

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO BRANCH OFFICE
DIVISION OF JUDGES**

MATHESON POSTAL SERVICES, INC.

and

Case 20-CA-186264

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 150**

ORDER DENYING MOTION TO RESCHEDULE 4/4/17 HEARING DATE

On October 13, 2016, a charge was filed in this case against Respondent Matheson Postal Services, Inc. (Respondent). On December 27, 2016, the charge was amended. On January 26, 2017, a complaint in this case was issued and the current hearing date of April 4, 2017 was noticed and set for trial in Sacramento, California. Among other things, the complaint alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act, as amended (the Act) by placing Phillip Zepp on unpaid administrative leave and suspending him from work without prior notice to the Union and, without affording the Union an opportunity to bargain with Respondent with respect to this conduct and that Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

On March 23, 2017, the Charging Party Union (Charging Party Union) filed its Motion to Reschedule Hearing (“Motion”) arguing that because of a scheduling conflict for Business Agent Jeff Carter, who is a necessary witness for the General Counsel’s case, the hearing should be postponed until the fall when Mr. Carter becomes available.

Also on March 23, 2017, an Order to Show Cause was issued by me asking the parties to respond to the Motion no later than noon on March 27, 2017 as why the Motion should not be granted.

On March 27, 2017 before noon, the counsel for General Counsel filed his opposition to the Motion (GC Opposition which argues that the Charging Party Union has been on notice for nearly three months that Mr. Carter’s testimony would be required on April 4 and “inexplicably waited to file its Motion until less than two weeks before the opening of the hearing, when the General Counsel, Respondent and the affected employee are ready to proceed.” In addition, the GC Opposition provides that “[t]he Charging Party’s simple assertion that Mr. Carter ‘has been summoned to an important meeting in Southern California’ fails to provide a compelling reason to reschedule a long-noticed hearing” and the “Charging Party has not explained why Mr. Carter’s presence is indispensable to its activities in Southern California during the week of the hearing or why he is unable to make himself available for even one day of that week, the April 4 hearing date.” The GC Opposition concludes by arguing that “the Charging Party has failed to establish that Mr. Carter is unavailable” and the “mere coincidence of there being another event that Mr. Carter would now rather attend should not outweigh the interests of the

affected employee, who has adjusted his work schedule with his new employer to testify, and the interests of both the General Counsel and Respondent, who have expended resources in preparing for the hearing as scheduled, including making travel arrangements, obtaining a hearing room, and securing a court reporter.”

Also before noon on March 27, 2017, the Respondent filed its opposition to the Motion (R’s Opposition) arguing that the Union’s website shows that “the Union has 10 business agents working for it.” In addition the R’s Opposition provides that Respondent’s counsel would be prejudiced by a trial postponement here because on March 17, he purchased a non-refundable plane ticket to fly from Los Angeles, California to Sacramento, California on the evening April 2, 2017, so he could prepare for Matheson's witnesses for on April 3 and appear at the Hearing on April 4. In addition the R’s Opposition provides that Respondent counsel is unavailable due to his heavily impacted trial, arbitration and collective bargaining schedule, and that the earliest he would be available for hearing if the current hearing date is continued would be August 21, 2017.

Having fully considered the pleadings, I find that good cause has not been shown to grant the Charging Party’s untimely Motion to Reschedule Hearing in light of the prejudice to the alleged discriminatee Zepp caused by a delay of hearing to late summer or thereafter. In addition, I also find the Motion was not filed in a timely manner as the Charging Party took nearly 3 months from receiving notice of the current 4/4/17 hearing date to file its Motion. Had the Motion been filed earlier than less than 2 weeks before hearing, the parties and the San Francisco Division of Judges may have been able to find a later date in April to hear the case. In addition, I further find that the Charging Party has not adequately explained why Mr. Carter's presence is indispensable to its activities in Southern California during the week of the hearing or why he is unable to make himself available for even one day of that week, the April 4 hearing date. My docket is heavy and it does not allow a postponement date before June 2017 and no dates are available until on or after August 21, 2017 as suggested by Respondent’s counsel. I further find that a postponement from the current April 4, 2017 hearing date to June, August or the fall of 2017 would further prejudice the Charging Party Zepp having his hearing on the merits. Given the seriousness of the charges, I further find the added costs and inconvenience to the General Counsel, Respondent’s counsel, their witnesses and the court reporter as well as the potential harm to the Charging Party Zepp associated with a trial postponement beyond the current trial date outweighs any added burden to the Charging Party Union getting one of its many business agents, Carter here, to the hearing. The Charging Party Union has waited too long to file its Motion. Such dilatory conduct should not be encouraged or rewarded.

For these reasons, **IT IS ORDERED** that the Charging Party Union’s Motion to Reschedule Hearing is **DENIED**.

Dated: March 29, 2017, San Francisco, California.



Gerald M. Etchingham,
Associate Chief
Administrative Law Judge

Served by email and facsimile upon the following:

For the NLRB:

Joseph Richardson, Esq., Fax: 415.356.5156

Email: joseph.richardson@nlrb.gov

For the Respondent:

Adam C. Abrahms, Esq. Fax: 310.943.3367

Email: aabrahms@ebglaw.com

For the Charging Party:

Jeffrey R.A. Edwards, Esq. Fax: 916.447.4614

Email: jedwards@mastagni.com

DiCrocco, Brian

From: noreply@nlrb.gov
Sent: Wednesday, March 29, 2017 9:55 AM
To: DiCrocco, Brian
Cc: SM-Nass
Subject: Re: [NASS] Scan-to-FAX Delivery - [REPORT]
Attachments: MF58DBE66B4E2566530B1F.tif

Retarus job id: MF58DBE66B4E2566530B1F

Number of faxes : 3
 thereof successfully sent: 3
 thereof failed with error: 0
Number of pages : 3
Resolution : Low

Fax number : +14153565156
Sent : 2017-03-29-12.53.29
Remote CSID: NLRB
Duration : 41 sec.
Status : OK
Reason :

Fax number : +13109433367
Sent : 2017-03-29-12.53.29
Remote CSID: 13109433367
Duration : 75 sec.
Status : OK
Reason :

Fax number : +19164474614
Sent : 2017-03-29-12.53.31
Remote CSID:
Duration : 56 sec.
Status : OK
Reason :

DiCrocco, Brian

From: Lee, Vanise J.
Sent: Wednesday, March 29, 2017 9:17 AM
To: Jeffrey R.A. Edwards; Adam C. Abrahms; Richardson, Joseph
Cc: Gomez, Doreen E.; DiCrocco, Brian; Lee, Vanise J.
Subject: Re: Matheson Postal Services, Inc. 20-CA-186264 - OrderDenying Motion to Postpone Hearing, dd., 3/29/17
Attachments: MathesonPSODMPP 03-29-17.docx
Importance: High

Good morning, attached is an Order from Associate Chief Judge Gerald M. Etchingham which will be faxed to your offices shortly.

Regards,

Vanise J. Lee, Legal Tech
NLRB Division of Judges - San Francisco Branch
Tele: 415.356.5255
Fax: 415.356.5254

From: Lee, Vanise J.
Sent: Thursday, March 23, 2017 9:59:17 AM
To: Jeffrey R.A. Edwards; Adam C. Abrahms; Richardson, Joseph
Cc: Gomez, Doreen E.; DiCrocco, Brian; Lee, Vanise J.
Subject: Matheson Postal Services, Inc. 20-CA-186264 - Order to Show Cause dd., 3/23/17

Good morning.

Please see the attached Order from Associate Chief Administrative Law Judge Gerald M. Etchingham.

Thank you.

Vanise J. Lee, Legal Tech.

NLRB Division of Judges San Francisco Branch

Main – 415.356.5255

Direct – 628.221.8826

Fax – 415.356.5254

“Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.” – James Madison