusal to provide such reports is unlawful, and Respondent should be ordered to provide them.

Respondent first made its claim of confidentially at the trial. IN this regard, as to Fuschino's report, Respondent had previously willingly provided it, or a report Fuschino had prepared on a different incident involving Guerin. The defense of confidentiality had never been raised before this trial. In these circumstances, I agree with the General Counsel's contention, that Respondent is estopped from raising this contention at trial. Similarly, with regard to EAP Coordinator Lynch's report, no claim of confidentiality had been raised prior to the trial. In conclude that this claim is therefore pretextual. In this regard, to the extent Lynch's report was made available to Respondent for further action to be taken by Respondent, such a report should similarly have been available to the Union at its request. Further, Respondent at no time approached the Union about limiting the amount of information provided, such as deleting names of witnesses, etc., or restricting dissemination. If Respondent was genuinely concerned about the possibility of harassment or embarrassment of and by employees, it could have addressed such concerns to the Union. In fact, as noted above, Lynch's report did not even reveal in her report by name the information provided her.

See *Minnesota Mining & Mfg. Co*., 261 NLRB 27, 30 (1982), Board required to balance union's need for information against any "legitimate and substantial" confidentiality interests. The accommodation in each case depends on its particular circumstances; *New Jersey Bell Telephone Co*., 289 NLRB 318, 319–320 (1988), no showing the absentee records contained information of an "intimate and highly personal nature," fact that an employee does not give formal consent, or might even object, to disclosure does not *in itself* constitute grounds for withholding, even where employer shows the records contain highly intimate medical or other information, information disclosable although names of employees deleted on showing that disclosure would invade personal privacy interests and union could function without disclosure of names; *Assn. of D.C. Liquor Wholesalers,* 300 NLRB 224, 229 (1990), general, belated, and eschewed assertions of confidentiality do not justify withholding of information where it fails to come forward with some offer to accommodate its concerns with its bargaining obligations, *Mobil Oil Corp.,* 303 NLRB 780 (1991), employer required to provide summary of informant's report regarding employee use of illegal drugs; *Postal Service*, 305 NLRB 997 (1991), "interest confidentiality does not outweigh union's right to obtain information from Inspection Service Manual about use of force by postal inspection against employees, absent showing disclosure would be used to disrupt investigatory process, also required to disclose Inspection Service findings made with respect to complaints of postal inspector misconduct, although names of complainants may be withheld"; *Postal Service*, 307 NLRB 429, 433–434 (1992), no showing union was prone to breach confidentiality of disciplinary action letter issued against supervisor, employer made no attempt to mitigate any real or imagined business concerns by proposing to provide information subject to reasonable restrictions, thereby failing to meet obligation to bargain for an accommodation between parties' rights and interests; employer failed to even inform union of claim of confidentiality; *Holiday Inn on the Bay,* 317 NLRB 479, 481–483 (1995), no recognized established public policy against disclosure of information concerning discipline imposed for comparable infractions, as "the information in question concerns willful activity of a kind that the Respondent had itself made the public basis for discipline and discharges of employees" no showing employees or supervisors expect disciplinary records to remain confidential nor that employer has made commitment to them to maintain confidentiality of disciplinary records; *Detroit Newspaper Agency* 317 NLRB 1071, 1072–1074 (1995), blanket claims of confidentiality will not be upheld, confidentiality claims must be timely raised so that parties can attempt to seek accommodation; untimely where claim raised for first time at or shortly prior to hearing, confidential information limited to highly personal information such as medical or psychological information, substantial proprietary information, such as trade secrets, that which could be expected to lead to harassment or retaliation, and that which is traditionally privileged, such as memoranda prepared for litigation; employer must first prove confidentiality claim before balancing union's need for information against legitimate and substantial confidentiality interests.

On November 30, 1995, the Union requested the work hours—EAR (employee activity reports) Reports for all customer service transitional employees between November 11 and 24, 1995, regarding alleged use of transitional employees to the detriment of career employees. On December 4, 1995, Lilly replied that he needed the names and social security numbers of the individuals for whom the Union was seeking the information.

Harden testified that under the collective-bargaining agreement there are certain conditions required before transitional employees can work overtime hours. There were only five to seven transitional customer service employees. The Union finally received the information on May 17, 1996.

I conclude that Respondent's 6-month delay in providing the information was unlawful, and violative of Section 8(a)(1) and (5).

On December 14, 1995, the Union requested a copy of the snow removal contract for the Fort Orange station 1995–1995, including the bid solicitation and list of unsuccessful bidders regarding an issue of subcontracting.

Harden testified that bargain unit custodians normally perform snow removal of sidewalks, and a contractor was performing this work. The Union wanted to ascertain exactly what work had been contracted out. The Union received the snow removal contract on March 11, 1996, and at that time the Union was informed that the other two items did not exist.

Ultimately, the parties agreed that unit employees would remove snow from sidewalks.

According to Lilly, the contract and other materials, if they had existed, were located at the Northwest Area Office in Windsor, Connecticut, and it thus took some time to obtain the document. Lilly did not indicate when he requested the materials from Windsor and when he received them. While the information request attached to Lilly's declaration provides that the request had been approved on December 15, 1995, it is noteworthy that the copies submitted by the General Counsel did not contain such notation.

I conclude that the 3-month delay in providing the information was unlawful and in violation of Section 8(a)(1) and (5). In this regard, it is inherently unlikely that Respondent had timely informed the Union that the request had been approved and that it would be seeking to obtain the document. If it had, there would have been no apparent reason for the Union to file an unfair labor practice charge on this subject.

On June 3, 1996, the Union requested copies or access to Tour II Maintenance Supervisor Frank Appio's Forms 3971 and 3972 for the preceding 12 months. The request alleges that the Union had reason to believe supervisors were being treated differently than craft employees concerning attendance (unscheduled absences) regarding a grievance over a warning issued to employee Raymond Van Egghen.

On June 10, Labor Relations Specialist Lisa Hambalek replied that supervisors are not similarly situated to craft employees and that the Union need to identify specific reasons to establish the relevance of the information. On July 1, Shop Steward John Zebrowski responded that it was "a known fact Mr. Appio has missed a lot of work within the last 12 months. Everyone under his supervision knows that as well as everyone in the maintenance craft. In order to say whether or not their [sic] unscheduled absences or scheduled absences, we first have to review his 3971's and 3972's. As for the concerns about the privacy of this information. . . . the only information left should be the dates of

the absences, the number of hours used, and whether or not there [sic] scheduled or unscheduled absences. . . . Our intent is to establish disparate treatment, and the information requested is relevant because Mr. Appio had missed a lot of time, and that is not mere suspicion as you state in your memorandum but fact. . . . I would note that Mr. Appio is on tour 3, and so is the grievant...who received the L.O.W. from Mr. Appio."

On September 18, Lilly informed the Union that management would disclose the 397s during the 6 months preceding Van Egghen's warning. On October 4, Harden responded that the Union was not limited to the same timeframe as Van Egghen's recorded unscheduled absences to prove disparate treatment. In this regard, the Union noted that in other instances management has issued warnings on the basis of unscheduled absences over a 12-month period.

Harden testified that the 397's are leave slips and the 392's is a leave analysis form used in tracking attendance over a 12-month period. The Union had reason to believe Supervisor Appio's attendance record was problem of an extended period of time, based on information provided by employees working under his supervision. Supervisors and bargaining unit personnel are subject to the same attendance policies, including scheduled and unscheduled absences. Harden also noted that the Union rejected the Employer's offer to provide the information for a 6-month period since the Union had information to believe Appio's attendance had been deficient for at least 12 months.

The Union has never received any of the information requested, although the underlying grievance was ultimately settled prior to arbitration, on February 13, 1997. Harden testified that the Union could not verify rumors that Appio's absences were unscheduled without access to the requested forms.

Lilly states that he informed Harden on May 23, 1996, that this information would not be provided to the Union.

The Board has consistently found an obligation on the part of the Postal Service to provide information pertaining to disparate treatment between bargaining unit employees and nonunit and/or supervisory employees where, as here, they are subject to the same standards of behavior and there is a factual basis beyond mere suspicions for the request. Thus, the steward advised Respondent that it was a known fact that Appio had been frequently absent during the 12 months covered and the employees under Appio's supervision had informed the Union that Appio had an attendance problem over an extended period of time. That was based upon their observations. The only question that the forms would have addressed is whether or not those absences had been unscheduled. *Postal Service,* 289 NLRB 942 (1988), information regarding disciplining of supervisors arising out of the investigation into gambling activity; *Postal Service,* 301 NLRB 709 (1991), information relating to allegation, investigation and disposition of supervisors' alleged falsification of documents and complete disciplinary files where guilty established; *Postal Service,* 307 NLRB 429, 432–434 (1992), disciplinary action letter issued to supervisor ordered disclosed where bargaining unit employee received higher level of discipline for similar violation of policy against violence or threats thereof; *Postal Service,* 310 NLRB 391 (1993), supervisors' timecards ordered disclosed where they had been personally observed by steward reporting late for work and both unit employees and supervisors are subject to Respondent's attendance and tardiness rules; Cf., *Postal Service* 310 NLRB 530, 536–537 (1993), Respondent not required to provide information pertaining to supervisor's falsification of documents and return to work, where there was no evidence rule applied equally to supervisors and mere assertion that "everybody knew" supervisor had falsified timecard was mere suspicion; *Postal Service*, 310 NLRB 702 (1993), 702–703 vague, general reports, not linked to specific time period and dependent on unnamed witnesses' subjective judgments about what might "border" on leave abuse insufficient to establish relevance. In the present case, the information request was limited to a single supervisor for a specific period based upon factual information within the Union's possession. I conclude that the failure to supply the requested information to the Union was violative of Section 8(a)(1) and (5).

The fact that the underlying grievance has since been settled does not, for the reasons cited along by itself render the Union's entitlement to the information moot. Accordingly, I conclude that Respondent be ordered to provide these items.

Kathleen O'Neill, Mid Hudson Local steward, recording secretary, and executive board member, testified that her duties encompassed the Poughkeepsie main facility, which encompasses an Arlington branch, and the Plattekill post office.

On December 11, 1995, by letter, the Union requested all of the 3972's for calendar year 1995 in the "Arlington Branch, Poke [sic] P.O. A bargaining unit employee at the Arlington branch, Terry O'Neill, had been issued a letter of warnings for attendance problems. The form 3972 is a chart of employee attendance over a period of time, normally covering one year, on 1 of 2 sheets of paper. O'Neill attendance record with that of the other employees in the office to determine whether she had been discriminated against or treated disparately. There were approximately seven clerical employees, several carriers, and a couple of maintenance employees working at Arlington.

The information had not been received as of the step 1 and 2 grievance meetings, and therefore O'Neill did not have the benefit of this information and could not conduct an investigation for purposes of these meetings or in preparing a submission to the step 3 union representatives. The Union did not receive the information until late February, at which time the grievance was already at step 3. I this regard, Poughkeepsie Postmaster Thomas Nucifore informed O'Neill on January 3, 1996 that the request involved 372 pages of duplication and billed the Union $105 in costs. On January 19, O'Neill advised Nucifore in writing that on January 5 he had agreed to provide the information at no charge since the information was well below the 100-page limitation, having been limited to the Arlington facility. The letter further stated that the information had not yet been received.

I conclude that without the information, the Union was unable to properly present much of a case at steps 1 and 2, even though O'Neill was aware that other employees had absences, by not having the requested information she was unable to document her contention.

In this regard, O'Neill testified that without such requested information, the Union was prevented from being able to show that Respondent's treatment of a grievant is different fro that of other employees. With the information, a grievance settlement at step 1 and 2 would be much more likely. In addition, by the time a

grievance is appealed to step 3 it is difficult to get information "out of the system".

Poughkeepsie postmaster Thomas Nucifore testified that the request encompassed 372 pages and that was the reason for assessing costs. He added that he was told in late January or mid-February 1996, presumably by his superiors, to provide the information without charge. Nucifore construed the request as including employees at the Poughkeepsie post office, although he acknowledged that the information request properly identified the Arlington branch. The request forms encompassed 2 to 4 pages per employee covered.

On rebuttal, O'Neill testified that 3972,s provided totaled about 20 to 25 pages and could not have taken long to assemble and copy. In this regard, O'Neill explained by phone to Nucifore that she only wanted the forms for the Arlington facility. This was conveyed to Nucifore shortly after the information request.

The credible facts establish that the information request was clearly on its face limited to the Arlington facility and thus only covered 20–25 pages. Even after O'Neill repeated to Nucifore on January 5 that all she was seeking was the Arlington forms, they were not provided until late February, over 2 months after the request, at which time the grievance was already at step 3. Accordingly, Respondent's unjustified delay in providing the information was unlawful.

On December 11, 1995, by letter, the Union requested the quarterly listings from the Postal Data Center for the Arlington Branch and Poughkeepsie Main post office for the third and fourth 1995 calendar year quarters. On January 2, 1996, the request was denied on the basis of relevance. This also pertained to the warning issued on Terri O'Neill. The requested information lists the amount of leave each employee uses per quarter, which would have enabled the Union to pinpoint the employees who had a lot of leave usage so that their printouts could be pulled out and compared with the grievant's. Steward O'Neill testified tat it is much easier to use the quarterly listing to pinpoint those employees with substantial leave usage instead of poring through hundreds of sheets of paper.

On February 22, 1996, O'Neill was informed tat the request was being forwarded to the timekeeper for processing. However, O'Neill was subsequently told that Respondent did not have the records. The information was never provided. The letter of warning was ultimately purged from the grievant's file after the grievant was submitted to step 3.

According to Nucifore, he denied the request because there was no such report available from the Postal Data Center. He claims that his response, "no relevance" was just his way of saying he didn't have it.

I conclude it is clear that the information, if it had existed or does exist, is relevant, as established by O'Neill. Contrary to Nucifore testimony, I conclude that the request was denied by hum on the basis of relevance. I conclude such denial was therefore unlawful, and Respondent has further violated Section 8(a)(1) and (5) by belatedly informing the Union that it did not have the records.

On December 11, 1995, by letter, the Union requested the "hours type inquiry report" from September to November 30, 1995 for all Arlington clerks. On January 2, 1996, the request was denied with the notation, "request needs to be specific to type of leave".

O'Neill testified that this information would provide a printout listing employees' time worked, leave time, leave without pay time, and sick leave, and would assist the Union in pinpointing those employees in the office with similar or worse attendance records. However, on February 22, 1996, after repeated requests, the information was provided. By that time, the grievance had been appealed to step 3 over a month earlier.

Nucifore testified that he was informed by the timekeeper that the request had to be by specific code. He believed that after informing O'Neill of threat, she resubmitted the request and that Nucifore gave it to the timekeeper. He assumed that the information was provided because he didn't receive any further complaints from O'Neill.

The information ultimately received by O'Neill totaled about 17 pages. O'Neill further testified that Nucifore did not provide the information to the timekeeper until the end of January, byt that Nucifore refused to allow the timekeeper to process the information request on the clock and that Nucifore was not allotting any overtime for the timekeeper.

O'Neill testified as had Harden, as to the strict time limitations under the contractual grievance procedure. The Union has 14 days to file at step 1, and Respondent must answer within 5 days, although Respondent often denies the grievance the same time it is filed. The Union has 10 days to appeal to step 2. The step 2 meeting is supposed to be held within 7 days.

I conclude that the original denial of the information request was unlawful and in violations of Section 8(a)(1) and (5) in this regard, Nucifore, in denying the request, wrote that the request had to be by type of leave, made it apparent that the request was based on any type of leave, since the Union's intention was in pinpointing other employees with worse attendance records, irrespective of the type of leave taken. I further conclude that the delay of more than 2 months I ultimately providing the information was unlawful and in violation of Section 8(a)(1) and (5). In this regard, it appears that Nucifore unduly impeded the Union's receipt of the information by his delay in submitting authorization to the timekeeper and restricting the timekeeper from working overtime to access the 17 pages of printouts.

On December 11, 1995, by letter, the Union requested a copy of all the Forms 3971 for Terri O'Neill for all the dates cited in a letter of warning that issued on December 1, 1995.

Shop Steward O'Neill testified that that forms are used by employees requesting leave and the type of leave requested, which is then approved or disapproved by the supervisor.

The information was not provided until the grievance was at step 3.

I conclude such delay in providing the information was in violation of Section 8(a)(1) and (5).

On September 18, 1996, by letter the Union requested copies of the Forms 1412 and IRT tapes for the entire audit period of a letter of demand issued n employee Dorothy Holveg on August 31, 1996.

O'Neill testified that the 1412; daily financial form, was only provided for one day, August 28, 1996; and that the IRT tapes were apparently not maintained for Plattekill. In this regard, Holveg was issued the letter of demand for having a cash short-

age and the 1412's would show what occurred on a daily basis. O'Neill had requested the 1412's for not only one day, but for the entire audit periods. Normally, a series of cash shortages during an audit period take place when a letter of demand issues. By examining the 1412's the Union can ascertain if there may have been a mathematical error. The standard audit period is 3 or 4 months. I the particular letter of demand issued on Holveg, there was a 1-month period, and O'Neill wanted the information during that entire period to see if there was a mathematical error or some other problems during the letter of demand period. In other words, the opening and closing balances of not only the day of the alleged shortage, but other days would be pertinent to determine if there was a consistency or inconsistency.

The single 1412 that was provided the Union, was not provided until January 30, 1997, which was well after the letter of demand grievance had been submitted to step 3. The letter of demand grievances is still in step 3 or may be scheduled for arbitration.

Reilly testified that the audit period for the letter of demand only covered 1 day.

Argument

I conclude, from the information request and O'Neill's testimony that the Union was requesting, and was entitled to, the Forms 1412's for the entire audit period, and Respondent failure to provide them is unlawful and in violation of Section 8(a)(1) and (5). Reilly's assertion that the audit period for the letter of demand was limited to one day is not convincing. Thus, even if the letter of demand itself was based upon an shortage the occurred on only one date; August 2; the Forms 1412 for preceding and subsequent dates might establish how the alleged shortage on that date occurred. In addition, on September 4, 1996, then—OIC Picarello referred to several alleged discrepancies; August 19, 26, 28, and 31. I conclude that the 1412's for those dates, as well as the other dates covered by the information request, could shed light on the letter of demand. In these circumstances, apart from the delay in providing the single Form 1412 and delay in informing the Union that there were apparently no IRT tapes. In conclude that the failure to provide the additional Forms 1412 is unlawful and in violative of Section 8(a)(1) and (5), and that Respondent should be ordered to provide them to the Union. In this regard, it is noted that the underlying grievance is still pending at step or arbitration.

On September 20, 1996, by letter, the Union requested (1) All Plattekill clerks' timecards for pay periods 19–2 and 20–1, 1996, and, (2) a copy of all part-time flexible schedules in Platteskill for pay periods 19–2, 20–1, and 20–2, for the period of September 7–17, 1996.

O'Neill testified that grievant Holveg had been ordered to report to work and was sent home. Moreover, there was an issue as to whether Holveg had been charged with the correct number of leave hours taken. In addition, the Union believed that Respondent had departed from past practice by only placing the start times, and not the ending times, o the PTF schedules.

Only after the grievances had gone to step 3 did the Union receive a response that was in late January 1997. However, the schedules for the first and last weeks of September were not included in the materials provided. Without the schedules for those weeks, O'Neill testified she was unable to compare them with Holveg's time cards for those two weeks, which were the periods covered by the grievance. The time cards requested were received in late January.

As noted, however, the time cards themselves, without the schedules, did not enable the Union to verify the leave charged to Holveg.

Argument

I conclude the unlawful delay of more than 4 months in providing the information and Respondent's failure to provide all of the PTF schedules violated Section 8(a)(1) and (5). I further conclude that Respondent should be ordered to provide the remaining schedules.

On September 20, 1996, by letter, the Union requested "All reason(s) why, in writing, Clerk Dorothy Holveg's documentation provided for absence of September 9–September 23, does not meet the criteria outlined in ELM 513 as alleged by LICD. Picarello/manager regarding AWOL issued September 18, 1996 via mail.

O'Neill testified that the information was needed because Holveg had provided doctor's notes which normally were considered sufficient by Respondent when employees are responding to requests for medical documentation. The doctor's notes that Holveg provided explained that she was incapacitated for the period in question. OIC Reilly wanted Holveg to provide a statement as to the nature of Holveg's medical condition, which according to the Union, is considered to be restricted medical information. The only response the Union received was referring back to ELM Employee and Labor Relations Manual 513, which is the portion that refers to medical documentation. In this regard, O'Neill testified that other employees have provided Respondent with the exact doctor's note than Holveg had provided and this was the first time in O'Neill's experience such a note was deemed unacceptable. Apparently in late January 1997, Respondent provided the Union with a copy of section 513.

I concluded that part from the delay of over 4 months in responding to the information request. The explanation given by Respondent was inadequate. Thus, in responding to a request for the reasons the medical documentation did not meet the EM March 13 criteria, Respondent merely provided a copy of section March 13. I conclude that Respondent's failure to specifically direct the Union's attention to section 513.364 and to give some explanation as to what documentation it was seeking was unlawful, and violative of Section 8(a)(1) and (5).

I further conclude, Respondent should be ordered to give the Union such an explanation.

On October 10, 1996, by letter, the Union requested copies of (1) the PTF schedule for pay periods 20–2 and 21–1, (2) Holveg's timecard for period 21-1, and, (3) reason why Holveg was scheduled to report for September 28, 1996 and not paid for reporting.

O'Neill testified that the information requested would have enabled the Union to ascertain if Holveg was scheduled to report on the date in question, if in fact she reported, if she was not paid, and, if not, the reasons therefor. The Union received no response until long after the grievance had been appealed to step 3.

As to item (1), although O'Neill testified that she did not receive the schedules for all the periods, it appears at this time that the schedules for the two requested periods may have been provided in late January. Although item (2) was received in late January, the Union never received any reponse to item (3).

Lilly testified that in late October he faxed the schedules and time cards. He further claims that O'Neill had been verbally provided item (3). Thus, he contended that he advised that the medical documentation had not been received prior to the scheduled reporting date, as required, and therefore Holveg was not scheduled to report.

As to items (1) and (2), the information was not provided until more than 3 months after it was requested, long after the grievance had been appealed to step 3. I conclude that this delay was unlawful, and violative of Section 8(a)(1) and (5. As to item (3), I conclude that a response was never provided to the Union. In addition, even if Reilly's assertion that he verbally provided a response to the Union is credited. I conclude that the failure to a written response, or at least an explanation that such information had been previously been verbally given, was unlawful, and violative of Section 8(a)(1) and (5). The Union's entitlement to this information is clear. Thus, in *Parsons Electric Co*., 304 NLRB 890 (1991), the employer therein unlawfully failed to comply with a request for reasons why an applicant referred by the union under an exclusive hiring hall was rejected by the employer. The Board majority noted that, as in the present case, the request was limited to specific reasons regarding a single individual in the context of a specific grievance.

On October 10, 1996, by letter the Union requested a copy of (1) reason why OIC Reilly contacted Holveg's personal physician on about pay period 20–2, and (2) the reason why Reilly was insisting that Holveg provide a diagnosis and prognosis of her medical condition. The information request cited a Privacy Act violation.

O'Neill testified that another steward received a response from Respondent in February or March 1997, long after the grievance was submitted to step 3 in November, 1996.

Reilly testified that he verbally responded to the requests and informed the Union that had called the physician only to find out if there were evening hours and, as to (2) the medical notations merely indicated Holveg was incapacitated and gave no other information. Since the Plattekill office had only two clerks, Reilly stated that he needed to know when to expect Holveg to be able to return to work.

I conclude that the credible evidence shows that Respondent delayed more than 4 months in responding to the request, and thus violated Section 8(a)(1) and (5). In this regard, the February 5, 1997 response provided only covered item (1) above. As noted, the Union was entitled to a response to the request for "reasons". *Parsons Electric,* supra.

On October 10, 1996, by letter the Union requested a copy of PTF schedules of all Plattekill clerks for July, August, September, and October 1996.

Respondent responded in late January 1997. However, according to O'Neill, the schedules for the first and last weeks of September were missing. (The attachments to the request reflect that the schedules for the first weeks of September were not provided. O'Neill testified that the information was needed in connection with a past practice grievance in that Respondent had threatened to change the practice of posting starting and finishing times on the schedules by posting only the starting times, which in fact the schedules ultimately provided indicate took place.

Reilly testified that whatever schedules he had were faxed in October and provided again in late January.

I conclude, Respondent's delay in supplying the information for over 3 months was unlawful and violative of Section 8(a)(1) and (5). In addition, the continued failure to provide the schedules for parts of September violated Section 8(a)(1) and (5). I therefore conclude, Respondent should be ordered to provide the remaining schedules. If Respondent does not have the, Respondent should inform the Union of that fact and the reasons therefore.

On October 10, 1996, by letter, the Union requested all "notes, directives, files, information, etc." In reference to a 7-day suspension issued to Holveg.

O'Neill testified that the information request was standard in cases of discipline. In this instance, Holveg had been disciplined regarding attendance and sick leave usage. O'Neill was aware from discussions with management that a supervisor had given a written report that Holveg had been seen at a diner with O'Neill on one occasion when Holveg had called in sick. Initially, the request was denied. However, the Union did receive notes from the Milton post master, but was not provided the notes OIC Picarello which were part of the disciplinary action. Thus, the Union did not receive most of the information and files underlying the discipline. In this regard, in disciplinary grievances the Employer bears the burden of proof and the Union routinely requests, and receives, the statements, notes, files, etc. Here, OIC Reilly told O'Neill on December 5, 1996 that he had the information but was going to provide it until he was instructed to do so.

Reilly testified that in October he attempted to fax two buck slips from Milton Postmaster Starkey, but that Reilly was not providing any of his notes, since they were "personal" and "would necessarily be the outcome of the final thought process."

O'Neill testified that in October 1996 the Employer had attempted to fax some information to the Union but they were illegible. O'Neill advised Reilly of this at the time.

I conclude the Union's request for all "notes, directives, files, information, etc." Pertaining to the disciplinary suspension was a proper one, and Respondent's denial of the request was unlawful, and violative of Section 8(a)(1) and (5). In this regard, the Board has generally ordered the disclosure of internal investigation reports. *NLRB v. New Jersey Bell Telephone Co*., 936 F.2d 144 (3d Cir. 1991), enfg. 300 NLRB 42 (1990). Also, in *Jewish Federation Council,* 306 NLRB 507 (1991), the employer was ordered to provide "copies of all documents and statement in its possession which support the Employer's [discipline], copies of all disciplinary memos/letters. . . ." Accordingly absent a showing that such information does not exist, I conclude Respondent is ordered to provide all the requested information, including, but not limited to, Picarello's and Reilly's notes and memoranda. As set forth above, none of the narrow circumstances in which the Board has upheld a claim that the notes are "personal" or "confidential" apply here. I conclude that by its failure to supply such information, Respondent violated Section 8(a)(1) and (5).

Reilly testified that on September 30 he informed O'Neill that she would be able to review the documents requested on September 18 and 20, but that the request for copies was denied since the Plattekill facility did not have a photocopy machine. Thereafter, it was agreed that the materials would be faxed to the Union. Reilly acknowledged that he was aware that there were difficulties with the fax machine, but claims he was never told that the materials were unreadable. In any event, in January 1997 Reilly compiled all information conversed by the charge, consisting of 22 separate requests, and brought it to Respondent's labor relations office. Reilly acknowledged that unreplaced materials, such as time cards, could be safely sent to labor relations by registered mail. The labor relations office was located 50 feed from the Mid Hudson Local's offices.

Acting labor relations specialist Richard DeGiorgio testified that on December 19, 1996 he received from O'Neill a summary of the information requests at Plattekill and the difficulty O'Neill was encountering in obtaining it. On receipt, DiGiorgio stated that he advised the Union that he would make sure the information would be made available if the Union was entitled to it.

On rebuttal, O'Neill testified that she was present in the Union office the first time the materials were faxed, October 15, and she informed Reilly that the materials coming over were not readable. Reilly told O'Neill that he would work o the fax machine and try again. When the materials were faxed again on October 21, O'Neill was out of the office at the time. The following day, October 22, she called Reilly and informed him. Thereafter, when she had arranged to view the information at the Plattekill facility. Reilly told O'Neill that he didn't have time f or her to let her review the materials.

O'Neill further testified that she had given a copy of the Plattekill information requests to DiGiorgio and on December 23, 1996, and he told her he would not provide the information to her. It was that refusal that led to the filing of separate grievances.

## Argument

I conclude that while Respondent should not be found to have violated the Act merely because it had no copying responsibility for the delays in excess of 4 months in providing the information. Thus, Respondent acknowledges that it could have securely sent the materials by registered mail to the labor relations office ofr copying, byt chose not to do so. In addition, even after DiGiorgio ws provided in December with a summary of the information request, it was not provided until well over a month thereafter. In these circumstances, I conclude that the delay in providing the information was unlawful, and violative of Section 8(a)(1) and (5).

## CONCLUSIONS OF LAW

1. The Board had jurisdiction over Respondent pursuant to Section 1209 of the Postal Reform Act.

2. The American Postal Workers Union, AFL–CIO (APWU) and its Local 390 and Mid-Hudson Local is a Labor organization within the meaning of Section 2(a) of the Act.

3. At all times material herein the APWU, and Local 390 and Mid-Hudson have been the exclusive representative within the meaning of Section 9(b) of the Act for the following employees:

> maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks

4. By delaying the furnishing of certain information, set forth in the decision herein, and by refusing to furnish other information, requested by the Union, Respondent has violated Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

## REMEDY

It having been found that Respondent has violated Section 8(a)(1) and (5) of the Act by delaying the furnishing of certain information requested, as set forth in this decision, I shall recommend Respondent cease desist therefrom, and take certain affirmative action necessary to effectuate the policies of the Act.

With respect to such information which was ultimately, but unlawfully furnished to the Union in an untimely manner is recommended, as part of the order that Respondent be precluded in the grievance-arbitration procedure from objecting to the Union's introduction of evidence and resulting arguments obtained on an untimely basis from Respondent.

With respect to such information not furnished to the Union, it is recommended that Respondent furnish such information upon request by the Union, should have been raised by the Union at preceding steps. Similarly, to the extent such information has been withheld from the Union, it is recommended that Respondent should be affirmatively precluded from relying on the withheld information in support of its grievance-arbitration positions.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

## ORDER

The Respondent, United States Postal Service, Albany, New York, and its Local 390 and its Mid Hudson Local, it officers, agents, successors, and assigns, shall

1.Cease and desist from

(a) Refusing to bargain collectively with the American Postal Workers Union, AFL–CIO and its aforementioned locals as the exclusive representative of all the employees in a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, composed of maintenance employees, special delivery, messengers, motor vehicle employees, and postal clerks, for refusing to provide or delay providing the Union with information for the processing of grievances.

(b) In any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

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

(a) On request, furnish the Union the requested information set forth in this decision herein.

(b) Post at all facilities in the Albany and Poughkeepsie, New York area, copies of the attached notice marked "Appendix B"[2]

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Copies of the notice, on forms provided by the Regional Director for Region 3 after being signed by Respondent's authorized representative, shall be posted immediately upon receipt and maintained by Respondent for 60 consecutive days in conspicuous places including all places where notices are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 3 in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."