

OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management

MEMORANDUM OM 90-23

March 22, 1990

TO: All Regional Directors, Officers-in-Charge,  
and Resident Officers

FROM: Joseph E. DeSio, Associate General Counsel

SUBJECT: Postal Services Employee Involvement/Quality  
of Worklife Program

The American Postal Workers Union and the United States Post Office have been involved in a dispute regarding the Postal Services Employee Involvement/Quality of Worklife Program which has resulted in the filing of numerous unfair labor practice charges nationally. Regional Director Richard L. Ahearn is assisting us in coordinating these charges insofar as the charges involve national postal service policy and common issues of fact and law.

In view of the large numbers of charges, each Region should continue to docket and investigate the charges filed in their Region. A decision should be reached by the Regional Director on the merits. If a merit determination is made, the file should be sent to Region 3. The Division of Operations-Management will coordinate settlement discussions, issuance of complaint and litigation, if required.

Attached for your convenience are the Division of Advice memoranda pertinent to this issue. Novel issues should continue to be submitted to the Division of Advice prior to the Regional Director's determination.

Questions concerning this matter should be referred to your Assistant General Counsel.

J. E. D.

Attachments

cc: NLRBU

MEMORANDUM OM 90-23



UNITED STATES GOVERNMENT  
National Labor Relations Board

Memorandum

TO : Richard L. Ahearn, Regional Director  
Region 3

DATE: MAR 02 1990

FROM : Harold J. Datz, Associate General Counsel  
Division of Advice

518-3001-3300  
518-2017-1400  
518-2017-2800  
518-2083-6750  
518-4020  
518-4060-1633

SUBJECT: United States Postal Service  
Case 3-CA-15349(P)

This case was submitted for advice as to whether (1) the Employer violated Section 8(a)(2) by creating and operating an Automation Executive Council, and (2) the instant charge should be consolidated with other pending cases. 1/

FACTS

The American Postal Workers Union, Albany Local (the Union) represents postal clerks employed by the United States Postal Service (the Employer) at its General Mail facility (GNF) in Colonie, New York.

In a letter dated June 19, 1989, 2/ the Employer invited representatives of all unions that represented employees in the Employer division that includes the GMF to attending a meeting about a new management innovation, the "Quality Process." Local Union President Jeffrey Leavitt attended this meeting on June 28. At the meeting, representatives of the Employer outlined a program to involve employees in work decisions, with the object of eliminating defects in job performance. The Employer said that it hoped to implement the program by the fall and that all employees would be trained to participate in the program.

In August, all GMF employees received a letter announcing that training for the Quality Process would begin in September. Employees subsequently received a 20 page newsletter devoted to the Quality Process.

---

1/ The case was also submitted on the need for Section 10(j) injunctive relief. The merits of that questions will be addressed in a separate Advice Memorandum. In addition, Case 3-CB-5613, which alleges that the Automation Executive Council violated Section 8(b)(1)(A), has recently been submitted to Advice. The merits of that charge will be addressed in a separate Advice Memorandum.

2/ Unless otherwise noted, all events occurred in 1989.



The Union became concerned that the Employer's use of the Quality Process would encroach upon the Union's status as collective bargaining representative. Consequently, Union representatives met with management to discuss the new process. The Union's executive board then voted not to participate in or endorse the process and so informed the Employer in a letter dated September 20.

In mid October, the Employer held a series of meetings with at least three work crews in the GMF. Union president Leavitt was invited to attend but not allowed to speak at one of these meetings. At one of these meetings, the GMF manager of operations addressed a group of 15 employees in the small bundle and parcel sorter machine crew; 10 of those 15 employees were members of the Union. The manager encouraged the employees to set production goals. To better accomplish these goals, the manager stated that employees could combine lunch and break periods. Further, if they reached agreed-upon goals, they could obtain rewards such as 15 minutes time off. Apparently, this work group has not pursued the Employer's offer. However, a similar offer was made to another work crew, a group of Tour III mail processors. Employees in this crew were given paid overtime to discuss the proposal. They decided to pursue the Employer's offer. Three representatives were selected to meet with management. At another meeting, the groundwork was laid for a joint employer-employee committee. The Employer suggested that a fourth employee be added, because the Employer intended to have four representatives. Employees were paid for attending all of these meetings.

This group of employee and Employer representatives was named the Tour III Automation Executive Council (the Council) and met three times in November. A supervisor chaired the meetings. The major subject discussed was machine assignment. In the past, these assignments had been made at random, even though the relevant contractual provision called for such assignments to be made by seniority. In mid November, the Council agreed to an experiment to "go by the book," that is, to use seniority. At the last meeting, on November 28, the Council agreed to review the new system at the next meeting and decide whether to continue to follow seniority or to resume random assignment. It appears that there have been no further Council meetings. The only change enacted as a result of the Council's operations was this change in machine assignment.

The Employer never asked the Union to participate in the Council. An employee has reported that the Employer told employees to turn to Council members, rather than to the Union, when they had problems.

The Region has decided to issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(5) by bypassing the Union and dealing directly with employees. It would appear that this complaint would be based upon the October meetings with employees as well as the meetings with the Council in November.

The Region seeks advice as to whether the complaint should also allege that the Council is a labor organization and that the Employer has formed, dominated and assisted it.

In an Advice Memorandum dated April 11, 1989, Advice concluded that a committee (called the EIC) created by the Employer at a different facility was a labor organization. However, the Employer was not considered to have violated Section 8(a)(2) with respect to the committee. The conclusion was based on the fact that the committee was created after bargaining with two Section 9 representatives, NALC and Mailhandlers.

#### ACTION

We concluded that the Employer violated Section 8(a)(2) by forming, assisting, and dominating the Council.

The Council is a statutory labor organization because it includes employees and exists for the purpose, at least in part, of dealing with the Employer concerning terms and conditions of employment, such as production goals, machine assignments, and work schedules. 3/ Further, it is clear that the Employer unlawfully established the Council. 4/ This case differs from the one involving an EIC because the Employer unilaterally established the Council, whereas the Employer and two other Section 9 unions jointly created the EIC.

In addition to creating the Council, the Employer has assisted the Council by paying employees to attend Council meetings. Since the Council was unlawfully created, such payments are in furtherance of the Employer's unlawful activities, rather than in furtherance of a lawful collective bargaining relationship. 5/ Finally, we concluded that the Employer

---

3/ See, e.g., Ona Corporation, 285 NLRB No. 77 (1987); Predicasts, Inc., 270 NLRB 1117, 1122 (1984).

4/ See North American Van Lines, Inc., 288 NLRB No. 11 (1988).

5/ Compare BASF Wyandotte Corporation, 274 NLRB 978 (1985), enfd. 123 LRRM 2320 (5th Cir. 1986); BASF Wyandotte, 276 NLRB 1576 (1986); Duquesne University of the Holy Ghost, 198 NLRB 891 (1972).

unlawfully dominated the Council because an Employer representative ran its meetings. <sup>6/</sup> Thus, a Section 8(a)(2) complaint is warranted, absent settlement.

The instant case should be consolidated for trial with the outstanding case involving the Employer and the EIC described above. While the Council and the EIC were created in different manners and have dealt with different subjects, the 8(a)(5) aspects of the cases are based upon the same theory of violation that the Employer has used both the Council and the EIC to bypass the APWU and to bargain directly with either employees or with other unions concerning matters affecting APWU-represented employees.



H.J.D.

ROF-1  
y:USPS4.mhw

---

<sup>6/</sup> See, e.g., Uarco, Inc., 286 NLRB No. 7, JD slip op. at 21-24 (1987).



UNITED STATES GOVERNMENT  
National Labor Relations Board

Memorandum

TO : Richard L. Ahearn, Regional Director  
Region 3

DATE: NOV 25 1980

FROM : Harold J. Datz, Associate General Counsel  
Division of Advice

530-6067-6001-3740  
530-6067-6001-3780  
530-6067-6067-9800

SUBJECT: United States Postal Service  
Case 3-CA-14591

This case was submitted for advice as to whether the Employer violated Section 8(a)(5) by failing to provide the Union with requested minutes from Quality of Work Life (QWL) meetings.

FACTS

The Employer and the APWU (Union) are parties to a contract covering a unit of several types of employees, including postal clerks, in Central New York. Article 19 of the contract provides as follows:

Those parts of all handbooks, manual and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly



relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

The Employer has implemented, but the Union has refused to participate in, QWL programs nationwide. However a unit of employees including mailhandlers, represented by the Laborers International Union, does participate in QWL meetings. The rules under which the QWL conducts its meetings are contained in a Handbook. Rule 15 provides, in relevant part, as follows:

15. Workteams will be provided maximum latitude in recommending workplace improvements.

It is important for managers, postmasters, and supervisors to allow workteams as much flexibility as possible in making recommendations for workplace improvements. However, in reviewing and approving recommendations, they should assure themselves that applicable laws, statutory requirements and labor agreements are complied with.

In January 1988 <sup>1/</sup> an Employer supervisor informed the Union that a mail sorting process would be taken away from unit clerks and given to mailhandlers in the Laborers unit. The supervisor stated the changes resulted from a QWL meeting. In protest, the Union told the supervisor that APWU contractual issues were not to be discussed in QWL meetings. The Union asserts that, as a result of its protests, the Employer did not change the operation. The Employer states that such a change was made.

In May, two supervisors informed the Union that the Employer was going to take the "culling belt" operation away from the clerks and give it to the mailhandlers. The supervisors stated that the Employer had made this decision as a result of a QWL meeting. The Union protested and, as a result of the Union protest, no change was made. On May 16, the Union requested the written minutes of all QWL meetings since January 1. The Employer denied this request. On June 2, the Union submitted an identical request, which the Employer also denied. It appears that both denials were based on an assertion of lack of relevancy.

---

<sup>1/</sup> All dates are in 1988 unless otherwise indicated.

In September, the Employer took unit work, i.e., the operation of sorting flats, away from unit clerks and gave it to the mailhandlers. A supervisor informed the Union that the idea had come from a QWL meeting.

The Union contends that it is entitled to the QWL minutes, even though it does not participate in QWL meetings, so that it can determine whether the Employer is using those meetings, to discuss contract issues and/or to take away bargaining unit work in violation of the contract and the QWL handbook. On the other hand, the Employer contends that QWL minutes are irrelevant because there is no contractual violation. Thus, the Employer claims that the QWL group merely discusses and recommends action and that the Employer makes independent decisions. 2/

On October 7, the Region determined that the QWL minutes are relevant and necessary to the Union's investigation of whether the Employer is diverting unit work from the clerks to the mailhandlers as a result of the QWL meetings. Subsequently, the Employer's attorney brought to the Region's attention a case involving the same parties and similar allegations, where the Office of Appeals sustained a Region 4 determination to dismiss the charge. 3/ The submitted issue is whether, in light of the Region 4 cases, the instant charge is meritorious.

#### ACTION

We conclude that complaint should issue, absent settlement, alleging that the Employer violated Section 8(a)(5) by refusing to furnish the Union with the requested QWL minutes.

The Board applies the following standards for determining the relevance of requested information:

Where the information sought covers the terms and conditions of employment within the bargaining

---

2/ The Employer apparently no longer adheres to its initial position that the minutes could not be furnished because they are the joint property of it and the mailhandlers who comprised the QWL. Nor does the Employer assert that the QWL minutes are confidential.

3/ U.S.P.S., Cases 4-CA-1469-1-P, Appeals letter dated August 14, 1987. (Region 4 cases)

unit, thus involving the core of the employer-employee relationship, the standard of relevance is very broad, and no specific showing is required; but where the request is for information with respect to matters occurring outside the unit, the standard is somewhat narrower (as where the precipitating issue or conduct is the subcontracting of work performable by employees within the appropriate unit) and relevance is required to be somewhat more precise. . . . 4/

Even where a union requests information outside the scope of the bargaining unit, it need show only a "reasonable and probable relevance of the requested information in regard to its contentions as to possible contractual violations." 5/ Moreover, "[i]t is certainly well within the statutory responsibilities of the Unions to scrutinize closely all facets relating to the diversion or preservation of bargaining unit work. . ." 6/

Under these principles, the information in the instant case is relevant, either because it concerns the unit or because a specific showing of relevance has been made. The Union in this case is concerned about two matters: (1) the diversion of unit work to a different unit, and (2) the apparent fact that such diversion was discussed at QWL meetings. As to the former matter, the Union believes that such diversion violates the contract, and it may wish to file a grievance based thereon. Clearly, the basis for such diversion would be relevant to such a grievance. The Union believes that the basis for such a diversion is contained in the QWL minutes. Thus, the QWL minutes are relevant to the first matter mentioned above.

As to the second matter, the contract provides that handbook provisions are to be continued in effect. Although the Employer has the right to make changes, any such changes must be fair, reasonable and equitable. Handbook Rule 15 provides that the QWL

---

4/ Doubarn Sheet Metal, Inc., 243 NLRB 821, 823 (1979), quoting Ohio Power Co., 216 NLRB 987, 991 (1975).

5/ Doubarn, supra at 824, citing inter alia, NLRB v. Rockwell-Standard Corporation, 410 F.2d 953 (6th Cir. 1969).

6/ Associated General Contractors of California, 242 NLRB 891, 894 (1979), enfd. 633 F.2d 766 (9th Cir. 1980).

group, in making recommendations, will comply with "applicable laws, statutory requirements and labor agreements." In essence, the Union believes that the QWL group, in recommending that work be removed from the Union's unit, has breached Rule 15 and therefore violated Article 19 of the contract. Clearly, the QWL minutes are relevant to a determination of whether such breaches occurred.

We also note that the Union did not request the information in light of a mere "suspicion" that unit work was being diverted elsewhere. <sup>7/</sup> Rather, at least some unit work was in fact diverted elsewhere. Further, Employer supervisors informed the Union that the Employer, in transferring operations from the clerks to the mailhandlers, had acted on discussions and recommendations of the QWL. Although the Employer contends that it makes independent decisions on making transfers, it clearly based its decisions here on QWL recommendations.

Therefore, we believe that the Union has demonstrated "a reasonable and probable relevance" of the QWL minutes to its investigation of the loss of unit work and potential contract violations.

Finally, these factors distinguish the instant case from the Region 4 cases. Those cases were dismissed because of an insufficient nexus between the discussions at QWL meetings and the alleged loss of APWU unit work. Thus, notes regarding the QWL meetings in the Region 4 cases merely contained references to the Laborers Local President's statement that certain tasks were in the clerks unit, but that "we should file a grievance with management to get clarification," and that the Laborers President gave the QWL information on how they should attempt to get jobs changed from being exclusively posted as clerk jobs. The APWU in the Region 4 cases also relied on the adjustment of a mailhandlers grievance regarding the reassignment of certain work away from the clerks to support its request for QWL minutes. However, there was no evidence that any work transfer decisions were actually discussed or made at QWL meetings. In contrast, the Union in the instant case has presented evidence that work transfer decisions, which adversely impacted on the APWU unit, were made. Further, Employer officials conceded that the changes were discussed at QWL meetings and were based on QWL recommendations. Accordingly, the requisite nexus between the

---

<sup>7/</sup> Cf. Bohemia, Inc., 272 NLRB 1128, 1129 (1985).

QWL meetings and the diversion of unit work is present here. Thus, the Employer violated Section 8(a)(5) by refusing to provide the Union with the QWL minutes, as requested.

WL  
H.J.D.

ROF - 1

y:states.dac



UNITED STATES GOVERNMENT  
National Labor Relations Board

Memorandum

TO : Joseph H. Solien, Regional Director  
Region 14

FROM : Harold J. Datz, Associate General Counsel  
Division of Advice

SUBJECT: United States Postal Service  
Case 14-CA-20252(P)

DATE: September 29, 1989

Collyer/Dubo Chron  
240-3367-0480-5000  
240-3367-0875  
512-5066-1400  
512-5066-1430  
536-2564

This Section 8(a)(5) case was submitted as to whether Collyer 1/ deferral of the instant charge is warranted. Also submitted is whether the Region should seek a Section 8(b)(1)(A) charge against an Employee Involvement Committee (EIC).

FACTS

The Charging Party APWU (Union) represents a unit of postal clerks at the Employer's Quincy, Illinois facility; the National Association of Letter Carriers (NALC) represents a unit of letter carriers at that facility. Both at the national and local levels, the NALC participates in the Employer's EIC program while the Union does not. At Quincy, the EIC is comprised of various levels of managerial, supervisory and letter carrier employees, and the NALC local president. The Region apparently has determined that the Quincy EIC is a statutory labor organization.

The clerks traditionally have performed functions known as "sweeping" and "spreading". Thus, as clerks place mail into the appropriate route pigeon holes, other clerks collect it by route number and distribute that mail to the letter carrier responsible for a given route. The letter carriers further break down the mail by destination, deliver it to the public and, upon their return to the facility, complete their work day by breaking down any mail distributed to them during their absence.

On June 14, 1989, as a result of EIC bargaining, the Employer and the NALC local president executed a "shared management agreement", which reaffirmed the right of letter carriers to participate in the 7.01 rule. 2/ Pursuant to this

1/ Collyer Insulated Wire, 192 NLRB 837 (1971); United Technologies Corp., 268 NLRB 557 (1984).

2/ The 7.01 rule essentially had provided that on "light mail days", a letter carrier who completed all available work for the day in at least 7.01 hours could clock out and be paid for a full 8-hour day.



Case 14-CA-20252(P)

agreement, letter carriers also have sought and received permission from their supervisors to perform the "sweeping" and "spreading" functions of the clerks, presumably to maximize the amount of non-worktime for which they would be paid under the 7.01 rule. As a result, there has been less work available for employees in the clerks unit.

On July 19, the Union filed a grievance regarding the letter carriers' actions in sweeping and spreading their own mail. The grievance specifically alleges that this practice resulted from the shared management agreement negotiated by the EIC. <sup>3/</sup> That grievance currently is pending at the third step of the parties' contractual grievance-arbitration procedure.

On August 14, the Union filed the instant charge. The Region has concluded that the Employer violated Section 8(a)(5) when it dealt with the EIC concerning terms and conditions of employment of employees represented by the Union, and when, as a result of EIC negotiations, it permitted letter carriers to perform unit work of the clerks. It is clear that the Union did not acquiesce in this unilateral change by withdrawing its 1987 and 1988 grievances.

#### ACTION

We conclude that the Region should proceed consistent with the following analysis.

In U.S. Postal Service, Cases 3-CA-14483(P), et al., and Employee Involvement/Quality of Work Life Committee, Case 3-CB-5413(P), Advice Memorandum dated May 12, 1989, at p. 3, we concluded that issuance of a Section 8(b)(1)(A) complaint was warranted because the EIC, a statutory labor organization, engaged in bargaining concerning the terms and conditions of employment of the APWU-represented employees even though EIC is not the representative of these employees. Since the EIC in the instant case has similarly engaged in bargaining that affects the working conditions of the Union-represented clerks, the Region should apprise the Charging Party of its right to file a Section 8(b)(1)(A) charge against the EIC. Upon receipt of such charge, the Region should issue an appropriate complaint, absent settlement.

---

<sup>3/</sup> In 1987 and 1988, the Union had also filed grievances regarding the letter carriers' performance of the sweeping and spreading functions. Those grievances were withdrawn upon Employer assurances to the Union that the practice would cease.

Case 14-CA-20252(P)

Since a grievance has been filed, the deferral issue arises under Dubo Manufacturing Corp., 142 NLRB 431 (1963), not under Collyer. Assuming that a Section 8(b)(1)(A) charge is filed, there should be no deferral of either charge. The 8(b)(1)(A) charge would be completely dependent on the same evidence which would be presented in the CA case. Deferral of the 8(b)(1)(A) charge would be inappropriate because the grievance-arbitration procedure has no binding effect on, and could not prevent future unlawful conduct by, the EIC. In this regard, we note that the EIC is not a party to the grievance-arbitration procedure in the contract between the Employer and the Union. Thus, even if the 8(a)(5) charge, by itself, would be deferrable under Dubo, there would be one charge that is deferrable (the 8(a)(5) charge) and one charge that is not (the 8(b)(1)(A) charge). In such circumstances, neither charge should be deferred. 4/

Accordingly, if an 8(b)(1)(A) charge is filed against the EIC, then the Region should issue a Section 8(a)(5) and Section 8(b)(1)(A) complaint, absent settlement. If no 8(b)(1)(A) charge is filed, the Region should resubmit whether deferral would be appropriate under Dubo.

*HJD*  
H.J.D.

ROF - 1

y:post2.dac

---

4/ George Koch Sons, Inc., 199 NLRB 166, 168 (1972).



UNITED STATES GOVERNMENT  
National Labor Relations Board

Memorandum

TO :	Richard L. Ahearn, Regional Director Region 3	DATE: May 12, 1989
FROM :	Harold J. Datz, Associate General Counsel Division of Advice	<u>Collyer-Dubo Chron</u> 240-3367-0480-5000 512-5045 512-5066-1400 512-5066-7000 512-5066-7023 512-5072-2500 518-4020 530-6017-5000 530-6017-7500
SUBJECT :	United States Postal Service Cases 3-CA-14483(P), -14847(P), -14861(P)  Employee Involvement/Quality of Work Life Committee (United States Postal Service) Case 3-CB-5413(P)	

These Section 8(a)(1), (2) and (5) and 8(b)(1)(A) cases were submitted for advice because they are connected to a prior case involving an Employee Involvement Committee created by the United States Postal Service and two unions.

FACTS

The underlying facts concerning the history, structure and operations of the Employee Involvement Committee (the EI Committee) created by the United States Postal Service (the Employer) and the National Association of Letter Carriers (NALC) and the National Post Office Mailhandlers, Division of Laborers International Union of North America (Mailhandlers) are set forth in an earlier Advice Memorandum, U.S. Postal Service, Case 3-CA-14483(P), dated April 11, 1989. In that memorandum, we concluded that the EI Committee was a statutory labor organization but that there was no merit to the Section 8(a)(2) allegation. We also concluded that further proceedings on the Section 8(a)(5) allegation that the Employer dealt with the EI Committee concerning the terms and conditions of employment of employees represented by the American Postal Workers Union (the Union) should be deferred under Collyer. 1/

The charge in Case 3-CA-14847(P) generally repeats the allegations in Case 3-CA-14483(P). However, the new charge also alleges, as an additional theory for a Section 8(a)(2) violation, that the EI Committee does not pay to use the Employer's phone system, whereas the Union must reimburse the Employer for long

1/ Collyer Insulated Wire, 192 NLRB 837 (1971); United Technologies Corp., 268 NLRB 557 (1984).



distance telephone calls. 2/ The charge in Case 3-CB-5414(P) alleges that the EI Committee is a labor organization dominated by the Employer and that the Committee violated Section 8(b)(1)(A) by participating with the Employer in the conduct alleged as violative in the two CA charges mentioned above.

The charge in Case 3-CA-14861(P) alleges that the Employer violated Section 8(a)(5) and (1) by refusing to give the Union copies of the minutes of the EI Committee meetings. When Case 3-CA-14483-1(P) was initially submitted, the Employer regularly gave copies of the minutes to the Union; the Employer has since decided to stop that practice. This refusal to supply copies of the EI Committee minutes to the APWU was the subject of a charge in Case 3-CA-14391(P), involving the Syracuse, New York Post Office. An Advice Memorandum dated November 25, 1988 concluded that the Union was entitled to the minutes if it could show that a "sufficient nexus" existed between the recommendations made at the EI Committee meetings and the effect that such recommendations had on employees represented by the Union. The Region has concluded that there is a "sufficient nexus" between the activities of the EI Committee and the effect on unit employees in the instant case, noting, inter alia, that EI Committee discussions have resulted in a requirement that all employees, including those represented by the APWU, wear picture IDs or face discipline. Other EI Committee discussions have resulted in a change in shift hours for employees, including APWU-represented employees. Also, the contract between the Union and the Employer requires discussions about conditions at the Employer's parking lot; the EI Committee has discussed that subject.

The Union had previously filed a grievance attacking the Employer's refusal to provide the Union minutes of EI Committee meetings held throughout the country. That grievance is pending at the National Arbitration level. The Employer contends that the Union's resort to the grievance procedure permits deferral of the instant charge under Dubo. 3/ The Union has indicated that it would consider withdrawing this nationwide grievance to prevent deferral of the instant charges.

---

2/ Factually, it is not clear that the EI Committee, unlike the Union, does not reimburse the Employer for long distance calls; nor is it clear that the Union, unlike the EI Committee, cannot make local calls without reimbursing the Employer.

3/ Dubo Manufacturing Corp., 142 NLRB 431 (1963).

ACTION

The Region should revoke its deferral of Case 3-CA-14483(P) and issue complaint in that case as well as in the other instant cases, absent settlement, consistent with the analysis set forth below.

Initially, we concluded that a Section 8(a)(5) complaint is warranted in Cases 3-CA-14483(P) and 14847(P). In reaching this conclusion, we reaffirmed our prior conclusion in Case 3-CA-14483(P), set forth in the April 11 memorandum, that the Employer violated Section 8(a)(5) and (1) by dealing with the EI Committee concerning the terms and conditions of employment of employees represented by the APWU.

With regard to the Section 8(a)(2) allegation in Case 3-CA-14847(P), as noted in fn. 2 above, it is not clear that the Employer has treated the EI Committee and the Union differently regarding payment for use of the Employer's telephone system. If the Region determines that the Employer has treated the two groups differently to the detriment of the Union, the Region should then determine whether the Union's payments were more than de minimis; if so, this portion of the Section 8(a)(2) allegation would be meritorious. If the amount is de minimis, there is no merit to the Section 8(a)(2) allegation. 4/

Next, we concluded that a Section 8(b)(1)(A) complaint should issue, absent settlement, because the EI Committee, which is a labor organization as found in the April 11 memorandum, has engaged in bargaining concerning the terms and conditions of employment of the APWU-represented employees even though the APWU is not a part of the EI Committee.

We also conclude that there is merit to Case 3-CA-14861(P) which alleges that the Employer has violated Section 8(a)(5) by refusing to supply the Union copies of the EI Committee minutes. We note that there is evidence that the EI Committee has discussed subjects that led to changes in the terms and conditions of employment of APWU-represented employees. Therefore, there is a nexus between those EI Committee meetings and the effect on unit employees sufficient to entitle the Union to copies of the minutes.

---

4/ We reaffirm our prior conclusion in the April 11 memorandum that the remainder of the Section 8(a)(2) allegation lacks merit.

Finally, we concluded that further proceedings on the instant charges should not be deferred to the national grievance proceeding under Collyer or Dubo. The Board will not compel parties to use their grievance and arbitration system to resolve disputes concerning refusals to supply information. See, e.g., United Technologies Corp. 5/ Consequently, Collyer deferral of further proceedings in Case 3-CA-14861(P) is inappropriate. Also this information charge is inextricably intertwined with the remaining 8(a)(5) charges. Specifically, the minutes that the Union has requested deal with the Employer-EI Committee bargaining that is attacked in Cases 3-CA-14483(P) and 3-CA-14847(P). Accordingly, Collyer deferral of these CA charges is also no longer appropriate. Dubo deferral is appropriate in disputes that are not arguably appropriate for deferral under Collyer but which the parties have nonetheless voluntarily agreed to attempt to resolve through the grievance and arbitration process. Thus, the subjects of the information charge and the other related CA changes are appropriate for Dubo deferral. 6/ However, the charge in Case 3-CB-5413(P), although filed against the Union and not the Employer, is dependent completely on the same evidence which would be presented in Cases 3-CA-14483(P) and -14847(P). Consequently, it would be inefficient and inappropriate to issue complaint in Case 3-CB-5413(P) and defer proceedings on these CA cases. And deferral of the CB charge is inappropriate because the grievance-arbitration procedure could not resolve the CB charge in that the EI Committee is not a party to the grievance-arbitration procedure in the Employer-APWU contract.

---

5/ 274 NLRB 504 (1985).

6/ As noted above, the Union has indicated that it might withdraw the information grievance. In such circumstances, the corresponding charge and the related CA charges would have to be litigated because the subject matter of the information charge is not appropriate for Collyer deferral.

In this situation, the Region should revoke its deferral of the charge in Case 3-CA-14483(P) and issue complaint in that case, as well as all the other instant cases, absent settlement. 7/



H.J.D.

ROFs-3  
y:EICUSPS.mhw

---

7/ It is not clear whether the newest Section 8(a)(2) allegation, concerning payments for use of the Employer's telephone system, is meritorious. If the Region finds that this allegation is meritorious, it should add a Section 8(a)(2) allegation to the complaint, absent settlement. Otherwise, that allegation should be dismissed, absent withdrawal.



UNITED STATES GOVERNMENT  
National Labor Relations Board

Memorandum

TO : Richard L. Ahearn, Regional Director  
Region 3

FROM : Harold J. Datz, Associate General Counsel  
Division of Advice

SUBJECT: U. S. Postal Service  
Case 3-CA-14483-1(P)

DATE: April 11, 1989  
(Collyer-Dubo Chron)  
177-3925-2000  
177-3925-4000  
177-3950-2700  
512-5045  
512-5066-1400  
512-5066-7000  
512-5066-7025  
512-5072-2500  
518-2017-2800  
518-4020  
530-6017-5000  
530-6017-7500

This case was submitted for advice as to whether the Employer violated Section 8(a)(1), (2), and (5) of the Act by:

- (a) rendering assistance and support to the Employer Involvement/Quality of Work Life Committee (EI Committee);
- (b) dealing with the EI Committee concerning hours, terms and conditions of employment of employees who are represented by Local 1151, American Postal Workers Union, AFL-CIO (Union) at the Employer's Ithaca, New York facilities; and
- (c) requiring APWU bargaining unit members to participate in EI Committee meetings.

FACTS

On September 22, 1982, the Employer and the National Association of Letter Carriers (NALC) issued a joint statement establishing an Employee Involvement Program. This program provided, in part, for the formation of a committee composed of employee, union, and management representatives whose proposed function was to identify and suggest solutions to workplace problems, with the overall goal of improving the quality of worklife. Thereafter, the National Post Office Mailhandlers, Division of Laborers International Union of North America (Mailhandlers) also began participating in this program. The American Postal Workers Union, AFL-CIO (Union) have refused on a nationwide basis to participate in the EI Committee program.

The EI Committee was assertedly established to address non-contractual issues, not matters covered by the National or Local



Case 3-CA-14483-1(P)

collective-bargaining agreements between the unions and the Employer. The EI Committee programs are assertedly intended to be entirely separate from collective bargaining, and are not intended as a substitute for the contractual grievance procedure.

Management and employee members propose and select new EI Committee members from the NALC and Mailhandlers unit. Membership is also extended to at least one steward from each of the participating unions. Participants in the committees receive 16 hours of training prior to their service. The committees meet for at least one hour per week in a room provided by the Employer. The Employer pays the salaries of the participants during the committee meetings and provides notebooks, paper, pens, and clerical service. Participants attend Employer-paid luncheons and travel at the Employer's expense for training and other reasons to other facilities.

The EI Committee in Ithaca, New York, has been in existence since approximately December 1984. The Local Union's President, Michael Oates, has objected to the EI Committee since its establishment. Oates has refused to participate in any EI Committee meetings, but he receives copies of the minutes of meetings and the newsletter distributed to all employees. The Union filed grievances protesting the EI Committee's discussion of terms and conditions of employment in 1987. In October 1987, management resolved a grievance stating:

The parties are agreed that management will comply with provisions under Article I of the National Agreement. 1/ Issues concerning wages, hours, and working conditions involving Bargaining Unit (APWU) employees will not be a matter for discussion at Employee Involvement Meetings.

However, despite this settlement, the EI Committee has discussed and dealt with the Employer concerning such issues as requiring that employees wear a picture ID or risk discipline; changes in Express Mail delivery work for all crafts; increasing hours of certain employees; giving jobs to the best qualified employees; giving awards to employees who did not use any sick leave during a specified period, with the awards to be administered by the EI Committee facilitator; changing starting times; making safety films available to employees; providing electrical wiring to recharge electric vehicles; painting lines in the parking lot;

---

1/ Presently, there is a national collective bargaining agreement between the Union and the Employer and a local memorandum of understanding concurrently effective July 21, 1987 through November 20, 1990.

making parking spaces available for additional vehicles; creating new floor plans; issuing new rubber stamps; making radio announcements when snowstorms occur in order to insure safe mail delivery; alleviating space problems on dock; providing CPR training; installing netting or shelves in two ton vehicles; scheduling for parttime flexible employees; improving safety talk format; and trying to obtain parking discounts for employees.

Over the last six months, the Union has filed various grievances concerning many of the topics discussed by the EI Committee, contending that the Employer has unlawfully instituted new terms and conditions of employment without bargaining with the Union. These grievances have either been resolved or are pending at various steps of the grievance procedure.

On April 21, 1988, Union member-Trustee Lyman Baker voluntarily attended an EI Committee meeting after two employees requested his attendance and management also encouraged him to attend. 2/ Baker is the Vehicle Operations Maintenance Assistant (VOMA) and the EI Committee asked Baker to provide information concerning vehicle maintenance. Baker provided the requested information during this meeting and on various occasions after this date, but has not attended any other meetings.

#### ACTION

We conclude that the Employer has not unlawfully assisted or supported the EI Committee. We also conclude that the Employer did not force bargaining unit members to attend EI Committee meetings. Therefore the Region should dismiss the 8(a)(2) allegations, absent withdrawal. We further conclude that the 8(a)(5) allegations concerning the Employer's dealing with the EI Committee with respect to terms and conditions of employment should be deferred under Collyer. 3/

Initially, we concluded that the EI Committee is a statutory labor organization. The term "labor organization" is defined in Section 2(5) of the Act as:

any organization of any kind or any agency or employee representation committee or plan, in which employees participate and which exists

---

2/ Baker formerly was employed in the NALC bargaining unit, and is still a member of that union even though he is now employed in the APWU unit.

3/ Collyer Insulated Wire, 192 NLRB 837 (1971); United Technologies Corp, 268 NLRB 557 (1984).

for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

The first element of a labor organization is that it is an "organization of any kind or any agency or employee representation committee or plan, in which employees participate..." This element is present in this case, since many of the members of the committee are chosen from the NALC and Mailhandlers. The second element is whether the EI Committee "...exists for the purpose, in whole or in part, of dealing with [the Employer] concerning grievances, ...hours of employment, or conditions of work." As noted above the EI Committee has regularly discussed with management subjects affecting employees' terms and conditions of employment. Thus, despite the assertions of the parties to the EI Committee that the Committee is not intended to supplement or replace collective bargaining, it appears that the Committee has regularly dealt with the subjects of collective bargaining e.g., work hours and safety.

In Cabot Carbon, 4/ the Supreme Court held that the term "dealing with" is not to be viewed as synonymous with the more limited term "bargaining with," but rather must be interpreted broadly. Subsequently, the Board found that an employee council which discusses with management proposals for employee facilities and fringe benefits, 5/ a personnel committee which mediates grievances and makes recommendations to the employer on working conditions and grievances, 6/ and an employee action committee which functions to improve working conditions and serves as a communication conduit between the employees and the employer 7/ are labor organizations within the meaning of Section 2(5) of the Act. In light of such decisions, we have determined that the EI Committee is a labor organization.

However, in the context herein, we conclude that the EI Committee does not violate Section 8(a)(2) of the Act. First, the EI Committee was voluntarily established and instituted by the NALC, Mailhandlers, and the Employer. These parties use the EI Committee as an extension of the bargaining process. Thus, it cannot be argued that the Committee was designed to usurp the

---

4/ NLRB v. Cabot Carbon Co., 260 U.S. 203 (1959).

5/ St. Vincent's Hospital, 244 NLRB 84, 86 (1979).

6/ Predicasts, Inc., 270 NLRB 1117, 1122 (1984).

7/ Ona Corporation, 285 NLRB No. 77 (1987).

unions' authority as Section 2(5) representatives of employees. Second, the EI Committee was not created to ward off any union activity. 8/

Moreover, the Board has held that employer payment for employee and union time spent conducting meetings on company time and use of company facilities and supplies does not violate Section 8(a)(2) of the Act. Coamo Knitting Mills, 150 NLRB 579, 582 (1964); Hesston Corp., 175 NLRB 96 (1969); BASF Wyandotte Corporation, 274 NLRB 978 (1985) enfd. 123 LRRM 2320 (5th Cir. 1986); BASF Wyandotte Corporation, 276 NLRB 1576 (1986). Indeed, the Board has regarded such use of company time and property, as merely "friendly cooperation growing out of an amicable labor-management relationship." Duquesne University of the Holy Ghost, 198 NLRB 891 (1972). Further, it has found this conduct not inherently coercive since it serves "to permit an otherwise legitimate labor organization to perform its function for the benefit of all concerned more effectively than otherwise might be the case." Sunnen Products, 189 NLRB 826, 828 (1971). Finally, Section 302(c)(9) specifically permits an employer to provide "money or other things of value... to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in Section 5(b) of the Labor Management Cooperation Act of 1978." While it is not known whether the EI Committee was expressly created pursuant to the Labor Management Cooperation Act of 1978, its purpose and the Employer's expenditures for the EI Committee are clearly consistent with that statute.

Nor is there merit to the allegation that the Employer violated Section 8(a)(2) by forcing Union-represented employees to participate in the EI Committee. The Region has concluded that Baker attended an EI Committee meeting voluntarily. There is no evidence that any unit members were required to participate in such meetings.

However, we concluded that the Employer violated Section 8(a)(5) when it implemented certain facility-wide changes in the workplace after dealing with the EI Committee but without bargaining with the Union. These changes have not only affected the NALC and Mailhandler employees, but have also affected the bargaining unit employees the Union represents. For example, the Committee planned the implementation of a new picture-identification for all employees and the possible discipline for those employees who failed to wear such ID. The Committee also

---

8/ Compare Schwab Foods, Inc., d/b/a Mooresville IGA Foodliner, 284 NLRB No. 120 (1987).

developed a plan for allowing carriers to start work earlier and perform some of the Union's bargaining unit work.

We realize that some of the topics discussed by the committee appear to consist of proposed administrative changes, not mandatory subjects of bargaining. Examples are electrical wiring needed to recharge electric vehicles or radio announcements to the general public when snowstorms occur. However, some other changes, such as the installation of shelves and netting in postal vehicles to eliminate possible safety hazards to operators, could be mandatory subjects.

Finally, we concluded that this dispute may be more appropriately addressed in the grievance-arbitration procedure contained in the existing collective bargaining agreement than through the Board's processes. The Board has consistently held that deferral to arbitration under Collyer may be appropriate if the dispute is cognizable by the grievance-arbitration provisions of the contract. Several factors have been articulated by the Board favoring deferral to the grievance-arbitration procedure.

The dispute arose within the confines of a long and productive collective bargaining relationship; there was no claim of employer animosity to the employees' exercise of protected rights; the parties' contract provided arbitration in a very broad range of disputes; the arbitration clause clearly encompassed the dispute at issue; the employer had asserted its willingness to utilize arbitration to resolve the dispute; and the dispute was eminently well suited to resolution by arbitration. 9/

In this case, it appears appropriate to defer further proceedings pending the grievance and arbitration procedure. The Employer has apparently been cooperating fully in processing the Union's grievances to arbitration. The facts that the Employer and the Union have previously settled a similar grievance and that the Union contends that the Employer's current conduct is inconsistent with that settlement does not indicate that resort to the grievance and arbitration process in the instant case would be fruitless. 10/

---

9/ United Technologies, supra at 558.

10/ Id. at 560 n. 21.

Case 3-CA-14483-1(P)

In summary, the Region should dismiss the Section 8(a)(2) charge, absent withdrawal, and defer the Section 8(a)(5) charge.

*HJD*  
H.J.D.

ROP(2)  
c:usps3.cmy