

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

In the Matter of:
University Station
Eugene, Oregon 97403
(Steven Shapiro, Petitioner)

Docket No. A2011-4

**SUPPLEMENTAL COMMENTS OF
AMERICAN POSTAL WORKERS UNION, AFL-CIO
EUGENE AREA LOCAL NO. 679
(March 15, 2011)**

The American Postal Workers Union, AFL-CIO, Eugene Areal Local No. 679 (“Union” or “Local 679”) submits these supplemental comments in response to the material contained in the redacted administrative record filed by the United States Postal Service on March 8, 2011.

The Commission Has Jurisdiction over this Appeal

In the Comments of American Postal Workers Union, AFL-CIO Eugene Area Local No. 679 (“Comments”), filed January 21, 2011, we argued that the Commission has jurisdiction over this appeal based on extensive Commission precedent holding that the requirements of Section 404(d) apply when the Postal Service proposes to close or consolidate a “community’s retail postal facility” irrespective of the designation given to the facility by the Postal Service, be it post office, station or branch.¹ Despite the clear and substantial precedent otherwise, the Postal Service asserts that Section 404(d) applies only to “post offices” in the technical sense. However, as detailed at length in our Comments, hereby incorporated by reference, this assertion is baseless, having been

¹ Comments of American Postal Workers Union, AFL-CIO Eugene Area Local No. 679, January 21, 2011, at 1-3.

repeatedly rejected by the Commission as unpersuasive.² For those reasons and the additional reasons contained in our Comments and longstanding Commission precedent, the Commission has jurisdiction over this appeal as it involves the closing of a “community’s retail facility.”

Section 404(d) Procedural Requirements Apply

Furthermore, contrary to the assertion of the Postal Service, the closing of the University Station is not a mere realignment of postal facilities within a community not subject to Section 404(d) procedures. As explained in our Comments, the University community is a unique community separate and apart from the surrounding community of Eugene.³ The Administrative Record filed by the Postal Service in this case confirms this. For example, the “Station and Branch Optimization Concept Briefing Statement” at page 11 of the record, indicates that when students and staff are on breaks, retail traffic is greatly reduced. Additionally, the “Community Survey Sheet,” page 136 of the record, states that “this station is used almost exclusively by the University of Oregon students and staff.” While it is true that the record makes no mention of the current use of other postal facilities in Eugene by University students and staff, the use is almost certain to be minimal or not at all. The letters filed in this docket, the returned questionnaires contained in the record and the numerous petitions opposing the closure of University Station, attached hereto as Attachment A, clearly show that due to several constraints specific to this community, including insufficient time during the day to access off campus facilities, lack of transportation, language barriers of international students and limited financial resources, this community simply cannot readily access any other postal facility. Therefore, this is not a mere realignment. Instead, the closing of the University Station completely deprives the University community of ready access to postal services.

Commission precedent indicates that in such a situation a closing under Section 404(d) may be found. For example, in Docket No. A2010-3 involving the East Elko Station closing, the Commission held that Section 404(d) requirements did not apply because the East Elko Station customers were “not losing access to the postal services

² *Id.*

³ *Id.* at 3-4.

offered in their community.”⁴ Unlike in East Elko, and contrary to the assertions by the Postal Service, as detailed above and in our Comments, the University Station customers are losing access to the postal services offered in their community. For these reasons the closing of University Station is a closing pursuant to Section 404(d), therefore, Section 404(d) requirements apply.

The Closing of University Station Violates Section 404(d)

Section 404(d) of the Act states in relevant part:

(d)(1) The Postal Service, prior to making a determination under subsection (a)(3) of this section as to the necessity for the closing or consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation to persons served by such post office to ensure that such persons will have an opportunity to present their views.

The law further requires that the determination to close or consolidate a post office be based on the consideration of the following factors:

- (i) the effect of such closing or consolidation on the community served by such post office;
- (ii) the effect of such closing or consolidation on employees of the Postal Service employed at such office;
- (iii) whether such closing or consolidation is consistent with the policy of the Government, as stated in section 101(b) of this title, that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining;
- (iv) the economic savings to the Postal Service resulting from such closing or consolidation; and
- (v) such other factors as the Postal Service determines are necessary.

39 U.S.C. § 404(d)(2)(A). The decision to close or consolidate a post office, along with the evaluation of the above factors must be in writing and must be made available to the patrons of that post office to enable them to evaluate the proposal and provide comments. 39 U.S.C. § 404(d)(3)-(4). The Postal Service cannot act to close or

⁴ Docket No. A2010-3, Order Dismissing Appeal, June 22, 2010, at 7-8.

consolidate the postal facility until 60 days after it has provided notice of its decision (which must be based upon consideration of the above five factors and any comments received) available to patrons of the facility. 39 U.S.C. § 404(d)(4); 39 C.F.R. § 3001.110. This notice must also detail the right to appeal the closure/consolidation decision within 30 days of the Postal Service's written determination. 39 U.S.C. § 404(d)(5); 39 C.F.R. § 3001.110.

On appeal, the Commission is required to

set aside any determination, findings, and conclusions found to be—

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
- (B) without observance of procedure required by law; or
- (C) unsupported by substantial evidence on the record.

Section 404(d)(5).

In challenging the Commission's jurisdiction and its Order to produce the administrative record, the Postal Service admits that it did not create a record "supporting the discontinuance of University Station that complies with the standards applicable to a Post Office discontinuance."⁵ Additionally, the record provided in this case does not show that Postal Service provided the mailing community of the University Station with its evaluation of the five factors listed above as required by Section 404(d)(3-4). For these reasons alone, the Commission must set aside the Postal Service's findings and return the entire matter to the Postal Service for reconsideration pursuant to Section 404(d)(5)(B). However, examination of the record reveals several other, more damaging reasons to return the determination to close the University Station to the Postal Service for reconsideration.

First, the closure of University Station violates the Section 101(b) of the Act requiring the Postal Service to "provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining." 39 U.S.C. § 101(b). As explained above, due to the unique needs and

⁵ Notice of United States Postal Service, December 7, 2010, at 1.

make-up of the University community it relies exclusively on postal services provided at the University Station. Requiring University Station patrons to use postal facilities well over a mile away from campus severely limits the ability to access any postal services thereby reducing the effectiveness of the postal services offered.

Second, the decision to close the University Station did not properly consider the effect on the community. At the outset, the Postal Service limited the amount of customer feedback received by sending out questionnaires regarding the closure on August 5, 2009, a time when the majority of students, faculty and staff were on summer vacation.⁶ However, even without a meaningful cohort of University Station patrons participating, the Postal Service still received numerous responses which were overwhelmingly in opposition to the closure.⁷ Despite the outspoken opposition, the Postal Service continued with its closure decision.

The law requires the Postal Service to actually consider the effect of a postal retail facility closing on the community. The Administrative Record produced in this case shows that at best, the Postal Service gave lip service to the legitimate concerns of the University Station community; at worst, the concerns were completely ignored. Examples of this in the Record are abundant:

1. Page 17 of Record – admits that several customer concerns were not addressed.
2. Page 23 of Record – patrons expressed concerns of having to travel to another retail facility for services. The Postal Service responds that “some customers will have to travel farther to obtain services.” This is disingenuous. As noted above, the University Station is used almost exclusively by University students, faculty and staff. Therefore, all customers will have to travel farther.

The Postal Service also suggested that ordering online or by phone will alleviate the need to go to the post office for stamps. This however, ignores the fact that these stamps will not be delivered to the University, so students and faculty and staff will still have to travel to a post office to pick up their order.

⁶ USPS Administrative Record, March 8, 2011, at 21.

⁷ Additional opposition to the closure can be see in Attachment A.

3. Page 21 of Record – Customers expressed concerns about the long wait at the Main Post Office. The Postal Service responded not by agreeing to increase staffing, but rather by encouraging patrons to visit the Post Office at non-peak times or access retail products and services through other means (see Point 2 above for why this is inadequate). The Postal Service gave no consideration to the fact that a long wait time in line, on top of a long commute from the University to the Main Post Office greatly impacts the University community's access to postal services.

This same concern was noted on page 54 of the Record. The response in that case shows even less consideration of the circumstances of the University community as it advises them that many retail services can be obtained from their letter carrier. The University community does not have a Postal Service letter carrier.

4. Page 67 of Record – The alternatives to in person access to retail facilities listed here do not eliminate the need for a visit to a postal facility for many members of the University community as there is no USPS delivery on campus. The Postal Service makes no mention of this in its consideration of the effect on the community.

5. Page 160 of the Record – In response to Question 15(b) the Postal Service clearly states that only one replacement facility is within walking distance. This facility is not a full service facility, it is a CPU. The Postal Service completely ignores how University Station patrons will access other postal facilities in Eugene which are not within walking distance from campus.

Section 404(d)(5)(C) requires the Commission to set aside any determination not supported by substantial evidence in the record. With regard to the impact on the community, on page 27 of the material provided, the Postal Service concludes that based on its study, the community will suffer no adverse impact. This is not supported by the record. The questionnaires contained in the record clearly show that the community would be adversely impacted and how. Moreover, as shown above, the discontinuance study did not sufficiently and genuinely consider the effect on the community; it was ill timed and did not give any credence to the unique attributes of the

University community. Thus, the Postal Service cannot claim that the community will not be adversely impacted.

Furthermore, the law also requires that the Postal Service consider the economic savings of the proposed closure. 39 U.S.C. § 404(d). In the instant case, the Postal Service asserts that closing the University Station will help alleviate its large debt burden. This is simply not supported by the record. First, there is no evidence that the University Station is operating at a loss. Additionally, the Postal Service inflated its savings calculation in order to bolster its economic claim. On page 27 of the record, the Postal Service claims that it will save \$130,095 by closing the University Station. However, the bulk of this savings comes from labor costs that will remain a cost to the Postal Service. Therefore, the actual savings are closer to \$21,000 (rent and utilities savings minus replacement costs). This is certainly not a sufficient savings warranting the elimination of valuable, needed postal services within a community.⁸

Section 404(d)(1) speaks of the “necessity” of closing a postal facility in a community and lays out the factors to consider in determining if the closure is in fact necessary. Nothing in the record indicates that closing the University Station is necessary. Closing the University Station will not help the Postal Service’s bottom line. Instead, it will deprive postal patrons of access to essential postal services while tarnishing the Postal Service’s standing in the community. The administrative record provided shows that the decision to close the University Station was not made pursuant to a legitimate business purpose. The Postal Service did not comply with the requirements of Section 404(d), the decision is not in compliance with the law and is unsupported by the record. Therefore, the Commission must remand this decision to the Postal Service for reconsideration.

Respectfully submitted,

Jim Kubli
President, Eugene Area Local No. 679

⁸ It bears noting that even if the Postal Service’s savings calculation was legitimate, a savings of just over \$130,000.00 would also make no difference to the Postal Service’s current economic situation.

ATTACHMENT A