



**UNITED STATES POSTAL SERVICE
OFFICE OF INSPECTOR GENERAL**

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MEMORANDUM OF INTERVIEW

Interview Date:	FEBRUARY 4, 2010
Case Name:	BERNSTOCK, ROBERT F. - PRESIDENT - MAILING AND SHIPPING SERVICES - WASHINGTON, DC
Case Number:	09UIHQ0132GC11SI
Interviewee:	John Potter, Postmaster General
Interview Location:	U.S. Postal Service Headquarters 475 L'Enfant Plaza SW Washington DC 20260
Interviewed By:	Yvette Savoy, Deputy Assistant Inspector General, Investigations (b)(7)(C) Investigator (b)(7)(C) Special Agent
Witnesses:	N/A

On February 4, 2010, OIG Investigator (b)(7)(C) Special Agent (b)(7)(C) (b)(7)(C) and Deputy Assistant Inspector General for Investigations Yvette Savoy interviewed Postmaster General John Potter to discuss allegations of misconduct regarding his subordinate President of Mailing and Shipping Robert Bernstock.

Potter provided the reporting agent (RA) the following information:

Potter stated he hired Robert Bernstock for the position of president of Mailing and Shipping Services in June 2006 after a lengthy search for an executive to help market and sell competitive products. The search and selection followed an 18-month period in which Potter tasked the Postal Service's Marketing group with growing the business and returning a profit on competitive products. (b)(7)(C) not changing, the competitive products profits were not growing, and he was not getting the desired response (b)(7)(C). The Postal Service's failure to succeed in the market place convinced Potter (b)(7)(C) qualified talent within the Postal Service to properly market and sell competitive products, and (b)(7)(C). According to Potter, the Postal Service had become stale. After an exhaustive search and interviews of candidates for the position, Potter selected Bernstock because he had very good product skills and he thought he would bring a new level of energy to the organization.

Upon starting, Bernstock had a lot of work to do, specifically recruiting and hiring talent.

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(b)(7)(C)

Bernstock was brought to the Postal Service with the "change" purpose in mind.

Bernstock evaluated the organization, evaluated the employees' skill sets, and brought in the necessary talent fill the voids. Because of his work, the Postal Service received a lot of recognition. Bernstock brought innovation to Mailing and Shipping Services under his leadership, as exemplified by the fact that the Postal Service had a sale for the first time ever. The sale was a break-through moment and proved to be profitable. Bernstock facilitated a significant number of contracts on the package side of the house. Bernstock is responsible for the change to cubic pricing and a new set of rate structures. Bernstock gave the Postal Service a phenomenal lift. Potter also pointed out the significant growth in the Priority Mail® area. Bernstock is responsible for world-class commercials. The Postal Service has a new vision and a new perspective. He brought energy and is a change agent for the Postal Service. Potter stated the chief executive officer of their current advertising agency, Campbell-Ewald (CE), recently told Potter his employees were learning from Bernstock. [Agent Note: CE is responsible for in-store advertising and television commercials, as well as internet and media advertising.] Potter said, "You cannot buy Bernstock's experience. You might need five of them (people like Bernstock) or take ten years to get (his) level of skill."

Bernstock's hire and newly created position drew a lot of negativity, which Potter called "the nature of the beast." Potter stated Bernstock has been doing a phenomenal job, breaking through, and building good customer relationships. He said Bernstock is still going through a transition period from the private sector to the Postal Service. He is starting to understand the boundaries, rules, regulations, and politics that come with his position. Potter said the good thing is Bernstock is new and questions if boundaries are real or not.

Conditions of Employment

Regarding the terms of Bernstock's hiring, Potter said it was understood that he was not moving to Washington, DC, in the short run, so it was agreed he could work from home one day a week. For compensation, Bernstock was to receive one of the highest salaries in the Postal Service, complete with recruitment and retention bonuses. Potter also agreed, after the lawyers vetted it, that Bernstock would be permitted to remain on two external boards, NutriSystems and The Pantry.

Potter said he and Bernstock only discussed Bernstock remaining on NutriSystems and The Pantry boards. Potter stated that these two boards were discussed because Bernstock was an "employee," complete with salaried compensation of the two companies. Potter was not informed about any other board memberships, nor did he authorize Bernstock to participate in any other outside business ventures. Potter assigned the Law Department's Ethics office to handle the logistics and any potential conflict of interests Bernstock might have transitioning from the private sector.

The RA asked Potter if he provided Bernstock with a written condition(s) of employment agreement and he responded in the negative, stating that he did not think he signed anything with Bernstock regarding his job description. He referred the RA to Executive Vice President Anthony Vegliante, stating that he usually signs employment agreements.

Misuse of Staff

Potter said he did not authorize Bernstock to utilize his staff to conduct outside business tasks. Potter's understanding of policy is that employees cannot use any Postal Service personnel to do outside business. Potter said he did not know why Bernstock's board membership e-mails (b)(7)(C) Postal Service e-mail account. He questioned the number of e-mails involved and said it was inappropriate for Bernstock's (b)(7)(C) to receive the e-mails or conduct tasks related to his external business. Potter could not comment what, if any, corrective action should be given to Bernstock if he learned that he had violated policy and inappropriately utilized his staff.

(b)(5)

Personal Use of Postal Service Resources

Potter recalled that he made no exceptions for Bernstock to use Postal Service equipment or employees for work on his board memberships or outside business activities. He recalled that the issue of Bernstock occasionally transferring e-mails from his personal e-mail account to his government e-mail account might have come up, but he did not remember the specific conversation nor commit the conversation to writing. However, he has no problems with Bernstock occasionally transferring e-mails to his government account to print or read.

Potter recalled meeting with Attorney Helen Grant and General Counsel Mary Ann Gibbons to discuss Bernstock staying in the office to participate in telephone conference calls for his board membership obligations. They counseled the alternative would

require Bernstock to travel to his hotel to participate in the meetings by phone, which he (Potter) did not believe was necessary and allowed him to stay on premises to participate in the phone conference. Grant and Gibbons informed him the calls would last approximately one-half hour to an hour and Bernstock would extend his day to make up for the time spent conducting his personal business. Bernstock's board meetings were not supposed to be conducted on the clock, if Bernstock had to attend board meetings, he was required to take leave.

Potter did not recall a conversation with Bernstock regarding telephone calls for his private business, etc. Potter believed that Bernstock would have utilized his personal mobile telephone to conduct his business and was unaware that he was using the government telephone or the government e-mail account to conduct his personal business. However, Potter opined that the Postal Service has policies permitting incidental use of office equipment, applicable to all employees, such as occasional phone calls. Potter stated that not knowing the totality of the circumstances (i.e. the number of calls and e-mails), he thinks Bernstock's use of government equipment may be de minimus. Potter's discussions regarding Bernstock's use of government telephone and e-mail were with Gibbons and Vegliante in the room, because they were responsible for writing Bernstock's contract.

Potter said, "De minimus to him is the odd use, limited use, like people taking calls from their family, or people working on your house. I do not know how or where to draw the line. In the past, you had to pay for personal long distance calls from USPS phones, but now there is a de minimus rule."

Potter recalled a recent conversation with Bernstock, which he described as odd, in which Bernstock stated, "I think I'm squeaky clean, and I turn around and there's new rules I'm finding out about." Bernstock would ask Potter "Is it true I'm not allowed to do x, y, z..."

Boards and the Standard Form (SF) 278, *Public Financial Disclosure Report*

Potter stated he was not aware that Bernstock asked for ethics advice regarding hiring (b)(7)(C) to work on his private businesses on the side. Potter did not talk with Bernstock about that, but if he did, Potter would have said no. Neither Potter nor Bernstock would have needed to ask for an opinion from the Law Department.

The RA asked Potter if he was knowledgeable about Bernstock's other board memberships. Potter knew Bernstock had other associations, but not others that were paid memberships, like NutriSystems and The Pantry, "constituting employment." Potter stated he does not know about other associations and they were never discussed. He added that he did not recall Bernstock's memberships on unpaid boards. Potter said that their discussions were around the compensation, things he was compensated for on the boards of Pantry and NutriSystems. Potter recalled focusing on the aforementioned two, as Bernstock was paid by them and did work for them, but

Potter allowed the lawyers vet it. He recalled the lawyers returned and said it was permissible for Bernstock to remain on the boards.

Potter stated that Grant and Gibbons told Bernstock all boards and investments on his SF 278 had to be vetted by the Law Department. Potter stated he was not involved in the ethics process and does not know what Bernstock owns or what relationships he has with external business other than The Pantry and NutriSystems. All outside activity is supposed to be vetted. Potter does not know about Bernstock membership on other boards, to include capital investment firms. Potter reiterated that he has no idea what is on Bernstock's SF 278 and said, "If it is a SF 278 requirement to list them all, it is a SF 278 requirement."

The RA asked Potter to opine on possible corrective action if the OIG provided him evidence that Bernstock failed to vet his external business activity with the Law Department through the SF 278. Regarding penalties for failing to list all holdings in his SF 278, Potter said as a manager, he would ask the lawyers for the rules and seek counsel from Attorney (b)(7)(C) who would conduct an evaluation of the rule, alleged violation, evidence, and range of corrective actions available. He was not knowledgeable about a range of penalties for failing to properly prepare a SF 278. The RA informed Potter that failing to properly disclose potential conflict of interests could be criminal and he stated criminal violations are for the OIG to deal with. Potter stated that his staff had not informed him that Bernstock failed to disclose outside business activity on his SF 278.

Potter stated there is no reason why he would think anything Bernstock does externally conflicts with his job, because it was not brought to his (Potter's) attention. Potter said Bernstock is clean, and he recalled that subsequent a SF 278 review by the Law Department, Bernstock sold off FedEx and DHL stock.

Contractors

The RA asked Potter about his knowledge of Bernstock hiring former colleagues as contractors. Potter stated he was aware of Bernstock bringing in outside contractors to the Postal Service "almost from the start, because he needed to get an infusion of new thinking and talent as quickly as possible." Bernstock informed Potter "he was considering using people he was aware of as consultants, who he personally knew." Potter advised Bernstock "the bottom line was to follow the Postal Service procurement rules, have lawyers review the contracts, and do not circumvent the Postal Service rules and regulations." Potter told Bernstock it was "OK" to hire outside consultants, but stated that the Law Department and Supply Management needed to review the contracts.

The RA informed Potter that the Law Department did not review the contracts prior to award, and Potter responded that he thought that there should be an attorney review of the contracts. He said that the Postal Service has rules and regulations, when an attorney is involved, depending on the size and the nature of the contracts. Potter did

not look at any of the individual contracts and did not know the award amounts. Potter was unsure if the contracts were big enough to trigger legal reviews. Potter added that the contracts he has dealt with in the past were very big (i.e., FedEx), and some even necessitated the retention of outside counsel for legal sufficiency prior to an additional Board of Governors review. Potter is not sure how Supply Management and the Law Department may handle contracts of small amounts, like \$25,000 to \$50,000.

Potter stated, "If it is reasonable and not a burden, there could be a legal review for sole source contracts. However, for contracts up to a (maximum) award of $\frac{1}{4}$ - $\frac{1}{2}$ million, (he) would trust the judgment of the (Supply Management) managers." Potter thinks they have a big enough law department, but stated if the OIG finds that the Postal Service should have smaller contracts (sole source) reviewed by counsel, they will follow OIG advice.

Regarding whether Bernstock hired friends as contractors, Potter thinks the term "friends" is too strong of a word. He said, "Of course Bernstock is going to go back to his pool of resources, like former colleagues, people he worked with and thought had good skill sets." Potter also said, "People recruit all over the place. We do it all the time in the federal government." Potter said it is normal for "some people to trail each other their whole career." He believes Bernstock reached out to people with the skills he needed and does not have a problem with Bernstock hiring former colleagues.

The RA asked Potter if he was familiar with Bernstock's contractors. Potter answered in the affirmative and praised the contractors, stating they are talented and he had not met one without the necessary skills to help benefit the Postal Service. Potter stated that Liz Shuttleworth is very smart and he thinks that Kimberly Wolfson has a very good grasp of systems, beyond anyone he has ever met. Potter said that he does not work with Richard Sorota, but speaks highly of him.

Potter said that any job could be outsourced. As to whether contractors were brought in and were doing inherently government functions, Potter said he views the skill sets of the contractors as higher than what Bernstock had available at the Postal Service to help turn around the competitive products. The contractors were an alternative to hiring traditional contractors like McKinsey, or outside attorneys for \$500 an hour. Postal Service normally contracts out in cases when employees would not achieve a desired result and do not have the same skill sets as those available in the private sector. There are a number of ways to satisfy the needs of the Postal Service and fill talent voids, such as contractors and government employees.

Potter believes that Contractor Lynn Alvarez offers the Postal Service multiple skills for the low price of approximately \$400,000. Potter opined that if the Postal Service replaced Alvarez with Postal Service employees, they might pay up to \$2 million to multiple people in salary to obtain the same skill-sets. He said if they bought talent from traditional contracting sources, they would pay five-times her award amount. Potter stated that Alvarez's experience and ability to prepare slides is well worth the investment.

Potter stated Sorota is responsible for coaching a number of highly talented Postal Service people. He said, "Sorota brings his perspective on issues and his acumen on product development." Once Sorota has completed employee the development they will terminate his contact, but Potter feels there is still a lot of work to be done. Bernstock has paired Sorota off with younger managers within the Postal Service for maximum payback on investment.

Potter added the Postal Service "in general – does a lot of contracting out, like in IT and programming and systems development." Potter said he did not believe that the Postal Service employees could keep their programming skill-sets fresh enough to compete with the private sector contractors.

Advertising Expense Manipulation

The RA asked Potter what knowledge he had related to expense allocation in Segment Advertising. Potter said he is familiar with the Annual Cost Report requirements and he has very strong opinions regarding the same. Potter said that institutional cost allocation, in his personal opinion, should be attributed to all media advertising expenses. He said that the recent Flat Rate Box television commercials have increased profits for other products and helped the Postal Service brand. Potter said advertising has "lifted all the ships"; specifically, standard mail, first class packages, and parcel post profits have grown.

Potter said the "area is ripe for debate around the company (Postal Service)" and there is an amount of judgment involved in allocating advertising expenses. The advertising expense allocation "is subjective at the end of the day." Potter said "any ad they have, should be (expensed) at 50% corporate (institutional/brand) and 50% product, because it brings the Postal Service good will." Potter's aforementioned reasoning is consistent with what he learned while attending MIT. However, he deferred the final judgment to the Chief Financial Officer and believes the split is currently heavier on product rather than brand. Potter stated he allows the Finance Office to use their judgment, but has repeatedly asked the CFO how we can achieve a 50/50 split. Potter said he acquiesced to their judgment because their rational made sense. They considered his opinion, and then explained why it ends up the way it does. Potter stated he gave no specific guidance or instructions to his staff on advertising expense allocations and said, "They do it." Potter and Bernstock have had no discussions on the allocation of expenses.

Regarding PAEA, law of causality, Potter said "yes" he is familiar with it, but does not think they are violating the spirit of the law. He reiterated that the package advertising is "lifting all ships," not the Flat Rate Box (Priority Mail) product alone. He said they currently utilize a 70/30 split, heavier on product and stated the split does not break any rules. From his reading, and discussions with his counterparts, this is the most subjective area they all have to deal with. The OIG's interpretation of PAEA is not consistent with his understanding and is the first time he has heard a description of the rule requiring a 100% advertising expense allocation to the product. He thinks there is a

lot of room for interpretation, regarding allocation of dollars. It has been explained to him there is room for interpretation. He has never received counsel as succinctly as the RA described from the CFO or the Law Department.

The RA asked if the OIG uncovered evidence that Bernstock violated PAEA and instructed staff to inappropriately split expense allocating 30% to brand, what corrective action should he face. Potter said he would write a stern letter saying the split should be 50-50.

PREPARED BY: (b)(7)(C)	DATE: February 6, 2010
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