REGULAR ARBITRATION PANEL

C#10537

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	GRIEVANT: Class Action POST OFFICE: Metairie,LA CASE NO: S7N-3N-C 24418 (GTS 003693)

BEFORE: James F. Scearce,ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Mack A. Boyd, Lab. Rel. Rep. (Presenting)
J. D. Gordon (Witness)

For the Union: G. E. Cruise, Reg. Admin. Asst. (Presenting)
M. Davis, R. Burdick, V. Saponara (Witnesses)

Place of Hearing: September 19, 1990(Union brief followed late November)

Date of Hearing: MPO - Metairie, LA

Award:

Grievance is denied.

James F. Scearce

Date: January 8, 1991

BACKGROUND

According to the Union, sometime in August of 1989 it learned that a contractor might or would be removing asbestos from one or more of the postal facilities at Metairie, Louisiana. This matter apparently was raised in a "Safety & Health Meeting" at Metairie on August 23, 1989 wherein the Service confirmed that the Main Post Office roofing material might have asbestos in it. The Union's position at that time was that any removal of asbestos should only occur when no employees were in the building. In a "Labor-Management Meeting" on September 7, 1989 at the facility, the Union demanded that it be apprised before any removal of asbestos material; Service management at Metairie assured the Union that it would do so.

Per the Union, on Saturday, September 23, 1989 the postmaster at Metairie informed the employees working at the main postal facility that day that beginning on Monday, September 25 a contractor would be removing material containing asbestos from the roof and that it would only work from 6:00 a.m. to 8:30 a.m.; apparently, such work commenced as scheduled. A grievance was initiated on September 25, 1989 challenging such activity, contending that it endangered the safety and health of the employees working inside. On September 26 and 27, 1989 the Union formally requested an opportunity to review all documents related to such removal activity.* From the record presented, it would appear that the disputed work was delayed until an "industrial hygienist"

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*Per the record, the Service at Metairie received the engineering evaluation and work procedure for the Metairie project on October 17 and made it available to the Union on October 25, 1989.

could be present and that the Union would be apprised before such work resumed.* There is also some indication that work was ensuing on the ceiling of the facility, involving the removal of fiberglas insulation; a decision was made to effect such removal after work hours. (This was per the minutes of a Labor-Management meeting at Metairie on October 11, 1989.) According to the Union, on October 19, 1989 a Safety Committe member and Chief Steward at the Park Manor Station (R. Burdick) parked a postal vehicle at the main postal facility and went inside during the time of day the contractor had workers on the roof effecting removal. The contract employees purportedly were wearing protective clothing and respirators. According to Burdick, when he returned to his vehicle "small pieces of roof tar" had blown off the roof onto his vehicle.

Meanwhile, the grievance initiated in September was formalized and progressed without satisfaction to the Union, the Service essentially contending that the removal of the material was in compliance with acceptable procedure. The dispute was referred by the Union to Step 4 in December of 1989 to be considered as an interpretive issue. It was deemed non-interpretive and remanded back to Step 3 in February of 1990 and certified for arbitration thereafter. This matter remains in dispute and is now at arbitration for final review and disposition.

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*This was ascertained from the minutes of a Labor Management meeting on October 2, 1989.

POSITION OF THE UNION

On learning of the Service's plan to have material removed from the roof of the main postal facility, the Union asked that such work not be carried forth while employees were in the facility. While the Service did not take such action, it did see fit to restrict such work so as not to endanger postal patrons. The Service's irresponsible actions have endangered the safety and health of all employees at the facility during those time periods. The Service claims that the work was performed in compliance with proper safety procedures, but does not explain why particles of such material were found on an employee's vehicle that had been parked outside the main post office during the time such work was underway. Since the Service refused to comply, the arbitrator should require that all employees who might have been affected be examined at the Service's expense by a medical doctor who is expert in this field and, if such condition is established, compensate in the amount of $100,000 or whatever amount the arbitrator deems appropriate.

POSITION OF THE SERVICE

The roof work was not for the purpose of removal of material containing asbestos; it was because there was a leak which had to be repaired. In examination prior to the repair, it was found that the roof felt was impregnated with a small amount of asbestos fibers, but procedure called for its removal. Management at the main postal facility was unaware when the contractor was to start until two (2) days before it was to commence and informed the Union as soon as it could; it also passed along all relevant information in that regard as soon as possible.

An industrial hygienist was available and air samples were taken continuously. No employee ever filed a CA-2 and none has ever claimed to have been adversely affected. While some material might have fallen on a vehicle --the only incident cited by the Union -- it has offered no proof that such material even contained asbestos fibers. No effort to claim this was a hazardous work condition via the filing of a Form 1767 was undertaken. The grievance filed in this instance is speculative in nature and without a foundation of proof. In any case, relief to be sought would fall under the provisions of the U. S. Department of Labor's Office of Worker Compensation Program (OWCP). The remedy sought is beyond the scope of the Agreement and the arbitrator's authority. The grievance should be dismissed in its entirety.

CITED/RELEVANT PROVISIONS OF THE AGREEMENT AND RELATED DOCUMENTS

AGREEMENT

Article 14 - Safety and Health

Section 1 Responsibilities

> It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility....

(Jt Ex 1)

EMPLOYEE AND LABOR RELATIONS MANUAL

Part 540 - Injury Compensation Program*

(Ser Ex 3)

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*Not reproduced here for sake of brevity.

THE ISSUE

Did the Service violate the Agreement and/or related regulations relative to maintenance of work schedules during the removal of material containing asbestos from the roof of the main postal facility; if so, what is the appropriate remedy?

DISCUSSION AND FINDINGS

It is not evident from the record presented that Service management at Metairie had any control over the timing of the work done on the roof. The Union argues that it could have and should have altered the schedules of the employees who were in the facility prior to 8:30 a.m. The explanation presented by the Service as to why work was underway at all, i.e. to repair a leak, appears to be logical. From the explanation given, in order to repair the leak, it was necessary to remove the shingles (or other external roof surface). In doing so, the underlayment -- roof felt -- was exposed and, in the area of the leak, necessarily would require removal. By some process, it apparently had been determined that the felt was impregnated with asbestos (for insulation or some other reason) and, under established safety and health statutes, had to be removed and replaced. It is not clear whether the entire roof felt was removed or how long this project lasted. In any case, a contractor specifically trained and certified in removal of such material had to effect such removal. It is the understanding of the undersigned (who conducted his own inquiry) that such contractor is mandated by law to use protective clothing and respirators -- and did so. Moreover, it is understood the work of such contractor was limited

to the 6:00 a.m. - 8:30 p.m. in order to minimize the potential for the release of asbestos fibers into the atmosphere at a time when postal patrons were entering and leaving the facility. (Removal procedures call for the use of wetting agents to surpress the likelihood of such fibers to be airborne.)

The thrust of the Union's case here is that the Service exposed the employees required to work in the facility during those hours to the potential dangers that it was foregoing for its patrons. The assertion that airborne fibers might intrude into the facility and hence create an unsafe work environment is speculative and there is nothing to indicate that this occurred. There appears to be no dispute that an industrial hygienist was utilized and the Service asserts that air samples were taken and the results evaluated continuously to ensure an asbestos-free air environment. What is not clear on the record is whether letter carriers were compelled to load their vehicles while the removal procedure was underway. If so, the Union did not see fit to make this point in the proceeding. (It might be argued that could have increased the potential for exposure.) The Service contends that, in any case, any adverse impact would have been job-related and, hence, a matter for the U. S. Department of Labor's Office of Worker's Compensation Program (OWCP), which is assertedly beyond the scope of this arbitrator's authority; it also points out that no "Notice of Occupational Disease and Claim for Compensation" (Form CA-2) or "Report of Hazard, Unsafe Condition or Practice" (PS Form 1767) were filed.

While the undersigned can appreciate the concerns raised by the Union in this case, the evidence presented does not support a claim that the Service failed to provide a safe and

and healthy work environment. I am mindful that the Union is hampered in this regard by a lack of tools or methodology by which to prove its claim. It is noteworthy that the Service suspended the removal of damaged ceiling material during working hours -- presumably being replaced as part of the overall repair -- because such activity did expose employees to falling material, including fiberglas. Thus, it cannot be argued that the Service was insensitive to the desires and interests of its employees. The Service contends that it brought information concerning the repairs to the Union's attention as soon as it was available.

In sum, I find no demonstrated basis to conclude that the Service violated the terms of the Agreement or related safety/health regulations as asserted.

James F. Scearce
Arbitrator

January 8, 1991