

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 THE MOTION OF THE AMERICAN POSTAL WORKERS UNION  
SEEKING THE PRODUCTION OF DOCUMENTS  
(October 8, 2009)

The United States Postal Service hereby files its opposition to the October 2, 2009 Motion of the American Postal Workers Union seeking the production of documents. The APWU motion is a misguided, belated and unjustified request for absolution from the consequences of failure to engage in meaningful discovery on Postal Service testimony filed in this docket. Accordingly, for the reasons explained below, the motion should be denied.

On July 2, 2009, the Postal Service filed its request in this docket, accompanied, *inter alia*, by the testimony of witness Matalik (USPS-T-2). That testimony described the factors used by the Postal Service in evaluating whether to discontinue the operation of a retail facility for purposes of the Station and Branch Optimization and Consolidation (SBOC) Initiative.

Presiding Officer's Ruling No. N2009-1/1 established September 11, 2009 as the deadline for discovery, providing intervenors with over two months within which to propound written requests for information and documents. APWU intervened in this case on July 6<sup>th</sup> and filed its only set of interrogatories

concerning the testimony of witness Matalik (USPS-T-2) on July 28th.<sup>1</sup> Answers to these interrogatories were filed August 12<sup>th</sup>. APWU filed no follow-up interrogatories, either in reaction to those answers, or the numerous other answers or documents filed by the Postal Service in response to other intervenor discovery or the Commission's Information Request. For reasons known only to itself, APWU elected not to inquire about such factors as the Postal Service's evaluation of customer wait-time and retail window service capacity that were explicitly referenced in USPS-T-2 as part of the discontinuance review process.

Instead, one day before the September 11<sup>th</sup> discovery deadline, APWU filed a motion seeking to extend discovery "by at least one month." That motion was denied by Presiding Officer's Ruling N2009-1/6 on September 18, 2009.

In support of its October 2<sup>nd</sup> request for permission to belatedly initiate written discovery on these matters three weeks after the discovery deadline, APWU argues at page 3 of its motion that:

during oral cross-examination of Postal Service witness Matalik . . . it was acknowledged that the customer wait-time in line . . . was determined by mystery shopper data and/or customer service measurements. It was further acknowledged that there are documents that govern the mystery shopper program.

As demonstrated below, whether considered separately or together, these arguments are, to be charitable, unavailing.

First, it seems wholly immaterial whether Wait-Time In Line (WTIL) data are generated through a stand-alone effort or as part of the Mystery Shopper

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<sup>1</sup> A second set of APWU interrogatories directed to witness Matalik was filed on August 6<sup>th</sup>, but pertained to the pair of discontinuance decisions filed on July 2<sup>nd</sup> in USPS Library References N2009-1/1 and N2009-1/2.

program. That bit of trivia would have been revealed in an instant at any time after July 2<sup>nd</sup> – had any intervenor or the Commission deemed it a matter worthy of exploration. The absence of any such inquiry speaks for itself. The compelling fact is that APWU had the opportunity from its intervention on July 8<sup>th</sup> until September 11<sup>th</sup> to inquire about such matters but offers no explanation for its failure to do so.

Second, APWU argues that it is now entitled to initiate written discovery regarding WTIL/Mystery Shopper three weeks after the written discovery deadline because witness Matalik apparently stunned APWU by acknowledging during cross-examination that there might be *documents* describing the program that generates the WTIL data referenced at pages 4, 9 and 10 of USPS-T-2. It is impossible to overstate the vacuity of such an assertion.

In large measure, discovery in Commission dockets presumes the existence of documents pertaining to matters explicitly referenced in pre-filed testimony. Participation in Commission proceedings under 39 U.S.C. § 3661 requires a measure of diligence, as dockets must move at a pace designed to permit the timely issuance of advisory opinions by the Commission, so that such opinions will be of maximum potential benefit to the Postal Service. The Commission has discretion to extend discovery to mitigate the impact of material last-minute surprises. However, that discretion should not be doled out for the benefit of intervenors long after the deadline for discovery, especially when they present no reason – much less a compelling one – to support the grant of such relief.

At page 3 of its motion, APWU argues that:

other factors, including but not limited to mail volume trends (factor a), retail transaction trends (factor b), space requirements and capabilities (factor d), and the ability of nearby postal facilities to handle retail service and mail processing workload that may shift to their locations (factor j), are calculated through reliance on documents, templates, handbooks and other instructions. Because the statistical significance of the data relied on to determine the value of the various factors is of critical importance, the Postal Service should be required to produce all documents relied on by Postal management to make these valuations. If the factors relied on are based on data that is statistically insignificant, this will certainly impact whether the Postal Service made a true assessment of whether postal patrons will maintain “ready access to essential postal services” if a facility is discontinued.

APWU has been provided documents, templates, handbooks, manuals, training presentations and instructions that govern the administration of the SBOC Initiative. See the summary of items provided in the September 28, 2009 response to APWU/USPS-DR-1. The Commission’s attention also is invited to the attachment to the instant pleading, which lists the factors in USPS-T-2, and cites the various documents filed in this case that reference those factors and the dates on which those documents were filed.

APWU’s arguments are unpersuasive and self-defeating. As with Wait-Time In Line information, the other factors referenced in USPS-T-2 are not matters that suddenly came to light as a result of oral cross-examination or recently filed interrogatory responses. These matters were explicitly highlighted in USPS-T-2 and were subject to discovery from the outset of this docket. In fact, APWU can hardly claim surprise, since its motion refers to the various factors above by the letter designations assigned them in USPS-T-2.

APWU attempts to turn the Docket No. N2009-1 calendar back to July 8<sup>th</sup>, in order to finally initiate discovery seeking records explaining and validating the postal operations, cost and service data systems that generate information examined by postal managers who ultimately make the subjective proposals or decisions regarding the consolidation of stations and branches. The subjective nature of the decision-making process is described by witness VanGorder (USPS-T-1) at Docket No. N2009-1, Tr. 2/244-45, 247-50, 265-66, 309, 330 and 364. And contrary to the assertion at page 3 of APWU's motion, the factors are not accorded equal weight. The factors are not empirically weighted. Individual factors may be accorded greater or lesser significance in particular cases based on relevant facts and circumstances. Accordingly, it is questionable what value would be obtained by an 11<sup>th</sup>-hour assessment of the statistical validity of data used as indicators in the subjective process of judging whether a proposed station or branch discontinuance is feasible to implement.

At page 3, APWU asserts a need to evaluate the "veracity" of Wait-Time In Line data. But how could that be accomplished other than by demanding the identities of and cross-examining the mystery shoppers who report their postal retail experiences to the firms employed by the Postal Service?

Also at page 3, APWU characterizes as "troubling" the "fact" that the various factors listed in USPS-T-2 are given "equal weight" in each discontinuance study, despite the absence of any such "fact," and despite the fact that the discontinuance review process relies largely upon the discretion and

judgment of local managers to give varying weight to each factor on a case-by-case basis. See Tr. 2/244-45, 247-50, 265-66, 309, 330 and 364.

On that same page, APWU argues that it needs to examine the statistical validity of all data examined by local discontinuance review teams in order to assess “whether the Postal Service made a true assessment of whether postal patrons will maintain ‘ready access to essential postal services’ if a facility is discontinued.” It is unclear from APWU’s assertion whether the statistics would be used to determine the truthfulness of the subjective determination by postal management regarding “ready access” or the “essential” quality of the services involved, or both. Later on page 4, APWU asserts that it needs to conduct a stem-to-stern examination of the requested data systems in order to “ensure that the Postal Service is making an honest assessment . . . before it closes a facility.”

Without pointing to any provocation arising in this docket, APWU is suddenly overcome by a spasm of anxiety about the veracity of mystery shoppers and the honesty of postal management. To ease its anxiety, APWU now requests that it be prescribed an emergency mega-dose of discovery in order to conduct a belated, in-depth examination of postal systems that generate cost, operational and service data in which APWU has until now been completely disinterested.

Enough.

Section 3001.25(a) of the Commission’s Rules of Practice and Procedure instructs that discovery against the Postal Service’s direct case end prior to the

receipt of that case into evidence. In accordance with that rule, the Commission established September 11<sup>th</sup> and the deadline for discovery on USPS-T-1 and USPS-T-2. Under Rule 25(a), additional discovery against the Postal Service is permitted in cases brought under 39 U.S.C. § 3661 when a party seeks information that (a) is beyond the scope of the Postal Service's direct case and (b) is only available from the Postal Service. When both of those conditions are met, the discovery request still must be made 20 days prior to the filing of rebuttal testimony.

APWU's October 2<sup>nd</sup> document requests are unjustified under Rule 25(a). First, the requests pertain explicitly to matters within the scope of USPS-T-2 and come three weeks after the September 11<sup>th</sup> discovery deadline. Alternatively, even if the requested information were not explicitly referenced in USPS-T-2 or in any of the materials referenced in the attachment to the instant pleading, the APWU discovery requests comes nearly a week after the September 25<sup>th</sup> deadline implied by the exception in Rule 25(a). APWU offers no explanation, much less any justification for its lack of diligence in the conduct of discovery or its belated request that it be permitted to initiate discovery on these USPS-T-2 factors this late in the docket.

Parties make choices with the finite opportunities provided by the Commission's rules of discovery. APWU might have used the discovery process in Docket No. N2009-1 to examine the pre-filed testimony regarding the station and branch discontinuance review process. APWU might have sought to inquire about the various SBOC pre-screening and discontinuance study factors in

USPS-T-2. APWU declined the opportunity presented by Ruling N2009-1/1. Having done so, APWU should not now be heard to complain about or escape from the adverse consequences of its utter lack of interest in the details of USPS-T-2 until oral cross-examination. This docket should not be brought to a screeching halt and the Postal Service's receipt of the Commission's advice should not be delayed because of APWU's belated interest in the responsibilities, obligations and consequences of being an intervenor in this docket.

For the foregoing reasons, the motion to compel should be denied.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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## The Factors Referenced In USPS-T-2 and Citations To Related Materials

- a) Mail Volume: See USPS response to CIR.1 Q8 (8/13/2009, revised 9/28/2009) and CIR 1 Q 10 (8/13/2009, revised 9/8/2009).
- b) Retail Transaction Trends: See USPS response to CIR.1 Q 9 (8/13/2009, revised 9/8/2009); Library Reference N2009-1/6, pages 16-20 (8/13/2009), Library Reference N2009-1/5 (8/13/2009).
- c) Proximity to other retail service facilities: See (b) above and Library Reference N2009-1/6 (8/13/2009), Page 3.
- d) Space Requirements and Capabilities: See Library Reference N2009-1/6, page 19 (8/13/2009); Library Reference N2009-1/5 (8/13/2009).
- e) Customer wait-time in line and retail window service capacity: See USPS Response to CIR 1 Q 8 (8/13/2009, revised 9/28/2009); CIR 1 Q 10 (8/13/2009, revised 9/8/2009), USPS Library Reference N2009-1/5 (8/13/2009); Library Reference N2009-1/6, pages 17-19 (8/13/2009).
- f) Impacts on employees at the facility under study. See Library Reference N2009-1/5 (8/13/2009), N2009-1/6, page 18 and page 10 of standard proposal language (8/13/2009)
- g) Customer concerns as expressed in response to questionnaires or in community meeting: See Library Reference N2009-1/5 (8/13/2009), N2009-1/6 pages 8-20, pages 6-9 of standard proposal language (8/13/2009); APWU/USPS-T2-2 (d-e) (8/12/2009, revised 9/28/2009), PR/USPS-T2-15(a)(1) (9/1/2009), CIR 1 Q 2 (8/13/2009, revised 9/28/2009), CIR 1 Q 3 (8/13/2009, revised 9/28/2009), Library Reference N2009-1/3, pages 20-23 (7/27/2009).
- h) Cost Savings: See PR/USPS-T2-24 (9/4/2009), Library Reference N2009-1/5 (8/13/2009), Library Reference N2009-1/6, pages 7, 16-19, and page 10 of sample proposal language (8/13/2009).
- i) Alternate retail window and delivery service options: See Library Reference N2009-1/5, pages 14-15 (8/13/2009); N2009-1/6, pages 18-19 (8/13/2009).
- j) Ability of nearby postal facilities to handle retail service and mail processing workload that may shift to their locations. See Library Reference N2009-1/6 pages 16-19 (8/13/2009).
- k) Ability of the community served by the facility to access nearby postal facilities or alternate access channels: See Library Reference N2009-1/5, page 12 (8/13/2009).
- l) Other factors: Library References N2009-1/5 (8/13/2009), N2009-1/6, page 4, and standard proposal language pages 9, 11 (8/13/2009).