

CLOSED,JURY,TYPE-E

**U.S. District Court**  
**District of Columbia (Washington, DC)**  
**CIVIL DOCKET FOR CASE #: 1:92-cv-01942-GHR**

APWU, AFL-CIO, et al v. USPS  
Assigned to: George H. Revercomb  
Demand: \$0  
Cause: 39:0409 Action by or against the Postal Service

Date Filed: 08/21/1992  
Date Terminated: 07/02/1993  
Jury Demand: Plaintiff  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: U.S. Government Defendant

**Plaintiff**

**AMERICAN POSTAL WORKERS  
UNION, AFL-CIO**

represented by **Darryl James Anderson**  
O'DONNELL, SCHWARTZ  
&ANDERSON, P.C  
1300 L Street, NW  
Suite 1200  
Washington, DC 20005-4126  
(202) 898-1707  
Fax: (202) 682-9276  
Email: [danderson@odsallaw.com](mailto:danderson@odsallaw.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**DONALD CHENEY**  
*President, Auburn, WA, Local American  
Postal Workers Union, AFL-CIO*

represented by **Darryl James Anderson**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**AUBURN, WA, LOCAL AMERICAN  
POSTAL WORKERS UNION,  
AFL-CIO**

represented by **Darryl James Anderson**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**UNITED STATES POSTAL SERVICE**

represented by **Sally M. Rider**  
U.S. ATTORNEY'S OFFICE  
Civil Division  
555 Fourth Street, NW  
10th Floor  
Washington, DC 20530  
(202) 514-7157  
Fax: 202-305-0955  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
08/21/1992	1	COMPLAINT filed; Attachment; summons issued (3) (kk) (Entered: 08/24/1992)
11/02/1992	2	ANSWER to the complaint for defendant USPS (kk) (Entered: 11/03/1992)
11/02/1992		CALEDNARED (kk) (Entered: 11/03/1992)
11/03/1992		SCHEDULING NOTICE: status hearing set for 9:15 12/18/92 ; (jwd) (Entered: 11/03/1992)

12/18/1992		STATUS HEARING before Judge George H. Revercomb : further status hearing set for 9:00 2/16/93 ; Reporter: N/A (sm) (Entered: 12/18/1992)
02/03/1993		SCHEDULING NOTICE: status hearing set for 9:00 3/30/93 ; (jwd) (Entered: 02/03/1993)
03/17/1993		SCHEDULING NOTICE: status hearing set for 9:00 3/30/93 ; (jwd) (Entered: 03/17/1993)
04/16/1993		SCHEDULING NOTICE: status hearing set for 9:15 6/1/93 ; (jwd) (Entered: 04/16/1993)
06/01/1993		STATUS HEARING before Judge George H. Revercomb : case passed for settlement, parties hope to have settlement pleading filed by 6/4/93; status hearing set for 9:00 6/30/93 ; Reporter: N/R (jwd) (Entered: 06/01/1993)
06/14/1993		SCHEDULING NOTICE: status hearing set for 9:00 7/26/93 ; (jwd) (Entered: 06/14/1993)
07/06/1993	3	STIPULATION filed and fiated by Judge George H. Revercomb of settlement and dismissal with prejudice; each party shall ear its own expenses, costs and attorney's fees. (N) (jwd) (Entered: 07/06/1993)

**1:92-cv-01942-GHR** APWU, AFL-CIO, et al v. USPS

George H. Revercomb, presiding

**Date filed:** 08/21/1992

**Date terminated:** 07/02/1993

**Date of last filing:** 07/06/1993

## Case Summary

**Office:** Washington, DC

**Jury Demand:** Plaintiff

**Nature of Suit:** 440

**Jurisdiction:** U.S. Government  
Defendant

**County:** 11001

**Origin:** 1

**Lead Case:**

**Related Case:**

**Filed:** 08/21/1992

**Demand:** \$0

**Cause:** 39:0409 Action by or against the Postal  
Service

**Disposition:** Dismissed - Settled

**Terminated:** 07/02/1993

**Reopened:**

None

None

**Other Court Case:**

None

**Defendant Custody Status:**

**Flags:** CLOSED,JURY,TYPE-E

**Plaintiff:** AMERICAN POSTAL WORKERS  
UNION, AFL-CIO

**represented by** Darryl James  
Anderson

**Phone:**(202) 898-1707

**Fax:** (202) 682-9276

**Email:** danderson@odsalaw.com

**Plaintiff:** DONALD CHENEY

**represented by** Darryl James  
Anderson

**Phone:**(202) 898-1707

**Fax:** (202) 682-9276

**Email:** danderson@odsalaw.com

**Plaintiff:** AUBURN, WA, LOCAL  
AMERICAN POSTAL WORKERS UNION,  
AFL-CIO

**represented by** Darryl James  
Anderson

**Phone:**(202) 898-1707

**Fax:** (202) 682-9276

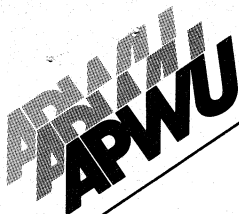
**Email:** danderson@odsalaw.com

**Defendant:** UNITED STATES POSTAL  
SERVICE

**represented by** Sally M. Rider

**Phone:**(202) 514-7157

**Fax:** 202-305-0955



## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Thomas A. Neill  
Industrial Relations Director  
(202) 842-4273

July 12, 1993

Donald C. Cheney, President  
Auburn Local, APWU  
P. O. Box 1002  
Auburn, WA 98071

Dear Don:

#### National Executive Board

Moe Biller  
President

William Burrus  
Executive Vice President

Douglas C. Holbrook  
Secretary-Treasurer

Thomas A. Neill  
Industrial Relations Director

Robert L. Tunstall  
Director, Clerk Division

James W. Lingberg  
Director, Maintenance Division

Donald A. Ross  
Director, MVS Division

George N. McKeithen  
Director, SDM Division

I am attaching a copy of the stipulated settlement in the lawsuit over your arbitration award. Please note that the language concerning the publishing of this settlement has been removed. I have, however, agreed with the Postal Service that the APWU would not publish the Stipulation of Settlement and Dismissal. There are several reasons, the most important being that the APWU considers arbitration as final and binding. As you know it is extremely rare that we would go to court, especially on a "just cause" disciplinary matter where the legal standard of "draws its essence from the collective bargaining agreement" can almost never be met.

In any event, enjoy your back pay. I look forward to seeing you soon.

#### Regional Coordinators

James P. Williams  
Central Region

Philip C. Flemming, Jr.  
Eastern Region

Elizabeth "Liz" Powell  
Northeast Region

Archie Salisbury  
Southern Region

Raydell R. Moore  
Western Region

With kindest personal regards, I remain

Sincerely and fraternally,

Thomas A. Neill, Director  
Industrial Relations Dept.

CC: Bob Tunstall

TAN:kj  
opeiu #2  
afl-cio  
Attachment

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

FILED

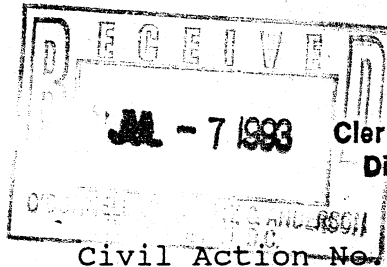
AMERICAN POSTAL WORKERS  
UNION, AFL-CIO, et al.,

Plaintiffs

v.

UNITED STATES POSTAL SERVICE,

Defendant.



Civil Action No. 92-1942 GHR

STIPULATION OF SETTLEMENT AND DISMISSAL

It is hereby stipulated by and between plaintiffs and defendant, by their respective attorneys and subject to the approval of the Court, as follows:

1. The parties do hereby agree to settle and compromise this case under the terms and conditions set forth herein.

2. Plaintiff Don Cheney was issued a 14-day disciplinary suspension dated June 5, 1991. On May 7, 1992, Arbitrator Roy Erickson issued an Opinion and Award in In the Matter of Arbitration between American Postal Workers Union and United States Postal Service, Case No. WOC-5R-D 1354, in which the grievance challenging the suspension was denied. On August 21, 1992, the complaint in this civil action was filed by the plaintiffs seeking, inter alia, a declaration that the issuance of the above-referenced suspension violated the United States Constitution.

3. In light of Mr. Cheney's discipline-free record since the June 5, 1991, suspension, the Postal Service agrees that such suspension shall not be considered in any subsequent disciplinary action. The Postal Service further agrees to pay Mr. Cheney for

all pay lost as a result of the suspension, at Mr. Cheney's rate of pay in effect on June 5, 1991, without interest.

4. Each party shall bear its own expenses, costs and attorney's fees.

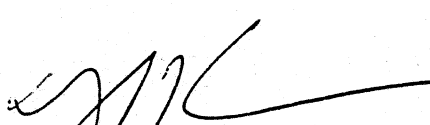
5. This Stipulation of Settlement and Dismissal contains the entire agreement between the parties and resolves all claims of all parties regarding the June 5, 1991, suspension and the Arbitration Award in Case No. WOC-5R-D 1354.

6. The parties expressly acknowledge that this settlement is made without prejudice to the positions of any party in any future arbitral, administrative or judicial forum unrelated to the suspension at issue here. This stipulation shall not constitute a finding by the Court or an admission of liability or fault on the part of the United States, its agents, servants, or employees, and is entered into by both parties for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation.

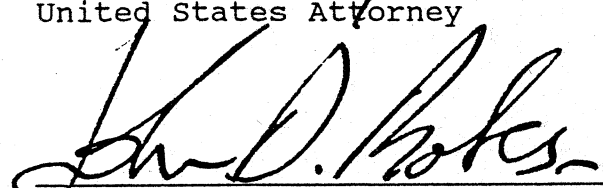
7. The parties agree that any dispute concerning implementation of this Stipulation shall be resolved pursuant to the grievance-arbitration procedures of the parties' collective bargaining agreement.

8. This case shall be dismissed with prejudice.

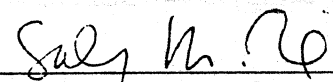
Respectfully submitted,

  
DARRYL J. ANDERSON  
D.C. BAR #154567  
LEE W. JACKSON  
D.C. BAR #436010  
O'DONNELL, SCHWARTZ  
& ANDERSON  
1300 L Street, N.W.  
Suite 200  
Washington, D.C. 20005

  
J. RAMSEY JOHNSON, D.C. BAR #243253  
United States Attorney

  
JOHN D. BATES, D.C. BAR #934927  
Assistant United States Attorney

Counsel for plaintiff

  
SALLY M. RIDER, D.C. BAR #436588  
Assistant United States Attorney

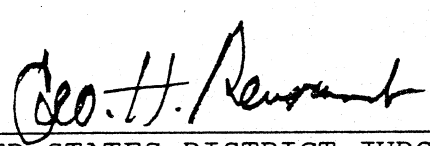
OF COUNSEL:

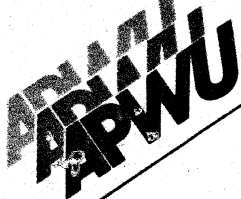
KEVIN B. RACHEL  
Attorney, Office of Labor Law  
United States Postal Service

Counsel for defendant

It is so ORDERED this 2 day of July,

1993.

  
UNITED STATES DISTRICT JUDGE



## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

**Thomas A. Neill**  
Industrial Relations Director  
(202) 842-4273

September 21, 1992

Ron Rasmussen, NBA  
Clerk Division, APWU  
6629 N.E. 82nd Avenue, Suite 204  
Portland, OR 97220

### National Executive Board

Moe Biller  
President

William Burrus  
Executive Vice President

Douglas C. Holbrook  
Secretary-Treasurer

Thomas A. Neill  
Industrial Relations Director

Kenneth D. Wilson  
Director, Clerk Division

Thomas K. Freeman, Jr.  
Director, Maintenance Division

Donald A. Ross  
Director, MVS Division

George N. McKeithen  
Director, SDM Division

Norman L. Steward  
Director, Mail Handler Division

Dear Ron:

This will further refer to our recent exchange of correspondence and subsequent meeting at the National Convention concerning Arbitrator Ray Erickson's award in the 14 day suspension of D. Cheney.

I am attaching hereunder a copy of the lawsuit filed in this matter and will keep you posted.

With kindest personal regards, I remain

Sincerely and fraternally,

Thomas A. Neill, Director  
Industrial Relations Dept.

### Regional Coordinators

James P. Williams  
Central Region

Philip C. Flemming, Jr.  
Eastern Region

Elizabeth "Liz" Powell  
Northeast Region

Archie Salisbury  
Southern Region

Raydell R. Moore  
Western Region

TAN:kj  
opeiu #2  
afl-cio  
Attachment

CC: Bob Tunstall  
Margaret Leaf  
Don Cheney



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RECEIVED  
AUG 21 5 08 PM '92  
UNITED STATES  
DISTRICT COURT  
DISTRICT OF COLUMBIA

AMERICAN POSTAL WORKERS UNION, AFL-CIO )  
1300 L Street, NW )  
Washington, DC 20005 )

and )

DONALD CHENEY )  
President, Auburn, WA, Local )  
American Postal Workers Union, AFL-CIO )  
P.O. Box 1002 )  
Auburn, WA 98071 )

Civil Action No. \_\_\_\_\_

and )

AUBURN, WA, LOCAL )  
AMERICAN POSTAL WORKERS UNION, AFL-CIO )  
P.O. Box 1002 )  
Auburn, WA 98071 )

JURY TRIAL  
DEMANDED

Plaintiffs, )

v. )

UNITED STATES POSTAL SERVICE )  
475 L'Enfant Plaza, SW )  
Washington, DC 20260 )

Defendant. )

COMPLAINT FOR INJUNCTIVE RELIEF  
AND DECLARATORY RELIEF AND FOR  
DAMAGES

1. Jurisdiction is conferred on this Court by the Postal Reorganization Act, 39 U.S.C. §§409 and 1208(b); the Federal Arbitration Act, 9 U.S.C. §10; the Declaratory Judgement Act, 28 U.S.C. §§2201-2202; the Judicial Code, 28 U.S.C. §§ 1331 and 1339; and the First and Fifth Amendments to the United States Constitution.

2. (a) Plaintiff American Postal Workers Union, AFL-CIO (APWU), is an unincorporated labor organization, and the exclusive bargaining representative of postal workers employed by the United States Postal Service (Postal Service) in the clerk, maintenance, motor vehicle and special delivery messenger crafts nationwide.

(b) The Auburn, WA, Local (the Local) is a local union affiliated with the APWU.

(c) Donald Cheney (Cheney) is a postal worker employed in the Auburn, WA, postal facility, a member of the APWU and the Local, and president of the Local.

3. Defendant Postal Service is an independent establishment of the executive branch of the United States Government, with its principal offices in the District of Columbia.

4. At all times relevant herein, the APWU and the Postal Service have been parties to successive collective bargaining agreements, the most recent being effective November 21, 1990, through November 20, 1994.

5. The current collective bargaining agreement provides in pertinent part:

## ARTICLE 16

### DISCIPLINE PROCEDURE

#### Section 1. Principles

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the

terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

6. On or about June 5, 1991, the Postal Service issued Cheney a fourteen (14) day calendar days suspension for "conduct unbecoming a postal employee."

7. The conduct allegedly unbecoming a postal employee was Cheney's providing to a newspaper reporter of the Seattle Times the telephone number of an employee who was involved in several incidents and disputes with the Postal Service, together with the names and telephone numbers of two other postal employees who were witnesses to the incidents of interest to the reporter.

8. The operations of the Postal Service in general, and the incidents about which the reporter for the Seattle Times inquired and Cheney responded, are matters of public concern.

9. There is no rule, regulation, or law which either prohibited or limited Cheney's disclosures to the reporter for the Seattle Times, for which he was suspended.

10. Pursuant to Article 15 of the collective bargaining agreement, the APWU grieved this action, which grievance culminated in an arbitration before Arbitrator Roy Erickson on or about February 7, April 3, and April 21, 1992.

11. On or about May 7, 1992, the Arbitrator issued an Opinion and Award denying the grievance (Attachment A). The APWU received

a copy of this Opinion and Award on suspension on or about May 8, 1992.

12. The Postal Service's suspension of Cheney

(a) violated Cheney's, the APWU's, the Local's, and their members' rights to freedom of speech and association, and of the press; and

(b) violated the rights of freedom of speech and of association, and of the press, of postal workers generally.

13. The Postal Service's discipline of Cheney has had and is having a chilling effect on the exercise of the rights of freedom of speech and association, and of the press, of Cheney, the APWU, the Local; their members, postal workers generally.

14. There exists no adequate remedy at law, and Cheney, the APWU, and the Local, their members, and postal workers generally were and are suffering irreparable injury as long as the Postal Service fails and refuses to rescind the suspension of Cheney and make him whole in all respects, and as long as Arbitrator Erickson's award remains in effect.

WHEREFORE the plaintiffs pray for

A. A judgment declaring that the Postal Service breached the collective bargaining agreement and violated the First and Fifth Amendments of the United States Constitution by suspending Cheney, and by adopting and effectuating the award.

B. An order directing the Postal Service to rescind Cheney's suspension and make him whole in all respects, including to expunge this discipline from his records, and otherwise to make

him whole for lost wages, benefits, leave, and all other rights and privileges.

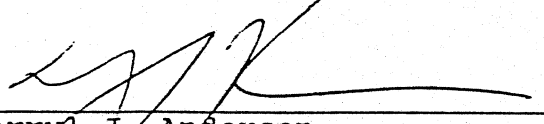
C. An injunction prohibiting the Postal Service, its officers, agents, successors and employees, from violating the First and Fifth Amendment right of Cheney, the APWU, the Local, their members, and other postal workers, in any manner.

D. An award of damages and affirmative relief according to proof to the APWU, the Local and Cheney for violation of the United States Constitution, including but not limited to attorneys fees, expenses, salaries and costs in this Court and in the grievance and arbitration process.

E. Such other and further relief to which the plaintiffs may be entitled, and which justice requires.

Respectfully submitted,

Dated: 8/21/92

  
Darryl J. Anderson  
D.C. Bar No. 154567  
Lee W. Jackson  
O'DONNELL, SCHWARTZ & ANDERSON  
1300 L Street, NW, Suite 200  
Washington, DC 20005  
(202) 898-1707  
Attorney for Plaintiffs APWU, the  
Local and Cheney