

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

Station and Branch Optimization and
Consolidation Initiative, 2009

Docket No. N2009-1

PRESIDING OFFICER'S RULING
CONCERNING MOTION TO COMPEL RESPONSES
TO APWU/USPS-T2-3(a-c), T2-8 AND APWU/USPS-DR-1 THROUGH DR-3

(Issued September 15, 2009)

On August 21, 2009, the American Postal Workers Union, AFL-CIO (APWU) filed a motion to compel requesting that the Postal Service be directed to provide responses to interrogatories APWU/USPS-T2-3(a-c) and APWU/USPS-T2-8 and to produce documents in response to APWU/USPS-DR-1-3.¹ The interrogatories are part of a set of interrogatories, APWU/USPS-T2-1-9, filed with the Commission on July 28, 2009.² The document requests were originally submitted on July 28, 2009,³ as well.

¹ American Postal Workers Union, AFL-CIO Motion to Compel the Postal Service to Respond to APWU/USPS-T2-3(a-c) and T2-8 and to Produce Documents in Response to APWU/USPS-DR-1 through APW/USPS-DR-3, August 21, 2009 (Motion to Compel).

² Interrogatories of the American Postal Workers Union, AFL-CIO to USPS Witness Kimberly I. Matalik (APWU/USPS-T2-1-9), July 28, 2009.

³ Document Request of the American Postal Workers Union, AFL-CIO to United States Postal Service (APWU/USPS-DR-1-3), July 28, 2009.

The Postal Service filed objections to these interrogatories and document requests on August 7, 2009,⁴ and an opposition to the Motion to Compel on August 28, 2009.⁵

Interrogatory APWU/USPS-T2-3

This interrogatory references Table 1 of Kimberly I. Matalik's Direct Testimony on Behalf of the Postal Service. USPS-T-2 at 6. This interrogatory is composed of five subparts, (a) through (e). The Motion to Compel pertains to subparts (a) through (c).

Interrogatory APWU/USPS-T2-3(a)

Interrogatory APWU/USPS-T2-3(a) seeks the total number of discontinuance review studies performed on station and branches between FY 2005 through FY 2008.

APWU/USPS-T2-3. On page 7, Table 1 of your testimony you provide the number of station and branch closures during the past four fiscal years.

- (a) Please provide the number of discontinuance review studies that were performed on station and branches each year during FY 2005-FY 2008.

APWU argues that a response to this interrogatory will enable the parties and the Commission to understand the scope of the Station and Branch Optimization and Consolidation Initiative (Initiative) in comparison to consolidations and closures outside the Initiative. Motion to Compel at 1. APWU states, "This speaks directly to whether what is being proposed is a change in the nature of postal services pursuant to 39 U.S.C. § 3661(b)." *Id.* APWU adds that the lack of a proper tracking system should not disadvantage interested parties and the Commission from obtaining information

⁴ Objections of the United States Postal Service to American Postal Workers Union Interrogatories APWU/USPS-T2-3(a-c) and T2-8, August 7, 2009 (Objections to Interrogatories); Objections of the United States Postal Service to American Postal Union Document Requests APWU/USPS-DR-1 through APWU/USPS-DR-3, August 7, 2009 (Objections to Document Requests).

⁵ Opposition of the United States Postal Service to Motion of the American Postal Workers Union Compel Response to APWU/USPS-T2-3, T2-8 and APWU/USPS-DR-1 through DR-3, August 28, 2009 (Opposition).

necessary to fully understand the proposed Initiative and its impact on postal services. *Id.* at 3.

The Postal Service argues that the requested number is irrelevant to the Initiative, and claims that its production would generate an undue burden. Objections to Interrogatories at 1. The Postal Service explains that it has no centralized database from which it could be determined if and how many discontinuance studies may have been initiated by each of the 80 District offices in existence between FY 2005 through FY 2008. Opposition at 2. The Postal Service contends that in order to gather the requested information, it would have to require its current 74 District offices to examine whether any available records might contain such information and to canvass employees to determine whether any of them can report responsive information. *Id.* at 3. The Postal Service estimates that fulfilling this request would require several hundred workhours of search and review. Objections to Interrogatories at 2.

When analyzing a motion to compel a response to an interrogatory, the interrogatory is initially evaluated against a standard of whether or not the interrogatory “appears reasonably calculated to lead to the discovery of admissible evidence” relevant to the subject matter of the proceeding. 39 CFR 3001.26(a). The Postal Service properly suggests that the Commission also should balance the benefit, or lack thereof, that the requested information could bring to bear against the burden imposed by production of the requested information. Opposition at 3. As required by 39 CFR 26(c), the Postal Service has stated with particularity the burden that would be required to provide an answer to subpart (a). The value of requested information, balanced against the effort to locate and determine it, appears to be insignificant. The information requested is historical in nature, and it has no direct bearing on the Initiative. The Motion to Compel with respect to interrogatory APWU/USPS-T2-3(a) is denied.

Interrogatory APWU/USPS-T2-3(b)

Interrogatory APWU/USPS-T2-3(b) solicits the number of consolidation review studies completed between FY 2005 through FY 2008 and the total number which resulted in consolidations.

- (b) Please provide the number of consolidation review studies that were performed on station and branches each year during FY2005-FY2008. How many of these studies resulted in a consolidation?

APWU asserts that the Postal Service currently cannot provide any information as to how many facilities will be studied and ultimately closed. It claims information sought will provide insight and prospective into the Initiative. Motion to Compel at 2.

The Postal Service objects to interrogatory APWU/USPS-T2-3(b), claiming that Headquarters' discontinuance review process does not track local consolidation proposals if they did not originate as proposals to discontinue operations and were not submitted to Headquarters for approval. Objections to Interrogatories at 3. To get such information, the Postal Service states it would need to canvass tens of thousands of District and local retail management personnel to obtain records documenting any such local changes. *Id.* The Postal Service adds, "It is estimated that many thousands of workhours would be involved in such an undertaking." *Id.*

Here again, the information requested is historical in nature, and has no direct bearing on the Initiative. This interrogatory, like APWU/USPS-T2-3(a), only seeks annual totals, and without any context, their value is limited. The Postal Service maintains that it cannot provide accurate figures because many of the studies may have been abandoned at the District level and never reached Headquarters. Balancing the potential value of the requested information to lead to admissible evidence against the effort to retrieve it, it seems that the value is trivial. The Motion to Compel with respect to interrogatory APWU/USPS-T2-3(b) is denied.

Interrogatory APWU/USPS-T2-3(c)

Interrogatory APWU/USPS-T2-3(c) seeks the total number of studies completed on facilities reporting to EAS-24 Postmasters and above and the number of closures in this total.

- (c) You specifically state in footnote 4 that not all of the facilities in this group would be classified as facilities that report to EAS-24 (and above) Postmasters. Please provide a count of the studies done during this time period of facilities that report to EAS-24 (and above) Postmasters and the number of closures of facilities in this group.

In regards to interrogatory APWU/USPS-T2-3(c), the Postal Service states that EAS pay grades of Postmasters are not required to be recorded for purposes of the discontinuation review process. Opposition at 4. As such, it would need to search through an estimated several thousand pages of records to see if they contain the requested data, which would take an estimated 20 workhours. *Id.* at 5. In order to fill the gaps, the Postal Service will have to consult additional historical files and the recollections of field personnel. *Id.* The Postal Service adds that whether 3 or 13 or all 21 of the stations and branches that were discontinued during FY 2005 through FY 2008 reported to Postmasters at or above the EAS-24 pay grade is irrelevant to the Initiative. *Id.*

Interrogatory APWU/USPS-T2-3(c) limits the Postal Service's task to singling out information pertaining to facilities reporting to EAS-24 and above Postmasters. This interrogatory is historical in nature, but will offer participants insight into the treatment of specific facilities. Though the Postal Service indicates that library references USPS-LR-N2009-1/NP1 and USPS-LR-N2009-1/NP2 do not necessarily include references to the EAS pay grade of the Postmaster to whom the facility reported, after reviewing the library references, the levels were located. Since the stations and branches being considered for the Initiative report to EAS-24 and above Postmasters, the data generated will likely lead to the discovery of admissible evidence relevant to this proceeding. The Motion to Compel with respect to interrogatory APWU/USPS-T2-3(c) is granted.

Interrogatory APWU/USPS-T2-8

This interrogatory inquires into whether stations and branches closed between FY 2005 through FY 2008 were located near a Contract Postal Unit (CPU). It also requests copies of the contracts entered into with CPUs near the stations or branches closed.

For each of the station and branch closures FY2005-FY2008 reported to the PRC in this docket, state whether or not a CPU existed in the area served by the station or branch and, where such a CPU did exist, provide a copy of the contract for the period in which the station or branch closed.

APWU contends that this interrogatory is relevant because the Postal Service considers the existence or possible existence of CPUs in making its determination to close or consolidate a facility. Motion to Compel at 2. APWU argues that knowledge of how many closed or consolidated stations and branches were located near CPUs will help determine how much weight is placed on this factor. *Id.* at 2-3. APWU adds, "it is immaterial that the documents requested were sought in another forum." *Id.* at 3.

The Postal Service argues that whether or not there is a CPU located in the vicinity of any station or branch closed between FY 2005 through FY 2008 is irrelevant to the Initiative. Objections to Interrogatories at 5. The Postal Service asserts that this interrogatory seeks to explore matters related to a collective bargaining issue recently raised by APWU, *i.e.*, whether stations or branches have been discontinued and replaced with CPUs to the detriment of APWU members. Opposition at 7. The Postal Service estimates that it may take at least one entire workday to isolate each of the nearly 100 hard copy station or branch discontinuance files for FY 2005 through FY 2008.⁶ Objections to Interrogatories at 6. The Postal Service argues that the burden of searching for such records would greatly outweigh any probative value any such information could provide. *Id.*

⁶ After this argument was made, the Postal Service determined that there were substantially less than 100 discontinuances during this period.

The first part of interrogatory APWU/USPS-T2-8 requests information that is relevant to the availability of alternative facilities factor that the Postal Service considers in its pre-screening studies. Postal Service witness Matalik provides an overview of the Initiative's review process, which includes examining the branch's proximity to other retail service facilities. USPS-T-2 at 4. Based on that testimony, the availability of alternative access to postal services is a factor in considering whether to close or consolidate a branch or station. The requested information will inform the Commission of the significance which this factor has had in the past and likely will have in the Initiative. It appears that the first part of interrogatory APWU/USPS-T2-8 is reasonably calculated to lead to the discovery of admissible evidence relevant to this docket. However, providing copies of the contracts for the CPUs during periods in which various stations or branches closed does not. The Motion to Compel is granted with respect to the location of CPUs, but not as it relates to the actual contracts.

APWU/USPS-DR-1

This document request seeks copies of all materials provided to managers at all levels of the Postal Service regarding how to carry out the Initiative.

Please provide copies of all written guidance provided to managers at any level of the Postal Service about how to carry out the Stations and Branches Optimization Initiative, including without limitation all handbooks, manuals, documents similar to handbooks and manuals however denoted, memorandums, emails, letters, power point presentations, forms, and instructions.

APWU argues that since the Postal Service does not claim that all the documents requested are privileged, it should be required to specifically name the documents it claims are privileged. Motion to Compel at 3. APWU adds, "those documents that are not privileged, must be produced." *Id.*

The Postal Service contends that on its own impetus and in response to various interrogatories and information requests, it has or will provide all requested documents that provide guidance on implementation from the Initiative administrative team. Opposition at 8. The Postal Service states that its objection to document request

APWU/USPS-DR-1 relates to communications prepared by postal counsel and disseminated to field managers. The Postal Service claims that these documents reflect attorney work product and attorney-client communications that are privileged and exempt from discovery. Opposition at 9.

When analyzing a motion to compel a document request, the document request is initially evaluated against a standard of whether or not the document request “appears reasonably calculated to lead to the discovery of admissible evidence” relevant to the subject matter of the proceeding. 39 CFR 3001.27(a). The documents sought are consistent with this purpose.

The Postal Service plans to provide copies of all documents that have been provided by the Initiative administrative team to field managers. In responding to this document request, the Postal Service may provide a list of where and when documents previously have been submitted in this docket, in addition to documents not previously submitted. As for the documents which the Postal Service claims to be exempt from discovery based on attorney work product and attorney-client communications privilege, more information is required. As APWU argues, the Postal Service should identify each document it claims to be privileged by date, author, and generalized subject matter. The Motion to Compel is granted with respect to document request APWU/USPS-DR-1.

APWU/USPS-DR-2

This document request seeks information explaining and supporting closures during FY 2005 through FY 2008 which were reported to the Commission.

With reference to the stations and branch closures FY2005-FY2008 reported to the PRC in this docket, please provide copies of the documents explaining and supporting each decision, including all related communications between and among local, District, Area and Headquarters managers.

APWU contends that since there is no information in the record as to what may happen in the future, providing past decisions is the only way to better understand the Initiative. Motion to Compel at 2. APWU further explains that the information provided in library references USPS-LR-N2009-1/NP1 and USPS-LR-N2009-1/NP2 is not

representative of the substantive issues faced in typical discontinuance reviews or in determining whether to discontinue a branch or station. *Id.* at 2. APWU argues that reviewing the documents used in determining whether to close or consolidate other facilities will assist the Commission in providing useful advice. *Id.*

The Postal Service disagrees, arguing that unconnected, locally-initiated discontinuance proposals will not provide insight into the Initiative. Opposition at 10. The Postal Service states, "Responding to this request would require examination of countless hard-copy files in corresponding Area and District offices." *Id.* The Postal Service estimates that such an undertaking would require thousands of workhours, and would paralyze the resources devoted to the litigation of this docket. *Id.* at 10-11.

This document request is broad. As the Postal Service points out, the request seeks all communications between and among local, District, Area, and Headquarters managers. In its Motion to Compel, APWU argues that the submitted decision packages do not contain the same information and therefore it cannot determine whether the Postal Service's discontinuance process is consistent. The Postal Service shall provide all decision packages for discontinuances between FY 2005 through FY 2008. These documents will give the public a more complete sketch of the Postal Service's discontinuance process and will likely lead to the discovery of admissible evidence relevant to this docket. However, the Postal Service need not locate and provide all communications between and among its managers that relate in some way to those closures. The burden of obtaining these documents appears to vastly outweigh the potential benefit this historical information might provide. The Motion to Compel is partly granted with respect to document request APWU/USPS-DR-2.

APWU/USPS-DR-3

This document request seeks a list of all the station and branch discontinuance proposals submitted to postal Headquarters and rejected during FY 2005 through FY 2008 and the documentation explaining the Postal Service's decisions.

List all Station and Branch closure proposals or requests submitted to postal headquarters during FY2005-FY2008 that were not carried out and provide copies of the documents explaining and supporting each decision, including all related communications between and among local, District, Area and Headquarters managers.

APWU contends that having an opportunity to review the information that the Postal Service relied on in deciding not to close certain stations and branches will give the Commission a better understanding of the discontinuance process. APWU claims that the information requested is in the sole possession of the Postal Service, and to the extent that it is available to the Postal Service, it must be produced. Motion to Compel at 3.

The Postal Service argues that “any number of station/branch discontinuance proposals may have been initiated in the 80 District offices between FY2005-08 that never were completed or submitted to Headquarters for review.” Opposition at 12. The Postal Service explains further that files pertaining to closures received by Headquarters were shipped back to their respective Districts where they are retained for a two-year period. *Id.*

The Postal Service’s argument that many of the discontinuance proposals were initiated at the District level and never submitted to Headquarters is irrelevant to this document request that only solicits the discontinuance proposals which were received by Headquarters. The documents requested will shed light on the Postal Service’s basis for rejecting a proposal to discontinue a station or branch. Since discontinuance proposals which are denied are sent back and retained for only two years by District offices, the Postal Service need only submit information pertaining to the proposals on which it acted within the last two years. In responding to this interrogatory, the Postal Service shall submit a list of such discontinuance proposals along with available documents explaining and supporting each decision to deny the proposal between and among local, District, Area, and Headquarters managers. These documents appear to be reasonably calculated to lead to the discovery of admissible evidence relevant to this

proceeding. The Motion to Compel with respect to document request APWU/USPS-DR-3 is granted as described.

RULING

The American Postal Workers Union, AFL-CIO Motion to Compel the Postal Service to Respond to APWU/USPS-T2-3(a-c) and T2-8 and to Produce Documents in Response to APWU/USPS-DR-1 through APWU/USPS-DR-3, filed August 21, 2009, is granted, in part, as described in the body of this ruling.

Ruth Y. Goldway
Presiding Officer