

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

_____	:	
TRENTON METROPOLITAN AREA	:	
LOCAL OF THE AMERICAN	:	
POSTAL WORKERS UNION,	:	
AFL-CIO,	:	CIVIL ACTION NO. 06-2319 (JAP)
	:	
Plaintiff,	:	
v.	:	<b>ORDER</b>
	:	
UNITED STATES POSTAL	:	
SERVICE,	:	
	:	
Defendant.	:	
_____	:	

On August 29, 2008, proposed Defendant-intervenor National Postal Mail Handlers Union (“NPMHU”) filed a motion for leave to intervene as a Defendant in this case pursuant to Federal Rules of Civil Procedure 24(a) or 24(b). [Docket Entry No. 64] On September 3, 2008, the NPMHU filed a motion for relief from this Court’s Orders dated May 28, 2008 and July 22, 2008, pursuant to Federal Rule of Civil Procedure 60(b). [Docket Entry No. 67] Plaintiff Trenton Metropolitan Area Local of the American Postal Workers Union, AFL-CIO (“Trenton Metro”) opposes both motions. Oral argument was held on the two motions on December 3, 2008.

Though an appeal to the Third Circuit was filed by Defendant United States Postal Service (“USPS”) on September 19, 2008 [Docket Entry No. 76], this Court retains jurisdiction to entertain both motions. *See Halderman v. Pennhurst State Sch. & Hosp.*, 612 F.2d 131, 134 (3d Cir. 1979) (holding the trial court’s declination to consider the merits of a motion to

intervene, filed after the filing of a notice of appeal, to be erroneous); *United States v. Contents of Accounts*, 971 F.2d 974, 988 (3d Cir. 1992) (holding that the filing of a notice of appeal does not divest a district court of jurisdiction to “entertain” a motion for relief from judgment under 60(b)).

The Court agrees that this litigation gives rise to a tangible threat to NPMHU’s legal interest to protect its membership because the instant dispute concerns the staffing of members of the NPMHU and the Trenton Metro labor unions for a mail sorting machine, the Automated Flat Sorter Machine 100 (“ASFM-100”). Consequently, NPMHU’s legal interest is certainly affected by the disposition of the action. Further, the Court finds, in its discretion, that the application to intervene is timely because NPMHU acted reasonably in filing its motion for intervention within one month of being informed that the USPS intended to not staff mail handlers on the ASFM-100, and because there no prejudice is suffered by Trenton Metro or the USPS. Because Defendant USPS’s primary goal was to achieve the most efficient staffing for the ASFM-100 without a preference for members of either labor union, the Court finds that NPMHU’s legal interest was not adequately represented as required by Rule 24(a) and the Court grants NPMHU’s motion to intervene.

However, NPMHU has failed to demonstrate good cause under Rule 60(b) to vacate the Court’s May 28 and July 22 Orders and this motion is denied. Though the Court is afforded broad discretion to deny or grant relief under Rule 60(b) in light of the particular circumstances, such relief is traditionally considered extraordinary and is only sparingly afforded. *Moolenaar v. Gov’t of Virgin Islands*, 822 F.2d 1342, 1346 (3d Cir. 1987) (stating that relief under Rule 60(b) is warranted under only the most extraordinary of circumstances). NPMHU has failed to

demonstrate either excusable neglect or unfair surprise under Rule 60(b)(1), as the union was periodically apprised of both the existence of and developments in the litigation. At the very least, NPMHU was on constructive notice of the existence of the litigation because the Complaint and other litigation documents remained on the Trenton Metro website, and a bulletin board at the Trenton, New Jersey post office, for over two years. Additionally, NPMHU cannot demonstrate that extreme and unexpected hardship will result if this Court fails to offer the extraordinary relief NPMHU seeks, as required by Rule 60(b)(6), because NPMHU was aware of the instant litigation.

Accordingly, on this 30<sup>th</sup> day of December, it is hereby

**ORDERED** that NPMHU's motion to intervene [Docket Entry No. 64] is **GRANTED**;  
and it is further

**ORDERED** that NPMHU's motion for relief from judgment [Docket Entry No. 67] is  
**DENIED**.

**SO ORDERED.**

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/s/ Joel A. Pisano  
JOEL A. PISANO, U.S.D.J.