

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
Region 21  
Los Angeles, California



## Memorandum

**To:** Lester A. Heltzer, Executive Secretary  
Executive Secretary Office

**Date:** October 18, 2010

**From:** William M. Pate, Acting Regional Director  
Region 21

**Subject:** United States Postal Service, South  
Garage Vehicle Maintenance Facility  
Case 21-CA-25278(P)  
Compliance

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Response to Request for Review of Acting General Counsel's Denial of Appeal  
of Regional Director's Unilateral Approval of Settlement Stipulation

Pursuant to Section 10602.4 of the Compliance Case Handling Manual, the Region files this response to the Charging Party's Request for Review. The Region is of the view that this Request for Review should be denied because none of the arguments set forth, which largely mirror the Charging Party's June 8, 2010 Appeal (attached hereto as Exhibit 1), warrant setting aside the Regional Director's April 8, 2010, unilateral approval of the Settlement Stipulation (attached as Exhibit 2).

As has been previously noted, the charge in this case was filed on March 6, 1987, alleging that the United States Postal Service (herein, the Postal Service) demoted Charging Party Anthony Pappas (herein, Pappas) on or about October 25, 1986, in retaliation for his protected activity.<sup>1</sup> The Region issued Complaint, which was settled in June 1993 with a formal Settlement Stipulation approved by the Board and enforced by the 9th Circuit Court of Appeals (attached as Exhibit 3), which left for the compliance process the precise means of making Pappas whole.

The United States Department of Labor Office of Workers Compensation Programs, (herein, OWCP), has decided that Pappas is, and has been since November 1986, psychologically disabled and unable to work. As a result, Pappas has, since that time, been receiving workers

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<sup>1</sup> In June 1986, Pappas testified at an arbitration in favor of a unit employee. After the arbitrator discredited Pappas' testimony, the Employer charged him with having given false testimony and took this action against him.

compensation benefits (a tax-free benefit amount of two-thirds of the salary he'd received when he was last employed, adjusted only for cost of living). Additionally, through successive Backpay Specifications issued by the Region, Pappas has also received backpay under the enforced 1993 formal settlement, in an amount which, pre-tax, would provide him with the same total pay as a comparable Postal Service employee.

Since 1993, each time the Region issued a Compliance Specification, the Postal Service entered into a Settlement Stipulation agreeing to pay Pappas the backpay the Region determined was due to him without resort to a compliance hearing. As such, the General Counsel has not, in the over 23 years since the charge was filed, been required to litigate the causal connection between the unfair labor practice and Pappas' disability.

As of today, the Postal Service has made Pappas whole for backpay, interest, and other benefits for the period extending from the date of his unlawful demotion, through September 30, 2006, (the ending point of the backpay period covered by the last Compliance Specification). The most recent Compliance Specification and Notice of Hearing was issued by the Region on June 15, 2009, and set forth the Postal Service's backpay obligation from October 1, 2006, through January 2, 2009, (Attached as Exhibit 4).

The Region has since administratively determined that a reasonable end date for the Postal Service's backpay liability to Pappas, under the factual circumstances of this case, would be on or about March 17, 2007, the date that Pappas became eligible to apply for a full Civil Service Retirement System (CSRS) retirement and pension. After receiving assurances from the Postal Service that all necessary contributions had (or would) be made to ensure that Pappas would receive a full pension, Regional Director Small unilaterally approved a Settlement Stipulation which provides Pappas with backpay through March 31, 2007, (attached as Exhibit 5). At Pappas' request, Regional Director Small issued a Compliance Specification letter, dated May 10, 2010, (attached as Exhibit 6), which set forth the reasons for the Region's administrative determination.

Pappas did not prevail in his appeal to the Acting General Counsel and now has filed Request for Review of this decision with the Board.

#### The Instant Request for Review

As before, Pappas argues that the Regional Director's decision to, "without hearing or evidence," terminate his backpay eligibility effective the date he became eligible to apply for retirement, is "unjustified and arbitrary." Pappas urges that there are material issues of fact regarding his backpay eligibility, which must be resolved by an Administrative Law Judge.

Pappas characterizes the Regional Director's decision to terminate the Postal Service's backpay liability after over 20 years, as a *limitation* upon a backpay order, which must be established, by the party who committed the unfair labor practice, according to a burden-shifting mechanism (emphasis added). Pappas also cites *M. Restaurants, Inc. v. NLRB*, arguing that any *adjustment*

of a backpay order must be decided upon by the Board. 621 F.2d 336, 337-338 (9<sup>th</sup> Cir. 1980) (emphasis added). Indeed, in that case, the 9<sup>th</sup> Circuit, upon enforcing the Board's supplemental backpay Order, stated "When the Board establishes the existence of an unfair labor practice and the gross amount of back pay due, . . . the burden shifts to the discriminating employer "to prove circumstances which would limit its liability." . . . a determination that is largely a question of fact for the Board"(citing cases). This reference to the Board, however, exists to affirm that the Agency, not the 9<sup>th</sup> Circuit Court of Appeals, possesses the expertise needed to make *factual* determinations about any limitations upon backpay.

Here, however, there is no effort to reduce, limit, or adjust an existing backpay award approved by the Board. To the contrary, Regional Director Small made the type of decision that is entrusted to him in deciding that the backpay paid to Pappas up until his eligibility for retirement is sufficient to remedy the unfair labor practice and to effectuate the purposes of the Act. No hearing is required or warranted prior to the Regional Director making such a decision. In practice, the backpay being paid to Pappas is approaching perpetuity, despite his claim that he does not expect or desire this.

It is not necessary for an Administrative Law Judge of the National Labor Relations Board to decide, as urged by Pappas, when he *would have* (absent the Postal Service's unfair labor practice) decided to retire, thus ending the Postal Service's backpay liability. As noted before, assuming arguendo that a hearing before an Administrative Law Judge was appropriate, there are no objective "facts" that Pappas could present to prove his "work expectancy" and intent to work, he claims, until age 70. Contrary to Pappas' argument, the Regional Director, however, is entitled to decide, without a hearing, whether it would effectuate the remedial purposes of the Act to continue or discontinue the Postal Service's backpay liability to Pappas.

As noted before, Pappas argues that he is not now eligible for a "full retirement<sup>2</sup>," as represented by the Region, but rather a less than full "early retirement." As the Region has previously stated, the fact that Pappas may, after 30 years of "service," only have sufficient tenure to receive somewhat less than the absolute maximum amount of retirement income<sup>3</sup> does not constitute an "early" retirement.

By making this decision, the Regional Director is not imposing a mandatory retirement age upon Pappas, but making the determination that 20 years of backpay has been sufficient to make him whole, especially considering the fact that he has, in that time, reached an age where he is

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<sup>2</sup> Defined in the Settlement Stipulation as an "unreduced pension, as if [Pappas] had been continuously employed through March 17, 2007 [the date of his eligibility to apply for retirement], without any break in service from his entry on duty with the Postal Service." Indeed, the viability of the Settlement Stipulation is dependent on Pappas receiving such a "full" retirement.

<sup>3</sup> Under the CSRS, a retiree is eligible to receive an annuity payment of 80% of his/her "high three average" pay after being credited with 41 years and 11 months of service with the Postal Service.

eligible to apply for retirement. Pappas is not required to apply for retirement by virtue of the termination of his backpay eligibility. Indeed, Pappas will continue to receive OWCP payments until such time as (1) OWCP determines that he is no longer disabled, or (2) he decides to apply for retirement.

In this Request for Review, Pappas alleges, for the first time, that there exists a “dispute of fact over the appropriate amount of retirement withholdings that the [Postal Service] was lawfully permitted to deduct from [Pappas’] gross backpay during the settlement period.” Pappas has not, however, adduced any facts or evidence in support of this alleged “dispute of fact,” or to show that there are any “errors and defects.” The Region is of the view that if this vaguely worded “dispute of fact” is to possibly be given consideration, Pappas should first be ordered to show that cause even exists for such consideration.

In conclusion, the Region is of the view that Pappas’ Request for Review raises no argument, fact, or law that shows that a hearing is necessary to determine if and/or when the Postal Service’s backpay liability to Pappas should terminate. As such, the Region respectfully urges the Board to sustain the Regional Director’s April 8, 2010, unilateral approval of the Settlement Stipulation.

WMP  
W.M.P.

Attachments

## STATEMENT OF SERVICE

I hereby certify that Counsel for the General Counsel's Response to Charging Party's Request for Review of Acting General Counsel's Denial of Appeal of Regional Director's Unilateral Approval of Settlement Stipulation was submitted by E-Filing to Executive Secretary of the National Labor Relations Board on October 18, 2010, and that copies of the same were served by e-mail on the same date on the following parties:

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**EXHIBIT 1**

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7 **NATIONAL LABOR RELATIONS BOARD**

8  
9 ANTHONY PAPPAS

Case No: 21-CA-25278 (P)

10 vs.

11 UNITED STATES POSTAL SERVICE,  
12 GARAGE VEHICLE MAINTENANCE  
13 FACILITY

**APPEAL FROM REGIONAL  
DIRECTOR'S ADMINISTRATIVE  
DETERMINATION TERMINATING  
BACK PAY**

14  
15 **I. INTRODUCTION**

16 Anthony Pappas (hereinafter "Appellant") files this appeal from the Regional Director's  
17 administrative determination terminating back pay on the basis that the Appellant has  
18 received back pay beyond the date of his early retirement age. Region 21's recent decision to  
19 simply terminate the Appellant's right to seek continuing back pay benefits without hearing or  
20 evidence is unjustified and arbitrary. Material issues of fact exist as to whether the Appellant  
21 is entitled to a continued back pay remedy. In particular, the propriety of limiting any back  
22 pay remedy can only be resolved on the basis of competent evidence before an Administrative  
23 Law Judge. The Appellant, therefore, respectfully requests that the matter of Appellant's  
24 continued right to back pay must be resolved on the basis of formal findings of fact by an  
25 Administrative Law Judge.

26 **II. STATEMENT OF FACTS**

27 The Appellant first began his employment with the United States Postal Service  
28 (hereinafter "Employer") on May 23, 1977. In January 1, 1984, the Appellant was promoted to

1 the position of Supervisor, Vehicle Maintenance. On or about June 16, 1986, the Appellant  
2 testified at an arbitration hearing regarding a postal union representative working for the  
3 American Postal Workers Union. On or about October 25, 1986, the Appellant was demoted  
4 by the Employer from his supervisory position because the testimony he gave at the June 1986  
5 arbitration hearing favored the union. On March 3, 1987, Appellant filed an Unfair Labor  
6 Practice Charge alleging that his employer, the United States Postal Service (hereinafter  
7 "Employer") initiated termination proceedings and, thereafter, demoted him in October, 1986,  
8 in retaliation for protected activities. As part of the Charge, the Appellant sought a continued  
9 make whole remedy because the Employer's retaliatory conduct had caused the Appellant  
10 severe emotional distress, resulting in a psychological condition that rendered him incapable  
11 of working.

12 On June 10, 1993, the Employer and the General Counsel of the National Labor  
13 Relations Board entered into a settlement stipulation ("Settlement Stipulation"), which  
14 provided for an entry of a consent order by the Board and a consent judgment by the United  
15 States Court of Appeals. On or about August 5, 1993, the National Labor Relations Board  
16 issued its decision and order. That order, *inter alia*, required the Employer to:

17  
18 Make whole Anthony Pappas for any loss of pay and benefits he  
19 may have suffered, and may continue to suffer, as a result of his  
20 demotion from his position as a supervisor with interest to be paid  
21 on the amounts owing as computed in accordance with New  
22 Horizons for the Retarded [citation omitted.]

23 On or about June 27, 2000, the Regional Director for Region 21 of the NLRB issued a  
24 compliance specification. Thereafter, in 2003, the Employer executed, together with the  
25 general counsel for the National Labor Relations Board, a stipulation (hereinafter "2003  
26 Stipulation") requiring it take various actions. A true and correct copy of the 2003 Stipulation  
27 is attached hereto as Exhibit A.

28 The September 2003 Stipulation provided in paragraph 7 the following:

Pappas has not yet returned to work at the Postal Service. Therefore, this Stipulation settles only the issues regarding the Postal Service's back pay liability for April 22, 2000 through June 12, 2004. The General Counsel contends the Postal Service's unfair labor practices have rendered Pappas psychologically incapable of performing his job

1 duties. The General Counsel also contends that the back pay period  
2 and the obligation to reinstatement to Pappas continues to run until  
3 the time that the Postal Service can demonstrate that Pappas is no  
4 longer disabled and can return to work. Thus, the General Counsel  
5 reserves the right to issue further compliance specifications and  
6 litigate all issues concerning Pappas's entitlement to reinstatement at  
7 the Postal Service and his entitlement to back pay and other benefits  
8 accruing after June 12, 2004 at a subsequent hearing or hearings. The  
9 Postal Service reserves the right to raise all defenses available to it at  
10 the subsequent hearing or hearings, including any defenses to the  
11 allegations that any Unfair Labor Practice the Postal Service have  
12 rendered psychologically incapable of performing his job duties or  
13 that the back pay period or obligation to offer reinstatement to Pappas  
14 continues to run until the time that the Postal Service can demonstrate  
15 that Pappas is no longer disabled and can return to work. The Postal  
16 Service also reserves the right to dispute and litigate any amounts of  
17 back pay and benefits allegedly owed to Pappas asserted to accrue  
18 after June 12, 2004, as might be alleged in subsequent compliance  
19 specifications.

20 Despite its efforts to send the Appellant to fitness for duty exams or secondary medical  
21 opinions (to which the Appellant has submitted), the Employer has failed to rebut the fact that  
22 the Appellant is in fact temporarily and totally disabled as a result of the Employer's unlawful  
23 conduct.

24 Beginning in 2007, the Employer initiated in a disingenuous scam disguised as an effort  
25 to reasonably accommodate the Appellant's disability. By letter dated March 7, 2007, the  
26 Appellant was informed by Los Angeles Post Office District Reasonable Accommodation  
27 Committee ("DRAC") Chairman that the Appellant was requested to explore a reasonable  
28 accommodation for the Appellant which would allow him to return to work. The DRAC  
29 Chairman's letter announced that the Appellant's "... name was submitted to the reasonable  
30 accommodation committee to discuss our ability to accommodate your restrictions ..."  
31 Pursuant to repeated requests from the Appellant, he was eventually supplied with a  
32 document entitled "Handbook EL-307.2 The Reasonable Accommodation Process." The  
33 reasonable accommodation process set out in that document requires that a request for  
34 reasonable accommodation must be submitted by the affected employee "or someone acting  
35 on an employee's/applicant's behalf." However, participation in the reasonable  
36 accommodation process is optional for the affected employee - and, moreover, is completely

1 inapplicable to an employee that is temporarily, totally disabled.

2 The Appellant, nor anyone acting on his behalf, ever requested any reasonable  
3 accommodation, so the very foundation of this so-called reasonable accommodation process  
4 (which was, in any event, voluntary and optional) was illegitimate from its inception. To date,  
5 the Employer has failed and refused to provide any relevant documentation concerning the  
6 implementation of this plan vis-à-vis the Appellant.

7 The Reasonable Accommodation Process handbook supplied to the Appellant  
8 specifically applies the reasonable accommodation process to but three situations. Those three  
9 situations include, when an applicant requests a reasonable accommodation, when a decision  
10 must be made with respect to a job applicant's ability to perform the functions of a job he is  
11 currently performing or when an employee requests some accommodation so that he or she is  
12 able to perform his or her current job. On its face, none of these three particular situations are  
13 triggered in the instant matter.

14 The reasonable accommodation process is the subject of detailed federal regulations,  
15 including 20 CFR 10-515, which states that when an employee is able to resume their regular  
16 duties, they must do so. However, in the present matter, no one has ever contended that the  
17 Appellant can return to his regular employment. The second part of the cited federal  
18 regulation addresses only situations where an employee cannot return to the job he held at the  
19 time of the injury, but who is recovered enough to perform some type of work. This situation  
20 is limited, according to the regulation, to instances where an employee suffers from a "partial  
21 disability." No one has ever contended that the Appellant suffers from a partial disability.

22 Rather, the authoritative medical opinion and factual findings by the Office of Workers'  
23 Compensation Programs ("OWCP") are that the Appellant is currently totally disabled from  
24 work. The OWCP officially designated treating physician Peter J. Weingold (erroneously  
25 referred to be the Regional Director as 'Appellant's medical provider") issued a September 9,  
26 2009, letter wherein he provides the following:

27 As his treating psychiatrist, I must strongly object to this examination.  
28

1 First of all, his status in terms of his inability to return to work has  
2 been and continues to be determined by the OWCP. Your insistence  
3 that he undergo a [Fitness for Duty Examination] only serves to  
4 exacerbate his accepted condition. The ongoing attempts by the USPS  
5 to force [Appellant] to return to work prematurely only serves to  
6 delay his possible recovery. As you must know, there are ongoing  
7 issues of a similar nature that are still unresolved referring to the  
8 National Labor Relations Board.

9  
10 Throughout the history of this case, Dr. Weingold has issued various medical  
11 determinations regarding the Appellant's medical condition, including a report, dated  
12 November 18, 2007, wherein he opined:

13  
14 [Appellant's] condition remains one of temporary, total disability on  
15 a psychiatric basis directly and solely the result of industrial factors  
16 enumerated above and in previous reports.

17 On January 23, 2009, Dr. Weingold issued yet another report explicitly stating that the  
18 Appellant cannot be employed anywhere at the present time.

19 On June 8, 2009, Dr. Weingold wrote a report, reiterating that, "[b]ecause [the  
20 Appellant] remains unable to perform work of any kind" and, further, noted that  
21 communications between the Employer and the Appellant should be handled by the OWCP's  
22 office due to the animus between the parties, which would serve only "to exacerbate his  
23 psychiatric condition and prolong his disability."

24 Since the Employer signed the 2003 Stipulation after the issuance of the first compliance  
25 specification, from time to time thereafter, Region 21 would issue subsequent compliance  
26 specifications requiring, *inter alia*, that the United States Postal Service pay the Appellant back  
27 pay, benefits, etc.

28 By June 15, 2009, Region 21 issued a compliance specification and notice of hearing.  
This compliance specification stated, in paragraph 1:

The back pay period for Pappas commences on November 24, 1986,  
at which time he was unlawfully demoted from his position of Vehicle  
Maintenance Supervisor. As a result of Respondent's unfair labor  
practice, Pappas has been rendered psychologically incapable of  
performing his duties. Thus, the back pay period and the obligation  
to offer reinstatement continues to run until the time that Respondent  
can demonstrate that Pappas is no longer disabled and can return to  
work.

1 The compliance specification went on to recount that through prior stipulations and  
2 compliance specifications, the Appellant had been made whole for back pay, interest and other  
3 benefits from the date of his unlawful demotion through September 30, 2006. This latest  
4 compliance specification then sought back pay and benefits from the period October 1, 2006  
5 through January 2, 2009. Finally, that compliance specification specifically left, "all liabilities  
6 accruing after January 2, 2009 . . . for future compliance and/or supplemental proceedings."

7 Thereafter, on August 21, 2009, the Employer filed a Motion for Summary Judgment  
8 taking the position that Appellant had already been made whole and the matter should cease.  
9 The Employer's Motion was initially denied, but the Employer also moved for a "brief  
10 postponement of the hearing" which was granted by ALJ Cracraft and the matter remanded  
11 "to the Regional Director for Region 21 to set a new hearing date." The Order postponing the  
12 hearing was issued September 2, 2009.

13 On September 2, 2009, the NLRB Agent responsible for this matter, Cecilia Valentine,  
14 sent an email announcing that Judge Cracraft had granted the Motion for Postponement of the  
15 hearing, offered available dates, and stated "we need to reschedule the hearing as soon as  
16 possible." A true and correct copy of this email is attached hereto as Exhibit B.

17 One of the arguments raised by the Employer in its Motion for Summary Judgment was  
18 that the Appellant had failed to mitigate its damages. By letter dated October 22, 2008, the  
19 Compliance Officer of Region 21 states that "The NLRB's division of advice concluded that  
20 back pay was appropriate in this case until the Postal Service either shows the Charging  
21 Party's disability does not prevent him from working or that he would no longer be working  
22 for the Postal Service (e.g. at retirement age.)" The advice memorandum referred to by the  
23 Compliance Officer was never disclosed to either the Appellant or his attorney and he is  
24 therefore unaware of what that memorandum provides and whether it states that back pay  
25 would terminate at retirement or whether or not "retirement age" was an interpretation of the  
26 advice memorandum by the Compliance Officer. The October 22, 2008 compliance letter  
27 sought evidence from the Appellant with respect to the issue of mitigation and damages.

28 By letter, dated December 10, 2009, the Appellant responded with thorough  
documentary evidence showing that reliance on the "reasonable accommodation" process was



1 procedure whenever an employer seeks to limit a back pay award. That is, once the gross  
2 amount of back pay due is established, the burden shifts to the wrongdoer to prove  
3 circumstances that would limit its liability. See *NLRB v. Joyce Western Corp.*, 873 F.2d 126, 128  
4 (6th Cir. 1989). Any doubts about the alleged affirmative defenses are resolved against the  
5 employer who committed the unfair labor practice. *NLRB v. NHE/Freeway, Inc.*, 545 F.2d 592,  
6 594 (7th Cir. 1976); *NLRB v. Madison Courier, Inc.*, 472 F.2d 1307, 1321 (D.C. Cir. 1972).

7 Here, the Regional Director's decision to eliminate the Appellant's right to continuing  
8 back pay flies in the face of Board law because the decision was reached without the benefit of  
9 the full resolution of disputed facts. In fact, no hearing has been afforded to the Appellant as  
10 to the Employer's continuing obligation to make the Appellant whole. In particular, there  
11 remain material facts as to whether the Employer has fulfilled the terms of the Settlement  
12 Stipulation, whether the Appellant has been made whole under the terms of the Settlement  
13 Stipulation, and whether the Employer is excused from paying back pay benefits on the flawed  
14 theory that the Appellant would have likely retired. The determination of these issues *can only*  
15 *be resolved on the basis of competent evidence before an Administrative Law Judge* – as opposed to  
16 being summarily resolved.

17 On May 10, 2010, Regional Director, James Small, issued a compliance determination  
18 letter opining that the Appellant should not be entitled to any back pay beyond the date of his  
19 early retirement – March 2007– when he attained the age of 60. The decision to terminate the  
20 Appellant's right to continued back pay, however, is not justified by any formal finding of fact,  
21 but rather, was guided by the Regional Director's mere opinion that it would not serve the  
22 remedial purposes of the Act to extend the Employer's back pay obligation. While the  
23 Regional Director may well have felt that the Appellant has been made whole, the personal  
24 opinion and belief of the Regional Director should not warrant the setting aside of the  
25 Appellant's judicially-enforced back pay order.

26 The Appellant is entitled to submit evidence concerning his work expectancy because  
27 that is the only fair and objective measure of when he would have terminated his employment.  
28 To dictate otherwise (as was the case herein) would constitute a complete departure from the  
well-defined legal standards requiring a formal hearing and findings of fact justifying the

1 limitation of any back pay award – not the mere fiat of the Regional Director. See *M*  
2 *Restaurants, Inc. v. NLRB*, 621 F.2d 336, 337-338 (9th Cir. 1980) (Recognizing that the issue of  
3 whether a “back pay liability should be appropriately adjusted” is “*a determination that is*  
4 *largely a question of fact for the Board.*”)(Emphasis added.)

5  
6 **B. THE APPELLANT IS PREPARED TO DEMONSTRATE THAT HE WOULD HAVE**  
7 **MAINTAINED EMPLOYMENT WITH THE EMPLOYER BEYOND MARCH 2007**

8 The Appellant vigorously contests Regional Director’s denial of his back pay benefits  
9 because the Appellant is prepared to show that his work expectancy would have exceeded the  
10 cutoff date arbitrarily designated by the Regional Director–i.e., March 2007. The Appellant is  
11 prepared to testify that he, like very many other postal service employees, would have worked  
12 beyond the age of 60, had it not been for the unlawful conduct of the Employer which has  
13 rendered him psychologically unfit to return to work to this day.

14 A review of the Appellant’s testimony and the facts surrounding the Appellant’s  
15 employment prior to the unfair labor practice is absolutely necessary to determine the  
16 Appellant’s work expectancy. On this score, the Appellant is prepared to testify that he would  
17 have worked through the age of 70 and, at least, up until the date he would have accrued full  
18 retirement benefits. See e.g., *Gotthardt v. National Railroad Passenger Corporation*, 191 F.3d 1148  
19 (1999) (affirming grant of front pay through retirement age of 70); *Shore v. Federal Express Corp.*,  
20 42 F.3d 373, 378 (6th Cir.1994) (affirming grant of front pay through retirement age of 65.)  
21 With respect to his work history, there is no dispute that the Appellant maintained an  
22 exemplary work and attendance record as a Vehicle Maintenance Supervisor after his  
23 promotion. The Appellant would have continued to maintain a positive work history but for  
24 the retaliation he suffered as a result of engaging in protected activities.

25 Unfortunately, the Regional Director has considered no evidence concerning the  
26 Appellant’s work expectancy. Rather, the sole basis that the Regional Director has offered for  
27 terminating the Appellant’s back pay is his personal view (which neatly coincide with the  
28 Employer position) that the Appellant has simply received back pay for too prolonged a

1 period. The Regional Director has not considered any evidence as to whether the Appellant  
2 would have sought early retirement or whether similarly situated employees would have  
3 sought early retirement. In short, the Regional Director has issued a decision which has  
4 discriminatorily and punitively imposed a mandatory retirement age on the Appellant.

5 **C. THE REGIONAL DIRECTOR HAS PROVIDED NO ADEQUATE BASIS FOR**  
6 **CONCLUDING THAT ANY FURTHER BACK PAY WOULD BE PUNITIVE IN**  
7 **NATURE**

8 The Regional Director's decision to terminate the Appellant's right to back pay is based  
9 on various patently unfounded assumptions set forth in the Regional Director's May 10<sup>th</sup>  
10 compliance determination letter.

11 A critical flaw in the Regional Director's decision is his mischaracterization of the  
12 Appellant's back pay award as "punitive" in nature. This is a classic strawman argument.  
13 Indeed, there is no dispute that a back pay award should not be "punitive." However, at no  
14 time has the Appellant ever suggested that his right to back pay should last indefinitely.  
15 Rather, the Appellant merely expects that the Employer fully and fairly comply with the  
16 Settlement Stipulation, executed on June 10, 1993, which guarantees that the Appellant be  
17 made whole "for any loss of pay and benefits he may have suffered, and may continue to  
18 suffer, as a result of his demotion from his position as a supervisor." (Emphasis added) To  
19 this end, the Appellant merely seeks a back pay award that fairly coincides with his future  
20 work expectancy and comports with the protections guaranteed to him under the Settlement  
21 Stipulation. At minimum, the Appellant should have been entitled, as a matter of basic  
22 fairness and due process, to adduce evidence delineating his work expectancy.

23 While the Employer has, at all relevant times, been afforded the opportunity to present  
24 evidence concerning the Appellant's work expectancy, no competent evidentiary showing has  
25 been made. It is not now appropriate for the Appellant's back pay award to be eliminated *sua*  
26 *sponte* by the Regional Director due solely to the Director's ill-informed view that it is  
27 "punitive" in nature.

28 As set forth in his May 10<sup>th</sup> compliance determination letter, the Regional Director's  
personal opinion that the back pay award is "punitive" is, ostensibly, derived from his

1 misconceptions (1) that Board precedent does not justify an award of back pay beyond the first  
2 possible date of retirement eligibility, (2) that it would not be fair to require the Employer to  
3 pay back pay beyond the date that "nearly all employees would commonly retire"; (3) that a  
4 perpetual back pay remedy is the only possible alternative to cutting off the Appellant's back  
5 pay award at the time of his early retirement; and (4) that the Appellant has already become  
6 eligible for "full retirement" under the Civil Service Retirement System ("CSRS"). These  
7 contentions are incorrect and unfounded.

8 **1. BOARD PRECEDENT DOES NOT MANDATE THE TERMINATION OF  
9 BACK PAY UPON EARLY RETIREMENT ELIGIBILITY**

10 First, with respect to Board precedent, the Regional Director fails to cite any case  
11 authority prohibiting the continuation of back pay past an employee's first possible date of  
12 retirement eligibility. In reality, the instant case presents very unique issues that have never  
13 before been decided by the Board. The two cases relied upon by the Regional Director – *Graves*  
14 *Trucking, Inc. v. NLRB*, 692 F.2nd 470 (7<sup>th</sup> Cir. 1982) and *Brown Company*, 305 NLRB 62 (1991) –  
15 are distinguishable. The *Graves Trucking, Inc* and *Brown Company* certainly do not stand for the  
16 proposition that the Regional Director may unilaterally choose to cut off all back pay benefits  
17 for the simple reason that the Appellant may have been eligible to apply for retirement  
18 benefits.

19 In *Graves Trucking, Inc.*, the Board had, initially, approved and issued an order which  
20 granted an employee – who had been choked by a supervisor – a back pay remedy making  
21 him "whole for any loss of earnings he may have suffered, or will suffer, as a result of  
22 Respondent's unlawful conduct against him until a reasonable period after his injury resulting  
23 from said unlawful conduct no longer precludes him from performing his former or a  
24 substantially equivalent job with Respondent, or any other employer, plus interest." *Graves*  
25 *Trucking, Inc.*, 246 NLRB 344, 345-346. Significantly, the Board had made it clear that the  
26 appropriate means to remedy the aggrieved employees injury was to grant him an back pay  
27 remedy – without qualification – that would last until after the time of his recovery. It was  
28 only at the enforcement stage, in *Graves Trucking, Inc. v. NLRB*, 692 F.2nd 470 (7<sup>th</sup> Cir. 1982),  
that the Seventh Circuit Court enforced the Board's award only to the extent that it was limited

1 to a duration of two years. The Regional Director's reliance on the enforcement order of  
2 *Graves Trucking, Inc.* is wholly misplaced.

3 Unlike in *Graves Trucking, Inc. v. NLRB*, the Ninth Circuit court of appeals in the instant  
4 case chose to enforce the Board's make whole back pay order in full. If any significance can be  
5 drawn from the *Graves Trucking, Inc.* case, it is the basic principle that Board remedies are  
6 intended to restore aggrieved employees to "as nearly as possible to the economic position  
7 they would have enjoyed in the absence of the unlawful conduct" and, further, to "discourage  
8 and remedy in full" any such unlawful conduct. *Graves Trucking, Inc.*, 246 NLRB 344, 345. As  
9 the Board recognized in its initial order in *Graves Trucking, Inc.*, the only way to truly achieve  
10 these ends was to issue a make whole order that guaranteed that the injured employee would  
11 continue to receive back pay until his injury was finally healed. *Id.* at 345-346. It was only at  
12 the enforcement stage that the Board's make whole remedy came under scrutiny. Hence, the  
13 Regional Director's suggestion that any "Board precedent" reflected in *Graves Trucking, Inc.*,  
14 warrants his position is wholly disingenuous.

15 There is no dispute that the Seventh Circuit and the Ninth Circuit clearly differed in  
16 how to enforce the Board orders in their respective cases. However, for our purposes, the  
17 bottom-line is that the Ninth Circuit enforced the Board's broad back pay award in its entirety  
18 a very long time ago at the enforcement stage. Whatever persuasive value the Seventh  
19 Circuit's opinion had in *Graves Trucking, Inc.* ended once the parties got past the enforcement  
20 stage. The parties are well past the enforcement stage. The Ninth Circuit enforced the Board's  
21 broad back pay award in its entirety and without qualification. The Regional Director cannot  
22 now cite the Seventh Circuit's opinion in *Graves Trucking, Inc.* for the proposition that the  
23 Ninth Circuit's decision to enforce the award was inconsistent with Seventh Circuit precedent.

24 The second case cited by the Regional Director, *Brown Company*, 305 NLRB 62 (1991), is  
25 even less analogous to our case. In *Brown Company*, the Board determined that an employer's  
26 transfer of its cement hauling operations – in 1977 – constituted a violation of 8(a)(1) and (5) of  
27 the Act because the sole purpose of the action was to abrogate and escape the employer's  
28 contractual obligations with a union. *Id.* at 63. After unlawfully relocating its cement trains, the  
employer terminated all operations in April 1988. The central holding in *Brown Company* was

1 merely that an employer may be excused from paying back pay in cases where it completely  
2 ceases operations. *Id.* at 62. This, of course, is not the case at all herein.

3       Significantly, *Brown Company* did address the question of an employer's duty to pay  
4 back pay benefits beyond early retirement. Specifically, one claimant-employee, Robert Reilly,  
5 had selected early retirement after the employer's unlawful relocation due to a severe arm  
6 injury he suffered. *Id.* at 62. Despite his efforts, Mr. Reilly was not able to perform the job of  
7 cement mixer and, therefore, chose to voluntarily retire at the age of 60 – which was  
8 approximately three years prior to the date he planned to retire. The employer seized on the  
9 Mr. Reilly's early retirement to argue that back liability should have been tolled as of the exact  
10 date Mr. Reilly retired – as opposed to the later date when the employer ceased operations .  
11 Rejecting this contention, the ALJ held that there was no justifiable basis for the employer to  
12 benefit from Mr. Reilly's forced early retirement. Accordingly, the ALJ held that Mr. Reilly's  
13 forced early retirement had no tolling effect. *Id.* at 72-73.

14       The ALJ observed that “there is no case holding that the Act, or general principles,  
15 precludes a backpay award because a period of that length is too prolonged.” *Id.* at 73. Thus,  
16 in the Appellant's case, provided that some fair and reasonable measure of back pay that can  
17 be determined through the submission evidence and findings of fact, there is no justifiable  
18 basis for the Regional Director to summarily curtail the Appellant's right to continued back  
19 pay.

20           **2. THE REGIONAL DIRECTOR OFFERS NO EVIDENTIARY FOUNDATION**  
21           **FOR CONCLUDING THAT THE VAST MAJORITY OF SIMILARLY**  
22           **SITUATED EMPLOYEES WOULD HAVE CHOSEN EARLY RETIREMENT**

23       One of the more outrageous assumptions made by the Regional Director is the  
24 presupposition that back pay should be tolled as of Appellant's early retirement eligibility date  
25 – March 2007 – because “nearly all employees would commonly retire” at the first early  
26 retirement age. The Regional Director offers no facts or evidence upon which this arbitrary  
27 conclusion is made. The Regional Director's comment is, ostensibly, derived from the March  
28 2010 compliance stipulation, which states, at footnote 1:

In view of the facts that the vast majority of individuals covered by the CSRS retire

1 on the last day of the month in which they become eligible for retire (or on the first  
2 three days of the month they become eligible), the Postal Service's obligation has  
been calculated through March 31, 2007.

3 The Appellant objects vigorously to the Regional Director's contention that the "vast  
4 majority" of federal employees opt for early retirement. To begin, this is nothing more than  
5 self-serving speculation offered in lieu of evidence. When the Appellant contacted Regional 21  
6 to determine what evidence relied upon to draw this conclusion, he was informed by Field  
7 Attorney Cecilia Valentine that this was merely the "general understanding" of Region 21's  
8 staff. Secondly, even assuming arguendo that such speculation were correct, there is no  
9 indication whether the "vast majority" referred to by the Regional Director encompasses  
10 similarly situated postal service employees. In light of a worsening economy, it begs to reason  
11 whether the "vast majority" of federal employees contemplated by the Regional Director are in  
12 a position to retire at the first opportunity. Lastly, whether other similarly-situated federal  
13 employees choose to retire early is merely one factor for Regional Director to consider.

14 **3. A PERPETUAL BACK PAY AWARD IS NOT THE ONLY ALTERNATIVE TO**  
15 **THE REGIONAL DIRECTOR'S DETERMINATION TO CUT OFF THE**  
16 **APPELLANT'S BACK PAY BENEFITS UPON HIS ELIGIBILITY FOR EARLY**  
**RETIREMENT**

17 It goes hardly without saying that no one has stated that the Appellant should recover a  
18 "perpetual" award of back pay. Rather, the Settlement Stipulation, executed on June 10, 1993,  
19 simply mandates that the Employer shall make the Appellant whole "*for any loss of pay and*  
20 *benefits he may have suffered, and may continue to suffer, as a result of his demotion from his position*  
21 *as a supervisor*. The Board has been tasked with the duty of assisting the Employer in  
22 complying with this obligation through compliance hearings. In an effort to derail the  
23 compliance procedure, the Regional Director has declared that the Appellant's right to back  
24 pay must be terminated retroactively to the date of his eligibility for early retirement. The flaw  
25 in the Regional Director's reasoning is conspicuously apparent when one considers his view  
26 that the *only* alternative to retroactively terminating back pay is to "continue the back pay  
27 obligation without any ending point." This position is patently illogical and, in fact, shows  
28 desperation on the part of the Regional Director to end this case. The Regional Director knows  
full well that other options are available besides a "perpetual" award of back pay benefits. If

1 allowed, the Appellant can and will show that his work expectancy would have lasted beyond  
2 early retirement and, further, that he planned to retire on a date certain.

3  
4 **4. THE APPELLANT HAS NOT ALREADY BECOME ELIGIBLE FOR FULL  
5 RETIREMENT UNDER THE CIVIL SERVICE RETIREMENT SYSTEM**

6 As reflected in his May 10<sup>th</sup> compliance determination letter, the Regional Director  
7 stated: “[i]t is *my understanding* that Pappas became eligible to apply for *full retirement/pension*  
8 *benefits* under the Civil Service Retirement System (“CSRS”) as of in or around March 2007”  
9 and, further, that “[b]ased on this understanding, I have determined that it would not serve  
10 the remedial purposes of the Act to extend the Employer’s backpay liability beyond that date.”  
11 (Italics added.) Unfortunately, the Regional Director’s presumption that the Appellant became  
12 eligible for full retirement is completely factually incorrect.

13 In reality, the Appellant can only receive full retirement once he completes 41 years and  
14 11 months of service. In the Annuity Estimate the Appellant received from the National  
15 Retirement Counseling System, dated April 16, 2010, the Appellant was notified, *inter alia*, that:  
16 “[m]aximum service credit for annuity is 41 years, 11 months, which [would] provide 80% of  
17 [his] high-3 average salary.” Thus, instead of obtaining his full retirement on March 2007, after  
18 30 years of service, the Appellant has yet to achieve approximately 8 more years of service to  
19 receive full retirement.

20 Due to his misunderstanding of what “full retirement” entails, the Regional Director has  
21 wrongly presupposed that the Appellant had been awarded the most complete relief  
22 possible toward putting the Appellant back into the position he would have been in but for the  
23 Employer’s unlawful conduct – i.e., eligibility for “full retirement.” As such, granting this  
24 appeal would now allow the Board to determine whether the point of full retirement should be  
25 reconsidered as an appropriate ending point for the Appellant’s work expectancy. Because the  
26 Regional Director’s compliance determination specifically turned upon this fact, the Appellant  
27 should be given an opportunity to correct the Regional Director’s error. At minimum, this  
28 matter should be resolved on the basis of competent evidence before a hearing.

1 **D. THE REGIONAL DIRECTOR'S DECISION AMOUNTS TO A FORCED EARLY**  
2 **RETIREMENT IN CONTRAVENTION OF ANTI-DISCRIMINATION PRINCIPLES**

3 The Regional Director takes the position that the Appellant has been made whole.  
4 However, making a discriminatee whole involves placing him or her in the same position they  
5 would have occupied but for the unlawful conduct. But for the unlawful conduct in the  
6 Appellant's case, he would have continued to work until he decided to retire. There is no  
7 mandatory retirement age for postal workers such as the Appellant because both federal and  
8 state law prohibit age discrimination in employment. If the Employer attempted to compel  
9 the Appellant to retire based simply upon the fact that he reached retirement eligibility, it  
10 would violate age discrimination laws. Here, the Employer is doing that exact thing, but  
11 rather than through its own hand, it is doing it through the processes of the National Labor  
12 Relations Board.

13 The Regional Director erroneously construes the Appellant's diagnosis of total disability  
14 as the mere opinion of the Appellant's "medical provider, which opinion has not, and may  
15 never, change." In a telling sign of the Regional Director's bias and lack of interest in this case,  
16 the Regional Director has erroneously referred to Peter J. Weingold, the OWCP-designated  
17 physician, as "Pappas' medical provider." In erroneously describing Dr. Weingold as the  
18 Appellant's "medical provider," the Regional Director has cast aspersions on the legitimacy of  
19 the findings made as to the Appellant's psychological state. Indeed, if there was any doubt in  
20 the mind of the Regional Director as to the credibility of the Appellant's psychological fitness  
21 (which seems to be the case), such doubt would clearly explain the Regional Director's  
22 desperate effort to terminate the instant compliance proceedings.

23 What is most disturbing about the Regional Director's decision is that it discriminatorily  
24 punishes the Appellant for having suffered the misfortune of being severely injured by the  
25 Employer's conduct. By formal finding of the OWCP, the Appellant has been conclusively  
26 determined to be totally disabled by the unlawful and egregious conduct of the Employer. As  
27 a result of the severe psychological injury he has suffered, the Appellant is unable to mitigate  
28 his damages by returning to work. Unlike employees who suffer only a partial disability, and  
are able to survive through subsequent employment, the Appellant's life has been destroyed

1 by the Employer. Yet, rather than holding the Employer to account for its conduct, the  
2 Regional Director has seen fit to summarily proclaim that any further back pay would be  
3 "punitive in nature."

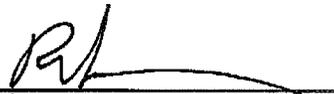
4 **IV. CONCLUSION**

5 In light of the foregoing, the Appellant respectfully requests that all material issues  
6 concerning of his continued right to back pay be resolved through formal findings of fact by an  
7 Administrative Law Judge after an evidentiary hearing. Accordingly, the Appellant requests  
8 that a hearing be scheduled as soon as practicable.

9  
10 Dated: June 8, 2010

**LEVY, STERN & FORD**

11  
12 By:

  
13 Adam N. Stern, Esq.  
14 Rudy Balderama, Esq.  
15 Attorneys for Appellant  
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**EXHIBIT 2**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Region 21

UNITED STATES POSTAL SERVICE

and

Case 21-CA-25278(P)  
Case 9<sup>th</sup> Circuit No. 93-70752

ANTHONY PAPPAS, an Individual

STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and among the United States Postal Service, herein called the Postal Service; Anthony Pappas, herein called Pappas; and the Counsel for the General Counsel of the National Labor Relations Board:

1. On August 5, 1993, the National Labor Relations Board, herein called the Board, issued its Decision and Order in Case 21-CA-25278(P), herein referred to as the Order, finding that the Postal Service had engaged in, and was engaging in, certain unfair labor practices affecting commerce. The Board ordered the Postal Service, its officers, agents, successors, and assigns to cease and desist from those practices and take certain actions as set forth in the Order, including offering Pappas, to the extent that it has not already done so, immediate and full reinstatement to his former position, or if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. In addition, the

Order directs the Postal Service to make Pappas whole for any loss of pay and benefits he may have suffered, and may continue to suffer, as a result of his demotion from his position as a supervisor, with interest to be paid on the amounts owing in accordance with New Horizons for the Retarded, 283 NLRB 1173 (1987).

2. On December 2, 1993, the United States Court of Appeals for the Ninth Circuit filed and entered its judgment enforcing in full, inter alia, the backpay and reinstatement provisions of the Board's Order.
3. As a result of prior stipulations, the Postal Service has made Pappas whole for backpay, interest, and other benefits for the period extending from the date of his unlawful demotion through September 30, 2006.
4. On June 15, 2009, the Regional Director for Region 21 of the National Labor Relations Board, herein called Regional Director for Region 21, issued a Compliance Specification and Notice of Hearing alleging, among other things, the backpay obligation of the Postal Service from October 1, 2006, through January 2, 2009, leaving for future determination all amounts owing after January 2, 2009.
5. Pappas has not yet returned to work at the Postal Service. However, the Regional Director for Region 21, on behalf of the General Counsel, has administratively determined that the Postal Service's liability in this

matter ceased as of on or about March 17, 2007, the date that Pappas became eligible to apply for a full Civil Service Retirement System (CSRS) retirement and pension.

6. In resolution of the monetary liabilities arising from the Order from October 1, 2006 through March 31, 2007,<sup>1</sup> the Postal Service will make payment to Pappas the amount of \$21,982.86, consisting of \$18,639.08 in backpay and \$3,343.78 in interest calculated through March 11, 2010. The backpay amount will be subject to normal withholdings under State and Federal laws, as it represents wages. No deductions will be made from the interest amount, although it is understood that this payment is subject to taxation and will be reported as interest to the Internal Revenue Service by the Postal Service.
7. The Postal Service will tender the amounts referred to in paragraph 6 within 8 weeks from the date it receives written notification that the Regional Director for Region 21 has approved this Stipulation. In the event that Pappas files an appeal of the Region's compliance determination, the Postal Service will tender the amounts referred to in paragraph 6 within 8 weeks from the date it receives written notification that the Region's compliance determination has been upheld by the General Counsel or by the Board. The checks shall be made payable to Anthony Pappas and forwarded to the Region 21 regional office for disbursement to Pappas.

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<sup>1</sup> In view of the fact that the vast majority of individuals covered by the CSRS retire on the last day of the month in which they become eligible for retirement (or on the first three days of the month following the month they become eligible), the Postal Service's obligation has been calculated through March 31, 2007.

8. In the event that the Postal Service fails to make any payment as set forth in paragraph 6 of this Stipulation, by failing to deliver a check or delivering a check that is not honored by the bank of issuance for any reason, that failure shall be considered an act of default. The Postal Service shall have 8 weeks from the date of notice to cure the default. Cure shall be effected by delivery of checks to the Board's Region 21 office in the proper amounts that are honored by the bank of issuance. That delivery must be within an 8-week period after notice of default is provided.
9. The Postal Service will credit Pappas with an annual leave balance of 616 hours through March 31, 2007. The Postal Service will also credit Pappas with a sick leave balance of 2977 hours through March 31, 2007.
10. The Postal Service will, to the same extent as with all other employees, assist Pappas, if requested by him, in his application for a full CSRS retirement. Further, as may be required by the Office of Personnel Management, the Postal Service will make any and all employer contributions, to the extent it has not already done so, including retroactive employer contributions, necessary to ensure that Pappas is qualified for a full, unreduced pension, as if he had been continuously employed through March 17, 2007, without any break in service from his entry on duty with the Postal Service. Pappas is solely responsible for properly completing all applications and for timely submitting all

information that is required of all employees who apply for retirement. If the Postal Service's actions that were the subject of the unfair labor practice charge at issue in this case cause the Office of Personnel Management to deny or reduce Pappas' retirement, then this Stipulation is null and void.

11. This Stipulation contains the entire agreement of the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to it.
12. The execution of this Stipulation shall not operate as an admission of fault or liability on the part of the Postal Service, its officers, employees, and agents in connection with the above-captioned matter.
13. The terms of this Stipulation will not establish any precedent, nor will these terms be used as a basis by Pappas or any representative organization to seek or justify similar terms in any subsequent case involving persons other than Pappas.
14. The parties to this Stipulation acknowledge that they have read and fully understand the provisions of the Stipulation. The parties further acknowledge and affirm that they are able to understand this Stipulation in its entirety, and that the Stipulation is executed by all parties hereto willingly and freely, and without coercion, threat or duress.

15. This Stipulation will be effective immediately upon signature by the parties and approval by the General Counsel on behalf of the National Labor Relations Board. In the event that any provision of the Stipulation is not complied with, the Regional Director, on behalf of the General Counsel, will withdraw his approval of the Stipulation.
16. This Stipulation may be signed in counterparts. Photographic copies of a signed counterpart may be used in place of the original.

UNITED STATES POSTAL SERVICE

Dated: March 11, 2010

By: 

Geraldine O. Rowe  
Deputy Managing Counsel

ANTHONY PAPPAS, An Individual

Dated: \_\_\_\_\_

By: \_\_\_\_\_

(Name and Title)

COUNSEL FOR THE GENERAL COUNSEL

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Approved By:

Date: \_\_\_\_\_

\_\_\_\_\_  
James F. Small  
Regional Director, Region 21  
National Labor Relations Board

**EXHIBIT 3**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

OCT 14 1993

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

NATIONAL LABOR RELATIONS BOARD, )  
 )  
Petitioner, )  
 )  
v. )  
 )  
UNITED STATES POSTAL SERVICE, )  
 )  
Respondent(s). )

93-70752

JUDGMENT

The National Labor Relations Board having on August 5, 1993, issued an Order against Respondent, United States Postal Service, its officers, agents, successors, and assigns, and the parties having stipulated that this Court or any other appropriate court may, upon application by the Board, enter a judgment enforcing said order, and this Court having considered the same, it is hereby

ORDERED AND ADJUDGED by the Court that the Respondent, United States Postal Service, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging, demoting or otherwise discriminating against any supervisor because the supervisor has given testimony in an arbitration proceeding held pursuant to a collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the National Labor Relations Board finds will effectuate the policies of the National Labor Relations Act, as amended:

(a) Offer Anthony Pappas, to the extent it has not already done so, immediate and full reinstatement to his former position, or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(b) Expunge from its records and files, to the extent it has not already done so, all references to the proposed removal of Anthony Pappas and to the demotion of Anthony Pappas.

(c) Make whole Anthony Pappas for any loss of pay and benefits he may have suffered, and may continue to suffer, as a result of his demotion from his position as a supervisor, with interest to be paid on the amounts owing as computed in accordance with New Horizons for the Retarded, 283 NLRB 1173 (1987).

(d) Preserve and upon request, make available to the Board or its agents, for examination and copying, all payroll and other records necessary to a determination of the amounts of backpay due under this Judgment.

(e) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Judgment, what steps Respondent has taken to comply herewith.

Mandate shall issue forthwith.

DATE ISSUED: December 2, 1993

Endorsed, Judgment Filed and Entered

/s/ Cathy A. Catterson  
Cathy A. Catterson  
Clerk

By: Michael Garay  
Michael Garay  
Deputy Clerk

A TRUE COPY  
CATHY A. CATTERSON  
Clerk of Court  
ATTEST  
DEC 02 1993  
by: Michael Garay  
Deputy Clerk

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Washington, D.C.

UNITED STATES POSTAL SERVICE

and

Case 21-CA-25278(P)

ANTHONY PAPPAS, An Individual

SETTLEMENT STIPULATION

IT IS HEREBY STIPULATED AND AGREED by and between United States Postal Service, herein called Respondent, Anthony Pappas, an Individual, herein called Pappas, and the General Counsel of the National Labor Relations Board that:

1. Upon a charge in Case 21-CA-25278(P) filed by Pappas on March 6, 1987, and served on Respondent on that same date by certified mail, receipt of which charge is hereby acknowledged by Respondent, the General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the Acting Regional Director for Region 21, acting pursuant to authority granted in Section 10(b) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, et seq., herein called the Act, and Sections 102.15 and 102.17 of the Board's Rules and Regulations, Series 8, as amended, issued a Complaint and Notice of Hearing against Respondent on April 22, 1987, and also issued an Amended Complaint and Amended Notice of Hearing against Respondent on September 17, 1992. Further, the

Regional Director for Region 21, issued an Amendment to Amended Complaint against Respondent on January 28, 1993. True copies of the aforesaid Complaint and Notice of Hearing (Complaint) were duly served by certified mail on the Respondent and Pappas on April 22, 1987, receipt of which is hereby acknowledged by all parties. True copies of the aforesaid Amended Complaint and Amended Notice of Hearing (Amended Complaint) were duly served by certified mail on Respondent and Pappas on September 17, 1992, receipt of which is hereby acknowledged by all parties. True copies of the aforesaid Amendment to Amended Complaint were duly served by certified mail on the Respondent and Pappas on January 28, 1993, receipt of which is hereby acknowledged by all parties.

2. At all times material herein, Respondent has provided and currently provides postal services for the United States of America and operates various facilities throughout the United States in the performance of that function, including a facility located at 7001 South Central Avenue, Los Angeles, California. The Board has jurisdiction over Respondent in this matter by virtue of Section 1209 of the Postal Reorganization Act (PRA).

3. At all times material herein, until on or about October 25, 1986, Pappas was a Vehicle Maintenance Supervisor for Respondent, acting on its behalf, and at all times material herein, until on or about October 25, 1986, was a supervisor within the meaning of Section 2(11) of the Act.

4. American Postal Workers Union, AFL-CIO, herein called the Union, is and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5. Respondent hereby withdraws its Answer to the Complaint, its Answer to the Amended Complaint and its Answer to the Amendment to the Amended Complaint, and hereby waives the filing of an answer to the Complaint, Amended Complaint or to the Amendment to Amended Complaint, and all parties hereto waive their rights to: a hearing, administrative law judge's decision, the filing of exceptions and briefs, oral argument before the Board, the making of findings of fact or conclusions of law by the Board, and all other and further proceedings regarding the Complaint and amendments, to which the parties may be entitled under the Act or the Board's Rules and Regulations. In the event that the Regional Director for Region 21 issues a Compliance Specification and Notice of Hearing in this case, all parties reserve their full rights under Section 102.59 of the Board's Rules and Regulations.

6. All parties hereto agree that: the Regional Director for Region 21 prepared an appropriate Notice to Employees (Notice) regarding Respondent's unfair labor practices; Respondent posted the Notice for an appropriate period of time in 1988; and that no further posting of a notice is required. All parties hereto also agree that a dispute remains over the amount of backpay due to Pappas. Respondent maintains that 5 U.S.C. Sec. 8116 is the exclusive monetary remedy available to Pappas, and that it bars the payment of any additional backpay to Pappas. It

is understood that by agreeing to comply with the Board's Order, as set forth in paragraph 8 below, Respondent does not waive its position, during compliance proceedings or during a compliance hearing, that 5 U.S.C. Sec. 8116 is the exclusive monetary remedy available to Pappas, and that it bars the payment of any additional backpay to Pappas. In the alternative, Respondent maintains that even if 5 U.S.C. Sec. 8116 does not bar the payment of any additional backpay to Pappas, a dispute still remains over the amount of backpay due to Pappas. Respondent also maintains that it reinstated Pappas to his supervisor position by memorandum dated December 17, 1987, but that Pappas has not returned to work, and has instead been receiving workers compensation benefits through the Department of Labor Office of Workers Compensation Programs, because he is reportedly suffering from a condition rendering him unable to work since November 1986. Pappas maintains that he has not been appropriately reinstated to his supervisor position, and that the reinstatement set forth in the memorandum dated December 17, 1987, was ineffective because he was at that time, and presently remains, disabled and unable to return to work, due to his unlawful demotion by Respondent. Both Respondent and the General Counsel reserve the right to demand and obtain a compliance hearing, if no agreement can be reached on these issues during compliance proceedings.

7. This Stipulation, together with the charge, Complaint, Amended Complaint, and Amendment to Amended Complaint, shall constitute the entire record herein.

8. Upon this Stipulation and record herein, as described in paragraph 7 above, the Board may enter an Order forthwith providing as follows:

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

1. Cease and desist from:

(a) Discharging, demoting or otherwise discriminating against any supervisor because the supervisor has given testimony in an arbitration proceeding held pursuant to a collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action to effectuate the policies of the National Labor Relations Act, as amended:

(a) Offer Anthony Pappas, to the extent it has not already done so, immediate and full reinstatement to his former position, or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(b) Expunge from its records and files, to the extent it has not already done so, all references to the proposed removal of Anthony Pappas and to the demotion of Anthony Pappas.

(c) Make whole Anthony Pappas for any loss of pay and benefits he may have suffered, and may continue to suffer, as a result of his demotion from his position as a supervisor,

with interest to be paid on the amounts owing as computed in accordance with New Horizons for the Retarded, 283 NLRB 1173 (1987).

(d) Preserve and upon request, make available to the Board or its agents, for examination and copying, all payroll and other records necessary to a determination of the amounts of backpay due under paragraph 2(c) of this Order.

(e) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

9. The United States Court of Appeals for any appropriate circuit may, upon application by the Board, enter its judgment enforcing the Order of the Board in the form set forth in paragraph 8 hereof. Respondent waives all defenses to the entry of the judgment, including compliance with the Order of the Board, and its right to receive notice of the filing of an application for the entry of such judgment, provided that the judgment is in the words set forth in paragraph 8 above. However, Respondent shall be required to comply with the affirmative provisions of the Board's Order after entry of the judgment only to the extent that it has not already done so.

10. This Stipulation contains the entire agreement of the parties, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to it, except that it is understood that the signing of this Stipulation by Respondent does not constitute an admission that it has violated the Act.

11. This Stipulation, together with the other documents set forth above, constituting the record as described in paragraph 7 hereof, shall be filed with the Board. The Stipulation is subject to the approval of the Board and it shall be of no force and effect until the Board has granted such approval. Upon the Board's approval of the Stipulation, Respondent will immediately comply with the provisions of the Order as set forth in paragraph 8 hereof.

Respondent:

United States Postal Service

Signed at San Bruno,  
California, this 10th day  
of May, 1993.

By: Eric J. Scharf  
Eric J. Scharf, Attorney at Law  
Office of Field Legal Services  
United States Postal Service

Charging Party:  
Anthony Pappas

Signed at Culver City,  
California, this 2nd day  
of June, 1993.

By: Anthony Pappas

Approval by the General Counsel  
recommended:

Signed at Los Angeles,  
California, this 10th day  
of June, 1993.

Neil A. Warheit  
Neil A. Warheit, Attorney at Law  
National Labor Relations Board  
Region 21  
811 Wilshire Boulevard, 11th Floor  
Los Angeles, CA 90017

Approved:

Signed at Washington, D.C.,  
this \_\_\_\_\_ day  
of \_\_\_\_\_, 1993.

Office of the General Counsel  
National Labor Relations Board  
Washington, D.C. 20570

DS-2268  
Los Angeles, CA

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

UNITED STATES POSTAL SERVICE

and

Case 21-CA-25278 (P)

ANTHONY PAPPAS, An Individual

**DECISION AND ORDER**

**Statement of the Case**

June 10, 1993, United States Postal Service, herein called Respondent; Anthony Pappas, an Individual, herein called Pappas, and the General Counsel of the National Labor Relations Board entered into a Settlement Stipulation, providing for the entry of a consent order by the Board and a consent judgment by any appropriate United States Court of Appeals. The parties waived all further and other proceedings before the Board to which they may be entitled under the National Labor Relations Act, as amended, and the Board's Rules and Regulations, and the Respondent waived its right to contest the entry of a consent judgment or to receive further notice of the application therefor.

The Settlement Stipulation is approved and made a part of the record, and the proceeding is transferred to and continued before the Board in Washington, D.C., for the entry of a Decision and Order pursuant to the provisions of the Settlement Stipulation.

Upon the basis of the Settlement Stipulation and the entire record, the Board makes the following:

**Findings of Fact**

**1. The Respondent's business**

At all times material herein, Respondent has provided and currently provides postal services for the United States of America and operates various facilities throughout the United States in the performance of that function, including a facility located at 7001 South Central Avenue, Los Angeles, California. The Board has jurisdiction over Respondent in this matter by virtue of Section 1209 of the Postal Reorganization Act (PRA).

At all times material herein, until on or about October 25, 1986, Pappas was a Vehicle Maintenance Supervisor for Respondent, acting on its behalf, and at all times material herein, until on or about October 25, 1986, was a supervisor within the meaning of Section 2(11) of the Act.

The Respondent admits and we find, that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The labor organization involved

American Postal Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

**ORDER**

Upon the basis of the above findings of fact, the Settlement Stipulation, and the entire record, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board orders that:

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

1. Cease and desist from:

(a) Discharging, demoting or otherwise discriminating against any supervisor because the supervisor has given testimony in an arbitration proceeding held pursuant to a collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the National Labor Relations Board finds will effectuate the policies of the National Labor Relations Act, as amended:

(a) Offer Anthony Pappas, to the extent it has not already done so, immediate and full reinstatement to his former position, or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges.

(b) Expunge from its records and files, to the extent it has not already done so, all references to the proposed removal of Anthony Pappas and to the demotion of Anthony Pappas.

(c) Make whole Anthony Pappas for any loss of pay and benefits he may have suffered, and may continue to suffer, as a result of his demotion from his position as a supervisor, with interest to be paid on the amounts owing as computed in accordance with New Horizons for the Retarded, 283 NLRB 1173 (1987).

(d) Preserve and upon request, make available to the Board or its agents, for examination and copying, all payroll and other records necessary to a determination of the amounts of backpay due under this Order.

(e) Notify the Regional Director for Region 21, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C., August 5, 1993

\_\_\_\_\_  
James M. Stephens, Chairman

\_\_\_\_\_  
Dennis M. Devaney, Member

\_\_\_\_\_  
John Neil Raudabaugh, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

**EXHIBIT 4**

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 21

UNITED STATES POSTAL SERVICE

and

Case 21-CA-25278(P)

ANTHONY PAPPAS, An Individual

COMPLIANCE SPECIFICATION  
AND  
NOTICE OF HEARING

On August 5, 1993, the National Labor Relations Board, hereinafter referred to as the Board, issued its Decision and Order, herein the Order, directing the United States Postal Service, hereinafter referred to as the Respondent, its officers, agents, successors and assigns to, inter alia, offer to Anthony Pappas, hereinafter referred to as Pappas, immediate and full reinstatement to his former position, (to the extent that it had not already done so), or if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges. In addition, the Order directs the Respondent to, inter alia, make Pappas whole for any loss of pay and benefits he may have suffered, and may continue to suffer, as a result of his demotion from his position as a Vehicle Maintenance Supervisor, with interest to be paid on the amounts owing as computed in accordance with New Horizons for the Retarded, 283 NLRB 1173 (1987).

Thereafter, on December 2, 1993, the United States Court of Appeals for the Ninth Circuit issued its Judgment enforcing in full the Order.

However, since a controversy has arisen over the monetary liabilities arising under the terms of the Order, as enforced, the Regional Director of Region 21, pursuant to authority duly conferred upon him by the Board, hereby issues this Compliance Specification and Notice of Hearing and alleges that:

1. The backpay period for Pappas commences on November 24, 1986, at which time he was unlawfully demoted from his position of Vehicle Maintenance Supervisor. As a result of Respondent's unfair labor practice, Pappas has been rendered psychologically incapable of performing his job duties. Thus, the backpay period and the obligation to offer reinstatement continue to run until the time that the Respondent can demonstrate that Pappas is no longer disabled and can return to work.
2. As the result of prior stipulations, the Respondent has made Pappas whole for backpay, interest, and other benefits extending from the date of his unlawful demotion through September 30, 2006.
3. An appropriate and reasonable method of determining the gross backpay liability for Pappas for the period extending from October 1, 2006 through January 2, 2009, is arrived at by utilizing the earnings of a comparable employee during the foregoing period.
4. Employee "A", whose name will not be disclosed to protect the individual's privacy interests, but whose payroll records were furnished to the Region by Respondent in connection with this case, is a comparable employee for backpay

purposes, inasmuch as he currently holds the same position that Pappas held at the time of his demotion.

5. During each calendar quarter, or portion thereof during the backpay period, Employee "A" earned those amounts reflected in the column entitled "Gross Backpay" attached hereto and identified as Exhibit 1. During the period extending from October 1, 2006 through January 2, 2009, Employee "A's" earnings have totaled \$171,722.58. Absent the unfair labor practice, Pappas' earnings during the period extending from October 1, 2006 through January 2, 2009, would have been approximately the same as Employee "A's" earnings during that same period.

6. During the period commencing on October 1, 2006 through January 2, 2009, Pappas has received payments from the United States Department of Labor's Office of Workers' Compensation Programs (OWCP) totaling \$83,342.04.

7. Net backpay is the product of subtracting Pappas' OWCP receipts from the gross backpay amounts. Thus, the total net backpay amount of \$88,380.54, reflected under the column entitled "Net Backpay" of Exhibit 1, is arrived at by subtracting Pappas' total OWCP receipts reflected under the column entitled "Interim Earnings" from the gross backpay amounts reflected under the column entitled "Gross Backpay." In the circumstances of this case, the total backpay amount of \$88,380.54, reflected under the column entitled "Total Backpay," is the same as the total amount reflected under the column entitled "Net Backpay."

8. Pappas is entitled to credit for both sick and annual leave. Pursuant to the most recent Stipulation in this matter, which was approved on April 25, 2007 by the Regional Director of Region 21 on behalf of the General Counsel, Pappas

was credited with 2,925 hours of sick leave through September 30, 2006. Therefore, based on upon the accrual of 4 hours sick leave per pay period, Pappas is entitled to be credited the amount of 236 hours of sick leave for the period extending from October 1, 2006 through January 2, 2009 (59 pay periods times 4 hours a pay period). Thus, Pappas' sick leave balance as of January 3, 2009 should reflect an amount of 3,161 hours (2,925 plus 236). With regard to annual leave, Pappas should be credited with an annual leave balance as of January 3, 2009 of 560 hours, which represents the maximum annual leave carryover available to Pappas.

9. Summarizing the facts and calculations specified above, the obligation of the Respondent, pursuant to the Order, as enforced, through January 2, 2009 only, will be discharged by making payment to Anthony Pappas the sum of \$88,380.54 plus interest accrued to the date of payment minus tax withholdings as required by Federal and state laws, together with crediting Pappas the amounts of sick and annual leave balances as are reflected in paragraph 8 above. All liabilities accruing after January 2, 2009 will be left for future determination and/or supplemental proceedings.

#### **ANSWER REQUIREMENT**

Respondent is notified that, pursuant to Section 102.56 of the Board's Rules and Regulations, it must file an answer to the compliance specification. The answer must be received by this office on or before July 6, 2009, or postmarked on or before July 5, 2009. Unless filed electronically in a pdf format, Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at <http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the "File Documents" button under "Regional, Subregional and Resident Offices" and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that such answer be signed and sworn to by the respondent or by a duly authorized agent with appropriate power of attorney affixed. See Section 102.56(a). If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a compliance specification is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must be accomplished in conformance with the requirements of Section 102.114 of the Board's Rules and Regulations. The answer may not be filed by facsimile transmission.

As to all matters set forth in the compliance specification that are within the knowledge of Respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial is not sufficient. See Section 102.56(b) of the Board's Rules and Regulations, a copy of which is attached. Rather, the answer must state the basis for any disagreement with any allegations that are within the Respondent's knowledge, and set forth in detail Respondent's position as to the applicable premises and furnish the appropriate supporting figures.

If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the compliance specification are true. If the answer fails to deny allegations of the compliance specification in the manner required under Section 102.56(b) of the Board's Rules and Regulations, and the failure to do so is not adequately explained, the Board may find those allegations in the compliance specification are true and preclude Respondent from introducing any evidence controverting those allegations.

#### **NOTICE OF HEARING**

PLEASE TAKE NOTICE that during the calendar call commencing at 1:00 p.m., PDT, on the on 21st day of September 2009, at 888 South Figueroa Street, 9<sup>th</sup> Floor, Room 902, Los Angeles, California, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present

testimony regarding the allegations in this compliance specification. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Los Angeles, California this 15th day of June, 2009.



James F. Small, Regional Director  
National Labor Relations Board  
Region 21  
888 South Figueroa Street, Ninth Floor  
Los Angeles, CA 90017-5449

Attachments – Exhibit 1  
Form NLRB- 4668  
Rules and Regs. Section 102.56

**EXHIBIT 5**



United States Government

**NATIONAL LABOR RELATIONS BOARD**

**Region 21**

**888 South Figueroa Street, Ninth Floor**

**Los Angeles, CA 90017-5449**

Telephone: (213) 894-5204

Facsimile: (213) 894-2778

e-mail: [NLRBRegion21@nlrb.gov](mailto:NLRBRegion21@nlrb.gov)

**Resident Office:**

**555 W Beech Street - Suite 418**

**San Diego, CA 92101-2939**

Telephone: (619) 557-6184

Facsimile: (619) 557-6358

VIA FACSIMILE to (213) 480-3284 AND U.S. MAIL

April 8, 2010

Adam Stern, Attorney at Law  
Levy, Stern & Ford  
3660 Wilshire Boulevard, Sixth Floor  
Los Angeles, CA 90010

Re: United States Postal Service;  
Case 21-CA-25278(P)  
9th Circuit Case No. 93-70752

Dear Mr. Stern:

After considering your objections, I have decided to unilaterally approve the Settlement Stipulation signed by the United States Postal Service on March 11, 2010. A compliance determination letter will issue, wherein your client will be afforded appeal rights if he wishes to challenge this decision.

Very truly yours,

James F. Small  
Regional Director

Enclosure

**EXHIBIT 6**



**United States Government**  
**NATIONAL LABOR RELATIONS BOARD**  
**Region 21**  
**888 South Figueroa Street, Ninth Floor**  
**Los Angeles, CA 90017-5449**  
Telephone: (213) 894-5204  
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**Resident Office:**  
**555 W Beech Street - Suite 418**  
**San Diego, CA 92101-2939**  
Telephone: (619) 557-6184  
Facsimile: (619) 557-6358

May 10, 2010

Adam N. Stern, Attorney at Law  
Levy, Stern & Ford  
3660 Wilshire Boulevard, Sixth Floor  
Los Angeles, CA 90010

Re: United States Postal Service, South  
Garage Vehicle Maintenance Facility  
Case 21-CA-25278(P)

Dear Mr. Stern:

The undersigned issues this compliance determination letter as a result of your March 18, 2010<sup>1</sup> request for a written statement of the basis for the Region's compliance determination, pursuant to Section 102.52 of the Board's Rules and Regulations.

The purpose of the National Labor Relations Act (herein, the Act) is to make a discriminatee whole following the commission of an unfair labor practice. The Act does not provide for punitive damages, but serves to place a discriminatee in the same position he would have been in had the unfair labor practice not occurred.

Your client, Mr. Anthony Pappas (herein Pappas) filed the unfair labor practice charge in this case against the United States Postal Service (herein, the Employer) on March 6, 1987, alleging that the Employer demoted him on or about October 25, 1986 in retaliation for his protected concerted activities, in violation of the Act. The Employer undertook several remedial actions, including extending an unconditional offer to reinstate him to his previous supervisor position on or about December 17, 1987. Despite this offer of reinstatement, Pappas has not returned to work for the Employer since November 1986, as a result of the psychological injury caused by the Employer's unfair labor practice.

---

<sup>1</sup> As I informed you by letter on March 24, 2010, your request was, at that time, premature.

In June 1993, a formal Settlement Stipulation was reached in this matter, subsequently approved by an Order of the National Labor Relations Board (herein, the Board) on August 5, 1993, and enforced by the 9<sup>th</sup> Circuit Court of Appeals on December 2, 1993. Pursuant to this Order, Pappas has, since 1986, received backpay through successive settlement agreements in addition to the payments provided by the United States Department of Labor Office of Workers Compensation Programs (herein, OWCP).

The 1993 Settlement Stipulation provided that the Employer was obligated to “Make whole Anthony Pappas for any loss of pay and benefits he may have suffered, and may continue to suffer, as a result of his demotion from his position as a supervisor, with interest.” The Settlement Stipulation did not, expressly or even implicitly, require that this backpay obligation would continue in perpetuity. Though the backpay obligation set forth was open-ended, it was not expressed as permanent in nature. Board precedent does not support the Board’s enforcement of a perpetual backpay obligation, that is, one extending beyond the date a discriminatee becomes eligible for retirement. *See, e.g., Graves Trucking, Inc.*, 692 F.2<sup>nd</sup> 470, 474-477 (7<sup>th</sup> Cir. 1982); *Brown Company*, 305 NLRB 62, 71-72 (1991).

It is my understanding that Pappas became eligible to apply for full retirement/pension benefits under the Civil Service Retirement System (herein, CSRS) as of in or around March 2007. Based upon this understanding, I have determined that it would not serve the remedial purposes of the Act to extend the Employer’s backpay liability beyond that date. I have determined that the nearly 21 years of backpay Pappas will have received through March 2007 is quite sufficient to remedy the Employer’s 1986 unfair labor practice. The backpay obligation persisted as long as it has based upon the opinion of Pappas’ medical provider, which opinion has not, and may never, change. To require the Employer to pay backpay to Pappas in perpetuity, long after the age when nearly all employees would commonly retire, would not be justified.

I am not, by making this decision, forcing Pappas to retire or apply for retirement. I understand that had the unfair labor practice, and the resulting psychological injury to Pappas not occurred, he may have decided to work for the Employer beyond March 2007. Nonetheless, upon review of Board precedent and in consideration of the remedial purposes of the Act, I have determined that it is appropriate to terminate the Employer’s obligation under the 1993 Settlement Stipulation effective the date upon which Pappas became eligible to apply for CSRS retirement. The only other option, to continue the backpay obligation without any ending point, would not further the purposes of the Act. Accordingly, as you were advised by letter on April 9, 2010, I have approved the Settlement Stipulation, which was signed by the United States Postal Service on March 11, 2010.

**Your Right to Appeal:** The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

**Means of Filing:** An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), click on E-GOV, select E-Filing, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14<sup>th</sup> Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

**Appeal Due Date and Time:** The appeal is due on May 24, 2010. If you file the appeal electronically, it will be considered timely filed if the transmission of the entire document through the Agency's website is accomplished **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or sent it by a delivery service, it must received by the General Counsel in Washington, D.C. by the close of business at 5:00 p.m. Eastern Time or be postmarked or given to the delivery service no later than May 21, 2010.

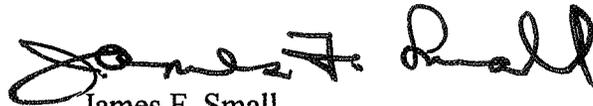
**Extension of Time to File Appeal:** Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-Gov**, select **E-Filing**, and follow the detailed instructions. The fax number is (202) 273-4283. A request for an extension of time to file an appeal must be received on or before the original appeal due date. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

**Confidentiality/Privilege:** Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Because we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(d), 5 U.S.C. § 552(b)(4), (6), (7)(C), and (7)(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

May 10, 2010

**Notice to Other Parties of Appeal:** You should notify the other parties to the case that an appeal has been filed. Therefore, at the time the appeal is mailed to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,



James F. Small  
Regional Director

Enclosures

cc: Mr. Anthony Pappas  
11235 McDonald Street  
Culver City, CA 90230

United States Postal Service  
7001 South Central Avenue, Room 304  
Los Angeles, CA 90052

Geraldine Rowe, Deputy Managing Counsel  
United States Postal Service  
Pacific Area – Long Beach Law Department  
300 Long Beach Boulevard, Room 240  
Long Beach, CA 90802-2496

Deborah Winslow, Attorney at Law  
United States Postal Service  
Law Department  
390 Main Street, Suite 740  
San Francisco, CA 94105-5001

General Counsel  
Office of Appeals  
National Labor Relations Board  
Washington, D.C. 20570

JFS/hm