

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

STATION AND BRANCH OPTIMIZATION AND
CONSOLIDATION INITIATIVE, 2009

Docket No. N2009-1

OPPOSITION OF THE UNITED STATES POSTAL SERVICE
TO MOTION OF AMERICAN POSTAL WORKERS UNION
TO EXTEND DISCOVERY
(September 14, 2009)

The United States Postal Service hereby files this opposition to the September 10, 2009, motion of the American Postal Workers Union seeking an extension of discovery "by at least one month" and a corresponding adjustment to the remainder of the procedural schedule in this docket. For the reasons below, the motion should be denied.

The request in this docket was filed on July 2, 2009. APWU intervened six days later, but did not propound its first discovery requests until July 28th and 29th, and then filed its final discovery request on August 6th. The Postal Service filed responses to the first two sets of interrogatories on August 12th and 17th, respectively, one business day late and five business days late. On August 14th, Presiding Officer's Ruling No. N2009-1/1 established September 11th as the deadline for discovery on postal witnesses. The Postal Service filed responses to the final set of APWU interrogatories on September 8th, 19 calendar days after the August 20th deadline for response.

As an institution, the Postal Service strives to meet discovery deadlines established by the Commission's rules and recognizes the importance of the high

degree of compliance with those rules necessary for the Commission to manage its many pending dockets. The Postal Service also is sensitive to the possibility of prejudice that may result from its inability sometimes to file particular discovery responses by the deadline established in the Commission's rules. Postal witnesses and counsel are more sensitive to these deadlines because their names and reputations are on the line. The responsibility to avoid late filings rests on their shoulders, often under circumstances where the delay is beyond their ability to control.

Because of its central role in Commission proceedings, the Postal Service is aware of the expectation that it respond to any motion seeking extraordinary relief that purports to be motivated by some shortcoming on its part in a manner that acknowledges the equities involved. Nevertheless, the Postal Service considers the request of APWU to be wholly unjustified under the circumstances.

APWU tallies the total number of instances of late interrogatory response filings in Docket No. N2009-1 and alludes to the Postal Service's September 8th responses to interrogatories APWU/USPS-T2-10 through 12 as having been 19 calendar days late. However, APWU fails to explain how the September 8th provision of the detailed information it requested about the discontinuance studies reflected in USPS Library References N2009-1/1 and N2009-1/2 has prevented or will prevent it from making "reasoned and informed decisions about how to proceed" in Docket No. N2009-1.

The schedule established by Presiding Officer's Ruling No. N2009-1/1 affords parties the expectation of receiving responses to interrogatories filed on

(or even several days after) the September 11th deadline in advance of the September 30th hearing scheduled for receipt of the direct testimony. All active Docket No. N2009-1 participants, save one, have exercised due diligence by propounding interrogatories right up to that deadline.¹

Instead, APWU argues that:

Answers to written discovery necessarily affect whether oral cross-examination will be required, the scope of any oral cross-examination and the determination of a party to submit rebuttal testimony. Currently, parties are required to file their notice of intent to conduct oral examination of Postal Service witnesses by September 16, 2009 and the parties are required to provide notice of intent to file rebuttal testimony by October 2, 2009. Lack of timely filed responses to interrogatories has severely impacted the ability to determine whether oral examination or rebuttal testimony will be required.

Given the time allowed for reflection in determining whether to conduct oral cross-examination, it would seem that the substance of September 8th interrogatory responses, rather than whether they were filed a day or a month late, would have the dominant influence on APWU's September 16th determination regarding cross-examination. Likewise, when the time comes to announce on October 2nd whether it intends to file rebuttal testimony, it would seem that APWU would be more influenced by the substance of the hearing record developed on September 30th rather than the degree to which any of the designated interrogatory responses in that record were filed late.

If APWU is uncertain by September 16th whether it will conduct cross-examination on September 30th, it can move at any time before that date for

¹ Of the four active participants in this docket, APWU has been, to put it charitably, far from the most active. Rather than focus what little discovery it has pursued in this docket on the Station and Branch Optimization and Consolidation Initiative, APWU devoted most of its limited effort pursuing information pertinent to a labor grievance based on its belief that stations and branches were closed between FY 2005-08 for the purpose of replacing them with contract postal units.

leave to file its cross-examination notice on some reasonable date later than the 16th, rather than insist now that a month-long delay in the entire case be granted. And, if APWU is uncertain as October 2nd draws near whether it will file rebuttal testimony, on or before that date, it can formally request a reasonable extension of time for the filing of such a notice.

At page 2, the APWU motion references an outstanding discovery dispute awaiting Commission resolution pertaining to document requests APWU/USPS-DR-1 through DR-3 and interrogatories APWU/USPS-T2-3(a-c) and T2-8.² APWU states that, “[t]o-date, much of the requested information has not been provided.” It is worth noting that virtually all of the information requested by the contested interrogatories pertains to locally-initiated station and branch discontinuance proposals or decisions that pre-date the Station and Branch Optimization and Consolidation Initiative under review in this docket and/or pertain to APWU’s investigation of a labor grievance regarding contract postal units. Like APWU, the Postal Service awaits the Commission’s disposition of this discovery dispute. In the mean time, the Postal Service considers it premature to address potential changes in the schedule of this docket that would be contingent upon the Commission’s resolution of that dispute.

In lieu of the motion that it filed, a more reasonable approach would seem to have been for APWU, on the basis for some specific assertion of prejudice relating to a particular late interrogatory response, to have moved for leave to

² See *also*, Opposition of the USPS to Motion of APWU to Compel Responses to APWU/USPS-T2-3(a-c), T2-8 and APWU/USPS-DR-1 through DR-3 (August 29, 2009).

engage in additional written discovery beyond the September 11th deadline and to have concurrently submitted the follow-up discovery request that arguably was delayed as a result of the Postal Service's tardiness. Instead, the Commission is faced with a last-minute motion from the least active participant in Docket No. N2009-1 discovery requesting the imposition of a one-month punitive sanction permitting additional discovery.

Whatever the reasons for its relative lack of participation in discovery to-date may be, APWU has offered no explanation for why any shortcoming of the part of the Postal Service justifies its request to be granted at least another month to consider discovery that it has thus far made little effort to pursue. Accordingly, the APWU motion should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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September 14, 2009