

Before The
Postal Regulatory Commission
Washington DC 20268-0001
26 July 2009

In the Matter of:
Post Office at
Hacker Valley, West Virginia 26222-9998
(Retha Hinkle Casto, Petitioner)

Docket No. A2009-1

Pursuant to the Postal Regulatory Commission Order No. 238, issued July 6, 2009, I, Lance McDermott, wish to file a notice of intervention in accordance with 39 CFR 3001.111(b).

Pursuant to *Interboro Contractors, Inc. v. NLRB*, 157 N.L.R.B. 1295 (1966), *enf'd* 388 F.2d. 495 (2d Cir. 1967), 90, finding that an individual employee's attempt to enforce provisions of a bargaining agreement constituted concerted activity, even though the employee acted solely on his own behalf, because the effort was directed at a goal shared by other employees. (Also see *Allied Cushion Co.* 221 N.L.R.B. 999 (1975) 90.) I do represent other U.S. Postal Service Employees and the American Public's Interest.

Controlling Statutes:

United States Constitution Amendment XIV Section 1. - "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Postal Accountability and Enhancement Act of Dec. 20, 2006, Public Law 109-435:

Title 39 section 101 - "(g) In planning and building new postal facilities, the Postal Service shall emphasize the need for facilities and equipment designed to create desirable working conditions for its officers and employees, a maximum degree of convenience for efficient postal services, proper access to existing and future air and surface transportation facilities, and control of costs to the Postal Service."

Section 403(3) - "To establish and maintain postal facilities of such character and in such locations that postal patrons throughout the Nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services."

Section 404(d)(3) - "Any determination of the Postal Service to close or consolidate a post office shall be in writing and shall include the findings of the Postal Service with respect to the considerations required to be made ..."

Section 2002 (d) - "After the commencement of operations of the Postal Service, the President is authorized to transfer to the Postal Service, and the Postal Service is authorized to transfer to other departments, agencies, or independent establishments of the Government of the United States, with or without reimbursement, any property of that department, agency, or independent establishment and the Postal Service, respectively, when the public interest would be served by such transfer."

39 CFR 273.1 - "This part establishes procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 USC 3801-3812) against any person who makes, submits, or presents, or causes to be made, submitted, or presented, a false fictitious, or fraudulent claim or written statement to the Postal Service." 273.2 (a) "Claim means any request, demand or submission." 273.3 (i) "is false, fictitious, or fraudulent or (ii) Includes or is supported by any written statement asserting a material fact which is false.."

Title 39 section 778.4 (a) - "The Postal Service provides opportunities for consultation by elected officials of those state and local governments that would be directly affected by the Postal Service's facility project plans..." 778.8 (a) - "Except in unusual circumstances, the Postal Service gives state processes or directly affected state, areawide, regional and local officials and entitles: (2)

At least 60 days from the date established by the Postal Service to comment on proposed facility projects actions..."

Title 39 section 2802 Strategic Plans (d) - "When developing a strategic plan, the Postal Service shall solicit and consider the views and suggestions of those entities potentially affected by or interested in such plan, and shall advise the Congress of the contents of the plan."

Title 39 section 2803 Performance Plans (a) - "The Postal Service shall prepare an annual performance plan covering each program activity set forth in the Postal Service budget..."

Title 39 section 2805 Inherently Governmental Functions - "The functions and activities of this chapter shall be considered to be inherently Governmental functions. The drafting of strategic plans, performance plans, and program performance reports under this section shall be performed only by employees of the Postal Service."

Title 39 section 3691 Postal Service Plan (c)(5) - "Existing efforts - Effective on the date of this Act (Dec. 20, 2006). the Postal Service may not close or consolidate any processing or logistics facilities without using the procedures for public notice and input consistent with those described under paragraph (3)(d)." (3)(d) - "procedures that the Postal Service will use to - (i) provide adequate public notice to communities ... (ii) make information available... (iii) afford affected persons ample opportunity... (iv) take comments into account in making a final decision."

Title 5 section 504 Congressional Findings: Section 202 of title II of Public Law 96-481 provided that - "(a) The Congress finds that certain individuals, partnerships, corporations, and labor and other organizations may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings."

Title 5 section 702 - "A person suffering wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof."

H. R. 2177 - "To establish certain requirements relating to area mail processing studies (1) the term 'AMP study' means an area mail processing study (as further defined in

any manual or handbook prepared by the Postal Service) which relates to consolidating the operations of 2 or more postal facilities; and (2) the term 'Postal Service' means the United States Postal Service. (b) Preservation of Status Quo Pending Completion of a Study- The Postal Service shall ensure that no reduction in the workforce of, and no removal of equipment from, any postal facility occurs during the period beginning on the date on which an AMP study is initiated in connection with such facility and ending on the earliest of-- (1) the date on which such study is completed..."

Postal Operations Manual 123.612 - "Under 39 United States Code (U.S.C.) 404(b), any decision to close or consolidate a Post Office must be based on certain criteria. These include the effect on the community served; the effect on employees of the Post Office; compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where Post Offices are not self-sustaining; the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply."

123.634 - "The district manager, Customer Service and Sales, must gather and preserve for the record all documentation used to assess the proposed change."

123.661 - "The vice president, Delivery and Retail, or a designee, must review the proposal of the district manager, Customer Service and Sales. This review and the decision on the proposal must be based on and supported by the record developed by the district manager."

123.665 - "Copies of each Final Determination and each disapproval of a proposal by the district manager, Customer Service and Sales, must be placed on file in the Postal Service Headquarters Library."

ISSUES:

1. The effect on the Community:

1989, GAO report GGD-89-11, - "The U.S. Postal Service (USPS) manages approximately 35,000 buildings nationwide... USPS policy requires specific coordination within community involved in a forthcoming facility relocation to minimize concerns and prevent potential delays in acquiring new postal facilities..." (This lawful requirement was established in USPS Memorandum Establishing Coordination Procedures, 16 March 1988.)

1996, GAO report GGD-96-129A - "...The Service is taking steps to upgrade many post offices and make them more accessible to customers. However, the 1970 Act contains detailed criteria and procedures that the Service must follow to close a post office, such as announcing a proposed closing and providing time for anyone affected to appeal the action to the Postal Rate Commission..." note 3 - "Of the 39,149 post offices operated in fiscal year 1995, 10,757 were small stations, branches and community post offices." - "... Between April 1993 and November 1995, after the Service had largely completed a downsizing effort, overall postal employment (career and noncareer) grew by about 10 percent, from 782,000 to 885,000 employees." (Note: 30 Percent of Postal facilities are not revenue producing Post Offices.)

September 1999, Statement of Gordon Creed Deputy Assistant Commissioner GSA, before the subcommittee on Government Management - "In July 1985, GSA and the Postal Service entered into an Agreement that covers the transfer, exchange and disposal of real property. The Agreement established procedures for the Postal Service to notify GSA of Postal real property that was on longer needed for its purposes, I.E. excess to its needs. The Agreement covered real property that is excess to the Postal Service for purposes of ownership yet remains encumbered by existing tenant agreements

2001, OIG Report FA-AR-01-001 - "The audit found Facilities Service office personnel did not always prepare required Decision Analysis Report modifications ... However, they circumvented this regulation and approved the transfer through a revised project authorization form."

2002, Congressional Research Service Report for Congress, page 7, **Inadequate information** - "GAO, the PRC, and the USPS Inspector General (IG) have each expressed frustration at the paucity of information USPS makes available that would allow those outside the service to analyze its financial condition and evaluate ways to improve it. Unusually for a government entity ... GAO has questioned whether USPS has 'reliable performance and cost information to effectively realizing anticipated cost savings' ... The IG testified before the House Government Reform Committee on April 4, 2001 that USPS lacked information to justify major investments ..."

2003, Comments to the President's Commission on the USPS submitted by Ruth Y. Goldway, Commissioner Postal Rate Commission - "... We all await detailed plans (not just the

promises) to consolidate facilities and close unnecessary facilities... Privatization also is a means for the U.S. Government to recover the assets it gave away for free in 1970 to the current postal corporate entity. In a sense, those assets have been parked in escrow while the USPS has been given the free use of them... While there are 38,000 post offices... the Postal Service should be privatized or contracted out so that cash from the increased value of long-held properties could be generated or lease revenues maximized. The long-term strategic value of the USPS retail network and its community support function need a thorough analysis..."

2003, USPS Five-Year Strategic Plan, Network Optimization and Facility Utilization, page 42 - "The Postal Service's investment in computer-based network modeling has been important step forward in developing an understanding of system capacity and capabilities. The knowledge gained will serve as a critical tool in the decision-making process that will determine the shape, scope, and operational vision of the 21st century postal system." Facilities, page 52 - "... The Postal Service's facility-related requirements are currently being evaluated and prioritized with the particular focus on high growth areas, facility obsolescence, and necessary maintenance on real property assets."

2004, USPS Handbook PO-101 Post Office Discontinuances, 121 Independent Post Offices - "Under Title 39, USC, section 404(d), any decision of close or consolidate a Post Office must be based on certain criteria... In addition, certain mandatory procedures apply: a. The public must be given 60 days notice... b. Final determination to close or consolidate a Post Office must be made in writing... c. Any customer served by the effected Post Office may appeal ..."

2004, GAO report 04-803 USPS Needs to Clearly Communicate how Postal services May Be Affected by Its Retail Optimization Plans - "USPS's retail optimization involves tailoring services to communities needs and replacing 'redundant, low-value access points with alternative access methods'... However, USPS needs to provide additional transparency and accountability mechanisms to better communicate its retail optimization plans and raise stakeholders' confidence that decisions will be made in a fair, rational, and fact-based manner... USPS stated in its Transformation Plan that the objective of its retail network optimization initiative is to tailor retail services to the individual needs of the communities..."

Specifically, customers have raised issues about how their access and convenience to services may be affected; employees have raised issues about how their jobs and compensation may be affected; and some Members of Congress are concerned ..."

2006, Strategic Plan, page 15 Facilities - "A new program to increase revenue from the disposition of excess properties was established with a goal of \$2.2 billion in revenue over the next 10 years." page 16, Evolutionary Network Development - "... A Network Alignment Implementation office was created at Postal Service Headquarters to direct network transition activities and coordinate the development of individual site plans for operational changes such as staffing, equipment, expansion, and mail flow and distribution changes..."

2007, GAO report 07-717 Mail Processing Realignment Efforts Under Way Need better integration and Explanation, page 44 Conclusion - "In our report 2 years ago, we concluded that USPS did not have answers to important questions about how it intended to realign its mail processing networks. This conclusion still holds today... USPS remains unable to demonstrate to Congress and other stakeholders the costs and benefits of these initiatives ... Stakeholder concerns related to the lack of clear and useful notification to stakeholders, coupled with lack of public input and transparency into USPS's AMP consolidation decision making, have contributed to public frustration with USPS's communication regarding its AMP consolidation decisions. USPS is currently developing Facilities Plan, mandated in legislation passed in December 2006, explaining how the network will be realigned and outlining how USPS will interact with stakeholders in making any changes...."

July 2007, the US District Court for the District of Columbia in APWU v. USPS, Civil Action No. 06-726 (CKK), in it the Union alleged that USPS violated 39 U.S.C. Section 3661 of the Postal Reorganization Act in developing the USPS' Evolutionary Network Development (END) program without the Postal Rate Commission's approval. The Court found that the claim - "is clearly moot unless USPS' alleged violation of Section 3661 is capable of repetition, yet evading review. The capable of repetition, yet evading review exception to the mootness doctrine applies where '(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable exception that the same complaining party would be subject to the same action again.' Weinstein v. Bradford, 423 U.S. 147, 149, 96 S.Ct. 347, 46L. Ed. 2d

350 (1975)."

September 2007, USPS Extended Retail Hours Plan - "We will preserve and grow our retail package business market share if we meet customer's expectations... This will translate into increased revenue and improving customer satisfaction. This should improve such indicators as wait time in line, retail revenue %plan, retail alternate access points, retail effectiveness, and retail customer satisfaction measurement as measured by National Performance Assessment."

December 2007 GAO report 08-41 - "To address the challenge of capturing and maintaining accurate facility management data, the Postal Service developed the Facility Database, but the database does not conform to the Postal Service's goals or to leading federal practices; specifically, it does not include data needed to measure performance on managing facilities or have the capacity to track such data over time... In addition, major Postal Service departments do not use the database as a consolidated data source for managing postal facilities."

2007, Supply Management investment Recovery Plan, Page 4 - "3. Ensure investment recovery is included in the development of a standard plant closing plan and plant consolidation plan (including post offices and facility plan). 6. Develop a revenue and expense model to include cost of operation; i.e. transportation, warehousing, packing, finance, data collection and labor costs."

2008, GAO report 08-1022T - "In its June 2008 Network Plan, USPS clarified how it makes realignment decisions, and generally addressed how it integrates its realignment initiatives. However, USPS has not established measurable performance targets for its realignment initiatives... Going forward, it will be crucial that USPS establishes and maintains an ongoing and open dialogue with stakeholders... who have questions or are concerned about the proposed realignment changes."

April 2008, USPS Contract Postal Unit Training Course #41201-14 - "A community Post Office (CPO) is a contract postal unit that provides postal services in small communities where an independent Post Office has been discontinued... A public service firm-fixed price contract is based on a supplier's written proposal to the Postal Service to operate a CPU for community convenience or business reasons. Payment under this firm-fixed rate contract may not exceed \$100 per year." (Not based on a

Postal Service proposal/plan?)

April 2008, USPS Retail Optimization Access Management (ROAM) User's Guide - "This guide is intended to instruct a user on how to use the Retail Optimization Access Management web application... The use of CPUs offer a quick, easy, and convenient solution to an area lacking a postal retail presence..."

June 2008, USPS Section 302 Network Plan V. - "The Postal Service is committed to continuously improving the quality and functionality of its retail network, with a focus on providing customer convenience... Future retail network initiatives will be developed based on market research and an assessment of customers needs... M. Conclusion - Customer service is the heart of the United States Postal Service brand, and is the key to increase competitiveness."

August 2008 OIG report SA-AR-08-011 - "Postal Service management did not make a prudent investment decision when they renewed the Regatta Annex lease for 5 years. Management in the Pacific Area and Bay Valley District renewed the lease although the facility was not needed for future Postal Service operations."

26 January 2009, Des Moines, Polk County, Iowa, Roll Call Number 09-111 - "WHEREAS, the Airport received notice in December that USPS will be terminating the lease effective January 31, 2009; and WHEREAS, it is in the best interest of the city to approve Amendment No.2 adjusting rents in the lease and setting the termination date of January 31, 2009..."

10 June 2009, PalmBeachDailyNews.com - "Palm Beachers will still be able to buy stamps, ship packages and maintain a post office bow somewhere in the immediate neighborhood in and when the USPS sell its main island branch at North County Road and Royal Poinciana Way. That was the message from David Ashley, real estate specialist for USPS.. Ashley said the Postal Service has identified some locations it might be interested in leasing, but is not divulge the sites... The Town Council designated is as a landmark in February..."

11 June 2009, Chantilly, VA, Johnston McLamb _ "Steven Pierce, Geospatial Business Manager, Johnston McLamb, discussed the methodology and frame work that Johnston McLamb developed to implement a location-based intelligence system for USPS, and related geospatial solutions that are

helping USPS effectively manage and optimize its large inventory of facilities." PSC member Johnston McLamb Case Solutions \$14,732,574 information technology CMC.

The Postal Service is required by law to inform the Public that it is considering closing a Post Office or facility it must hold Public/Employee meetings, perform studies, analysis, measurements, plans, that show cost savings and issue a written final determination that it will close/not close a facility. The Postal Service has spent millions of dollars on computer based applications to make it easier to perform the detailed studies needed but does not have the personnel capable of using them and contracts out the work. Management at best can only write Requirements for a contract that requires the one desiring the contract to write their own proposal.

PRC Docket No. A2009-1, USPS Motion to Dismiss Proceedings is based on "has not initiated a discontinuance study or issued any final determination to close the Hacker Valley Post Office." This shows a "Due Process" failure on the part of the Postal Service that would open it to a possible Civil Suit in Federal Court. "The suspension began on June 30, 2009, after the lessor of the property housing the Hacker Valley Post Office declined to renew the lease for the Postal Service..." The Postal Service has in effect has conceded their lawful responsibility for the closure

process and final determination for Federal Facilities to the private owner of the property.

Indy.com 22 Jun 09 - "After 30 years in the same location, the Nora branch of the U.S. Postal Service will close, asid Donna Hoffamn, USPS spokeswoman... It's my understanding that Target owns the land and they are not renewing our lease."

San Jaun Islands Travel Examiner 14 Jun 09 - "In September 2008, word circulated that the landowner of the post office property in Deer Harbor, Wyndham Worldwide, had Decided not to renew the lease with the US Postal Service. Postal Officials in both Seattle and Denver offices explained that there was not money... However, when questioned, the USPS indicated that if the community found a property, and paid for its renovation, they might reconsider... The committee had repeatedly asked the USPS for property specifications, but they were never given any."

Post-Gazette.com 2 Jun 09 - "The U.S. Postal Service has notified customers in Harmony, Bulter County, that it will suspend operations in the post office there ..."

Cumberland Times News 13 Apr 09 - "The lease for the Luke Post Office building expires April 30 and the Postal Service has decided not to renew the lease, said Freda Sauter, spokeswoman for USPS district base in Baltimore..."

Tulsaa WEorld 4 Apr 09 - "It appears the U.S. Postal

Service will close the Whittier station post office despite a survey indicating the vast majority of survey respondents oppose its closing... Beth Fisk, who handles customer relations for the Postal Service in Tulsa, did not return telephone calls."

YourMurrysville.com 5 Mar 09 - "... Plans to replace the Export post office, which closed after its lease expired in June, have stalled because of the economic downturn... Jane Rahenkamp, marketing director of the postal service, said the contract postal unit likely is the only option

City of Aliso Viejo News Feb 09 - "... City officials are elated but still cautious and reluctant about the Postal Service's decision to not move forward. During the City's drawn-out battle to stop the USPS from moving forward with its plan, City officials were told certain things by Postal Service staff that turned out to be false.... The City is grateful to the public for its support... With so many errors and omissions, the document fails in its primary purpose' - to inform the USPS and public about the impacts..."

Southern Maryland Online 10 Feb 08 - "... 'In recent days, Capital district officials reviewed this matter and concluded that the Broomes Island Post Office will maintained at it current location at this time,' wrote Mitch King, the government relations manager for the USPS 'this

determination largely was based upon community comments and adequacy of the present facility.' "

The Pelham Weekly 10 Aug 07 - "The Village of Pelham released a copy of a letter from the U.S. Postal Service received Aug 13 announcing that the Pelham branch will close on Aug 31 because it could not agree on continuing its month-to-month lease at its location..."

12 July 2007, Pittsburgh Post-Gazette - "The bad news for Carnegie is that the USPS is not interested in continuing ownership of its landmark post office building on East Main Street in the heart of the borough... and relocate into leased space... 'They don't want to own buildings anymore is what they said,' reported Carnegie Council member Dorothy Kelly, who attended the private meeting"

The record shows that when the Postal Service closes, suspense, discontinue, or what ever wording it uses to close a facility it does so to mask its unlawful actions. Unaccountable Independent Contractors running Contract Postal Units (CPUs) and their Customers (the Public) cannot sue the Postal Service if injured. The Independent Contractor leases from the very same private property owners that the Postal Service "lost" its lease from and probably at a higher cost. Looking at the Public Service Contract for a CPU is capped at \$100 per year it would seem that the

Postal Service is looking for volunteers. In forcing CPU contractors to use the better paying Minimum-Rate-Based Contracts the Postal Service is at the same time steering lease contracts for the CPUs to Private Individuals using Federal dollars.

The Postal Service cannot show that their actions followed Due Process with the Hacker Valley Post Office or any other facility nor that it was fair, reasonable and/or to save the Public, who own what is left of the Postal Service, any money.

2. The effect on employees:

Title 29 section 401 Congressional declaration of findings, purposes and policy - "... (b) protection of rights of employees and the public; ... The Congress further finds, from recent investigations in the labor and management fields, that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures of observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public..."

Richard Jackson vs. USPS, EEOC No. 01923399, 12 Nov 92, in the Analysis and Findings - "It is the cardinal principle of statutory interpretation the courts are required to give effect to every clause and word of a statute if possible..." "The Commission's federal sector case precedent has long defined an "aggrieved employee" as one who suffers a present harm of loss with respect to a term, condition, or privilege of employment for which there is a remedy. Diaz v. Department of the Air Force, EEOC Request No. 05931049 (April 21, 1994)."

9 August 2002, letter from USPS CFO Patrick Donahoe to the Unions - "In order to decrease the number of unfair labor practice charges, I would like to take this

opportunity to reaffirm the general principle that the unions are entitled to all relevant and necessary information to perform their obligations as the representative of bargaining unit employees." (exhibit 34)

January 2003 GAO report 03-205 Employee Issues Associated with the Potential Closure of the San Mateo IT Center - "... USPS plans to offer job assistance to management employees seeking nonpostal jobs. However, USPS does not plan to offer job assistance to union employees because such assistance is not covered by their collective bargaining agreement... The Investment Review and Approval Process requires that a Decision Analysis Report (DAR) be prepared as support for the investment. Additionally, the process requires that key senior postal executives approve the DAR... these approvals are the final steps in its Investment Review and Approval Process... plant and facility closures occur throughout the nation and generally result in negative economic and social impacts on employees and their families."

2006 Strategic Plan -page 31 - "Each day managers in more than 29,000 Post Offices..." page 41 - "Complement and workforce related indicators are carefully tracked using the WebCOINS application which provides local management with timely and accurate complement information." (Note: The Postal Service does not know how many facilities it has (33,000-37,000) or how many are Post Offices.)

June 2007 GAO report 07-717 Mail Processing Realignment Efforts Under Way Need better integration and Explanation, Footnote 38 - "According to USPS officials, communication requirements would be modeled after the Worker Adjustment and Retraining Notification Act, Pub. L. No. 100-379 (29 U.S.C. 2101, et seq.)."

July 2008, Deputy Postmaster General Patrick R. Donahoe before the Subcommittee on Federal Workforce - "The Network Plan establishes continuous improvement... When it considers potential operational consolidations, the Postal Service carefully evaluates the impacts on both service standards and customer service... Moving forward on these necessary network changes would be impossible without the commitment of our employees, the Postal Service's most valuable resource. We are sensitive to the impact that network rationalization could have on our employees who work in affected mail processing plants..."

5 April 2009, APWU union letter - "Many clerks have been asking me what is the latest information on management's

plans for the Clerk Craft due to the projected closing of the AMC and due to the decline in mail volume. Management hasn't provided or discussed any specific plans for any clerk craft changes, abolishments, or excessing, etc. The union has requested all documentation and plans, but as of today management hasn't provided any details for the closure of the AMC."

In June 2009 the Postal Service moved to close the Seattle SeaTac Air Mail Center (AMC) without conducting an Area Mail Processing (AMP) Study (June 2008 Network Report to Congress, USPS Handbook PO-408). It denied the Union copies of the Collective Bargaining Agreement (CBA) Article 32 considerations. It did so without a Final Agency Decision (legal authority) showing the need to close the facility. The Postal Service closed all the AMCs without the required Area Mail Processing Study and costs savings analysis, studies, Public/Union meetings before making the Final Agency Determination. The Postal Service years before contracted out the Terminal Handling Services (THS) to minimum wage non-union (strike) workers at all of America's airports for sensitive (safety/security) core work (at the time) AMC Postal Employee processing, sorting and loading the airplanes. The Postal Service did so without the required vote of the Board of Governors for a program worth over \$100 million. This affected thousands of Employees across the nation denied their "Due Process" rights. (See Lance McDermott v. USPS, Western District of Washington, Seattle, Case No. C09-776RSL)

Further consideration of other unlawful actions:

Federal Property and Administrative Services Act of 1949 section 313, enhanced at Title 41 Section 204 directed - "that proceeds of the sale of Federal property must be set aside by GSA in a separated special fund in the Treasury (40 USC 485)."

Section 263 - Public Contracts, established Congressional Policy that "the head of each executive agency should achieve, on average, 90 percent of the cost, performance, and schedule goals established for major acquisition programs of the agency. (A) relates pay to performance." (c) IDENTIFICATION OF NONCOMPLINANT PROGRAMS (2) Identify suitable actions to be taken, including termination, with respect to such programs."

Title 41 Section 205 (40 USC 486) (a) - "The President may prescribe such policies and directives, not inconsistent with the provisions of this Act, which policies and directives shall govern the Administrator and executives agencies in carrying out their respective functions hereunder."

Title 40 section 524; - "(5) transfer or dispose of excess property as promptly as possible in accordance with authority delegated and regulations prescribed by the Administrator." Title 40 section 542; - "The disposal of surplus property, and the care and handling of the property pending disposition, may be performed by the General Services Administration or, when the Administrator of General Services decides, by the executive agency in possession of the property or by any other executive agency that agrees." Title 40 section 571; - "(1) In general - Except as otherwise provided in this subchapter, proceeds described in paragraph (2) shall be deposited in the Treasury as miscellaneous receipts." Title 40 section 572; - "(4) Report - A report of receipts, disbursements, and transfers to miscellaneous receipts under this subsection shall be made annually, in connection with the budget estimate, to the Director and to Congress."

Title 40 section 3304, requires that the GSA Administrator and the Postal Service to act "jointly" in selecting public buildings. Further, section 3304 requires

that the select site be "most advantageous to the Government". Presidential Directive under Title 40 section 121, also requires that the Administrator of General Services "Issue regulations, periodically undertake surveys and ensure cooperation with the heads of Executive agencies."

GAO report GAO/PLRD-82-79 (1979) found that - "leasing as is should only be allowed in unusual situations and should be supported by a written determination".

1996 GAO report GGD-96-59 - "...Problems with real estate transactions were apparently due to shortcutting important integrity safeguards through a mistaken sense of urgency... The purchase was seriously misrepresented before the Board of Governors; including erroneous information ... The Postal Service paid \$12.5 million to the seller who had acquired the building for \$4 million earlier the same day..."

Statement of Tom Samra, VP Facilities, before the Subcommittee on Federal Financial Management, 6 Feb 06, - "With more than 34,000 Post Offices, processing plants, vehicle maintenance facilities, and administrative offices, this requires flexibility, responsiveness and a sharp eye on the bottom line. Some 26,100 of these facilities are leased, and 8,400 are owned."

Presidential Directive 13423, set the goals of Federal agencies to ensure that new construction comply with the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings set forth in the Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding (2006). Further, under the General Provisions the heads of Executive agencies shall cooperate with the Administrator and that federally

owned or leased facilities shall conform to the provisions of this Order.

Under the Reorganization Plan of 1950 incorporated in Title 40 section 301, to establish:

"...far-reaching changes which directed the released of rented buildings and greatly reduced the cost of the Government establishment. Similar procedures applied in the larger center of field activity should produce substantial savings."

- President Harry S. Truman

Remarks by Postmaster General John E. Potter to the Presidential Commission on the USPS, 8 Jan 03, - "The net result is \$15 billion in annual worksharing discounts for our customers and less investment in buildings and equipment for the Postal Service. The point is the Postal Service made a strategic decision not to own everything."

In 1970 Congress gave the Postal Service several billion dollars in Public Assets of facilities and equipment owed by the Public in Trust with GSA used by the former Post Office Department. Before 1970 the GSA owned 27,000 postal facilities that Congress told GSA to handover the title to the Postal Service pursuant to the Postal Reorganization Act.

The Comptroller General report to the Subcommittee on Treasury, Post Office, and Executive Office Committee on Appropriations United States Senate, March 1971, found that - "decisions as to whether to construct or lease a facility would based on the evaluations made...".

Executive Order 11672, 6 Jun 72, 37 F.R. 11455, Title 39 section 2002, conferred to the GSA and the Director of OMB that property transferred to the Postal Service at fair market value - "unless a different basis of valuation is more equitable or better serves the public interest."

USPS OIG report CA-MA-07-003, Background - "The OIG and the Supply Management Facilities Portfolio (SMFP) entered into an agreement on February 3, 2006, to develop and conduct work focused on the Facilities Service Offices' (FSO) use of the Parsons' indefinite quantity contract (# 512582-03-B-0005). The goals of the Value Proposition are to: 1. Assure suppliers and responsible Postal Service personnel abide by the terms and conditions of the contracts and Postal Service regulations. 2. Reduce cost and ensure the efficiency and effectiveness of the contracts. The SMFP mission is to provide purchasing leadership for major facilities projects... The SMFP is responsible for purchasing construction and design-build services for projects approved by the Board of Governors... However, Pacific FSO personnel did not always maintain complete work order files in accordance with Postal Service policy... However, the Parsons contractor was permitted to incur extra and unnecessary travel costs at the expense of the Postal Service... Specifically, of the 148 work order files we reviewed, 59 did not have appropriate signatures. According to FSO management, work order files were not complete due to a shortage of personnel and paperwork was not all in one place or had been misfiled. However, the FSO is in the process of hiring additional staff. Also, the FSO personnel received approval from SMFP officials to divert from contract terms and use 'draft' work orders for similar type of work at multiple facilities. The work order files reviewed totaled \$8.4 million, and at the time of our review, we found that the files not consistently maintained accounted for 77 percent of total dollar value (or \$6.5 million)... Appropriate approving signatures were missing on 59 work orders in the contract files... Review and approval of the work order is critical in assuring that the work contracted will be done correctly and according to policy... the Parsons contractor was permitted to incur extra and unnecessary costs at the expense of the Postal Service."

The contract with Parson's Inc, was for \$900 million over ten years. \$900 million because the Postal Service cannot do the job Congress gave it to manage its own facilities. The 2004 Area Budget Targets shows \$5,482,096 projected for additional growth of facilities. The Postal Service is spending \$90 million a year for a planning

contract for \$5.5 million (one facility worth) a year spent on new facilities.

OIG report CA-AR-07-003, 2007, Postal Service Facilities Maintenance and Repair Costs, - "The FSOs accomplish the majority of the Postal Service facilities program work. This includes planning, leasing, purchasing, designing, and constructing facilities to house postal operations. Organizational administration, policy and procedure development, and realty asset management functions were administered from Facilities' headquarters. Now the FSOs are administering these functions... The Postal Service spends less than the national average for repairs and alterations of its facilities than similar businesses. 2 During the audit we also noted several accounting issues related to the recording of line 3B expenditures. We noted expenses that should be recouped from the landlord through rent reduction instead of being expensed. We also noted lease support expenses that were recorded on line 3B because there were no other expenditures lines available for recording this.. Generally, the Postal Service does not perform inspections or preventative maintenance of customer service facilities to prevent unplanned repairs and alterations. According to Postal Service officials, the FSOs do not have the manpower or the resources to perform the required inspections. Additionally, facilities personnel do not think local building managers possess the expertise to conduct the inspections. In an effort to address these issues, Facilities Management initiated a pilot program with the Logistics Management Institute (LMI) to conduct inspections of Postal Service customer service facilities. To enhance this program, the Postal Service hired contracted building inspectors and held formal training in March 2007..."

USPS Facility Contract Manager, Rudy Umscheid, since 1993 when he was given blanket authority, has given out 5,934, non-competitive Real Estate Contracts with a value of - \$862,800,000 with no review or accountability.

2001, Direct testimony of William P. Tayman JR., General Manager Office of Accounting, before the PRC docket number R2001-1, on page 55 (e) Postal Service Assets Do Not Protect Against Financial Risk - "The only real source of long-range financial security is equity. But this is

instead a source of concern for the Postal Service because our equity is negative estimated to be \$6.7 billion below its starting value going into the test year... page 67 (j) Recovery of Prior Years' Losses - At this point, prior years, losses have entirely consumed the Postal Service's equity. ... The BOG adopted Board Resolution 95-9. This directs the Postal Service to plan for net incomes of a rate cycle which cumulatively will result in recovery of prior years' losses... The Postal Service is committed to restoring past losses, as the Board affirmed in that Resolution." (Mr. Tayman stated on page 46 that the Postal Service would need to add 40 new facilities a year at \$5 million a facility to meet the network growth.)

Federal Facilities

\$5 million (new facility cost) times the 17,000 facilities sold by the Postal Service is \$105 billion in equity lost (Public Trust) for Federal Buildings. The Postal Service commonly depreciates the value of facilities before selling them below market value and then leasing at a higher rate to "give back to the community". The Service has sold 277 facilities a year for the last 39 years. The Postal Service leases 28,536+ (73%) buildings and/or land. That is leasing 717 a year for 39 years. In comparison the Federal Government through the GSA owned 411,000 Buildings and leased 45,000 buildings which is 11% leased in 2004. The Postal Service has stated the goal is to raise \$2.2 billion by selling the remaining facilities placed in its Public Trust and count it as revenue that is diverted to private individuals through leases, contracts and discounts. The Board of Governors did not vote on this "strategic decision".

The Association of United States Postal Lessors (AUSPL) is the largest association for postal lessors, currently serving more than 3,500 members nationwide since 1981. Some members (millionaires) owned 80-175 (Dawn Bowman) properties that are leased to USPS. One member Rick Austin handles the insurance for more than 7,000 properties valued at over \$2.8 billion. Lawrence Schlager was instrumental in getting the Postal Service to assume responsibility for maintenance and taxes easing the burden of lessors by reducing a proportional share of the base rent. The AUSPL Subcommittee presented its recommendations (slated view) to the President's Commission on USPS relating to the consolidation and rationalization of the mail processing and distribution infrastructure. - "... Further, the Subcommittee strongly encourages the Postal Service to use its current statutory flexibility to dispose of real estate assets to strengthen the Postal Service's long-term financial position."

3,500+ contract builders and facilities managers working for the Postal Service under the table padding their own pay checks at the cost of billions of Public Trust dollars from American (full rate) Payer.

American Postal Owners.com - "Yes, you can own a post office building and the land it occupies and/or buy just the land in some cases (called a land lease) that is rented to the United States Postal Service! The best thing is that the

rental income is backed by the U.S. Government! ... If you already invest in and own leased U.S. Postal Service Property would you like to buy more? Would you like to sell the ones you own? ... There is a link to get all your transfer documents if you buy a post office... Would you like to see a list of Post Office Closures, ... For those of you who might be confused about how you can profit from owning a leased U.S. Post Office property... The tax advantage of being able to keep your profits... When the US Postal Service decides they need a post office building but there is no suitable existing space they send a site person to the area and the person then takes an option to buy the land. Then through a bidding process a contractor, who has been approved by the postal service, makes a bid by filling in a blank USPS lease form with their proposed rental rates, terms and conditions. The USPS then chooses one of the builders to build the facility... However, having them as a tenant means the rent is US Government backed and guaranteed as the USPS budgets, even if in the negative, as supplemented by the Federal Government... In fact, the USPS's only real shareholder remains the U.S. government, and it has no actual board of directors other than Congress..."

PhoenixBusinessProperties.com, U.S. Post Office Building
- Investment, price: \$1,695,000, location: 3575 Main Street,

Arlington, VT.

Leasing facilities is more costly when the fact of paying property taxes is taken into account. Estimates (no one knows) are that the Postal Service is now paying 9 Billion dollars in leases each year. This would mean that \$228.6 million (2.54%) is being paid in property taxes that would not be paid if the property was owned by the Federal Agency. \$500 million in Public money is being paid indirectly by the Postal Service through business profit taxes by the property owner making excessive profits from the Federal leased. Considering that 10,000+/- facilities are not revenue producing retail Post Offices if the Postal Service simply (ordered by Congress) for little cost were to put a Post Office (counter) in every facility that they claim they have there would be 10,000 more revenue producing Post Office locations and some 1,000 24/7 operations serving the Public.

Consider the lease for the "temporary" processing facility in 1997 of the Kent, Washington, Priority Mail Annex (PMA) two year extended "non-breakable" lease in 2008 at \$7.52sqft that included a \$158,768 Common Area Maintenance (property tax) charge and \$5,000 appraisal fee. The \$5,000 Appraisal Fee times the 27,000 leases is \$135,000,000 (every two years) for unneeded and not normal for commercial lease appraisals (kickbacks). Compare it to

the \$1.02sqft with no taxes or appraisal charges that the Postal Service is still paying for the land the vacant Air Mail Center (AMC) building (USPS owned) sits on. Compare the SeaTac AMC lease to the Air Mail Facility (AMF) Terminal Handling Service (THS) contractor building subleased by USPS for \$15.67sqft and it would show that these decisions are not being made in the Public's Interest.

The Postal Service misrepresented to Employees and the Mayor of SeaTac that the Port of Seattle (owns the land) would not re-new the 55 year lease for the AMC that expires in 2030. Further, the Seattle District Manager Katharine Nash wrote to the City of SeaTac Mayor that the Postal Service did not have to hold a Public meeting before making the decision to close the AMC or the 24/7 Retail Postal Office also formerly located at the SeaTac Airport.

AMC Employees injured include senior day shift employees some who had been on day shift for over twenty years forced to a graveyard shift. While I know of no former day shift AMC Supervisor or Manager assigned to graveyard.

I work in the Kent PMA that has no air conditioning like the AMC or secure employee parking. The Kent PMA is located between a river and wildlife wetlands. The employees suffer constant mosquito bites with a bit of West Nile Virus and other health worries.

Former USPS Executives Insider Trading

Further, former Postal Service Executives, who do not understand what a Life-Time-Ban is, are using their insider knowledge to enrich themselves and others. These former Executives whom had approving authority for these public property sales, leases, contracts, discounts, alliances and partnerships are now working for consulting firms like NGI Solutions a consulting firm that will help individuals and organizations rape (contract) more money out of the Federal Government.

NGI-Solutions website - "Founded in 2004, NGI-S' core team consists of a number of former government and U.S. Postal Service executives and staff..."

Former Postal Officer Gene Johnson developed Postal Service that was called "Mailgram - a hybrid mail system", before he left in 1980. In 1986 he co-founded with former Postmaster Bill Bolger a mail distribution company that "did not do well" and the shareholders lost all their money. Gene Johnson then co-founded with former Postmaster Paul Carlin a company called Business Mail Express that they sold in 1994. In 1996 Gene and former Postmaster Paul Carlin started a company called Mail2000 that printed cards/letters and sent them to the nearest postal processing center the same as the USPS Mailgram program. Back in 1997 PMG Marvin T. Runyon was investigated by a Grand Jury because he held \$350,000 in Coca-Cola stock when he approved their vending

machines in Post Offices lobbies. Former PMG Marvin Runyon and former USPS CFO Loren Smith joined Mail2000's Board in 2000. In 2001 Mail2000 was sold to United Parcel Service for \$100 million making these former U.S. Postal Service Executives "multimillionaires the minute they inked the deal with UPS".

In 2004 Gene Johnson and former Postmaster General Bill Henderson started AmeriNet to license information from the Postal Service to assemble a database with customer's postal addresses (non-public information) and e-mail addresses.

Today, the former Postmaster Paul Carlin sits on the board of directors of Global Envelope Alliance and was inducted in his High School's new (he paid for?) Hall of Fame for the Class of 1949.

Other former Postal Service Executives are double-dipping after getting a generous early Federal retirement (\$50,000 to move, million dollar house purchased by the government, travel expenses, discount mortgage on new home):

Wade Worldwide Inc., James P. Wade CEO, former USPS Vice President.

Former USPS Director of the Office of Government Relations, Paul Van Coverden, was named the VP of U.S. Strategies Corporation (USSC).

Alliance of Nonprofit Mailers, Executive Director,

Anthony W. Conway, former USPS Manager of Government Relations.

Direct Marketing Association, Inc., VP Government Affairs, Jerry Cerasale, former USPS Attorney and senior staff of the Postal Rate Commission.

Janet L. Webster, President of Creative solutions Consulting, LLC and Advisory Board member of Self-service Kiosk Association. Former USPS VP responsible for retail network optimization and alternate retail access policies. Janet was the executive responsible for the implementation and management (contracting) of 2,500 Automated Postal Centers (APCs) kiosks across the US at various postal locations. During her tour the Postal Service shit-canned 27,000, upgraded to accept the \$1 coin, Stamp Vending Machines worth \$109 million in Capital Property and which took in \$600 million in revenue because "they were spending \$66 million a year in maintenance". The maintenance contract to IBM for the 2,500 APCs was \$88 million a year. One of corruption scandals of the old Post Office in the late 1800's was that Post Office Officials were trashing good equipment so they could enrich others by buying more is being repeated (also see the ACE computer contracts). This former Postal Service Executive help set the Postal Service's "strategic policy" that 40% of retail Post Office revenue will be diverted to costly alternate access like the

2,500 APCs and 4,000 Contract Postal Units. In the 1930s the Post Office had scandals of Airline contractors being given Federal appointments just like what is going on now with the Postmaster hiring FedEx and UPS executives to help cash-out the Public's Interest in USPS and privatize.

Former USPS "Honors" Attorney David P. Hendel now represents Star Route Mail Highway contractors.

AFMS Logistics Management Group - "AFMS draws its insight, knowledge and information from experts comprised of former vice presidents and senior sales managers from FedEx, UPS, the USPS ..."

Former USPS VP of Public Affairs, Azeezaly Jaffer, started his own company called "globalPRpros LLC". Azeezaly Jaffer had resigned his position of USPS self-proclaimed co-branding expense-account-spending executive following an OIG report that he - "...drinking at a work function until he passed out; running up \$8,000 in extra hotel room charges, so he could qualify for a suite with a bathtub for two; following a female colleague into her hotel room, propositioning her, then passing out."

In December 2007 the Postmaster General sided with Netflix not to charge them a 17 cent fee for the DVDs that were damaging the sorting equipment. Former PMG Bill Henderson is now the new COO of Netflix and sits on the

board of directors for ComScore and Quad Graphics
"stakeholders" with the Postal Service.

Postal Executives Lobbying

In a Townhall.com news article Nov 3, 2002, - "USPS Senior Vice President Deborah Willhite resigned abruptly amid allegations she used the federal mail budget to hurt the re-election chances of Arkansas Republican Sen. Tim Hutchinson. According to U.S. News and World Report, Willhite, the postal service's top lobbyist..." (1) Former VP Willhite was involved in the closure of processing facility possibly to injure the public and did not follow the rules (due process) to do it. (2) Federal Officials cannot by law "lobby" other Federal Officials using Federal money. (3) Senate Report 106-338 - Breast Cancer Research Stamp Reauthorization Act of 2000 shows as VP of Government Relations and Public Policy Deborah Willhite with other Postal Executives lobbied Congress to - "grant the Postal Service broad authority to issue semipostal stamps of its own choosing." This lobbying of Congress would make USPS's entire Government Relations and Public Policy department and budget unlawful.

Standard of Review:

Title 5 section 2635 (11) - "Employees shall disclose waste, fraud, abuse and corruption to appropriate authorities." Section 7301 (k) - "Employees shall disclose waste, fraud, abuse and corruption to appropriate

authorities." Executive Order 12674 (11) - "Employees shall disclose waste, fraud, abuse and corruption to appropriate authorities." (Supplemental Standards of Ethical Conduct for Employees of USPS 39 CFR 7001)

Title 5 section 557 (d)(1)(A)(12) - "... violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts."

Federal Sentencing Guidelines, chapter 3 section 3B1.3 Abuse of Position of Trust - "If the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense, increase by 2 levels... For this adjustment to apply, the position of public or private trust must have contributed in some significant way to facilitating the commission or concealment of the offense (e.g. by making the detection of the offense or the defendant's responsibility for the offense more difficult)."

Conclusion:

1. The United States Postal Service is unlawfully closing Post Offices and other Facilities without the Public's or Employees' input.

2. The Postal Service is taking these unlawful actions before the feasibility study is done showing the need to close a facility and before the final agency decision is made.

3. The United States Postal Service is not maintaining in good condition its Public Trust Owned Facilities for the Public's Trust and allowing them to fall in such disrepair that it poses a hazard to Employees and the Public.

4. The United States Postal Service is unlawfully selling Real Estate held in Public Trust and is not

retaining the funds from the sale in a special Public Trust account to build or maintain other U.S. Postal Service Facilities.

5. The United States Postal Service is masking its unlawful actions diverting Public Property and Funds held in Trust to private Organizations and Individuals.

The United States Postal Service is half dead (half privatized/contracted) and dying the death of a thousand cuts inflicted by a thousand incompetent Pricks In Charge.

For the Public's Interest,

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