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**In the Matter of the National Arbitration Between**

<b>UNITED STATES POSTAL SERVICE</b>	)	
	)	
<b>and</b>	)	<b>Case No. Q06N-4Q-C 12013405</b>
	)	
<b>NATIONAL ASSOCIATION OF LETTER</b>	)	
<b>CARRIERS, AFL-CIO</b>	)	

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**Before:** Dennis R. Nolan, Arbitrator**Appearances:**

**For the USPS:** Lucia R. Miras and Redding C. Cates, USPS Labor Counsel,  
Washington, DC

**For the NALC:** Keith Secular and Kate M. Swearengen, Cohen, Weiss &  
Simon LLP, New York, NY

**Place of Hearing:** Washington, D.C.**Date of Hearing:** February 4, 2016**Date of Award:** August 9, 2016**Relevant Contract Provision(s):** Article 34**Contract Year:** 2006-2011**Type of Grievance:** Contract Interpretation

**Award Summary:** Article 34 applies to time or work studies designed to be used in negotiations or interest arbitration as well as to studies designed to be used for changing work measurement systems or work or time standards during the term of an Agreement.

*Dennis R. Nolan*


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Dennis R. Nolan, Arbitrator

## OPINION

### I. Statement of the Case

The NALC filed Grievance No. Q06N-4Q-C 12013405 at the national level on October 28, 2011 to challenge the Postal Service's "unilateral collection of data and analysis of office activities for the purpose of changing work standards." The parties could not resolve the dispute in the grievance process, so the Union demanded arbitration. The arbitration hearing took place in Washington, DC on February 4, 2016. Both parties appeared and had full opportunity to testify, to examine and cross-examine witnesses, and to present all pertinent evidence. Both parties filed lengthy post-hearing briefs, the last of which arrived in hard copy on July 5, 2016.

### II. Statement of the Facts

#### A. Background

The hearing in this case was very brief because parties agree on the relevant facts. The only issue is the application of one contract article to those facts. Specifically, that issue is whether the requirements of Article 34, Work and/or Time Standards, should have been followed for a 2011 study that management conducted in preparation for upcoming contract negotiations.

Letter carrier work has long been subject to time allowances for specific tasks. Union Exhibit 5, *Time Allowances for Carrier Office Work*, provides a list in force at the time of this grievance. Stated time standards have benefits for both employer and employees. The Employer can use those time allowances to evaluate employees' work performance while employees can use them as guides for the Employer's expectations. Time allowances are set and revised after the Postal Service conducts time studies.

On April 8, 2011, the Postal Service notified the Union that it would conduct a review of city letter carrier office activities beginning April 25. The letter described the study:

The review will involve data collection and analysis of all office activities on selected routes for one day, with the route serviced by its regular carrier or carrier technician. It is anticipated that the assessment will take approximately nine weeks and involve approximately 400 city letter carrier routes.

The letter went on to explain how the sampling plan selected delivery routes and how the study would be conducted, including the use of cameras to record the time carriers spent on office tasks. One key paragraph stated the study's purpose: "The data is being collected in preparation for upcoming collective bargaining."

The Union filed its initial grievance on October 28, 2011. The grievance asserted that Article 34 applied to this study and that management had failed to follow Article 34's requirements. Article 34.B. ensures that the Union is fully involved in work studies "which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards." The Union's involvement is to be facilitated by notice to the Union and the right of the Union to have a representative observe the studies. The Postal Service takes the position that this study was to be used solely for contract negotiations and not to change existing standards or to institute new ones, and thus is not subject to Article 34.

The rest of Article 34 deals with the use of any such studies. Under Sections 34.C. and D., the Employer must notify the Union before changing old or instituting new standards, must conduct a test of the standards, and, if the test is deemed satisfactory, must notify the Union before implementation. The parties shall then meet to resolve any differences. If they cannot agree, Section E. allows the Union to file a grievance at the national level. Section 34.G. provides that the issue before the arbitrator is whether the concepts in the new standards are "fair, reasonable and equitable." Section 34.I. allows the Union, once it receives notification of management's intention to implement the proposal, to conduct its own studies in the test cities.

The parties discussed the grievance for several years with no resolution. On December 17, 2015, the Postal Service formally rejected the grievance. The Union apparently had advance word of the rejection, because two days earlier it asked for arbitration at the national level.

## **B. Prior Arbitration Decisions**

The parties discussed at some length prior arbitration rulings on similar issues, most importantly three involving the National Rural Letter Carriers' Association (NRLCA). Two of those decisions occurred after the NALC filed this grievance but before the Union sought arbitration.

While the wording of Article 34 of the NRLCA contract is not quite identical to Article 34 of the NALC contract, the two provisions are substantively similar in ways relevant to this grievance. Both articles, for example, apply to time or work studies that are to be used as a basis "for changing current or instituting new work measurement systems or work or time standards." Both provide for notification to the Union of any such proposed studies, for observation of the studies by a Union representative, for notification of any changes resulting from those studies, and for the right to grieve those changes.

### **1. The Wells Ruling**

Three arbitration rulings have interpreted the scope of NRLCA Article 34. The first occurred during a 2002 interest arbitration before Arbitrator John Calhoun Wells. Before negotiations started, the Postal Service conducted some sort of review of rural operations. NRLCA objected to introduction of that review in the interest arbitration proceedings.

The Postal Service asserted, and Arbitrator Wells accepted the assertion, that the review was not a time study but merely an effort to gather evidence for the interest arbitration. After noting that the NRLCA had not objected to other studies in support of collective bargaining efforts, the Arbitrator made this comment:

Finally, it defies logic or common sense that in an interest arbitration one party would or should be invited or required to invite the other party to participate in the preparation of their case. Simple fairness dictates that each party should be able to prepare and present their own case before an interest arbitration panel.

The Arbitrator therefore allowed introduction of the study and testimony about it.

The Postal Service in this case introduced only a portion of the testimony from the transcript of that interest arbitration as Postal Service Exhibit 8, pages 2371-73. It would be risky to determine the full nature of the study from that brief excerpt, but the testimony of the Postal Service's sole witness on that point made it sound like a time study. He said that it involved random selection of 240 routes for collection of data by staff members who were very experienced "in conducting rural route counts."

Arbitrator Wells announced his ruling orally during the interest arbitration proceedings. Perhaps because he did not prepare a written ruling, his comments are not as clear as one might desire. He seemed to give two distinct and not entirely consistent explanations for allowing the study into evidence. On the one hand, he accepted the Postal Service's claim that the review was not a time study and therefore did not fall under Article 34. On the other, he seemed to suggest that even if it were a time study, it was not covered by Article 34 because the data were to be used for collective bargaining rather than for a mid-contract change in standards.

## **2. The Bloch Award**

The second and most important ruling was a 2012 decision by Arbitrator Richard I. Bloch in Case Q06R-4Q-C10176721 (January 3, 2012). In April 2010, the Postal Service notified the NRLCA that it would begin a video tape time study of rural routes (RCSR 2010) on April 16. The stated purpose was to determine if changes in eight work standards were warranted. The NRLCA grieved, arguing that the study was required to be conducted in accordance with Article 34. Management claimed that Article 34 was inapplicable because it applied only to studies made in support of mid-term standards modifications, while RCSR 2010 was made in preparation for collective bargaining negotiations and, if necessary, for interest arbitration.

After a careful analysis of Article 34 and the parties' arguments, Arbitrator Bloch sustained the grievance. He found that the Postal Service violated Article 34 by conducting the time studies without observing Article 34's procedural mechanisms. He ordered the Postal Service to cease and desist but did not award any other remedies.

He first noted that Article 34 stated the goals of ensuring “a fair day’s work for a fair day’s pay” and that any work measurement systems be “fair, reasonable and equitable” but did not restrict those principles to mid-term adjustments. While Article 34 does provide for rights arbitration in the case of mid-term modifications, that did not necessarily mean that studies for other purposes were free from the negotiated procedures: “Nothing in the labor agreement suggests management should be able to divest itself of its Article 34 obligations simply by submitting proposed work standards changes at the end of the contract instead of during its term.”

Next, Arbitrator Bloch rejected the Postal Service’s reliance on the Wells ruling. Because that case did not involve a time study, Arbitrator Wells did not resolve the question of whether Article 34 requirements extend beyond mid-term changes. “For that reason, the Wells decision provides no guidance for resolution of the instant matter.”

Finally, Arbitrator Bloch returned to the question Arbitrator Wells did not resolve. He recognized the importance of work management systems to the parties and the possible need to change them during the term of an agreement. That is why, he said, the parties included a mid-term dispute resolution process that included a series of notice and oversight obligations. “These bargained checks and balances,” he concluded, “cannot be read as somehow dependent on when proposals for new standards are to be proffered. For that reason, he found that the Postal Service violated Article 34 by failing to involve the Union in the challenged time studies. He left to the interest arbitrator, if any, the question of the admissibility of those studies in the interest arbitration record.

### 3. The Clarke Ruling

The final relevant NRLCA decision was an interim award in the 2012 interest arbitration. The Postal Service hoped to use the study at issue in the Bloch case, RCSR 2010, in the interest arbitration. The parties asked for a ruling as to what impact, if any, Arbitrator Bloch’s decision should have. Arbitrator Clarke first found that Arbitrator Bloch’s determination that the time study violated the 2006 NRLCA agreement bound the interest arbitration award. He then agreed with the Postal Service that the Board of Arbitration *could* admit RCSR 2010 into evidence but concluded that it should not and would not do so. Here is the critical part of his ruling:

The UPS correctly argues that this Board of Arbitration has the power to admit RCSR 2010 into evidence. However, respect for contractual integrity, that is respect for the multitude of agreements the parties have reached in collective bargaining and reduced to writing in the 2006 Agreement, requires that the Board of Arbitration exclude RCSR 2010 from admission into evidence in this arbitration. To hold otherwise would make a mockery of the parties’ jointly agreed determination that decisions of its National Arbitrators are final and binding. Moreover, admitting RCSR 2010 into evidence would create an exception to Article 34 for interest arbitration, contrary to Arbitrator Bloch’s having specifically found that Article applies to time studies regardless of when conducted.

The Union naturally argues that the Bloch award controls this case. Just as naturally, the Postal Service disagrees. Because the Postal Service refuses to accept the Union's assertion that the Bloch award in an NRLCA case controls the interpretation of Article 34 of the NALC contract, the interpretive issue presented in this grievance remains in dispute even though completion of the 2011 contract mooted the study's use at the time. To put it differently, the same question may arise another time, so both parties agree that the issue should be finally resolved here even though the answer cannot affect the 2011 negotiations.

### **III. The Issue**

The parties stipulated to this issue:

Whether the Postal Service is obligated to follow the process outlined in Article 34 when making "time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards" in preparation for collective bargaining or interest arbitration.

### **IV. Pertinent Authorities**

#### **2006-2011 AGREEMENT ARTICLE 34 WORK AND/OR TIME STANDARDS**

A. The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.

B. The Employer agrees that any work measurement systems or time or work standards shall be fair, reasonable and equitable. The Employer agrees that the Union concerned through qualified representatives will be kept informed during the making of time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards. The Employer agrees that the National President of the Union may designate a qualified representative who may enter postal installations for purposes of observing the making of time or work studies which are to be used as the basis for changing current or instituting new work measurement systems or work or time standards.

C. The Employer agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union concerned as far in advance as practicable. When the Employer determines the need to implement any new nationally developed and nationally applicable work or time standards, it will first conduct a test or tests of the standards in one or more installations. The Employer will notify the Union at least 15 days in advance of any such test.

D. If such test is deemed by the Employer to be satisfactory and it subsequently intends to convert the test to live implementation in the test cities, it will notify the Union at least 30 days

in advance of such intended implementation. Within a reasonable time not to exceed 10 days after the receipt of such notice, representatives of the Union and the Employer shall meet for the purpose of resolving any differences that may arise concerning such proposed work measurement systems or work or time standards.

E. If no agreement is reached within five days after the meetings begin, the Union may initiate a grievance at the national level. If no grievance is initiated, the Employer 'Will implement the new work or time standards at its discretion.

If a grievance is filed and is unresolved within 10 days, and the Union decides to arbitrate, the matter must be submitted to priority arbitration by the Union within five days. The conversion from a test basis to live implementation may proceed in the test cities, except as provided in Paragraph I.

F. The arbitrator's award will be issued no later than 60 days after the commencement of the arbitration hearing. During the period prior to the issuance of the arbitrator's award, the new work or time standards will not be implemented beyond the test cities, and no new tests of the new standards will be initiated. Data gathering efforts or work or time studies, however, may be conducted during this period in any installation.

G. The issue before the arbitrator will be whether the national concepts involved in the new work or time standards are fair, reasonable and equitable.

H. In the event the arbitrator rules that the national concepts involved in the new work or time standards are not fair, reasonable and equitable, such standards may not be implemented by the Employer until they are modified to comply with the arbitrator's award. In the event the arbitrator rules that the national concepts involved in the new work or time standards are fair, reasonable and equitable, the Employer may implement such standards in any installation. No further grievances concerning the national concepts involved may be initiated.

I. After receipt of notification provided for in Paragraph D of this Article, the Union shall be permitted through qualified representatives to make time or work studies in the test cities. The Union shall notify the Employer within ten (10) days of its intent to conduct such studies. The Union studies shall not exceed one-hundred fifty (150) days, from the date of such notice, during which time the Employer agrees to postpone implementation in the test cities for the first ninety (90) days. There shall be no disruption of operations or of the work of employees due to the making of such studies. Upon request, the Employer will provide reasonable assistance in making the study, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in providing such assistance. Upon request, the Union representative shall be permitted to examine relevant available technical information, including final data worksheets, that were used by the Employer in the establishment of the new or changed work or time standards. The Employer is to be kept informed during the making of such Union studies and, upon the Employer's

request the Employer shall be permitted to examine relevant available technical information, including final data worksheets, relied upon by the Union.

(The preceding Article, Article 34, shall apply to Transitional Employees.)

## **V. The Union's Position**

The Union understandably relies heavily on the Bloch award. That award, it argues, is fully applicable here because it interpreted the same contractual language after considering the same management arguments and because it is clearly consistent with the express language and underlying purpose of Article 34.

Article 34 applies regardless whether time studies will be used for changing standards mid-term or for collective bargaining or interest arbitration. Arbitrator Bloch's interpretation of Article 34 in the NRLCA contract controls the interpretation of the same language in Article 34 of the NALC contract. The plain language of Article 34, Section B requires that all time studies be fair, reasonable and equitable, that the Union be kept informed during the study, and that the Union be permitted to observe the study. Section B does not limit its application to mid-term changes.

For more than 40 years, arbitrators have recognized the significance of Article 34. Several national level arbitrators have applied it to changes in work standards. Practical reasons also support the Union's interpretation. Section B imposes a minimal burden on management but is extremely important to employees. Union participation can even lead to improvements in the studies. No policy reasons support denying the Union the same rights when the studies are conducted for collective bargaining or interest arbitration.

Management's arguments must be rejected. First, the Bloch award should apply here because the relevant language is the same. Differences in payment methods between letter carriers and rural letter carriers are irrelevant because both groups are evaluated according to fixed standards. Arbitrator Bloch correctly found that there was no need to consider the rest of Article 34 because the relevant section could be considered on its own. Arbitrator Bloch correctly rejected Arbitrator Wells's oral ruling during the 2002 interest arbitration because Arbitrator Wells accepted the Postal Service's assertion that the study at issue was not a time study and therefore was not covered by Article 34.

## **VI. The Postal Service's Position**

The Postal Service makes three arguments: The Union's interpretation of Article 34 conflicts with the article's language and purpose; the Bloch decision is not dispositive; and adopting the Union's position would lead to an absurd result.

A. On the first point, the Postal Service notes that Article 34 is a complicated process that operates properly only when the Employer makes unilateral changes to standards. Those



burdensome procedures are incompatible with collective bargaining and interest arbitration. The bargaining process is designed to give both parties the freedom to prepare their own proposals before sharing them. As Arbitrator Wells stated, it defies logic to require that one party invite the other to participate in the preparation of its case.

The Union's interpretation is inconsistent with the Article's language and purpose. The procedural requirements of Article 34 do not fit into the collective bargaining process. The testing requirement, for example, is not necessary for negotiated changes. Article 34 is therefore a completely separate process, one designed to deal with mid-term changes.

B. On the second point, the Postal Service emphasizes that Arbitrator Bloch interpreted a different national agreement that expressly excludes city carriers. The two Articles 34 have different requirements. For example, the NRLCA contract does not require a test before national implementation. Moreover, a grievance under the NRLCA contract bars implementation until the arbitrator rules, while the NALC contract allows the Postal Service to implement the new standard in test cities before the award issues.

Work standards do not affect city carriers' compensation, in contrast to the rural letter carrier situation that Arbitrator Bloch ruled on. Arbitrator Bloch weighed heavily the direct link between standard and compensation for rural carriers. In contrast, city carrier office standards do not directly determine city carriers' compensation because they are paid by the hour.

In any event, the Bloch award is inconsistent with the structure of Article 34. He focused only on Section 2 of the NRLCA contract, the counterpart to Section 34.B of this Agreement. Contract interpretation principles require that all parts of an agreement should be read as a whole.

C. Finally, the Union's position would create an absurd result, that the parties would prepare jointly for collective bargaining and interest arbitration. That would actually discourage bargaining over work standards. Even if the Postal Service did propose new standards in bargaining, it would do so without the best supporting data.

## **VII. Discussion**

The record contains no important evidence about the bargaining history of Article 34 or about the parties' intentions when adopting it. Nevertheless, the basic objectives of Article 34 are clear from its content.

As stated in Section B, the parties agreed that work measurement systems and time or work standards should be "fair, reasonable and equitable." One method of ensuring the reasonableness of the systems and standards was to inform the Union of any studies "to be used as a basis for changing current or instituting new work measurement systems." Another was to give the Union the right to designate a qualified observer for such studies.

Later parts of Article 34 address the use of such studies. Section C requires a test of any changes in systems or standards. Section D requires notice of any plans to implement changes after the test. Sections E through H create a special grievance process if the Union disagrees with the Employer's plans. Section I gives the Union the right to conduct its own study after receiving a Section D notice.

The sole question in this case is whether Article 34 applies to studies conducted in preparation for collective bargaining or interest arbitration. As on all contract issues, the Union bears the burden of proving that the Postal Service's interpretation is wrong and that its interpretation is correct.

#### **A. The Wording of the Agreement**

The starting place for any question of contract interpretation is of course the relevant contract language. In this case, the crucial language is in Article 34. Within Article 34, Section B is the most important because it is the trigger for all that follows. Section B obliges the Employer to notify the Union about, and allow a qualified Union representative to observe, any "time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards." That language neither limits the Section's application to studies that might lead to mid-term changes nor excludes studies intended for use in collective bargaining or interest arbitration. Without more, the only possible conclusion would be that it applies to all time and work studies.

The Postal Service correctly argues, however, that all debated contractual provisions should be read in context with the rest of the agreement. In this case, the other sections of Article 34 provide the only relevant context. Apart from Section A's statement that the parties recognize the principle of a fair day's work for a fair day's pay, the rest of Article 34 deals with the methods for conducting studies and pilot programs, the procedure for resolving disputes over such studies, and the right of the Union to conduct its own studies. Nothing in those sections self-evidently conflicts with using Section 34.B for negotiation preparation. Certain sections are irrelevant to negotiated changes, but the presence of some provisions useful for mid-term changes does not mean that the other parts of the section may only be used that way. Contrary to the Postal Service's argument, the wording of Article 34 does not prove that it is a completely separate process designed solely for mid-term changes.

Looking only at the wording of Article 34, therefore, the article applies to all time and work studies, not merely to those used for changes during the term of the Agreement.

#### **B. The NRLCA Rulings**

In addition to the express language of Article 34, both parties discussed the NRLCA rulings described in Part II. The Union emphasizes Arbitrator Bloch's decision and, to a much lesser extent, Arbitrator Clarke's acceptance of the Bloch decision when deciding whether the study at issue in

Arbitrator Bloch's case could be used in the 2012 interest arbitration. The Employer distinguishes those two rulings and relies instead on Arbitrator Wells's acceptance of certain evidence during the 2002 interest arbitration.

Like Arbitrator Bloch, I find Arbitrator Wells's ruling of no help. Apart from the fact that it was an oral ruling rather than a written decision that might have involved greater study, Arbitrator Wells found that the Postal Service's evidence was not a time study falling under Article 34. It thus did not definitively interpret that Article. The policy position taken by Arbitrator Wells, however, deserves separate consideration. I will return to that matter below. I also find that Arbitrator Clarke's ruling is of no help here because he merely accepted a previous national arbitrator's interpretation of a provision in the very contract that governed Arbitrator Clarke's work.

In contrast, Arbitrator Bloch carefully analyzed Article 34's application to a time study in preparation for contract negotiations — the exact issue presented in this case. The Postal Service made, and Arbitrator Bloch rejected, the same arguments about Article 34 of the NRLCA contract that the Postal Service makes in this case about Article 34 of the NALC contract. He noted that nothing in the NRLCA contract indicated that management could "divest itself of its Article 34 obligations simply by submitting proposed work standards changes at the end of the contract instead of during its term." The carefully bargained checks and balances in Article 34 "cannot be read as somehow dependent on when proposals for new standards are to be proffered."

To put it differently, Arbitrator Bloch found that the parties negotiated Article 34's complicated procedures to protect covered employees by ensuring that *all* time and work studies were conducted under observation — and possibly duplication — by the Union, regardless of when in the negotiation cycle they are conducted. If this case were brought under the NRLCA contract, there is no question but that Arbitrator Bloch's decision would be controlling, just as Arbitrator Clarke ruled.

### **C. The Relevance of the Bloch Award**

But of course this case does not arise under the NRLCA contract. At most, an arbitrator's interpretation of similar or even identical language in another contract is persuasive, not controlling. The degree of weight to which such an award is entitled depends on many factors: the quality of the award, of course, but also, when evidence is available, the origins of the provisions, the parties' intentions in drafting the language, their practical construction through applications of the negotiated terms, and the similarities or differences in the circumstances to which the contract provision applies. In this case, there was no solid evidence about the parties' bargaining history or the parties' intentions, and the only evidence about the parties' practices comes from the disputed NRLCA rulings.

It is therefore necessary to consider the Postal Service's argument that differences between the contracts and their separate applications mean that Arbitrator Bloch's award should carry no weight.

The differences between the two contracts' provisions are minor and inconclusive. The distinctions raised in the Postal Service's brief (and summarized in Part VI.B. above) are so small that they provide no basis for ignoring Arbitrator Bloch's interpretation. The only one that deserves separate comment is the fact that work standards directly affect rural carriers' compensation but do not do so for city carriers. That may be true, but time studies and work standards can affect city carriers in other important ways, notably in the structuring and evaluation of their work. If work standards had no impact on city carriers, Article 34 would have no point. The parties adopted Article 34, no doubt after significant negotiation, and that demonstrates that they believed time and work studies could have an important impact on city carriers' work lives. Even if the NRLCA's primary motivation for limiting such studies differed from the NALC's primary motivation, the fact is that both unions sought similar restrictions over the conduct and use of those studies.

I find that Arbitrator Bloch's interpretation of the NRLCA contract's Article 34 is entitled to very careful attention in this case — not to deference, perhaps, but to great weight because of his judicious and reasonable interpretation of language that is in all important respects similar to the provision at issue here. When two Postal Service union contracts use virtually identical language, a national level arbitrator's considered interpretation of one provision should strongly influence a national level arbitrator's interpretation of a parallel provision in another Postal Service contract; absent persuasive reasons to do otherwise, the second arbitrator should follow the first. Here, the Postal Service offered no convincing reasons why this Article 34 should mean something other than what the NRLCA contract's Article 34 means.

#### **D. The Logic of Union Participation in Management's Preparations for Negotiations**

There remains one other Postal Service argument for not following Arbitrator Bloch's lead.

Arbitrator Wells made a powerful point in rejecting the NRLCA's objection to consideration of the studies by management that were conducted outside of Article 34. His paragraph deserves repetition because it would apply to time and work studies as well as to whatever sort of investigation the Postal Service had conducted for his case:

Finally, it defies logic or common sense that in an interest arbitration one party would or should be invited or required to invite the other party to participate in the preparation of their case. Simple fairness dictates that each party should be able to prepare and present their own case before an interest arbitration panel.

In short, Arbitrator Wells seems to say that even if Article 34 had applied to the study offered into evidence in his interest arbitration (and keep in mind that he found the research was *not* a time study subject to that Article) it would defy "logic or common sense" to permit Union observation of a management study conducted in preparation for collective bargaining.

After giving due weight to Arbitrator Wells's oral ruling, I cannot agree. To be sure, it is unusual and even surprising that an employer would give a union that opportunity. Perhaps there were trade-offs not reflected in the record of this case, so that the Postal Service got something it found more important than what it gave up in Article 34. Apart from that possibility, though, there are also some logical reasons for adopting a broad provision on such studies that would apply regardless of their timing.

Most importantly, the same reasons for allowing Union observation of studies possibly leading to mid-term changes — among other things, accuracy, transparency, and possible critiques of the studies' design and conduct, all of which would increase the studies' reliability, utility, and acceptance — apply to studies designed for collective bargaining. A study conducted under Article 34 and then presented in collective bargaining or during an interest arbitration would be familiar to the Union and might be more persuasive than a study conducted unilaterally and confidentially. While those possibilities might be optimistic, they are not illogical. It is therefore rash to assert without qualification that the parties could never have intended to allow the Union to observe studies conducted in preparation for collective bargaining or interest arbitration.

#### **E. Conclusions**

Article 34 grants the Union the rights to be notified of, and to observe, time or work studies to be used as a basis for changing work measurement systems or work or time standards. The negotiated language contains no exemptions for studies conducted toward the end of a contract or for studies designed to be used in collective bargaining or interest arbitration. Arbitrator Bloch's careful interpretation of a similar provision in the NRLCA contract rejected the Postal Service's arguments against reading Article 34 literally and is entitled to substantial weight when interpreting Article 34 in the NALC contract. The Postal Service's attempts to distinguish the two contracts were unpersuasive. Allowing that degree of Union observation of studies leading up to contract negotiations does not necessarily defy logic or common sense. It is therefore appropriate to read Article 34 just as it is written, to apply to all such studies.

#### **AWARD**

The grievance is sustained. The Postal Service is directed to comply with Article 34 when conducting time or work studies designed for use in collective bargaining or interest arbitration.

*Dennis R. Nolan*

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Dennis R. Nolan, Arbitrator

**August 9, 2016**

**Date**