

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Sherwood Post Office
Sherwood, Michigan

Docket No. A2012-83

ORDER AFFIRMING DETERMINATION

(Issued March 22, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On November 28, 2011, Kathryn Barnes (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Sherwood, Michigan post office (Sherwood post office).² The Final Determination to close the Sherwood post office is affirmed.³

II. PROCEDURAL HISTORY

On December 8, 2011, the Commission established Docket No. A2012-83 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.⁴

On December 13, 2011, the Postal Service filed the Administrative Record with the Commission.⁵ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁶

² Petition for Review received from Kathryn Barnes regarding the Sherwood, Michigan post office 49089, November 28, 2011 (Petition).

³ The Commission is divided equally, 2-2, on the outcome of this appeal. In the absence of a majority, the Final Determination stands.

⁴ Order No. 1032, Notice and Order Accepting Appeal and Establishing Procedural Schedule, December 8, 2011.

⁵ The Administrative Record is attached to the United States Postal Service Notice of Filing, December 13, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Sherwood, MI Post Office and Establish Service by Rural Route Service (Final Determination).

⁶ United States Postal Service Comments Regarding Appeal, January 23, 2012 (Postal Service Comments).

On February 13, 2012, the Public Representative filed reply comments.⁷ On February 14, 2012, the Postal Service filed a response to the Public Representative's reply comments.⁸

III. BACKGROUND

The Sherwood post office provides retail postal services and service to 99 post office box customers. Final Determination at 2. Five-hundred-seventy-six (576) delivery customers are served through this post office. The Sherwood post office, an EAS-13 level facility, provides retail service from 7:30 a.m. to 11:00 a.m. and 12:30 p.m. to 4:00 p.m., Monday through Friday. Lobby access hours are 7:00 a.m. to 4:30 p.m., Monday through Friday, and 7:00 a.m. to 12:00 p.m. on Saturday. *Id.*

The postmaster position became vacant on March 13, 2010 when the Sherwood postmaster was promoted. A non-career officer-in-charge (OIC) was installed to operate the post office. Retail transactions average 18 transactions daily (20 minutes of retail workload). Post office receipts for the last 3 years were \$32,068 in FY 2008; \$32,977 in FY 2009; and \$28,081 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$49,755 annually. *Id.* at 10.

After the closure, retail services will be provided by the Union City post office located approximately 8 miles away.⁹ *Id.* at 2. Delivery service will be provided by rural carrier through the Union City post office. The Union City post office is an EAS-18 level post office, with retail hours of 9:00 a.m. to 4:30 p.m., Monday through Friday, and 9:00 a.m. to 12:00 p.m. on Saturday. Ninety-nine (99) post office boxes are available.

⁷ Public Representative Reply Comments, February 13, 2012 (PR Reply Comments). The Public Representative also filed a Motion of Public Representative for Late Acceptance of Comments, February 8, 2012. The motion is granted.

⁸ United States Postal Service Response to Public Representative Reply Comments, February 14, 2012 (Postal Service Response).

⁹ Google Maps estimates the driving distance between the Sherwood and Union City post offices to be approximately 7.6 miles (18 minutes driving time) using local roads or 10.4 miles (17 minutes driving time) using state highways.

Id. The Postal Service will continue to use the Sherwood name and ZIP Code. *Id.* at 10, Concern No. 1.

Retail services are also available from the Athens post office located approximately 6 miles away.¹⁰ *Id.* at 2. The Athens post office is an EAS-15 level post office, with retail hours of 9:00 a.m. to 4:00 p.m., Monday through Friday, and 9:00 a.m. to 11:00 a.m. on Saturday. One-hundred-seventy-five (175) post office boxes are available. *Id.*

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner opposes the closure of the Sherwood post office. Petitioner contends that the Postal Service has: (1) failed to consider the adverse effect that closure will have on the Sherwood community identity and local businesses; (2) failed to consider the environmental impact that closure will have; (3) failed to consider concerns about rural mailbox safety; and (4) overestimated the cost savings that it anticipates from closing the Sherwood post office. Petition at 1.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Sherwood post office. Postal Service Comments at 1. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services; (2) the impact on the Sherwood community; and (3) the economic savings expected to result from discontinuing the Sherwood post office. *Id.* The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Sherwood post office should be affirmed. *Id.* at 11-12.

The Postal Service explains that its decision to close the Sherwood post office was based on several factors, including:

- the postmaster vacancy;

¹⁰ Google Maps estimates the driving distance between the Sherwood and Athens post offices to be approximately 6.2 miles (11 minutes driving time).

- a minimal workload and reduction in office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- minimal impact on the community; and
- expected financial savings.

Id. at 4. The Postal Service contends that it will continue to provide regular and effective postal services to the Sherwood community when the Final Determination is implemented. *Id.*

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner regarding the effect on postal services, the effect on the Sherwood community, economic savings, and the effect on postal employees. *Id.* at 11.

Public Representative. The Public Representative asserts that the Commission should remand the Postal Service's determination to close the Sherwood post office. PR Reply Comments at 9. The Public Representative concurs with Petitioner's claims that the Postal Service failed to consider concerns about rural mailbox safety and that the Postal Service overestimated the cost savings that it anticipates from closing the Sherwood post office. In addition, the Public Representative contends that the Postal Service: (1) failed to follow proper procedures in creating the Administrative Record,¹¹ *Id.* at 2-4; (2) failed to adequately consider the effect on employees that the closure would have; *Id.* at 8; and (3) failed to sufficiently address customer concerns about the hardships faced by customers who do not or cannot drive, the ability to purchase money orders, and the lack of a collection box. *Id.* at 6-7.

¹¹ The Public Representative criticizes the Postal Service for including copies of documents with facsimile date stamps indicating that the documents were sent by facsimile after the Final Determination was made. The Postal Service explains that the documents it submitted were nonetheless considered by it in making the Final Determination and are properly part of the Administrative Record. Postal Service Response at 2.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in providing notice of its intent to close. On May 20, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Sherwood post office. Final Determination at 2. A total of 676 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter of the Sherwood post office. A total of 161 questionnaires were returned. On

June 2, 2011, the Postal Service held a community meeting at the Sherwood Township Hall to address customer concerns. Thirteen (13) customers attended. *Id.*

The Postal Service posted the proposal to close the Sherwood post office with an invitation for comments at the Sherwood, Union City, and Athens post offices from July 6, 2011 through September 6, 2011. *Id.* The Final Determination was posted at the Sherwood and Union City post offices from October 18, 2011 through November 21, 2011. Administrative Record, Item No. 49.¹²

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Sherwood, Michigan is an unincorporated community located in Branch County, Michigan. Administrative Record, Item No. 16. The community is administered politically by the Sherwood Village. Police protection is provided by the Branch County Sheriff. Fire protection is provided by the Sherwood Township. The community is comprised of retirees, farmers, the self-employed, those who work in local businesses or commute to work in nearby communities, and unemployed individuals. *Id.* Residents may travel to nearby communities for other supplies and services. *See generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal

¹² The Public Representative points out that the Administrative Record contains no evidence supporting the Postal Service's claim that it posted the notice in the Athens post office. PR Reply Comments at 4.

Service met with members of the Sherwood community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Sherwood post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 10.

Petitioner contends that the Postal Service failed to consider the effect that the closing will have on the Sherwood community and local businesses. Petition at 1. With respect to the effect on the community, the Postal Service contends that the community identity will be preserved by continuing the use of the Sherwood name and ZIP Code in addresses. Postal Service Comments at 6; Final Determination at 10. With respect to the effect that the closure will have on local businesses, the Postal Service indicates that it considered the effect of the closure on businesses and concluded that closure would not have an adverse effect. Postal Service Comments at 7. The Public Representative disagrees with this conclusion, and notes that several customers indicated, in the questionnaires, that they would discontinue using local businesses if the post office closes. PR Reply Comments at 5. However, as the Postal Service points out, customers generally indicated that the decision to close the post office would not affect their decision to use local businesses. Postal Service Comments at 7.

Petitioner also contends that the Postal Service failed to consider the environmental impact that closure of the post office will have. Petition at 1. Petitioner argues that customers will use more gasoline to drive to collect their mail from a post office box in another town. *Id.* The Postal Service claims that this is a speculative assertion, and that rural route service might have positive effects on the environment, as more customers opt for carrier service, thereby reducing the fossil fuels used in commuting to the post office for delivery and retail services. Postal Service Comments at 7.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Sherwood postmaster was promoted on March 13, 2010 and an OIC has operated the Sherwood post office since then. Final Determination at 2. The Postal Service indicates that once the Final Determination is implemented, the temporary OIC will either be reassigned or separated and that no other Postal Service employee will be adversely affected. *Id.*

The Public Representative, pointing to ambiguities in the Administrative Record concerning whether an additional employee might be affected by the closure,¹³ contends that the Postal Service failed to adequately consider the effect on employees that the closure would have. PR Reply Comments at 8. Although the Administrative Record is somewhat ambiguous on the possibility of a second employee being affected by the closure, the Postal Service consistently maintained throughout the closure proceedings that the employee (or employees) will be transferred to the Union City post office.

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Sherwood post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Sherwood customers. Postal Service Comments at 4-5. It asserts that customers of the closed Sherwood post office may obtain retail services at the Union City post office located 8 miles away or at the Athens post office located 6 miles away. Final Determination at 2. Delivery service will be provided by rural carrier through the Union City post office. *Id.* The Sherwood post office box customers may obtain Post Office Box service at the Union City post office, which has 99 boxes available, or at the Athens post office which has 175 boxes available. *Id.*

¹³ The Proposal and the Final Determination indicate that the OIC is the only employee who will be affected by the closure and that “[n]o other Postal Service employee will be adversely affected.” Administrative Record, Item No. 48 (Revised Proposal) at 11; Final Determination at 10. The Post Office Survey Sheet however indicates one “regular” employee and one “RCA” (rural carrier associate) would be affected by the closure. Administrative Record, Item No. 15 at 1.

Petitioner and the Public Representative raise the issue of regular and effective postal services for the Sherwood community. Petition at 1; PR Reply Comments at 5. Citing prior experiences involving mailbox theft, vandalism, and destruction, Petitioner contends that the Postal Service failed to consider concerns about rural mailbox safety. The Public Representative concurs with Petitioner, and argues that the Postal Service additionally failed to consider customer concerns about the additional hardships faced by customers who do not or cannot drive, the ability to purchase money orders, and the lack of a collection box. PR Reply Comments at 6-7.

With respect to mailbox security, the Postal Service advised customers who were concerned about mail box security that they could place a lock on their mailbox. Administrative Record, Item No. 41 at 4. For customers who were concerned about leaving money in the mail, the Postal Service advised that although there were no reports of theft in the area,¹⁴ customers could leave a note in their mailbox instructing the carrier to sound their horn when they arrive. *Id.* at 6.

With respect to the concerns about customers who are unable or cannot afford to drive to another town to obtain retail services, the Postal Service explained that customers could obtain postal services from the carrier, or use alternate access options, including *www.usps.com* and Stamps By Mail®. Postal Service Comments at 5.

The Public Representative notes that customers who lock their mailbox are unable to have the carrier collect their mail from their mailbox and those who do not lock their mailbox and who leave mail in their mailbox for carrier collection run a greater risk of identity theft. *Id.* at 6-7. The Public Representative is accordingly “troubled” that the Postal Service does not provide a collection box for the Sherwood community. PR Reply Comments at 6. The Postal Service considered and responded to each of

¹⁴ The Public Representative contends that the Postal Service’s claim that there had been no reported mail thefts is contradicted by the sheriff’s report, which the Public Representative claims, indicates that there were three records of theft or vandalism. PR Reply Comments at 6; Administrative Record Item No. 14. The sheriff’s report contained in the Administrative Record is illegible, rendering it impossible to determine whether the Public Representative is correct in this claim.

these customer concerns—about mailbox security, carrier pick-up, and the absence of a collection box—separately.¹⁵

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$49,755. Final Determination at 10. It derives this figure by summing the following costs: postmaster salary and benefits (\$47,499) and annual lease costs (\$16,356), minus the cost of replacement service (\$14,100). *Id.*

Petitioner and the Public Representative argue that the cost savings estimates are inaccurate. Petition at 1; PR Reply Comments at 8. Petitioner argues the savings estimate is incorrect because: (1) a career postmaster (rather than OIC) salary was used in the savings calculation; (2) the savings estimate understates the cost of replacement service; and (3) the Postal Service fails to include the additional costs that customers will incur travelling to different post offices. Petition at 1. Petitioner also suggests that the Postal Service purchase the building that it is presently renting for the Sherwood post office. The Public Representative also contends that the savings calculation understates the cost of replacement service. PR Reply Comments at 8.

With respect to the postmaster salary, the Postal Service indicates that because the economic savings calculation is forward-looking, although the Postal Service may have paid less in salary and benefits to the OIC in the past does not mean that it can assume that it would do so in the future. Postal Service Comments at 8-9. It argues that closing the Sherwood post office results in the elimination of a position that would otherwise be filled by a career employee who would be paid the postmaster's salary and benefits. *Id.* at 9.

With respect to the costs of replacement service, the Public Representative argues that rural route cost, which would largely be transferred to the Union City post office, is approximately equal to the total operating expenses of the Sherwood post

¹⁵ See Administrative Record, Item No. 47, Concern No. 17 (mail security); Concern No. 28 (absence of a collection box); Concern No. 31 (carrier collection of outgoing mail).

office. PR Reply Comments at 8. The Postal Service contends that the cost of replacement service will be the cost resulting from additional post office boxes and miles on the rural route. It claims that it will not require any extra space or additional employees. Postal Service Comments at 9

As for the costs that customers may incur as a result of the closure, the Postal Service responds that customer costs are not included in the economic savings calculation. Postal Service Comments at 9; See Order Affirming Determination, Order No. 1037, December 12, 2011 at 13 (“The Commission traditionally has not expected the Postal Service to account for patrons’ costs.”) It claims that it properly accounted for the economic savings to the Postal Service as the statute requires. Postal Service Comments at 9.

With respect to Petitioner’s suggestion that the Postal Service purchase the building that it presently leases, the Postal Service contends that the Administrative Record supports its claim that carrier service, coupled with service at the nearby Union City post office, is a more cost-effective solution. *Id.* at 10. It adds that it would be difficult to justify purchasing the building given the Postal Service’s current financial condition. *Id.*

The Postal Service leases the Sherwood post office for \$16,356 per year. The underlying lease does not contain a 30-day cancellation clause and runs through 2017. See Administrative Record, Item No. 15 at 1. It is possible that the Postal Service will not realize the full amount of the \$49,755 in savings that it anticipates for several years. The Sherwood post office postmaster was promoted on March 13, 2010. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Sherwood post office has been staffed by an OIC for approximately 2 years even assuming the use of the

presumably lower OIC salary, and an additional salary for a Rural Carrier Associate, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Sherwood post office is affirmed.¹⁶

It is ordered:

The Postal Service's determination to close the Sherwood, Michigan post office is affirmed.

By the Commission.

Shoshana M. Grove
Secretary

¹⁶ See footnote 3, *supra*.

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Sherwood post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster was promoted on March 13, 2010. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only an OIC will be eliminated (and a Rural Carrier Associate may also be affected—the Administrative Record is ambiguous on that point); yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

In addition, the Postal Service includes the building lease in its economic savings calculation. The lease for the Sherwood post office runs through 2017 and does not contain a 30-day cancellation clause. Thus, the lease savings are illusory for the next 5 years. I agree with my colleague, Vice Chairman Langley, who has commented that as a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data were in the

Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011, have the respite of a 5-month moratorium and the opportunity to have further consideration of alternatives by the Postal Service.

The citizens of Sherwood, Michigan and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The current lease does not terminate until September 30, 2017, and does not have a 30-day termination clause. Administrative Record, Item No. 18. The Postal Service should note that any savings from the lease will not be realized for almost 5 years.

The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since March 2010, not an EAS-13 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis.¹ As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Sherwood post office and should be remanded.

Nanci E. Langley

¹ The Administrative Record is unclear if the employee in charge of the post office is career or non-career. See Administrative Record, Item No. 18; Final Determination at 10; Postal Service Comments at 10.