

PUBLIC COMMUNICATION ON LABOR LAW MATTERS ARISING IN CANADA

**Before the
NATIONAL ADMINISTRATIVE OFFICE OF THE UNITED STATES**

**Under the
NORTH AMERICAN AGREEMENT ON LABOR COOPERATION (NAALC)**

**VIOLATIONS OF NAALC LABOR PRINCIPLES AND OBLIGATIONS
IN THE CASE OF CANADIAN RURAL ROUTE MAIL COURIERS**

SUBMITTERS:

Organization of Rural Route Mail Couriers
Canadian Union of Postal Workers
National Association of Letter Carriers, AFL-CIO
Canadian Labour Congress
Fédération des travailleurs et travailleuses du Québec (FTQ)
Communications, Energy and Paper Workers Union of Canada (CEP)
Communications International
American Postal Workers Union
National Postal Mail Handlers Union
National Rural Letter Carriers Association
Communications Workers of America
Sindicato Nacional de Trabajadores del Servicio Postal Mexicano
Sindicato de Telefonistas de la Republica Mexicana
Teamsters Canada
United Steelworkers of America
International Brotherhood of Teamsters
Canadian Association of Labour Lawyers
Asociación Nacional de Abogados Democráticos
Common Frontiers
Réseau québécois sur l'intégration continentale
International Labor Rights Education and Research Fund

RECEIVED

DEC - 2 1998

I. INTRODUCTION

This submission raises issues concerning freedom of association and the right to bargain collectively for rural route mail couriers employed by the Canada Post Corporation.

In 1981, the Canadian Government enacted the *Canada Post Corporation Act* which establishes the Canada Post Corporation as a government-owned entity. The Act includes a provision that denies the right to collective bargaining for rural route mail couriers, while urban letter carriers have traditionally been unionized.

There have been two unsuccessful legal challenges of this provision, one based on the *Canada Labour Code* and another based on the *Canadian Charter of Rights and Freedoms* which is part of the Canadian Constitution.

Submitters contend that by refusing to repeal the provision, Canada is in breach of its obligation under the North American Agreement on Labor Cooperation (NAALC) to promote, to the maximum extent possible, the labor principles set out in Annex 1, namely freedom of association, the right to bargain collectively, prevention of and compensation for occupational injuries and illnesses, and elimination of employment discrimination.

The submission also discusses Canada's obligations under ILO Conventions.

II. NAALC LABOR PRINCIPLES AND OBLIGATIONS FOR COOPERATIVE CONSULTATIONS

A. Labor principles addressed by this submission:

- Freedom of association and protection of the right to organize.
- The right to bargain collectively.
- Elimination of employment discrimination.
- Prevention of occupational injuries and illnesses.
- Compensation in cases of occupational injuries and illnesses.

B. Obligations of Canada addressed by this submission:

- The obligation to promote, to the maximum extent possible, the labor principles set out in Annex 1 (Article 1 of the NAALC)
- The obligation to promote improvement of working conditions and living standards in Canada's territory (Article 1 of the NAALC)
- The obligation to ensure that labor laws and regulations provide for high labor standards (Article 2 of the NAALC).
- The obligation to continue to strive to improve those standards (Article 2 of the NAALC).
- The obligation to promote compliance with and effectively enforce labor law (Article 3 of the NAALC).

III. STATEMENT OF JURISDICTION AND AUTHORITY FOR COOPERATIVE CONSULTATIONS

The National Administrative Office (NAO) of the United States has jurisdiction to review this submission under Article 16(3) of the NAALC authorizing each NAO to review public communications on labor law matters arising in the territory of another Party, in accordance with domestic procedures.

The U.S. NAO is empowered under Article 21 to request consultations with the Canadian NAO concerning labor law, its administration, or labor market conditions in Canada.

Under Article 22, the U.S. Secretary of Labor may request consultations with the Minister of Labor of Canada regarding any matter within the scope of the NAALC. The matters raised in this submission are within the scope of the Agreement.

IV. BACKGROUND

A. Section 13(5) of the *Canada Post Corporation Act*: denial of the right of association for the purpose of collective bargaining

The Canada Post Corporation employs a little over 5000 people across Canada to deliver mail in rural areas. These workers, who make up close to 10% of the Corporation's workforce, do not

benefit from working conditions similar to those of their colleagues who deliver mail in urban areas. They barely earn minimum wage and they have no benefits. Rural mail couriers are obliged to compete with one another as well as with third parties in a tendering process, where Canada Post offers the available work to the person who is willing to accept the lowest wages.

Rural mail couriers are denied the fundamental right to form a union in order to negotiate a collective agreement. Therefore, they are also denied the right to get reasonable and decent working conditions and achieve the same level of protection as their colleagues serving urban dwellings.

The Parliament of Canada adopted specific legislation denying the right to collective bargaining to rural route mail couriers in 1981 strictly for financial reasons. It has refused ever since to repeal the provision.

When the *Canada Post Corporation Act*¹ (hereafter referred to as the Act) was adopted in 1981, the Postmaster General, Mr. André Ouellet, insisted on including what is now section 13(5) of the Act:

"Notwithstanding any provision of Part 1 of the Canada Labour Code, for the purposes of the application of that Part to the Corporation and to officers and employees of the Corporation, a mail contractor is deemed not to be a dependant contractor or an employee within the meaning of those terms in subsection 3(1) of that Act."

¹ R.S.C. 1985, c. C-10.

Part I of the *Canada Labour Code*², titled Industrial Relations, deals with the acquisition of bargaining rights through a certification procedure and regulates the collective bargaining process as well as the collective agreement entered into by the employer and the certified association. Part I applies to *employees* of federal businesses as defined in section 3(1):

"employee" means any person employed by an employer and includes a dependant contractor and a private constable, but does not include a person who performs management functions or is employed in a confidential capacity in matters relating to industrial relations;

"dependant contractor" means

(a) the owner, purchaser or lessee of a vehicle used for hauling, other than on rails or tracks, livestock, liquids, goods, merchandise or other materials, who is a party to a contract, oral or in writing, under the terms of which he is

(i) required to provide the vehicle by means of which he performs the contract and to operate the vehicle in accordance with the contract, and

(ii) entitled to retain for his own use from time to time any sum of money that remains after the cost of his performance of the contract is deducted from the amount he is paid, in accordance with the contract, for that performance,

(b) a fisherman who [...]

(c) any other person who, whether or not employed under a contract of employment, performs work or services for another person on such terms and conditions that he is, in relation to that other person, in a position of economic dependence on, and under an obligation to perform duties for, that other person;"

By adopting section 13(5) of the Act, Parliament denied rural route mail couriers the right to unionize and bargain collectively as well as the protection granted by the *Canada Labour Code* to workers who wish to associate for the purpose of entering into a collective agreement with their employer.

² R.S.C. 1985, c. L-2.

When this provision was adopted, the reasons given by the Postmaster General were purely financial. These are the explanations given by Mr. Ouellet before the Standing Committee on Miscellaneous Estimates of the House of Commons in December 1980:

"There are a number of reasons. One of the big ones obviously is that the override of the Canada Labour Code must continue in this proposed Canada Post Corporation Act, because without this override we believe the tendering system that exists presently would be destroyed. The present land mail service contracts that we have are valued at about \$90 million. If we were to carry this to the extreme - and I do not want to exaggerate the figure - the possibility of increased expenditures could be doubled or even tripled. Thirdly, the rural mail contractors represent almost 69 per cent of all land mail service contracts. Approximately 60 per cent of these work fewer than four hours per day, therefore, if we were to have these people pressing for unions the next step would be for the union to press for equalization of work and full-time employment with, obviously, the triple effect in terms of escalation of costs. These are just a few of the reasons why I think it would be risky at this time to change this clause. I would prefer that you just approve the amendment that I suggest, rather than approve the amendment by Mr. Orlikow".

Rural route mail couriers are denied the fundamental right of association for the purpose of collective bargaining based solely on financial reasons, preventing them from improving their working conditions and maintaining them in an inferior economic situation. According to Mr. Ouellet, the provision was adopted to enable the Canada Post Corporation to pay its workers as little as half their worth and maybe even the third of what they would be paid under negotiated terms.

B. Working conditions of rural route mail couriers

Rural route mail couriers perform the same work as their colleagues who are unionized letter carriers. Both work side by side within the postal installations sorting the mail, both deliver letters, parcels, express post, priority post, registers, certified items, items requiring proof of delivery and

both collect mail. Both perform their work under significant administrative control by the Corporation.

The Canada Labour Relations Board recognized the similarities of the functions in its decision of April 1987 (cited below):

"...we are equally satisfied that when a review is made of the functions of the couriers and letter carriers and, in some cases, rural post masters, the similarities of their functions greatly outweigh the dissimilarities. They are all involved with the sortation, delivery and collection of mail. They are all involved with customer contact items, such as special delivery, c.o.d., etc. Just as letter carriers deliver the mail during the course of a walk, or in the case of a mobile letter carrier through the use of a vehicle, so do the couriers. Just as the letter carriers collect mail, so too do the mail couriers. Just as letter carriers deliver flyers and other "junk" mail, so too do couriers. Just as letter carriers must sort their mail within prescribed time frames in order to meet the delivery schedule of the Corporation, so too do the couriers. And just as letter carriers must return mail collected to the plant or post office within certain time frames for forwarding, so too must couriers. Finally, all follow the same rules and regulations of the Corporation dealing with the sortation, collection, delivery and handling of mail."(at pages 192-193)

Even though both perform the same work, rural route mail couriers and letter carriers employed by the Corporation do not have the same working conditions. Letter carriers have employment security, access to arbitration of grievances, health and safety committees and training, sick leave benefits, paid holidays and vacations, maternity benefits, medical and dental plans as well as higher wages.

Rural route mail couriers have no benefits whatsoever. Their contract provides for an annual fee paid on a monthly basis. They provide their own vehicles and are responsible for all expenses related to licenses, insurance, taxes, vehicle maintenance and gas. The standard contract is for 250 operating days per year. If couriers wish to take some vacation time, they must find and train a replacement worker at their own expense and the choice of the replacement worker must be approved by the Corporation. Rural couriers are never paid overtime even when the weather or the daily workload forces them to put in extra hours.

Letter carriers enjoy employment security while rural route couriers do not. The latter's contracts are for five years but the relationship can be severed unilaterally by the Corporation with a ninety day notice. The vast majority of rural couriers work full time and have no other source of income. The time requirements of the Corporation permit no other significant regular employment.

Up until 1987, the practice was that once a person became a successful bidder and entered into a contract with the Corporation, at the end of the five year term, the contract would be automatically extended without re-tendering according to terms essentially established by the Corporation. Starting April 1987, all routes were opened for tender to the lowest bidder. The consequence of this competition is obviously lower revenues for couriers and even sometimes loss of the contract to a lower bidder who will often abandon the route because he cannot meet operation expenses.

C. Recourses available to rural route couriers

a) access to the certification procedure

In the mid 1980s, the Canada Labour Relations Board (CLRB), at the request of the Canada Post Corporation, reviewed the bargaining units at Canada Post. All unions took part in the hearings and the rural route mail carriers asked the CLRB to intervene in order that they be considered in the review conducted by the Board. Canada Post opposed the couriers' request and invoked section 13(5) of the Act in support of its position that these workers could not benefit from the provisions of the *Canada Labour Code* and therefore could not be included in any of the bargaining units the CLRB was about to establish in the course of the review process.

The Board heard evidence concerning the working conditions of the rural route mail couriers and the specific nature of their ties with the Canada Post Corporation in order to determine if they could be considered dependant contractors and thus included in the definition of "employee" of the *Canada Labour Code*.

In its decision³, the Board concluded that rural route mail couriers were employees according to the definition of the Code. It held that they were in a situation of total economic dependence with the Corporation, that their work constituted, in almost all cases, their only job and that they could not hold other employment. The CLRB concluded that rural couriers were perfectly integrated in the Corporation's operations and that their work was fully controlled by corporate managers.

As a result, the Board decided that rural route mail couriers were employees who should normally be covered by the provisions of the *Canada Labour Code*. It then examined the interpretation to be given to section 13(5) of the *Canada Post Corporation Act* and concluded that this exclusion should not apply to rural route mail couriers.

The Corporation filed a motion for judicial review of the decision of the CLRB before the Federal Court of Appeal. The Court set aside the decision of the Board stating that section 13(5) of the Act applied to rural route mail couriers since such was the intention of Parliament when the provision was adopted⁴. The Federal Court of Appeal recognized that without section 13(5), the employees concerned would have benefited from all the rights provided for in the *Canada Labour Code*. The Court noted that section 13(5) was a legal fiction designed to set reality aside and that the purpose of this provision was to deny these workers the right to collective bargaining.

The application of the union for leave to appeal to the Supreme Court of Canada was dismissed on May 26, 1988.

³ *Canada Post Corporation v. various unions*, C.L.R.B. decision dated April 29, 1987, 69 di 173.

⁴ In *Canada Post Corp. v. C.U.P.W.*, [1989] 1 F.C. 176.

Following the decision of the Federal Court of Appeal, the CLRB had no jurisdiction to review certification procedures regarding rural route mail couriers. Therefore, the only remaining recourse was to challenge the constitutionality of section 13(5) of the Act.

b) discrimination

A Statement of Claim was filed with the Federal Court of Canada by the Rural Route Mail Carriers of Canada, local 1801, by which the Plaintiffs requested a declaration that section 13(5) of the Act was contrary to section 15(1) of the *Canadian Charter of Rights and Freedoms*⁵. The Court found that section 13(5) of the Act did not discriminate against rural route mail couriers on any of the grounds enumerated in section 15(1) of the *Charter*⁶.

c) freedom of association

Article 2 of the *Canadian Charter of Rights and Freedoms* protects freedom of association:

—
"Everyone has the following fundamental freedoms:

[...]

(d) *freedom of association*"

⁵ Which reads: "Every individual is equal before and under the law and has the right to the equal protection of and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability."

⁶ *Rural Route Mail Carriers of Canada Local 1801 et al. v. The Attorney General of Canada*, F.C.C. T-549-89, decisions dated August 3rd, 1989 and May 29, 1990.

If a legislative provision restricts freedom of association, it is unconstitutional unless it can be demonstrated that the measure is justified in a free and democratic society.

However, the Supreme Court of Canada has held⁷ that the *Charter's* freedom of association protection does not extend to collective bargaining. The Court ruled in this case that freedom of association is not infringed upon by legislation establishing a public service union and denying any other union the right to bargain collectively with the employer. The employees had not lost their right to form another union, although the legislation precluded such a union from engaging in collective bargaining. According to the Court, the individual's right to form an association does not guarantee to the association the power to carry out its essential objectives nor an activity that is a foundational or essential purpose of the association.

d) health and safety protection and compensation for occupational injuries and illnesses

Part II of The *Canada Labour Code* deals with occupational health and safety matters and is mostly focused on prevention of safety hazards. However, these provisions apply only to *employees*, a term which is not defined in this Part so as to include dependant contractors. Therefore, due to the nature of the employment relationship between rural route mail couriers and the Canada Post Corporation, one must conclude that rural route couriers do not benefit from the health and safety protection provided for by the *Code*.

In consequence, rural route couriers do not benefit from the same health and safety programs as the letter carriers with whom they work side by side in the employer's facilities. They are not represented on any health and safety committee. They can not refuse to work when the situation or working conditions constitute a danger to them or to other workers. The Canada Post

⁷ In the case *P.I.P.S.C. v. N.W.T. (Commissioner)*, [1990] 2 S.C.R. 367

Corporation has no specific obligation towards rural route couriers to ensure their safety and health at work.

Regarding compensation for injuries or diseases, employees of the Canada Post Corporation are considered Government employees and as such are governed by the *Government Employees Compensation Act* which does not extend its protection to dependent contractors.

Indeed, Federal Parliament has exclusive legislative jurisdiction with respect to the employment and all related conditions for those who are in the service of the Federal Crown or who work for agents of the Federal Crown⁸. Thus Parliament has exclusive legislative jurisdiction with respect to workers' compensation for Federal Government employees, including employees of the Canada Post Corporation.

Parliament has chosen to exercise its exclusive legislative authority over Federal Government employees by incorporating by reference⁹ the workers' compensation available in each province to apply to Federal Government employees working in that province. Provincial legislation may be applicable to Federal Government employees since section 4 of the *Government Employees Compensation Act* specifies that federal employees are entitled to receive compensation at the same rate and under the same conditions as provided for by the provincial law. Therefore, the relevant definition of employee is the one found in the Federal Act. Unfortunately, it is limited to the traditional concept of *employee* and does not include dependent contractors.

Consequently, rural route mail couriers employed by the Canada Post Corporation who do not meet the test for the meaning of the word *employee* benefit from no compensation whatsoever with respect to industrial accidents and occupational diseases.

⁸ By virtue of section 91(8) of the Constitution Act, 1867.

⁹ Through the *Government Employees Compensation Act*.

In this context, it is interesting to note that some provinces have adopted legislation that applies to dependant contractors. For example, the Quebec Act applies to dependent contractors who meet certain criteria¹⁰. If the Quebec Act extends its protection to workers in a situation similar to that of rural route mail couriers, why shouldn't federal legislation do the same?

V. VIOLATIONS OF NAALC PRINCIPLES AND OBLIGATIONS

A. Freedom of association

The issue raised by the present case regarding freedom of association and the right to organize is substantially the same as the one raised before the Supreme Court of Canada in the case *P.I.P.S.C. v. N.W.T. (supra)*: does the protection of freedom of association include the guarantee to pursue the essential objectives of the association?

The Supreme Court of Canada has decided that in the context of the protection afforded by the Canadian constitution, this guarantee is not included. However, in the context of the NAALC, submitters contend that the issue commands a different approach.

In the labor law context and considering the labor principles enunciated in the NAALC, one cannot sustain that the right of association should be formulated as a right of individuals that does not include the right of the labor union to access certification procedures. This would miss an important point about the purpose of the protection of the exercise of the right of association as provided for in the NAALC.

¹⁰ Section 9 of the *Act Respecting Industrial Accidents and Occupational Diseases*, R.S.Q., c. A-3.001.

The purpose of the right of association in the labor context is obviously to pursue the goal of collective bargaining in order to improve terms and conditions of work. This is even one of the stated objectives of the NAALC: improve working conditions and living standards in each Party's territory (Article 1). It flows from this collective aspect of the right of association that the organization itself has rights, stemming from the exercise of the right of association by the individuals who form and join it. The exercise of this right requires that some measure of concerted activities be allowed and protected, otherwise it could not serve its purposes.

In the case *P.I.P.S.C. v. N.W.T.* (*supra*), Justice Cory expressed dissenting reasons. The following passage is relevant to the present discussion:

"Suppose individual employees formed an association, a team, to play hockey or baseball. The Government, through the Commissioner, could say that only those teams approved at the discretion of the Government are allowed to play baseball or hockey, or even attempt to book ice time or reserve a field. The Government would still graciously permit the team members to meet whenever or wherever they liked, at which meeting they could discuss the weather or the standard of television programs. However, they could not play baseball or hockey. In those circumstances the right of employees to associate for the lawful purpose of playing baseball or hockey would have been frustrated. How much more important is the right to form an association for the purpose of collective bargaining? [...]

It follows that I cannot accept the statement of my colleague that "s. 42(1)(b) has no effect on the existence of the Institute" (p. 405) and that "The union exists as long as the individuals can meet at a town hall and discuss their grievances. The hypothetical team in the example above did not exist because, while the members could meet, they could not play hockey or baseball. Similarly, a union can only exist if it is allowed to bargain collectively. That is the raison d'être of a union. In order to carry out its function of bargaining it must be recognized pursuant to the provisions of the relevant labour legislation. However, such an association or union does not "exist" under the Northwest Territories Act until it is incorporated as an "employees' association". [...]

To say that the association exists independently from its being incorporated under the legislation would be to denude the right granted by s. 2(d) of the Charter of any significance. [...]

Once a government has enacted a statutory definition of a group, as a legal entity, then any individual should be able to attempt to get his or her group recognized as such an entity, or to change the existing group entitled to exercise the rights granted under that legislative scheme.

(at pages 382-384)

In the present case, rural route mail couriers are denied the right of association for the purpose of collective bargaining. This activity is not just one of the many activities of the labor union; it is its *raison d'être*. Most of the other activities and services performed by the trade union result from this main purpose.

Therefore, submitters maintain that when Canada denies a group of workers the right to form a union for the purpose of collective bargaining, it denies each member of the group the freedom of association as stated in the NAALC.

Section 13(5) of the Act constitutes a breach of Canada's obligation to promote, to the maximum extent possible, the labor principle of freedom of association (Article 1 of the NAALC).

Denying a group of workers the fundamental freedom of association for a reason that does not serve the public interest and that is not necessary in a democratic society certainly goes against the promotion of this basic principle in labor law.

Being bound to protect freedom of association, governmental authorities have the obligation to create an enabling environment in which this right can be exercised. One must ask how a government can promote freedom of association in private party labor relations if it does not even promote the principle among employees under its control.

B. The right to bargain collectively

The effect and intent of section 13(5) of the Act is to deny rural route mail couriers the possibility of bargaining collectively their terms and conditions of employment. This constitutes a flagrant violation of Canada's commitment to promote the guiding principle of the right to bargain collectively found in Annex 1 of the NAALC.

Section 13(5) and the reasons for which it was enacted also constitute a violation of the obligation to ensure that labor laws and regulations provide for high labor standards (Article 2 of the NAALC), the obligation to continue to strive to improve these standards (Article 2 of the NAALC) and the obligation to promote improvement of working conditions and living standards in Canada's territory (Article 1 of the NAALC).

We have seen that the only reason for which rural route mail couriers are denied the right to bargain collectively is to keep costs down for the Canada Post Corporation. Canadian authorities do not seem to be concerned that the result is maintaining poor working conditions and living standards for rural route mail couriers. By denying these workers the right to bargain collectively and by using a tendering process in which they must compete with each other or with anybody else, Canada is making sure that rural couriers will never enjoy high labor standards or be able improve those standards by negotiating terms of employment with the Canada Post Corporation that resemble those of their colleagues in urban areas.

C. Elimination of employment discrimination

Canada has the obligation under the NAALC to promote the elimination of employment discrimination on such grounds as race, religion, age, sex or other grounds, subject to certain reasonable exceptions such as, where applicable, *bona fide* occupational requirements or qualifications and established practices or rules governing retirement ages, and special measures of protection or assistance for particular groups designed to take into account the effects of discrimination (Labor principle # 7).

In the present case, section 13(5) of the Act denies a number of rights and protective measures contained in the *Canada Labour Code* to a group of workers on the basis of their occupational status and/or whether they are rural or urban workers. These grounds for discrimination are neither reasonable exceptions, nor *bona fide* occupational requirements that justify the breach of this fundamental principle of elimination of employment discrimination.

We have seen that no reasons were given by Canadian governmental authorities that could explain and excuse this discrimination.

D. Canada's obligations under ILO Conventions

Of the six ILO conventions governing freedom of association and collective bargaining, Canada has ratified only the Freedom of Association and Protection of the Right to Organize Convention #87 of 1948, leaving unratified Convention 98 on the right to bargain collectively (ratified by 138 countries), Convention 135 on workers' representatives, Convention 141 on rural workers and Convention 151 on labor relations in the public service as well as Convention 154 on the promotion of collective bargaining.

One might reasonably expect that a country like Canada, who has committed itself under the NAALC to promote the principles of freedom of association and the right to bargain collectively as well as to strive to improve its labor standards, would have ratified at least the six ILO Conventions on association and bargaining rights.

Nonetheless, Canada is bound by the provisions included in these conventions since all member states must honor the freedom of association and collective bargaining principles embedded in the ILO constitution.

Reports of the ILO Committee on Freedom of Association (CFA), which examines complaints submitted against member states alleging non conformity with ILO principles, offers an excellent source of international law that can be used to interpret the scope of the principles Canada is committed to promote under the NAALC.

Article 2 of Convention 87, which was ratified by Canada, states that:

"Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous autorisation".

Article 10 defines the term "organisation" as any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

Article 7 provides that:

"The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

As a general principle, the CFA has stated that Article 2 of Convention 87 is designed to articulate the principle of non-discrimination in trade union matters. It has also stated that the words "without distinction whatsoever" used in this article mean that freedom of association should be guaranteed without discrimination of any kind based on occupation, sex, color, race, beliefs, nationality, political opinion, etc., not only for workers in the private sector, but also for civil servants and public service employees in general¹¹.

Regarding collective bargaining, the CFA has stated that the right to bargain freely with employers concerning working conditions constitutes an essential element of freedom of association. Therefore trade unions should have the right, through collective bargaining or other lawful means, to seek to improve the living and working conditions of those they represent. Public authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof. Any such interference would appear to infringe the principle that workers' and employers' organizations should have the right to organize their activities and to formulate their programs¹².

As well, the CFA considers that measures should be taken to encourage and promote the full development and use of mechanisms for voluntary negotiation between employers and workers' organizations, with a view to regulate the terms and conditions of employment by means of collective agreements.

It should be noted that the relationship between freedom of association and the right to collective bargaining is a question which was raised before the ILO on many occasions, and the importance of their interrelation was recognized without hesitation.

In conclusion, it is obvious that Canada is in breach of its obligations under ILO Conventions towards rural route mail couriers.

E. Prevention of and compensation for occupational injuries and illnesses

Under the NAALC, Canada is expected to promote, to the maximum extent possible, the prevention of occupational injuries and illnesses. It is also expected to continue to strive to

¹¹ See CFA Digest of Decisions, 1996, document 0301. Regarding public servants, see document 0303.

¹² See CFA Digest of Decisions, 1996, document 1401.

improve labor standards, including compensation for work related injuries and illnesses. Canada has failed to provide either for rural route mail couriers.

Any other dependant contractor has the possibility of obtaining health and safety protections through the negotiation process under federal law. Indeed, any other dependant contractor has access to collective bargaining under the terms of the *Canada Labour Code*. Preventive measures or representation on a health and safety committee may be provided for in a collective agreement. In that regard, it should be noted that postal workers employed by the Canada Post Corporation who are represented by the Canadian Union of Postal Workers enjoy extensive negotiated protections.

Therefore, denying rural route mail couriers the right to organize and bargain collectively has the effect of denying any possibility of obtaining protection against work related accidents and occupational diseases.

Furthermore, because the Federal Parliament has chosen not to extend compensation for occupational injuries to dependant contractors, rural route mail couriers suffer considerable disadvantages with respect to their unionized colleagues. Not only is the Corporation free from any obligation regarding the prevention of accidents and diseases, but if such occupational accidents or illnesses occur, workers are not compensated.

This situation is in total contradiction with the principles outlined in the NAALC.

VI. ACTION REQUESTED

Submitters request that the U.S. NAO undertake a review of the labor law matters arising in Canada, as outlined in this public communication. In this regard, submitters ask that the U.S. NAO hold public hearings where the case may be presented in greater detail, with direct testimony from rural route mail couriers. The NAO of Canada, officials of the Canada Post Corporation involved in this case as well as representatives of the Canadian Government should participate in such hearings.

Submitters ask that the U.S. NAO request cooperative consultations with the NAO of Canada under Article 21 of the NAALC with regards to the matters outlined in this public communication so that the NAOs may better understand and respond to the issues raised.

Submitters request that Ministerial Consultations be held under Article 22 of the NAALC to resolve matters raised in this public communication, including exchange of information, to permit a complete examination of the matter.

Submitters request that the US NAO urge the Canadian Government to repeal section 13(5) of the *Canada Post Corporation Act* in order to give full force and effect to the fundamental freedom of association and right to bargain collectively of rural route mail couriers employed by Canada Post Corporation.

Submitters request that the Secretariat of the Commission for Labor Cooperation undertake a report pursuant to Article 14(2) of the NAALC on the following subjects:

- the scope of the principle of freedom of association and the rights labor organizations must have in order to give full force and effect to this principle;
- the reasonable limitations that can be placed on freedom of association and the right to collective bargaining in a free and democratic society, in light of international labor law and reports or recommendations of the ILO's CFA and Committee of Experts;

- the principle of elimination of discrimination based on occupational status and the denial of rights and protections granted by labor legislation of general application;
- the prevention of injuries and illnesses related to rural route mail couriers' work;
- working conditions and living standards of rural route mail couriers employed by the Canada Post Corporation in comparison with those employed in similar work.

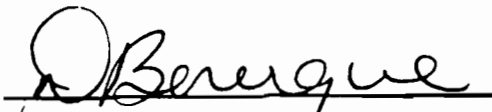
Submission to the US NAO in the Canadian rural route mail couriers case

122

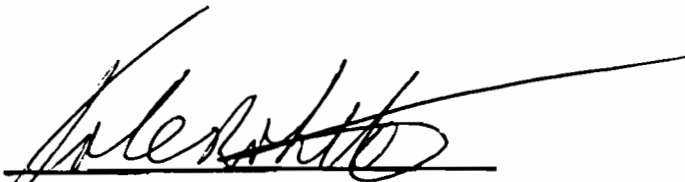
Submitted December 2nd, 1998 by:



Organization of Rural Route Mail
Couriers



Canadian Union of Postal Workers



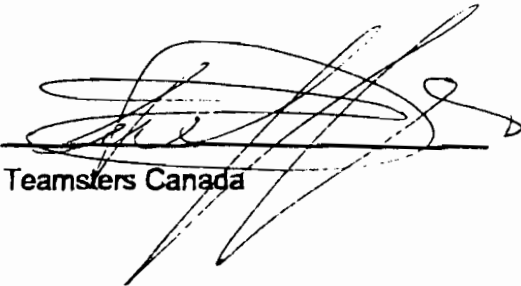
Canadian Labour Congress



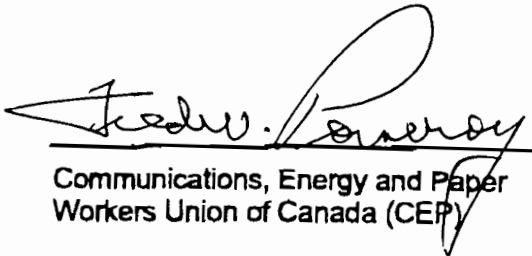
Fédération des travailleurs et
travailleuses du Québec (FTQ)

Submission to the US NAO in the Canadian rural route mail couriers case

123



Teamsters Canada



Communications, Energy and Paper
Workers Union of Canada (CEP)



United Steelworkers of America



Communications International



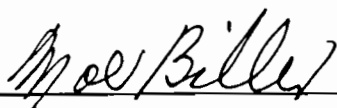
National Association of Letter
Carriers, AFL-CIO



National Postal Mail Handlers Union



National Rural Letter Carriers
Association



American Postal Workers Union



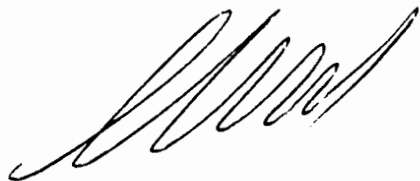
Communications Workers of America



International Labor Rights
Education and Research Fund



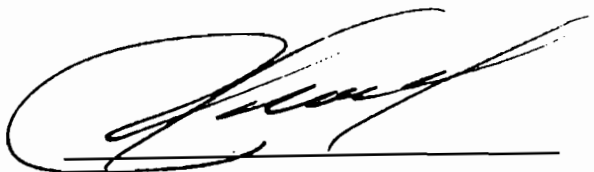
FRANCISCO HERNANDEZ JUAREZ
SECRETARIO GENERAL DEL
SINDICATO DE TELEFONISTAS DE
LA REP. MEX.

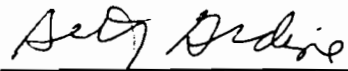


Oscar Alzaga Sánchez
Presidente de la Asociación
Nacional de Abogados Democráticos



Sindicato Nacional de Trabajadores
del Servicio Postal Mexicano

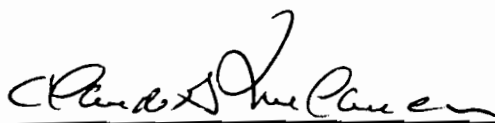




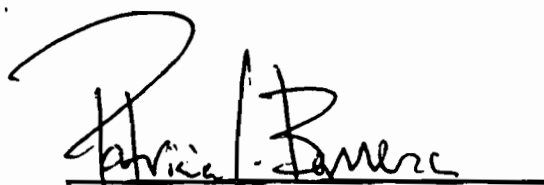
International Brotherhood of Teamsters



Réseau québécois sur l'intégration
continentale



Canadian Association of Labour
Lawyers



Philip B. Bowers
Common Frontiers

SUBMITTERS

Organization of Rural Route Mail Couriers

Larry Fedechko
President
20471, 16th Avenue
Langley, B.C.
V2Z 2B3

The Organization of Rural Route Mail Couriers represents 3000 rural couriers employed by the Canada Post Corporation.

Canadian Union of Postal Workers

Deborah Bourque
3rd National Vice-President
377, Bank
Ottawa, Ont.
K2P 1Y3

The Canadian Union of Postal Workers represents 48 000 postal workers and couriers, the majority being employed by the Canada Post Corporation.

National Association of Letter Carriers, AFL-CIO

Vincent R. Sombrotto
President
100 Indiana Ave., N.W.
Washington, D.C. 20001

The National Association of Letter Carriers has 300,000 active and retired members and represents 245,000 active employees of the US Postal Service (USPS).

American Postal Workers Union

Moe Biller
President
1300 L Street, N.W.
Washington, D.C. 20005

The American Postal Workers Union represents 350,000 active USPS employees.

National Postal Mail Handlers Union

William H. Quinn
President
1101 Connecticut Ave., N.W.
Washington, D.C. 20036

The National Postal Mail Handlers Union represents 60,000 employees of the USPS.

National Rural Letter Carriers Association

Stephen R. Smith
President
1630 Duke Street
Fourth Floor
Alexandria, VA 22314

The National Rural Letter Carriers Association represents 60,000 employees of the USPS.

Communications Workers of America

Morton Bahr
President
501 3rd Street, N.W.
Washington, D.C. 20001

The Communications Workers of America represents 600,000 workers in the private and public sectors, including telecom, newspaper, media and airline industries.

Canadian Labour Congress

Bob White
President
2841, Riverside Drive
Ottawa, Ontario
K1V 8X7

The Canadian Labour Congress groups the majority of national and international unions in Canada. The CLC includes 12 provincial and territorial federations, and represents 2.3 million unionized workers in Canada.

Fédération des travailleurs et travailleuses du Québec (FTQ)

Henri Massé
Président
545, Crémazie est, 17th floor
Montréal, Québec
H2M 2V1

The Quebec Federation of Labour represents 500 000 workers members of trade unions in all sectors of the economy, in the Province of Quebec.

Communications, Energy and Paper Workers Union of Canada (CEP)

Fred Pomeroy
President
350 Albert, suite 1900
Ottawa, Ontario
K1R 1A4

The CEP represents over 150 000 workers in Canada, in the paper, electricity, energy, media and communications industries.

Communications International

Philip Bowyer
General Secretary
38, avenue du Lignon
CH 1219 Geneva
Switzerland

The Communications International is an international federation of postal and telecom workers unions in more than 120 countries with 4.5 million members.

Sindicato Nacional de Trabajadores del Servicio Postal Mexicano

Manuel Acevedo Gonzalez
Secretary General
Calle Gomez Farias no. 52, Colonia San Rafael
C.P. 42230
Mexico 706470

Sindicato de Telefonistas de la Republica Mexicana

Francisco Hernandez Juarez
President
Rio Neva 16, colonia Cuauhtemoc
Mexico D.F.

Teamsters Canada

Louis Lacroix
Président
2540 Daniel-Johnson, suite 804
Laval, Québec
H7T 2S3

United Steelworkers of America

Lawrence McBrearty
National Director
234 Eglinton Ave. E. 7th Floor
Toronto, Ontario
M4P 1K7

The United Steelworkers of America is a diverse union representing 200 000 Canadian workers in the steel and mining industries, as well as in health care, hotels, security, retail and manufacturing industries.

International Brotherhood of Teamsters

Betty Grdina
Associate General Counsel
25, Louisiana Avenue N.W.
Washington D.C. 20001

Asociación Nacional de Abogados Democráticos

Oscar Alzaga
President
Dr. Lucio 102-401, Ed. Centauro
Colonia Doctores
Mexico D.F.

Common Frontiers

Patty Barrera
15, Gervais Dr., suite 305
Don Mills, Ontario
M6H 3W3

Common Frontiers is a coalition of social, labour, economic and environmental justice organizations from Chile and Canada.

Réseau québécois sur l'intégration continentale

Peter Bakvis
1601, de Lorimier
Montréal, Québec
H2K 4M5

Canadian Association of Labour Lawyers

Mel Myers

President

1717, René-Lévesque est, suite 300

Montréal, Québec

H2L 4T3

The Canadian Association of Labour Lawyers is a national organization whose members are lawyers practising or acting for labour unions or employee organizations.

International Labor Rights Fund

Pharis Harvey

Executive Director

110 Maryland Ave., N.E.

Washington, D.C.

The International Labor Rights Fund is a nonprofit action and advocacy organization whose mission is to encourage enforcement of international labor rights.