

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

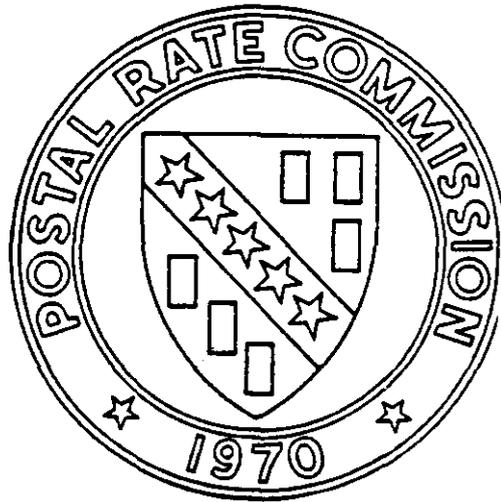
Before

Chairman Steiger, Vice-Chairman Folsom,
Commissioners Crutcher, Guiton and Tyson

In the Matter of:

Little Norway, California 95721
(Mr. and Mrs. Dingwell, et al.,
Petitioners)

: Docket No. A85-20
:
:



COMMISSION OPINION AFFIRMING DETERMINATION
UNDER 39 U.S.C. § 404(b)(5)

Washington, D.C. 20268-0001
(October 28, 1985)

I. Introduction and Summary

This opinion is issued pursuant to section 404(b) of the Postal Reorganization Act [39 U.S.C. § 404(b)]. On July 3, 1985, the Commission received a letter from Mr. and Mrs. Dingwell stating they wished to appeal the Postal Service's decision to convert the Little Norway, California, post office into a contractor-operated "community post office" (CPO) under the administrative control of the Twin Bridges, California post office. The Commission received three additional appeal letters.¹ The Commission has consolidated those appeal letters into this docket. Mr. and Mrs. Dingwell filed a Participant Statement (August 9, 1985) and a Reply (September 3, 1985). The Postal Service filed a Response to the Participant Statement on August 19, 1985.

We affirm the Postal Service's decision to consolidate the Little Norway, California, post office and convert it into a community post office. As explained in greater detail below, the record shows that the Postal Service acted in compliance with section 404(b) of the Act and with its own regulations in making its decision.

II. Commission Review

A. Summary of the Postal Service's Determination

The Postal Service has decided to convert the Little Norway post office into a contractor-operated CPO under the administrative control of the Twin Bridges, California, post office, which is six miles away. The Little Norway office has 63 post office box customers and one general delivery customer. The office is open eight hours Monday through Friday and two hours on Saturday for the pick-up of parcels and accountable mail. During the summer months, the Little Norway post office administers a CPO at Echo Lake, two miles away. This function would be taken over by the Twin Bridges post office. The Postal Service's "fact

¹ Roy A. Tariel (July 29, 1985); Walter W. Stevenson (July 29, 1985); Donald J. Thomsen (August 22, 1985).

sheet" shows for 1982, the office's receipts at \$2,686 and expenses at \$24,881.²

The Postal Service describes Little Norway as a small mountain community. It is a resort area; many people have summer homes there and skiers visit during the winter. There are 11 businesses and one church. The businesses include a restaurant, bar, two ski shops, gas station and two real estate offices. Four of the businesses are seasonal. Little Norway has no schools. Final Determination, p. 2.

B. Procedural Requirements: 39 U.S.C. § 404(b)

The procedural requirements for providing adequate notice of the Postal Service's intention to close a post office and an opportunity for public comment are found at section 404(b) of the Act, as well as in the Service's own regulations. Domestic Mail Manual (DMM) § 113.2.

Mr. and Mrs. Dingwell complain that the Final Determination was posted at a time when the Little Norway office was temporarily suspended, with mail pick-up switched to the Twin Bridges post office. Apparently the Little Norway office reopened in two weeks. The Dingwells assert that the posting in the Twin Bridges office during that time did not suffice. We do not believe that the Postal Service's actions in this regard are reversible error. It appears that the Postal Service acted reasonably under the circumstances. Additionally, Petitioners did see the Final Determination and filed a timely appeal.

² It appears that there is inconsistency in the Postal Service's method of completing this form. In this copy and the one prepared later in 1984, \$2,040 appears in the expense blank. (In the earlier form, the figure "24,881" also appears.) It is evident that \$2,040 cannot represent all the expenses, since the rent shown on the same form exceeds this amount. The problem with the fact sheet is not significant in this case, since the Postal Service used the figure needed if a new postmaster was appointed rather than current expenses in calculating economic savings.

The Dingwells also complain that they received none of the correspondence that the Postal Service sent to the postal patrons during the decisionmaking period. The record, however, indicates that the Dingwells may not have been living in Little Norway at that time. (During much of the decisionmaking period, the resort now owned by the Dingwells was owned by others.) Considering the number of responses in the record, it is reasonable to assume that the Postal Service distributed the documents as it described.

C. Substantive Criteria to be Considered by Postal Service Before Closing a Post Office: 39 U.S.C. § 404(b)(2)

When making a decision on consolidating a post office, the Postal Service must follow a procedure which affords patrons the opportunity to present their opinions. Additionally, the Postal Service must consider four specific factors as well as any others deemed necessary. The four specific factors are: effect on community, effect on employees, whether a maximum degree of effective and regular postal services will be provided, and economic savings. In our review, we examine the Postal Service's consideration of each statutory criterion and determine whether the Service made the required findings concerning each factor, and whether those findings are supported by substantial evidence in the record and are otherwise in accordance with the requirements of the Act.

1. Specific Issues Raised

a. Permanence of the CPO

The Dingwells say that part of their opposition to the Postal Service's plan stems from a concern that the conversion to a CPO may be a step toward the elimination of any staffed, retail facility in Little Norway. Appeal letter, p. 1. One reason that the Dingwells give for the concern is their perception that the Postal Service has not acted appropriately in its attempts to

find a contractor to operate the community post office. Id. at 1-4. Other petitioners say that a CPO would be sufficient for the community's needs.³ In their Participant Statement, p. 2, the Dingwells assert that service has deteriorated, which they believe is an indication the Postal Service may intend to close the office entirely.

In its response the Postal Service notes, without presenting any discussion, that Mr. Tariel and Mr. Stevenson favor the retention of a facility at Little Norway. Postal Service Response, pp. 1-2. In its Proposal the Postal Service discussed one aspect of this issue -- what happens if the contractor gives up the CPO and leaves the community. The Postal Service reassures the patrons that the CPO would not be closed under those circumstances; rather "another individual from the community will be sought." Proposal, p. 3.

The Dingwells describe their goal in this appeal as obtaining "assurances that if no individual or group of individuals bid in for the Little Norway Community Post Office at terms acceptable to the United States Postal Service, then we will still have the same postal service we have had for decades, staffed as always by Postal Service personnel." Participant Statement, p. 3. As a result of the Postal Service's decisionmaking now before us, the Service's options are limited to contracting for a community post office or retaining the current office. The Postal Service may not close out its retail operations in Little Norway without first following another section 404(b) procedure -- information gathering, notice, opportunity for comment and consideration of the statutory factors. PRC Op. A85-17, Ranchita, California. These requirements remain whether the Postal Service might want to close the office now, or at any time in the future. We cannot

³ Appeal letter of Roy A. Tariel; Appeal letter of Donald J. Thomsen. Mr. Stevenson emphasizes that what is important is to have someone carrying out the functions of the current post office. He says that a clerk would be sufficient. Appeal letter, p. 1.

assure the petitioners that a facility will always remain in Little Norway. However, before any subsequent closing, the residents will be given the same opportunity as in this proceeding to present their views and convince the Postal Service that the office should not be closed. The patrons will retain the same statutory rights with regard to the CPO as they have with the current post office. PRC Op. A83-30, Knob Fork, West Virginia.

b. Contracting Disputes

The Dingwells devote a substantial amount of their filings to a discussion of the problems they had with the Postal Service in attempting to negotiate a contract for operating the office. The Dingwells conclude that the Postal Service's actions in these negotiations may mean that it is not serious about finding a contractor, but is moving toward closing the office.

The Postal Service replies that it must be given maximum negotiating flexibility in such matters. The Postal Service adds that a section 404(b) appeal is not the proper forum to settle this type of dispute. Postal Service Response, pp. 3-4.

We agree with the Postal Service that this proceeding is not the proper place to resolve this problem. The Commission has the jurisdiction to review the Postal Service's decisionmaking record in order to ascertain whether it is consistent with the statute. We have no authority to oversee specific contract negotiations. This limitation on our jurisdiction is consistent with the restrictions on Postal Service's actions in these circumstances. The Postal Service must either procure a contract acceptable to it or leave the office open.

c. Number of Customers

In their Participant Statement, p. 2, the Dingwells challenge the Postal Service's count of Little Norway patrons. They note the influx of people during the spring and summer. The Dingwells predict that business would triple if the office were well-run and patrons were assured that retail operations would not be eliminated in Little Norway. The Dingwells re-iterated this issue in their Reply, p. 5.

The Postal Service did not address this issue in its Response. By searching the record, we have been able to find the support for the Postal Service's conclusions on the office's statistics. The record supplies adequate support for the Postal Service's findings. All the evidence in the record supports the reasonableness of the Postal Service's count of 60 families served by the office. The Final Determination notes that about 300 people are seasonal residents. Many of these part-time residents use the CPO which will continue to be maintained, during the season, at Echo Lake. In preliminary investigative notes, dated June 30, 1981, the Postal Systems Examiner lists the businesses receiving delivery from the Little Norway office and reports that 76 post office boxes are rented. The Little Norway Postmaster wrote in 1981 that about 40 families live year-round in the area. The fact sheets filled out in 1981 and 1983 both show the number of patrons consistent with the Postal Service's figure of 60 families in the Final Determination.

The Dingwells base their criticism of the Postal Service's figures, in large part, on their knowledge of the Little Norway post office's operations through 1978. We do not know how much the situation may have changed during the interim, but changes in the patrons' use of the postal services available in the area may very well account for what the Dingwells see as a discrepancy.

d. Status of Petitioners Mr. and Mrs. Dingwell

The Postal Service devotes a major portion of its response to arguing that the Dingwells should not be considered persons "served by" the Little Norway post office -- which is the statutory prerequisite for the right to appeal the Postal Service's decision to consolidate it. The Postal Service notes that the Dingwells have said they use another post office for much of their business mail. Response, p. 2. In their reply, pp. 1-3, the Dingwells point out that they have maintained a number of post office boxes at Little Norway for both business and personal mail, and purchase postal products there.

We agree with the Dingwells that they are persons served by the Little Norway post office and that they are proper

petitioners in this case. In situations like the one before us, it is reasonable to conclude that petitioners may be "served by" one post office within the meaning of the statute even though they do other postal business and receive delivery of some mail at another post office. It would not be reasonable to conclude that Congress intended to deny the section 404(b) rights to people in the circumstances of the Dingwells. Nothing in the statute indicates that a person may not be "served by" more than one post office. Compare PRC Op. A79-10 et al. at 111.

2. Effect on Employees, Economic Savings, and Other Factors

The Petitioners have raised no specific issues regarding the Postal Service's findings and conclusions regarding effect on employees [§ 404(b)(2)(B)] or "other factors" [§ 404(b)(2)(E)]. Petitioners discussed economic savings [§ 404(b)(2)(D)] only as the issue relates to the contracting dispute, which we have addressed previously in this opinion. Having reviewed the Postal Service's findings and conclusions with respect to these matters, we find them consistent with the statute and with the Postal Service's own regulations. We therefore affirm the Postal Service's treatment of those issues, on the basis of its discussion in the record.

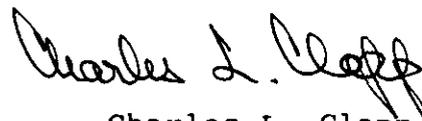
II. Conclusion

In summary, we hold that the Postal Service's determination to consolidate the Little Norway post office is: (1) supported by substantial evidence on the record, (2) in accordance with the procedural requirements of the Act, and (3) not arbitrary, capricious or an abuse of discretion.

Accordingly, the Postal Service's determination in Docket No. A85-20 is hereby affirmed.

By the Commission.

(S E A L)


Charles L. Clapp
Secretary