

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 01-25

January 2, 2001

TO: All Regional Directors, Officers-in-Charge, and Resident Officers**FROM:** Richard A. Siegel, Associate General Counsel**SUBJECT:** MOU between USPS and APWU - Memorandum OM 97-52

For the last two and a half years the United States Postal Service and the American Postal Workers Union (APWU) have attempted to resolve refusal-to-provide-information issues through an alternative dispute resolution (ADR) procedure established by a Memorandum of Understanding (MOU) adopted by the parties. In OM 97-52, *MOU between USPS and APWU*, dated July 31, 1997, General Counsel Feinstein announced procedures intended to facilitate the resolution of these types of charges through the MOU procedure. OM 97-52 contemplated periodic assessments of the procedure established in the MOU to determine whether the procedure was resulting in the prompt resolution of refusal-to-provide-information issues. Having undertaken such an assessment recently, the Acting General Counsel has determined that the potential of the ADR procedure has not been realized. By letter dated November 29, 2000, a copy of which is attached, the Acting General Counsel informed the parties about this determination. In this letter, the Acting General Counsel also advised the parties that as of January 1, 2001, the Office of General Counsel will cease participation in the program.

Accordingly, as of January 1, 2001, the procedures outlined by OM 97-52 will no longer be in effect with respect to charges filed after that date and which involve situations that also arise after that date. As to situations covered by OM 97-52 arising prior to January 1, 2001, it is contemplated that the parties will continue to attempt to resolve those charges through the ADR procedure. Therefore, should a APWU representative desire to file a charge concerning an alleged refusal-to-provide-information occurring before January 1, 2001 but within the Section 10(b) period, the procedures in OM 97-52 would continue to be applicable. If the representative insists on filing a charge, the region should take the charge and follow the procedures set forth below.⁽¹⁾

For situations that arise after January 1, 2001, involving a refusal-to-provide-information charge, Regions should docket and serve those charges in accordance with standard procedures. However, Regions should not immediately initiate the investigation of the charges. Rather, Regions should, as soon as practicable, mail a copy of the charge and any supporting materials to Assistant General Counsel Gary Shinnars in the Contempt Litigation and Compliance Branch. That Branch will review the charge and explore the possibility with the parties of resolving it without the necessity of invoking the Board's formal processes. If after 30 days the Contempt and Compliance Branch has been unable to resolve the dispute raised by the charge, the case will be returned to the Region for a full investigation.⁽²⁾ In some instances the Contempt and Compliance Branch may return a case for investigation to a Region prior to the expiration of the 30-day period.⁽³⁾

After January 1, 2001, Regions may receive other charges related to refusal-to-provide-information charges. These may encompass allegations that would normally be deferred to the grievance/arbitration procedures, if it were not for the related refusal-to-provide-information allegation. In such circumstances, Regions should forward those charges and any underlying support documentation together with the related refusal-to-provide-information charge to Gary Shinnars and hold the investigation of the related "deferrable" charge in abeyance, pending the outcome of the refusal-to-provide-information charge.⁽⁴⁾ After the return or resolution of the refusal-to-provide-information charge, the Region should proceed to investigate and resolve these related charges in accordance with Board procedure and policy.⁽⁵⁾ Please note that the procedure outlined in this paragraph is not intended to modify deferral policy with regard to allegations that are unrelated to a pending refusal-to-provide-information charge.

The USPS and the APWU are currently engaged in interest arbitration in an attempt to resolve their national contract. One of the issues still on the table is the continuation of the ADR procedures for refusal-to-provide-information issues. It is anticipated that the agreement will be finalized this spring. Once that agreement is reached, we will re-evaluate our procedures in this area.

If you have a concern about following this procedure in a particular instance you should consult about the matter with your AGC or Deputy or Assistant General Counsel Shinnars. General questions about the procedure outlined by this memo should be directed to your AGC or Deputy.

/s/
R.A.S.

Attachment

cc: NLRBU
NLRBPA
&nbs,p; Release to the Public

¹ In situations where the matter is in the ADR procedure, and the charging party insists on filing a charge, this fact should be highlighted in the submission to the Contempt and Compliance Branch.

² In unusual circumstances the Contempt and Compliance Branch may determine that it is productive to explore the possibility of resolving a charge for a period beyond the 30-day period outlined by this memo. In such circumstances, the Region will receive notification from the Contempt and Compliance Branch of its intention to hold onto the case beyond the 30-day period.

³ For purposes of calculating a Region's casehandling performance, the period when such a charge is being handled by the Contempt and Compliance Branch will not count against the Region's performance.

⁴ If a Region believes that crucial evidence might be lost if an investigation is not launched immediately the Region should proceed to obtain the evidence that might otherwise become unavailable.

⁵ The period when such related charges are held in abeyance will not be counted in determining a Region's casehandling performance.

United States Government
NATIONAL LABOR RELATIONS BOARD
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John E. Potter
Chief Operating Officer and Executive Vice President
United States Postal Service
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Washington, DC 20260

Dear Mr. Potter:

On July 15, 1997, the United States Postal Service and the American Postal Workers Union entered into a Memorandum of Understanding (MOU) creating an alternative dispute resolution procedure for resolving disputes over Union information requests. The National Labor Relations Board fully supported the MOU and in fact agreed to settle a pending contempt of court action that the Board had brought against the Postal Service in such a case based in part on the parties' undertakings in the MOU. The thrust of the MOU was to create a procedure that would assist the parties in resolving information request disputes quickly, at the lowest possible level, and without the Board's intervention. Although the procedure provided for submission of disputes to the Board's Headquarters if the parties' national level representatives could not reach agreement, it was envisioned by all that only a handful of such disputes would be submitted to the Board given that very few disputes would ever reach the parties' national representatives.

At the time, we recognized that the new dispute resolution procedure would take some getting used to, and that there would be some resistance to resolving information request disputes cooperatively, particularly at certain locations. To assist the parties, the Board took the initiative on several occasions to call a meeting of the parties' national representatives in order to apprise them of ongoing problems in the system and to encourage them to find solutions to these problems. The Board also offered to arrange for FMCS training on information request dispute resolution, send Board personnel to those locations where the most difficulties were occurring in order to meet and talk with representatives on both sides, and assist in the process of drafting questions and answers illustrating how the process should work. The dispute resolution procedure had great potential, and the Board was willing to make every effort to help make the procedure a success.

Regrettably, it now appears clear that the potential of the alternative dispute resolution procedure has not been realized. For example, instead of just a few disputes reaching the parties' national representatives, well over 1,200 disputes have been referred to the national representatives for resolution. Moreover, many of these disputes arise from a relatively limited number of facilities. Although some of these facilities briefly cooperated with the dispute resolution program after Postal Service Headquarters communicated with them, they now appear to have reverted to their earlier behavior.

There also have been ongoing problems with follow-through on those information request disputes that the parties settled in favor of the Union. Often months have passed before the agreed-upon information was actually provided, and in some cases it was never provided at all. As a result, there are now unfair labor practice charges, covering dozens of separate disputes, awaiting action at the Board's Headquarters.

In sum, in our view the dispute resolution procedure is not working as envisioned. Instead, and regretfully, I have concluded that there appears to be no benefit to continuing with the dispute resolution procedure. Accordingly, it is my intention that the Office of the General Counsel will cease participation in the program effective January 1, 2001. However, rather than return to "business as usual" regarding the handling of such cases, I intend to have my staff develop procedures and guidelines designed to bring about a systemic resolution to these problems.

If there are any suggestions that you would like to make regarding how we can assist the parties in resolving this long-standing area of contention, we would be happy to discuss them with you.

Sincerely,

Leonard R. Page
General Counsel

cc: William Burrus, Executive Vice President, APWU
Howard Kaufman, Esq.
Anton Hajjar, Esq.