

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Dan G. Blair;
Tony L. Hammond; and
Nanci E. Langley

Eugene Post Office's University Station
Eugene, Oregon

Docket No. A2011-4

ORDER GRANTING MOTION TO COMPEL

(Issued March 2, 2011)

In Order No. 597, the Commission gave notice of this appeal and directed the Postal Service to file its responsive pleading or administrative record.¹ On December 7, 2010, the Postal Service filed its response reiterating its position that this proceeding is not subject to 39 U.S.C. 404(d).²

On January 26, 2011, the Eugene Area Local No. 679 of the American Postal Workers Union, AFL-CIO (Local No. 679) filed a motion to compel requesting that the

¹ Notice and Order Accepting Appeal and Establishing Procedural Schedule, November 23, 2010 (Order No. 597).

² Notice of the United States Postal Service, December 7, 2010 (Notice). Attached to the Notice is the Final Determination to close the Eugene, Oregon University Station and information regarding additional post offices located in Eugene, Oregon.

Postal Service file its complete administrative record.³ Local No. 679 also requests that the Commission modify the procedural schedule to allow time for parties to submit additional comments after reviewing the entire administrative record.

In support of its Motion, Local No. 679 challenges the Postal Service's assertion that it does not have to, nor is it required to, create an administrative record in this case. Motion at 2. Local No. 679 contends that without the administrative record the Commission would have to base the decision on an incomplete record. This would deprive customers of a meaningful appeal. *Id.* at 3. Local No. 679 also contends that without knowing the basis of the Postal Service's decision, customers cannot effectively challenge the merits of the decision. *Id.* Finally, Local No. 679 asserts that the Postal Service's "evasive behavior" is contrary to the call for increased transparency contained in the Postal Accountability and Enhancement Act of 2006. *Id.* at 3-4.

On February 2, 2011, the Postal Service filed a reply opposing the Motion.⁴ The Postal Service contends that the Commission lacks subject matter jurisdiction because this docket involves a facility classified as a station and not a post office. *Id.* at 1. The Postal Service further contends that the Commission has no legal authority to expand the limited Congressional grant of subject matter jurisdiction over post office closings found in section 404(d). *Id.* at 1-2. The Postal Service concludes that the content of the administrative record has no bearing on whether the Commission has jurisdiction to hear the appeal. *Id.* at 1.

Commission analysis. At the outset, the Commission recognizes its long-held disagreement with the Postal Service regarding the scope of section 404(d). The Commission's decision to grant the Motion is not taken lightly and is based on the

³ Eugene Area Local No. 679 of the American Postal Workers Union, AFL-CIO Motion to Compel and Revise Procedural Schedule, January 26, 2011 (Motion). On December 23, 2010, Local No. 679 filed a Notice of Intervention American Postal Workers Union, AFL-CIO Eugene Area Local No. 679. This notice was accompanied by American Postal Workers Union, AFL-CIO Eugene Area Local No. 679 Motion for Late Acceptance. This motion is granted.

⁴ Reply of the United States Postal Service in Response to Eugene Area Local No. 679 of the American Postal Workers Union, AFL-CIO Motion to Compel and Revise Procedural Schedule, February 2, 2011 (Reply).

narrow circumstances presented in the instant proceeding. Moreover, the Commission stresses that this Order neither represents a ruling on the merits of the jurisdictional issue nor whether the discontinuance is subject to section 404(d).

Given that this ruling is limited and is without prejudice to any parties' legal position, the Commission views such filing as a matter of comity. Accordingly, the Commission concludes that granting Local No. 679's Motion is appropriate.

It is ordered:

1. The Eugene Area Local No. 679 of the American Postal Workers Union, AFL-CIO Motion to Compel and Revise Procedural Schedule, filed January 26, 2011, is granted.
2. The Postal Service shall file the administrative record by March 7, 2011.
3. Participants may supplement their initial comments based upon the underlying record through March 11, 2011.

By the Commission.

Shoshana M. Grove
Secretary

Commissioner Blair dissenting.