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REGULAR ARBITRATION PANEL

In the Matter of Arbitration)
) Grievant: Class Action
between)
) Post Office: Fall River, MA
UNITED STATES POSTAL SERVICE)
) Case No: B06N4BC08055207
and)
) Union No: 72509
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO) *DIT 14-091666*

BEFORE: EILEEN A. CENCI

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APPEARANCES:

For the U.S. Postal Service: Joseph Panek

John J. Casciano, NBA
NALC - New England Region

For the Union: Patricia Joseph

Place of Hearing: Fall River, MA

Date of Hearing: August 19, 2008

AWARD: The grievance is sustained. Management at the Fall River Post Office is ordered to cease and desist from violating the National Agreement by failing to meet with the Union at the Formal A level within the time limits prescribed by Article 15. If future violations occur management is ordered to pay the Union \$25.00 for the first such violation and that penalty is to increase by \$10.00 for each subsequent violation.

Date of Award: September 19, 2008

Regular Regional Arbitration Panel

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OCT 3 2008

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

OPINION

STATEMENT OF PROCEEDINGS:

This matter was arbitrated pursuant to the grievance and arbitration provisions of a collective bargaining agreement (National Agreement) in effect between the United States Postal Service (Service) and the National Association of Letter Carriers (NALC or Union). A hearing in this matter was held before me on August 19, 2008 in Fall River, Massachusetts. The parties appeared and were given a full and fair opportunity to be heard, to present evidence and argument and to examine and cross-examine witnesses. Each party called witnesses who testified under oath. At the conclusion of the hearing they made oral closing arguments and the record was closed at that time.

ISSUE:

The parties agreed to the issue statement from the B Team:

Did Management violate Article 15 of the National Agreement by failing to meet timely at the Formal Step A level on several issues?

If so, what is the appropriate remedy?

FACTS:

The parties in this case agree that management at the Fall River Post Office has violated Article 15 by failing to meet at the Formal A level within the time limits prescribed by the National Agreement. Their dispute concerns the appropriate remedy for such a violation.

The case before the arbitrator concerns the failure by management to meet within the prescribed time limits on seven separate grievances with incident dates in October and November 2007. Management at the Fall River Post Office has a prior history, however, of failing to meet in a timely manner at the Formal A level. This problem may be partially explained, according to management, by the fact that station managers, who serve as management representatives at the Formal A meeting, are sometimes required to meet on grievances involving other units. This occurs because the Union Formal A representative is determined by which steward wrote the grievance and

some cases may involve people from other stations.

The local Union has worked to resolve the ongoing problem over a period of several years. Stewards have notified management that time limits were about to expire and granted extensions in many cases. These efforts were unsuccessful and in 2005 the local sought intervention by the National Business Agent's office. With the assistance of that office the parties negotiated an Intervention Agreement that was signed by representatives of the Union and management on January 3, 2006. Even after the Intervention Agreement was signed management at the Fall River Post Office continued to miss the timelines for meeting on grievances at the Formal A level and the Postmaster instituted a practice of paying the Union escalating penalties when the deadlines were missed. Such payments were made in 2006 and 2007 and ultimately totaled more than \$8000.00. According to Union steward Linda Souza these payments were the only thing that has been effective in bringing about change in management's habitual failure to meet within the time limits.

Nonetheless, a backlog of grievances had developed in 2007 when the problems at the Fall River Post Office came to the attention of higher-level management. Deborah Wichert, Manager of Labor Relations for Southeast New England, was assigned by the District Manager in December 2007 or January 2008 to go to Fall River and attempt to clear the backlog of grievances. When she first met with Union steward Linda Souza, Ms. Wichert was informed that there was a backlog of 107 grievances. Ms. Wichert traveled to Fall River and met with a Union representative on those grievances over a period of several months and the parties were able to clear the backlog by about April 2008.

When Deborah Wichert and other management personnel in the Labor Relations Office became aware that management at the Fall River Post Office was making payments to the Union for violations of Article 15.2(c) the practice was ended. The Labor Relations office took the position that payment was not a proper remedy for such violations and that the only proper remedy for failure to meet within the time limits set forth in the National Agreement is to advance to the grievance to the next level.

The Union filed the grievances currently before the arbitrator when management failed to meet at the Formal A level on eight separate grievances in late 2007.¹ The effect of ending penalty

¹ The underlying grievances are not before the arbitrator.

payments, according to the Union, has been a complete breakdown once again of the grievance system. The Union has been forced to pay Union stewards in order to keep up with the backlog of grievances that has developed.

CONTRACT

Article 15.2 (c)

The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the **Joint Step A Grievance Form** unless the parties agree upon a later date. In all grievances at **Formal Step A**, the grievant shall be represented for all purposes by a steward or a Union representative who shall have authority to **resolve** the grievance as a result of discussions or compromise in this Step. The installation head or designee also shall have authority to **resolve** the grievance in whole or in part.

Article 15.3.A

The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in **resolution** of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end...

Article 15.3.C

Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure.

POSITIONS OF THE PARTIES:

National Association of Letter Carriers [Union]

The Union maintains that the integrity of the National Agreement is at issue here. There is a long history in Fall River of management failing to meet with the Union within the time limits prescribed by Article 15. The Union has made every effort to resolve the problem, including reminding management of deadlines, granting extensions, seeking the assistance of the National Business Agent's office and entering into an Intervention Agreement. Nothing except penalty payments has been effective in resolving the problem.

The result of management's continuing violations has been that the grievance and dispute resolution process is ineffective. Backlogs have occurred and problems have not been resolved at the local level. Advancing each grievance to the next level when management fails to meet does not work because the B Team simply sends the grievances back and orders management to meet. Despite such

orders management still does not always conduct the required meetings with the Union.

Management has continued to intentionally violate the provisions of the National Agreement. The Union is not seeking a punitive remedy but is looking to arbitration to remedy a problem that has gone on for a long time despite the efforts made by the Union to resolve it. Progressive payments to the Union for violations of Article 15 worked in the past and the Union asks the arbitrator to issue a cease and desist order and to further order a \$25 escalating remedy for future violations.

United States Postal Service [Service]

The Service does not deny that Article 15 has been violated but argues strenuously that Article 15.3.C does not permit the arbitrator to award a monetary remedy for the violation. It provides that the remedy for a failure by the Employer to meet within the prescribed time limits is to advance the grievance to the next level and the arbitrator has no authority to rewrite the National Agreement by fashioning a different remedy.

The Service also points out that the backlog of grievances in Fall River was cleared in early 2008 when Deborah Wichert was assigned to meet with the Union at the Formal A level. Management has, therefore, shown a willingness to be responsive to the problem even as it has denied that a monetary remedy is appropriate.

The remedy ordered by the arbitrator should be limited to a cease and desist order.

DISCUSSION:

The parties are in agreement that management violated Article 15 by failing to meet with the Union at the Formal A level on the subject grievances within the time period set forth in the National Agreement. Information included in the joint file and presented at arbitration makes it apparent that these violations were part of a long-standing pattern of conduct on the part of management at the Fall River Post Office.

Although Article 15.3.C provides that "Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided...shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure" I do not read that language as providing the exclusive remedy for such violations. The provision does not specify that movement of the grievance to the next level is the exclusive remedy for violations or

say that no other remedy can be awarded.

The case before me presents an unusual situation in which failure to meet in a timely manner at the Formal A level has been an ongoing problem over a long period of time. The record demonstrates that the Union has made repeated, good faith efforts to resolve the problem without lasting success. Moreover, the Union is not satisfied that its interests are protected by advancing each grievance to the next level when management fails to meet in a timely manner since the B Team often remands the grievances and orders management to meet at the Formal A level, thereby delaying resolution of the matter.

A finding that management could engage in an ongoing, intentional practice of failing to meet in a timely manner at the Formal A level and suffer no consequences beyond the advancement of each grievance to the B Team would risk depriving the Union of a benefit negotiated in the National Agreement, namely a meaningful opportunity to resolve grievances in a timely manner at the local level. The parties have explicitly set forth in Article 15.3A their expectation that the policies and procedures set forth in Article 15 will be followed in good faith and that as a result substantially all grievances will be resolved at the lowest possible step. Grievances cannot, however, be resolved at the lowest possible step if management routinely fails or refuses to meet with the Union in a timely manner at the Formal A level. The Formal A level is the one at which the parties exchange all relevant information and each fully sets forth the evidence and arguments on which it relies. Grievances that must be advanced to the B Team without interaction between the parties at the Formal A level often have poorly developed records and are often remanded by the B Team so that the parties can meet and fully develop the record. The result is delay and a loss to the Union of the negotiated benefit that the parties will make good faith efforts to resolve problems expeditiously and at the local level.

Having concluded that management at the Fall River Post Office has engaged in a pattern of repeated, willful and intentional violations of Article 15 over a long period of time and that this conduct has resulted in harm to the Union that cannot be remedied by advancing each grievance to Step B, I find that another remedy is warranted. The concept of progressive payments advanced by the Union is reasonable in my view and does not constitute punitive damages. The requested remedy is prospective only and management has complete control over whether any

payments are ever made to the Union. Having cleared the backlog of cases that existed in 2007 management can avoid payment to the Union by complying with the contract and meeting in a timely manner at the Formal A level on future grievances. In the event that violations persist a progressive monetary remedy is warranted.

For the reasons set forth above the grievance is sustained. Management at the Fall River Post Office is ordered to cease and desist from violating the National Agreement by failing to meet with the Union at the Formal A level within the time limits prescribed by Article 15. If future violations occur management is ordered to pay the Union \$25.00 for the first such violation and that penalty is to increase by \$10.00 for each subsequent violation.