

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman; and
Robert G. Taub

Complaint of American Postal Workers Union,
AFL-CIO

Docket No. C2013-10

ORDER DISMISSING COMPLAINT

(Issued February 27, 2014)

I. INTRODUCTION

On December 13, 2013, the American Postal Workers Union (APWU) filed an amended complaint alleging violations by the Postal Service of 39 U.S.C. § 3691 and 39 C.F.R. § 121.1.¹ The Amended Complaint alleges that the Postal Service is regularly failing to comply with the market dominant service standards set by 39 C.F.R. § 121.1 in violation of 39 U.S.C. § 3691(b)(1)(A) and (C). *Id.* ¶ 20.

¹ Amended Complaint of American Postal Workers Union, AFL-CIO Regarding Violations of 39 U.S.C. § 3691 and 39 C.F.R. § 121.1 (Amended Complaint).

The Postal Service filed a response² in further support of its earlier Motion to Dismiss.³ For the reasons set forth below, the Motion to Dismiss is granted, and the Complaint and Amended Complaint are dismissed.

II. BACKGROUND

On September 5, 2013, the APWU filed a complaint alleging violations by the Postal Service of 39 U.S.C. §§ 3661, 3691, and 403(c).⁴ The APWU alleged that the Postal Service is failing to comply with its service standard regulations in violation of title 39. *Id.* at 9. The Postal Service moved to dismiss the Complaint,⁵ and the APWU filed a response on October 2, 2013.⁶

On November 27, 2013, the Commission issued Order No. 1892, granting in part the Motion to Dismiss for all claims under 39 U.S.C. §§ 403(c), 3661, and 3691(b)(1)(B). The Commission deferred ruling on the APWU's claim under 39 U.S.C. § 3691(d) and offered the APWU an opportunity to file supplemental information to support this latter claim.⁷ The Commission stated that the APWU must "identify the specific standards it believes are being violated, the harm alleged to be caused to it by those violations, and allege facts it intends to elicit that, if proven, would constitute violations of those regulations." *Id.* at 16.

² United States Postal Service Response in Further Support of its Motion to Dismiss, December 20, 2013 (Response).

³ United States Postal Service Motion to Dismiss the Complaint of the American Postal Workers Union, AFL-CIO [Errata], September 26, 2013 (Motion to Dismiss).

⁴ Complaint of American Postal Workers Union, AFL-CIO Regarding Violations of 39 U.S.C. 3661 and 3691, September 5, 2013 (Complaint).

⁵ United States Postal Service Motion to Dismiss the Complaint of the American Postal Workers Union, AFL-CIO [Errata], September 26, 2013 (Motion to Dismiss).

⁶ Response of American Postal Workers Union, AFL-CIO to USPS Motion to Dismiss, October 17, 2013.

⁷ Order Granting, In Part, Motion to Dismiss and Holding Complaint in Abeyance Pending Further Action, November 27, 2013, at 15-16 (Order No. 1892). The opportunity to provide additional information was provided pursuant to 39 C.F.R. § 3030.20. That section expressly authorizes the Commission, in its discretion, to permit a complainant or the Postal Service to submit additional information.

The APWU filed an Amended Complaint. The Amended Complaint presents for the first time allegations that the failure to comply with service standard regulations violates 39 U.S.C. §§ 3961(b)(1)(A) and (C). It omits any specific allegation that the Postal Service has violated 39 U.S.C. § 3691(d)—*i.e.*, the statutory section which Order No. 1892 deferred ruling upon. The Postal Service filed its Response in further support of its earlier Motion to Dismiss. The APWU did not reply to the Postal Service's Response.

III. SUMMARY OF PLEADINGS

A. The Amended Complaint

The APWU's Amended Complaint alleges that the Postal Service "is regularly failing to comply with the service standards set by 39 C.F.R. § 121.1 in violation of 39 U.S.C. § 3691(b)(1)(A)[,](C)." Amended Complaint ¶ 20. In support of this contention, the Amended Complaint alleges that local APWU unions in Texas, Pennsylvania, New York, New Jersey, Colorado, and Florida have reported that the Postal Service is failing to meet the one-day and two-day service standards for First-Class Mail in certain cases. *Id.* ¶¶ 25-77.⁸ It also describes the experience of the Westside Pioneer weekly newsletter, whose subscribers have complained that they do not receive the newsletter on time. *Id.* ¶¶ 65-69. Finally, the Amended Complaint contends that the APWU conducted a test mailing of 40 letters nationwide from the APWU's Washington's D.C. office to various APWU members across the country. *Id.* ¶ 78. It asserts that 25 percent of the letters mailed were not delivered according to their two-day or three-day service standards for First-Class Mail. *Id.* ¶ 79.⁹

⁸ The original APWU Complaint relied upon the experiences of local unions in 10 cities or communities. See Complaint ¶¶ 30-57. The Amended Complaint cites experiences in 6 cities or communities, only two of which (Local 251 in Brooklyn, New York, and Local 247 in Colorado Springs, Colorado) were also discussed in the original Complaint.

⁹ Of the 40 letters in the test mailing, 8, or 20 percent, were delivered late. See *id.* ¶¶ 78, 80-89.

B. Postal Service's Motion to Dismiss

The Postal Service argues that the Amended Complaint fails to satisfy the Commission's instructions in Order No. 1892. Response at 2-3. It contends that the APWU fails to identify any facts that, if proven, would establish service standard violations and renews its argument from the Motion to Dismiss that the APWU lacks standing to maintain its claim. *Id.* at 5-10. It also asserts that the APWU fails to identify any harm resulting from the alleged violations of First-Class Mail service standards. *Id.* at 3-5.¹⁰

IV. COMMISSION ANALYSIS

The Amended Complaint and the Postal Service's Response raise three issues: (1) APWU's standing to bring the Amended Complaint; (2) the sufficiency of the claims alleged under 39 U.S.C. §§ 3691(b)(1)(A) and (C); and (3) the sufficiency of the claims alleged under 39 C.F.R. § 121.1. Each issue is addressed below.

A. Standing

The Postal Service argues that the APWU lacks standing to bring its Amended Complaint. Response at 9. It notes that the Commission in Order No. 1892 stated that the APWU must "elaborate on the harm to it allegedly caused by violations of current service standards" if it elects to file additional information in this proceeding. *Id.* at 10 (citing Order No. 1892 at 9 n.18). It asserts that the APWU fails to make such allegations and, in any event, has not been harmed by any alleged service standard violation. *Id.* As such, it contends that the APWU is not an interested person and lacks standing to maintain its claim under section 3691(d).

¹⁰ The Postal Service also argues that the APWU's allegations regarding 39 U.S.C. § 3691(d) are not ripe. *Id.* at 10-11. Because the Commission grants the Motion to Dismiss for failing to allege any harm or injury resulting from alleged service standard violations, it does not reach the question of whether the APWU's allegations are ripe for review.

The Commission previously addressed the issue of the APWU's standing in Order No. 1892. It found that "the APWU is an 'interested person' for purposes of filing the Complaint." Order No. 1892 at 9. It explained that "[a]s a mailer who sends and receives mail to and from postal districts in every state and territory, the APWU has a direct stake in and may be aggrieved if the allegations in the Complaint are true." *Id.* Nothing in the Response supports a reevaluation of these prior findings on standing. The APWU thus maintains standing to bring the Amended Complaint.

B. Alleged Violations of 39 U.S.C. §§ 3691(b)(1)(A) and (C)

The APWU alleges that "[t]he Postal Service is regularly failing to comply with the service standards set by 39 C.F.R. § 121.1 in violation of 39 U.S.C. § 3691(b)(1)(A)[,](C)." *Id.* ¶ 20. Section 3691(b)(1) lists four objectives that service standards must be designed to achieve. Subsection (A)'s objective is "[t]o enhance the value of postal services to both senders and recipients." 39 U.S.C. § 3691(b)(1)(A). Subsection (C)'s objective is "[t]o reasonably assure Postal Service customers delivery reliability, speed and frequency consistent with reasonable rates and best business practices." *Id.* § 3691(b)(1)(C).

In its original Complaint, the APWU alleged violations of section 3691(b)(1)(B), which is an objective requiring service standards "[t]o preserve regular and effective access to postal services in all communities, including those in rural areas or where post offices are not self-sustaining." In Order No. 1892, the Commission concluded that the APWU's claims relating to section 3691(b)(1)(B) were misplaced. Order No. 1892 at 14. It explained that section 3691(b)(1)(B) "relates to the objectives of how service standards are to be designed, not how they should be enforced." *Id.*

As with section 3691(b)(1)(B), the Commission finds that the APWU's claims regarding sections 3691(b)(1)(A) and (C) are likewise misplaced. These sections, which establish objectives that service standards must achieve, relate to the design of service standards rather than the enforcement of actual service standards. The

Amended Complaint alleges that the Postal Service is failing to comply with the service standards established by 39 C.F.R. § 121.1. It does not claim that the service standards themselves do not meet the objectives of sections 3691(b)(1)(A) and (C). Therefore, the APWU's claims brought pursuant to section 3691(b)(1)(A) and (C) are dismissed.

C. Sufficiency of Claims Alleged under 39 C.F.R. § 121

In Order No. 1892, the Commission provided the APWU the opportunity to file supplemental information to elaborate on its claims under 39 U.S.C. § 3691(d), including identifying “the harm alleged to be caused to it by those [service standard] violations.” Order No. 1892 at 16. In its Amended Complaint, the APWU alleges that the Postal Service is failing to meet the one-day service standard for First-Class Mail pursuant to 39 C.F.R. § 121.1(a), *e.g.* Amended Complaint ¶ 25; the two-day service standard for First-Class Mail pursuant to 39 C.F.R. § 121.1(b), *e.g. id.* ¶ 60; and the three-day service standard for First-Class Mail pursuant to 39 C.F.R. § 121.1(c), *e.g. id.* ¶ 82. In support, it states that presidents of APWU locals have observed that communications sent to its members is being delayed and that local members regularly receive their First-Class Mail after the delivery date. *See, e.g., id.* ¶¶ 27, 39, 56. It also alleges that the publisher of a Colorado weekly news publication, Westside Pioneer, has cancelled its publication of printed editions, at least in part, because of the Postal Service's failure to meet its delivery standards. *Id.* ¶ 69. Finally, the APWU cites the results of its test mailing to various union members on December 5, 2013. *Id.* ¶ 78-89.

The Postal Service argues that the Amended Complaint fails to identify any harm resulting from alleged violations of First-Class Mail service standards. Response at 3-5. It asserts that the Amended Complaint states that the Postal Service allegedly violated service standards without identifying any consequences of such violations. *Id.* It concludes that the APWU has failed to satisfy the Commission's requirements in Order No. 1892. *Id.*

For claims involving violations of section 3691(d), harm or injury is an essential element. Without harm or injury, claims of alleged service standard violations present no controversy for the Commission to hear under section 3662.¹¹ In this case, the APWU merely alleges violations of service standards without identifying how it or its members are harmed or injured by the alleged service standard violations.¹²

In 2013, the Postal Service delivered over 158 billion packages and pieces of mail to almost 153 million delivery points.¹³ In that context, reports of mail pieces arriving past the intended delivery time without allegations of the harm or injury caused by such untimely delivery do not justify commencement by the Commission of a complaint proceeding.

The APWU has failed to comply with the Commission's directive in Order No. 1892 to identify any harm or injury resulting from alleged service standard violations. Thus, the Postal Service's Motion to Dismiss is granted, and the APWU's claims brought pursuant to 39 C.F.R. § 121.1 and 39 U.S.C. § 3691(d) are dismissed.

¹¹ This is not to suggest, however, that such violations could not be pursued as a rate or service inquiry under 39 C.F.R. part 3031.

¹² The situation involving Westside Pioneer's publication is unclear. Assuming, as the Commission must at this stage, that the allegations regarding the Postal Service's failure to meet its service standards are true, it also appears that Westside Pioneer's decision to publish weekly editions online was due in part to circumstances other than the Postal Service's delivery performance. Amended Complaint ¶ 69. In addition, there is no indication of what steps, if any, West Pioneer has taken to resolve the alleged delivery problems with its weekly publication through discussions with the Postal Service.

¹³ United States Postal Service 2013 Annual Report to Congress at 3.

It is ordered:

1. The United States Postal Service Motion to Dismiss the Complaint of the American Postal Workers Union, AFL-CIO, filed September 25, 2013, is granted as to claims under 39 U.S.C. § 3691(d).
2. The Amended Complaint of American Postal Workers Union, AFL-CIO Regarding Violations of 39 U.S.C. § 3691 and 39 C.F.R. § 121.1, filed December 13, 2013, is dismissed.

By the Commission.

Shoshana M. Grove
Secretary