

National Postal Mail Handlers Union

Paul V. Hogrogian
National President

Timothy M. Dwyer
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June Harris
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John A. Gibson
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Lawrence B. Sapp
*Vice President
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Don J. Sneesby
*Vice President
Western Region*

February 27, 2018

TO: All Local Unions
National/Regional CAD

FROM: Paul V. Hogrogian, National President *PVH*
Teresa Harmon, Manager, CAD *TH*

RE: NLRB Issues Complaint Challenging Postal Service's Refusal
to Provide NPMHU with Full Information on F-1 Scheduler

Attached to this memorandum is a Complaint and Notice of Hearing just issued by the National Labor Relations Board against the U.S. Postal Service. The Complaint is based on the Postal Service's refusal to respond to a series of information requests about the F-1 Scheduler that were filed by the NPMHU Contract Administration Department during the period running from May through November of 2017.

In those Requests for Information, the National Office has been seeking complete information about the F-1 Scheduler, including all of the information input into that program at each of the 260 mail processing facilities that employ mail handlers. As the NLRB explains in its Complaint:

Since about May 31, 2017, and including on November 21, 2017, the Charging Party [the NPMHU] has requested orally, and in writing, that Respondent [the USPS] furnish the Charging Party with information pertaining to the input data used, and results obtained, from Respondent's Function 1 Scheduler for all mail processing facilities at which the employees represented by the Charging Party work. This request is reflected in request 1 of the Charging Party's November 21, 2017 request for information, which is attached [to the Complaint] as Exhibit 1.

The Complaint also alleges that the Postal Service, even with regard to other information that it eventually did provide to the NPMHU, acted unlawfully by unreasonably delaying its responses and disclosures to the Union.

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The Postal Service has been given until March 7, 2018 to answer the Complaint, and a hearing already has been set for May 24, 2018.

A copy of the Complaint and Notice of Hearing, including all exhibits, is attached to this memorandum.

Please disseminate this information as you deem appropriate, and please do not hesitate to contact the National Office should you have any questions.

cc: National Executive Board

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

UNITED STATES POSTAL SERVICE

and

Case 5-CA-208552

NATIONAL POSTAL MAIL HANDLERS UNION,
A DIVISION OF LIUNA, AFL-CIO

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by the National Postal Mail Handlers Union, a Division of LIUNA, AFL-CIO, whose correct name is the National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO (the Charging Party). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., the Postal Reorganization Act, 39 U.S.C. § 101 et seq. (PRA), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that the United States Postal Service (Respondent) has violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Charging Party on October 23, 2017, and a copy was served on Respondent by electronic means, based on Respondent's prior agreement, on October 25, 2017.

(b) The first amended charge in this proceeding was filed by the Charging Party on February 14, 2018, and a copy was served on Respondent by electronic means, based on Respondent's prior agreement, on February 15, 2018.

2. (a) Respondent provides postal services for the United States and operates various facilities throughout the United States in performing that function, including its headquarters facility currently located at 475 L'Enfant Plaza, SW, Washington, D.C. 20260.

(b) The Board has jurisdiction over Respondent and this matter by virtue of Section 1209 of the PRA.

3. At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

- | | | |
|---------------------|---|--|
| (a) Kyle Bandy | - | Industrial Engineer for Network Processing Operations |
| (b) Patrick Devine | - | Manager of Contract Administration (NPMHU) and Employee Workplace Programs |
| (c) Michele Ditchey | - | Labor Relations Specialist |
| (d) Leigh Hsu | - | Labor Relations Specialist |
| (e) Doug Tulino | | Vice President of Labor Relations |
| (f) Gun Udomsawat | | Acting Manager of Processing and Distribution Center Operations |

5. (a) The following employees of Respondent (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees designated as Mail Handlers and defined in Articles 1 and 7, entitled "Union Recognition" and "Employee Classifications,"

respectively, of the National Agreement between the Charging Party and Respondent effective from May 21, 2016 to September 20, 2019.

(b) At all material times, Respondent has recognized the Charging Party as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from May 21, 2016 to September 20, 2019.

(c) At all material times, based on Section 9(a) of the Act, the Charging Party has been the exclusive collective-bargaining representative of the Unit.

6. Since about May 31, 2017, and including on November 21, 2017, the Charging Party has requested orally, and in writing, that Respondent furnish the Charging Party with information pertaining to the input data used, and results obtained, from Respondent's Function 1 Scheduler for all mail processing facilities at which the employees represented by the Charging Party work. This request is reflected in request 1 of the Charging Party's November 21, 2017 request for information, which is attached as Exhibit 1.

7. Since about November 21, 2017, the Charging Party has requested, in writing, that Respondent furnish the Charging Party with the following information:

(a) a copy of the PowerPoint presentation given at the meeting of November 3, 2017, as reflected in request 2 of Exhibit 1;

(b) spreadsheets containing the information gathered during all Network Distribution Center work studies related to the Function 1 Scheduler, as reflected in request 5 of Exhibit 1; and

(c) the results of any time studies conducted in each facility at which members of the Charging Party work, as reflected in request 8 of Exhibit 1.

8. The information requested by the Charging Party, as described above in paragraphs 6 and 7, is necessary for, and relevant to, the Charging Party's performance of its duties as the exclusive collective-bargaining representative of the Unit.

9. Since about November 30, 2017, Respondent, by Patrick Devine, in writing, has failed and refused to furnish the Charging Party with the information requested by it as described above in paragraphs 6, 7(b), and 7(c).

10. From about November 30, 2017, to about December 22, 2017, Respondent unreasonably delayed in furnishing the Charging Party with the information requested by it as described above in paragraph 7(a).

11. By the conduct described above in paragraphs 6 through 10, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act and within the meaning of the PRA.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before March 7, 2018, or postmarked on or before March 6, 2018.**

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer

rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on May 24, 2018, at 10:00 a.m., at the Board Hearing Room, 6th Floor, 1015 Half Street, SE, Washington, DC, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this

proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Baltimore, Maryland this 21st day of February 2018.

(SEAL)

/s/ SEAN R. MARSHALL

Sean R. Marshall, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center - Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

Attachments

EXHIBIT 1



National Postal Mail Handlers Union

Paul V. Hogrogian
National President

Timothy M. Dwyer
National Secretary-Treasurer

June Harris
*Vice President
Central Region*

John A. Gibson
*Vice President
Eastern Region*

David E. Wilkin
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Lawrence B. Sapp
*Vice President
Southern Region*

Don J. Sneesby
*Vice President
Western Region*

November 21, 2017

CERTIFIED# 7016 0750 0001 1069 8911

VIA E-MAIL AND U.S. MAIL

Patrick Devine, Manager, Labor Relations
Leigh Hsu, Labor Relations Specialist
Labor Relations
U.S. Postal Headquarters
475 L'Enfant Plaza, SW
Washington, DC 20260

Dear Patrick and Leigh:

I am writing in response to Patrick's letter of November 3, 2017, which also attached "slides from a PowerPoint presentation regarding Function 1 Scheduler." Notably, these slides were not used in any presentation to the NPMHU, but apparently are summary slides used in another, earlier presentation, perhaps one conducted for management representatives. Your letter also referred to a summary sheet that Patrick sent me on October 4, 2017, an Excel spreadsheet that Leigh sent to the NPMHU on October 13, 2017, and an informational meeting that the parties held on November 3, 2017.

The NPMHU has reviewed the information provided by the Postal Service, including all of the materials referenced in the above paragraph, and that information is not sufficient to comply with the Postal Service's obligations under the Articles 17 and 31 of the National Agreement and the National Labor Relations Act. In particular, as described during our meeting of November 3, 2017, the NPMHU continues to seek the following information, all of which is directly relevant to potential grievances to be filed by the NPMHU or its Local Unions concerning the implementation of the F-1 Scheduler at all USPS mail processing facilities across the country.

1. Based on the presentation made by Kyle Bandy of USPS Network Operations during our meeting of November 3, it was confirmed that the Postal Service has a detailed set of materials explaining the input used and the results obtained from the F-1 Scheduler for each of the approximately 250 mail processing facilities at which Mail Handlers represented by the NPMHU are

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employed. Each one, we were informed, occupies between 10 and 60 megabytes of information. The NPMHU is requesting an electronic copy of this information, for each facility, in a format jointly identified by the parties. The NPMHU is prepared to cover the cost involved in producing this information, in a manner consistent with USPS handbooks, rules, and/or procedures.

2. A copy of the PowerPoint presentation given at the meeting of November 3, 2017, which made an example of the Northwest Rochester, NY P&DC mail processing facility.

3. Any written materials, including recordings, tapings, or webinar records, that have been used for training on the F-1 Scheduler with management representatives or in prior meetings with representatives of the American Postal Workers Union.

4. A listing of all "target productivity rates" for all operations, functions, etc. performed by NPMHU-represented employees in all facilities.

5. Spreadsheets containing the information gathered during all NDC Work studies related to the F-1 Scheduler.

6. A list of all BPI Target groups by facility – parcel-only facilities, manual facilities, facilities with more than one floor, etc.

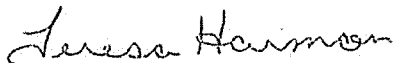
7. Information about the work hour costs used for Mail Handlers, Mail Handler Assistants, and Mail Handler Casuals used in the F-1 Scheduler.

8. All results of any time studies conducted in each facility, pursuant to which it was determined, for just one example, how many minutes it takes for a Mail Handler to load and/or unload a particular truck.

9. A copy of all default numbers that are used for each category of information when information required by the F-1 Scheduler is not manually input by each facility.

Thank you for your prompt attention to these matters.

Sincerely,



Teresa Harmon

Contract Administration Representative, NPMHU

Cc: Paul Hogrogian, National President
Tim Dwyer, National Secretary-Treasurer
National CAD

Bruce Lerner, Bredhoff & Kaiser
File

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlr.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in

evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
NOTICE

Case 5-CA-208552

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements *will not be granted* unless good and sufficient grounds are shown *and* the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

COUNSEL FOR RESPONDENT:

RODERICK D. EVES, ESQ.
MR. ARTHUR G. ROXAS
UNITED STATES POSTAL SERVICE
1720 MARKET STREET, ROOM 2400
ST. LOUIS, MO 63155-9948

RESPONDENT:

MR. DOUGLAS A. TULINO,
VICE PRESIDENT OF LABOR RELATIONS
UNITED STATES POSTAL SERVICE
475 L'ENFANT PLAZA, S.W.
WASHINGTON, DC 20260-4100

COUNSEL FOR CHARGING PARTY:

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CHARGING PARTY:

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