

C# 11197

USPS - APWU CONTRACTUAL GRIEVANCE PROCEEDINGS
CENTRAL REGION
ARBITRATION OPINION AND AWARD

In The Matter of Arbitration
Between:

THE UNITED STATES POSTAL SERVICE
Detroit, Michigan BMC

* Case Nos. C1C-4B-C 11033
* C1C-4B-C 14568

-and-

THE AMERICAN POSTAL WORKERS UNION
AFL-CIO
Detroit District Area Local

* Decision Issued
* December 11, 1985

APPEARANCES

FOR THE EMPLOYER

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Virginia Langford

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Labor Relations Representative
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FOR THE UNION

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ISSUE: Article 17, Section 7B -- Union Protest of Dues Revocations

Jonathan Dworkin, Regional Arbitrator
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BACKGROUND OF DISPUTE

The American Postal Workers Union charges that the Detroit, Michigan General Mail Facility improperly canceled dues checkoffs of eleven employees. The charge is set forth in two grievances initiated on behalf of the entire Detroit District Area Local. The Union focuses on Article 17, Section 7 of the Agreement which describes in specific terms how dues checkoff authorizations are implemented and what must be done before they can be revoked. Section 7A provides that proper authorizations are irrevocable for a period of not more than one year. Section 7B specifies a form for checkoff cancellations which contains the following conditions: (1) the form must be filled out and submitted to the Employer within a window period of not more than twenty or less than ten days prior to the anniversary of the original authorization; (2) the employee must give written notice of his/her election to the Union within the same time frame. If a checkoff authorization is not revoked as prescribed, it is automatically renewed from year to year. These requirements are spelled out in the following portion of Article 17, Section 7B:

This assignment, authorization and direction shall be irrevocable for a period of one (1) year from the date of delivery hereof to you, and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1)

year, unless written notice is given by me to you and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one (1) year. (Emphasis added.)

All of the revocations at issue occurred one or two months prior to July 22, 1982. Of the eleven cancellations protested by the grievances, it is claimed that four were invalid because the form was not submitted within the contractual window period, and seven were improper because the Union did not receive timely notification. The Union demands an award ordering the Employer to reinstate the checkoffs, to reimburse the Union for lost dues, and to "cease and desist from such actions." In addition, the Union requests reimbursement of its costs for prosecuting the grievances.

The Postal Service denied the grievances at each level, and the Union appealed to Regional Arbitration. The grievances were joined as a single dispute. A hearing was convened in Allen Park, Michigan on July 12, 1985. The Postal Service stipulated that the submission to arbitration was procedurally correct and that the Arbitrator was authorized to issue a conclusive award on the merits of the controversy.

PROOF OF ANNIVERSARY AND REVOCATION DATES --
THE EVIDENTIARY BURDEN

In a dispute of this kind, the Union is ordinarily obligated to present sufficient evidence to establish a prima facie case. If the Union fails to meet this responsibility, it is proper to deny the grievance whether or not the Employer submits responsive evidence. However, burden of proof concepts are not immutable; they shift from time to time as justice and reason require. For example, if critical evidence is in the exclusive control of the Employer, Management will be expected to produce it, and its failure or refusal to do so may justify a presumption that the evidence is damaging to its position.

This principle has particular relevance to the Union's allegation that some of the checkoff revocations were untimely. The actual anniversary of a checkoff authorization may be separated by several weeks from the date when an employee submits an authorization (Form PS 1187) to local Management. Before the official date is established, the form is transferred to and processed by the Postal Data Center. There is no machinery for notifying the Union precisely of the authorization date (and, therefore, of the window for revocation). The information the Union normally receives is a computer tape transmitted each pay period in which dues are withdrawn. By running the tape, the Union obtains a printout of current membership. From this, the Union can fairly estimate when an employee's checkoff began. But it is an estimate; it is not exact.

The Postal Service proved that some of the Union's estimates were inaccurate. For example, the Union believed that C. L. Drake's anniversary date was March 11, and that her May 5 revocation form (Form PS 1188) was untimely. In actuality, Ms. Drake's authorization was received by the Data Center on May 20, 1974, and her Form 1188 was submitted in the window period. Moreover, although it claimed it did not receive a copy of Ms. Drake's Form 1188, the Union may have been mistaken. Between 1974 and 1982, Ms. Drake married and changed her name to Burtt. Her Form 1188 was submitted under that name. A copy may have been received by the Union and escaped attention because of the name change.

In the Arbitrator's opinion, this is the kind of evidence the Postal Service had to submit to overcome the presumption that the Union's estimates of anniversary dates were reasonably accurate. The means to correct errors consisted of records which were in the Employer's exclusive possession. The Postal Service submitted only three such records, claiming it had others and that the three presented were representative examples. It argued that these examples justified finding the Union's assumptions regarding anniversary dates to be uniformly erroneous.

The Arbitrator declines to adopt the argument or to find that evidence establishing the correctness of some revocations extends to verify all revocations. Such conclusion would be illogical and naive. It is more reasonable (and more consistent with this Arbi-

trator's experience with these parties) to assume that the Postal Service Advocate presented all evidence at his disposal tending to disprove the basis for the grievances. It follows that, at least in some instances, the Union's contention that untimely checkoff revocations were honored by the Data Center is well taken.

THE NOTICE REQUIREMENT

The arguments of parties made it clear that the question of whether or not cancellation requests were timely is secondary in this dispute. Of greater importance is the issue of whether timely notification to the Union is mandatory, and whether revocations can be valid without it. Stated another way, the issue is what (if any) obligation is imposed on the Postal Service to ensure that the Union is advised when Forms 1188 are submitted by employees.

Local Management never gives notification to the Union, but the Postal Data Center routinely does. Form 1188 is a three-part document. One part is designated, "Agency Payroll Copy;" the second is the "Labor Organization Copy;" and the third is returned to the employee. When the Data Center receives a complete set, it transmits the Labor Organization Copy to the Union. This happens in most instances. However, when the form is sent to the Data Center without the Union's copy, no notification is provided.

The Postal Service maintains that it has no obligation in this regard. It calls attention to the statement in Article 17,

Section 7B requiring employees, not the Employer, to give written notice of revocations to the Union. The Postal Service reasons that it is appropriate to divorce Management from what is essentially an aspect of the private, internal relationship between employees and their representative. It clarifies this position in the Step 2 answer to one of the grievances in which it argues:

To hold management responsible for the union not receiving notification of an employee's intention to revoke his/her dues check-off is unrealistic. The 1187 (dues check-off) is entered into voluntarily by the employee. By the same token, the intention to revoke is voluntary. Management in this case is nothing more than a vehicle used to extract and forward monies to the involved labor organizations where an agreement has been entered into by the union and the employee. It is ludicrous to insist that management be held responsible or liable over situations where they have no control or knowledge.

The Postal Service calls attention to the limitations on arbitral authority. Article 15, Section 4 A(5) of the Agreement restricts arbitrators to deciding disputes in accordance with existing contractual language and prohibits decision making which modifies provisions of the Agreement. In the Employer's view, this Arbitrator has no authority whatsoever to impose a notification requirement on Management when the Agreement places that responsibility on employees.

The Union's arguments centered on the importance of notification. Postal Service employees work in an open shop. Union mem-

bership is entirely voluntary. Employees who do not join receive all the advantages of representation without concomitant expense. Therefore, an employee's revocation of his/her Union membership can have severe impact on the Bargaining Unit, and the Union needs the prescribed window period to try to dissuade potential dropouts. In point of fact, the Union is successful in this endeavor more times than not. But it cannot take advantage of the window period unless it receives timely notice of a member's intention to cancel his/her checkoff, and it looks to Management to provide that notice.

The Union's arguments are persuasive. However, as the Postal Service contends, the Arbitrator is powerless to expand contractual language. The Agreement states that notifying the Union of a check-off cancellation is the employee's responsibility, and the Union cannot obtain transfer of the obligation to Management through arbitration.

This finding is not dispositive of the issue. Although Article 17, Section 7B does not oblige Management to notify the Union of checkoff revocations, it does state that a revocation is not operative unless and until defined prerequisites are fulfilled. The election to revoke must occur within the prescribed window period and it must be accompanied by timely notice to both the Employer and the Union. Contrary to the Step 2 answer in this case, the Postal Service's role in the checkoff scheme is not simply to act as a conduit, extracting money from employees and paying it to the

Union. By agreeing to the contractual checkoff provisions, the Employer voluntarily accepted a fiduciary responsibility; it became the trustee of the system. It obtained the power to cancel check-offs, but with it came the duty to exercise that power only if all conditions were met. In other words, the Postal Service is without authority to honor a revocation request unless all three prerequisites are met -- notice which is timely; notice which is given in writing to the employer; notice which is communicated within the window period to the Union. The Employer has essentially admitted having this responsibility. The following is included at the bottom of Form 1188, the form designed by the Postal Service itself:

(Both copies to be submitted to agency payroll office; original to be retained for payroll records and carbon to be forwarded by payroll office to labor organization in accordance with the arrangement between the agency and the labor organization.)

The Postal Service's duty to continue checkoffs unless all conditions for revocation are met probably means, for all practical purposes, that the Employer will have to notify the Union itself. The Agreement does not require this, but it does make the Postal Service an insurer that dues will be withheld unless checkoff cancellations are properly and completely executed. If the Employer honors an incomplete checkoff revocation, it does so at its peril.

CONCLUSION -- CASE-BY-CASE ANALYSIS

In its fiduciary capacity, the Postal Service is liable to the Union for dues lost through contractually improper checkoff cancellations. It can honor only those revocations which are submitted in the window period of twenty to ten days prior to the anniversary of an authorization and only if notice has been provided to the Union within that time frame. These principles will be applied on a case-by-case basis to the revocations challenged by the Union:

1. Betty Bailey. According to the evidence, this employee's checkoff authorization became effective on June 8, 1981. She submitted two 1188's, one in January and the other in April, 1982. Neither was timely. The window period for revocation was from May 19 to May 29 in any year. There is some indication that the Postal Service may have held the premature revocation and effectuated it later. The parties previously agreed that such procedure is improper. Normally, the Postal Data Center returns premature forms with the following cover letter:

The enclosed Standard Form 1188 submitted to revoke the union dues withholdings cannot be processed and is returned for disposition.

The Standard Form 1187 enrollment was effective for one year and automatically renewed each year on the date of delivery to employer (anniversary date).

Enrollment may be terminated by submitting an SF 1188 dated not more than 20 days and not less than 10 days prior to the date of delivery of enrollment.

The date of delivery (anniversary date) is _____

The Data Center sent letters of this kind to the Detroit Postmaster whenever it received untimely revocation forms. No evidence was submitted establishing that the employee tendered a third form at the right time. Therefore, the Arbitrator finds that the revocation was untimely and the Union is entitled to recoup its losses.

2. Russell A. Brown. This employee's revocation was timely. However, the evidence confirms to a high degree of probability that no notification was supplied to the Union. For that reason, the Form 1188 was incomplete and was not entitled to be processed. The Postal Service is liable to the Union for lost dues.

3. Doris Dandridge. Postal Service records confirm that this employee's anniversary date was October 25. Obviously, her checkoff authorization could not properly have been revoked in July, 1982 when the grievances arose. The revocation was untimely and the Union is entitled to recover.

4. C. L. Drake. This is the employee whose marriage and name change might have been overlooked by the Union. The revocation was timely and there is insufficient evidence to establish

that notice was not provided. The Union will not recover dues in this instance.

5. Sally Ann Forrest. The employee's anniversary date was May 16. She submitted a Form 1188 on March 13, 1982, the Union received a copy on April 13. This was outside of the prescribed window period, and was acknowledged to be premature by the standard letter from the Postal Data Center. Nevertheless, the evidence indicates that no subsequent Form 1188 was submitted or, if it was, that the union received notification. The union will be awarded lost dues relative to this employee because a premature revocation was processed, or the union was not notified of a properly submitted form.

6. Gale Gray. The Union's unrefuted evidence indicates that the employee's checkoff anniversary date was June 21. Her window period was June 1 to June 11. She filed a premature revocation on February 18, 1982. It was returned by the Postal Data Center with the usual cover letter. It is probable that, upon receiving this and other revocation forms, the Postmaster simply returned them to the employees and the employees resubmitted them at proper times. If this occurred, the labor organization's duplicate was not included. As stated, when the Data Center did not receive a copy for the Union, it did nothing to assure the Union's timely notification. The evidence confirms that no notification was given to the Union

during the window period in this instance. Accordingly, the revocation was flawed and the Postal Service was required to dishonor it. The Union shall be awarded lost dues relative to Gale Gray.

7. E. Johnson. The Union received no notification of this employee's revocation. The revocation was incomplete and ineffective. Therefore, the Union will be awarded lost dues. The same reasoning applies to each of the following employees and requires the same finding:

8. A. B. Osterling
9. L. D. Parker
10. M. E. Summers
11. Donald K. Taylor

REMEDIES

Because the Postal Service neglected to perform fiduciary responsibilities it accepted when it agreed to the language in Article 17, Section 7B, the Union is entitled to reinstatement of improperly revoked checkoff authorizations. It is also entitled to reimbursement of the actual dues lost after the 1188's were put into effect. During the hearing, the Union conceded that some of the employees in question re-joined and became dues paying members of the APWU later. Of course, the Union shall not be awarded double dues as to those employees. The portion of the award favoring

the Union is restricted to actual losses (which the parties have the means to calculate).

The Union's request for a cease-and-desist order will be rejected. The evidence discloses that the violations which triggered these grievances were neither routine nor ordinary. In almost every instance, the Postal Service does abide by the window provision and does provide the Union with adequate notice. A cease-and-desist order, therefore, is clearly inappropriate.

The Postal Service's right to recoup dues from the affected employees has already been resolved in a National Decision. (Case Nos. M-NAT-196 & M-W-166, Decision issued, July 30, 1975; Supplemental Opinion issued, January 26, 1976). That question was not presented here and will not be addressed.

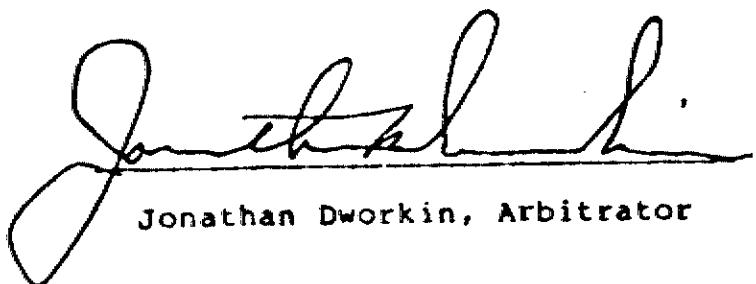
AWARD

The Postal Service is directed to reinstate, as of the date(s) of revocation, dues checkoff authorizations of Betty Bailey, Russell A. Brown, Doris Dandridge, Sally Ann Forrest, Gale Gray, E. Johnson, A. B. Osterling, L. D. Parker, M. E. Summers, and Donald K. Taylor. It is further ruled that the Postal Service shall reimburse the Union for the amount of dues actually lost by revocation of checkoff authorizations of these named employees.

In all other respects, the grievances are denied.

Decision Issued:

December 11, 1985



Jonathan Dworkin, Arbitrator