

SECRETARY OF LABOR,

Complainant,

v.

UNITED PARCEL SERVICE, INC.,

OSHRC Docket No. 05-1115

Respondent,
and

SAMUEL J. BUCALO,

Affected Employee

APPEARANCES:

Peter J. Vassalo, Attorney; Charles F. James, Counsel for Appellate Litigation; Joseph M. Woodward, Associate Solicitor; Gregory F. Jacob, Solicitor; U.S. Department of Labor, Washington, DC
For Complainant

Amir C. Tayrani, Esq., Gibson, Dunn & Crutcher, LLP, Washington, DC
Seth D. Bruckner, Esq., United Parcel Service, Inc., Atlanta, Georgia
For Respondent

Samuel J. Bucalo, Cincinnati, Ohio
For the Affected Employee

REMAND ORDER

Before: THOMPSON, Chairman; ROGERS, Commissioner

BY THE COMMISSION:

On August 21, 2007, United Parcel Service, Inc. (“UPS”) filed a Petition for Discretionary Review of Administrative Law Judge Ken S. Welsch’s decision affirming one serious citation consisting of eight instances and assessing a penalty of \$4,400. The case was directed for review and a briefing notice was issued to the parties on October 22, 2007. To allow the Secretary and UPS an opportunity to engage in negotiations to reach a corporate-wide settlement regarding the cited conditions, the briefing schedule was subsequently held in abeyance until December 30, 2008. The Secretary filed a Stipulation and Settlement Agreement with the Commission on January 6, 2009, and Affected Employee Samuel Bucalo timely filed his objections to the agreement on January 22, 2009.¹ UPS filed a letter in response to Mr. Bucalo’s

¹ On January 15, 2009, Mr. Bucalo filed a Petition for Clarification of Computation of Time regarding the filing of any objections to the settlement agreement. On January 16, 2009, the

objections on January 27, 2009, as did the Secretary on January 29, 2009. For the following reasons, we now remand this case to the judge for further proceedings consistent with this decision.

Prior to filing his objections to the settlement agreement, Mr. Bucalo filed four motions with the Commission on January 15, 2009. On January 23, 2009, the Secretary and UPS separately filed their oppositions to these motions. One of Mr. Bucalo's motions seeks a default judgment against UPS for failing to disclose its corporate affiliates as prescribed in Commission Rule 35(a), 29 C.F.R. § 2200.35(a).² The record shows that UPS filed a Corporate Disclosure Statement with its Answer dated September 9, 2005. However, in a January 29, 2009 letter, Mr. Bucalo takes issue with the adequacy of that filing. Accordingly, we remand this matter to the judge for consideration and ruling.

Furthermore, because two of Mr. Bucalo's remaining motions and his objections to the settlement agreement raise overlapping factual and legal issues, we find it appropriate to remand this matter to the judge to consider and address all of the filings relating to the settlement agreement. On remand, the judge should rule on the two motions in question: in one, Mr. Bucalo seeks sanctions against the Secretary and UPS, claiming they have falsely represented that abatement of the cited conditions has been completed, and in the other, he requests that the Commission order UPS to post the settlement agreement in every UPS facility in the nation.³ The

Executive Secretary sent Mr. Bucalo a letter explaining that "the Commission will require that [Mr. Bucalo] file any objection to the Settlement Agreement on or before January 22, 2009 in order to be timely."

² Commission Rule 35(a) provides as follows: "All answers, petitions for modification of abatement period, or other initial pleadings filed under these rules by a corporation shall be accompanied by a separate declaration listing all parents, subsidiaries, and affiliates of that corporation or stating that the corporation has no parents, subsidiaries, or affiliates, whichever is applicable."

³ The Commission has not yet received proof that the settlement agreement was posted at the cited facility in Sharonville, Ohio, on Friday, January 9, 2009, as stated in the settlement agreement. *See* Commission Rule 100(c), 29 C.F.R. § 2200.100(c) (requiring proof of the "posting of notice to non-party affected employees in a manner prescribed by § 2200.7(g)"). *See* also Commission Rule 7(e), 29 C.F.R. § 2200.7(e) ("Where service is accomplished by posting, proof of such posting shall be filed no later than the first working day following the posting"). Indeed, the abatement verification letter filed by UPS with the OSHA Cincinnati Area Office indicated the settlement agreement was posted on January 8, 2009. We also note that the settlement agreement references but does not include a final consent order, and also fails to state whether Mr. Bucalo has raised any objections regarding the reasonableness of the abatement time. *See* Commission Rule 100(b), 29 C.F.R. § 2200.100(b) (settlement agreement must "state whether any affected employees who have elected party status have raised an objection to the reasonableness of any abatement time").

judge should also review the settlement agreement, the objections filed by Mr. Bucalo and the responses to those objections filed by UPS and the Secretary, and any objections that may be timely filed by non-party affected employees, pursuant to the requirements set forth under Commission Rule 100, 29 C.F.R. § 2200.100.

Accordingly, we rescind the briefing notice and remand this case to the judge for further proceedings consistent with this opinion.⁴

SO ORDERED.

/s/
Horace A. Thompson III
Chairman

Dated: February 2, 2009

/s/
Thomasina V. Rogers
Commissioner

⁴ Given our decision to rescind the briefing notice, Mr. Bucalo's final motion asking the Commission to reset the briefing schedule is now moot. We note, however, that the Secretary and UPS appear to have assumed that the briefing schedule has already been set aside. On the contrary, pursuant to the Commission's Order dated June 27, 2008, the briefing schedule resumed on December 30, 2008, when a settlement agreement was not submitted to the Commission by that date. This is not the first time the Secretary and UPS have ignored the plain terms of our June 2008 order. Specifically, these parties were required to submit joint status reports to the Commission every forty-five days during the abeyance period. However, without explanation, the Secretary and UPS—both represented in this matter by seasoned practitioners who are familiar with agency procedures—filed the second status report several weeks late and inexplicably never filed the third status report. We are troubled by such conduct and warn both parties that their compliance with Commission orders is critical to this case being resolved in a fair and efficient manner.