

1 **Affidavit on behalf on Dan O'Shea, Teamsters Shop Steward**

2
3 February 22, 2006

4
5 My name is Robert Michael Moorhead and I hereby depose, affirm and state as follows:
6 I am over the age of 18 and have personal knowledge of, and am competent to testify to, the facts
7 stated in this Affidavit.

8
9 I reside at 16426 Clymer Street, Granada Hills, County of Los Angeles, California. My home
10 telephone number is 818-360-9989.

11 I began my employment with United Parcel Service (UPS) as a "Package Car Driver" in May
12 1988. During the subsequent years I became a vocal advocate of employee rights and also a union
13 steward representing over 400 employees in my workplace, UPS division 9120 located in Van
14 Nuys, California.

15
16 I have direct knowledge of rank-and-file UPS employees conducting electronic recording of
17 conversations with management personnel while engaged in work activities, with the full
18 knowledge of management (either concurrent with the recording or afterwards), resulting in no
19 disciplinary action against the employee.

20
21 While I can provide many examples of this widespread practice, I will limit the scope of my
22 testimony to a few well documented and easily verifiable instances in which recordings were
23 made and management had knowledge of the practice, yet took no action to stop it. I have no
24 knowledge of UPS management ever disciplining an employee in my workplace for using a
25 recorder to document conversations with management, or recording for any other purpose. Indeed,
26 management sometimes indirectly encouraged the practice by specifically considering the
27 evidence obtained through such recordings in the discipline of rogue management personnel.

28
29 Early in my career at UPS, approximately 1990, I was singled out for harassment and retaliation
30 by the top management person in my facility, division manager Steve Mundy, and by his
31 immediate subordinate, center manager Ed Fonegra (sp?). These management persons forbade me
32 from taking meal periods and breaks as mandated by the California Labor Code and/ or applicable
33 collective bargaining agreements. I routinely used a small micro cassette recorder to document
34 these violations and conversations. The evidence obtained by these recordings was the basis of a
35 NLRB complaint of unfair labor practices which eventually resulted in the removal of both
36 managers from their management positions in my workplace.

37
38 Management had full knowledge of my recording activities. On one occasion I lost my micro
39 cassette recorder somewhere inside the UPS facility. I reported the loss to my immediate
40 supervisor, Robert Hembeck (sp?) and further explained that this was the recorder I used to record
41 conversations with management and employees to document violations, and that the cassette within
42 the missing machine did indeed contain such recorded conversations. Mr. Hembeck then spent

1 approximately one hour helping me search for the micro cassette recorder, and he also enlisted
2 other management personnel to aid in the search as well. The recorder was never located and I
3 bought a replacement that evening. I told Mr. Hembeck the next day that I had replaced the
4 recorder and had resumed my recording activities.

5
6 Clearly UPS was aware that workplace recording was being conducted, as the information was
7 part of a NLRB investigation and management participated in helping me search for a lost
8 recording machine. No disciplinary action was ever taken against me for making those recordings,
9 yet UPS considered evidence collected in those recordings for its discipline of management
10 personnel, and the favorable settlement of my grievances against the company in which I was
11 awarded back wages.

12
13 Other significant instances of employee workplace recording occurred in 2003 following the
14 assignment of a new division manager, Eldridge Sims, to our facility. Many employees reported to
15 me of abusive and unprofessional behavior on the part of Mr. Sims, in violation of the California
16 Labor Code and/ or the collective bargaining agreements. Many employees told me they were
17 carrying recorders to document these abuses and protect themselves.

18
19 Three persons in particular are worth mentioning here, as I have direct knowledge that their
20 recording activities documented repugnant and abusive behavior by Mr. Sims, and that high level
21 UPS management had knowledge of these recordings, that evidence collected in these recording
22 was used by UPS to remove this rogue manager from his position within our facility and that
23 absolutely no disciplinary action was taken against those employees involved in the recording
24 activities.

25
26 On September 10, 2003 a high level regional labor manager from UPS, Mike Rosentrater, and the
27 Southern California labor manager, Joe Lichtenstein, made a surprise inspection of my facility in
28 Van Nuys to investigate relentless allegations of abuse and hostile work environment that I had
29 made against Mr. Sims in my position of Teamsters Union 396 shop steward.. They chose a day
30 when Mr. Sims was absent from the workplace, having traveled to Milwaukee two days earlier.

31
32 On this date, at approximately 8am, the labor managers toured the facility speaking with
33 employees and learning of Mr. Sim's behavior in our workplace. Following their tour of the
34 facility I spoke with them, primarily Mr. Rosentrater, and sometimes in the presence of Joe
35 Lichtenstein, Richard Galvan (a Teamsters Union business representative) or Lonnie Ponce
36 (another shop steward in the Van Nuys facility).

37
38 Mr. Rosentrater said he agreed that my allegations were valid. His exact words concerning Mr.
39 Sims behavior were that "it made him sick". He told me that one sure sign that Mr. Sims had
40 created a hostile work environment was that many employees were afraid to speak with him for
41 fear of retaliation by Mr. Sims.

1 I specifically informed Mr. Rosentrater that employees were recording incidents of abuse in the
2 workplace. He told me that he already knew of this, both from speaking with employees that
3 morning, and in prior conversations with UPS management. He took no action against those
4 involved.

5
6 We discussed fixing the hostile work environment. Mr. Rosentrater immediately promised me
7 two things would now happen. First, he would see that Mr. Sims was removed from our
8 workplace. Second, that the information provided to him that morning "would be kicked upstairs"
9 to his superiors. As Mr. Rosentrater is already a high level UPS manager (Regional Labor
10 Manager, Pacific Region), I interpreted this to mean he would share the information with the UPS
11 National Labor Manager in Atlanta, the next logical step in the management structure.

12
13 True to his word, Mr. Sims was removed from his position as division manager at Van Nuys
14 within a matter of days (see attached email correspondence).

15
16 Among the recordings I mentioned on the morning of September 10, 2003, I distinctly remember
17 specifically detailing the recording activities of three employees in my conversations with Mr.
18 Rosentrater. Those employees were Bruce Kammerich, Tom Caughlin and Dana Kiser.. All had
19 damning evidence of abuse, intimidation, threats, harassment or sex and/ or race discrimination,
20 among other things.

21
22 None of the three aforementioned employees involved in recording activities were ever
23 disciplined for their actions. Indeed, their recording activities helped compel UPS to remove a
24 rogue manager.

25
26 While I and others recorded, we did not inform every manager or supervisor we encountered that
27 we did so. In general, a number of management personnel were told we recorded while a number
28 of them were not. Regardless of the method of informing management of recording activities, the
29 fact that it was indeed occurring was generally known by all supervisors, perhaps learning from
30 each other in conversations between themselves, as many supervisors who had not been directly
31 informed of the practice by employees had asked me specific questions about the evidence
32 collected by electronic recording.

33
34 There is no policy, to my knowledge and experience, prohibiting electronic recording by
35 employees at UPS, and I have direct knowledge of many employees who have done so with the
36 knowledge of management and faced no disciplinary consequences.

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38 Dan O'Shea is being held to a different and discriminatory standard than are other employees.

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One other disturbing incident of workplace recording of which I have serious questions of legality was conducted by UPS in 2003 against employees who were neither on-the-clock, nor in workplace areas when the clandestine recording occurred. In such non-work related instances one would have the expectation of privacy for privileged and private conversation.

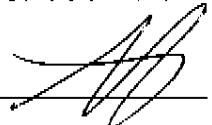
UPS had secretly hidden an audio visual camera in the employee breakroom, a non-work area to record privileged and private conversations when employees were not in service to UPS and had the reasonable expectation of privacy. The camera was concealed withing a wall clock, with the lens aimed through a pinhole in the blackened number 11 character on the clock's face. The lens was indistinguishable from the letters on the clock face.

The secret audio video surveillance system was discovered one afternoon by a hub employee who had attempted to adjust the time on the battery driven clock. He discovered that the clock had coaxial cables attached to a camera/ microphone assembly behind the face of the clock. Subsequently many UPS employees entered the break room to inspect the secret surveillance system. I was notified of the secret camera upon my return to the building that evening by hub worker Madison Herbst (sp?). I went into the break room and disconnected the coaxial cable and power source from the camera.

What we found particularly disturbing about this recording was that it was in a located in an area we had long expected ourselves at liberty to have private conversations. The audio/visual system was positioned directly above booths in which union representatives and employees discussed workplace violations, enforcement strategies and disciplines of employees. This behavior, in my mind is illegal spying and wiretapping, while conversations recorded by employees were those in which no expectation of privacy was afforded either party. The crooked party here, is UPS. Management refused to ever hear grievances arising from their secret recording of people in non-work areas while not in employ of the company. A double standard? Yes, I strongly believe it is.

These are just a few of the multitude of examples I can provide to document Mr. Shea's contention that he is being singularly and discriminately targeted for bogus discipline by UPS.

I HEREBY DECLARE AND AFFIRM UNDER PENALTY OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE FOREGOING STATEMENT CONTAINED IN THIS AFFIDAVIT ARE TRUE AND CORRECT.

ROBERT MOWHEAD  2-22-06
Name/ Signature Date

Attachment 1 of 3
Rob Moorhead

Personal and Confidential

September, 11, 2003

Dear Mike,

I am glad that you and Joe were able to visit the Van Nuys hub yesterday. Thank you for showing an interest in our concerns. I really wish you could have stayed longer and spoken with more people in order to get a more complete picture.

Van Nuys has gone from first to worst over the past several years. We have good employees who know their jobs well and can get back to the top if we address the problems facing us together.

Mike, this has become a truly hellish place to work. If you left with one impression, I hope that was it.

I sense that employees at Van Nuys have been reduced to 'siege mentality', that is to say, they are hunkered down, keeping their heads low, waiting for the next shell to hit. Employees are overwhelmed, frustrated and scared of management. We have many legitimate business issues to address, such as service, production, growth and safety. But instead we are dealing with a morass of issues that do not belong in any workplace, especially in an enlightened corporate culture such as UPS.

You made some positive remarks to us. You said you recognized problems and felt we could work together to fix them. I think your suggestion of forming focus groups to indentify the problems and find solutions was brilliant. Our employees want to succeed. We are not malcontents who resist change and merely blame all the failings on others. We will do what needs to be done. But we are exhausted mentally and physically. It has become all-peak, all-the-time. And no matter what we do, we are faced with draconian discipline and retribution at every turn. Let's turn this thing around.

I think we have the same goals.

Respectfully,

Rob Moorhead

Driver and Steward, Van Nuys CA

-----Original Message-----

From: Rob Moorhead [mailto:RobMoorhead@social.rr.com]

Sent: Wednesday, September 17, 2003 6:34 PM

To: mrosentrater@ups.com

Subject: fixing Van Nuys

Personal and Confidential

September 17, 2003

Dear Mike,

It is my understanding that there are changes being made to Van Nuys. I want to thank

Attachment 2 of 3
Rob Moorhead

you for any action you may have taken to get the ball rolling. It is only the first step, and we certainly have far to go, but it was a very big and difficult step to take. You are a man of your word.

I also want to reaffirm my commitment to you that we will help to solve the problems that currently plague the division. Both Labor and Management have serious issues to address and it appears as if we are finally going to have the opportunity to do so. We have a hard road ahead, but it is a much easier road if we are not enemies. This division will get fixed. Please let me know what I can do to help. You can expect candor and honesty from me, and I already know I can expect the same from you. I will keep you informed as things progress.

Kudos to you.

Respectfully Yours,

Rob Moorhead

Driver and Steward, Van Nuys, CA

----- Original Message -----

From: Rosentrater Mike (NOJ2MXR)

To: Rob Moorhead

Sent: Tuesday, September 23, 2003 10:08 PM

Subject: RE: fixing Van Nuys

Rob - just an FYI that I have received your messages. Not sure that I deserve any credit for what

took place in Van Nuys. Look forward to working with you in the near future. Mike

Mike Rosentrater

Pacific Region Labor Relations Manager

Telephone - (949) 452 2059

Fax - (949) 452 2040

Atlas - 693 2059

Email mrosentrater@ups.com

Attachment 3 of 3
✓ Rob MORRISON

Mike,

Thanks for the note. Regardless of how the ball got rolling, I am happy to see change is in the wind. Now lets hope the new division manager can help repair a truly dysfunctional workplace.

Best,

Rob

Motive, Corruption and Dysfunctional Corporate Culture

February 22, 2006

My name is Robert Michael Moorhead and I hereby depose, affirm and state as follows:

I am over the age of 18 and have personal knowledge of, and am competent to testify to, the facts stated in this Affidavit.

I reside at 16426 Clymer Street, Granada Hills, County of Los Angeles, California. My home telephone number is 818-360-9989.

I began my employment with United Parcel Service (UPS) as a "Package Car Driver" in May 1988. During the subsequent years I became a vocal advocate of employee rights and also a union steward representing over 400 employees in my workplace, UPS division 9120 located in Van Nuys, California.

Before I provide documentation that UPS has full knowledge and indeed approves of the widespread practice of electronic recording in the workplace, I should first provide a description of the working environment within the company which might provide insight into possible ulterior motives by management in this matter.

Management/ labor scales are not balanced in the UPS workplace. While rank-and-file employees may be covered under collective bargaining agreements and represented by unions (most often the Teamsters), it has been my experience that a calculated, malicious and dysfunctional management culture intentionally evades compliance with the letter and intent of labor contracts, state and federal laws and labor regulations. Essentially, UPS will pick-and-choose which rules to follow, unilaterally creating rules on a case by case basis in furtherance of arbitrary actions or willful violations. In my functions as an employee and shop steward I have witnessed that UPS often unilaterally reinterprets the collective bargaining agreement and corporate policy without allowing prior notification or negotiation with all parties. As a corporate entity, UPS has routinely demonstrated that it is more cost effective to violate rights, contract and labor laws --- and pay any subsequent fines or judgements-- than it is to operate in a forthright and honest manner. The base motivation of a corporate scofflaw is profit. In overzealous pursuit of profit, integrity and honesty will suffer. UPS corporate culture dictates that unless actually caught and held accountable for violations, then the incidents never happened and violations do not exist. My direct encounters with employees suffering under this concerted practice of UPS management operating deceptively is both from firsthand experience as shop steward in my own workplace, and is also provided a wide network of contacts I maintain with UPSers throughout the country. If management does get caught in violations? Well... litigation, sanctions, fines and judgements are just the cost of doing business. There seems to be no downside to operating outside of the law and CBA. UPS has deep pockets.

Dan O'Shea has been targeted in just such an agenda, and he is being subjected to a set of bogus

1 rules specifically manufactured to target only him and no others.

2 Employees harmed by this cavalier disregard of their rights rely upon recourse through the union
3 grievance process. My experience as a shop steward has clearly convinced me that the process is
4 disingenuous at best. UPS, as I have seen, often simply refuses to address the issues, or imposes a
5 Kafka-esqe choice for the employee: if you continue challenging the abuses of management,
6 harassment will be followed by false and manufactured discipline, or even termination. The
7 union is largely powerless or unwilling to risk defending members against abuses. For example, I
8 (a shop steward), filed over 100 grievances between the Spring 2003 and Spring 2004 on behalf
9 of myself and the members I represented. On only one occasion during that year, in November
10 2003, did management agree to meet and consider any of my outstanding grievances.
11 Management routinely makes the rules, changes the rules and referees the game... a game in
12 which they are also a player.

13 My experience in representing employees at UPS is that objectivity is absent in employee
14 relations as I have witnessed a large majority of the vocal advocates for fairness in the workplace
15 targeted for retaliation. UPS is adept at cloaking malicious retaliation in seemingly innocuous
16 and seemingly justified discipline. But it is my experience that such disciplines are neither
17 innocuous, nor justified. Elaborate subterfuge is used to hide a concerted practice of intimidation,
18 coercion and harassment, and the true motivation for the false accusations are a mere front to
19 obscure the actual agenda for targeting vocal and effective employee advocates. It is process I
20 have seen countless times, yet it is difficult to expose a widespread and well crafted conspiracy
21 of retaliation practices. UPS is not a pleasant place to work and employees develop a siege
22 mentality, keeping their heads low to avoid attention to possible retaliation. Those employees
23 brave and assertive enough to seek redress from outside agencies such as the Department of
24 Labor, OSHA or the National Labor Relations Board are often subjected to subsequent
25 retaliation, as I have witnessed, and a false or manufactured cause for discharge.

26 Expose misdeeds at UPS and you become a target. Witness the recent ruling by the District Court
27 for Central California in Gnesda v. UPS. I have discussed this ruling with Mr. Gnesda's
28 attorney. Based upon that conversation it is my understanding that Mr. Gnesda, a customer
29 service representative in Los Angeles, alerted his superiors that the company had instituted a
30 program which was intentionally designed to overcharge customers for services that were not
31 performed. When he refused to drop the matter under pressure from management to do so, he
32 was harassed and retaliated against. In it's ruling the court agreed with Mr. Gnesda. UPS was, in
33 fact, willfully engaged in fraud by overcharging customers. The court ruled that UPS did indeed
34 harass and retaliate against Mr. Gnesda for his actions to correct a misdeed, and awarded \$21
35 million damages to compensate him for the repugnant treatment at the hands of the company.

36 This is only one example of the dysfunctional and imperious state of labor relations practices by
37 UPS. From my personal experience, I have come to learn that the most cost efficient and
38 effective tool in controlling employees is "management by fear, intimidation, coercion and
39 deception." UPS thrives on cost efficiency and profit, even if it undermines integrity, contracts
40 and law. Corporate governance at UPS is truly contemptible.

41 UPS is currently facing a flood of litigation which challenges their oppressive and illegal

1 management practices. I have been asked by attorneys at the DOI. to testify on behalf of the
 2 government in hearings this summer as the Department of Labor (through OSHA) is currently
 3 investigating this behavior and intends, in my discussion with a DOL attorney, to impose changes
 4 in the way UPS operates and treats employees.. This investigation has been underway for the past
 5 two years.

6
 7 Dan O'Shea has done nothing that thousands of other UPS rank-and-file employees do everyday.
 8 He protected himself by documenting events in the workplace with a recorder. There is no
 9 expectation of privacy, as I have been repeatedly told by management, of work related issues. A
 10 termination for using an electronic recording device is not supported by either law, the CBA or
 11 company policy. The termination is clearly discriminatory treatment, and most likely subterfuge
 12 for ridding the workplace of a skilled and dedicated advocate of worker's rights.

13
 14 **HEREBY DECLARE AND AFFIRM UNDER PENALTY OF PERJURY AND UPON PERSONAL**
 15 **KNOWLEDGE THAT THE FOREGOING STATEMENT CONTAINED IN THIS AFFIDAVIT ARE TRUE**
 16 **AND CORRECT.**

17 _____ *2-22-06*

18 [Name] Date

19 *ROBERT MOORHEAD*
 20