

## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Greg Bell, Director  
Industrial Relations  
1300 L Street, NW  
Washington, DC 20005  
202-842-4273 (Office)  
202-331-0992 (Fax)

### Initiate National Dispute

May 3, 2010

#### Sent Via Facsimile First Class Mail

Mr. Doug Tulino  
Vice President, Labor Relations  
U.S. Postal Service, Room 9014  
475 L'Enfant Plaza  
Washington, D.C. 20260

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John H. Dirzius  
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William E. "Bill" Sullivan  
Coordinator, Southern Region

Omar M. Gonzalez  
Coordinator, Western Region

Re: APWU No. HQTG20100180, Failure and Refusal to Bargain Over  
Safety and Ergonomic Issues

Dear Mr. Tulino:

In accordance with the provisions of Article 15, Section 2 and 4, of the Collective Bargaining Agreement, the American Postal Workers Union is initiating a Step 4 dispute over the Postal Service's failure and refusal to meet and bargain in good faith with the American Postal Workers Union, AFL-CIO, about safety and ergonomic issues associated with the Delivery Bar Code Sorter (DBCS) machines. The issues and facts involved in this dispute are as follows:

#### ***NLRB Complaints against USPS***

By letter dated May 1, 2009, the NLRB Region 5 issued a "complaint" against the Postal Service in Case 5-CA-34671 for failing and refusing to provide the Union with requested information – ergonomic report, data, etc. – concerning the DBCS machines in a timely manner, and by doing so, the Postal Service has failed and refused to bargain collectively and in good faith with the exclusive collective bargaining representative of its employees. By letter dated July 17, 2009, the NLRB issued an amended "complaint" against the Postal Service in Case 5-CA-34671 for failing and refusing to bargain collectively about ergonomic issues associated with the delivery DBCS machines. Moreover, by its conduct, the Postal Service has been failing and refusing to bargain collectively and in good faith with the exclusive collective bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

The Postal Service admits that safety and health, including ergonomics issues, are mandatory subjects of bargaining, but contends that the Postal Service has no statutory duty to bargain with the Union about any safety and health issues because Article 14 limits the Postal Service's obligation to bargain

with the Union during the term of the National Agreement. The APWU disagrees.

Article 14 of the parties' collective bargaining agreement provides for a joint process for handling safety and ergonomics issues directly affecting employees. Accordingly, Article 14 provides that it is the Postal Service's responsibility to provide safe working conditions in all present and future installations, and it is the Union's responsibility to cooperate with and assist the Postal Service to live up to its responsibility. Moreover, Article 14 establishes a Joint Labor-Management Safety Committee and a Joint Labor-Management Ergonomics Committee to meet the parties' joint obligation in addressing and handling safety and ergonomics issues.

The responsibility of the Safety and the Ergonomics Committees includes evaluating and making recommendations on all aspects of the Employer's respective Safety and Ergonomics Programs, to include program adequacy, field implementation, and studies for improving the work environment, training, and unsafe conditions. However, the Postal Service refused to comply with its obligations pursuant to Article 14 to jointly address and handle safety and ergonomics related issues. The Postal Service takes unilateral action in regard to handling of safety and ergonomics issues, contrary to the joint process required by Article 14 of the National Agreement, including refusing to discuss, bargain, and to provide information necessary for the union to carry out its obligation and responsibility pursuant to Article 14 of the National Agreement. It is the APWU's position, but not limited to, that the Postal Service's action violates Article 5 and Article 14 of the National Agreement. Moreover, such action constitutes an unfair labor practice.

The Postal Service contends that during collective bargaining, the parties agreed on how they would handle ergonomic issues during the term of the National Agreement in Article 14, Section 3; and therefore, the Postal Service had no duty to bargain about ergonomic issues in 2008-2009 during the term of the current labor agreement. The APWU disagrees. Moreover, what the parties agreed to is a joint process for handling safety and ergonomics issues pursuant to Article 14 that encompasses bargaining between the parties over safety and ergonomics issues that may arise directly affecting bargaining unit employees. At no time has the APWU waived its rights to bargain over safety and ergonomics issues that directly affect APWU bargaining unit employees. Notwithstanding the above, the Postal Service's refusal and failure to jointly address and handle safety and ergonomics issues constitutes a violation of the NLRA.

#### ***"Partial" NLRB Settlement Agreement***

Prior to the scheduled "NLRB hearing" on the above-referenced complaints issued against the Postal Service in Case 5-CA-34671, the parties entered into a partial Board settlement agreement.

In the Postal Service's settlement of the information aspects of the charge, it agreed to post the following "Notice to Employees:"

**WE WILL NOT** refuse to recognize and bargain with the **AMERICAN POSTAL WORKERS UNION, AFL-CIO**, as your exclusive collective-bargaining representative in the bargaining unit recognized in our most recent collective-bargaining agreement.

**WE WILL NOT** fail and refuse to timely furnish the **AMERICAN POSTAL WORKERS UNION, AFL-CIO**, with requested information that is relevant and necessary to the performance of its duties as your exclusive collective-bargaining representative.

**WE WILL** timely furnish the **AMERICAN POSTAL WORKERS UNION, AFL-CIO**, with information that it requests which is necessary for, and relevant to, the performance of its duties as the exclusive collective-bargaining representative in the bargaining unit recognized in our most recent collective-bargaining agreement.

**WE WILL NOT** in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of their rights as guaranteed in Section 7 of the Act.


***NLRB "Deferral" of Failure and Refusal to Bargain in Good Faith Portion of Case***

By letter dated April 14, 2010, NLRB Region 5 "deferred" the portion of the charge that alleges the Employer violated Section 8(a)(5) of the Act by failing and refusing to meet and bargain in good faith with the American Postal Workers Union, AFL-CIO, about ergonomic issues revealed in a report of the U.S. Occupational Safety and Health Administration.

The NLRB deferral was based in part on (1) the parties' agreement to the prompt processing of the dispute, including by expeditiously scheduling the arbitration hearing; (2) the likelihood that utilization of the contractual arbitration procedure will resolve this dispute; and (3) the Postal Service agreeing to waive any alleged contractual time limits arguments and process the related grievance through arbitration. It should be noted that this dispute is entitled to priority scheduling under the terms of the deferral letter of NLRB Region 5 and in addition, upon request of the Union, placed at the head of the national arbitration docket in accordance with Article 14.2.

Article 15 of the collective bargaining agreement provides that within thirty (30) days after the initiation of a dispute the parties shall meet in an effort to define the precise issues involved, develop all necessary facts, and reach agreement. It is requested that you or your designee contact my office at 202-842-4273 to discuss this dispute at a mutually agreed upon date and time.

Sincerely,

  
Greg Bell, Director  
Industrial Relations

GB/LB

APWU #: HQTG20100180

Dispute Date: 5/3/2010

Resident Officers

Case Officer: Greg Bell

Contract Article(s): 14;

cc: File

# Transmission Report

Date/Time  
Local ID 1  
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05-03-2010  
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Industrial Relations1

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**Abbreviations:**

HS: Host send  
HR: Host receive  
WS: Waiting send

PL: Polled local  
PR: Polled remote  
MS: Mailbox save

MP: Mailbox print  
CP: Completed  
FA: Fall

TU: Terminated by user  
TS: Terminated by system  
RP: Report

G3: Group 3  
EC: Error Correct



American Postal Workers Union, AFL-CIO

Greg Bell, Director  
Industrial Relations

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Washington, DC 20005  
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FAX COVER SHEET

Date: May 3, 2010 Time: \_\_\_\_\_

To: Doug Tullins, Vice President

Labor Relations

U.S. Postal Service

Recipient's Fax Number: 202-268-3074

From: Greg Bell Fax: (202) 371-0992

Number of Pages Transmitted (Including Cover Page): 4

COMMENTS: \_\_\_\_\_

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