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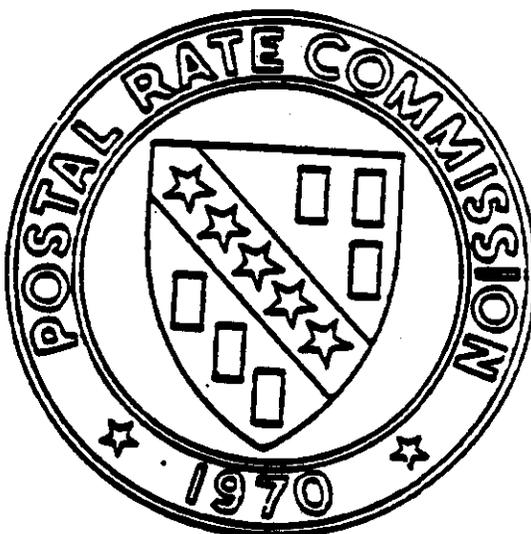
UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, D.C. 20268-0001

Before

Vice Chairman LeBlanc,
Commissioners Haley, Quick and Schley*

In the Matter of:

Cataract, Wisconsin 54620 : Docket No. A93-19
(Helen F. Swansbro, et al., :
Petitioners) :



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

Washington, D.C. 20268-0001
(January 21, 1994)

* Commissioner Schley did not participate in this decision.

I. Introduction and Summary

On September 24, 1993, Helen F. Swansbro, and Hazel and Paul Abbott (Petitioners) filed an appeal with this Commission requesting that the Commission review the Postal Service's decision to consolidate the post office at Cataract, Wisconsin. In PRC Order No. 989, we designated the proceeding "Docket No. A93-19" and established a procedural schedule for the submission of various documents and for our review of the Postal Service's decisionmaking.

On October 5 and 19, 1993, respectively, we received separate letters from Bernadine Arena and the Honorable Herb Kohl, United States Senator from Wisconsin, protesting the Postal Service's decision. On October 20, 1993, the Commission responded to Senator Kohl's letter. In this opinion, we have considered the arguments and issues raised in the Kohl and Arena letters, along with those raised by the petitioners. The Postal Service (Service) filed "Comments" regarding the appeal on November 19, 1993.

We have reviewed the Postal Service's decision and the Administrative Record (Record) upon which it was based against the policies and criteria of the Postal Reorganization Act. On the basis of that review, we affirm the Postal Service's decision to consolidate the Cataract, Wisconsin post office. As explained in greater detail below, we find that the Postal Service complied with § 404(b) of the Act and its own regulations when it made its decision.

II. Commission Review

A. Summary of the Postal Service's Final Determination

The Postal Service has decided to consolidate the Cataract, Wisconsin post office with the Sparta, Wisconsin post office located eleven miles away. Final Determination (FD) at 1. The Cataract office will be replaced by a community post office (CPO) located somewhere in Cataract, Wisconsin. Id. The Sparta, Wisconsin post office will administer the CPO that will be

operated by a successful bidder under a contract with the Postal Service. Id.

The Postal Service states that the CPO will provide the same retail and delivery services as the Cataract post office does, except permit mail acceptance and postage meter setting. Id. The CPO will have the same number of post office boxes (56) as are currently available at the Cataract post office and will be open for service at least 36 hours per week. In addition, the Sparta post office has 103 available post office boxes and is open 46 hours per week. Id.

The Postal Service claims that one of the primary reasons why it made its decision is that the facility housing the Cataract post office has deteriorated. The Postal Service found that the facility is a health hazard because it does not have running water, restroom facilities, or proper ventilation. It also found that there is a potential safety problem in that the heat for the facility is provided by a wood stove.

Cataract is described as a rural community. Id. at 5. There are at least 11 local businesses. Id. at 6. None were identified by the Postal Service as requiring postage meter setting or permit mail services. Retirees, farmers and commuters make up the Cataract community. Cataract has two churches and a school. Id.

The Postal Service estimates that its decision will save the Postal Service \$16,598 annually. Id. The Cataract post office is currently operated by an officer-in-charge (OIC). The OIC is a postal career employee on loan from a neighboring post office who will return there following the closing. Id. The former postmaster retired on November 29, 1990. Id.

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

Section 404(b) of the Postal Reorganization Act as well as section 113.2 of the Postal Service's Domestic Mail Manual Transition Book (effective 7-1-93 to 6-30-94) outline the procedures that the Postal Service must follow to give the public

notice of its intention to consolidate post offices and an opportunity for them to comment on its proposal.

On May 21, 1991, the Postal Service sent questionnaires to Cataract post office customers. Id. at 2. The Postal Service received 30 completed questionnaires. On June 5, 1991, postal representatives met with Cataract community members to provide them with information concerning its proposed consolidation and to answer their questions. Thirteen persons attended the meeting. Id. On September 19, 1991, the Postal Service received a petition containing 113 signatures supporting the retention of the Cataract post office. Id.

On April 6, 1992 through June 8, 1992, the Postal Service posted its proposal to consolidate the Cataract post office with the Sparta post office. Record, Item No. 33. Fifteen comments were received. The Final Determination was posted on September 7, 1993.

No one has complained about the Postal Service's actions with respect to its compliance with procedural requirements. We have reviewed the Administrative Record and conclude that the Postal Service complied with all applicable procedural requirements.

C. Substantive Criteria to be Considered by the Postal Service before Consolidating a Post Office

Section 404(b) is a provision in the Postal Reorganization Act that requires the Postal Service to consider four specific factors when it makes a decision to consolidate a post office. These factors are: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal services will be provided; and the economic savings that will flow from the consolidation. The Postal Service may also consider other factors in addition to statutory ones.

In the Commission's review, we examine the Postal Service's Final Determination to determine whether the Postal Service made

the required findings concerning each factor and whether there is substantial evidence in the Administrative Record which supports its findings on each of those factors. We also determine whether the Postal Service has otherwise complied with the requirements of the Act.

1. Specific Issues Raised

The petitioners raised three statutory-based issues. These concern: (1) the impact of the consolidation on the Postal Service's provision of postal services to the Cataract community; (2) the impact of the consolidation on the nonpostal needs of the Cataract community; and (3) the financial consequences for the Postal Service resulting from the consolidation. In addition, the petitioners expressed a general preference that the Postal Service continue to have an independent post office operated by a postmaster located within Cataract. To justify their preference, they pointed out that local businesses as well as nonbusiness community members use the Cataract post office and that the nearest independent post office is 12 to 15 miles away. Petitioners' letters at 1.

Petitioners also predicted that the substitute CPO will not provide a sufficient quality or level of service, so it will fail. They questioned the Postal Service's \$16,598 cost savings estimate by arguing that the Postal Service should have estimated how much it will cost the Service to provide postal services after the CPO ceases to exist. They complained that when the CPO fails, rural route delivery will be the only practical service alternative and, therefore, Cataract residents will suffer physical and financial hardships in order to obtain adequate postal services.

In his letter, Senator Kohl argued that the CPO will not provide the same quality of postal service that an independent office such as the Cataract office provides. He also argued that the Postal Service failed to consider the non-postal effects of the consolidation on the Cataract community. He questioned the

accuracy of the Postal Service's financial estimate, predicting the failure of the CPO will require that the Postal Service institute rural route service in its stead. He argued that in the long run, it will cost the Postal Service more to operate any substitute service than it costs to operate the Cataract office.

Despite the arguments of the petitioners and intervenors, the record supports the Postal Service's decision concerning each of the statutory factors related to the issues raised. Our review of the record demonstrates that the "substantial evidence" test imposed by the Postal Reorganization Act was satisfied by the Service on each of the issues raised. Our discussion and reasoning follow:

2. Effect on Postal Services

The Record shows that the Postal Service did give adequate consideration to the issue concerning the impact of the consolidation upon the Postal Service's provision of postal services to the Cataract community. The Final Determination explains the basis for the Postal Service's finding. After the Cataract post office is consolidated, the substitute CPO will provide the same delivery and retail services for at least as many hours of service that the Cataract office, as an independent post office, provides.

The Postal Service identified two exceptions. The CPO will not accept permit mailings or set postage meters. However, the Postal Service also found that there were no permit mail or postage meter customers that use the Cataract post office. The Administrative Record confirms this fact. This suggests that those particular postal services are not needed by Cataract's business and nonbusiness community members. Furthermore, there is a savings to box customers as the CPO box rates are \$2.00 per year. We conclude that the Postal Service's finding that its provision of postal services to Cataract residents through a community post office will satisfy the statutory requirement that "the Postal Service shall provide a maximum degree of effective

and regular postal services . . ." is supported by substantial evidence in the record.

In connection with this issue, the petitioners expressed doubts about the viability of any community post office that may be established in Cataract and argued that it cannot be sustained economically. However, the Administrative Record demonstrates that there are several potential CPO sites, given the number of existing businesses in Cataract. The Postal Service identifies these sites. Record, Item 14. It is clear that the Postal Service will have bidders to choose from. Cataract community members have shown an interest in bidding to operate the CPO. Id. at Items 11 and 22-7. While this interest does not insure the continued viability of a community post office in Cataract, it does indicate that the Postal Service's chances of successfully establishing a community post office in Cataract are good and its findings with respect to that issue are supported by record evidence.

It appears that the petitioners' real concern is that if CPO operations do not work out, the Cataract community will have no recourse if the Postal Service decides to close it at a later date. We share the petitioners' concern. However, the Postal Reorganization Act does not require that the Service guarantee not to close the substitute CPO before the Commission may affirm the Service's determination.

The Commission has held that the same 39 U.S.C. § 404(b) procedures that apply before the Postal Service decides to close an independent post office such as the Cataract office will apply when the Postal Service proposes to close a community post office that is the only retail postal facility serving the community. See Commission Opinion Remanding Determination for Further Consideration, 39 U.S.C. § 404(b)(5), Knob Fork, West Virginia (A83-30). Since the Cataract CPO will be the only retail postal facility in Cataract, if the Postal Service should propose to

close it at a future date, Cataract residents could appeal that decision to the Commission.¹

3. Effect on Cataract Community

We also conclude that the Postal Service's finding regarding the effect of its decision on the Cataract community is supported by substantial record evidence. The Record shows that the Postal Service did in fact consider that the Cataract post office is a gathering place for the Cataract community. FD at 3, 4-5. The Postal Service also found that the CPO will continue to provide this particular nonpostal service, as well as serve as an information center. Id.

Additionally, the Postal Service found that the CPO operation will provide Cataract customers with any "special assistance that may be needed." There is nothing in the record which suggests that this might not be the case. The Administrative Record shows that the likely sites for the establishment of a CPO are existing area businesses that will have the built-in incentive to be responsive to the needs of their neighbors. In addition, the Postal Service has given assurance that the CPO operator will be held to the same high standards of courtesy and sensitivity applicable to permanent employees.

4. Economic Savings

The Postal Service estimated that it will save \$16,598 annually through the consolidation. The petitioners question the Postal Service's calculation and claim that if the CPO is closed the Postal Service will not save this amount. In its Comments at 8, the Postal Service maintains that it arrived at the estimated figure based on its CPO contracting experience. We conclude that

¹ While we have no specific assurance from the Postal Service that it would accept the Commission's jurisdiction in such circumstances, we would expect the Service to resolve any ambiguity in favor of affording mailers the opportunity to have their concerns reviewed.

there is no evidence in the record that shows that estimate to be unreasonable, or, that a CPO cannot be successfully operated in Cataract. Accordingly, we uphold the Postal Service's finding on this issue.

5. Effect on Employees and "Other Factors"

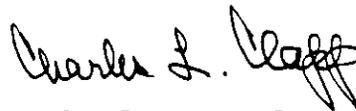
The petitioners and intervenors have raised no specific issues regarding the Postal Service's findings and conclusions concerning the effect on employees and "other factors" criteria in the statute [section 404(b)(2)(B) and (E)]. We reviewed the Postal Service's findings and conclusions regarding these matters and find them consistent with the statute and with the Postal Service's own regulations. Therefore, we affirm the Postal Service's treatment of these factors on the basis of the discussion in the record.

III. Conclusion

For the reasons described above, we find the Postal Service's determination to consolidate the Cataract, Wisconsin, post office meets the standards of 39 U.S.C. § 404(b). The determination is affirmed.

By the Commission.

(S E A L)



Charles L. Clapp
Secretary