

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Before

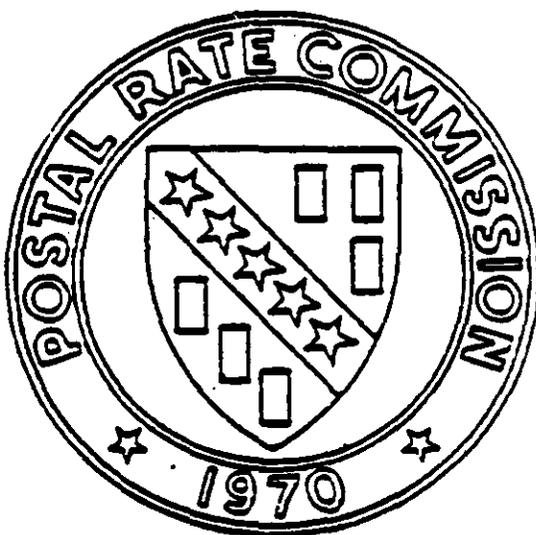
Chairman Steiger,
Vice-Chairman Crutcher,
Commissioners Bright, Duffy and Folsom

In the Matter of:

Knob Fork, West Virginia 26579
(Donald R. Rankin, Petitioner)

:
:

Docket No. A83-30



COMMISSION OPINION REMANDING DETERMINATION
FOR FURTHER CONSIDERATION
39 U.S.C. § 404(b)(5)

Washington, D.C. 20268-0001
(January 18, 1984)

Introduction and Summary. This case involves the question of whether the 39 U.S.C. § 404(b) procedure must be followed before the Postal Service decides to close a Community Post Office (CPO) which is the only retail postal facility serving the community. We hold that section 404(b) does apply. We set aside the Postal Service's decision because it was made "without observance of procedure required by law."

Facts and position of parties. On September 30, 1983, the Commission received an appeal letter from Donald R. Rankin of Knob Fork, West Virginia, stating that the Postal Service had decided to discontinue the Knob Fork Community Post Office. Mr. Rankin argues that the decision is invalid because the Postal Service did not follow the procedure established in 39 U.S.C. § 404(b). Mr. Rankin says he has requested the documentation on which the Postal Service based its decision. According to Mr. Rankin, the Knob Fork CPO has grown in the past five years and would expand more if a money order machine is installed. A small store is operated in conjunction with the office, and Mr. Rankin says the employees and patrons would be affected by the closing.

In Order No. 527, establishing this docket, the Commission pointed out the issue of whether 39 U.S.C. § 404(b) is applicable to the Postal Service's actions regarding the Knob Fork CPO. On October 14, 1983, the Postal Service filed a notice and motion to terminate this proceeding.¹ The Postal Service said Mr. Rankin's appeal letter concerns the closing of a community post office and it has made no decision to close or consolidate a "post office" (as it understands that term), in Knob Fork. Postal Service Motion, p. 2. The Postal Service noted that the Conference Report concerning section 404(b) stated that the procedure would apply only to post offices and not to other postal facilities.

¹ USPS Notice Regarding Administrative Record and Motion to Terminate Docket (Postal Service Motion).

Id., citing H.R. Rep. No. 94-1444, 94th Cong., 2d. Sess. 17 (1976).

The Postal Service Motion pointed out that in its 1977 rulemaking to establish procedures for applying the section 404(b) amendment, it said that "by long tradition" decisions concerning stations and branches have been made on a less centralized basis and these facilities "tend to be changed more frequently than post offices." Additionally, the Postal Service pointed out that contract facilities can be terminated by notice of the operator. Postal Service Motion, p. 3. The Postal Service contends that no statutory justification exists for this docket and there is no subject matter to be reviewed. Id. at 3-4.

Section 404(b)(1) states:

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 insure that such persons will have an opportunity to present their views.

Section 404(b) continues by providing the factors the Postal Service must consider, the procedure to be followed, and the patrons' appeal rights.

Applicability of section 404(b). The threshold issue² in this case is whether the Knob Fork community post office is a "post office" as that term is used in section 404(b). If it is, then the Postal Service has not followed the prescribed section 404(b) procedure in the Knob Fork closing; if not, then there is no particular statutorily prescribed procedure.

² In previous cases, the Commission rejected a Postal Service threshold argument that the Commission has no review authority in the absence of a formal "Final Determination" by the Postal Service. PRC Order No. 409, pp. 7-11. In this case, the Postal Service has advanced no new argument requiring reconsideration of that decision.

The Postal Service gives a technical definition of "post office", as "The basic organizational unit of the USPS. Generally, each Post Office has a specific geographic area for which it has primary responsibility for collection, delivery, and retail operations." Postal Service Glossary of Postal Terms (1981). The Postal Service defines Community Post Offices (CPOs) as "contract units which provide service in small communities. A CPO bears its community's name as part of a recognized mailing address." Postal Operations Manual § 211.126.

The statutory language, in section 404(b), however, can be said to include a latent ambiguity: Is "post office" used in its technical or in its common sense? The common meaning of post office is a fixed, staffed retail facility where postal services may be obtained. The American Heritage Dictionary (1976 edition) defines "post office" as: "Any local office where mail is received, sorted, and delivered, and stamps and other postal matter are sold."³

In ordinary usage, "post office" is a retail facility where patrons may purchase postal services, and dispatch and possibly receive mail. The technical or specialized usage of "post office" adds to the ordinary definition the requirement of a specific degree of managerial independence. That is, the technical meaning of post office is a retail postal facility with a managerial structure including a postmaster position. Postmasters have authority concerning operational decisions in the area served by their post offices.⁴

As an aid in determining whether Congress intended the common or the specialized meaning, the Commission will look

³ This is the second definition. The first refers to the entire establishment responsible for mail services -- clearly not a relevant meaning here.

⁴ See e.g., Postal Operations Manual §§ 144.2, 631.2 and 636.2; Domestic Mail Manual §§ 113.611 and 113.71; Buchanan v. USPS, 508 F.2d 259, 265 (5th Cir. 1975).

to the purpose of the section 404(b) amendment. The court in Buchanan v. USPS gave a succinct explanation of the accommodation possible between the two policies underlying Postal Reorganization: those calling for promotion of both the freedom to manage and responsiveness to the public.

Although these policies conflict to some extent, we think a balance may be struck whereby management is given the freedom to manage without unnecessary limitations and the public is given an opportunity to present their views on decisions of the Postal Service which affect them.

Buchanan v. USPS, 508 F.2d 259, 262 (5th Cir. 1975).

In the Postal Reorganization Act of 1970, Congress emphasized its concern regarding postal facilities in less-populated areas. "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. No small post office shall be closed solely for operating at a deficit." 39 U.S.C. § 101(b).

Congress, not satisfied with the Postal Service's implementation of this directive, in 1976 added section 404(b) to limit the previous grant of authority and provide a procedure for its exercise. In explaining this amendment, Senator Randolph described the intent as establishing a "very simple mechanism"⁵ to insure the opportunity for patrons to participate in the decisionmaking to close or consolidate the community's post office. 122 Cong. Rec. 14268. The importance of the role post offices can play in the life of a community was emphasized during the debates on the 1976 amendments. 122 Cong. Rec. 14268, 14283-84, 14292, 14304, 14417, 14428, 14446 and 14456.

The Postal Service accurately points out that the Conference Report states that the provision is to "apply to post offices only and not to other postal facilities." Postal Service Motion, p. 1. This statement, however, provides no insight to whether

⁵ 122 Cong. Rec. 14277 (Aug. 23, 1976).

"post office" is to mean community post offices as well as independent post offices. It is reasonable to assume that the words "other facilities" refer to units other than retail facilities, such as mail processing centers or vehicle maintenance facilities. The reasonableness of this assumption is underscored by the attempts of interested parties to require the Postal Service to follow section 404(b) procedures before mail processing functions⁶ or rural routes⁷ could be consolidated.

The legislative history does not provide a definitive answer on the meaning of the term "post office." However, the legislative history does describe the situation section 404(b) seeks to change: the Postal Service's closing or consolidation of small communities' only retail postal facility without first requesting the views of the affected patrons. See 122 Cong. Rec. 14284 and 14424. Not only were the post offices which were discussed the sole retail postal facility in the community; often they were also the only federal presence there. Id. at 14456. Senator Randolph explained that the problem concerned the smaller offices in the rural areas. Id. at 14286. It is not reasonable, given these concerns, to believe that the availability of the comment procedure should turn on whether the only postal facility in the community is operated by a postal employee or a private contractor.

Another indication that Congress assumed the conventional meaning of "post office" (that is, a staffed retail facility) is Senator Fong's statement on the ramifications of section 404(b). He argued, in opposing the amendment, "If the Postmaster [General] should decide that he will close a station, he can be taken to court." 122 Cong. Rec. 14278 (August 23, 1976). No one

⁶Knapp v. USPS, 449 F. Supp. 158 (E.D. Mich. 1978); Wilson v. USPS, 441 F. Supp. 803 (C.D. Cal. 1977).

⁷Martin v. Sloan, 432 F. Supp. 616 (W.D. N.C. 1977); PRC Order No. 208.

disputed this interpretation.

In proceedings concerning conversions of independent post offices into CPOs, the Postal Service has emphasized that, in the public's perception, the two types of facilities function in exactly the same manner. The difference is in the employment status of the person operating the facility. "A CPO [community post office] offers the same services as a small post office, but is operated by a bonded contractor . . . not by a career postal employee . . . The CPO contractor is trained by Postal Service personnel to insure that postal procedures, policies, and service standards are followed." Postal Service Motion for Expedited Affirmance of the Final Determination to Consolidate the Ruby Valley, Nevada, Post Office, pp. 12-13, Docket No. A83-2 (Dec. 8, 1982).

The Postal Service has emphasized, in explaining to patrons about the effects of converting their independent post office into a CPO, that the same service will be provided. "The principal difference in service as a result of the change will be the employment status of the operator of the office. . . . Service will be equal to the service now provided by the Sessums Post Office."⁸ "The same high standards of customer service and courtesy would be expected of a successful bidder for the contract station. . . . The Postal Service would demand the same standards of service from this contractor as is expected of postal employees." Postal Service Final Determination, p. 3, Tomnolen, Mississippi, Docket No. A82-16.

What section 404(b) addresses is the closing, or a particular change in the management structure, of a post office serving a community. The court in Knapp v. USPS⁹ emphasized the importance of retail facilities to the community. "Given the

⁸ Postal Service Final Determination, p. 1, Sessums, Mississippi, Docket No. A82-9.

⁹ 449 F. Supp. 158 (E.D. Mich. 1978).

prospect of adverse impact on the populace of the postal community of such a closing or consolidation, it makes perfect sense to accord affected postal customers the right to notice and a hearing prior to consolidation as § 404(b) requires." 449 F. Supp. at 162.

If we accept the Postal Service's consistent position that a community post office serves the public in much the same way as an independent post office, the more reasonable reading of section 404(b) is that it is to apply whenever the Postal Service proposes to close or consolidate a community's retail postal facility. The public generally describes these facilities as "post offices." Congress was concerned about the effects on the community resulting from the Postal Service's decisions on retail facilities.¹⁰

It may be helpful to point out that our decision in this case is entirely consistent with our holding in Docket No. A82-10, Oceana Station, that section 404(b) did not apply to the Postal Service's decision to eliminate the Oceana Station facility. That case involved a relocation of facilities within a community, rather than the closing of the only retail facility serving a community. PRC Order No. 436. Thus it did not present the situation we face here.

Interpreting "post office" in the conventional sense comports well with the two broad, and sometimes conflicting, policies of the Postal Reorganization Act, as amended -- freedom to manage and responsiveness to the public. Section 404(b) simply gives a procedure and guidelines for the Postal Service to

¹⁰ Section 404(b) explicitly applies to consolidating the management of a post office. As the effects of consolidating the management of an independent post office could be expected to be significantly less than those of eliminating a CPO, interpreting "post office" in its usual sense is more reasonable and more likely to achieve the result intended: that is, to permit meaningful public participation in decisions concerning the community's retail postal facility.

follow in exercising its authority over the nation's system of post offices; it does not place rigid constraints on the Postal Service's management of its system of retail facilities. Section 404(b) does not follow the more intrusive route of an absolute prohibition or numerical limit for closings and consolidations.¹¹ The Postal Service's reliance on a distinction that is more closely related to the Postal Service's internal management structure than the public perception of the services provided by the community post offices does not comport with the policy of responsiveness to public concerns. It follows that interpreting "post office" in its non-technical sense promotes one main policy of the statute (responsiveness) without doing violence to the other (managerial freedom).

We have carefully considered the ramifications of refusing to accept the Postal Service's limitation on the applicability of section 404(b). We believe the intent of the amendment extends to facilities such as the CPO in Knob Fork, West Virginia. An important intent, but not the only one, of Congress was to apply § 404(b) to the closing of the sole postal retail facility serving a community. That is implicit in the definition of a CPO. See p. 3, supra. Of course, if a community no longer exists, the facility may be closed. We find no such determination in this case. We do not anticipate that requiring the section 404(b) procedures before closing CPOs will unduly hamper the operations of the Postal Service. The intent of the amendment was to establish a "very simple mechanism" for decisionmaking on the closing or consolidation of post offices. 122 Cong. Rec. 14277.

The Postal Service's argument that section 404(b) is not applicable because, traditionally, stations, branches and contract facilities tend to be changed more frequently than independent post offices is not persuasive. The Postal Service's additional observation that contractors may terminate the facilities on notice

¹¹ Compare Pub. L. 94-421 §§ 2(2), (3) and (4).

does not make the argument convincing. See Postal Service Motion, p. 3. The Postal Reorganization Act was passed to improve the traditional operating practices of the Post Office Department. The 1976 amendments were "fine tuning" on the Act. Accepting Congressional dissatisfaction with previous functioning, we cannot accept as persuasive an argument based merely on tradition. Rather, we must look at the rationale underlying those traditions to determine whether they remain applicable to current practice.

That stations, branches and contract facilities tend to be "changed" more frequently does not address the applicability of section 404(b). The statute is concerned with only two types of changes: a closing which eliminates a community's post office or a particular consolidation of management of an office. The Postal Service may make a myriad of changes in postal facilities that do not come under section 404(b). The Commission has previously addressed some of the changes that do not come within section 404(b). Postal Rate Commission Order No. 436, p. 6:

The requirements of section 404(b) do not pertain to the specific building housing the post office; but rather are concerned with the provision of a facility within the community. We do not believe that section 404(b) was intended to govern the Postal Service's decisionmaking on improving or relocating facilities within the community. One of the reasons for the reorganization of the Post Office Department in 1970 was to promote the efficient progress of needed capital improvements. Additionally, in 1976 when Congress was considering changes to the Postal Reorganization Act, the goal of upgrading facilities was emphasized. 112 Cong. Rec. S14294-95 (Aug. 23, 1976).

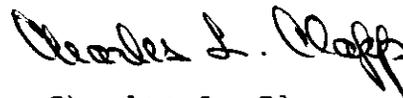
That the operators of community post offices may cancel the contracts on notice does not show that Congress intended to exclude communities with only contractor-operated facilities from the procedural protections of section 404(b). The changing of contractors would not be an event requiring the section 404(b) procedure. Additionally, since the Postal Service must continue to provide service to every community in the nation [39 U.S.C. § 101(a)] and there are provisions to deal with unanticipated

inability of post offices to remain functioning (DMM § 113.3), it does not appear that the contractor's ability to cancel has any bearing on the proper interpretation of section 404(b).

Likewise, the Postal Service's emphasis on the decentralized decisionmaking on the provision of retail facilities other than independent post offices does not address the question at issue. Section 404(b) does not place the responsibility for carrying out the requirements at any particular management level within the Postal Service.

Accordingly, the Postal Service's determination to close the community post office at Knob Fork, West Virginia, is set aside as having been made without observance of the procedure required by law.

By the Commission.



Charles L. Clapp
Secretary