

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

COMPLAINT OF THE NATIONAL
ASSOCIATION OF POSTMASTERS OF
THE UNITED STATES, THE NATIONAL
LEAGUE OF POSTMASTERS, et al.

Docket No. C2011-3

**MOTION TO RENEW COMPLAINT,
AND REQUEST TO SUBMIT FOR DECISION
ON AN EXPEDITED BASIS, BEFORE DECEMBER 1, 2011, OR IN THE
ALTERNATIVE TO STAY THE POSTAL SERVICE'S FINAL RULE FROM
GOING INTO EFFECT ON DECEMBER 1, 2011
(November 7, 2011)**

The National Association of Postmasters of the United States, the National League of Postmasters, Mark Strong, Robert Rapoza, Marilyn Shaw, and Marilyn Hill ("NAPUS and the LEAGUE" or "Complainants") hereby submit the above-entitled Motion in this docket.

BACKGROUND

On May 23, 2011, Complainants filed a complaint alleging that the rules proposed by the Postal Service violated title 39 of the U.S. Code by 1) arbitrarily changing the definition of "consolidation" (claim one) in 39 U.S.C. 404 (d) and 2) ignoring the provision of law in 39 U.S.C. 1004(i)(3) defining a "postmaster" as the manager of a "post office." (claim two). The Complaint contained a third claim that the Postal Service had 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 in 39 U.S.C. 3661 (b), which has since been rendered moot.

On June 13, 2011 the Postal Service moved to dismiss the Complaint and on July 5, 2011, the Complainants responded to that motion.

On July 27, 2011 USPS filed its RAO Case and the Commission subsequently open Docket N-2011 thus effectively granting relief on claim three of the Complaint.

On August 11, 2011 the PRC recognized that claim three was now moot, and dismissed without prejudice the remaining claims (Claim 1 and Claim 2) of the Complaint, finding them not ripe for adjudication, and dismissed the complaint without prejudice.

On October 26, 2011 the Postal Service adopted a Final Rule in the subject matter of this complaint, 76 Fed. Reg.66184 (October 26, 2011), which implemented rules redefining “consolidation” in 30 U.S.C. 404 (d) and ignoring the plain meaning of the statutory definition of “postmaster” in 39 U.S.C. 1004.

MOTION TO RENEW

The August 11, 2011 dismissal of the instant Complaint was without prejudice, and in the last line of its dismissal Order, the Commission specifically invited the Complainants to renew their complaint should the two claims become ripe for adjudication. See Order 797 at 8. By its October 26 action adopting and implementing final rules, both claims are ripe for adjudication, and Complainants hereby respectfully renew their Complaint.

REQUEST TO SUBMIT

This matter is now not only fully ripe for adjudication, but has also been fully briefed. Only legal issues are involved in the matter, and they have been addressed in full by both Complaints and the Postal Service. Complainants believe there is no need

for a hearing, since no factual questions exist and no factual issues are implicated. Therefore, Complainants respectfully request that the Commission take the matter under submission and render a decision on the legal issues raised in Claims 1 and 2 of the Complaint

REQUEST FOR DECISION ON AN EXPEDITED BASIS

The Postal Service has both adopted and implemented the new rules, which will go into effect on December 1, 2011, unless the Commission acts.

Complainants fear that on December 2, 2011, the Postal Service can instantly convert thousands of the current independent post offices that it is now reviewing for closing into stations and branches without a hearing, and then subsequently close those stations and branches without affording the citizens of those communities appeal to the Postal Regulatory Commission. That will not only prejudice Complainants interests, but it will also prejudice the interests of millions of Americans that are served by local post offices.

Indeed, the Postal Service could conceivably determine that there is but one official Post Office in the country, and thus make every other retail facility a station and branch of that post office. Further, the Postal Service could conclude that those stations and branches were to be managed under the supervision of just one postmaster for all the United States, the Postmaster General of the United States.

These possibilities were surely not within Congress' intent in either 1976 or 2003 when it passed the post office closing procedures in the Postal Reorganization Act Amendment of 1976 and the Postmasters Equity Act in 2003. Indeed, the passage of the Postal Reorganization Act Amendment of 1976 was accompanied by a one-year

moratorium on the closing of post offices, a fact highlighted in President Ford's signing statement. Gerald R. Ford: "Statement on Signing the Postal Reorganization Act Amendments of 1976." September 24, 1976. Online by Gerhard Peters and John T. Woolley, The American Presidency Project.¹

Complainants respectfully request that the Commission review this matter on an expedited basis and issue a decision prior to December 1, 2011, or, in the alternative, to place a Stay on the implementation of the Final Rule, 76 Fed. Reg.66184 (October 26, 2011), until such time as a decision can be made in this matter.

Respectfully submitted,
ROBERT J. BRINKMANN
HAROLD J. HUGHES
MICHELLE BUSHMAN

by: /s/ Robert Brinkmann
/s/ Hal Hughes

Counsel for the National League of Postmasters, the National Association of Postmasters of the United States, and the individual Complainants.

Law Offices of Robert J. Brinkmann LLC
1730 M St. N.W. Suite 200
Washington, D.C. 20036
202-331-3037; 202-331-3029 (f)
robert.brinkmann@rjbrinkmann.com

Ford & Huff LC
10542 South Jordan Parkway, Suite 300
South Jordan, UT 84095
801-407-8555
hal.hughes@fordhuff.com
michellebushman@fordhuff.com

November 2, 2011

¹ <http://www.presidency.ucsb.edu/ws/index.php?pid=6366#axzz1cUVx4AXF>