

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

UNITED STATES POSTAL SERVICE

and

Case 5-CA-140963

AMERICAN POSTAL WORKERS UNION, AFL-CIO

**COMPLAINT AND NOTICE OF HEARING**

This Complaint and Notice of Hearing is based on a charge filed by the American Postal Workers Union, AFL-CIO (the Union). 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 Union on November 13, 2014, and a copy was served on Respondent by electronic means, based on Respondent's prior agreement, on November 17, 2014.

(b) The first amended charge in this proceeding was filed by the Union on May 28, 2015, and a copy was served on Respondent by electronic means, based on Respondent's prior agreement, on May 29, 2015.

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 in the District of Columbia.

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

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

4. At all material times, the following individuals have 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:

Doug Tulino	-	Vice-President of Labor Relations
Rickey Dean	-	Acting Manager of Contract Administration

5. At all material times, an Unnamed Agent has held the position of Respondent's Deputy Managing Counsel and has been an agent of Respondent within the meaning of Section 2(13) of the Act.

6. (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:

**INCLUDED:** All maintenance employees, motor vehicle employees, postal clerks, mail equipment shop employees, material distribution center employees, and operating services and facilities services employees, employed by Respondent.

**EXCLUDED:** All managerial and supervisory personnel, professional employees, employees engaged in personnel work in other than a purely non-confidential clerical capacity, Postal Inspection Service employees, employees in the supplemental work forces, rural letter carriers, mail handlers, letter carriers, guards and supervisors as defined in the Act.

(b) Since at least 1986, and at all material times, the Union has been the designated, exclusive collective-bargaining representative of the Unit, and, since then, the Union has been recognized as the representative by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective by its terms from November 21, 2010 through May 20, 2015.

(c) At all times since at least 1986, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

7. (a) Since about August 29, 2014, the Union has requested, in writing, that Respondent furnish the Union with information concerning Respondent's Approved Shipper program, in general, as well as information relating to Respondent's Approved Shipper arrangement with Staples The Office Superstore, LLC (Staples), specifically.

(b) The information requested by the Union, as described above in paragraph 7(a), is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the Unit.

(c) Since about August 29, 2014, Respondent has failed and refused to furnish the Union with the information requested by it, as described above in paragraph 7(a).

8. (a) About August 1, 2014, Respondent subcontracted Unit work to Staples via Respondent's Approved Shipper program.

(b) The subject set forth above in paragraph 8(a), relates to wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject of bargaining.

(c) Respondent engaged in the conduct described above in paragraph 8(a), without affording the Union an opportunity to bargain with Respondent with respect to this

conduct, and the effects of this conduct, and without first bargaining with the Union to an overall good-faith impasse.

9. (a) About July 7, 2014, Respondent failed to continue in effect all the terms and conditions of the agreement described in paragraph 6(b), by informing the Union that it was subcontracting work to Staples without adhering to the agreed-upon protocol in Article 32 (Subcontracting) of the parties' agreement.

(b) The subject set forth above in paragraph 9(a), relates to wages, hours, and other terms and conditions of employment of the Unit and is a mandatory subject for the purposes of collective bargaining.

(c) Respondent engaged in the conduct described above in paragraph 9(a), without the Union's consent.

10. By the conduct described above in paragraphs 7 and 8, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of the employees set forth in the Unit, in violation of Section 8(a)(1) and (5) of the Act and within the meaning of the PRA.

11. By the conduct described above in paragraph 9, in the alternative to the conduct described above in paragraph 8, Respondent modified the terms of an effective collective-bargaining agreement without the consent of the Union, in violation of Section 8(d) of the Act and within the meaning of the PRA.

## **REMEDY**

As part of the remedy for the unfair labor practices alleged above in paragraphs 10 and 11, the General Counsel seeks an order requiring Respondent to restore its bargaining unit work as it existed on July 31, 2014. The General Counsel further seeks such other relief as may be appropriate to remedy the unfair labor practices alleged.

## **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 July 13, 2015, or postmarked on or before July 10, 2015**. 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](http://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 August 17, 2015, at 10:00 a.m., at the Margaret A. Browning Hearing Room, 6<sup>th</sup> 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 26<sup>th</sup> day of June 2015.

(SEAL)

/s/ CHARLES L. POSNER

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

Attachments

## 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](http://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](http://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 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.