

# FRENEMIES

The complex relationship between the Postal Service, FedEx and UPS

Purchaser



Shipper



We see them each day, doing a job much like ours. The drivers for FedEx and UPS are the most common sign that the Postal Service faces competition for package delivery.

But are they only competitors?

It turns out these two companies, and their employees, have a complex relationship with USPS and postal workers that sometimes makes them friends as well as foes.

"The package delivery market is driving the growth of the Postal Service," NALC President Fredric Rolando said. "As e-commerce continues its rapid progress, the complex relationship USPS has with FedEx and UPS—sometimes competitors, sometimes partners—will matter more and more."

All three players in the package delivery game have experienced dramatic changes over the last few decades. The Postal Service is shifting emphasis from its bedrock first-class

mail business to the fast-growing parcel market. Both UPS and the Postal Service have stepped up their act to keep up with the challenge of FedEx's promise of fast delivery. And like first-class mail at USPS, over-nighted documents don't quite pay the bills for FedEx anymore thanks to fax machines and e-mail, so the company has moved more into UPS' and the Postal Service's parcel delivery territory.

Nevertheless, the three competitors still operate in very different ways and with different competitive advantages, and this has led them to work as partners as well as competitors, an arrangement known as "co-opetition."

The Postal Service remains the only shipper with a universal "last-mile" network—we go to virtually every address in the United States, at least six days a week. It's not that expensive to send thousands of packages across the country on a truck or a plane; it's the last-mile distribution to each delivery point

that adds up. Any added cost to USPS of visiting a certain address to pick up or deliver on a given day is almost nothing, since a letter carrier is going there anyway. That doesn't apply for other shipping companies that only visit many addresses when a customer requests it or is due a delivery.

Because of our unmatched last-mile network, FedEx, UPS and other carriers often find that it is cheaper to simply mail packages from their distribution centers in the destination city rather than sending their own trucks to deliver them to a recipient's door.

"The Postal Service's current delivery operations are well-suited for business-to-consumer—or 'B2C'—delivery," Rolando said. "Companies such as FedEx, UPS and others recognize this built-in capacity and rely on the Postal Service to help them move merchandise from shippers to residences."

Most of us have seen competitors' trucks drop their packages at the back dock, and we've delivered parcels marked with labels such as SmartPost (FedEx) and SurePost (UPS). Some other shippers have similar partnerships with USPS. For each parcel delivered through one of these co-opetition arrangements, the shipping partner gets a package to a customer for a little less money, while USPS gets additional revenue for delivering a parcel while incurring almost no extra cost.

FedEx sends an average of 2 million packages a day into the USPS mail stream through SmartPost, representing about a third of FedEx's ground business. (UPS' SurePost figures were unavailable.) Some other shipping companies have similar arrangements.

"When FedEx or UPS accepts a package and then sends it to a customer's door through the Postal Service, does

that mean USPS lost a customer, or gained one?" Rolando asked. "It's hard to say, but both companies earned a share of the business, and both the shipper and the customer enjoyed reliable service at a reasonable rate—so co-opetition seems to produce wins for everyone involved."

On the other side of the coin, USPS has a similar arrangement, but in reverse: It contracts with private shippers to handle some of its city-to-city transportation. FedEx is the primary airport-to-airport carrier of USPS Express and Priority Mail.

### What's past is prologue

The reason for this complex relationship, and the different ways the three organizations serve their customers, stems from the history of the companies.

The Post Office was fully established as the nation's only universal, daily delivery provider by the time UPS and FedEx arrived on the scene, so both of these companies began by focusing on ways to serve the shipping needs of customers in ways that the U.S. Mail did not.

UPS (United Parcel Service) began in 1907 as a local delivery service in Seattle founded by a 19-year-old entrepreneur named James E. Casey. The Post Office had yet to begin its parcel post service (that was launched in 1913), so Casey's company was one of many local businesses that had sprung up to handle local package delivery. UPS pioneered the use of motor vehicles for last-mile delivery and invented some of the sorting and delivery practices that USPS and other shipping companies use today, and it expanded rapidly to provide nationwide shipping services.

When aviation opened a new avenue for shipping, UPS and USPS



Delivery



## Standing up for the rights of UPS drivers

**L**etter carriers believe in solidarity with fellow union workers, and that includes workers at our competitors.

At the national convention in Philadelphia last August, delegates approved a resolution offered by San Francisco Branch 214 expressing solidarity with UPS worker Jairo Reyes, a member of Teamsters Local 804 in Queens, NY, who was unfairly fired last year, and 250 of his fellow workers who were fired for protesting the company's action by staging a 90-minute walkout. Following additional protests by UPS workers and a grievance settlement, Reyes and the fired protesters were all rehired.

"An attack on one of these unions threatens the position of all workers and strengthens the power of management and owners, and a victory for one makes us all stronger," the resolution said. "The union victory at UPS has strengthened the hand of the union at UPS, and weakened the hand of the UPS owners, who as we know are closely connected to the campaign to privatize the most profitable parts of the people's Postal Service."

"These unionized drivers have the potential to become an important ally in the postal workers' struggle to defend living wage union jobs and the public Postal Service," the resolution continued, "since an injury to one is an injury to all." PR

both relied mostly on passenger airlines that carried mail and parcels using extra space in airplane cargo holds. But a Yale student named Frederick Smith dreamed up an idea for an airline dedicated only to fast shipping of valuable or urgent documents and packages, writing a term paper about the idea in 1965. He founded Federal Express, later shortened to FedEx, in 1971 to make the idea a reality. Before the era of fax machines and e-mail, Federal Express offered long-distance, overnight shipping of documents, as well as parcels.

Since then, USPS, UPS and FedEx have all faced the same challenges from changes in transportation, lifestyles and technology. While each organization once occupied a niche in delivery services, they all compete for the same package business today.

"Co-opetition is one reason reform of the Postal Service is more complicated than it may seem to those who don't understand it," President Rolando said. "The Postal Service provides a unique service that no private company could easily replicate, and our competitors actually rely on USPS to provide the best service to their own customers."

"The Postal Service isn't just another shipper," Rolando added. "It's a service, to shipping companies as well as to other businesses and individuals."

### What's in it for workers

With three different histories and business models, the workers at USPS, FedEx and UPS enjoy very different rights and benefits.

Like letter carriers, most postal workers are represented by unions that collectively bargain for their interests. Each union—NALC, APWU, NRLCA and NPMHU—has its own contract that applies nationwide. Thanks to

our unions, we postal employees have successfully negotiated for good pay and benefits.

FedEx was founded as an airline, and this history left an important legacy for its workers. Labor relations at FedEx are covered by a different law than UPS or the Postal Service. The 1926 Railway Labor Act (RLA)—the law was later amended to cover airlines in the age of flight, but kept its name—governs most of FedEx's employees. This law was designed to keep the rails and airlines moving without labor strife, so it requires a union to organize employees on a national scale and an elaborate process of negotiation and mediation before union employees can strike. This makes it harder to get union representation at a railroad or airline.

Since FedEx began life as an airline, the RLA governs most of its ground support operations—truck drivers, cargo handlers, etc.—as well as its flight crews. What's more, FedEx Ground, FedEx's ground-delivery subsidiary, uses independent contractors for most of its other ground operations, requiring delivery drivers to buy and maintain their own trucks and pay for all their benefits themselves, even though FedEx treats them like employees otherwise. As a result, only a few workers toiling for FedEx and FedEx Ground are unionized.

Some states have pressed FedEx to hire companies as contractors rather than individual drivers, so that the companies can provide employee benefits, but those benefits may not be as good as those provided to FedEx employees, plus these companies' employees may not be represented by a union.

On the other hand, UPS started as a ground-based delivery service and branched into air service later, so most UPS operations are governed by the

# A firsthand look at differences between FedEx, USPS

Unlike letter carriers, who are legally classified as employees and who are able to unionize, FedEx Ground's drivers are neither, often leaving them without paid benefits or union protection. FedEx Ground considers them to be private contractors.

Some of FedEx Ground's independent contractor drivers have sued the company, saying that the arrangement is illegally designed to allow FedEx Ground to avoid providing them with health benefits, unemployment insurance, retirement accounts, overtime pay and other benefits they would have access to as regular FedEx Ground employees. Some have won their cases, and more are pending.

Reggie Gray of Florissant, MO, was among those who prevailed in court. Gray left his job as a letter carrier in 2002 to drive for FedEx Ground, hoping the independence would be a path to success. Instead, it turned out to be a nightmare.

"We all signed up for what we thought was the American dream," Gray told CNNMoney. "We received the exact opposite. It was a really bad deal."

Gray had to buy his own vehicle, which cost \$17,000, and his uniform. He leased a scanner from FedEx Ground, and he had to pay the company \$5,000 for his route. When his route got too busy



for him to handle alone, FedEx Ground compelled him to buy another truck and hire a driver. All the maintenance costs, insurance premiums and inspections for the vehicles came out of his pocket, too. FedEx Ground even charged him for taking company-mandated drug tests.

He received no company benefits, overtime pay or employer's contribution to Social Security, employment insurance or workers' compensation.

Yet FedEx Ground controlled every aspect of the business—his independence was a mirage whenever it didn't favor the company. When it suited FedEx Ground, the company treated him like an employee to be supervised and disciplined, and he had no union to speak for him.

Gray earned up to \$70,000 per year as a FedEx Ground driver. However, after expenses, including paying the other driver, Gray said his net income ranged between \$25,000 and \$35,000 per year. Working up to 16 hours a day, that amounted to little more than minimum wage.

Gray ended up declaring bankruptcy. "This whole ordeal cost me a lot, it really did," Gray told CNNMoney. "Financially, it was a huge, huge hit."

He was surprised when the Internal Revenue Service reviewed a copy of his contract and told him that, legally, he

was an employee of FedEx, not a contractor. The IRS uses a test based on several employment-related laws to determine whether someone working for someone else is a contractor or employee. Most of those laws are designed to protect employees from companies that shirk their responsibilities to them by declaring them to be contractors instead—just the situation facing FedEx Ground drivers.

In 2006, Gray sued FedEx Ground for benefits such as the overtime pay and benefit he'd been denied, and won \$90,000.

Fed up, Gray went back to carrying mail for the Postal Service, as a city carrier assistant. Just recently he returned to being a career carrier.

FedEx Ground drivers in at least 38 states have sued the company. While many cases are pending, the results of the cases decided have been mixed as FedEx Ground lawyers have put up stiff opposition. Still, drivers have banded together, state by state, and won a few major class-action lawsuits lately, so the trend is in their favor. Last year, a federal appeals court ruled in favor of drivers in class-action cases involving drivers in California and Oregon, saying they were legally FedEx Ground employees. A key ruling from the Kansas Supreme Court also held that under that state's employment laws, FedEx Ground drivers in Kansas are employees. Drivers in other states hope these cases will lead to victory in their lawsuits. PR

National Labor Relations Act (NLRA), a law that makes union organizing easier than the Railway Labor Act does, including allowing for organizing city by city. Nearly two-thirds of UPS workers are represented by the Teamsters union. In 2009, UPS lobbied Congress to cover more FedEx ground-based workers under the NLRA the same way UPS workers are covered, but FedEx's allies in Congress scuttled the effort at the last minute following a rather nasty public relations attack campaign launched by the company.

"We believe FedEx workers have a right to collectively bargain for their pay and benefits," Rolando said. "It may take a while to get to that goal, though."

Change is the only constant in the delivery business, and just as FedEx workers may one day gain the collective-bargaining rights and benefits of union representation that most UPS and USPS workers enjoy, it's likely the fast-growing package delivery market will drive all three companies to find new ways to compete, and perhaps to work together, in the coming years. PR