Memorandum of Understanding
between the
United States Postal Service
and the
American Postal Workers Union, AFL-CIO

Re: Accelerated Arbitration

The parties agree that the Accelerated Arbitration initiatives which were put into effect during the term of the 1994 National Agreement may be continued by agreement between the Area Managers, Labor Relations and the APWU Regional Coordinators.

The parties further agree that if the Area Manager, Labor Relations and the APWU Regional Coordinator choose not to continue these initiatives, they will jointly agree to an alternative method of reducing their arbitration backlog. In addition, they will jointly notify the undersigned whether they will continue the Accelerated Arbitration process, or have chosen some other alternative, within 30 days of receipt of this memorandum.

John E. Potter
Senior Vice President
Labor Relations

2/3/99
Date

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

2/3/99
Date

JOHN E. POTTER
VICE PRESIDENT, LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

March 20, 1998

MAR 1998

HUMAN RESOURCE MANAGERS (AREA)

SUBJECT: Non-Compliance with Arbitration Awards

It has been brought to our attention that we have an increasing problem with postal managers not complying with arbitration awards and grievance settlements, especially back pay awards.

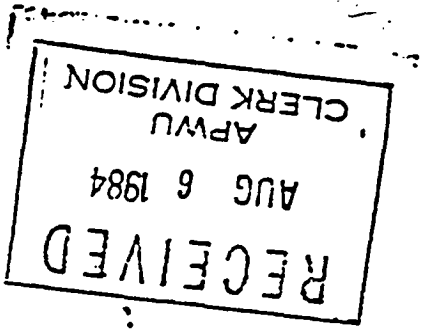
Arbitration awards and grievance settlements are final and binding. Compliance is not an option but a requirement. One of the few acceptable reasons for non-compliance with an arbitration award is if the Postal Service is seeking to have the award vacated in a federal court, which is very rare. No manager or supervisor has the authority to override an arbitrator's award or a signed grievance settlement.

Please take affirmative steps to ensure that all arbitration awards and grievance settlements are being complied with in a timely fashion. Failure to do so only damages our credibility with both our employees and our unions.

Jack Potter
John E. Potter

cc: Mr. William Henderson
Mr. Michael Coughlin

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100
202-268-3819
FAX: 202-268-3074



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

AUG 3 1984

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Rochester, NY 14692
H1C-2W-C 12866

Dear Mr. Connors:

On July 30, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The grievance involves an alleged violation of Article 15 by requiring union stewards to file Step 1 grievances with their immediate supervisor.

We agreed that there is no dispute between the parties relative to the meaning and intent of Article 15.2 which provides in part, "Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor . . ." Who the immediate supervisor of an employee, including a union steward, is at a particular installation must be determined locally, Finally, we agreed to resolve this case as no further action is required.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,

Margaret H. Oliver
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

O'Donnell, Schwartz & Anderson
Counselors at Law
1300 L Street, N.W. Suite 200
Washington, D.C. 20005
(202) 898-1707

ASHER W. SCHWARTZ
JOHN F. O'DONNELL*
DARRYL J. ANDERSON
MARTIN R. GANZGLASS
LEE W. JACKSON**
ARTHUR M. LUBY
ANTON G. HAJJAR***
SUSAN L. CATLER

*N.Y. BAR ONLY
**PA. AND MS. BARS ONLY
***ALSO MD. BAR

186-C

JUL 1992
Office of The Executive Vice President

60 East 42nd Street
Suite 1022
New York, N.Y. 10165
(212) 370-5100

M E M O R A N D U M

TO: Moe Biller

FROM: Susan L. Catler SLC

DATE: June 9, 1992

RE: New EEO Case Processing Regulations
57 FR 12634 (April 10, 1992) Effective October 1, 1992
File: 50-95/1-15

On June 4, 1992, Edgar Williams relayed a question from Omar Gonzalez. Omar called about a new EEO regulation. He will ask at the President's Conference what the APWU is going to do about it.

The new regulation, 5 CFR 1614.301(c), permits the Postal Service to hold an EEO charge in abeyance, without investigating it, if a grievance is filed over the same matter. The EEO charge will be processed only after the grievance is finished.

The APWU filed comments objecting to the EEO's original proposal, which was even worse. The proposed reg required all postal EEOs be held if a grievance on the same matter was filed. The final regulation permits the USPS to hold the EEO, but only if they give written notice to the employee that they are going to hold it. The new regulations will go into effect October 1, 1992.

Because litigation is not likely to be successful and legislation in this area is very risky and unlikely to move, you may have to use this as an example of why we need a new occupant at 1600 Pennsylvania Avenue.[1]

---

[1] After the USPS starts holding EEO charges, you may want to discuss with top management why encouraging workers to ask the Union to drop a grievance so that they can move forward with their EEOs is not in the USPS's interest in light of the enhanced remedies now available through the EEO process. However, this discussion should wait until the Postal Service discovers the reg.

We have evaluated the possibility of litigation and have concluded that, based on the arbitrary and capricious standard that would be applied by Reagan and Bush appointees, we have virtually no hope of success.

With respect to legislation, a bill currently pending before the full Post Office and Civil Service Committee, H.R. 3616, would wipe out the new regs by having the EEOC, not federal agencies themselves, do the initial investigation. However, there is a great likelihood that any opening of the Federal/Postal EEO law would result in adding an election requirement for Postal employees, so like all other Federal employees Postal Workers would be able to file either a grievance or an EEO charge, not both as they can currently. In addition, Myke Reid reports that the management associations are trying to kill the bill because they believe it does not treat them, the ones who are accused of discrimination, fairly. Unless someone besides AFGE really pushes for the bill, it appears destined to die.

Attached as background are the following:

A. A memo comparing the problematic provisions in the proposed and final regulations and discussing the APWU's comments on these sections.

B. A copy of the joint comments filed by the APWU and the NALC on January 2, 1990.

C. A copy of your testimony on March 5, 1990, before two Subcommittees.

If you would like, I will give you a copy of the whole final regulations, but they are very long and detailed.

cc: William Burrus
Myke Reid

O'Donnell, Schwartz & Anderson
Counselors at Law
1300 L Street, N.W., Suite 200
Washington, D.C. 20005
(202) 898-1707

ASHER W. SCHWARTZ
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SUSAN L. CATLER

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**PA. AND MS. BARS ONLY
***ALSO MD. BAR

60 East 42nd Street
Suite 1022
New York, N.Y. 10165
(212) 370-5100

M E M O R A N D U M

TO: Moe Biller

FROM: Susan L. Catler SLC

DATE: June 9, 1992

RE: Background--New EEO Case Processing Regulations
57 FR 12634 (April 10, 1992)
Effective October 1, 1992.
File: 50-95/1-15

The APWU filed comments on January 2, 1990, and presented testimony on March 5, 1990, responding to several sections of proposed regulations to restructure the Postal/Federal sector EEO complaint process, as published in the Federal Register on October 31, 1989. The final regulations are out. A discussion of the three sections objected to by the APWU follows:

1. The final regulations do not adopt the APWU's position that the EEO investigation should not be delayed because a grievance was also filed. Proposed Section 1614.301(c) provided that for persons employed by agencies not covered by 5 U.S.C. 7121(d) appeals to the Commission shall be held in abeyance during the processing of a grievance covering the same matter as the complaint.

The APWU opposed this rule, which singles out employees of the Postal Service, arguing that the Commission has no authority to deprive Postal employees of their statutory right to dual file discrimination complaints on matters which have also been grieved. The APWU explained that Postal employees are not covered by 5 U.S.C. 7121(d), which precludes a Federal employee from filing an EEO claim and a grievance simultaneously. The APWU further argued that the Commission's deferral policy is inappropriate because the individual's right to bring an EEO claim could be postponed indefinitely if the Union's grievance is appealed to arbitration.

In final form, Section 1614.301(c) reads:

> When a person is employed by an agency not subject to 5 U.S.C. 7121(d) and is covered by a negotiated grievance procedure, allegations of discrimination shall be processed as complaints under this part, except that the time limits for processing the complaint contained in §1614.106 and for appeal to the Commission contained in §1614.402 may be held in abeyance during processing of a grievance covering the same matter as the complaint if the agency notifies the complainant in writing that the complaint will be held in abeyance pursuant to this section.

57 FR 12634, 12655 (April 10, 1992)

The substance of the Commissions revisions, based on the objections of the APWU and others, is noted in the Preamble to the Final Regulations:

> We recognized that there may be some individual circumstances where holding the complaint in abeyance would not be appropriate. Therefore, we have revised the section [1614.301(c)] to permit rather than require agencies not subject to 5 U.S.C. 7121(d) to hold complaints in abeyance. Whenever an agency does so, it must notify the complainant.

57 FR at 12639.

2. The APWU was successful in having the final regulations permit cross-craft reassignment as reasonable accommodation for handicapped Postal employees if the employee wants reassignment and it does not violation a collective bargaining agreement. 57 FR at 12652, 12638. Proposed Section 1614.203(g) contained language, stating that:

> [A]n employee of the United States Postal Service shall not be considered qualified for reassignment to a position in a different craft or for any reassignment that would be inconsistent with the terms of a collective bargaining agreement covering the employee.

54 FR 45747, 45755 (October 31, 1989).

The APWU objected on the ground that it was overbroad and appeared to result in a wholesale prohibition against cross-craft reassignments which would work to the detriment of a handicapped Postal employee who desired to be reassigned instead of retiring on disability. The APWU also noted that cross-craft reassignments within the Postal Service are not necessarily in violation of the Service's collective bargaining agreements, pointing to Article 13 of the National Agreement and Subchapter 540 of the ELM.

The APWU requested that Section 1614.203(g) be amended to 1) require the Postal Service to honor requests for reassignment by handicapped employees as a reasonable accommodation where such reassignment was not inconsistent with the terms of any CBA, and 2) make clear that the availability of such reassignment would not affect the employee's entitlement to disability retirement.

In final form, Section 1614.203(g) reads in pertinent part:

> [A]n employee of the United States Postal Service shall not be considered qualified for any offer of reassignment that would be inconsistent with the terms of any applicable collective bargaining agreement.

57 FR at 12652.

This language should be read in light of the Preamble to the Final Regulations which states:

> If such a [cross-craft] reassignment is permitted by the applicable agreements and otherwise consistent with this section [1614.203(g)], we agree that it should be required. Accordingly we have revised the section to require reassignment in the Postal Service unless prohibited by applicable collective bargaining agreements.
>
> If an employee is unable to perform his job and declines an offer made in compliance with this section [1614.203(g)], the agency has completely fulfilled its obligation under this section; the agency should not and cannot cite this section as authority for a non-consensual reassignment. We do not believe that this section conflicts with the rights of employees or the obligations of agencies under applicable disability retirement systems.

57 FR at 12638.

3. The APWU's position on interest on back pay was also adopted in the final regs. Proposed Section 1614.501 expressly barred the payment of interest on back pay awards to applicants or employees under Title VII or the Rehabilitation Act based on the conclusion that the Back Pay Act of 1966, 5 U.S.C. 5596, did not serve as a waiver of sovereign immunity for this purpose.

The APWU objected to the application of this section to Postal employees based on the Supreme Court's decision in Loeffler v. Frank, 486 U.S. 549 (1988), where the Court specifically held that interest may be recovered from the Postal Service in suits under Title VII because 39 U.S.C. 401(1) of the Postal Reorganization Act of 1970 constitutes a waiver of sovereign immunity from awards of interest.

In final form, Section 1614.501 reads in pertinent part:

> Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived.

57 FR at 12659.

The Preamble to the Final Regulation notes that this revision was made with the APWU's comments in mind:

> A few commenters also noted that the proposal went too far when it stated that interest may never be paid on back pay awards under part 1614 since sovereign immunity has been waived for some agencies, e.g., the Postal Service. . . . Consequently, the regulation provides for payment of interest where sovereign immunity has been waived.

57 FR at 12641-42.

171 Cont.

t R. Sombrotto
President

(202) 393-4695

National Association of
Letter Carriers (AFL-CIO)
100 Indiana Ave., N.W.
Washington, D.C. 20001

JOINT BARGAINING COMMITTEE

Moe Biller
President

(202) 842-4200

American Postal Workers
Union (AFL-CIO)
1300 L St., N.W.
Washington, D.C. 20005

January 2, 1990

Office of the Executive
Secretariat
Room 10402, Equal Employment
Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507

Dear Sir:

The National Association of Letter Carriers, AFL-CIO ("NALC"), and the American Postal Workers Union, AFL-CIO ("APWU"), by their undersigned attorneys, hereby jointly submit the following comments with respect to the Commission's proposed restructuring of the Federal sector EEO complaint process, as published in the Federal Register on October 31, 1989.

The APWU is the collective bargaining representative of all employees of the United States Postal Service ("Postal Service") in the clerk, maintenance, motor vehicle, and special delivery crafts. The NALC is the collective bargaining representative of all employees of the Postal Service in the city letter carrier craft. NALC and APWU (hereafter "the Unions") have been parties to successive collective bargaining agreements with the Postal Service since 1971.

1. Section 1614.203(g) of the proposed regulation contains language, apparently derived from 5 U.S.C. 8337(a) and 8451(a)(2)(D), stating that "an employee of the United States Postal Service shall not be considered qualified for reassignment to a position in a different craft or for any reassignment that would be inconsistent with the terms of a collective bargaining agreement covering the employee." The inclusion of this language in the regulation appears to result in a wholesale prohibition against cross-craft reassignments in the Postal Service.

The Unions submit that this prohibition against cross-craft assignments is overbroad. The referenced provisions of 5 U.S.C. 8337(a) and 8451(a) are designed to protect a disabled postal employee's right to disability retirement benefits when that employee is unable to perform useful and efficient service within the employee's craft. The statutes prohibit the Postal Service from defeating an employee's application for disability retirement by reassigning the employee to a different craft. However, in those cases where a handicapped postal employee who is unable to perform within his craft voluntarily elects not to apply for disability retirement status and instead wishes to continue employment with the Postal Service, the Rehabilitation Act should be construed to require the Postal Service to consider a cross-craft reassignment as a reasonable accommodation, provided only that such reassignment does not violate an applicable collective bargaining agreement.

Cross-craft assignments within the Postal Service are not necessarily in violation of the Service's collective bargaining agreements. For example, Article 13 of the National Agreement between the Postal Service, APWU, and NALC requires the Service to honor requests for temporary or permanent cross-craft assignments by ill or injured employees under specified circumstances. In addition, Subchapter 540 of the Postal Service Employee and Labor Relations Manual, which is incorporated by reference by the collective bargaining agreement, requires the Service under certain circumstances to assign employees who have been injured on the job to limited duty in other crafts. The change in the proposed regulation we suggest would treat handicapped employees in a manner which is consistent with this framework.

In sum, the Unions propose that Section 1614.203(g) of the proposed regulation be amended to require the Postal Service to honor requests for reassignment by handicapped employees as a reasonable accommodation, except where such reassignment would be inconsistent with the terms of an applicable collective bargaining agreement. The regulation should also state that the availability of such a reassignment shall not affect the employee's entitlement, if any, to disability retirement pursuant to 5 U.S.C. 8337 or 5 U.S.C. 8451.

2. Section 1614.301(c) of the proposed regulation provides that for persons employed by agencies not covered by 5 U.S.C. 7121(d) appeals to the Commission shall be held in abeyance during processing of a grievance covering the same matter as the complaint. The Unions oppose the application of this rule to employees in the Postal Service.

Postal employees, unlike their federal counterparts, have the statutory right to file discrimination complaints on matters which have also been grieved. Employees of the United States Postal Service are not covered by 5 U.S.C. 7121(d), the provision which requires Federal employees to elect either the EEO process or the negotiated grievance procedure and precludes them from filing in both fora on the same matter. While the Commission does have authority to issue regulations to carry out its responsibilities, those responsibilities do not include taking away individual rights granted by statute. Holding in abeyance without investigation allegations of discrimination filed by postal employees during the processing of a grievance covering the same matter does just that. As proposed in Section 1614.301(c), postal employees who want to exercise their right to have their discrimination allegations heard in the EEO process can effectively be deprived of their individual right to do so by their Union's determination that the same matter also violates the collective bargaining agreement, irrespective of whether the grievance raises issues of discrimination. As only the Union determines whether a grievance goes beyond the initial step, under the proposed regulation postal employees could be deprived of their statutory right to have their discrimination allegations considered in the EEO process for many months (conceivably years if the grievance is appealed to arbitration). Insofar as such a result is both inappropriate and beyond the Commission's authority, the Unions suggest that the Commission omit Section 1614.301(c) from the final regulations. The ability of postal employees to exercise their legal rights should not be affected by their Union's decision to enforce the collective bargaining agreement.

3. Proposed Section 1614.501 expressly bars the payment of interest on back pay awards to applicants or employees under Title VII or the Rehabilitation Act. This prohibition is based on the conclusion that the Back Pay Act of 1966, 5 U.S.C. 5596, does not serve as a waiver of sovereign immunity for this purpose.

This reasoning with respect to sovereign immunity is not applicable to the Postal Service. In Loeffler v. Frank, ___U.S.___, 108 S.Ct. 1965 (1988), the Supreme Court specifically held that interest may be recovered from the Postal Service in suits under Title VII:

> "We conclude that, at the Postal Service's inception, Congress waived its immunity from interest awards, authorizing recovery of interest from the Postal Service to the extent that interest is recoverable against a private party as a normal incident of suit."

Id. at 1970. The Court based this conclusion on the sue-and-be-sued clause of the Postal Reorganization Act of 1970, 39 U.S.C. 401(1) which the Court found constituted a waiver of sovereign immunity from awards of interest. Id. at 1969-70, 1974-75. Accordingly, the proposed regulation should be amended to provide for interest awards against the Postal Service.

Respectfully submitted,

American Postal Workers Union, AFL-CIO

By:_____
Susan L. Catler
O'Donnell, Schwartz & Anderson
1300 L St., N.W.
Washington, D.C. 20005

National Association of Letter Carriers, AFL-CIO

By:_____
Keith E. Secular
Cohen, Weiss & Simon
330 W. 42nd Street
New York, NY 10036

SLC/KES:tjm

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Jurisdictional issues, arising under the Modified Article 15 pilot program, will not be addressed by arbitrators in that forum.

Whenever jurisdictional issues are raised under the Modified Article 15 pilot program, and no resolution is reached by the parties at Step 2, the Union may appeal such issues to the regional level of the regular grievance and arbitration procedure. Such issues will be processed pursuant to those provisions under Article 15 of the National Agreement.

William J. Downes
Director
Office of Contract
Administration
U.S. Postal Service

Date 8/29/89

Francis J. Conners
Executive Vice President
National Association of
Letter Carriers, AFL-CIO

Date 10/3/89

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date 9-20-89

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

June 2, 1995

JUN 1995
Received

MANAGERS, HUMAN RESOURCES (AREAS)

SUBJECT: Follow-up to Memorandum of Understanding
Modified Arbitration Decisions

This is to further follow up on my previous letter concerning modified arbitration decisions and the Memorandum of Understanding on that subject.

Arbitration awards issued under a modified procedure continue to be binding on the office of origin, even after the office has withdrawn from the modified procedure. However, under no circumstances may such a modified arbitration award be cited in arbitration after the office has withdrawn from the modified procedure, except as follows.

In the case of an office which withdraws from a modified procedure and then re-enters a modified procedure, awards from the initial entry in the modified procedure may be cited in the subsequent modified procedure, unless the local parties otherwise mutually agree.

The above is further clarification in this area, and does not disturb previous agreements concerning citing awards from modified grievance/arbitration procedures, or withdrawal from the Modified 15 program.

Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

cc: Mr. Burrus, American Postal Workers Union
Labor Relations Specialists (Area)

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

UNITED STATES POSTAL SERVICE

May 23, 1995

MANAGERS, HUMAN RESOURCES (AREAS)

SUBJECT: Follow-up to Memorandum of Understanding Modified Arbitration Decisions

This is to follow up on my previous letter concerning modified arbitration decisions and the Memorandum of Understanding on that subject.

If an office withdraws from a modified procedure, any arbitration award which was heard under that procedure but is issued after the withdrawal is binding on that office. However, no modified award from that office may be cited in arbitration after the office has withdrawn from the modified procedure, regardless of whether it was issued while the office was in the modified procedure or after withdrawal from the procedure.

In the case of an office which withdraws from a modified procedure and then re-enters a modified procedure, awards from the initial entry in the modified procedure may be cited in the subsequent modified procedure, unless the local parties otherwise mutually agree.

The above is further clarification in this area, and does not disturb previous agreements concerning citing awards from modified grievance/arbitration procedures, or withdrawal from the Modified 15 program.

Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

cc: Mr. Burrus, American Postal Workers Union
Labor Relations Specialists (Area)

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE AND
AMERICAN POSTAL WORKERS UNION, AFL-CIO

RE: Modified Arbitration Decisions

The parties agree that Arbitration Awards issued under any Modified Grievance procedure are not to be cited in any future arbitrations when and if the parties withdraw from that modified grievance procedure.

Arbitration Awards rendered in any modified grievance procedure are intended to apply only in the specific subject office of the grievance and only while the office is under the modified grievance procedure.

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

Date: 4-4-95

Anthony J. Vegliante
Manager
Contract Administration
APWU/NPMHU

Date:

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO
AND THE
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

The parties hereby agree that any arbitration award arising under the Modified Article 15 grievance and arbitration procedure will be referenced in the following manner:

1. It shall not be cited as precedent in any future arbitration proceedings occurring outside of a test office.

2. It may, however, be cited as precedent in any future arbitration proceedings occurring within a test office.

This Memorandum will apply to any office implementing Modified Article 15 and shall continue as long as the program is in existence at the test office.

Stephen W. Furgeson
General Manager
Grievance and Arbitration Division
Labor Relations Department

9/6/88
DATE

William Burrus
Executive Vice President
American Postal Workers Union, AFL-CIO

9/6/88
DATE

Francis J. Conners
Executive Vice President
National Association of Letter Carriers, AFL-CIO

DATE

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

When the Modified Article 15 test program is terminated in a particular test site, the following procedures have been agreed upon:

1) An expiration date will be agreed upon locally;

2) All grievances pending in the Modified Article 15 process shall be decided by the appropriate management official(s) under that process. Any appeals from adverse decisions shall be processed pursuant to the regular contractual procedure. For example:

Modified Article 15	Current Article 15
Step 1 decision to	Step 2
Step 1a decision to	Step 2
Step 2 decision to	Step 3

3) Unless the local parties otherwise agree, those arbitration appeals already scheduled under the Modified Article 15 process will be heard as scheduled. All other grievances pending arbitration shall be forwarded to the region for logging by appeal date on the register of pending cases for regular regional or expedited panels, as appropriate.

4) All Step 1 grievances filed after the date of termination from the Modified Article 15 process shall be in accordance with the regular contractual procedure.

5) Postal and Union officials designated by the parties will meet at the regional level to determine future use of arbitrators certified under the pilot program.

William J. Downes
Director
Office of Contract
Administration
Labor Relations Department

DATE 4/3/96

William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO

DATE 4/4/96

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street NW
Washington, DC 20005-4128

Subject: Case No. H0C-NA-C 26

Dear Bill:

Recently, we met to discuss the implementation of Arbitrator Dobranski's award in Case Number H0C-NA-C 26. The parties have agreed to the following as a final and binding resolution of all issues regarding the implementation of the "new steps" created by the June 12, 1991 Interest Arbitration Award and the interpretation and application of the October 12, 1999 award in Case H0C-NA-C 26.

A list of affected employees who were promoted and placed in an incorrect step has been developed and furnished to the APWU at the national level. We have agreed that this list contains the names of all employees entitled to compensation under this settlement. No payments are authorized for individuals not listed on this printout.

The salary history of each employee on the above list who was on the rolls as of the date of Arbitrator Dobranski's award will be recalculated as if the employee had not been placed in the lower step following a promotion. The dollar difference between the actual and recalculated earnings will be identified. This difference will then be compared to any "promotion pay anomaly" payments received by the employee for the same time period. If the recalculated earnings are greater than the "promotion pay anomaly" payment total, the employee will be paid the difference, subject to appropriate payroll deductions, as an adjustment to the employee's regular paycheck. Negative balances will be automatically waived.

Form 50 changes will be made to reflect the above and the employee will be placed in the step the employee otherwise would have attained. It is anticipated that the Form 50 changes will be completed June 16 and that payment will be made in the check for pay period 19, which ends September 8, 2000.

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

Implementation of this award will be coordinated at the national level. A national Administrative Dispute Resolution Committee will be established to help resolve disputes that arise out of the implementation of this award. No individual grievances will be filed or processed concerning implementation of the award.

The above is a final and complete settlement of all issues relating to implementation of the award in Case No. H0C-NA-C 26.

Sincerely,

Ed Ward

Edward F. Ward, Jr.
Manager
Collective Bargaining and Arbitration
Labor Relations

William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO

Dated: May 23, 2000

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

Mr. William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO
1300 L Street NW
Washington, DC 20005-4128

Subject: Additional agreement for Case H0C-NA-C 26

Dear Bill:

This is to confirm our agreement concerning a limited number of additional grievances filed and held in abeyance pending the outcome of Case H0C-NA-C 26. These grievances involve employees who worked higher level assignments and were paid higher level as if they had been placed in an incorrect lower step. Because these employees were not promoted, their names do not appear on the list of employees who were promoted and placed in an incorrect step. Those grievances currently in the system involving this higher level issue will be identified and the names and social security numbers of the grievants forwarded to the national level for resolution consistent with the award of Arbitrator Dobranski identified above. This understanding applies only to grievances in the system as the date of Arbitrator Dobranski's award on this subject.

The parties have further agreed that this document shall not be publicized, except to enforce its terms, and will not be viewed as a precedent for any purpose whatsoever.

Sincerely,

Ed Ward

Edward F. Ward, Jr.
Manager
Collective Bargaining and Arbitration
Labor Relations

William Burrus

William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO

Dated: May 23, 2000

NOV 23
...ESIDENT

Memorandum of Understanding

It is agreed by the United States Postal Service; the National Association of Letter Carriers, AFL-CIO; and the American Postal Workers Union, AFL-CIO, that the processing and/or arbitration of a grievance is not barred by the separation of the grievant, whether such separation is by resignation, retirement, or death.

W. E. Henry

William E. Henry, Jr.
Director, Office of Grievance
and Arbitration
United States Postal Service

Vincent R Sombratto

Vincent R. Sombrotto
National Association of
Letter Carriers, AFL-CIO

William Burrus

William Burrus
American Postal Workers Union,
AFL-CIO

October 16, 1981

WASHINGTON, D.C. 20036
AREA CODE 202
833-9346

October 3, 1975

Mr. James V. P. Conway
Senior Assistant Postmaster
General
Employee and Labor Relations
United States Postal Service
Washington, D.C. 20262

Dear Mr. Conway:

At the Blue Ribbon Committee meeting on September 23, 1975, the subject of the filing of requests for reconsideration by arbitrators of their awards was discussed. It was agreed that sound labor relations policy and the arbitration processes established under Article XV would be better served by precluding requests for reconsideration by either a Union or Postal Service for reconsideration of arbitration awards. Accordingly, it was agreed that, beginning with the date of this letter, no requests or motions for reconsideration of arbitration awards would be filed by any Union signatory to the 1975 National Agreement or by the Postal Service.

Out of an abundance of caution, I wish to make clear that nothing herein is intended to preclude any right that any party may have to seek judicial review of an arbitrator's award. Nor is anything herein intended to preclude an arbitrator from correcting clerical mistakes or obvious errors of arithmetical computation.

If you find that this letter accurately expresses our agreement, please sign in the space provided below.

/s/
James V.P. Conway
Senior Assistant Postmaster
General

/s/
Bernard Cushman
Chief Spokesman for the
Unions

BC/ap

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

APR 24 1984

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: M. Pfister
Elizabeth, NJ 07207
H1C-1N-C 24361

Dear Mr. Connors:

On February 7, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether the Postal Service is obligated to pay witnesses for time spent waiting to testify at an arbitration hearing.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

1. When arbitration hearings are held at the site where the grievance arose, it is Postal Service policy to stagger the appearance of employee witnesses in order to avoid the need for any waiting time. The consistent practice has been to require employee witnesses to perform work at a location from which they can be readily called when needed to testify. Conversely, when an arbitration hearing is scheduled at a location away from the site where the grievance arose and reasonable waiting time is necessary, the consistent practice has been that the employee remains on employer time while waiting to testify.

2. Payment will be on a no gain-no loss basis.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Sincerely,

Thomas J. Lang
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO

DDeJ

277 NLRB No. 59

D--3283
Columbus, OH

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

COLUMBUS AREA LOCAL, AMERICAN POSTAL WORKERS UNION, AFL—CIO (U.S. Postal Service)

and

Case 9--CB--5337(P)

JESSE F. WILLIAMS, an Individual

DECISION AND ORDER

On 25 May 1983 Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions [1] and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent,

---

[1] We note that the duty of fair representation requires that a grievance filed by a bargaining unit member, whether union member or nonmember, not be processed by the union in an arbitrary, discriminatory, perfunctory, or bad-faith manner. Vaca v. Sipes, 386 U.S. 171 (1967).

[2] We agree that the Respondent should be ordered to move to dismiss the lawsuit it filed against nonmember John Harsanye seeking recovery of expenses the Respondent incurred in processing his grievance. We find the Respondent's reliance on Bill Johnson's Restaurants v. NLRB, 461 U.S. 731 (1983), misplaced, because the Respondent's suit "has an objective that is illegal under federal law." 461 U.S. at 737 fn. 5. See Laundry Workers Local 3 (Virginia Cleaners), 275 NLRB No. 98 (June 17, 1985).

Columbus Area Local, American Postal Workers Union, AFL--CIO, its officers, agents, and representatives, shall take the action set forth in the Order as modified:

1. Substitute the following for paragraph 2(a).

"(a) Move to dismiss the lawsuit the Respondent filed against John D. Harsunye in Franklin County Municipal Court."

2. Substitute the attached notice for that of the administrative law judge.

Dated, Washington, D.C. 19 November 1985

Donald L. Dotson, Chairman

Patricia Diaz Dennis, Member

Wilford W. Johansen, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

JD-219-83
Columbus, OH

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

COLUMBUS AREA LOCAL, AMERICAN POSTAL WORKERS UNION, AFL-CIO, (U.S. POSTAL SERVICE)

and

Case No. 9-CB-5337(P)

JESSE F. WILLIAMS, An Individual

Patricia Rossner Fry, Esq., of Cincinnati, OH, for the General Counsel.
Leonard S. Sigall, Esq., of Reynoldsburg, OH, for the Respondent.

DECISION

Statement of the Case

MARTIN J. LINSKY, Administrative Law Judge: This matter was heard by me on February 7, 1983 in Columbus, Ohio. Based upon an unfair labor practice charge filed on August 10, 1982 by Jesse F. Williams against the Columbus Area Local, American Postal Workers Union, AFL-CIO (herein the Respondent), the Regional Director for Region 9 of the National Labor Relations Board, (herein the Board), issued a Complaint dated September 17, 1982. The Complaint alleges that Respondent violated Section 8(b)(1)(A) of the National Labor Relations Act, (herein the Act), by billing and attempting to collect fees from nonmembers for processing grievances. Respondent denied the commission of any unfair labor practice.

Upon consideration of the entire record, to include post-hearing briefs filed by the General Counsel and Respondent, 1/ I make the following:

Findings of Fact

I. Jurisdiction

The United States Postal Service, herein called the employer, provides postal services for the United States of America and operates various facilities throughout the country in performance of that function including its facilities in Columbus, Ohio, the only facilities involved in this proceeding. The Board has jurisdiction over the employer's operations in this matter by virtue of Section 1209 of the Postal Reorganization Act.

1/ The General Counsel's Motion to Correct Transcript, which was unopposed by Respondent, is hereby granted.

II. The Labor Organization Involved

Respondent, an affiliated local of the American Postal Workers Union, AFl-CIO, and the American Postal Workers Union, AFL-CIO are now, and have been at all times material herein, labor organizations within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practice

A. Issues Presented

The issues presented are whether Respondent in June 1982 violated Section 8(b)(1)(A) of the Act by posting a notice on bulletin boards at various Postal facilities in the Columbus area and informing nonmembers that fees would be charged for processing grievance of nonmembers, and whether Respondent violated Section 8(b)(1)(A) of the Act by billing John Harsunye for the cost of handling his grievance and when Harsunye didn't pay expenses incurred by Respondent in processing his grievances by filing suit in Franklin County Municipal Court against John Harsunye seeking to collect nine dollars and seventy-five cents ($9.75), which Respondent charged him for processing his grievance.

For the reasons below, I find consistent with Board precedent that Respondent violated Section 8(b)(1)(A) 2/ of the Act.

B. The Facts

The facts in this case are undisputed. The American Postal Workers Union has an extensive history of collective bargaining with the United States Postal Service. Their latest collective-bargaining agreement, which is effective from July 21, 1981 to July 20, 1984, includes a grievance procedure culminating in final and binding arbitration.

Although Respondent is the exclusive bargaining representative of unit employees, it is prohibited by federal law from having a union security clause in its collective bargaining agreement with the US Postal Service. Members of the bargaining unit are therefore free to remain nonmembers of Respondent. Currently Respondent has about 1,250 members who pay twenty dollars and ninety-three cents ($20.93) per month in dues. Respondent also represents another 400 unit employees who are nonmembers of the Union.

In June 1982, Respondent posted on bulletin boards in various Postal facilities in the Columbus area, a notice which stated:

2/ Section 8(b)(1)(A) of the Act provides, in pertinent part, that:

> (b) It shall be an unfair labor practice for a labor organization or its agents --
>
> (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7: Provided that this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein. . . .

To Non-Members

No grievances will be filed for nonmembers unless directly requested by the (nonmember). No steward will file a step 1 nor will he or she hold a step 1 discussion with your supervisor unless directly requested by the non-member.

All forms will cost a nonmember $.25, all time off the clock spent on your grievance or any help requested by a nonmember will cost $10.00 per hour. All items, i.e., transportation, phone calls, will be charged to the nonmember.

All nonmembers will be billed, if payment is not received within 15 days we will take the nonmember to court to recover our costs.

All grievances after step 1 becomes property of this local. Any request for information after step 1 will be at an extra expense. (Joint Exhibit 3).

At about the same time that this notice was posted, Respondent also sent a letter to nonmembers which stated in pertinent part:

If you are not a member of the APWU we will no longer hold step 1 for you unless we are requested to do so by you. You will be required to pay for all expenses incurred by this local in handling your grievance. All forms are $.25 each, all time, off the clock, spent on your grievance will be $10.00 per hour; transportation and other expenses will be charged to you.

Any nonmember who fails to pay will be taken to court to recover our losses. (Joint Exhibit 2)

John D. Harsunye, a nonmember, signed an agreement with Respondent dated July 13, 1982, which stated in part:

I hereby give my consent to have any grievance, (No. 72181A, CM) appealed to the highest step possible to receive a resolve. I understand APWU position on nonmembers' fees and I will accept responsibility for the financial fees pertaining to this grievance. I also understand that I will be "billed" for forms and /et cetera/ concerning this grievance.

Mr. Harsunye did not pay pursuant to his agreement and Respondent sued him in the Franklin County Muncipal Court for $9.75. No steps have been taken to secure a default judgment against Harsunye, although the evidence indicates that he is in default.

The July 1982, edition of The Vindicator, Respondent's newsletter contained an article arguing the benefits of union membership. The article included the assertion that "NONUNION MEMBERS ARE FREELOADERS", and the remark "Even in the short term you might be surprised how costly it could prove to be for you to remain outside the Union." (General Counsel's Exhibit 2)

Respondent incurs a number of expenses in processing grievances be they grievances of members or nonmembers of the Union. Article 31 Section 2 of the present collective bargaining agreement allows the US Postal Service to charge Respondent for costs incurred in supplying information needed for processing grievances. Respondent is charged $13.40 per hour for research time to get information necessary to process grievances, and $.10 per copy. These amounts must be paid in advance, and are paid out of union dues. Other expenses which must also be paid from Union dues but incurred in processing grievances of members and nonmembers include the union steward's transportation expenses, reimbursement for steward's leave without pay, and office expenses such as copying machines. Uncontradicted testimony at trial was to the effect that taking a grievance to arbitration would cost a miminum of $1,000.

Respondent's letter to nonmembers stated that nonmembers would be charged 25 cents per form and $10.00 per hour for leave without pay of the representative for his or her time off the clock in handling the grievance. The 20 cents per mile which Respondent reimburses stewards for travel in connection with processing grievances would also be charged to nonmembers.

Respondent has continued to represent nonmembers in grievance proceedings regardless of whether or not they have paid. No nonmember has been refused representation because of his or her failure to pay.

Jesse F. Williams, the Charging Party in this case, resigned from the Union in March 1981 after twenty years of membership. In June, 1982, he received a copy of the letter sent to nonmembers, which was referred to above. In August 1982, Williams filed a grievance claiming that a supervisor was doing bargaining unit work. On August 10, 1982, he filed the charge which is the basis of this Complaint. Williams' grievance was handled in the normal fashion as far as this record reflects and Williams was not charged any fee or expenses by Respondent for the processing of his grievance.

C. Analysis and Conclusions

Respondent argues that it should be allowed to recover expenses it incurs in representing nonmembers in processing grievances. Union members, the argument proceeds, by paying dues pay their fair share of the expenses associated with grievance processing and it is only fair to pass on to nonmembers the cost of processing any grievance they may file, especially in light of the fact that the Union is required to process grievances of nonmembers and may be sued civilly for money damages if it breaches its duty of fair representation. 3/ Respondent argues that nonmembers who don't pick up the expenses of processing their grievances are "freeloaders." The situation is aggravated by the fact that pursuant to federal law a union security clause is not permitted in any collective bargaining agreement between the Union and the US Postal Service.

3/ The US Supreme Court recently held that a union could be held financially liable for breaching its duty of fair representation by failing to adequately pursue a meritorious grievance. Bowen v. US Postal Service, 459 US (1983).

While all these arguments have some merit, this case must be decided in accordance with the law as it exists as of the writing of this decision. That law is quite clear. Section 7 of the Act specifically gives employees the right to refrain from joining a union. Section 8(b)(1)(A) make it an unfair labor practice for a union or its agents to restrain or coerce employees in the exercise of those rights guaranteed in Setion 7. A union, which is the exclusive bargaining representative of all employees in the unit, must represent all members of the bargaining unit and deligently pursue their meritorious grievances whether those employees are dues paying members of the Union or not. Vaca v. Sipes, 386 US 171 (1967).

While the issue of so-called "freeloaders" may be one of growing concern to Respondent it is not a novel issue. Over the years the Board has addressed this issue in a number of cases to include Hughes Tool Company, 104 NLRB 318, Plumbers, Local 141, 252 NLRB 1299, Exxon Company U.S.A., 253 NLRB 213, International Association of Machinists and Aerospace Workers, Local Union No. 697, AFL-CIO (The H.O. Canfield Rubber Company), 223 NLRB 832, and International Brotherhood of Electrical Workers, Local No.396. (Central Telephone Company), 229 NLRB 469. From a study of these cases it is clear that, in the absence of a valid union security clause, a union may not charge nonmembers for the processing of grievances or other services.

While arguments can be made to the contrary the law is clear that a union violates Section 8(b)(1)(A) of the Act by charging or threatening to charge nonmembers the costs of processing any grievances they may file. Charging nonmembers the cost of providing a service which members get free (even though they pay dues) has a coercive effect on nonmembers in the exercise of their right to join or refrain from joining a union.

It is noted that it would take over four years worth of dues to pay for the cost of one single grievance taken to arbitration. This would necessarily have a coercive effect on nonmembers in the exercise of their right to join or refrain from joining a union. It is also noted that a union member who is prone to grieve more than his fellow employees 4/ would himself become a so-called "freeloader."

If Respondent wants a change in the law in this area it will have to secure it from the Board or higher authority.

Since I find that Respondent has committed the unfair labor practices noted above I will recommend that it cease and desist therefrom and take certain affirmative action designed to affectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Columbus Area Local, American Postal Workers Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4/ Evidence at the hearing reflected that less than 10 percent of the bargaining unit employees ever grieved a matter and that some bargaining unit employees grieved substantially more often than others.

2. By informing nonmembers that they would be required to pay expenses Respondent incurred in processing the grievances of nonmembers and by commencing a lawsuit against nonmember John D. Harsunye for failing to pay expenses Respondent incurred in processing his grievance Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A), 2(6), and 2(7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record in this proceeding and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER 5/

Respondent, Columbus Area Local, American Postal Workers Union, AFL-CIO, its officers, agents, successors and assigns shall:

1. Cease and desist from:

(a) Notifying nonmembers of Respondent that they will be billed for expenses incurred by Respondent in representing such employees in grievance proceedings.

(b) Requiring John D. Harsunye or any other nonmember of Respondent to pay to Respondent expenses incurred by Respondent in processing grievances they file.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Dismiss the lawsuit Respondent filed against John D. Harsunye in Franklin County Municipal Court.

(b) Post copies of the attached notice marked "Appendix". 6/ Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days

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5/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

6/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

thereafter, in conspicuous places, including all places where notices to members and employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director, for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

Dated, Washington, D.C. May 25, 1983

Martin J. Linsky
Admininstrative Law Judge

The Respondent also filed a state-court suit against employees to collect fines levied against them. Although the judge recognized that the Respondent's position in the suit is contrary to Board law, he relied on Bill Johnson's Restaurants v. NLRB, 103 S.Ct. 2161, 113 LRRM 2647 (1983) (the Board may not enjoin a pending state-court lawsuit, regardless of the plaintiff's motive, unless the suit lacks a reasonable basis in fact or law) to dismiss the allegation that the Respondent's suit violated the Act. We reverse.

In Bill Johnson's the Supreme Court observed that its holding did not apply to a suit that "has an objective that is illegal under federal law," and gave as an example "Board orders enjoining unions from prosecuting court suits for enforcement of fines that could not lawfully be imposed under the Act." 103 S. Ct. at 2167 fn. 5.[1] We conclude that Bill Johnson's specifically endorses finding the Respondent's state-court action to be unlawful. The Respondent's fines of employees who have resigned from the Union could not lawfully be imposed under the Act. Machinists Local 1414 (Neufeld Porsche-Audi), 270 NLRB No. 209, 116 LRRM 1257 (June 22, 1984); Machinists Local 1769 (Dorsey Trailers), 271 NLRB No. 146, 117 LRRM 1004 (Aug. 10, 1984). Thus, the suit "has an objective that is illegal under federal law." Accordingly, we find that by commencing a state-court suit to collect fines imposed on employees after they resigned from the Union, the Respondent violated Section 8(b)(1)(A).

DAYTON MALLEABLE, INC. —

GHR FOUNDRY DIVISION OF DAYTON MALLEABLE, INC., Dayton, Ohio and ELECTRICAL WORKERS (IUE), LOCAL 765, Case No. 9-CA-19029-1 and -19029-2, June 17, 1985, 275 NLRB No. 99

Bruce H. Meizlish, Cincinnati, Ohio, and Susan L. Stahl, Washington, D.C., for General Counsel; John H. Hovis, Jr., Varberton, Ohio, for union; E. Allan Kovar (Kovar, Nelson & Brittain), Chicago, Ill., for employer; Administrative Law Judge Norman Zankel.

Before NLRB: Dotson, Chairman; Hunter and Dennis, Members.

REFUSAL TO BARGAIN Sec. 8(a)(5)

— Plant shutdown — Effects on employees ▸54.667

Employer did not violate LMRA, despite allegation that it failed to bargain with union concerning effects of plant shutdown on employees. Employer notified union of shutdown well in advance of its implementation, gave union opportunity to bargain over effects of shutdown, and adequately responded to limited demands made by union during bargaining; it is immaterial that there was little actual bargaining over effects of shutdown.

[*Text*] The evidence establishes that for several years prior to the shutdown of its Dayton, Ohio facility on 21 January 1983 the Respondent experienced serious financial difficulties.[1] In October 1981 the Respondent notified the Union that only a major capital investment and modifications in the parties' collective-bargaining agreement could "save the GHR facility."[2] Thereafter, the Respondent and the Union met on numerous occasions to discuss the Respondent's proposals.

By letter of 1 October 1982 the Respondent advised the Union that the Respondent's existence was "in jeopardy" because of operating losses. Thereafter, at a bargaining session on 25 October 1982, the Respondent advised the Union that a shutdown was "imminent." By letter of 29 November 1982 the Respondent advised the Union that on approximately 14 January 1983 the Respondent's facility would shut down and that the resulting layoff of employees would be for an indefinite period. In this letter the Respondent indicated that no decision had been made whether the shutdown would become permanent and invited the Union to discuss the matter further if it so desired. On 16 December 1982 the Respondent and the Union met again. On this occasion the Union demanded continued recognition of the Union and asked that the

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local union to "expunge" a provision appearing in the constitution of the parent International, which is not a party to this proceeding. Instead, Member Dennis would order the Respondent to notify its members in writing that it will not enforce the restriction on resignations.

[1] Fn. 5 reads in pertinent part as follows:

"It should be kept in mind that what is involved here is an employer's lawsuit that the federal law would not bar except for its allegedly retaliatory motivation. We are not dealing with a suit that is claimed to be beyond the jurisdiction of the state courts because of federal law preemption, or a suit that has an objective that is illegal under federal law. . . . [W]e have upheld Board orders enjoining unions from prosecuting court suits for enforcement of fines that could not lawfully be imposed under the Act, see Granite State Joint Board Textile Workers Union, 187 NLRB 636, 637, 76 LRRM 1246 (1970), enforcement denied, 446 F.2d 369, 77 LRRM 2711 (CA1 1971), rev'd. 409 U.S. 213, 81 LRRM 2853 (1972)." [Additional citations omitted.]

[1] No exceptions were filed to the judge's conclusions that the Respondent did not violate the Act by refusing to bargain over the decision allegedly to relocate unit work and by laying off employees following the shutdown. In the absence of exceptions to these conclusions, we find it unnecessary to determine whether the Respondent effectuated only an indefinite plant shutdown, as contended by the Respondent, rather than a relocation and transfer of unit work. Further, in the absence of exceptions to these conclusions, we also find it unnecessary to consider the judge's discussion regarding the scope of Milwaukee Spring Division, 268 NLRB 601, 115 LRRM 1065 (1984), and Otis Elevator Co., 269 NLRB 891, 116 LRRM 1281 (1984).

[2] The Respondent and the Union were parties to a collective-bargaining agreement effective 1 June 1980 to 4 June 1983.

ndards; (3) department manager mitted that leadman's alleged lack fervor and leadership deficiencies l not manifest themselves until ter the union problem started."

— **Discharge** ▸52.2722 ▸52.2780 2.2756 ▸52.344

Employer violated LMRA when it scharged three union supporters, alegedly for poor production. (1) Emoyer's statistical summary and aphic representation of production cords was prepared specifically for esentation at unfair labor practice aring and does not establish that rticular employees were failing to aintain acceptable production levels;) employees were told initially that ey were merely being laid off, and ntention regarding poor production as not raised prior to unfair labor actice proceeding; (3) although emoyer contended that employees had ot completed work orders, its testimoy establishes that this also had hapened previously without resulting in scharges; (4) there is no evidentiary pport for employer's contention that nployees engaged in intermittent oduction slowdowns.

[*Text*] We agree with the judge's conclusion that Respondent Crest violated Sec. a)(3) and (1) of the Act by the demotion nd discharge of J. Magdeleno and the disarges of D. Magdeleno and R. Torres. Respondent Crest excepts to this finding, arguing that the judge failed to apply the causation test set forth in Wright Line, 251 LRB 1083, 105 LRRM 1169 (1980), enfd. 62 F.2d 899, 108 LRRM 2513 (1st Cir. 1981). We note, however, that with respect to evidence of the alleged violation, the judge found a prima facie case of a violation which Respondent Crest did not persuasively counter. In these circumstances, we find the judge's analysis consistent with Wright Line, supra. See Limestone Apparel Corp., 55 NLRB 722, 107 LRRM 1187 (1981).

The administrative law judge dismissed certain allegations. Only the employer filed exceptions to the ALJ's decision.

LAUNDRY & DRY CLEANING UNION —

(Virginia Cleaners)

LAUNDRY, DRY CLEANING, GOVERNMENT & INDUSTRIAL SERVICE, LOCAL 3, AFL-CIO, San Francisco, Calif. and VIRGINIA CLEANERS, INC. and ASSOCIATION OF EAST BAY, WEST BAY AND PENINSULA DRY CLEANERS; CROCKER CLEANERS; AND G. F. THOMAS, INC., Case Nos.32-CB-1848 and -1902 (formerly 20-CB-6271), June 17, 1985, 275 NLRB No. 98

Elaine D. Climpson, Oakland, Calif., for General Counsel; William F. Crowell, Oakland, Calif., for union; William Shepard, San Francisco, Calif., for employers; Administrative Law Judge Timothy D. Nelson.

Before NLRB: Dotson, Chairman; Hunter and Dennis, Members.

RESTRAINT OR COERCION Sec. 8(b)(1)(A)

— Resignation from membership — Discipline for postresignation strikebreaking ▸57.03 ▸57.02 ▸57.930 ▸59.236

Local union violated LMRA by (1) refusing to accept employees' resignations from membership, (2) threatening them with disciplinary proceedings for returning to work after resigning, (3) instituting disciplinary proceedings and imposing fines on employees for their postresignation refusal to honor picket line, and (4) maintaining restrictions on right to resign by incorporating into official membership oath provision in international union's constitution prohibiting resignations during strike. Employers distributed memoranda advising employees about their right to resign, but memoranda contained express assurances that employers will not retaliate against any employees who chose to retain membership in union and/or to support strike.

— Suit to collect unlawfully imposed fines ▸57.03 ▸59.236

Union that unlawfully imposed fines on employees who have resigned from union membership violated LMRA by instituting suit in state court to collect fines, in view of U.S. Supreme Court's decision in Bill Johnson's Restaurants v. NLRB (113 LRRM 2647).

[*Text*] The judge found that the Respondent violated Section 8 (b)(1)(A) of the Act by refusing to accept resignations, threatening discipline proceedings for returning to work after resigning, bringing disciplinary proceedings and imposing fines for postresignation refusals to honor the Respondent's picket line, and maintaining restrictions on the right to resign. We adopt.[1]

[1] Member Dennis joins her colleagues in ordering the Respondent to cease and desist from maintaining the restriction on resignations because the complaint alleges unlawful maintenance of the constitutional provision and the record supports that allegation. Compare Machinists Local 1414 (Neufeld Porshe-Audi), 270 NLRB No. 209, fn. 22, 116 LRRM 1257 (June 22, 1984), in which the complaint contained no such allegation. As in Neufeld Porsche-Audi, however, Member Dennis considers it impracticable to order the Respondent

O'Donnell & Schwartz
Counselors at Law

1126 Sixteenth Street, N.W., Suite 700
Washington, D. C. 20036
(202) 887-5955

285 Madison Avenue
New York, N.Y. 10017
(212) 532-8900

ASHER W. SCHWARTZ
JOHN F. O'DONNELL*
DARRYL J. ANDERSON
ARTHUR M. LUBY
ANTON GEORGE HAJJAR
SUSAN L. CATLER

*MEMBER N. Y. BAR ONLY

RECEIVED
MAR 23 1984
OFFICE OF
EXECUTIVE VICE PRESIDENT

MEMORANDUM

TO: Moe Biller
Bill Burrus
Tom Neill

FROM: Darryl Anderson

RE: Short Statute of Limitations on Suit to Set Aside Arbitration Award

DATE: March 20, 1984

Notwithstanding the Supreme Court's recent decision in DelCostello applying a six-month statute of limitations in DFR cases brought against unions, the Courts have continued to apply shorter state limitations periods to actions to set aside arbitration awards. This means that, when we wish to challenge an arbitration award, we must do so within 20 to 90 days after the award issues to be sure we will not be time-barred, depending on the applicable limitations period under state law.

Because the finality and enforceability of arbitration awards tends to favor the Union, this is not a bad development; it merely requires diligence on our part if we choose to challenge an award. It has not been settled which limitations period will apply under our Agreement. We contend that it must be a Federal period of 90 days or the three-month period set by District of Columbia law; but the USPS may try to apply a shorter period in cases which arise in a state with a shorter period.

DJA:kr

RECEIVED
FEB 19 1985
CLERK DIVISION

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

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

FEB 15 1985

Re: Class Action
West Palm Beach, FL 33401
H1C-3W-C 41731

Dear Mr. Connors:

On February 4, 1985, we met to discuss the above-captioned case at the fourth step of the contractual grievance procedure.

This question in this grievance is whether a steward has a right to be represented by another steward.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

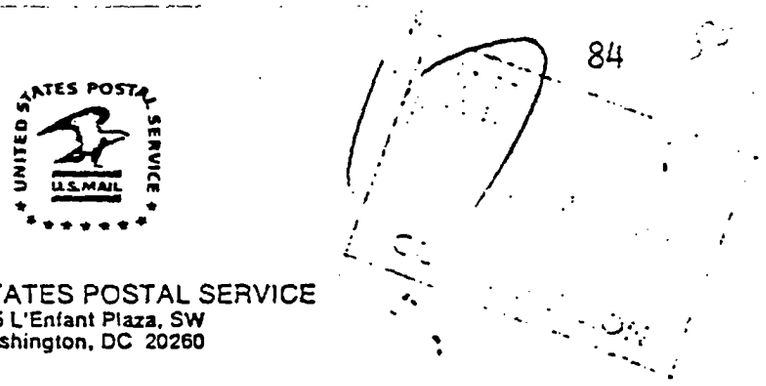
> A steward, just as any other employee, has a right to representation by another steward.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Sincerely,

Daniel A. Kahn
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO



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

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

JUL 26 1984

Re: R. Bergeron
Orlando, FL 32802
H1C-3W-C 31937

Dear Mr. Connors:

On June 12, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The grievance concerns whether it is proper for a supervisor to require an employee to discuss the nature of his/her grievance before the employee is permitted to see a steward.

We mutually agreed that this grievance does not fairly present an interpretive dispute. There is nothing improper about the supervisor requiring an employee to relate the general nature of the problem or grievance before the employee sees a steward. However, the employee should not be arbitrarily required to divulge detailed information if he/she insists on seeing a steward first.

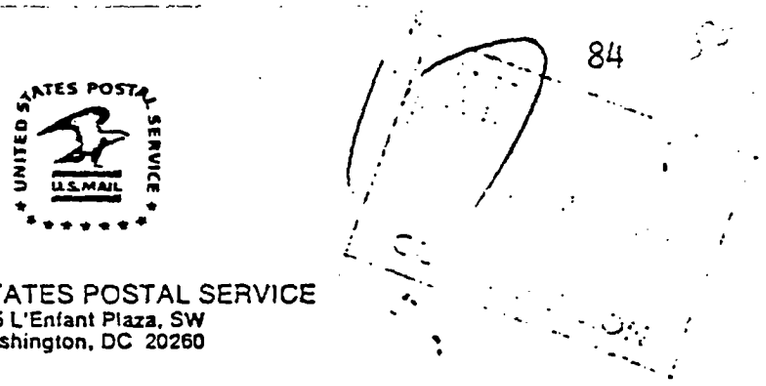
Please sign and return the enclosed copy of this decision as acknowledgment of agreement to resolve this case.

Time limits were extended by mutual consent.

Sincerely,

Robert L. Eugene
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO



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

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

JUL 26 1984

Re: R. Bergeron
Orlando, FL 32802
H1C-3W-C 31937

Dear Mr. Connors:

On June 12, 1984, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The grievance concerns whether it is proper for a supervisor to require an employee to discuss the nature of his/her grievance before the employee is permitted to see a steward.

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Please sign and return the enclosed copy of this decision as acknowledgment of agreement to resolve this case.

Time limits were extended by mutual consent.

Sincerely,

Robert L. Eugene
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO

LABOR RELATIONS

UNITED STATES
POSTAL SERVICE

October 2, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

Dear Mr. Burrus:

This is in response to your correspondence dated August 30, 1995, in which you expressed concern, because it is your belief, that Postal Data Centers do not have an automated or manual system to compensate TE's for grievance settlements which involve compensation.

Your concern is for naught, as the Postal Data Center does in fact, have a system in place for the processing of grievance settlements which involve compensation for TE employees.

According to the PDC, a manual system is in place, and grievance settlements which involve compensation for TE's are processed accordingly.

If anything out of the ordinary develops, please notify my office and we will handle it on a case by case basis.

Sincerely,

Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

OCT 1995
Vice Pr

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-4100

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

William Burrus
Executive Vice President
(202) 842-4246

August 30, 1995

Dear Tony:

I am informed that the Postal Data Centers do not have an automated or manual system to compensate TEs for grievance settlements thereby delaying compensation for such employees. In that TEs are governed by the provisions of Article 15, the parties envisioned that grievance settlements would require compensation of such employees.

I request that your office determine the procedures implemented by the PEDC and advise of your findings, and changes if necessary.

Thank you for your attention to this matter.

Sincerely,

William Burrus
Executive Vice President

Anthony J. Vegliante, Manager
Grievance & Arbitration Division
USPS, Labor Relations
475 L'Enfant Plaza, SW
Washington, DC 20260

WB:rb
opeiu#2
afl-cio

National Executive Board
Moe Biller
President

William Burrus
Executive Vice President

Douglas C. Holbrook
Secretary-Treasurer

Thomas A. Neill
Industrial Relations Director

t L. Tunstall
or, Clerk Division

James W. Lingberg
Director, Maintenance Division

Donald A. Ross
Director, MVS Division

George N. McKeithen
Director, SDM Division

Regional Coordinators
James P. Williams
Central Region

Jim Burke
Eastern Region

Elizabeth "Liz" Powell
Northeast Region

Terry Stapleton
Southern Region

Raydell R. Moore
Western Region

O'Donnell, Schwartz & Anderson
Counselors at Law
1126 Sixteenth Street, N. W., Suite 700
Washington, D. C. 20036
(202) 887-5955

ASHER W. SCHWARTZ
JOHN F. O'DONNELL •
DARRYL J. ANDERSON
ANTON G. HAJJAR
ARTHUR M. LUBY
SUSAN L. CATLER

• MEMBER N.Y. BAR ONLY

O'Donnell & Schwartz
285 Madison Avenue
New York, N. Y. 10017
(212) 532-8900

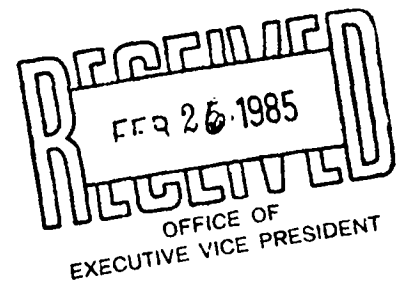
M E M O R A N D U M

TO: Moe Biller
William Burrus
Thomas Neill

FROM: Anton Hajjar

RE: Travel Time Grievance

DATE: February 22, 1985



Mittenthal held that Art.15.4.A.5 (". . . witnesses . . . shall be on employer time when appearing at the hearing . . .") means what it says, and precludes payment for travel to and from hearings. He said that it would take overwhelming evidence of past practice to overcome this "plain language". The USPS was able to show a few instances of non-acquiescence by management over the years, and the arbitrator also cited the unfortunate Connors settlement against us (p.6).

We hoped that Mittenthal would find that, in light of our strong evidence of past practice, it was not enough for management to discredit these instances as abberations contrary to policy, but would be required to show many actual instances of non-payment; i.e., hold that we made out a prima facie case of past practice that shifted the burden to them to rebut it. After all, they have the records. He didn't accept this evidentiary argument, however. Putting aside an advocate's partisanship, the decision was not unexpected and is not clearly wrong. It is a shame that his timing means we have to wait 3 years to fix this situation.

AGH:nlm

O'DONNELL & SCHWARTZ
RECEIVED
FEB 20 1985
WASHINGTON, D.C.

ARBITRATION AWARD

February 15, 1985

UNITED STATES POSTAL SERVICE

-and- Case No. H1N-NA-C-7

NATIONAL ASSOCIATION OF LETTER CARRIERS

-and-

AMERICAN POSTAL WORKERS UNION
Intervenor

Subject: Payment of Union Witnesses - Travel and Waiting Time For Arbitration Hearings

Statement of the Issue: Whether the Postal Service is required by the National Agreement to pay Union witnesses for time spent traveling to and from arbitration hearings and for time spent waiting to testify at arbitration hearings?

Contract Provisions Involved: Article 5; Article 15, Section 4A(5); Article 17, Section 4; and Article 19 of the July 21, 1981 National Agreement.

Appearances: For the Postal Service, Eric J. Scharf, Attorney, Office of Labor Law; for NALC, Richard N. Gilberg, Attorney (Cohen, Weiss & Simon); for APWU, Anton Hajjar and Philip Tabbita, Attorneys (O'Donnell & Schwartz).

Statement of the Award: With respect to travel time, the grievance is denied. With respect to waiting time at the hearing, the grievance is disposed of in the manner set forth in the foregoing opinion.

BACKGROUND

This grievance concerns Union witnesses who attend an arbitration hearing during their regular working hours. Such witnesses are paid for time spent testifying and reasonable waiting time at the hearing. The question in this case is whether they are also entitled to pay for time spent traveling to and from the hearing and all time waiting at the hearing. NALC and APWU claim that payment for such time is required by Article 15, Section 4A(5) of the National Agreement. The Postal Service disagrees.

Because this is an interpretive question initiated by NALC at Step 4 of the grievance procedure, there is no specific set of facts before me. It would be helpful therefore to describe in general terms how the parties handle Union witnesses. Ordinarily a Business Agent informs Management in advance of the names of the employees he intends to call as witnesses at a pending arbitration. He may confer with Management to determine when the witnesses should be released from work. But Management usually is in the best position to predict when witnesses will be needed. For most arbitrations involve disciplinary action and hence require the Postal Service to present its case first. Management estimates the length of its presentation and plans for Union witnesses accordingly. It tells supervision to release the witness at a certain time although occasionally the witness may request to leave earlier.

If the hearing is held in the same facility where the witness is working, no travel time issue is likely to arise. But if the hearing is somewhere else, the witness must often take a car, bus or train to the hearing site. After he arrives, he may have to wait a period of time before he is called upon to testify. This travel time to and from the hearing and waiting time at the hearing are the crux of this dispute.

Article 15, Section 4A(5) of the National Agreement addresses this subject:

> "Arbitration hearings normally will be held during working hours where practical. Employees whose attendance as witnesses is required at hearings during their regular working hours shall be on Employer time when appearing at the hearing, provided time spent as a witness is part of the employee's regular working hours." (Emphasis added)

NALC stresses the phrase "time spent as a witness" and contends that "witness" status begins when an employee is released from work to attend the arbitration and ends when the employee returns to regular work. It believes, accordingly, that "time spent as a witness" includes travel and all wait time. It further maintains that Article 15, Section 4A(5) should be construed in the Union's favor because of past practice. It alleges that the practice nationally has been to compensate Union witnesses for travel and all wait time. It claims that the Postal Service unilaterally discontinued this practice after the award in Case No. N8-N-0221 which held that Article 17, Section 4 did not entitle grievants to pay for time spent traveling to and from Step 2 meetings.

The Postal Service asserts that the phrase "time spent as a witness" cannot be read in isolation but rather must be related to the far more significant phrase, "when appearing at the hearing." It urges that the latter words plainly reveal the parties' intention to pay only for such time as witnesses are actually present "at the hearing", i.e., time spent testifying and reasonable waiting time. It denies that there has been a practice of paying witnesses in the manner claimed by NALC. It contends that Management policy nationally has been to pay witnesses only for time spent testifying and reasonable waiting time. It maintains that any instances of payment for travel time or all wait time would be deviations from its long-standing policy and practice.

It should be noted that although this case only involves witnesses at an arbitration hearing, the parties agree that grievants should be treated the same as witnesses for pay purposes.

DISCUSSION AND FINDINGS

Article 15, Section 4A(5) deals with employees whose "attendance as witnesses" is "required" at an arbitration hearing "during their regular working hours." It provides that such witnesses "shall be on Employer time when appearing at the hearing, provided the time spent as a witness is part of the employee's regular working hours." The underscored language is the primary test for determining when an employee-witness is "on Employer time." He is paid only "when appearing at the hearing." These words clearly refer to physical presence at the hearing. When an employee-witness is traveling from his work location to the hearing site or vice-versa, he is certainly not "...at the hearing." Thus, travel time is not compensable.

NALC seeks to avoid this conclusion by stressing the contract phrase, "time spent as a witness." It asserts that when an employee is traveling to the hearing to testify or returning to his work place after testifying, all of that is "time spent as a witness." It urges he should therefore be considered "on Employer time" and be paid when traveling.

The difficulty with this argument is that it ignores the relationship between principle and proviso in the sentence in question. The principle is that the employee-witness be paid "when appearing at the hearing." The proviso is simply a means of insuring that the employee-witness be paid for "appearing at the hearing" only to the extent that such appearance time occurs "during regular working hours." This proviso serves to narrow the principle upon which it rests*, to limit the application of Section 4A(5). It is a secondary test for determining when an employee-witness is "on Employer time." But NALC here seeks to make the proviso a primary test, to allow the proviso to enlarge the application of Section 4A(5). That certainly is not what the parties intended. Indeed, if NALC were correct, there would have been no need for the parties to say anything other than that the employee shall be "on Employer time" for all "time spent as a witness." That would in effect treat the principle and the critical words in Section 4A(5), "when appearing at the hearing", as mere surplusage. Such a reading of Section 4A(5) conflicts with the plain meaning of its terms.

These findings are supported by my earlier award in Case No. H8N-1A-C-7812 (also referred to as Case No. N8-N-0221). There, the issue was whether grievants are entitled to pay for travel time to and from Step 2 meetings. Article 17, Section 4 called for grievants to be paid in Step 2 "for time actually spent in grievance handling, including investigations and meetings with the Employer." The ruling was that this contract language does not encompass travel time. I stated:

> "...While the grievant is on a bus or train en route to the [Step 2] meeting, he is not engaged in the 'actual...handling...' of a grievance. He is traveling, nothing more. His 'grievance handling' begins only when he arrives at the meeting..."

* That is the normal function of a proviso.

Similarly, "time spent as a witness" in the Article 15, Section 4A(5) proviso begins when the employee arrives at the arbitration hearing and ends when he leaves. These words do not encompass travel time. They apparently were meant to be synonomous with time spent "appearing at the hearing."

Moreover, the parties were well aware of how to express a pay formula in terms which would embrace travel time. They stated in Article 17, Section 4 that "...the Employer will compensate any witnesses for the time required to attend a Step 2 meeting." Clearly, the "time required to attend..." includes travel time. The arbitration witness clause speaks of paying the employee "when appearing at the hearing" or for "time spent as a witness." It says nothing whatever about "time required to attend..." the arbitration hearing. It can hardly be interpreted to mean the same thing as the Step 2 witness payment clause.

NALC resists these conclusions in the belief that Article 15, Section 4A(5) must be interpreted in light of past practice. It maintains that Management has customarily paid travel time to employees required as witnesses at arbitration hearings. It urges that this long-standing practice has become an accepted part of the postal bargaining relationship and should be a controlling consideration in the disposition of this grievance.

This argument is not persuasive. To begin with, the principle set forth in Article 15, Section 4A(5) seems reasonably clear. I have already explained why this language plainly supports the Postal Service's view. Given my reading of Section 4A(5), it would require the strongest proof of past practice to interpret this clause in a manner contrary to its apparent intent, that is, to interpret this clause as authorizing pay for travel time. NALC and APWU have not met that test. They have introduced evidence that travel time was paid to arbitration witnesses on many occasions. But the Postal Service has introduced evidence that travel time was not paid on other occasions and, more importantly, that its policy has for years always been to deny payment for travel time. The most that can be said, on the present state of the record, is that there has been a mixed practice. It is clear, however, that the management group responsible for negotiating Section 4A(5) never acquiesced in any payment of travel time to arbitration witnesses.

It would serve no useful purpose to review all of the evidence introduced by the parties. But certain points made by the Postal Service should be noted. For those points together preclude a finding that the parties had in effect, through past practice, agreed that Section 4A(5) calls for the payment of travel time to arbitration witnesses.

First, there are several grievance answers in which the Postal Service unequivocally rejected the payment of travel time for arbitration witnesses. A NALC grievance (V-74-6217) requested payment for travel time to and from arbitration for a grievant-witness. That grievance was denied in Step 3 in 1974, the Postal Service asserting that "there is no requirement for the employer to pay for the witness' travel time." Another NALC grievance (NC-N-4440) requested payment for such travel time for a grievant-witness. That grievance was denied in Step 4 in 1977, the Postal Service asserting that "there is no contractual provision which allows for the payment of travel to and from the hearing site." The matter was appealed to arbitration but later withdrawn in 1980. The withdrawal letter*, signed by the parties, stated the Postal Service's position that "only time at the arbitration hearing is compensable."

APWU seems to have conceded the practice question in its resolution of a recent grievance (H1C-5F-C-20272). That grievance was settled in Step 4 in 1984, the parties agreeing that the Postal Service "is not contractually obligated to pay employees for the time spent traveling to and from the hearing location nor has such a policy been established by the Postal Service." Although this settlement was later repudiated by APWU on the ground that it had been misled by Management, the fact remains that an informed Union representative acknowledged that the Postal Service had never established a policy of paying travel time to arbitration witnesses.

All of this was confirmed by the testimony of various Postal Service Regional Managers. They instructed their local management people not to pay travel time to arbitration witnesses. Some of them communicated that message to Union

* This withdrawal was "without precedent." However, I refer to it here not to prove NALC conceded anything but rather to show the Postal Service was still asserting its view that Section 4A(5) did not authorize pay for travel time.

representatives. The Northeast Manager of Arbitration recalled a 1975 conversation with a NALC Business Agent who objected to the Postal Service's refusal to pay travel time and suggested that travel be minimized by scheduling arbitrations at local sites. An Eastern Manager recalled a NALC Local President complaining about the Postal Service being "cheap" for not paying travel time. It may well be that Management's instructions were sometimes (or often) misunderstood or ignored. But the resultant payments for travel time were certainly not made with the knowledge or approval of those responsible for Postal Service policy on Section 4A(5).

Moreover, the bargaining history is highly suggestive. NALC proposed in the 1978 negotiations* that the arbitration witness clause be changed to read, "...Employees whose attendance is required at [arbitration] hearings during their regular hours shall be on Employer time." These words would have granted pay for travel time for witnesses. The Postal Service rejected the proposal. If the NALC proposal simply reflected a long-established national practice, as NALC claims, there would have been no reason for the Postal Service to object to this change in contract language. Its objection suggests the practice was quite different. Either the practice was to deny travel time or there was a mixed practice. The Postal Service was obviously attempting to prevent the introduction of a new contractual rule, paid travel time for witnesses.

None of this is meant to detract from the force of the Union's evidence. Rather, the purpose is to illustrate my conviction that there was a mixed practice. To prevail here, the Unions would have to show a practice so uniform and so widely accepted as to warrant finding that the higher echelons of labor-management authority had agreed to apply Section 4A(5) in the manner urged by NALC and APWU. No such showing has been made. Therefore, practice cannot alter my earlier interpretation of Section 4A(5).

* I rely on bargaining history not to prove the meaning of Section 4A(5) but rather to help determine the nature of the disputed practice.

The remaining issue is whether arbitration witnesses are entitled to pay for all waiting time at the hearing as the Unions claim or only reasonable waiting time as the Postal Service claims.

The answer can be found, once again, in the language of Section 4A(5). The arbitration witness is "...on Employer time when appearing at the hearing." These words suggest that all time spent at the hearing is compensable. There is, however, one important qualification. The benefit in Section 4A(5) applies only to those "whose attendance is required at the hearing..." Suppose, for instance, a witness appears at the very start of the hearing some hours before he is expected to testify. His presence then may or may not be "required." The reason for his being there may be critical. If his knowledge of the case is vital and the Union advocate needs him by his side, surely his presence is "required." He would be entitled to pay for all waiting time. But if he is called to corroborate what others will be testifying to and he is merely an observer, his early presence is hardly "required." He would not be entitled to pay for all waiting time. The point at which someone's attendance is "required" is a question of fact. The relevant considerations are the judgment of the parties' advocates, the nature of the case, the relationship of the witness to the case, the testimony he is expected to give, and so on. This ruling is not altered in any way by past practice.

AWARD

With respect to travel time, the grievance is denied. With respect to waiting time at the hearing, the grievance is disposed of in the manner set forth in the foregoing opinion.

Richard Mittenthal

Richard Mittenthal, Arbitrator

April 27, 1982

Joseph F. Morris
Senior Assistant Postmaster General
Employee & Labor Relations Group
United States Postal Service Headquarters
Washington, D.C. 20260

Dear Mr. Morris:

Under the provisions of Article 15, Section 4, A(3) which states in part,

> The Employer, in consultation with the particular unions involved, will be responsible for maintaining appropriate dockets of grievances, as appealed, and for administrative functions necessary to assure efficient scheduling and hearing of cases by arbitrators at all levels.

The Postal Service has unilaterally assumed full control of policy decisions , including:

a. The number of cases scheduled
b. The assignment of cases
c. Duration of advanced scheduling
d. Selection of back-up cases
e. Time and place of hearings

The American Postal Workers Union maintains a responsibility for all aspects of the arbitration procedure including prior consultation and joint decisions.

This letter is to advise that effective June 1, 1982 all requests for available dates forwarded to arbitrators must be provided to the union prior to mailing to the appropriate arbitrator.

All correspondence to the arbitrators arranging dates and location of hearings will contain the signature of union and management represen-

tatives. Appropriate letters of acceptance of available dates by arbitrators must likewise be copied to the appropriate union representative and the parties will mutually agree upon the designated time and location of the scheduled hearing.

This is to advise the Postal Service that effective June 1, 1982 the American Postal Workers Union will not recognize schedules of hearing dates arranged in any manner other than described above.

I am available to discuss this issue with appropriate USPS officials and may be reached at 842-4250.

Sincerely,

William Burrus,
General Executive Vice President

WB:mc

cc: Sherry Barber, General Manager
Arbitration Division

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

RECEIV
59A MAY 12 19
OFFICE OF
GENERAL PRESI

May 12, 1982

Mr. Moe Biller
General President
American Postal Workers Union
AFL-CIO
817 - 14th Street, NW
Washington, DC 20005

Dear Mr. Biller:

This will respond to Mr. Burrus' April 27 letter (copy enclosed) expressing APWU concerns regarding Article 15, Section 4 A(3).

I suggest that a joint meeting with you and your regional coordinators and our regional general managers would be appropriate in order to fully discuss just what are the problems in connection with the above.

Sincerely,

James C. Gildea
Assistant Postmaster General
Labor Relations Department

Enclosure

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

May 28, 1982

Mr. Moe Biller
General President
American Postal Workers Union,
AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005

Dear Mr. Biller:

This is in reference to recent correspondence that originated with an April 26 letter from Mr. Burrus to Senior Assistant Postmaster General, Joseph F. Morris. As you recall, the letter from Mr. Burrus expressed various APWU concerns which he had with the administrative functioning in scheduling arbitrations.

I initially felt that a joint meeting between the parties would be productive since the parties shared a sincere desire to clean up the arbitration backlog. I further felt that with a full discussion of our differences, we could certainly come to an understanding on procedures.

Since that time, I have been given copies of two letters that are enclosed which lead me to believe that such a proposed meeting would serve no useful purpose. For the moment, I have no further interest in pursuing such a meeting.

Sincerely,

RECEIVED
JUN 1 1982
OFFICE OF
GENERAL PRESIDENT

James C. Gildea
Assistant Postmaster General
Labor Relations Department

Enclosure

cc: Mr. Burrus

817 14TH STREET, N. W., WASHINGTON, D. C. 20005

59C

June 4, 1982

Mr. James C. Gildea
Assistant Postmaster General
Labor Relations Department
United States Postal Service
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Dear Mr. Gildea:

This is in response to your most recent correspondence regarding the concerns expressed in Vice President Burrus' letter of April 27, 1982. It is apparent that the two letters referenced have been misunderstood as to their intent and purpose, even though it is obvious that you disagree with their content.

The arbitration process has been agreed to by the parties as a means to resolve our disputes, therefore it is imperative that we make every attempt to administer that process in a manner acceptable to both parties. Misunderstandings involving the procedures ultimately color the entire relationship between us. I believe that any misunderstanding that presently exists, or is perceived as existing, can only be resolved if the parties meet in good faith to discuss the issues. For these reasons I continue to believe that a meeting as you proposed in your letter of May 12th is necessary. I am therefore requesting that such a meeting be arranged at the earliest suitable time.

Sincerely,

Moe Biller,
General President

MB:mc

59D

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

August 23, 1982

RECEIVED
AUG 24 1982
OFFICE OF GENERAL
EXECUTIVE VICE PRESIDENT

Mr. Moe Biller
General President
American Postal Workers Union, AFL-CIO
817 14th Street, N. W.
Washington, D. C. 20005

Dear Mr. Biller:

This is in response to your letters of August 5 and 12 regarding the scheduling of arbitration cases. As I indicated to you in our telephone conversation of August 4, I strongly believe that the framework of collective bargaining is the most preferable means of resolving disputes between the parties. Accordingly, we are willing to consult with the American Postal Workers Union regarding the administrative functions necessary to assure efficient scheduling and hearing of cases by arbitrators at all levels, and also to discuss any other problems relating to the administration of article 15.

As Mr. Burrus has undoubtedly related to you, we have agreed that you and your regional coordinators will meet with me and the Regional General Managers and their Arbitration Branch Managers on September 3 at 9:30 a.m. in room 4841, U. S. Postal Service Headquarters.

A copy of this letter is being transmitted to you at the Fontainebleau Hotel, Miami, Florida, APWU Convention, as well as to your Washington, D.C., office. Additionally, copies of this letter are being sent to Executive Vice President William Burrus at both locations.

Sincerely,

James C. Gildea

James C. Gildea
Assistant Postmaster General
Labor Relations Department

In recognition of the parties joint responsibility for the effective use of arbitration, the parties agree that the respective representatives at the regional level will meet to establish procedures that will provide for:

a. The use of the attached 3 form letters (request, confirmation, scheduling).

b. A procedure utilizing all arbitration dates on a first-in, first-out basis for primary cases while recognizing the need to review assignments to ensure that scheduling is not restricted to specific geographic areas.

c. Assignment of sufficient backup cases to ensure that available dates are not lost. This will include consideration of assigning arbitrators to cities with a heavy backlog of cases and/or the use of a "case docket" for that city and date.

d. The prompt rescheduling of cases delayed as a result of the arbitrator's inability to hear the scheduled case. In those instances where cases are rescheduled as a result of either advocate's request, they will be rescheduled before the original arbitrator.

e. An advanced schedule of some (X) months duration. This will not limit the parties from requesting available dates beyond the (X) month period. In order to limit schedule adjustments, all dates beyond the (X) month period will not be assigned case numbers or locations.

f. A mutual review at the regional level of certified arbitrators on the expedited and regular panels that the parties can agree to upgrade to either the removal or contract panels. These regional recommendations may be either on a temporary or permanent basis.

g. A procedure, i.e. granting LWOP or AL, to prevent unnecessary inconvenience to grievants and witnesses caused by conflict between their scheduled tours of duty and the arbitration schedule.

h. An agreed upon percentage of contract vs. discipline cases scheduled for hearing.

Sherry S. Barber
General Manager
Arbitration Division
Labor Relations Department

William Burrus
Executive Vice President
American Postal Workers Union,
AFL-CIO

Dear Arbitrator:

The parties, pursuant to the terms of the Agreement, are currently planning to schedule for grievances to be heard in arbitration on the (expedited/regular) regional panels for the next "X" month period.

Please advise us of dates you will have available for hearing such cases between _____ and _____. We would appreciate as many dates as you have available due to the existing backlog of cases. Also, if you acquire any cancellations and want these dates filled, please advise us and we will try to fill them if possible.

In order for the parties to fulfill their contractual requirements in this regard, a response is needed by _____ as to the dates you can provide.

(Optional typed name)
Manager
Arbitration Branch

(Optional typed name)
Regional Coordinator
American Postal Workers Union, AFL-CIO

Burrus

59F

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
AMERICAN POSTAL WORKERS UNION, AFL-CIO

The American Postal Workers Union and the United States Postal Service are committed to maintain the effectiveness of the arbitration process by ensuring that representatives of both parties maintain appropriate contact and communications with postal arbitrators. Accordingly, the parties agree that:

1. The parties' (APWU and USPS) representatives shall have no unilateral contact or discussion with an arbitrator concerning any subject which is, may be, or has been, before them.

2. As a general rule, no substantive written information shall be unilaterally sent to an arbitrator. In the context of an arbitration case which is currently designated to be heard by a specific arbitrator, however, it is understood that motions or briefs may be filed unilaterally, provided that copies are simultaneously provided to the opposing party. It is permissible, however, for either party to request subpoenas from an arbitrator unilaterally.

3. Matters such as scheduling or cancelling hearing dates, and establishing hearing locations are decided jointly by the parties. Accordingly, neither party is entitled to modify such hearing arrangements unilaterally.

4. Arbitrators may not participate in any, seminar, training program, or similar program hosted by either party unless the parties mutually agree in advance that the arbitrator's participation is appropriate.

5. All arbitrators are to conduct themselves in accordance with the standards of professional responsibility set forth in the "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes."

CONFIRMATION LETTER

SUBJECT: Hearing Dates

The parties to the National Agreement hereby confirm receipt and acceptance of dates offered for hearing arbitration matters in 198(2/3) as follows:

_____

_____

_____

_____

_____

(Optional typed name)
Manager
Arbitration Branch

(Optional typed name)
Regional Coordinator
American Postal Workers
Union, AFL-CIO

SCHEDULING LETTER

Pursuant to Article 15, Section 4.B.2. of the 1981 National Agreement, the following arbitration case has been scheduled before this arbitrator on the (expedited/regular/impasse items) regional arbitration panel. The hearing will begin at (9/10) a.m. on the following date at the below-listed location:

DATE	ARBITRATION CASE	LOCATION

Further, pursuant to Article 15, Section 4.A.4 of the 1981 National Agreement, the following backup case(s) has been scheduled to be heard in the order of below-listed appearance in the event the above-cited case(s) is settled or withdrawn:

DATE	ARBITRATION CASE	LOCATION
1.		
2.		
3.		

This letter does not constitute a waiver by either party to the processing of the grievances, but merely serves to confirm to the arbitrator the location, date, and time, pursuant to the terms of Article 15, Section 4.B.2. of the 1981 National Agreement, and the backup cases pursuant to Article 15, Section 4.A.4. of the 1981 National Agreement.

(Optional typed name)
Manager
Arbitration Branch

(Optinal typed name)
Regional Coordinator
American Postal Workers Union, AFL-CIO

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20260

July 8, 1977

Mr. Emmet Andrews
General President
American Postal Workers Union,
AFL-CIO
817 Fourteenth Street, N. W.
Washington, DC 20005

Dear Mr. Andrews:

This is in reference to our recent discussions concerning the provisions set forth in Article XV, Section 2 of the National Agreement with respect to Step 1 discussions on grievances.

It is mutually agreed that when the "Union" files a grievance at Step 1, the authorized union official filing the grievance is the only appropriate party required to meet with the supervisor and discuss the grievance pursuant to Article XV, Section 2, Step 1 of the National Agreement.

Please sign a copy of this letter as your acknowledgement of this agreement.

Sincerely,

James C. Gildea
Assistant Postmaster General
Labor Relations Department

Emmet Andrews
General President
American Postal Workers
Union, AFL-CIO