

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

Latham Post Office
Latham, Missouri

Docket No. A2011-71

PUBLIC REPRESENTATIVE COMMENTS
SUPPORTING REMAND
(December 1, 2011)

On September 13, 2011, the Commission received an appeal from Deanna Cook (Petitioner) objecting to the closing of the Post Office in Latham, Missouri. The appeal was postmarked September 2, 2011.¹ On September 15, 2011, the Commission issued Order No. 855 accepting the appeal, directing the Postal Service to file the administrative record by September 28, 2011, establishing a procedural schedule, and naming the undersigned Public Representative.² On September 28, 2011, the Postal Service filed an incomplete copy of the Administrative Record.³ On October 12, 2011, Petitioner filed a participant statement. On October 13, 2011, the Commission received letters from Shelbie Schazter, Enos G. Sauder, and Elva K. Sauder objecting to the closing of the Latham office. On October 21, 2011, the Postal Service supplemented the Administrative Record.⁴ The Postal Service will serve Latham via highway contract carrier.⁵

Petitioner and Interveners make the following assertions:⁶

- The Postal Service failed to acknowledge the existence of various businesses in the community and thus did not consider the postal needs of those businesses.

¹ Notice of Filing under 39 U.S.C. § 404(d), September 14, 2011.

² Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 15, 2011.

³ United States Postal Service Notice of Filing Administrative Record, September 28, 2011 (AR I).

⁴ United States Postal Service Notice of Supplemental Filing, October 21, 2011 (AR II).

⁵ Proposal to Close, AR I, Item No. 33, at 2 (pdf page 123).

⁶ Petition for Review, September 13, 2011; Participant Statement, October 12, 2011; Letter Received from Shelbie Schatzer Regarding the Latham, MO Post Office 65050, October 13, 2011.

- The Postal Service did not acknowledge that Latham is a Mennonite community. The Mennonites do not have computers and cannot conduct postal business online. They travel by horse and buggy or by bicycle. Travelling an extra 12 miles to the California Post Office would be an extreme hardship.
- The Postal Service is saving money on the Latham Post Office by employing an OIC, who is paid much less than a postmaster.

Legal considerations. Under 39 U.S.C. section 404(d)(2)(A), in making a determination on whether to close a post office, the Postal Service must consider the following factors: the effect on the community; whether a maximum degree of effective and regular postal service will be provided; the effect on postal employees; and the economic savings to the Postal Service. The issues raised by Petitioner and Interveners fall under the categories of effect on the community, effect on postal services, effect on employees, and economic savings to the Postal Service.

The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions of the Postal Service that it finds 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 in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

Effect on the community. In a memo to the OIC/Postmaster at Latham dated February 25, 2011, the Post Office Review Coordinator requested "the names and addresses of businesses, religious institutions, civic organizations, and local government offices, and schools that are served by the LATHAM Post Office." AR I, Item No. 13. No response to this request appears in the record. The Community Survey Sheet provides no analysis or documentation of expected business growth.

AR I, Item No. 16. The Final Determination lists six “Businesses and organizations” in Latham under the heading “EFFECT ON COMMUNITY.”⁷ A letter to the Gateway District Manager, received April 14, 2011, lists 17 businesses and organizations in Latham, only one of which appears in the Final Determination. See AR I, Item No. 27, at 2 (pdf page 98). Petitioner’s participant statement lists 12 businesses with Latham addresses, nine of which are not on any other list. There are thus at least 31 businesses or organizations in Latham, of which the Postal Service acknowledges six. One of the unacknowledged businesses is the Tipton Latham Bank, which is next door to the Post Office!⁸

Clearly, the Postal Service has no clue as to the makeup of the Latham community. Its findings and conclusions regarding the effect on the community of closing the Latham Post Office are unsupported by substantial evidence. The Rate Commission, in its Opinion Remanding Determination in Docket No. A97-20, urged the Postal Service “to reconcile the discrepancies regarding the number and identities of business establishments within the . . . community.”⁹

Effect on postal services. While the Community Survey Sheet notes the existence of a “small Menonite [sic] population,”¹⁰ the Final Determination takes no notice of the Mennonites’ unique way of living and their postal needs. Several Latham patrons raised concerns about the Mennonites in questionnaire responses and optional

⁷ AR II, pdf page 96. The instructions for drafting this section of a final determination in the prior version of Handbook PO-101 (LR-USPS-N2009-1/3) suggest the following language (at pdf page 124): “There is/are <> religious institutions in the community. Businesses include: <list any and all businesses, including in-home businesses, local government offices, and service organizations>. Residents travel to nearby communities for other supplies and services.” The final sentence, which appears *verbatim* in the Latham Final Determination (AR II, pdf page 96), is unsupported by substantial evidence when less than 20 percent (6/31) of the businesses and organizations in the community have been identified by the Postal Service.

⁸ Letter Received from Shelbie Schatzer Regarding the Latham, MO Post Office 65050, October 13, 2011, at 2 (which is a different letter from Enos and Elva Sauder).

⁹ PRC Op. A97-20, September 23, 1997, at 7.

¹⁰ AR I, pdf page 21, AR II, pdf page 88; see *also id.*, Item No. 41 at 5.

comment forms. For example, on June 4, 2011, the Postal Service received an optional comment form from Harlan and Edna J. Dowell. AR II, pdf page 70. The Dowells pointed out how difficult it would be for the Mennonites to travel by horse and buggy or by bicycle. However, in all cases, the Postal Service responded with its canned answer about customers' not having to travel to a distant post office. *Id.* at 69. It did not address the specific problem of travelling to a distant post office by horse and buggy or by bicycle. The use of canned responses (which may be found in the prior edition of Handbook PO 101¹¹) makes it impossible to determine from the administrative record whether the Postal Service gave any consideration whatsoever to the specific concerns of customers. As the Commission observed in Order No. 974, when the administrative record does not address matters raised by customers, "the implication is left that failure to consider the [matters] was arbitrary or capricious."¹²

Economic savings. The Postal Service estimated no extra cost for providing highway contract delivery service to Latham, AR I, Item No. 17 (Highway Contract Route Cost Analysis Form). The cost analysis assumes zero additional boxes and zero additional miles. While it is conceivable that an existing route already passes by the new delivery points in Latham (thus adding no miles to the route), it is not reasonable to assume no new delivery points. Even if a CBU is installed at Latham, AR Item No. 15, the carrier will have to spend extra time loading mail into individual boxes, a task previously performed by the OIC.

Conclusion. The Commission should remand the Final Determination to close the Latham Post Office so that the Postal Service can give proper consideration to the postal needs of the Mennonite community and to the effect on the community of closing the Latham Post Office.

¹¹ See Docket No. N2009-1, Library Reference USPS-LR-N2009-1/3, July 27, 2009, at pdf pages 133, 151, 167.

¹² Docket No. A2011-34, Order Remanding Determination, November 16, 2011, at 13.

Respectfully submitted,

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