

**BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001**

Annual Compliance Report, 2008

Docket No. ACR2008

**REPLY COMMENTS OF
AMERICAN POSTAL WORKERS UNION, AFL-CIO
(February 13, 2009)**

On December 29, 2008, the United States Postal Service (USPS) filed its Annual Compliance Report (ACR) for Fiscal Year 2008 pursuant to Section 3652 of the Postal Accountability and Enhancement Act (PAEA). The Postal Regulatory Commission subsequently issued Order No. 161, Notice of Filing of Annual Compliance Report by the Postal Service and Solicitation of Public Comment (December 31, 2008). In accordance with Order No. 161, American Postal Workers Union, AFL-CIO (APWU) submitted Comments on January 30, 2009, and the APWU respectfully submits the following Reply Comments in response to Comments filed by other parties.

We begin by reiterating a basic point made at greater length in our Initial Comments: Workshare discounts provided in 2008 exceeded costs avoided in violation of the workshare discount restrictions of 39 U.S.C. § 3622(e). The Commission must require the Postal Service to redress this violation or to justify it by reference to the terms of Section 3622(e). If no record is made on this issue, the Commission must make a determination of noncompliance and order the Postal

Service to adjust its workshare discounts to lawful rates, in accordance with Sections 3653(b) and (c) and 3662(c) of the Act.

Pitney-Bowes, in an apparent attempt to defend discounts in excess of costs avoided, asserts that “[t]he cost avoided by 5-Digit automation letters (relative to 3-Digit automation letters) is likely to increase further in the eighteen months between FY 2008 ... and the May 2009-May 2010 period (the period during which the next set of rates will likely be in effect)” Initial Comments of Pitney-Bowes, Inc. at 3. This comment by Pitney-Bowes is irrelevant and wrong. It is irrelevant because excessive workshare discounts are illegal even if they are trending downward. They may be “phased out over time” only if it is demonstrated that this “is necessary to mitigate rate shock.” 39 U.S.C. § 3622(e)(2)(B). There is no contention in this case that excessive discounts could be justified by the necessity of avoiding rate shock, much less is there any evidence to support such a contention.

In addition to being legally irrelevant, Pitney-Bowes’ assertion that costs avoided are likely to increase between now and May 2010 is also factually incorrect. This assertion is based on an anomalous increment in clerk wages during 2008 that will not be repeated in 2009. Initial Comments of Pitney-Bowes, Inc. at 3, n. 4. During 2008, postal clerks received a significant cost-of-living increase and an upgrade in salary level in lieu of the 2007 and 2008 annual general wage increases found in other postal bargaining unit contracts. These factors combined to increase compensation costs for clerks by 6.5% between December 2007 and December

2008; but clerks will receive neither a wage increase nor a cost of living adjustment during FY2009.¹

Furthermore, as the Postal Service becomes more efficient, there is every reason to conclude that costs avoided will be reduced, not increased.² The Postal Service is rapidly cutting hours in mail processing. The 10-Q Report shows that mail processing work hours were cut by more than 13 percent year-over-year in the first quarter; and workhours will be cut even further when the next round of early retirements takes effect in March 2009. Even during the time period cited by Pitney-Bowes, there was a 4.2 percent reduction in total salary costs.³ Thus, Pitney-Bowes' attempt to suggest that excessive workshare discounts will be mitigated without Commission action is factually incorrect as well as legally irrelevant.

We also observe that the comments made by Pitney-Bowes and others to the effect that First-Class Mail Presort Letters/Cards make a larger contribution to overhead than individual First Class Letters/Cards, although true, make a point that has been well-understood by Congress and the Commission for a long time. E.g., Initial Comments of Pitney-Bowes, Inc. at 1-2. The effort by large mailers to persuade Congress and the Commission that workshare mailers are being required to support the postal network to an unfair degree is perennial. The Commission

¹ The CPI-W Index, 1967=100, not seasonally adjusted, stood at 644.303 for July 2008 the point at which the September 2008 was determined. The Index must rise above that point before any additional COLA is paid. In December 2008 the Index stood at 610.075.

² We observe that many of USPS cost savings initiatives focus allied and support operations that are "avoided" by worksharing.

³ We also observe that, going forward, negotiated changes in the sharing of health benefits premium costs between the Postal Service and APWU-represented employees will help restrain increases in compensation costs.

responded to these arguments in a series of omnibus rate cases filed under the Postal Reorganization Act by adopting the requirement that workshare discounts be justified by costs avoided by the Postal Service. Thus, a broad economic consensus developed around the point that efficient component pricing is an important principle in ratemaking. Congress responded to these developments and to the continuing pressure from large mailers to reduce their obligation to support the postal network, in part by placing into law the restrictions on workshare discounts that had been developed by the Commission. In this manner, large workshare mailers are given a measured and fair discount while still being required to make a substantial contribution to the maintenance of the postal network that serves their business interests greatly.

Thus, arguments that First Class workshared letters and cards make a larger unit contribution to overhead than single piece First Class letters and cards raise a fundamental policy question that has been addressed not only by the Commission but also by Congress. This point is illustrated by the erroneous contention (see, e.g., Initial Comments of Pitney-Bowes, Inc. at 2) that First Class letters and cards are “profitable.” Aside from the financial crisis facing the Postal Service caused by the current economic downturn, there is no prospect that the Postal Service will make a “profit” on its market dominant products. The question is how the costs of the postal network will be shared among its major users. That question has been answered by Congress and the Commission.

Finally, we observe that unsigned comments filed in this matter as “Public Representative Comments” make statements on economic and public policy that

sweep broadly beyond this case and advocate decisions that would require changes in law and public policy. Section 505 of Title 39 requires that the Commission “designate an officer of the Postal Regulatory Commission in all public proceedings ... who shall represent the interests of the general public.” We have been unable to find any notice in this record of the official appointment of a public representative in this matter. We therefore respectfully request that the record be clarified about the process by which this “public representative” has been appointed and identify the public representative so designated. We have always understood the “general public” to mean individuals whose interests would not otherwise find representation before the Commission. Comments by the “Public Representative” include many that are controversial in practical terms (e.g., unionized city letter carriers might welcome the abrogation of their compensation system in favor of the system used to pay rural carriers) and in economic terms (see the “non-technical examination” of trends and cost coverages). There is no shortage of representation on behalf of those who wish to dismantle the Postal Service and reduce or eliminate the presence of unionized labor in the postal industry. Thus, we question the identity and role of those who have filed “Public Representative Comments” in this matter.

Respectfully submitted,

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