

UNITED STATES POSTAL SERVICE

Washington, DC 20260

DATE: February 25, 1994

OUR REF: LR400:TJValenti:cmv:20260-4125

SUBJECT: Union Requests for Supervisory Records

TO: Human Resources Managers (All Areas)
Human Resources Managers (All Districts)

On August 4, 1993, you were sent a memorandum which included an attachment that addressed the issue of union requests for supervisory records. On page 4 of the attachment, there was a recommendation to have the union sign a confidentiality agreement.

This memo is to clarify that the National Labor Relations Board (NLRB) settlement agreement does not require the union to sign a confidentiality agreement in order to obtain supervisory records that they are entitled to under the necessary and relevant criteria.

The utilization of supervisory records has been discussed with the American Postal Workers Union. I have been assured that the union will instruct their locals that supervisory records obtained pursuant to the NLRB settlement agreement must be used only for the purpose for which these records were obtained.

If there are any questions regarding the foregoing, please contact Thomas J. Valenti of my staff at (202) 268-3831.



William J. Downes
Manager
Contract Administration (APWU/NPMHU)
Labor Relations

▲
FEB 1994
Received
Office of The
Executive
Vice President

On August 3, 1993, the APWU and the USPS entered into a settlement agreement with the National Labor Relations Board providing for the release of supervisory records, if requested by union representatives. Recent instructions have been issued by USPS legal counsel governing conditions under which such information should be provided to the union. Following is the union's legal interpretation as to a union representatives entitlement to supervisory records.

Such request for information must meet a standard of "relevance" to the purpose for which it is intended to be used. Unlike requests for information concerning bargaining unit employees, which are presumed to be relevant, information about supervisors requires a demonstration of relevance. Such relevance test includes the following:

1. The union must be willing to demonstrate that there is a "reasonable" basis for requesting the information. The factors involved will vary with each such request but may include:

a. A statement by the union explaining the postal policy or rule that is being applied and the information requested is to determine if its application is uniformly applied to supervisors and bargaining unit employees.

b. Did the suspected supervisory violation involve the same or similar policy.

c. Was the suspected supervisory violation during the same general time frame.

d. The source of the unions suspicion that a supervisor was engaged in similar conduct. The union must have a "factual basis" for believing that a supervisor committed a similar infraction -- "mere suspicion" that the requested records will reveal evidence of misconduct will not suffice. The factual basis need not be the first-hand knowledge of the requesting union official. Reports from employees or similar objective information is a sufficient foundation.

After reviewing requested supervisory records, the union is entitled to request and receive other internal postal documents relating to action taken against supervisors. e.g., memorandums, letters or documents (including Inspection Service Memorandum if they exist) relating to the decision for the action taken against the supervisor. You are not limited to copies of disciplinary action taken if other documents exist containing the rationalization for the final action.

You are not required to sign a confidentiality agreement certifying that the use of the requested documents will be limited for the purpose described in the original request. The settlement agreement between the parties does not require the union to sign a "confidentiality agreement" to gain access to the requested information.

Supervisory records received should not be used for any other purpose including publicizing the conduct or action taken against a supervisor. These limitations for use of the information include local or state newsletters, papers and/or bulletins.

When it is intended to use supervisory violations of rules or policy to show either disparate treatment or inconsistencies in discipline for the same or similar infractions, the issue/s should be raised at the earlier steps of the grievance procedure. Article 16 is the appropriate contractual provision to allege violation. Allegations of Article 2 violations should be limited to issues of discrimination as provided in the specific language of the contract.

It is anticipated that, at arbitration, the Postal Service will resist the introduction of evidence about supervisors, contending that, by definition, they are not similarly situated to bargaining unit employees. The attached cases support the unions position that such information is admissible. U.S. Postal Service, 289 NLRB No. 123 (1986), enf'd 888 F.2d 1568 (11th Cir. 1989) and arbitration decision by Arb Patrick Hardin (S4M-3E-D 42104, et al., Oct 24, 1990.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 22

UNITED STATES POSTAL SERVICE

and

Cases 6-CA-24756(P) and
6-CA-24792(P)

AMERICAN POSTAL WORKERS UNION,
PITTSBURGH METRO AREA POSTAL WORKERS
UNION, AFL-CIO

UNITED STATES POSTAL SERVICE

and

Case 6-CA-24800(P)

AMERICAN POSTAL WORKERS UNION,
LOCAL 2013, AFL-CIO

UNITED STATES POSTAL SERVICE

and

Case 18-CA-12410(P)

DES MOINES BULK MAIL CENTER,
LOCAL NO. 7027, AMERICAN POSTAL
WORKERS UNION, AFL-CIO

UNITED STATES POSTAL SERVICE
(KILMER GENERAL MAIL FACILITY)

and

Case 22-CA-17009(P)

KILMER GMF AREA LOCAL NO. 149,
AMERICAN POSTAL WORKERS UNION,
AFL-CIO

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
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UNITED STATES POSTAL SERVICE

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UNITED STATES POSTAL SERVICE
(KILMER GENERAL MAIL FACILITY)

and

Case 22-CA-17009(P)

KILMER GMF AREA LOCAL NO. 149,
AMERICAN POSTAL WORKERS UNION,
AFL-CIO

UNITED STATES POSTAL SERVICE

and

Case 22-CA-17769(P)

TRENTON METROPOLITAN AREA LOCAL 1020
AMERICAN POSTAL WORKERS UNION, AFL-CIO

UNITED STATES POSTAL SERVICE
(FRANKLIN OFFICE)

and

Case 22-CA-18007(P)

NORTH JERSEY AREA LOCAL, AMERICAN
POSTAL WORKERS UNION, AFL-CIO

UNITED STATES POSTAL SERVICE

and

Case 22-CA-18544(P)

NORTH JERSEY AREA LOCAL, AMERICAN
POSTAL WORKERS UNION, AFL-CIO

UNITED STATES POSTAL SERVICE

and

Case 28-CA-11627-2(P)
28-CA-11627-3(P)

AMERICAN POSTAL WORKERS UNION,
LAS VEGAS AREA LOCAL 761, AFL-CIO

INFORMAL SETTLEMENT AGREEMENT

In settlement of the above matters and subject to the approval of the Regional Director for the National Labor Relations Board, it is hereby stipulated and agreed by and between the United States Postal Service (herein "Respondent"), the American Postal Workers Union, AFL-CIO (herein "APWU"), on behalf of the charging party locals of the APWU and counsel for the General Counsel of the National Labor Relations Board as follows:

POSTING OF NOTICE: Upon approval of this Agreement the employer will post immediately in conspicuous places in and about its facilities, including all places where notices to employees are customarily posted, and maintain for 60 days from the date of posting, copies of the attached Notice, said Notice to be signed by a responsible official of the employer.

COMPLIANCE WITH NOTICE: The employer will comply with all the terms and provisions of the Notice.

REFUSAL TO ISSUE COMPLAINT: In the event the Charging Parties fail or refuse to become parties to this Agreement, and if in the Regional Director's discretion it will effectuate the policies of the National Labor Relations Act, the Regional Director shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charged Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Board's Rules and Regulations if a request is filed within 14 days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of all allegations in the subject complaints regarding the employer's refusal to furnish supervisory records or the entire complaint where no other allegations are contained therein, as well as the related portions of any answers filed in response.

PERFORMANCE: Performance by the employer with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Parties do not enter into this Agreement, performance shall commence immediately upon receipt by the employer of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

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

provisions hereof, no further action shall be taken in these cases with regard to the supervisory information allegations.

NON-ADMISSIONS: It is understood that Respondent, by entering into this Informal Settlement Agreement does not admit that it has violated the National Labor Relations Act, the Postal Reorganization Act, or any existing collective bargaining agreements between the parties.

All parties agree to an informal settlement agreement pursuant to the NLRB's Rules and Regulations to fully resolve all individual cases to which this settlement pertains as reflected in the case captions and numbers above on the following basis:

1. Respondent will not refuse to bargain with the APWU by refusing to furnish information regarding supervisors which is necessary and relevant to the union's duties as exclusive collective bargaining representative of employees in the units for which it is recognized.
2. Respondent will not affirmatively defend a refusal to furnish supervisory records which are necessary and relevant to the union's duties as collective bargaining representative on the grounds that the release of such records is barred by the Privacy Act of 1974, as amended, and its presently existing implementing regulations.
3. The Postal Service will ensure that this Informal Settlement Agreement is transmitted to the responsible management officials, including all responsible Human Resources personnel throughout the U.S. Postal Service.
4. **SCOPE OF THE AGREEMENT:** This Settlement Agreement settles only the unfair labor practices alleged in the cases referenced herein and does not constitute a settlement of any other case. It does not preclude persons from filing, or the National Labor Relations Board from prosecuting, unfair labor practice charges based on events which precede the date of the approval of this Agreement. The General Counsel shall have the right to use the evidence obtained in the investigation of these cases in the litigation of any other unfair labor practice cases; and any judge, the Board or any other tribunal may rely on such evidence in making findings of fact or conclusions of law.

UNITED STATES POSTAL SERVICE

Jay Mahan
For Respondent

8/3/93
Date

AMERICAN POSTAL WORKERS UNION, AFL-CIO

William Burrus
For APWU Charging Parties

8-2-93
Date

NATIONAL LABOR RELATIONS BOARD

J. Michael Lytne
Counsel for the General Counsel

8-3-93
Date

APPROVED:

William A. Pasarell
Regional Director, Region 22

8-9-93
Date

POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY
A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD,
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT refuse to bargain with the AMERICAN POSTAL WORKERS UNION, AFL-CIO AND ITS LOCALS OR ANY OTHER LABOR ORGANIZATION by refusing to furnish them with requested information concerning supervisors which is relevant and necessary to the unions' collective bargaining duties.

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

WE WILL, on request, furnish the union or its locals, as applicable, information concerning supervisors which is described or referred to in each of the complaints issued in the subject cases.

UNITED STATES POSTAL SERVICE

(Employer)

Dated: _____

By: _____

(Representative)

(Title)