

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Mark Acton, Vice Chairman;
Tony L. Hammond; and
Nanci E. Langley

Complaint of the National
Association of Postmasters of
the United States, et al.

Docket No. C2011-3

ORDER DISMISSING COMPLAINT

(Issued August 11, 2011)

I. INTRODUCTION

On May 23, 2011, the National Association of Postmasters, the National League of Postmasters of the United States, and several individuals (Complainants) jointly filed a complaint with the Commission concerning the Postal Service's proposed rules regarding post office discontinuance and its alleged actions concerning a plan to close thousands of post offices.¹

Specifically, Complainants seek redress alleging the Postal Service has proposed rules that violate title 39, United States Code by arbitrarily changing the definition of "consolidation" in 39 U.S.C. 404(d) (claim 1) and ignoring the provision that

¹ Complaint Regarding Postal Service Proposed Rule "Post Office Organization and Administration: Establishment, Classification and Discontinuance," 39 CFR Part 241, May 23, 2011 (Complaint).

a “postmaster” is the manager of a “post office” in 39 U.S.C. 1004(i)(3) (claim 2). *Id.* at 10-29. The final claim is that the Postal Service has undertaken a change in the nature of postal services by starting a process to close thousands of post offices without following the advisory opinion procedure required by 39 U.S.C. 3661(b) (claim 3). *Id.* at 30-31.

Complainants believe the Commission has jurisdiction to hear the Complaint under 39 U.S.C. 3662. Specifically, with regard to claims 1 and 2, section 3662 gives the Commission the ability to hear a complaint when the Postal Service is not operating in conformance with 39 U.S.C. 401(2). Section 401(2) allows the Postal Service to promulgate rules and regulations that are not in conflict with title 39. Section 3662 also gives the Commission the ability to hear a complaint based on chapter 36, which includes the nature of service advisory opinion process in section 3661. *Id.* at 5.

Complainants allege that they have standing because they are interested persons and have legal status as postmasters. Further, Complainants contend that the issue is ripe for adjudication because the Postal Service’s actions are capable of repetition while evading Commission review, and implementation of the proposed rule would cause widespread and irreversible damage. *Id.* at 6-7.

Complainants seek broad relief, including a stay delaying implementation of the Postal Service’s proposed rule, declaratory judgment that the Postal Service lacks authority to implement the proposed rule, and declaratory judgment that the Postal Service’s plan to close post offices on a large scale requires a Commission advisory opinion. *Id.* at 32-34.

II. MOTION TO DISMISS AND COMPLAINANTS' RESPONSE

On June 13, 2011, the Postal Service filed a motion to dismiss the Complaint.² The Postal Service cites several grounds for dismissal, including lack of jurisdiction, ripeness, and other procedural arguments. *Id.* at 2-5. On July 5, 2011, Complainants filed in opposition to the Motion to Dismiss.³ Complainants contend that the Commission should hear the Complaint because Complainants have standing and the issues in the Complaint are ripe for adjudication.

A. Jurisdiction

1. Postal Service Motion

The Postal Service contends that the Commission lacks jurisdiction over the first two claims of the Complaint because Complainants read the section 401(2) jurisdiction statement in 39 U.S.C. 3662 incorrectly. Motion to Dismiss at 6-7. First, the Postal Service contends that a proposed rule does not implicate section 401(2) because no action has actually been taken to “adopt, amend, or appeal regulations....” *Id.* at 7-8. Second, the Postal Service contends that Complainants’ view of jurisdiction under section 401(2) is overbroad. *Id.* at 8. Specifically, the Postal Service contends that the Commission’s complaint jurisdiction is limited and that accepting Complainants’ reading of jurisdiction under section 401(2) would “explode” the limitations on jurisdiction intended by drafters of that legislation. *Id.* The Postal Service posits a narrow reading of jurisdiction derived from section 401(2) and argues that section 401(2) jurisdiction only extends to rules and regulations used to carry out the other enumerated areas of jurisdiction in section 3662. *Id.* at 8-15.

² United States Postal Service Motion to Dismiss, June 13, 2011 (Motion to Dismiss).

³ Complainants’ Response to the Postal Service’s Motion to Dismiss, July 5, 2011 (Complainants’ Response). Complainants requested and received an extension to the deadline to respond to the Motion to Dismiss. See Order No. 749, Order Extending Deadline to Respond, June 17, 2011.

2. Complainants' Response

Complainants argue that the Commission has jurisdiction to hear the Complaint despite the fact that there is no final rule. Complainants' Response at 7. Complainants state that if the rule is "unlikely 'to be abandoned or modified before it is actually put into effect,'" the Commission has jurisdiction to consider the Postal Service's legal interpretation as the basis for the proposed rule. *Id.* Further, Complainants contend that the statute clearly provides for Commission jurisdiction over Postal Service rules and regulations that are inconsistent with title 39 through its inclusion of section 401(2) in 39 U.S.C. 3662. *Id.* at 8-9. Complainants note that the Postal Accountability and Enhancement Act (PAEA) broadened, rather than limited the Commission's complaint jurisdiction, and the Postal Service's strained reading of the law would nullify that intent. *Id.* at 9-11.

B. Standing—Ripeness

1. Postal Service Motion

The Postal Service contends that even if the Commission has jurisdiction, the issue is not yet ripe for decision. Motion to Dismiss at 15-16. For claims 1 and 2, the Postal Service states that since it has only proposed a rule, rather than adopted, amended, or repealed a rule or regulation, the action is not final or as yet deserving of adjudication. *Id.* at 16-17. For claim 3, the Postal Service contends that none of its conduct has yet implicated a nationwide service change under section 3661. *Id.* at 21. The Postal Service states that if it were to proceed with a change in service that implicated section 3661, it would comply with the statute. *Id.* at 23.

2. Complainants' Response

For claims 1 and 2, Complainants contend that the Postal Service's flawed legal interpretation of the statute is ripe for review despite the fact that it is not a final rule. Complainants' Response at 3-4. Complainants characterize the Postal Service's

proposed rule as a matter of statutory interpretation that is inherently ripe for adjudication. *Id.* at 4-5. For claim 3, Complainants allege that a nationwide effort to close post offices is currently underway, not a mere proposal. *Id.* at 11-14.

C. Standing—Injury in Fact

1. Postal Service Motion

The Postal Service asserts that Complainants do not have standing because they have not suffered injury. Motion to Dismiss at 19. For claims 1 and 2, the Postal Service contends that even if a final rule had been implemented, Complainants would have to show a direct injury rather than the mere possibility of injury. *Id.* at 19-20.

2. Complainants' Response

Complainants allege that the injury for claim 1 stems from the erasure of the procedural safeguards surrounding post office discontinuance provided by statute. Complainants' Response at 5. Similarly, Complainants state that, for claim 2, postmasters are injured by being subjected to decisions of statutory interpretation made on unfounded authority. *Id.* at 8-9.

D. Exhaustion of Remedies

1. Postal Service Motion

The Postal Service states that, notwithstanding the jurisdiction and standing arguments, the Commission should decline to hear the Complaint because Complainants have not exercised their right to consult with the Postal Service on the proposed rules. Motion to Dismiss at 23-25. The Postal Service notes that the Commission is not bound by the "exhaustion" doctrine under Article III of the Constitution, but that the same policy considerations apply. *Id.* at 25.

2. Complainants' Response

Complainants state that exhaustion of remedies is not relevant to a matter of statutory authority and misinterpretation of the law. Complainants' Response at 6. The policies underlying the "exhaustion" doctrine would not be implicated because it does not interrupt the administrative process to adjudicate a dispute on the underlying legal authority for a proposed rule. *Id.* at 7. Complainants allege that "consultation" is not subject to the doctrine of exhaustion of remedies. *Id.* at 15. Further, the Postal Service, in Complainants' view, did not offer consultation because postmasters' organizations were not involved in the planning and development of the process. *Id.* at 15-17.

E. Procedural Deficiencies

1. Postal Service Motion

The Postal Service contends that the Complaint is procedurally deficient because Complainants did not meet or confer with the Postal Service as required by rule 3030.10(a)(9). Motion to Dismiss at 26-27.

2. Complainants' Response

Complainants state that the Postal Service is playing semantics concerning the meet and confer requirement under the Commission's rules. Complainants' Response at 18-19. Complainants refer to letters sent to the Postal Service's General Counsel to discuss the issues, and allege that these letters were ignored. *Id.*

F. Judgment as a Matter of Law

1. Postal Service Motion

Notwithstanding all its other arguments, the Postal Service contends that the Complaint is deficient because it is based on a flawed interpretation of the law. Motion

to Dismiss at 31-39. In sum, the Postal Service contends that it has the authority to issue reasonable interpretations of the law it is charged with implementing. *Id.*

2. Complainants' Response

Complainants state that their interpretation of the law with regard to claim 1 is not flawed because the Postal Service is not substituting "one 'reasonable and valid' interpretation of 'consolidation' with another." Complainants' Response at 5. Rather, Complainants contend, the Postal Service is attempting to unreasonably ignore a specific portion of its authorizing statute to further its own goals. *Id.* at 6.

III. COMMISSION ANALYSIS

The Commission takes notice of recent developments outside this complaint docket that directly implicate claim 3 of the Complaint. On July 27, 2011, the Postal Service filed a request for the Commission to consider its proposal to review the possible discontinuance of over 3,500 retail postal facilities. See Docket No. N2011-1, Request of the United States Postal Service for an Advisory Opinion on Changes in the Nature of Postal Services, filed July 27, 2011.⁴ This action is consistent with the relief sought by Complainants. Therefore, claim 3 of the Complaint is dismissed as moot.

Claims 1 and 2 both focus on the Postal Service's alleged misinterpretation of provisions of title 39. However, both claims also are based on Postal Service rules that have been proposed, but not finalized or implemented. In fact, the Postal Service specifically declined to finalize the sections of its proposed rule relating to claims 1 and 2 of the Complaint. See 76 Fed. Reg. 41413 (July 14, 2011). The Postal Service explains that as a result of its statutory responsibilities to consult regarding issues related to claims 1 and 2, it would not adopt proposed rules on consolidation or definition of "postmaster." *Id.* at 41419.

⁴ Docket No. N2011-1 does not involve recent decisions to close several hundred facilities initiated in the 12 months prior to July 14, 2011.

Complainants filed a notice on July 28, 2011 concerning the consultative process.⁵ In the Notice, Complainants discuss their communications with the Postal Service. In Complainants' view, those communications are not "consultation" as required by title 39.

Notwithstanding the extent consultation has or has not taken place, the Postal Service has not implemented a final rule implicating claims 1 and 2. The Postal Service has specifically delayed issuing final rules in these areas to allow for further consultation and possible revision of the proposed rules. Its decision to not implement final rules that implicate claims 1 and 2 at minimum appears to be evidence that those rules may change and evolve. While, hypothetically, circumstances may warrant adjudication of a dispute involving a pending rulemaking, such circumstances are not present here. Issues raised by Complainants in claims 1 and 2 are premature and therefore not ripe for adjudication. The Commission must, within 90 days of the filing of a complaint, determine whether that complaint raises material issues of fact or law, and either begin proceedings on the complaint or dismiss it. See 39 U.S.C. 3662(a)(1). Because claims 1 and 2 of the Complaint are not ripe, the Commission dismisses them without prejudice. If, in the future, the Postal Service implements a final rule that implicates Complainants' interests, they may renew their Complaint.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The United States Postal Service Motion to Dismiss, filed June 13, 2011, is granted, in part, as set forth in the body of this Order.
2. Claims 1 and 2 of the Complaint Regarding Postal Service Proposed Rule "Post Office Organization and Administration: Establishment, Classification and

⁵ Notice Regarding Consultation Efforts Between Complainant Organizations and Postal Service, July 28, 2011 (Notice).

Discontinuance,” 39 CFR Part 241, filed May 23, 2011, are dismissed without prejudice.

3. Claim 3 of the Complaint Regarding Postal Service Proposed Rule “Post Office Organization and Administration: Establishment, Classification and Discontinuance,” 39 CFR Part 241, filed May 23, 2011, is dismissed with prejudice.

By the Commission.

Ruth Ann Abrams
Acting Secretary