

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

SHERWOOD CARRIER ANNEX
TOPEKA, KANSAS

Docket No. A2023-2

UNITED STATES POSTAL SERVICE MOTION TO DISMISS PROCEEDINGS
(August 25, 2023)

On August 16, 2023, Catherine Hackett-Brown (Petitioner) submitted a Participant Statement purporting to appeal, in accordance with 39 U.S.C. § 404(d)(5), “the Postal Service’s Final Determination concerning the Sherwood post office.” See Participant Statement at 1.

On August 22, 2023, the Postal Regulatory Commission (Commission) issued a Notice and Order Accepting Appeal and Establishing Procedural Schedule (Order No. 6636) wherein the Commission appears to accept Petitioner’s Participant Statement as the Petition for Review required by 39 C.F.R. 3021.10 to commence an appeal of a Postal Service determination to close or consolidate a Post Office. See Order No. 6636, n.1.

In accordance with Order No. 6636, the Postal Service hereby respectfully moves to dismiss the appeal on the basis that the decision to relocate the Sherwood Carrier Annex operations is not appealable to the Commission under section 404(d)(5). In addition, the appeal should be dismissed for lack of standing because the Petitioner is not a person served by the Sherwood Carrier Annex as required by section 404(d)(5).

In support of these motions, the Postal Service relies on the arguments and authorities set forth below.

I. STATEMENT OF FACTS

The Sherwood Carrier Annex (Annex) was a local sortation and delivery facility that was relocated in conjunction with moving sorting and delivery operations to the newly opened Topeka Sorting and Delivery Center (S&DC). The Annex had no Post Office boxes, offered no retail services for purchase, and was staffed entirely by back-office personnel.

While it was open, the Annex provided only one customer-facing service as a pick-up point for undeliverable accountable packages—for example, a package that required a signature but could not be delivered because no one was home to sign would be returned to the Annex where it would be held for pick-up. Notice of the relocation was posted at the Annex on July 17, 2023, informing customers that, effective August 26, 2023, packages that would have previously been held for pick-up at the Annex will be available for pick-up at the Gage Post Office.¹ The Gage Post Office is a full-service retail Post Office located 3.8 driving-miles from the Annex.

II. ARGUMENT

The Commission's authority to hear appeals of Post Office discontinuance actions is prescribed by 39 U.S.C. § 404(d)(5) and is limited to appeals of a Postal Service determination to discontinue Post Offices brought by someone who had been served by that Post Office:

¹ Consistent with Postal Service practice, customers can also request redelivery of previously undeliverable packages.

A determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission within 30 days after such determination is made available to such person under paragraph (3).

39 U.S.C. § 404(d)(5); see *also* 39 C.F.R. § 3021.10(a) (“A Postal Service decision to close or consolidate a post office may be appealed only by a person served by that office.”)

A. The Decision to Relocate the Annex Sorting and Delivery Operations is not Appealable

The Participant Statement expressly invokes 39 U.S.C. § 404(d)(5) as the statutory basis for this appeal. See Participant Statement, ¶ 2. Section 404(d)(5), however, only applies to Postal Service determinations to discontinue a Post Office. As discussed above, however, the Annex is not a Post Office within the scope of section 404(d)(5), but rather a postal sorting and delivery facility.²

Indeed, 39 U.S.C. § 404 clearly distinguishes between Post Offices, the closure or consolidation of which are subject to specified administrative procedures and appeal, and other postal facilities, which are not. Thus, while 39 U.S.C. § 404(a)(3) recognizes the Postal Service’s power “to determine the need for post offices, postal and training facilities and equipment, and to provide for such offices, facilities, and equipment as it determines are needed[,]” only determinations as to the need for Post Offices are subject to administrative procedures and appeal under 39 U.S.C. § 404(d): “The Postal Service, prior to making a determination under section (a)(3) of this section as to the necessity for

² See *supra*, Section I, at 2-3 (Statement of Facts).

the closing or consolidation of *any post office*, shall ...” 39 U.S.C. § 404(d)(1) (emphasis added).

Courts that have considered the scope of section 404(d) have also concluded that it applies only to the discontinuance of Post Offices and not to the relocation of sorting and processing operations. See, e.g., *Knapp v. USPS*, 449 F. Supp. 158, 161-62 (E.D. Mich. 1978)(observing that section 404(d) was clearly intended to deal with the physical closure or consolidation of Post Offices and concluding that the transfer of bulk mail sorting operations did not constitute a closing or consolidation necessitating the administrative procedures identified in section 404(d)); *Wilson v. USPS*, 441 F. Supp. 803, 805-6 (C.D. Cal. 1977)(concluding that section 404(d) was intended to mitigate potential effects on communities that may arise when Post Offices are closed or consolidated and holding that relocating mail processing operations was an internal management decision and not a consolidation within the scope of section 404(d)).

The conclusion that only decisions to discontinue a Post Office are subject to appeal is further confirmed in related regulations. Thus, regulations concerning discontinuances of USPS-operated retail facilities³ specifically provide only for appeals of decisions discontinuing Post Offices:

Within the first 30 days after the written determination is made available, any person regularly served by a *Post Office* subject to discontinuance may appeal the decision to the Postal Regulatory Commission. *Where persons regularly served by another type of USPS-operated retail facility subject to*

³ The Annex is not a “USPS-operated retail facility”, which is defined as “any Postal Service employee-operated Post Office, station, or branch....” See 39 U.S.C. 241.3(a)(2)(i); see also 39 C.F.R 241.2(a)(2)(“Stations and branches transact registry and money order business, sell postage supplies, and accept matter mailing.”) As shown above, the Annex provided no retail services for purchase. See *supra* at 2.

discontinuance file an appeal with the Postal Regulatory Commission, the General Counsel reserves the right to assert defenses, including the Commission's lack of jurisdiction over such appeals.

39 C.F.R. § 241.3(a)(3)(iv)(emphasis supplied). Likewise, the appeal rights provision in section 241.3 also confirms that only decisions to discontinue Post Offices may be appealed:

Appeal rights. If the USPS-operated retail facility subject to discontinuance is a post office, the Final Determination must include the following notice: "Pursuant to Public Law 94-421 (1976), this Final Determination to (close) (consolidate) the (Facility Name) may be appealed by any person served by that office to the Postal Regulatory Commission

Id., § 241.3(f)(2)(ii) (emphasis supplied).

The Commission's own rules provide additional support for the conclusion that only decisions to close or consolidate Post Offices are appealable. See 39 C.F.R. § 3021.2(a) ("The rules in this part apply when: (1) The Postal Service decides to close or consolidate a post office,"); *id.*, 3021.10(a) ("A Postal Service decision to close or consolidate a post office may be appealed only by a person served by that office."); *id.*, 3021.13(a) ("If the Postal Service has issued a final determination to close or consolidate a post office, an appeal is due within 30 days of the final determination being made available"). Indeed, 39 C.F.R. Part 3021 is titled: "Rules for Appeals of Postal Service Determinations to Close or Consolidate Post Offices." 39 C.F.R. Part 3021 (heading).

Because only Postal Service determinations to discontinue a Post Office are appealable to the Commission, and because the Annex is not a Post Office, the Postal Service's determination to relocate the Annex operations is not

appealable and the Petitioner's appeal of that determination should be dismissed.⁴

B. Petitioner Does Not Have Standing to Pursue this Appeal

Even were the decision to relocate the Annex operations appealable, which it is not, appeals may only be prosecuted by a person served by the subject Post Office:

A determination of the Postal Service to close or consolidate any post office *may be appealed by any person served by such office* to the Postal Regulatory Commission within 30 days after such determination is made available to such person under paragraph (3).

39 U.S.C. § 404(d)(5)(emphasis supplied); see *also* 39 C.F.R. § 3021.10(a) (“A Postal Service decision to close or consolidate a post office may be appealed only by a person served by that office.”); 39 C.F.R. § 241.3(a)(3)(iv) (“Within the first 30 days after the written determination is made available, any person regularly served by a Post Office subject to discontinuance may appeal the decision to the Postal Regulatory Commission.”).

In that regard, the Commission's Rules require that the Petitioner aver that they are served by the subject Post Office, including providing their address:

“The Petition for Review must state that the person(s) submitting it is/are served by the post office that the Postal Service has decided to close or consolidate.

⁴ The Commission has consistently affirmed that the relocation of retail services within a community does not constitute a closure within the scope of section 404(d). See, e.g., Docket No. A2017-1, Order Granting Motion to Dismiss, June 15, 2017 (Order No. 3963); Docket No. A82-10, Order Dismissing Docket No. A82-10, Jun. 25, 1982 (Order No. 436). In that context, even if the Annex's customer-facing package pick-up services were deemed to be retail services within the scope of section 404(d) (which, to be clear, they are not), those services have simply been relocated within the community and hence dismissal of the appeal would still be appropriate.

The petition should include the name(s) and address(es) of the person(s) filing it” 39 C.F.R. § 3021.10(b).⁵

Here, the Participant Statement does not aver that Petitioner is a person served by the Annex, nor does it provide Petitioner’s address. To the contrary, Petitioner asserts only that she is the President of the American Postal Workers Union (APWU), Local 270. Petitioner’s status as APWU Local 270 President, however, does not establish her standing as someone served by the Annex.

Petitioner also asserts that she represents the community served by the Annex. See Participant Statement at 2. “Ordinarily, of course, a litigant must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties.” *U.S. Dept. of Labor v. Triplett*, 494 U.S. 715, 720 (1990) (internal quotation marks omitted)). While third-party standing has been recognized in cases where the party asserting rights has a close relationship to the parties possessing those rights and the parties possessing the rights are hindered in their ability to assert such rights, see *Kowalski v. Tesmer*, 543 U.S. 125, 129-30 (2004), there is nothing in the Participant Statement to suggest that this exception applies here. Petitioner does not allege a close relationship to the community of users served by the Annex, nor does she allege that members of that community cannot bring their own appeal.

⁵ The Participant Statement attaches several pages of lists of names, addresses, and signatures, but without any indication that the lists represent the names and addresses of persons served by the Annex. Yet, even if those people identified are persons served by the Annex, the inclusion of the list of names does not cure Petitioner’s lack of standing to appeal; rather someone with proper standing would need to substitute as the Petitioner.

Because only a person served by a closed or consolidated Post Office may appeal the Postal Service's decisions to close or consolidate such Post Office, and because Petitioner is not a person served by the Annex, Petitioner lacks standing to pursue this appeal (even were the Annex a Post Office within the scope of section 404(d)(5), which it is not). The appeal should, therefore, be dismissed.

III. CONCLUSION

WHEREFORE, the Postal Service respectfully submits that the appeal should be dismissed for lack of subject matter jurisdiction and lack of standing.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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