

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

Before Commissioners: George Omas, Chairman;
Tony Hammond, Vice Chairman;
Dana B. Covington, Sr., and
Ruth Y. Goldway

In the Matter of:

Birmingham Green, AL 35237 :
(George Prince *et al.*, Petitioners) :

Docket No. A2003-1

ORDER DISMISSING APPEAL
ON JURISDICTIONAL GROUNDS

(Issued December 3, 2003)

Introduction and Summary. On September 17, 2003, three individuals petitioned the Commission to review the Postal Service's actions regarding the Birmingham Green, Alabama Post Office.¹ The Commission gave notice and accepted the appeal in Order No. 1384, issued on September 23, 2003.² The Postal Service subsequently moved to dismiss this proceeding, arguing that the Commission lacks jurisdiction to consider an appeal under 39 U.S.C. § 404(b).³ After considering the circumstances of this appeal in light of applicable law and precedent in earlier dockets, the Commission has concluded that this proceeding should be dismissed for lack of jurisdiction.

Petitioners' Request for Review. Petitioners George Prince, Terry Finch, and James E. Roberts contest a Postal Service action — which they characterize as a “closing or consolidation” — affecting the Birmingham Green Post Office, located at 317 North 20th

¹ Joint Petition for Review and Application for Suspension, September 17, 2003.

² Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. § 404(b)(5), September 23, 2003.

³ United States Postal Service Motion to Dismiss Proceeding, October 3, 2003.

Street in Birmingham, Alabama 35237. Joint Petition at 1. Petitioners document the Postal Service action in two attachments to their pleading.

The first attachment is a letter dated August 27, 2003 and signed by Paul T. Barrett, Postmaster of Birmingham. In the letter, Mr. Barrett advises postal customers that “the Birmingham Green Post Office will be officially closed September 12, 2003.” In light of this development, he states that customers will be required to change their Post Office Boxes, and that mail will be forwarded in accordance with postal regulations. He further states that “[r]etail services from the Main Post Office will ensure effective and regular services to the Downtown Birmingham community.”

The second attachment is a document entitled “Proposal to Consolidate the Birmingham Green Station and Establish a Contract Postal Unit,” dated June 20, 2003. According to the document’s cover page, the matter was assigned Docket Number 35237.

The document states at the outset that the Postal Service “is proposing to consolidate the Birmingham Green Station and provide retail services by establishing a contract postal unit (CPU) under the administrative responsibility of the Main Post Office, located 4 blocks away.” Proposal to Consolidate at 1. The remainder of the document consists of assessments of the proposal’s anticipated effects, under headings entitled “Responsiveness to Community Postal Needs,” “Effect on Community,” “Effect on Employees,” “Economic Savings,” and “Other Factors.” These areas of inquiry correspond to the criteria the Postal Service is directed to consider in making a statutory determination to close or consolidate a post office, pursuant to 39 U.S.C. § 404(b)(2).

Petitioners assert that the Postal Service’s determination to close the Birmingham Green facility, announced in a Notice of Final Determination on August 27, 2003 violates the requirement in 39 C.F.R. § 241.3(a)(2)(iii) that such determinations be available in writing at least 60 days before discontinuance takes effect. On this basis, petitioners argue that the process was “without observance of procedure required by law,” in contravention of 39 U.S.C. § 404(b)(5)(B). Joint Petition at 1.

Petitioners also challenge the merits of the Service’s decision. They allege that it will have adverse effects on the community served by the Birmingham Green facility and

will degrade the degree of service provided; that the Service failed to take into account all the disadvantages of closing the facility; that the Service provided no statement of the facility's income or revenue in its proposal; and that it did not adequately respond to the concerns raised by community members in both questionnaire responses and in a public hearing. *Id.* at 1-2.

Postal Service Motion to Dismiss. Order No. 1384 established October 3, 2003 as the date for the Postal Service's filing of its administrative record in this appeal. On that date, rather than filing an administrative record, the Service submitted a motion to dismiss this proceeding.⁴

In its motion, the Postal Service submits that the Petition does not fall within the Commission's jurisdiction under § 404(b)(5). The Service cites two bases for this conclusion. First, it asserts that the Birmingham Green facility is a Classified Postal Station — one of at least four USPS-operated facilities in downtown Birmingham — and thus is not a Post Office. Second, the Service represents that operations at the Birmingham Green facility “are currently suspended rather than formally closed[.]”⁵ and that it has been working with Birmingham customers on providing them services, with the expectation that a contract station will be established in the vicinity of the Birmingham Green Station.

The Postal Service musters an extensive review of legislative history and case law to support its position “that the procedures mandated by 404(b) apply only to the closing or consolidation of an independent post office, which is a facility occupied and immediately supervised by a postmaster, and not the closing or consolidation of a station, branch, contract unit, or other subordinate facility under the administrative supervision of a post office.”⁶ The Service argues at length that Congress, in enacting § 404(b), intended to limit the term “post office” to a definition predating the Reorganization Act that distinguishes between independent post offices and their subordinate retail facilities such

⁴ *Id.*

⁵ *Id.* at 1. (Footnote omitted.)

⁶ *Id.* at 2.

as stations and branches.⁷ The Service also cites judicial authority in support of the restrictive interpretation of “post office” it urges.⁸ Most notably, it invokes the decision in *Shepard Community Association v. United States Postal Service*,⁹ in which a United States District Court found convincing indications of Congressional intent to distinguish post offices from branches and stations for purposes of applying § 404(b), and accordingly ruled that § 404(b) did not apply to the contested closing of the Shepard station in Columbus, Ohio.

Analysis of Jurisdictional Applicability. The available documentary evidence concerning the Birmingham Green facility, and the nature of the Postal Service’s actions affecting it, are somewhat opaque. The Service asks the Commission to infer that operations at the facility have been “suspended,” based on the absence of a formal announcement of its closure in the Postal Bulletin.¹⁰ However, Postmaster Barrett’s letter of August 27, 2003, publicly discloses an official intention to close the facility, with Post Office Boxes and other services to be provided at the Main Post Office.

At the same time, his apparently contemporaneous administrative responsibility for the Birmingham Green facility implies that its closure would not constitute a statutory “consolidation,” which has been found to have “the characteristic of subordinating the day to day overall management of one office having a postmaster to the administrative personnel of another office.”¹¹ If Postmaster Barrett already had administrative responsibility for the Birmingham Green facility, closing it would not appear to constitute a “consolidation” subject to review under § 404(b). Yet, apparently two months earlier, the Postal Service at some administrative level had prepared an analysis on the “Proposal to Consolidate the Birmingham Green Station and Establish a Contract Postal Unit,” which Petitioners have provided as an attachment to their appeal.

⁷ *Id.* at 3-9.

⁸ *Id.* at 9-14.

⁹ *Shepard Community Association v. United States Postal Service*, Civ. No. C2-82-425 (S.D. Ohio 1985).

¹⁰ Postal Service Motion to Dismiss, *supra*, at 1, n. 4.

¹¹ *Knapp v. United States Postal Service*, 449 F. Supp. 158, 162 (C.D. Cal. 1978).

Notwithstanding these unclear circumstances, the Commission finds that the available facts support a conclusion that the Postal Service's actions regarding the Birmingham Green facility — whether considered as a “closing” or a “suspension” — affect a “station or branch” within the service area administered by the Birmingham post office, and thus do not fall within the ambit of the review process provided in 39 U.S.C. § 404(b).

The Commission's action in an earlier proceeding, Docket No. A82-10, provides useful guidance in this controversy. In that docket, petitioners contested the Postal Service's plan to close the Oceana Station in Virginia Beach, Virginia. In its dispositive order,¹² the Commission considered legal arguments on what it regarded as a threshold issue: whether § 404(b) procedures for closing or consolidating post offices were applicable to the Service's plan to close the Oceana Station.

In deliberating on this issue, the Commission held that the Postal Service decision to close the facility “must be considered within the context of the Postal Service's other actions in the area.”¹³ After examining the facts presented, the Commission found the proposed closing of the Oceana Station to be one component of a plan to reconfigure the network of postal facilities providing services to various communities in the Virginia Beach area. Employing a “rule of reason,” the Commission held that “the requirements of section 404(b) do not pertain to the specific building housing the post office; but rather are concerned with the provision of a facility within the community.”¹⁴ In light of the Service's description of its actions in the Virginia Beach area, the Commission concluded “that the Postal Service is merely rearranging the retail facilities in the community[,]”¹⁵ and that the formal requirements of § 404(b) were not intended to apply to such changes. More broadly, the Commission stated that “the Postal Service is not required to follow the formal § 404(b) procedure when it is merely rearranging its retail facilities in a community, as it is doing in Virginia Beach.”¹⁶

¹² Order No. 436, Order Dismissing Docket No. A82-10, June 25, 1982.

¹³ *Id.* at 7.

¹⁴ *Id.* at 6-7.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 1.

Here, as in Docket No. A82-10, the Postal Service's action affects one Classified Station of several in a metropolitan area: in this instance, Birmingham, Alabama.¹⁷ The Postal Service represents that equal or superior service is available at the Birmingham Main Post Office, less than one-half mile away, but that it is also working to establish a contract station in the vicinity of the Birmingham Green station.¹⁸ These activities indicate that the Service's action with regard to the Birmingham Green station is part of a rearrangement of the retail network serving the Birmingham community, as with the Virginia Beach area in Docket No. A82-10. For this reason, the Commission concludes that the procedural requirements of § 404(b) do not apply, and that the appeal of the Postal Service's action regarding the Birmingham Green station does not fall within the Commission's jurisdiction under that section.¹⁹ Therefore, the Postal Service's motion to dismiss this proceeding shall be granted.

The Joint Petition for Review was accompanied by an application for suspension of the Postal Service's action regarding the Birmingham Green station. Inasmuch as the Commission has found § 404(b) inapplicable to the Service's action, the motion for suspension must also be denied.

¹⁷ *Id.*, Attachment #1, p. 3-7.

¹⁸ Postal Service Motion to Dismiss, *supra*, at 1-2.

¹⁹ The Commission views this outcome as compatible with, if not in every respect identical to, the court's analysis in the *Shepard* decision, *supra*.

The Commission orders:

- (a) The United States Postal Service Motion to Dismiss Proceeding, filed October 3, 2003, is granted.
- (b) Petitioners' Application for Suspension, filed September 17, 2003, is denied.
- (c) The Secretary of the Postal Rate Commission shall publish this Order in the **Federal Register**.

By the Commission.

(S E A L)

Steven W. Williams,
Secretary