



National Postal Mail Handlers Union

John F. Hegarty
National President

Mark A. Gardner
National Secretary-Treasurer

Jefferson C. Peppers, III
*Vice President
Central Region*

Kevin L. Fletcher
*Vice President
Eastern Region*

Paul V. Hogrogian
*Vice President
Northeastern Region*

Lawrence B. Sapp
*Vice President
Southern Region*

Rudy Santos
*Vice President
Western Region*

September 18, 2013

Dear Local Presidents:

Attached you will find a copy of an unfair labor practice charge that the National Union filed on September 4, 2013. Along with the ULP, we are providing our arguments in support of the charge.

You should already have all of the attachments, as provided at the recent Semi-Annual meeting.

Please feel free to contact my office should you have any questions or concerns.

Fraternally,

John F. Hegarty,
National President

cc: Mark A. Gardner, National Secretary-Treasurer
National Executive Board
National and Regional CAD

BREDHOFF & KAISER, P.L.L.C.

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Elliot Bredhoff
(1921 - 2004)
Henry Kaiser
(1911 - 1989)

September 4, 2013

Wayne R. Gold
Regional Director, Region 5
c/o National Labor Relations Board
Washington, DC Resident Office
1099 14th Street, NW, Suite 6300
Washington, DC 20570-0001

Re: U.S. Postal Service

Dear Mr. Gold:


Enclosed please find an original and three copies of an unfair labor practice charge against the U.S. Postal Service, relating to mail handlers represented by the National Postal Mail Handlers Union. A copy of this charge is being served this same day upon the following:

Douglas Tulino
Vice President, Labor Relations
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

Allen Mohl
Manager, Labor Relations
United States Postal Service
475 L'Enfant Plaza, SW
Washington, DC 20260

Please feel free to call me if you have any questions.

Sincerely,



Bruce R. Lerner

Cc: John F. Hegarty, NPMHU National President
Mark A. Gardner, NPMHU National Secretary-Treasurer
Thomas J. Branch, Manager, Contract Administration Department

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer U.S. Postal Service	b. Tel. No.
d. Address (Street, city, state, and ZIP code) 475 L'Enfant Plaza, SW Washington, DC 20260-9326	c. Cell No.
e. Employer Representative Allen Mohl Manager, Labor Relations	f. Fax No.
i. Type of Establishment (factory, mine, wholesaler, etc.) Postal Service - Nationwide	g. e-Mail
j. Identify principal product or service Mail Services	h. Number of workers employed 800,000

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (list subsections) 8(a)(2) and 8(a)(5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
Please see attached statement and exhibits

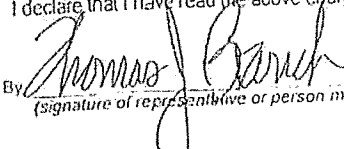
3. Full name of party filing charge (if labor organization, give full name, including local name and number)
National Postal Mail Handlers Union, a Division of the Laborers' International Union of North America, AFL-CIO

4a. Address (Street and number, city, state, and ZIP code) 1101 Connecticut Avenue, NW Suite 500 Washington, DC	4b. Tel. No. 202-833-9095
	4c. Cell No.
	4d. Fax No. 202-833-0008
	4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)
The NPMHU, as indicated above, is a Division of the Laborers' International Union of North America, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By  Thomas J. Branch, Manager, CAD
(signature of representative or person making charge) (Print/type name and title or office, if any)

Address 1101 Connecticut Avenue, NW, Ste 500, Washington, DC 20036	Tel. No. 202-833-9095
	Office, if any, Cell No.
	Fax No. 202-833-0008

Address 1101 Connecticut Avenue, NW, Ste 500, Washington, DC 20036 9/4/2013 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

A. Violation of Section 8(a)(2)

The Postal Service has violated Sections 8(a)(2) and 8(a)(1) of the Act through the unlawful formation and domination of labor organizations in the form of so-called Lean Mail Processing Teams ("LMP Teams" or "Teams"). A violation of Section 8(a)(2) occurs when an employer dominates or interferes with a "labor organization" within the meaning of Section 2(5) of the Act. Electromation, Inc., 309 NLRB 990, 990 (1992). Here, the Postal Service controls the existence, composition, and duties of the LMP Teams and thus employer domination is indisputable.

An employee involvement committee like the LMP Teams will constitute a Section 2(5) labor organization when: "(1) employees participate, (2) the organization exists, at least in part, for the purposes of 'dealing with' employees, and (3) these dealings concern 'conditions of work' or concern other statutory subjects." Electromation, 309 NLRB at 994. The LMP Teams satisfy all three prongs of this test and thus constitute labor organizations.

First, it is clear that employees participate in the LMP Teams. The Postal Service has notified the Union that bargaining unit employees will be asked to "participate as team members" and will "spend time working with the project team." Attachment 2 at 1, 2.

Second, the LMP Teams are involved in "dealing" with bargaining unit employees. The Board has recognized that "dealing" carries a broad meaning, and in the context of employee involvement committees will typically be found when the committees "involve group action and not individual communication," and when the committees "make proposals and management respond[s] by

word or deed.” E.I. du Pont de Nemours & Co., 311 NLRB 893, 894-95 (1993). Here, the main functions of the LMP Teams are to “[d]esign and implement LMP initiatives” meant to transform the workplace, and to “[c]ommunicate and engage employees” regarding these changes. Attachment 4 at 56. Employee members of the LMP Teams are tasked with “identify[ing] areas of opportunity and solutions,” Attachment 2 at 1, 2, and the Teams are tasked with generating project proposals to be “signed off” by the Plant Manager and approved through a formal process, Attachment 4 at 57.

The purpose of the LMP Teams goes well beyond mere informational committees or “brainstorming groups,” E.I. du Pont, 311 NLRB at 894, and instead involves the formulation of substantive proposals that are sent to upper management. Like the mixed employee-management committees at issue in E.I. du Pont, it is irrelevant that the LMP Teams are comprised of both bargaining unit employees and management personnel: “As a practical matter, if management representatives can reject employee proposals, it makes no real difference whether they do so from inside or outside the committee.” 311 NLRB at 895. Here, bargaining unit employees “deal” with management both inside the Teams, by “identify[ing] . . . solutions” that are either accepted or rejected by the rest of the Team, and outside the Teams, by the formal review of LMP Team proposals.

Third, the LMP Teams are tasked with modifying conditions of work for bargaining unit employees. Since the LMP Teams are in the early stages of implementation, it is difficult to discern any limitation on the subjects that management intends to direct to the Teams. What is clear from the pilot program at the South Jersey Processing & Distribution Center is that the LMP Teams will be tasked with modifying conditions of work such as work hours and productivity standards. The South Jersey LMP Team’s proposals to management resulted in a 2% reduction in work hours, Attachment 4 at 41, and overall “savings” of 470 hours a week, *id.* at 42. The obvious conclusion from these figures is that the policies bargained for by the LMP Team, not the Union, could result in the elimination of bargaining unit jobs. In effecting such changes, the LMP Teams serve the role of employer-dominated labor organizations in violation of Section 8(a)(2).

B. Violation of Section 8(a)(5)

The Postal Service also has violated Sections 8(a)(5) and 8(a)(1) of the Act by establishing the LMP Teams as a means of unlawful “direct dealing” with bargaining unit employees, thus undercutting the position of the Union as exclusive bargaining representative. The Board has held that unlawful direct dealing occurs when: “(1) [the Employer] was communicating directly with union-represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of

employment or undercutting the Union's role in bargaining; and (3) such communication was made to the exclusion of the Union." Permanente Med. Grp., 332 NLRB 1143, 1144 (2000). Once again, the creation of the LMP Teams satisfies all three prongs of this test, and thus constitutes unlawful direct dealing.

First, it is clear that management representatives directly communicate with employee participants, and that the Union is not a party to the LMP Teams or to the selection of participants. See Attachment 4 at 5 (noting that employee members will be "solicited based on their interest").

Second, as noted previously, the Postal Service has circumvented the Union and dealt directly with bargaining unit employee members of the LMP Teams to negotiate policies affecting conditions of work. The policies negotiated with employees—without any input from the Union—have so far involved reductions in available work hours and thus have posed a direct threat to the jobs of bargaining unit employees. This constitutes dealing with the purpose of "changing . . . hours," Permanente, 332 NLRB at 1144, and has the effect of undermining the role of the Union in negotiating such changes and in representing its membership.

Third, the LMP Teams and resulting communications to participating employees have been made to the total exclusion of the Union. The mere fact that the Postal Service notified the Union of the LMP Teams in advance is irrelevant at the point where the Union is nonetheless denied any role in the actual formulation or execution of LMP proposals. E.g., Aggregate Indus., 359 NLRB No. 156, slip op. at 9 (2013) (finding unlawful direct dealing at employee-management meetings even though union representatives were present in the room, since "[t]he union representatives were relegated to the status of passive observers").

Indeed, the Postal Service has deliberately undercut the role of the Union regarding the LMP program on multiple occasions. The Union and Employer have an existing, bargained-for system in place for formulating work life improvements in the form of the joint Committee to Improve the Quality of Work Life, see Attachment 1, Article 31.4 of the 2011 NPMHU-USPS National Agreement, and thus the Postal Service's current attempt to establish largely redundant LMP Teams can only be understood as an attempt to evade the pre-existing, Union-endorsed employee involvement program. In fact, the Postal Service specifically raised the issue of so-called "Lean Six Sigma" programs with Union officials at the National level, during meetings of the National Joint Steering Committee of the QWL process, and was told that the Union was opposed to such programs. The fact that the Postal Service has decided to implement its LMP policies unilaterally demonstrates an attempt to wholly disregard the role of the Union as bargaining representative.

It bears noting, in this regard, that the Postal Service's powerpoint presentation on the LMP Teams that was provided to NPMHU representatives at the National level differed substantially from the presentation given to management officials, excluding a number of key provisions concerning the formation and functions of the LMP Teams. For example, in the presentation to Union representatives, the Postal Service deliberately excised any reference to "team formation," compare Attachment 4 at 2, 55, with Attachment 3 at 2, a key area where the NPMHU is being circumvented and the Postal Service is directly dealing with employees. Similarly, all references to "employee engagement," Attachment 4 at 56, 64, and critical changes to the workplace such as the reduction in work hours, *id.* at 41, 42, were absent in the presentation to the Union. The Employer's attempt to conceal these details from the Union further establishes that the LMP Teams undermine the Union's role as exclusive bargaining representative and constitute violations of Section 8(a)(5).