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**American Postal Workers Union Area Local 984 and  
Juan O. Chevere-Cruz.** Case 11-CB-3922

March 30, 2009

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file a timely answer to the complaint. Upon a charge filed by Juan O. Chevere-Cruz on April 28, 2008,<sup>1</sup> the General Counsel issued the complaint on September 25 against American Postal Workers Union Area Local #984, the Respondent, alleging that it has violated Section 8(b)(1)(A) of the Act. On October 15, the Board's Regional attorney notified the Respondent, in a certified letter, that an answer to the complaint had been due on October 9. The letter further advised that if an appropriate answer was not received by close of business on October 22, a motion for default judgment would be filed.

On October 28, the General Counsel filed a Motion for Default Judgment and memorandum in support with the Board on the ground that the Respondent had failed to file an answer to the Complaint and Notice of Hearing. On October 30, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On November 13, Tony D. McKinnon Sr., the Respondent's President, acting pro se, filed a timely response to the motion and Notice to Show Cause.

On February 24, 2009, the Board issued an Order giving the Respondent 14 days from the receipt of the Order to provide a response explaining why there is good cause for its failure to file a timely answer to the complaint. The Respondent did not file any response to the Board's Order.

Ruling on Motion for Default Judgment<sup>2</sup>

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days

<sup>1</sup> All dates refer to 2008 unless otherwise indicated.

<sup>2</sup> Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

from the service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that an answer must be received by the Regional Office on or before October 9, and that if no answer was filed, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by its October 15 letter, notified the Respondent that unless an answer was received by October 22, a motion for default judgment would be filed. No answer or request for an extension of time to file an answer was received by that date.

In response to the General Counsel's Motion for Default Judgment, the Respondent asserted that it "met the requirements of time As (sic) outlined in sec. 102.20, sec. 102.21 of the NLRB provisions," and that attachments to the response substantiated this assertion. The attachments included a copy of an electronic "Form to E-File Document with Regional, Subregional or Resident Office." This document, which indicates it was printed on October 20, sets forth the case number, the filing party (McKinnon), and the Board office designated to receive the filing (Region 11/Winston-Salem). The document also shows that the attached file for transmission was denominated "Response to Case 11-CB-3922.pdf," and was described as the "Answer," presumably to the complaint. A separate attachment to the response is an answer to the complaint.

The Board reviewed its electronic records and verified that, although the Respondent attempted to E-file a document on October 20,<sup>3</sup> it did not successfully complete the process. Apparently, McKinnon failed to select and click the "Finish E-Filing" button. Had he done so, a new window would have opened on the computer screen advising him that he had successfully accomplished the steps for E-filing a document but must wait for an e-mail acknowledgement of the filing. The window message would have further advised McKinnon to contact the Board's Executive Secretary immediately if he did not receive the e-mail acknowledgement within 15 minutes.

In our February 24, 2009 Order, we found that the Respondent's answer attached to its response to the Notice to Show Cause adequately denied the critical complaint allegations. However, we also found that the response did not set forth any "good cause" justification for failure to file a timely answer to the complaint in the first place. See *TNT Logistics North America, Inc.*, 344 NLRB 489 (2005). Nevertheless, because the Respondent was appearing pro se, we recognized that McKinnon, on behalf

<sup>3</sup> As indicated above, an answer to the complaint was due by close of business on October 22.

of the Respondent, may not have realized his failure to file a timely answer and his obligation to supply a “good cause” justification for this failure. Accordingly, in our discretion, we gave the Respondent 14 days from receipt of our February 24, 2009 Order “to submit a response explaining why there is good cause, within the meaning of the Board’s rules, for [the Respondent’s] failure to file a timely answer or otherwise comply with the Board’s rules.” See *R-Max Services, LLC*, 346 NLRB 177 (2005) (pro se respondent given additional time to provide reasons for lack of initial timely answer).<sup>4</sup>

As stated above, the Respondent has not responded to our Order. Thus, the Respondent has failed to show good cause for its failure to file a timely answer, and we reject as untimely the answer set forth in its response to the Notice to Show Cause.<sup>5</sup> We therefore grant the General Counsel’s motion for default judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The United States Postal Service, the Employer, provides postal services for the United States of America and operates various facilities throughout the United States in the performance of that function, including its postal facility in Fayetteville, North Carolina. The Board has jurisdiction over the United States Postal Service and this matter by virtue of Section 1209 of the Postal Reorganization Act (PRA).

At all material times the Respondent, American Postal Workers Union Area Local #984, has been a labor organization within the meaning of Section 2(5) of the Act.

<sup>4</sup> The Order also explained that the Respondent failed to comply with the extant requirement that it transmit hard copies of its answer to the Regional office within 3 business days after E-filing. This requirement has subsequently been amended so that parties must only file hard copies of the answer by traditional means if the electronically filed document was not in a pdf format that includes the signature of counsel or non-attorney representative for represented parties or the signature of the party if not represented. The Respondent’s noncompliance with the prior e-filing requirement is not a factor in our decision to grant default judgment.

<sup>5</sup> In Member Schaumber’s view, in assessing a respondent’s “good cause” showing, the proper analysis is that utilized by the federal courts, i.e., the reasons the answer was untimely, the merits of the respondent’s defense, and whether any party would suffer prejudice if the default motion were denied. *R-Max Services*, supra, 346 NLRB at 177 fn. 4. Member Schaumber also believes that the Board’s Notice to Show Cause form should be amended to make clear that the respondent is obligated to provide good cause for its failure to file a timely answer at the time it responds to the Notice. *Id.* Nonetheless, Member Schaumber agrees that default judgment is appropriate here, where the Respondent was given an additional opportunity to set forth reasons for its failure to file a timely answer, but did not submit any response to the Board’s February 24, 2009 Order.

##### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, by virtue of Section 9(a) of the Act, the Respondent has been, and is now, the exclusive bargaining representative for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment of all clerk craft, maintenance craft, motor vehicle craft, equipment shop, and distribution center employees employed by the United States Postal Service at the postal facility in Fayetteville, North Carolina.

At all material times, the Respondent and the Employer have maintained in effect and enforced a collective-bargaining agreement covering wages, hours, and other terms and conditions of employment of the employees of the Employer represented by the Respondent.

At all material times, the following persons have been, and are now, agents of the Respondent, acting on its behalf, and are agents within the meaning of Section 2(13) of the Act:

Tony D. McKinnon, Sr.	Local President
Tiffany Hill	Steward

About the end of February and again in the beginning of March, the Respondent failed to provide Juan O. Chevere-Cruz with a copy of a grievance related to him and requested by him. The Board has found that by such conduct a union breaches its duty of fair representation and thereby violates Section 8(b)(1)(A) of the Act. *Letter Carriers Branch 529 (Postal Service)*, 319 NLRB 879, 881 (1995). We therefore find that the Respondent violated the Act as alleged.

##### CONCLUSION OF LAW

By the conduct described above, the Respondent has breached its duty of fair representation and violated Section 8(b)(1)(A) of the Act. The Respondent’s unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

##### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to provide Juan O. Chavere-Cruz with a copy of the grievance related to him and requested by him, and to post a notice to employees and members.

##### ORDER

The National Labor Relations Board orders that the Respondent, American Postal Workers Union Area Local #984, Fayetteville, North Carolina, its officers, agents, and representatives, shall

- 1. Cease and desist from
  - (a) Failing and refusing to provide employees with copies of grievances related to them and requested by them.
  - (b) In any like or related manner restraining or coercing 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) Provide Juan O. Chevere-Cruz with a copy of the grievance related to him that he requested in late February and early March 2008.
  - (b) Within 14 days after service by the Region, post at its business offices and meeting places copies of the attached notice marked "Appendix."<sup>6</sup> Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.
  - (c) Within 14 days after service by the Region, deliver to the Regional Director for Region 11 signed copies of the notice in sufficient number for posting by the Employer at its Fayetteville, North Carolina facility, if it wishes, in all places where notices to employees are customarily posted.
  - (d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 30, 2009

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<sup>6</sup> 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."

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Wilma B. Liebman, Chairman

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Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

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 Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join or assist a union
- Choose representatives to bargain on your behalf with your employer
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to provide employees with copies of grievances related to them and requested by them.

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

WE WILL provide Juan O. Chevere-Cruz with a copy of the grievance related to him which he requested in late February and early March 2008.

AMERICAN POSTAL WORKERS UNION  
AREA LOCAL #984