Postal employees

[Council of American Postal Employees (AFL-CIO)]

In our hands:

New law gives key role to postal unions and members

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The quotations on pages 8 and 18 are from an address by Edward C. Miller, chairman of the National Labor Relations Board.

Introduction

All of us in the Postal Service have embarked on a new way of life.

This fact applies with equal force from the lowest wage grade to the highest echelons of management. It applies even more forcefully, if possible, to our unions.

It is literally true that most of what any of us knew about the conduct of labor-management relations in the Postal Service is no longer valid. In many respects we are starting all over, from scratch.

Speaking only for our side, the employee and union side, we wanted it that way. We realized that the old system simply was not adequate in the world of today. Above all, it could no longer achieve economic justice for postal employees. Change, drastic change, was essential to correct inequities which had become intolerable.

This was dramatically demonstrated to the nation by the postal strike of 1970. What we did was unprecendented in itself. But beyond that, never before has an action in express violation of law enjoyed such widespread public endorsement. The average citizen simply hadn't realized what we were enduring. Once the truth was made known, change became a national mandate.

As things turned out, the change so essential to us became part of a change in the basic nature of the Postal Service itself. There are new rules for everyone; we are all charting a new course together.

But the change that concerns us the most has to do with our relations with management. In this respect, one fundamental point stands out: Self-reliance is an absolute necessity. From now

on we ourselves, through free collective bargaining, will determine our wages and working-conditions, our job security and virtually all the circumstances of our employment.

To do this effectively we have to know how. In this new way of life, success will depend not on who we know but what we know.

This pamphlet sets forth as simply as possible the rules we now live by. It describes our rights —our rights as individual employees, and the rights we exercise through our unions.

Just as important, it also describes our obligations. Like our rights, they are much broader than before.

Our future will be shaped by the skill with which we exercise these rights and fulfill these obligations. Let us learn together.

Most of us know that the Postal Reorganization Act places labor relations in the Postal Service—generally speaking—within the same system that applies in private employment.

This is, we're basically governed by the National Labor Relations Act (NLRA), which began as the Wagner act, was later incorporated into the Taft-Hartley act and underwent some other changes as a result of the Landrum-Griffin act. The law is administered through the National Labor Relations Board (NLRB) and its related but independent general counsel, with most disputes subject to appeal in the federal courts. The internal affairs of unions, including the submission of financial reports, are supervised by a separate operation in the Department of Labor.

These names and initials are known to us from what we've read in newspapers over the years. They will become much more familiar in the future. But the names and initials don't explain themselves.

Our friends from AFL-CIO unions in the private sector—the *completely* private sector—can help with explanations on some matters but by no means on all of them. The system we now live under is closer to the private industry pattern than to traditional civil service, but there are still differences, large and small, for better and for worse.

It has been widely predicted that our new system will eventually become a pattern for all federal workers. Legislation of this general nature has been urged by AFL-CIO leaders and by the heads of unions that represent workers in other government operations. Maybe we will all look back some day and brag about our role as pioneers, and how we showed everyone the way. But before that, we need to find the way ourselves.

I. Rights and obligations of employees

The preamble of the Wagner act declared that the encouragement of collective bargaining is the policy of the United States. This policy has survived, despite all the changes that have been made in the law itself.

The principal way the law seeks to carry out this policy is by protecting the right of each worker to complete freedom of choice with respect to unions. Primarily this means protection against reprisals or interference by his employer. It also includes protection against certain forms of interference by a union.

A worker is not merely free to join a union; he's free to encourage others to join, and to engage in union activities generally. As suggested above, he's equally free not to join a union; but if he makes this choice, of course, he surrenders his right to take part in the collective bargaining process. *Certain workers cannot join unions because of the jobs they hold. This will be discussed in Section II.*

These words may sound like echoes from old regulations but the realities are brand new. The rights are

prescribed and protected by law. Moreover, they have been clarified and interpreted by countless legal actions, culminating in decisions of the Supreme Court. They are not alterable by the whim, obstinacy or overzealousness of any party.

Thus it is well-established that a worker cannot be fired, demoted, refused a promotion, transferred, spied on or questioned by his employer *or employer agents* because of his union activity, or for testifying against the employer in a labor relations matter. Every pretext devised by anti-union employers and high-priced union-busters in an effort to evade these prohibitions has been put to the test over the years, and has failed. There are still some employers in private industry who deliberately violate the law, but few believe they can escape it by trickery.

Workers also have specific rights as "union citizens." These embrace the right to full democratic participation in the organization, including freedom of expression. The law spells out nothing beyond what a member of a properly-run union would expect; however, what it spells out is enforceable in the courts.

Union members must be furnished regular financial statements by the organization, and not only members but all workers in the bargaining unit are entitled to a copy of the union contract upon request.

Workers are guaranteed another right that seldom needs to be exercised where there's a union contract—the right as individuals (or as part of a group of individuals) to take up grievances with their employer and get them settled.

This can be done even when a union has exclusive bargaining rights for a unit that includes these workers, and has negotiated a contract covering them. However, any settlement must be consistent with the existing contract, and the union must have an opportunity to be present when it is made.

Responsibilities go hand in hand with rights, all along the line. It's a great feeling to realize that all of a sudden you have a lot more muscle in dealing with the boss, but acting drunk with power is sure to cause headaches.

Specifically, the freedom to engage in all the union activities mentioned above doesn't mean they can be substituted for work. The law doesn't protect an active unionist from discipline when it is imposed for cause. In that respect the law offers less protection than a union contract, except where the punishment is in fact imposed for union activity rather than poor job performance. The NLRB is expert at sorting out the truth in such cases.

Similarly, the freedom of a union member to be a maverick or rebel within the ranks is subject to the union's own reasonable rules. The concept of reasonableness runs through the whole body of NLRB operations—the kind of reasonableness that makes it possible for conflicting views to co-exist. The worker who wants a different union or no union at all is guaranteed the right to hold and to promote his views—but not the power to disrupt the majority organization or prevent it from fulfilling its role as bargaining representative.

In other words, the government safeguards only those rights guaranteed by the National Labor Relations Act and the Labor-Management Reporting and Disclosure Act. These have nothing to do with grievances involving the interpretation of contracts, job conditions, discipline, etc. unless related to a worker's membership or non-membership in a union. What the law does, in essence, is protect the right of workers to organize unions so they can solve job problems themselves.

Let us now turn to the individual rights and benefits which are carried over from the old system to the new one, or which otherwise distinguish us from workers in the purely private sector.

These begin with a set of sweeping guarantees that the wages and fringe benefits existing at the time of reorganization cannot be reduced—they can only be improved, whether through collective bargaining, legislation or management decree. This establishes existing benefits as a floor, including retirement benefits, compensation for injury, sick and annual leave, etc. The guarantees go across the board; and to remove any doubt about the intention of Congress, there is even a clause that safeguards any pre-existing rights that may have been left out of the new law.

All this stems from the provision which makes us unique: "Officers and employees of the Postal Service . . . shall be in the postal career service." This section then goes on to instruct the Postal Service to set up procedures covering employee relations, but in the same breath makes the whole matter subject to collective bargaining.

However, in the civil service spirit the new act includes such terms as these:

- "Preference eligible" provisions are retained and cannot be modified by collective bargaining.
- The principle of comparability with private employment is reaffirmed in two separate sections.
- Desirable working-conditions shall be a key consideration in the creation of new facilities.
- Equal employment opportunity and freedom from discrimination on the basis of marital status or physical handicaps are retained.
- Seniority for employees in rural service is restated but made subject to collective bargaining.
- The right to transfer to other divisions of the civil service is maintained without change.

The former limitations on political activity remain, and are supplemented by new language intended to remove the Postal Service from politics in every respect.

The law specifies that personnel recommendations from elected officials of any description (and it describes most of them), or from officials of a political party, are to be ignored by the Postal Service. Moreover, employees are forbidden to solicit such recommendations and the outside officials are forbidden to make them.

Excluded from this prohibition is the general right of employees to petition Congress.

One surviving obligation accompanying these special provisions is the individual no-strike affidavit. One part of this affidavit has been declared unconstitutional as a result of a suit by the Letter Carriers; the remainder is under similar legal attack by the Postal Clerks. The subject of strikes is treated in the following section of this pamphlet.

I urge all parties affected by the Postal Reorganization Act to make every effort to resolve their disputes by voluntary means and to come to us only after they have exhausted every possible means of voluntary settlement.

If either side comes to regard the discussions across the table as mere prelude to litigating before an arbitration board, then free collective bargaining will have become a mockery. . . . Such a result would not only demean the ability and effectiveness of both union leadership and management, but it would demonstrate that the hopeful experiment of free collective bargaining for public employees has been abandoned.

II. Rights and obligations of unions

Many of the individual rights set forth in the previous section existed on paper, at least, for years before the Postal Service was reorganized; the big change, as noted, is in their application and enforcement.

The same cannot be said of the rights and obligations of unions. They now have the legal freedom to function like unions in the private sector, and the moral and practical obligation to do so effectively.

There are two major limitations on the freedom of our unions compared to those in private employment:

- Strikes are forbidden by law.
- Union shop contracts, under which all workers in the bargaining unit must become and remain members, are prohibited.

In return for the first of these limitations the law provides an elaborate system for resolving deadlocks over contract terms, with binding arbitration as the final step. (The procedures will be described in Section III of this pamphlet.)

No balancing concession is made for the second limitation, which was imposed by an anti-labor coalition in the House of Representatives. The same sort of limitation is applied to all unions in 19 states which have adopted so-called "right-to-work" laws. Although the

curb is flagrantly unjust, the labor movement has learned to live with it when it must, and so shall we. Eliminating this injustice will be a major goal of our continuing legislative and political programs.

Despite these limitations, our unions are expected to establish wages, fringe benefits and other conditions of employment for workers in the Postal Service through the process of collective bargaining. Here is how the law defines the process specifically:

- Meetings must be held at reasonable times. *This means with reasonable frequency and within a reasonable period after requested, as well as at a reasonable hour of the day.*
- Management must bargain with whatever spokesman or spokesmen the union chooses to designate. *Any lingering doubt about this was removed when the courts upheld coordinated bargaining against a challenge by the General Electric Co.*
- The parties must deal with each other in good faith. Does this sound hard to define or to prove? It isn't. Thirty-five years of litigation have left no doubt about what constitutes bad faith. *A classic form is for an employer to put in a wage increase or make any other changes on his own, without consulting the recognized union.*
- Proper subjects for these meetings include wages, hours and *all other terms and conditions of employment,* many of which are spelled out as "mandatory," including the negotiation of a contract or any question arising from a contract. Labor board decisions have affirmed that "all other terms and conditions" is comprehensive, extending even to matters that affect or may affect the permanence of a job, such as taking work out of the shop and giving it to an outside contractor.
- To help make bargaining meaningful, the employer must furnish the union with whatever "relevant and necessary" information it requests. *A generation ago a union demand to "look at the books"*

was called revolutionary. Today, management must reveal far more intimate data on wages, costs and production to the union of its employees.

- Any agreements reached at these meetings must be put into writing if desired by either party.
- Reaching an agreement is *not* required by law; it's not even illegal to refuse to budge from a first position as long as no bad faith is involved. However, standing pat might tend to suggest a positive desire to prevent an agreement from being reached —a bad-faith position. *In a deadlock, as noted, postal law provides for binding arbitration.*

In general these bargaining rules apply equally to both participants; that is, the union must also abide by them.

Now let's see who is represented in collective bargaining, and by whom, and to what extent.

The National Labor Relations Act and the Postal Reorganization Act are in agreement that certain workers are excluded from the bargaining process—security guards, management personnel and supervisors. In addition, the NLRB has excluded confidential aides to the employer's labor relations officials, and persons classed as "executives."

Most of these exclusions are self-evident. Security guards are out, period; they can have a union of their own, but it can't have ties with any other. No one wants to include bosses or their confidential aides; confidences can flow in both directions. But there can be room for argument over who is really a "supervisor" or an "executive" especially since the titles don't necessarily mean the same in the Postal Service as they do in private industry. Private employers have in many cases tried to weaken bargaining units by claiming certain pro-union employees were ineligible on those grounds. The same practice is not unknown in the Postal Service.

It is now up to our unions to establish, through collective bargaining, more precise definitions of "super-

visor" and "executive" as these terms apply to membership in the bargaining unit.

Another problem relates to "professional employees." They can't be combined in the same unit with nonprofessionals except by majority vote among themselves. The impact of this provision will depend in part on the ultimate makeup of the bargaining units in the Postal Service.

The law authorizes the NLRB to determine the appropriate bargaining units for us, applying the same standards it uses elsewhere. However, there is not likely to be any change for at least two years in the makeup of existing national craft units having exclusive recognition. This is due to the terms of the "transitional period" created by the law.

During this transitional period, all union agreements that were in force prior to the reorganization will remain in effect, including dues checkoff provisions. The seven unions which had national exclusive recognition under the old system are "authorized" to start bargaining for new contracts at once. Congress clearly expected this to happen, and it did.

The new contracts that emerge from this bargaining —talks are in progress as this pamphlet goes on the press—will be for a period of not less than two years. Since an existing contract protects the bargaining rights of a recognized union, the units presently represented by these seven unions will be undisturbed until 1973 at the earliest.

On the other hand, changes are very likely to take place where exclusive recognition doesn't now exist.

Exclusive recognition is presently the only kind that counts. The other forms of recognition that existed under the old system are abolished, and the non-exclusive organizations will have no role at all when the transition period is over. *There will be one recognized union in each unit and only one.*

Consequently, postal workers who are not members of the union having exclusive jurisdiction in their

place of employment will have no voice with respect to the union contract covering their wages and working conditions. Workers in units where there isn't an exclusive bargaining agent will be even worse off; they won't have any union protection. *The clear lesson for all of us is that to get a piece of the action, we need to be part of a union with exclusive recognition.*

The new responsibilities of our unions in fact go beyond those exercised by trade union organizations elsewhere. The reorganization act created a Postal Service Advisory Council, named by the President, four of whose members shall be appointed from a list of nominees submitted by unions having bargaining rights for postal employees. This advisory council will consult with the Postal Service on all aspects of its operations. Thus the views of labor on matters far removed from the bargaining table will be freely heard.

There are two other major elements in the new post office management. At the top is a Board of Governors of 11 members. Nine are appointed by the President, subject to Senate confirmation. These nine choose the Postmaster General, who is the chief executive officer of the Postal Service and a voting member of the board. He and the other nine governors select the Deputy Postmaster General, who also becomes a voting member. Since the nine Presidential appointees will eventually serve nine-year terms, with one vacancy occurring each year; since only five may be of the same political party, and since all must represent "the public interest generally," rather than postal users, the chances of a sudden policy turnover are remote.

The other major body is the Postal Rate Commission of five members, named for six-year terms by the President on the basis of "professional qualifications." The commission hears proposals on rate changes and recommends rate schedules to the Board of Governors, which has the final say subject to court appeal. The rate commission may also receive complaints from the public and make recommendations to the Postal Service.

There are many miscellaneous rights that accompany the basic changes outlined here. For example, our contracts are now enforceable in court; the "advisory" policies, or decisions revocable by some higher management official, are gone for good. Management is responsible for the authorized acts of its agents; unions are, too. But as in the private sector, the courts will not entertain suits until the grievance procedures prescribed by the contract have been exhausted. This is further evidence of the law's intention to repose primary responsibility upon unions for fulfilling their obligations to those they represent.

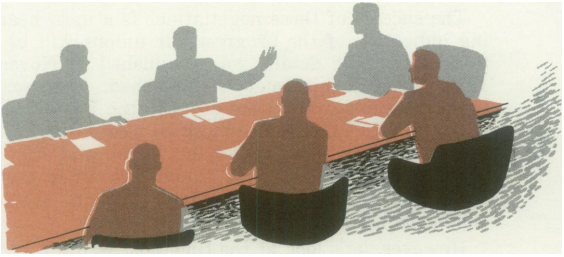
One of these obligations deserves special note.

It is the obligation of a union to give fair representation to every employee in the bargaining unit for which it is the recognized agent. There are no exceptions. The fulfillment of this obligation can be distasteful, but it's part of the price of exclusive recognition.

A union can take reasonable measures to protect itself from deliberate harassment by enemies from within, but it must safeguard their rights on the job. And the union cannot try to get rid of them, or bring them in line, by threatened or actual discrimination on the job. It's also illegal for a union to induce management to give preferential treatment to union members.

There is general agreement in the labor movement that these obligations fully justify the negotiation of union shop contracts, which require all the workers a union must fully represent to pay their fair share of the costs. But for unions in the Postal Service, this is a philosophical argument; the practical fact is the inescapable obligation to advance the well-being and protect the interests of all workers in the bargaining unit, not just members but free riders and foes as well.

For the free riders, one point should have new appeal today. It is now the exclusive craft union that determines improvements in wages, fringe benefits and job conditions; to do the job right the union needs the voice and the dues dollars of all.



III. Bargaining deadlocks and contract enforcement

The collective bargaining process described in the previous section differs in two major non-technical respects from any we have known before in the Postal Service.

First, the range of terms to be established and questions to be decided is almost unlimited. True, we are assured that benefits now enjoyed will not be taken away. But from this point on the whole structure of our working lives—including our standard of living today and our retirement comforts tomorrow—will be determined by union contract.

Second, these matters will not merely be debated and left hanging; they will be decided in a measureable time by the bargaining parties, or by others, through procedures mutually agreed upon or prescribed by law.

The reorganization act warmly invites the parties to adopt their own procedures. A start has been made in this direction; the seven unions and management have agreed to extend the existing national agreement and have completed negotiations compressing the steps in the salary schedule.

The success of these negotiations is a most heartening indication of the progress our unions will be able to achieve. The details were published in November 1970, when the agreement was reached. Even so, it is worth repeating that some of us in the Postal Service will reach the top step almost *13 years* sooner than previously provided. It can be fairly said that this first negotiated agreement, though limited to a single issue, has meant more to postal workers than any single change in the history of the service.

However, let's look at the timetable written into the act, without regard to the negotiations now in progress. Let's assume that an existing contract is nearing the end of its term, and no substitute procedures have been adopted.

At least 90 days before the formal expiration date, the party wishing to make changes in the agreement must so notify the other party in writing. It is assumed that negotiations will begin shortly thereafter. If no agreement has been reached 45 days after notice is served, the party that served the notice must so inform the Federal Mediation and Conciliation Service.

Up to here the procedure follows the routine in private industry. Since hardly any new agreements are reached 45 days before deadline, the mediation service gets lots of notices.

If, by the actual expiration date of the old contract, the parties have still not reached agreement and have not adopted an alternate procedure for arriving at a *binding* solution, the director of the mediation service must set up a fact-finding panel in this fashion:

He submits to the parties a list of not less than 15 names, from which each party has 10 days to choose one. These two then have three days to select a third person from the list to serve as chairman. If any of these selections aren't made, the mediation service director will make them.

The fact-finding panel must report its findings to the parties, with or without a recommended settlement, within 45 days after the list of panelists was submitted. In effect this is 45 days after contract expiration.

If the deadlock remains unbroken after another 45 days an arbitration board must be established. This is also to have three members, none from the fact-finding panel. Postal management names one, the union another and these two select a third. If they can't, the mediation director again makes the choice.

If the dispute is so sticky that the parties can't even agree on a description of their disagreements, the fact-finding panel frames the issues for submission to the arbitration board.

The board then gives the parties a full and fair hearing, including an opportunity to present evidence, be represented by counsel and the like—but not at leisure. The arbitration board must issue its final and binding decision within 45 days after it is appointed.

Thus the procedures in the law call for a final resolution of a deadlock within 135 days of contract expiration—say five months, allowing for inevitable lost time between steps. Against the background of postal service history, this is almost instantaneous.

But there is a price for this. The federal mediators are free of charge; the fact-finders and arbitrators are not. Their fees are to be shared by the postal service and the union involved.

It should be stressed again that the parties may substitute machinery of their own choice for the procedures just described. And most of us in the Postal Service believe we should have the right to strike. Yet it should also be noted that the mediation and arbitration provisions in the law do call for definite results in the shortest feasible time—in itself a welcome change.

Just as important as contract negotiation is contract enforcement, a fact that we in the postal service should

know. It's nice to have rights, privileges and benefits in theory, but it's nicer to have them in fact.

The reorganization act places the responsibility for contract enforcement, and for the resolution of any disputes that may arise during the term of an agreement, squarely on the union. Although, as seen in Section I, a form of end-around grievance procedure survives from the past, the law clearly doesn't anticipate it will get much use.

In this area, like so many others, the law tells us in the Postal Service to work out our own solutions. Collective bargaining agreements, it says, may include any procedures the parties may devise for settling grievances, including binding third-party arbitration. Or if the machinery isn't written into the contract, the parties can mutually consent to arbitrate an individual case, or to handle it in some other agreed-upon fashion.

It was undoubtedly in the spirit of encouraging workers to rely upon their unions, rather than the statute, for their protection—the highest form of self-reliance in modern industrial society—that Congress omitted from the act an arbitration mechanism for individuals, comparable to that provided for unions. In effect it left the burden of protecting the rights of an individual under the contract to the union that represents him. And by indirection, it left to the individuals the collective responsibility for creating unions capable of doing the job.

Free collective bargaining is a process which takes time.

The practice of free collective bargaining is a difficult art . . . which the postal service and its unions must now acquire.

Conclusion

These few pages have not attempted to discuss the technical or legalistic details of the Postal Reorganization Act, or of the applicable sections of the National Labor Relations Act. Few of us could make sense out of them if we tried; and besides, we don't need to. All we need to do is ask our union.

Actually, that's one of the ideas that inspired this pamphlet—the idea that in these new times, the union is the place to go for answers and for help: Practical help with job problems.

Another idea is that these new times, these new rights and responsibilities, offer all of us a tremendous opportunity. We can not only make the postal service a far better career for those involved in it; we have a chance to set an example in labor-management relations that will point new directions for unions and employers throughout America.

We are entering fresh on an established scene. The rules are definitive, the boundaries are marked; we bear none of the scars from the bitter battles that brought this about. For that reason alone, we may be in a position to develop new insights into the invaluable structure we have inherited.

There is another reason. Time after time, sections of the Postal Reorganization Act charge the postal service with the responsibility of being a model employer, providing worthwhile and satisfying careers for its employees, with full opportunity for advancement, and a work environment that is both safe and pleasant.

Let us forego cynicism based upon the past and for as long as we can, nurture the hope that this will in fact be the objective of the postal service now and in the future. If this proves to be so, the rights and responsibilities summarized in these pages will enable us to play our full part toward that end.

Council of American Postal Employees
in cooperation with
Government Employees Council, AFL-CIO