

C-25161

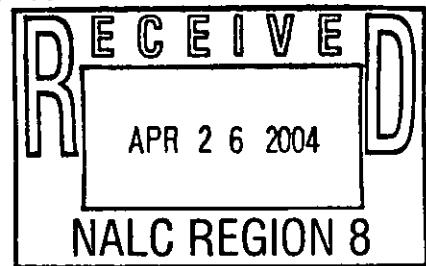
BEFORE THE SOUTHEAST REGULAR REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration
between
THE UNITED STATES POSTAL SERVICE,
and

Grievant: Class Action
Post Office: Birmingham, Alabama
Case No: H01N-4H-C 03045053
2002-00-07, 08-039883

THE NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO.

Before: Martin A. Soll, Arbitrator
For the Postal Service: Fay Jackson
For the Union: Stephen Vadorsky
Place/Date of Hearing: Birmingham, Alabama/March 12, 2004
Date of Award: April 12, 2004
Relevant Contract Provisions: CBA Articles 14 & 41.3-H, 3, 19
Contract Year/Type of Grievance: 2001-2006/Contract



AWARD SUMMARY

The grievance is sustained in part and denied in part as follows:

- A. NALC has proven by a preponderance of the evidence:
 1. That by prohibiting Birmingham Letter Carriers the right to carry with them a personal cell phone while on their delivery routes, the current Birmingham Cell Phone Policy constitutes, and/or has caused or contributed to, or brought about, or enhanced, whether potentially or otherwise, an "unsafe condition" or unsafe working condition as such terms are stated, applied and referred to within Articles 14.1 and 14.2. of the National Agreement. And, thus,
 2. The grieved Birmingham Cell Phone Policy is in violation and/or violative of the language, intent, safety goals and requirements of the National Agreement's Article 14, Safety and Health, in general, and particularly 14.1. and 14.2. which mandate that USPS "provide safe working conditions," and correct "unsafe conditions."
- B. NALC has failed to prove by a preponderance of the evidence that the Birmingham Cell Phone Policy, as applied, violates Article 41.3-H.



Martin A. Soll, Arbitrator, April 23, 2004

RELEVANT CONTRACT ARTICLES

ARTICLE 3. MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- B. To hire, promote, transfer, assign, and retain employees to positions within the Postal Service and to suspend, demote, discharge or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted.
- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees, and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

ARTICLE 14. SAFETY AND HEALTH, SECTIONS 1 & 2

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. . . .

Section 2. Cooperation

The Employer and the Union insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions. Mechanization, vehicles and vehicle equipment, and the work place must be maintained in a safe and sanitary condition, including adequate occupational health and environmental conditions. The Employer shall make available at each installation forms to be used by employees in reporting unsafe and unhealthful conditions. If an employee believes he/she is being required to work under unsafe conditions, such employee may:

- (a) notify such employee's supervisor who will immediately investigate the condition

and take corrective action if necessary;

(b) notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor;

(c) file a grievance at Step 2 of the grievance procedure within fourteen (14) days of notifying such employee's supervisor if no corrective action is taken during the employee's tour; and/or

(d) make a written report to the Union representative from the local Safety and Health Committee who may discuss the report with such employee's supervisor. Upon written request of the employee involved in an accident, a copy of the PS Form 1769 (Accident Report) will be provided. Any grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration in accordance with the provisions of Article 15 may be placed at the head of the appropriate arbitration docket at the request of the Union.

ARTICLE 19, HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours or working conditions will be furnished to the Union at the national level at least Sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

* * *

ARTICLE 41, SECTION 3-H

H. The Postal Service recognizes that representatives of the NALC should be permitted to use available telephones. Accordingly, the Employer at the local level shall establish a reasonable policy regarding the use of telephones by authorized Union officials and stewards for calls relating to the administration of the National Agreement. The policy will be made known to the President of the NALC Branch.

RELEVANT FACTS

In this matter, Vulcan Branch 530/Birmingham, Alabama, National Association of Letter Carriers (NALC) protests and grieves the Birmingham Cell Phone Policy (or "Policy," or "Birmingham Policy") issued by Postmaster Paul Barrett, on June 5, 2001. The Policy states, in pertinent part, as follows:

June 5, 2001

On May 15, 2001, the [USPS Alabama] District Manager [Ms. Gloria Tyson] issued a letter establishing the guidelines regarding the use of personal cellular phones and pagers in the workplace.¹ These guidelines prohibited use while an employee is in an on-duty status unless authorized by a supervisor/manager. In addition, I sent a cc:mail message to each office instructing that if approval was given, please provide me their names and reason for

¹ Alabama District Manager Tyson's May 15 cellular phone guidelines (hereinafter, "Alabama Guidelines" or "Alabama Cell Phone Guidelines") cited by Postmaster Barrett, state, in relevant part, as follows:

May 15, 2001

SUBJECT: Personal Cellular Phones and Pagers

This is written to establish guidelines in the Alabama District regarding the use of personal cellular phones and pagers in the workplace. Effective immediately, the use of cellular phones and pagers is prohibited while employees are in a duty status unless authorized by their supervisor/manager. Employees should address all personal business during official lunch and break times.

Cellular phones can be a useful tool, but please bear in mind they should not interfere with the safe performance of your duties. For those employees who drive on official business and may be authorized to use them, the following procedures should be followed:

- * Do not use a cellular phone or attempt to retrieve a pager message while driving.
- * Dial or check pager messages only when stationary and safely out of traffic.
- * Do not write while driving.
- * Allow incoming calls to be picked up by voice mail or left unanswered while driving or during severe weather conditions.
- * Crimes in progress and other emergencies can be reported to 911 or #77 on the highways.
- * Concerns have been expressed about using cell phones in potentially explosive atmospheres. Turn your phone OFF when in any area with a potentially explosive atmosphere and obey all signs and instructions. Sparks in such areas could cause an explosion or fire resulting in bodily injury or property damage. These areas are not always clearly marked, but include fueling areas (gasoline stations); fuel or chemical transfer/storage facilities; and other areas where you would normally be advised to turn off your vehicle engine.
- * Follow the safety tips specified by the manufacturer of your cell phone,

\s\ Gloria E. Tyson
District Manager, Customer Services and Sales

approval.

From the reasons that I have received, it is apparent each of you have a different criteria when determining who should qualify for exemptions to these guidelines. Due to the wide range of approval and disapproval, resulting in an inconsistency city wide, I am establishing the following procedures for all Birmingham City employees:

- Effective immediately all prior approvals are rescinded.
- **There will be no personal cellular phones or pagers allowed in the workplace. The only exemption will be a signed letter of approval by the Postmaster, Birmingham.** (Emphasis supplied).

Employees requesting an exemption must provide a statement explaining the nature of the request. In most cases, systems are in place to notify employees when emergencies arise, Only after a request is determined to be a hardship case will it be approved.

\s\ Paul T. Barrett
Postmaster, Birmingham

NALC alleges, among other things, the Birmingham Policy is violative of the language, intent and goals of Article 14 and particularly 14.1 & 14.2 of the National Agreement on the grounds that although many Letter Carriers have made written requests to carry and use their personal cell phone for emergency/safety reasons while on their routes, Postmaster Barrett has uniformly denied every request. NALC further charges the Birmingham Policy violates Article 41.3-H of the National Agreement since it totally disallows NALC officials and stewards from using their personal cell phones while in any Birmingham USPS building to timely and efficiently administer and oversee the National Agreement.

NALC requests, accordingly, that the undersigned Arbitrator i) order the recession of the Birmingham Cell Phone Policy and, thus ii) allow all Birmingham Letter Carriers and NALC officials and shop stewards (at own their cost and with no expense to the Postal Service), to possess and use personal cell phones under the same terms and conditions of District Manager Tyson's above quoted May 15, 2001, Alabama Cell Phone Guidelines which permits cell phones to be used when employees are not in a "duty status."

Remaining unresolved, the grievance was submitted to binding arbitration before the undersigned neutral arbitrator. A non-transcribed hearing was held at the main post office in Birmingham, Alabama on March 12, 2004, wherein, the parties were accorded the full opportunity to call, examine and cross-examine witnesses and submit all evidence pertinent and material to the

case. Written closing arguments were waived.²

ISSUE

Whether The Birmingham Cell Phone Policy Violates Articles 14, and/or 41.3-H of the National Agreement? And if So, What is the Appropriate Remedy?

POSITION OF THE PARTIES

NALC

At the arbitration, NALC argued and presented witnesses and documentary evidence requesting that the grievance be awarded based upon the following:

1. Since the June 5, 2001, implementation of the Birmingham Policy, to the present, Postmaster Barrett has refused to allow Letter Carriers to carry a cell phone while on their delivery routes or in the office.³
2. Postmaster Barrett's failure or refusal to allow letter carriers to even carry cell phones is a safety issue and, thus, violative of the language, intent and goals of Article 14.
3. Letter Carriers are the eyes of the community. The Postal Record, Postal Life and other publications document heroic deeds performed by Letter Carriers. Having the use of a cell phone, Letter Carriers could save lives, report crimes in progress, and notify postal authorities of vehicle accidents or other emergencies, etc. Such facts are corroborated by the USPS Commission On A Safe and Secure Workplace who on August 31, 2000, reported and recommended to the then Postmaster General, among other things, "To help assure safety and security for its workers: (a) [that USPS] establish communication systems such as cell phones or beepers for carriers on delivery routes especially in high-crime and remote areas."
4. Letter Carriers should not use a cell phone while working, unless an emergency situation occurs. However, and consistent with the Alabama Cell Phone Guidelines, Letter Carriers should be allowed to carry and use their cell phone limited to emergency situations and while

² The parties agreed to extend the time limit for the undersigned to submit this Opinion and Award.

³ The hearing record shows that while several Letter Carriers have requested exemptions to carry cell phones on their route, each request has been denied by Postmaster Barrett. On the other hand, in each case, Postmaster Barrett authorized the requesting Letter Carrier to carry a beeper or pager.

on breaks, or at lunch.

5. Further, to disallow the use of cell phones by NALC officials and stewards, USPS Birmingham is in violation of Article 41.3-H which recites that USPS, "recognizes that representatives of the NALC should be permitted to use available telephones" for calls relating to the administration of the National Agreement. Contrary to the Postal Service's position, "available telephones" are not limited to the hard wired phones belonging to USPS.
6. And finally, Postmaster Barrett's blanket policy of barring all cell phones from the workplace and while delivering mail is unsafe, improper and unjust. Letter Carriers know when, how to, and for what reasons to safely use a cell phone, whereas, those Letter Carriers who may abuse the use of a cell phone should be dealt with like any other employee who may violate a USPS rule or regulation.

USPS

USPS counters that the grievance be denied and dismissed. In support, it contends, argues and submitted evidence and testimony establishing, in pertinent part, that:

1. Postmaster Barrett's June 21, 2001, Policy disallows only personal cellular phones in the work place. Beepers/pagers are allowed to be carried by Letter Carriers.
2. Birmingham's Policy is in accordance with the Alabama Cell Phone Guidelines, not an "expansion of same," and that "(b)oth policies say the same - no use of cell phones unless authorized by management."
3. The requirements of Article 41.3-H have been complied with, nor has Birmingham's management denied NALC officials and stewards the use of telephones while in its offices for grievances or to otherwise administer the National Agreement.
4. However, while Letter Carriers are delivering mail on their routes, there is no need, nor support for a cell phone. If cell phones were necessary they would be supplied by USPS.
5. The main concern and focus of a carrier's attention while on their routes should be on the safe, accurate and timely delivery of the mail. The use of a cellular phone while delivering mail is an unsafe distraction from the carrier's attention to his or her duties. NALC business, likewise, should not be conducted while carriers are on their routes delivering mail.
6. In past years, carriers were given cell phones to carry with them in case of an emergency, whereas, NALC rejected the use of such cell phones on safety grounds and many Letter Carriers refused to take them.

7. Just as Letter Carriers have eyes on the community, the community has eyes on the carriers. To see a carrier driving or walking down the street talking on a cell phone is unsafe, nor does it give the impression of working, nor of paying attention to the Letter Carrier's duties which reflects poorly on USPS.
8. And finally, there is no language in the National Agreement, nor in any of the Postal handbooks or manuals that give Letter Carriers the right to have personal cell phones. Thus, Postmaster Barrett under Article 3's Management Rights language had the right to and has lawfully established a local cell phone policy which violates no element of the National Agreement, nor any of the USPS manuals.

DISCUSSION & FINDINGS

This being a contract grievance, it is NALC who has the burden of proving its case by a preponderance of the evidence. Having carefully reviewed the extensive testimony, comprehensive exhibits, arguments and applicable case law submitted in this matter, the undersigned finds the Birmingham Cell Phone Policy violative of Article 14 of the National Agreement. The undersigned, on the other hand, finds insufficient evidence was submitted showing the Policy has unreasonably impaired NALC's Article 41.3-H telephone rights.

Article 14

Articles 14.1 and 14.2 specifically mandate that USPS provide safe working conditions and to correct those that are not. It is NALC's "safety position" in this case, among others, that by prohibiting the carrying of cell phones while Letter Carriers are in the workplace and particularly when on their delivery routes, the Birmingham Cell Phone Policy unreasonably compromises and inhibits their safety in violation of Article 14. Without access to a personal cell phone, notes and argues NALC, Letter Carrier's have no ability to promptly and safely report crimes, vehicle breakdowns, accidents and other emergencies.

The evidence supporting NALC's safety position includes, among other things: 1) the compelling and unrefuted testimony of a number of local Letter Carriers who while on their routes were in need of a cell phone to call for help which included the testimony of a female Birmingham Letter Carrier who related that at approximately 5:30 p.m. one night, her USPS vehicle became "stuck in the mud" during a sever rain storm, and having no available cell phone, she had to leave

the vehicle unattended and walk at least two blocks to the nearest pay phone in order to notify USPS of her situation; 2) the more flexible Alabama Cell Phone Guidelines which, unlike Birmingham's Policy, deems and recognizes cell phones as a "useful tool" and, in turn, permits their "off-duty" use and when necessary to report crimes and other emergencies; and 3) the August 31, 2000, report of the USPS Commission On A Safe and Secure Workplace which found and recommended to the then Postmaster General, "To help assure safety and security for its workers [that USPS] establish communication systems such as cell phones or beepers for carriers on delivery routes especially in high-crime and remote areas."

USPS, as noted above, counters with numerous reasons and arguments to defeat the grievance, the most compelling of which centers on Article 3's Management Rights language. Says and argues USPS:

Article 3 gives [Birmingham's] Management the exclusive right to direct the employees in the performance of their duties. This is common language in most Labor/Management agreements. Most arbitrators have universally held that if the employer is not prohibited by language in the contract or, in other words, has not specifically surrendered any right that the employer would have as if no labor contract existed, the employer shall continue to have the right to direct employees in the performance of their official duties, unless it is inconsistent with applicable laws and regulations. There is no language in either the National Agreement nor in Postal Handbooks and Manuals that gives [NALC bargaining unit] employees the right to take with them, in their Postal vehicles, telephones or cellular phones and pager/beepers. Therefore, the Postal Service has the right to establish a local policy as distinguished from policies, rules, regulations and handbooks provided for in Article 19, dealing with the usage of telephones, cellular phones, pagers and beepers. In this instant grievance, [Birmingham's] Management exercised this right, and in doing so, violated no element of the National Agreement. Consequently, Management requests that you deny this grievance in its entirety.

In support, USPS points to, among others, the February 22, 1999, opinion and award of Arbitrator J. Reese Johnson in USPS/NALC Case # G94N-4G-C-98039703/011603. In that case, the arbitrator denied a NALC class action grievance protesting the 1997 Oklahoma Cell Phone Policy which similarly prohibited Letter Carriers from carrying personal cell phones while on their delivery routes. Arbitrator Johnson's denial of the grievance was, in part, predicated upon Article 3, whereas, carrier safety/Article 14 was not at issue, nor even raised by NALC in that case. As to Article 3, Johnson stated and found as follows:

Article 3 of the National Agreement which sets out Management Rights provides under paragraph A that the employer has the exclusive right subject only to the provisions of the Agreement, to direct employees of the employer in the performance of official duties. This language which is in one form or another very common in employment agreements between Management and Labor and has almost universally been held by myself and other arbitrators to provide that if the employer is not prohibited by language in the contract or, in other words, has not specifically surrendered any right that the employer would have as if there were no labor contract, shall continue to have the right, unless inconsistent with applicable laws and regulations, to determine the application of those rights. The only exception to this that I know of is where there has been a long well-established past practice wherein the employer has permitted employees to do or perform their duties in certain particular ways.

It is my finding that the language, or the lack of language, in the National Agreement and the handbooks and regulations provided for in Article 19 of the National Agreement, does not deal with the subject of employees having the right to take with them, in their vehicles, telephones or cellular phones and pager/beepers. Therefore, the Postal Service has the right to establish a local policy as distinguished from policies, rules, regulations and handbooks provided for in Article 19, dealing with the usage of telephones, cellular phones, pagers and beepers.

Arbitrator Johnston's opinion is sound and persuasive. Moreover, since it appears that Articles 3 and 19 have remained unchanged to the present and the grieved Birmingham and Oklahoma cell phone policies are similarly worded (i.e., both prohibit Letter Carriers from carrying cell phones while on their routes), Johnston's denial of that grievance based upon Article 3's Management Rights language should ordinarily constitute sufficient precedent and grounds to deny the instant grievance. Indeed, an abundance of arbitration case law is supportive and generally state or hold that once a disputed contract issue has been arbitrated and an award made (as was done by Arbitrator Johnson), res judicata, collateral estoppel and/or stare decisis principles essentially preclude a different finding when the same issue or issues again arise between parties to a collective bargaining agreement.

However, the times and society has changed from the time of Johnson's 1999 award notes NALC. For example, when Johnson issued his opinion in 1999, cell phones were not as miniaturized nor so technologically advanced, nor so prevalent and accepted in society.

And, likewise, in 1999, as NALC's advocate noted in his closing, the World Trade Center was standing; the Brentwood Post Office serving Washington, D.C. had not been shut down and many of its employees killed due to an anthrax attack of that facility; a female Letter Carrier in

Miami while driving her Postal truck on her route had not been kidnaped and hijacked at gunpoint; and further, as of 1999, the USPS Commission On A Safe and Secure Workplace had not yet found and recommended to the then Postmaster General, “To help assure safety and security for its workers: (a) [that USPS] establish communication systems such as cell phones or beepers for carriers on delivery routes especially in high-crime and remote areas.”

But equally important, NALC’s arguments and evidence proffered in this matter has, likewise, changed from the evidence it put forth in the Oklahoma cell phone case denied by Arbitrator Johnson in 1999. Again, Article 14/safety was not raised by NALC in that matter. And that being the case, the undersigned, simply stated, declines to follow or adopt Johnson’s ruling.

It follows, accordingly, that based upon the above described compelling and unrefuted “safety” evidence submitted in the instant case, the undersigned finds NALC has sustained its burden of proving by a preponderance of the evidence:

1. That by prohibiting Birmingham Letter Carriers the right to carry with them a personal cell phone while on their delivery routes, which, in turn, forecloses their ability to promptly and safely report crimes, vehicle breakdowns, accidents and other emergencies, the current Birmingham Cell Phone Policy constitutes, and/or has caused or contributed to, or brought about, or enhanced, whether potentially or otherwise, an “unsafe condition” or unsafe working condition as such terms are stated, applied and referred to within Articles 14.1 and 14.2. of the National Agreement. And, thus,
2. The grieved Birmingham Cell Phone Policy is in violation and/or violative of the language, intent, safety goals and requirements of the National Agreement’s Article 14 in general, and particularly 14.1. and 14.2. which mandate that USPS “provide safe working conditions,” and correct “unsafe conditions.”

Article 41.3-H

Article 41.3-H’s language recognizes and provides that NALC representatives and officials “should be permitted to use available telephones” for calls relating to the administration of the National Agreement. Based upon this language, and separate and apart from its Article 14/safety evidence, NALC asks that the undersigned strike the Birmingham Cell Phone Policy based upon two additional and overlapping arguments and claims.

First, it contends the words and language "should be permitted to use available telephones" stated in 41.3-H includes cell phones. And second, the Birmingham Policy's total prohibition of cell phones "within the workplace" inhibits, frustrates and violates the ability of its officials and stewards to timely and effectively administer the contract.

It is suffice to say that uncompelling evidence was submitted by NALC in this matter establishing, 1) the Postal Service's violation of 41.3-H and/or that its language "should be permitted to use available telephones" includes cell phones, and/or 2) the Birmingham Cell Phone Policy has measurably or unreasonably impacted its ability to administer the contract. Accordingly, all such claims and demands by NALC encompassing Article 41.3-H are denied.⁴

AWARD & REMEDY

On the record submitted and the above, the instant grievance as it pertains to Article 14 is sustained, and as it pertains to Article 41.3-H is denied. Accordingly,

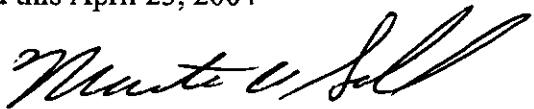
1. Effective Saturday, June 1, 2004, the grieved Birmingham Cell Phone Policy shall become null and void and unenforceable.
2. In its place, Birmingham's Postmaster, at his discretion, may adopt the above quoted Alabama Cell Phone Guidelines, or implement a new or revised local cell phone policy, provided however, the language and application of such new or revised local policy:
 - a) shall not prohibit Birmingham Letter Carriers from possessing or carrying a personal cell phone while in an on-duty or off-duty status whether in the workplace or while on delivery routes. However, while on-duty, the Postmaster, at his discretion may require the cell phone to be turned off or put on vibration or silent mode.
 - b) nor shall such new or revised policy prohibit Birmingham Letter Carriers from

⁴ This denial, on the other hand, shall not, nor be interpreted to stop or foreclose NALC from again grieving its cell phone claims and demands pertaining to Article 41.3-H in future Birmingham cases. To prevail, however, specific, detailed and persuasive testimony and/or documentation must be proffered showing, for example, that USPS facilities outside of Birmingham or Alabama permit cell phones to be used by NALC officials under 41.3-H; that land lines have been removed from Birmingham Postal facilities and to what extent and when; or that phone usage by NALC officials has been denied by Birmingham management including the times, places and circumstances of such denials; and/or that the land lines used by NALC to administer the Agreement are insufficient in number, out of order, constantly busy, or otherwise unavailable.

using a personal cell phone while i] off-duty (i.e., during an official break and authorized lunch or meal period taken in the course of the day while the Letter Carrier is on their delivery route), or ii] to report true emergency situations such as a crime or criminal activity, a vehicle breakdown, malfunction or accident, or other hazardous conditions or situations affecting the Letter Carrier's health, safety or ability to perform his/her work duties and responsibilities and/or to protect and secure the mail.

3. The language of paragraphs 2, 2-a, & 2-b immediately above, is not intended to, nor shall it bar, prohibit or limit the Birmingham Postmaster's discretion to a) further issue mandatory practices pertaining to the safe and proper use or operation of cell phones, or to b) restrict their use within any Birmingham USPS building, and c) to further warn employees that not adhering to such practices, shall be cause for severe discipline. Examples, of such cell phone use practices may include, but are not limited to the following:
 - With the exception to report a true emergency situation, personal cell phones may not be used to receive or make calls and/or shall be turned off, or put on vibration or silent mode while the Letter Carrier, whether on-duty or off-duty, is within a Birmingham USPS building.
 - When authorized for use (i.e., during an official break and authorized lunch or meal period) personal cell phones must only be operated while the Letter Carrier is seated or otherwise stationary and may never be operated while driving a Postal vehicle or a non-Postal vehicle being used for USPS business.
4. The individual decision of a Birmingham Letter Carrier to carry and/or utilize a personal cell phone shall be at no cost or expense to USPS.
5. Based upon the joint assurances of the parties that the use of beepers and pagers by Birmingham Letter Carriers is not at issue or in dispute, it is unnecessary to reach nor rule upon same, subject to paragraph 6 immediately below.
6. The undersigned shall retain jurisdiction only to resolve any disputes which may arise concerning the Postal Service's implementation of this Opinion and Award which is otherwise final and binding.

Signed this April 23, 2004



Martin A. Soll, Arbitrator