A. Complaint Paragraph 36(a)—The "Golden Hour" Rule

Complaint paragraph 36 alleges that about February 2001, Respondent implemented new standard operating procedures by (a) restricting employees from talking during the first hour of work and (b) assigning employees tasks that were previously assigned to supervisors. Respondent denies this allegation.

Union Steward Carew testified that in February 2001, management at the Panther Creek Station announced a "golden hour rule." According to Carew, management communicated this rule to employees over the public address system, by passing out a written "Standard Operating Procedure Revision for Carriers," and by conducting meetings.

Carew testified that he attended one of these meetings, at which Supervisor Andre Patrick spoke. According to Carew, Patrick said, "[Y]ou have to be at your case during the first hour of working. You can't speak to anybody. You're not to take any breaks." Further, Carew testified, Patrick informed employees that the change was effective "starting now."

At the time of hearing, Patrick was serving in the armed forces and did not testify. However, his supervisor, Maryke Cudd, essentially confirmed Carew's description of the "golden hour" rule:

> Q. Tell me what that rule is?
>
> A. They—The Golden Hour is an—the first hour of a carrier's work. If they wanted them to stay at their—you know stay at your cases and work all of your mail. No taking breaks, taking—making unnecessary—things other than cases or mail. They wanted them to stay at their case and case the mail.
>
> Q. Are they allowed to walk around the work room floor and briefly engage in conversations with co-workers?
>
> A. They're not supposed to do that, even whether it's a—even if it's not—if it's not The Golden Hour, they should be, you know, casing their mail, so they can get up and go out to the street.
>
> Q. Are they allowed to get a drink of water during The Golden Hour?
>
> A. Oh, sure. They can do that.
>
> Q. Can they go to the restroom?
>
> A. Yes.

Cudd further explained that the term "golden hour" referred to the first hour each employee worked, regardless of when that might be. She said that there "probably was" a meeting at which supervisors informed employees about this rule.

Cudd did not contradict Carew's testimony that Respondent implemented the "golden hour" rule in February 2001. Rather, she testified that she could not recall when the rule went into effect.

A copy of the handout, "Standard Operating Procedure Revision for Carriers," which includes the substance of the "golden hour" rule, is in evidence as General Counsel's Exhibit 80. At the bottom left of each page is a notation, "SOPF2.DOC02 /16/01," which appears to be the word processing file name and date. Such notation, indicating a document date of February 16, 2001, is consistent with Carew's testimony that Respondent implemented the rule in February 2001. I so find.

This handout includes the provision that "[a]fter reporting and during the first hour carriers are expected to be at their cases, working diligently and quietly without personal conver-sation with others." Carew testified that before the announcement of this rule in February 2001, Respondent had no rule requiring carriers to work "diligently and quietly without personal conversation with others." For the reasons discussed above, I conclude that Carew was a reliable witness. Crediting his testimony, I find that this prohibition of conversation did constitute a change in conditions of employment.

The Union protested this change in a grievance, which is still pending. The grievance invokes article 5 of the collective-bargaining agreement, which states in part that Respondent "will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law."

Respondent has not advocated that the Board defer this unilateral change allegation to the arbitral process. Rather, in oral argument, Respondent's counsel focused on the merits of the allegation, taking the position that no unilateral change had occurred:

> Concerning the golden hour, General Counsel's Exhibit No. 80 requires nothing new. No one was ever prevented from taking a break during the first hour of work. The Postal Service has an absolute right to manage its work force the way it seems fit, and to require employees or to recommend that employees not take a break during the first hour of work is not unreasonable and is not a unilateral change.

******For several reasons, Respondent's argument is incorrect. Although Respondent asserts that the "golden hour" rule "requires nothing new," it clearly imposed restrictions not present before by prohibiting employees from talking with each other while they sorted mail and by precluding them from scheduling a break during the first hour of work. Credible evidence establishes that the employees enjoyed these privileges before imposition of the rule.

*******Respondent elicited testimony that no employee had been disciplined for violating the "golden hour" rule and argued that no one "was ever prevented from taking a break during the first hour of work." However, the existence of the rule itself, and the possibility of being disciplined for violating it, make it impossible to determine whether any employee had been prevented from taking a break. Because of the rule, an employee simply may have decided to schedule his break at another time, even though in the absence of the rule, the employee would have taken the break during the "golden hour."

*******Respondent's argument that the "Postal Service has an absolute right to manage its work force the way it seems fit" is palpably wrong. Under the law, an employer may not make a material, substantial and significant change in any term or condition of employment which is a mandatory subject of bargaining without first notifying and bargaining with the exclusive representative of the affected employees.

Certainly, a union may waive the right to bargain regarding the changes an employer may make during the term of a collective-bargaining agreement. Depending on the circumstances, a union's agreement to a management rights clause may constitute such a waiver. In the present case, however, the converse is true. Respondent specifically agreed, in article 5 of the collective-bargaining agreement, *not* to make unilateral

changes.

Respondent further argued that "to require employees or to recommend that employees not take a break during the first hour of work is not unreasonable and is not a unilateral change." More precisely, it appears that Respondent is contending that this limitation on breaks is not a material, substantial and significant change in terms and conditions of employment.

It is true that limiting an employee's discretion in scheduling a break is not the same thing as reducing or eliminating the allotted breaktime all together. However, the ability to choose when to take the allotted break time remains a very material, substantial and significant condition of employment.

******Depriving an employee of this degree of autonomy, previously enjoyed, does more than demean the dignity of the employee, significant as that may be. It also limits the ability of the employee to seek relief from the pressures of demanding and monotonous tasks by scheduling the break at the time when the job seems most overwhelming.

Few doubt that the challenge of handling enormous volumes of mail and delivering it on time creates psychological stresses. In extreme cases, such stresses have reached tragic proportions. In the abstract, an employee's ability to schedule his break for his own convenience may seem a minor privilege, but to a worker in such a stressful position, this small amount of control can have major consequences for physical and mental health.

Since the 1950s, researchers have demonstrated that giving an individual even a modicum of control over a stressful situation significant reduces the incidence of conditions, such as stomach ulcers, which may be caused or exacerbated by such stress. Conversely, depriving an individual even of this small amount of control increases vulnerability to such conditions.

Prohibiting employees from scheduling a break during the first hour of work—a privilege they previously enjoyed—reduces their control over the stressful work environment and their adaptability to it. Such a change can hardly be considered immaterial, insubstantial, or insignificant.

Additionally, as noted above, Respondent's argument also ignores that the "golden hour" rule did more than restrict the employees' right to schedule their breaks. It also prohibited talking, by requiring employees to work "quietly without personal conversation with others."

The record establishes that before the promulgation of this rule, employees enjoyed the right to talk with each other as they sorted the mail. Leaving aside the possible psychological effects of prohibiting employees under stress from talking with each other, common sense compels the conclusion that such a change in working conditions is material, substantial, and significant.

Respondent's argument that there was no unilateral change can mean two things, either that there was no change, or that there was a change but it was not unilateral. Convincing evidence establishes that the "golden hour" rule changed working conditions. Credible witnesses testified that such changes took place, and the document announcing the "golden hour" rule suggests as much in its title, "Standard Operating Procedure *Revision* for Carriers." (Emphasis added.) The word "revision" itself signifies a change.

The record also establishes that the change was unilateral. Local Union President

Priscilla Grace testified that no agreement existed which would permit Respondent to limit the time when employees chose to take their breaks. Moreover, she credibly testified that "we have a written agreement that applies throughout the areas that we represent that allows employees to take the break at a time of their own choice." Under this agreement, Grace said, an employee could take a break "the first minute of the day" if the employee wanted to do so.

Crediting this testimony, and noting further that the Union has filed a grievance to protest the change, I find that Respondent unilaterally implemented the "golden hour" rule during the term of the collective-bargaining agreement without obtaining the Union's agreement to do so. Further, I conclude that this rule caused material, substantial and significant changes in working conditions which were mandatory subjects of collective bargaining. Therefore, I recommend that the Board find that Respondent's announcement and implementation of this rule violated Section 8(a)(5) and (1) of the Act.

REMEDY

Respondent violated Section 8(a)(5) and (1) of the Act in two ways. On numerous occasions, described in detail above, it failed and refused to provide relevant and necessary information requested by the Union. In some instances, the information related solely to Respondent's function representing an employee in the grievance procedure, and the grievance precipitating the information request has been resolved. In those instances, I do not recommend that the Board order Respondent to furnish the information to the Union.

In many other instances, the underlying grievance is still pending, and in some cases, the requested information served more than one purpose; it assisted the Union in representing a particular grievant but also was relevant to some of the Union's other duties as exclusive bargaining representative.

In these instances, where the requested information relates to a pending grievance or other ongoing duties of the exclusive bargaining representative, I recommend that the Board order Respondent to furnish the information. Should questions arise concerning the continuing utility of the requested information, I recommend that such issues be resolved in the compliance stage.

Further, I recommend that the Board order Respondent to rescind its unlawful "golden hour" rule which prohibited employees from talking with each other during the first hour of their work, and curtailed their right to take breaks during that period. The record does not indicate that Respondent disciplined any employee for violation of this unlawful rule. Should it appear that any employee did suffer discipline because of this rule, I recommend that the remedy for that employee be addressed during the compliance stage.

Also, I recommend that the Board order Respondent to rescind the unlawful unilateral change which resulted in denial of Steward Carew's request to represent an employee at another of Respondent's facilities, and restore the policy that was in effect before the unlawful change.

Further, I recommend that the Board order Respondent to rescind its unilaterally imposed policy requiring the Union to pay in advance the costs of locating and photocopying requested documents, and to restore its previous practice. It should be stressed that even under its old policy, Respondent usually did not charge the Union for

the costs of locating and copying documents. It did so only infrequently, when the document costs were unusually large. In recommending that the Board order Respondent to reinstate its prior practice of providing the documents to the Union and billing the Union for the costs, I certainly do not suggest that Respondent be allowed to increase either the frequency or amount of such charges. Should questions arise concerning Respondent's adherence to its prior practice, I recommend that these issues be resolved at the compliance stage.

Certainly, Respondent should be required to post a notice to employees addressing all of the violations herein. A question arises, however, as to where Respondent should be ordered to post this notice.

Respondent has a history of violating Section 8(a)(5) of the Act. Board volumes document numerous cases in which Respondent failed and refused to provide necessary and relevant information to a union representing its employees. See, e.g., *Postal Service*, 276 NLRB 1282 (1985); *Postal Service*, 280 NLRB 685 (1986); *Postal Service*, 289 NLRB 942 (1988); *Postal Service*, 301 NLRB 709 (1991); *Postal Service*, 303 NLRB 463 (1991); *Postal Service*, 303 NLRB 502 (1991); *Postal Service*, 305 NLRB 997 (1991); *Postal Service*, 307 NLRB 429 (1992); *Postal Service*, 307 NLRB 1105 (1992); *Postal Service*, 308 NLRB 358 (1992); *Postal Service*, 308 NLRB 547 (1992); *Postal Service*, 308 NLRB 1305 (1992); *Postal Service*, 309 NLRB 309 (1992); *Postal Service*, 310 NLRB 391 (1993); *Postal Service*, 310 NLRB 530 (1993); *Postal Service*, 310 NLRB 701 (1993); *Postal Service,* 337 NLRB No. 130 (2002); and *Postal Service*, 332 NLRB No. 62 (2000).

In all of these cited cases, the Board found that Respondent violated Section 8(a)(5) by failing to furnish a requesting union with relevant and necessary information. In one of these cases, the Board ordered Respondent to post a notice at each of its facilities nationwide. See *Postal Service*, 303 NLRB 463 at fn. 5 (employerwide policy which resulted in the unfair labor practices warranted notice posting at all facilities).

This nationwide posting, of course, necessarily included all of Respondent's facilities in its Houston district. Such a posting should have placed Respondent's management, including its managers in the Houston district, on explicit notice of Respondent's duty to provide relevant and necessary information requested by an exclusive bargaining representative. Obviously, these postings, including the nationwide posting, have not cured Respondent of its tendency to violate this particular section of the Act.

In this case, the General Counsel has not requested that the Board order Respondent to post a notice nationwide, and I am reluctant to recommend such a remedy sua sponte based only on the record in this case. However, I do recommend that the Board order Respondent to post the notice at all of its facilities in its Houston district. Although the evidence here does not establish that a nationwide policy caused the unfair labor practices, as in *Postal Service*, supra, 303 NLRB 463, it does suggest an areawide phenomenon.

The record here establishes that Respondent committed similar violations in at least five different postal facilities in its Houston district. The violations appear to have been cut from the same cloth, and it is difficult to attribute them to mere coincidence. Rather, it seems likely that they arose either because higher management in the Houston district encouraged local managers to stonewall the Union, or because they created an environment in which such actions by local managers were rewarded rather than

condemned.

In oral argument, Respondent's counsel asserted that nationwide, "99 percent of the information requests go unnoticed because the Postal Service complies. Further analysis indicates that a large percentage of the one percent of cases that go to charge and eventually go to complaint, were *brought by the Houston district*." (Emphasis added.)

This observation by Respondent's counsel supports my conclusion that whatever "virus" is causing these repeated 8(a)(5) violations, it has spread beyond a single facility. Additionally, based on the numerous past cases, cited above, in which the same Respondent committed similar unfair labor practices, it appears that the "virus" has developed some resistance to notice postings. Therefore, I believe that requiring Respondent to post the notice only at the five individual facilities would fall short of curing the problem.

It certainly would not be punitive to prescribe a remedy strong enough to inhibit the spread of this "virus" throughout the Houston district. The benefits of a districtwide notice posting would, I believe, outweigh any extra burdens such a posting would impose. Therefore, I recommend that the Board order Respondent to post the notice in all of its facilities and offices in the Houston district.

Although the Board typically does not order a districtwide posting, Respondent should be aware that its past history provides little reason to believe that a lesser remedy would end this particular type of unlawful conduct. As noted above, in a large number of previous cases, the Board has found that this same Respondent violated this same section of the Act in the same way, by refusing to provide a union with requested relevant and necessary information.

These repeated violations harm not only Respondent's employees and their Unions, but also burden the taxpayers who finance the investigation and prosecution of such unfair labor practices. Respondent must recognize that it has received clear and unequivocal notice that it must stop violating the Act, and that continuing the type of conduct found unlawful here could, in the future, justify an extraordinary remedy, such as an order requiring it to pay the General Counsel's litigation expenses.

The General Counsel has not sought such an order here and I do not recommend that the Board impose one. However, in contemplating the course of its future conduct, Respondent needs to recognize that an extraordinary persistence in violating the Act can necessitate an extraordinary remedy. If the prior cases and this one can be likened to dots on a graph, connecting the dots produces essentially a straight line pointing in the direction of further violations. I hope that Respondent will connect the dots, examine its path, and change direction.

Conclusions of Law

1. The Respondent, United States Postal Service, is an independent establishment of the Executive Branch of the Government of the United States, and is subject to the jurisdiction of the National Labor Relations Board by virtue of Section 1209 of the Postal Reorganization Act.

2. The Charging Party, National Association of Letter Carriers, AFL–CIO, and its affiliate, National Association of Letter Carriers, Branch 283, collectively referred to below as the Union, are labor organizations within the meaning of Section 2(5) of the Act.

3. The following employees of Respondent constitute a unit appropriate for the

purposes of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All letter carriers.

EXCLUDED: Managerial and supervisory employees, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, security guards, Postal Inspection Service employees, employees in the supplemental workforce as defined in Article 7, rural letter carriers, mailhandlers, maintenance employees, special delivery messengers, motor vehicle employees, and postal clerks.

4. Since about 1971, the Union has been the designated exclusive collective-bargaining representative of the unit described above, and has been recognized as such by Respondent.

5. At all times since 1971, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit described in paragraph 3, above.

6. Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to furnish the Union, in a timely manner, information the Union had requested on or about the following dates, which information was relevant to and necessary for the Union to perform its functions as the exclusive bargaining representative of the bargaining unit described in paragraph 3, above: May 12, 2001 (complaint par. 9(a)); May 31, 2001 (complaint par. 12(a)); June 1, 2001 (complaint pars. 15(a), (c), (d), (e), and (f)); June 4, 2001 (complaint par. 12(b)); June 5, 2001 (complaint pars. 9(b) and 15(b)); June 11, 2001 (complaint par. 15(g)); June 12, 2001 (complaint par. 27(b)); June 26, 2001 (complaint par. 12(c)); June 29, 2001 (complaint par. 15(h)); June 30, 2001 (complaint pars. 15(i), (j), (l), (m), and (n)), and 27(a)); July 1, 2001 (complaint par. 33(a)); July 2, 2001 (complaint par. 27(c)); July 7, 2001 (complaint par. 33(b)); July 9, 2001 (complaint par. 33(c)); July 12, 2001 (complaint par. 33(d)); July 13, 2001 (complaint pars. 12(d), 33(f) and (g)); July 14, 2001 (complaint pars. 33(j) and (k)); July 17, 2001 (complaint pars. 33(d) and (i)); July 18, 2001 (complaint par. 12(e)); August (no date specified) 2001 (complaint par. 33(v)); August 1, 2001 (complaint par. 33(o)); August 15, 2001 (complaint par. 33(q)); August 15, 2001 (complaint pars. 27(d) and 33(n)); August 16, 2001 (complaint pars. 33(r), (s), and (t)); August 20, 2001 (complaint par. 33(p)); September 14, 2001 (complaint pars. 27(f), 33(bb) and (cc)); September 17, 2001 (complaint par. 33(ii)); September 18, 2001 (complaint par. 33(ff)); September 19, 2001 (complaint par. 33(z)); September 21, 2001 (complaint par. 33(dd)); September 22, 2001 (complaint par. 33(u)); September 25, 2001 (complaint pars. 33(y) and (ee)); September 28, 2001 (complaint par. 33(gg); October 25, 2001 (complaint par. 33(vv)); October 29, 2001 (complaint par. 27(h)); November (no date specified) 2001 (complaint par. 33(ll)); November 8, 2001 (complaint par. 30(a)); November 17, 2001 (complaint pars. 33(jj), (kk), (mm), 33(nn), (oo), (pp), (qq), (rr), and (ss)); December 2, 2001 (complaint par. 33(uu)); and December 3, 2001 (complaint par. 33(ww)).

7. Respondent violated Section 8(a)(5) and (1) of the Act by making the following material, substantial, and significant changes in conditions of employment which were mandatory subjects of collective-bargaining, without first notifying the Union and affording it the opportunity to negotiate regarding such changes: On or about February

16, 2001, Respondent announced and implemented a "golden hour" rule which prohibited employees from talking with each other while working and from taking breaks during each employee's first hour of work (complaint par. 36(a)); on about June 7, 2001, Respondent changed its existing policy allowing a union steward to receive permission to represent bargaining unit employees at a facility other than where the steward worked (complaint par. 37); on about August 29, 2001, Respondent imposed a new requirement that the Union pay for copies of requested documents in advance as a condition of receiving those copies (Complaint par. 38).

8. Except for the violations described in paragraphs 6 and 7, above, Respondent did not violate the Act in any manner alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record in this case, I issue the following recommended

ORDER

The Respondent, United States Postal Service, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to furnish in a timely manner, to a union which is the exclusive collective-bargaining representative of a unit of its employees, information requested by the Union which is relevant to the union's performance of its functions as the employees' representative and necessary for that purpose.

(b) Making material, substantial and significant changes in wages, hours, or other terms and conditions of employment which are mandatory subjects of bargaining with a union representing its employees, without first notifying and bargaining with that union.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union the requested information as set forth in the decision herein.

(b) Rescind the unilateral changes in conditions of employment found unlawful herein, and restore the conditions which existed before those changes.

(c) Within 14 days after service by the Region, post at all of its facilities in Respondent's Houston, Texas district, copies of the attached notice marked "Appendix A." Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 16, 2001.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Regional Director

attesting to the steps that the Respondent has taken to comply.

Dated Washington, D.C. August 2, 2002

APPENDIX A

Notice To Employees
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of these rights guaranteed to them by Section 7 of the Act.

WE WILL NOT fail and refuse to provide in timely manner to the Union, National Association of Letter Carriers, Branch 283, affiliated with National Association of Letter Carriers, AFL–CIO, requested relevant information necessary for the Union to perform its functions as exclusive bargaining representative.

WE WILL NOT make any material, substantial, and significant change in any term or condition of employment which is a mandatory subject of collective bargaining, without first notifying the Union and affording it the opportunity to bargain about the proposed change.

WE WILL NOT, in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL provide the Union with all relevant and necessary information it has requested as the bargaining representative of our employees.

WE WILL rescind the following unlawful unilateral changes we previously made: (1) The "golden hour rule," which had prohibited employees from talking or taking breaks during the first hour of work. (2) The policy denying a union steward permission to represent a bargaining unit employee at a facility other than the one at which the steward works. (3) The policy requiring the Union to pay in advance for photocopies of requested information and documents before receiving them.

WE WILL restore the terms and conditions of employment which were in effect before we made these unlawful unilateral changes.

UNITED STATES POSTAL SERVICE