Service was doing more in
han simply adjusting EEO
It was also attempting to ad-
instances adjusting, concur-
s under the terms of its con-
Union through its internal
es." As we have found above
Service was not privileged to
t grievances with individual
rogation of the Union's stat-
find that it violated Section
the Act by not affording the
ining representatives an op-
present at grievance adjust-
red by Section 9(a) of the

edy: Having found that the
s engaged in, and is engag-
bor practices in violation of
and (1) of the Act, we shall
ondent to cease and desist
to take certain affirmative
to effectuate the policies of

ound that the Respondent
sted or attempted to adjust
vances without giving the
ctive-bargaining represen-

esolution of Otler's EEO claim
tration proceedings on the con-
owever, it also seeks a remedy
bor practices alleged above in
9" of the complaint, and par. 8
er filed the EEO precomplaint
ber 1980; (b) that Otler filed a
with respect to the same sub-
September 1980; (c) that Otler
t entered into a resolution with
precomplaint matter on 12 No-
d) that neither the Union nor
atives participated in the pro-
g in the resolution of Otler's
earing counsel for the General
mend the complaint to delete
r. 8 in the remedy section, but
t motion to amend. In these
find the complaint allegations
support our finding that the
at the time of the grievance
han at the time the settlement
ntract grievance defense.
cide here whether the Union
to be present at grievance
ndividual employees in which
e had been filed. In all of the
ontract grievances had been
ve bargaining representative
notice and opportunities to be
stments of the grievances as
ond proviso to Sec. 9(a).
., 249 NLRB 424, 104 LRRM
es cited therein, cited in U.S.
NLRB 876, 115 LRRM 1108

does not agree that "an at-
vances" at an employee's re-
transcends Sec. 9(a)'s reser-
t of employees to present
nployer without the interven-
representative.
nd Stephens do not dispute
proviso to Sec. 9(a) of the Act
ight to present grievances to
out the intervention of the
tative. However, they con-
second proviso to that sec-
-bargaining representative
portunity to be present at a
ndividual employee at which
red a final settlement of a
vance, whether this attempt
in the employee's acceptance
t. They intimate no view on
nces might bring a confer-
ithin the second proviso.

tative the opportunity to be present at the adjustments, we shall order it to cease and desist from this conduct. We shall also prohibit the Respondent from raising or otherwise asserting the unlawfully obtained EEO grievance settlements reached with the individual employees as a bar to the contractual grievance and arbitration procedures, so that in those cases where the Respondent negotiated settlements with individual employees without the Union's notification or participation but has not yet asserted the settlements as a defense to contract grievance processing that unlawful conduct may be effectively remedied. With respect to the case in which the Respondent successfully asserted an EEO settlement as a defense in a contract arbitration proceedings, we shall adopt the judge's recommended remedy. Thus, we shall order the Respondent to take all appropriate steps to reconvene the Otler arbitration or to hold the arbitration de novo, as provided by the judge, and to pay the Union for all reasonable increased expenses resulting from its assertion of the Otler EEO settlement as a contract defense in the manner set forth in his recommended remedy. In this way the status quo ante may be restored. We shall also order the Respondent to afford the Union the opportunity to be present at any attempts to adjust contractual grievances.

A new notice which conforms with our Order shall be issued, and we shall require its posting at both the Phoenix and Columbus facilities. Like the judge, we do not find nationwide posting to be warranted.

U.S. POSTAL SERVICE —

UNITED STATES POSTAL SERVICE, Columbus, Ohio **and** POSTAL WORKERS, AFL-CIO, COLUMBUS AREA LOCAL, Case No. 9-CA-18366(P), September 30, 1986, 281 NLRB No. 139

Before NLRB: Johansen, Babson, and Stephens, Members.

REFUSAL TO BARGAIN Sec. 8(a)(5)

— Adjustment of grievances — Civil Rights Act of 1964 — EEO claim at precomplaint stage — Union's presence ▸54.17 ▸71.18 ▸54.659 ▸100.4049 ▸100.0751

U.S. Postal Service violated LMRA by failing to give union opportunity to be present at settlement of suspended female employee's claim under Title VII of Civil Rights Act of 1964 at precomplaint stage of proceedings, where claim covered matter that was subject of pending contractual grievance-arbitration proceedings. Union's LMRA right to be present at adjustment of grievances must prevail over Equal Employment Opportunity Commission (EEOC) administrative regulations mandating anonymity of aggrieved employee at precomplaint stage.

ORDER Sec. 10(c)

— Refusal to bargain — Remedy ▸56.503 ▸56.03 ▸56.01

Employer that unlawfully failed to provide union with opportunity to be present at settlement of suspended female employee's claim under Title VII of Civil Rights Act of 1964 and that successfully asserted unlawfully obtained settlement as defense in arbitration proceedings is ordered (1) to take — jointly with union if it is willing — all appropriate steps to reconvene arbitration proceedings or to hold arbitration de novo, waiving all defenses not ripe at time of original arbitration and withdrawing from reconvened arbitration, or not presenting at any de novo arbitration, any argument that settlement defeats, diminishes, or otherwise weakens union's claims under collective bargaining agreement, and (2) to pay all reasonable increased expenses of union and arbitrator resulting from delay in arbitration caused by assertion of settlement as defense.

[Text] The Union and the Respondent have been parties to successive collective-bargaining agreements covering postal clerks, as well as certain other employees of the Postal Service, for a number of years, including a contract which was effective from 21 July 1978 to 20 July 1981. This contract contained a final and binding grievance and arbitration provision.

About 10 July 1981, distribution clerk Regina M. Woods, an employee included in the bargaining unit covered by the parties' contract, was given notice of a 10-day suspension by the Respondent for being "Absent Without Leave." About 13 July 1981, Woods filed a grievance regarding the suspension under the grievance-arbitration procedure included in the parties' contract. The grievance was denied by management at steps 1 and 2 of the grievance procedure. Thereafter, about 28 July 1981, Woods filed a precomplaint Equal Employment Opportunity (EEO) form alleging discriminatory treatment because of race and sex with respect to the suspension which was the subject of her contract grievance.

About 18 September 1981, an agreement entitled "Pre-Complaint Withdrawal of Complaint" was signed by Woods and EEO Counselor Barbara J. Johnson on behalf of the Respondent. Such withdrawal was based on partial relief for the substantive matter complained of in Woods' precomplaint form. Specifically, the final resolution provided that the Postal Service would withdraw the 10-day suspension and remove it from Woods' record, that there would be no payment of back wages, and that Woods would withdraw her complaint of discrimination. Neither the Union nor any of its representatives participated in or were notified of the proceedings culminating in the resolution of Woods' EEO claim.

The Union continued pursuing Woods' contract grievance through the contractual grievance and arbitration procedure. The Union maintained in the grievance that the disciplinary action was unjust and unwarranted, and sought backpay to make Woods whole for all her losses. The contract grievance was based, in part, on an alleged violation of the nondiscrimination clause of the parties' collective-bargaining agreement. About 16 February 1982, when the grievance had reached the arbitration stage, the Respondent asserted the EEO Pre-Complaint Withdrawal of Complaint as a defense to the arbitration proceedings on the contract grievance. On 22 February 1982, Arbitrator Linda Di Leone Klein issued an award holding that the contract grievance was not arbitrable because of the EEO Pre-Complaint Withdrawal of Complaint executed by Woods. Accordingly, she denied the grievance on that basis.

Contentions of the Parties: The parties agree that the legal issues raised by this case are identical to those presented in Postal Service, 281 NLRB No. 138, 123 LRRM 1209 (Sept. 30, 1986), and urge that this case be considered concomitantly with that proceeding. That case presented the Board with the question whether the Union must be given the opportunity to be present when the Postal Service adjusts or attempts to adjust Equal Opportunity (EEO) complaints with individual unit employees when the same incidents or course of conduct comprising those complaints are concurrently the subject of contractual grievances.

The General Counsel asserts that the Respondent's conduct of raising a precomplaint resolution of an employee's EEO claim reached without notice to, or participation of, her collective-bargaining representative as a defense in a contract arbitration proceeding violates Section 8(a)(5) and (1) of the Act. That assesrtion is premised on the position that it is a violation of Section 8(a)(5) and (1) for an employer to adjust employees' grievances without permitting their collective-bargaining representative an opportunity to be present at such adjustment, as required by Section 9(a) of the Act.

The Respondent submits that it did no more than offer a legitimate, goodfaith affirmative defense at arbitration. It claims that to preclude the assertion of such a defense deprives the Postal service of its right to present a defense, and unjustly deprives and usurps from the arbitrator the right to decide the issue. The Respondent argues that precluding the assertion of a defense frustrates, rather than aids, the grievance-arbitration process.

The Charging Party maintains that an employer should not be permitted to preempt arbitration proceedings under a collective-bargaining agreement with a settlement arrived at in unilaterally established internal EEO proceedings. In its brief to the Board in 281 NLRB No. 138, 123 LRRM 1209, referred to in its memorandum in this proceeding, the Charging Party asserts that the unilateral grievance adjustment prohibited by Section 9(a) of the Act occurred when the document was signed, but that the EEO settlement was not apparent as a grievance adjustment until the Postal Service asserted it as a defense before the arbitrator.

Analysis and Conclusions: As stated, the parties agree that this case is controlled by the Board's decision in 281 NLRB No. 138, 123 LRRM 1209, which issued today. As fully set forth in that decision, we find that the clear statutory mandate of Section 9(a) of the National Labor Relations Act must prevail over EEO administrative regulations requiring anonymity of the complainant at the precomplaint stage of an EEO proceeding. Accordingly, we find that the Postal Service violated Section 8(a)(5) and (1) of the Act when it adjusted a contract grievance with employee Woods without affording her collective-bargaining representative the opportunity to be present at the adjustment as required by Section 9(a) of the Act.[1] See, e.g., Top Mfg. Co., 249 NLRB 424, 104 LRRM 1116 (1980), and cases cited therein, cited in Postal Service, 268 NLRB 876, 877, 115 LRRM 1108 (1984).[2]

Remedy: Having found that the Respondent has engaged in and its engaging in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act, we shall order the Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

As we have found that the Respondent unlawfully adjusted a contractual grievance without giving the employee's collective-bargaining representative the opportunity to be present at the adjustment, we shall order it to cease and desist from this conduct. We shall also order the Respondent to afford the Union the opportunity to be present at any attempts to adjust contractual grievances.

In order to return the parties to the position in which they would have been but for the Respondent's unlawful conduct, we shall order the Postal Service, jointly with the Union if it is willing, to take all appropriate steps to reconvene the Woods' arbitration or, in the alternative, to hold the arbitration de novo, waiving all defenses not ripe at the time of the original arbitration and specifically withdrawing from the reconvened arbitration, or not presenting at any de novo arbitration, any argument, made directly or indirectly, that Woods' EEO settlement defeats, diminishes, or otherwise weakens the Union's claims under the collective-bargaining agreement.

The Postal Service shall also pay all reasonable increased expenses of the Union and the arbitrator clearly and specifically resulting from the delay in the arbitration caused as a result of the successful but improper assertion by the Postal Service of the Woods' EEO settlement as a defense. The sums owing, if any, shall be computed as prescribed in F. W. Woolworth Co., 90 NLRB 289, 26 LRRM 1185 (1950), and shall bear appropriate interest to be calculated in accordance with the formulas set forth in

[1] As in 281 NLRB No. 138, 123 LRRM 1209, we find the allegations of the complaint sufficiently broad to support our finding that the violation occurred at the time of the grievance adjustment, rather than at the time the settlement was asserted as a contract grievance defense. The complaint in this proceeding generally tracks that in Case 9 — CA — 16503(P), 281 NLRB No. 138, 123 LRRM 1209.

[2] Member Johansen does not find that attempting to adjust a grievance necessarily violates the Act. See Postal Service, 281 NLRB No. 138, 123 LRRM 1209.

Florida Steel Corp., 231 N
LRRM 1070 (1977).

Finally, we shall require th
to post a notice at its Columb
ity in order to fully inform
their rights and the outcome

WORTHS STORES —

WORTHS STORES
Louis, Mo. and LEATH
WORKERS, AFL-CIO,
JOINT BOARD, Case No.
September 30, 1986, 281 NI

Before NLRB: Dotson
Babson and Stephens, Me

ELECTION Sec. 9(c)

— Election interfere
▸63.5633

Union did not interfere
when it sent employees
containing word "Congra
bold print, (b) listing
which employees could be
structing employees to
"Rosemary," and (d) cont
duction of NLRB officia
"X" mark on "Yes" box,
document does not suffic
fy union as source of a
Document did not tend t
ployees into believing th
vored union, where (1) it
reasonable for an employ
that Board would includ
tory headings and indivi
tations on its official pu
even if document's sectio
ing covers some of san
dressed in Board's notic
its partisan stance is rea
(3) it is clear that samp
been cut from another fo
to partisan material;
does not appear "offic
union leaflet mailed earl
ees identified "Rosemary
union organizer and l
phone numbers as found
in question.

After the union won a
employer filed objections
In the absence of e
Board adopts, pro forma
director's recommendat
employer's Objection 2 b

[*Text*] The Regional Direc
ed that the Employer's Ob
tained and that the electi
based on his finding that
mile ballot circulated by

: *Conclusions:* As stated, the
hat this case is controlled by
cision in 281 NLRB No. 136,
00, which issued today. As
in that decision, we find that
tory mandate of Section 9(a)
1 Labor Relations Act must
EEO administrative regula-
anonymity of the complain-
complaint stage of an EEO
ccordingly, we find that the
violated Section 8(a)(5) and
when it adjusted a contract
employee Woods without af-
fective-bargaining represen-
rtunity to be present at the
required by Section 9(a) of
E., Top Mfg. Co., 249 NLRB
1116 (1980), and cases cited
Postal Service, 268 NLRB
LRM 1108 (1984).[1]
ng found that the Respond-
in and its engaging in un-
ices in violation of Section
the Act, we shall order the
cease and desist therefrom
tain affirmative action de-
ate the policies of the Act.
ound that the Respondent
sted a contractual griev-
ving the employee's collec-
representative the opportu-
nt at the adjustment, we
cease and desist from this
all also order the Respond-
Union the opportunity to
y attempts to adjust con-
ces.
urn the parties to the posi-
y would have been but for
's unlawful conduct, we
Postal Service, jointly with
willing, to take all appro-
convene the Woods' arbi-
e alternative, to hold the
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me of the original arbitra-
lly withdrawing from the
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the Union's claims under
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F. W. Woolworth Co., 90
RM 1185 (1950), and shall
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No. 138, 123 LRRM 1209, we
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me the settlement was assert-
rance defense. The complaint
nerally tracks that in Case 9
1 NLRB No. 138, 123 LRRM

does not find that attempt-
ance necessarily violates the
ion, 281 NLRB No. 138, 123

Florida Steel Corp., 231 NLRB 651, 96 LRRM 1070 (1977).

Finally, we shall require the Respondent to post a notice at its Columbus, Ohio facility in order to fully inform employees of their rights and the outcome of this matter.

WORTHS STORES —

WORTHS STORES CORP., St. Louis, Mo. and LEATHER GOODS WORKERS, AFL-CIO, MIDWEST JOINT BOARD, Case No. 14-RC-10085, September 30, 1986, 281 NLRB No. 160

Before NLRB: Dotson, Chairman; Babson and Stephens, Members.

ELECTION Sec. 9(c)

— Election interference ▸62.5631 ▸63.5633

Union did not interfere with election when it sent employees document (a) containing word "Congratulations" in bold print, (b) listing benefits for which employees could bargain, (c) instructing employees to call certain "Rosemary," and (d) containing reproduction of NLRB official ballot with "X" mark on "Yes" box, even though document does not sufficiently identify union as source of altered ballot. Document did not tend to mislead employees into believing that Board favored union, where (1) it would be unreasonable for an employee to assume that Board would include congratulatory headings and individualized salutations on its official publications; (2) even if document's section on bargaining covers some of same issues addressed in Board's notice of election, its partisan stance is readily apparent; (3) it is clear that sample ballot has been cut from another form and added to partisan material; (4) document does not appear "official"; and (5) union leaflet mailed earlier to employees identified "Rosemary Behrman" as union organizer and included same phone numbers as found on document in question.

After the union won an election, the employer filed objections.

In the absence of exceptions, the Board adopts, pro forma, the regional director's recommendation that the employer's Objection 2 be overruled.

[*Text*] The Regional Director recommended that the Employer's Objection 1 be sustained and that the election be set aside based on his finding that an altered facsimile ballot circulated by the Petitioner tended to mislead employees into believing that the Board favored the Petitioner. We disagree.

The document at issue * * * was prepared by Union Organizer Rosemary Behrman and was mailed to all eligible voters on 29 April 1986. The document was enclosed in envelopes which included the Petitioner's name and return address. At the top of the document, the word "Congratulations" twice appears in bold print and capital letters, forming a semicircle around salutations to each employee and general information regarding secret-ballot elections. Directly below is specific information concerning the date, time, and place of the election; a list of benefits for which employees can bargain; and instructions for employees with questions to call "Rosemary" at the home and work telephone numbers provided. The bottom part of the document consists of a facsimile of a portion of the Board's official ballot. An "X" appears in the "Yes" box, and the Petitioner's name was placed above the box.

In support of its objection, the Employer submitted to the Regional Director the affidavit of an employee witness. The witness stated that she did not retain the envelope in which the document was delivered and could not recall if the envelope had a return address or identified the Petitioner as the party responsible for distributing the material. The witness further stated that she did not know that "Rosemary" referred to the union organizer. She also stated that because of her unfamiliarity with Board-conducted elections, she assumed that the ballot portion of the document was to be retained for use in the election and was therefore upset that one of the ballot choices had been marked with an "X."

The Petitioner, contending that the document was not misleading, presented the affidavits of Rosemary Behrman, the union organizer, and an employee witness. Behrman stated in her affidavit that the ballot portion of the document was copied from the sample ballot portion of a notice of election used in another case. Behrman also stated that the documents were mailed in union envelopes in order to identify the Petitioner as the party responsible for their distribution. In addition, Behrman stated that she identified herself on the face of the document by referring to her first name and by including both her office and home telephone numbers. She also noted that in a previous union leaflet mailed to eligible voters in early April, she identified herself as a union representative and included the same telephone numbers.

The Petitioner's employee witness stated that she knew the document was sent by the Petitioner, not the Board, because of the Petitioner's name and return address on the envelope and because she recognized the reference to "Rosemary" from the earlier leaflet.

In his report, the Regional Director initially found, pursuant to the Board's analysis in SDC Investment, 274 NLRB No. 78, 118 LRRM 1410 (Feb. 28, 1985),[1] that the

[1] SDC, above, set forth a two-part analysis to determine whether an altered ballot is likely to give voters the misleading impression that the Board favored one of the parties to the election. Relying on the policy that employees are capable