C#01409

VOLUNTARY LABOR ARBITRATION

In The Matter of Arbitration Between	) Grievance of:
UNITED STATES POSTAL SERVICE CLEVELAND, OHIO 44101	) ROBERT L. HOLMES) (Supervisors doing bargaining unit work - training or instruction exception - appropriateness of remedy)
and	)
NATIONAL ASSOCIATION OF LETTER CARRIERS BRANCH 40 CLEVELAND, OHIO 44103	)
CASE NO: C8N-4E-C 25076 Robert Holmes Cleveland, OH	) OPINION AND AWARD

APPEARANCES

For The Employer:

Lawrence G. Handy, Labor Relations Executive

Patrick Hanlon, Manager, Station Branch

Arthur Swirskey, Supervisor, Delivery and Collections
(Called by the Union as an adverse witness)

For the Union:

Jack N. Grab, President, Branch 40

Robert L. Holmes, Letter Carrier, and Steward, Shaker Heights Station)

Arthur Swirskey, Supervisor, Delivery and Collection
(Called by the Union as an adverse witness)

ELLIOTT H. GOLDSTEIN
ARBITRATOR
3300 Manor Court
Evanston, Illinois 60203

I. INTRODUCTION

The hearing in this case was held on Friday, September 18, 1981 at the Main Post Office, 301 West Prospect Street, Cleveland, Ohio, 44101, before the undersigned arbitrator duly appointed by the parties pursuant to the rules of the United States Postal Service Regular Regional Level Arbitration Procedures. At the hearing, both parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of all witnesses. The parties stipulated that the case was properly before the arbitrator and that the arbitrator had the authority and jurisdiction to issue a final and binding award in this matter. No formal transcript of the hearing was made and both parties waived the opportunity to file a post-hearing brief.

II. THE ISSUE

"Did the Postal Service violate the 1978 National Agreement (Joint Exhibit 1) and particularly Article I, Section 6 thereof, by having the two supervisors in question (Swirskey and Hanlon) relabel nine carrier cases at the Shaker Heights, Ohio Station?

III. PERTINENT CONTRACTUAL PROVISIONS

ARTICLE I,

SECTION 6, Performance of Bargaining Unit Work

A. Supervisors are prohibited from performing bargaining unit work at post offices with 100 or more bargaining unit employees, except:

1. In an emergency;
2. for the purpose of training or instruction of employees;
3. to assure the proper operation of equipment;
4. to protect the safety of employees; or
5. to protect the property of the USPS.

Also cited by the Union (Union Exhibit 1) as having possible relevance in this matter is Section 121.21 of the M-41 City Delivery Carriers Handbook. This section provides as follows:

121.2 Case Duties

.21 Relabel cases if local management so desires, as required by route adjustments and changes in delivery.

IV. THE FACTS

Grievant is a regular fill-time carrier on Route 37, Shaker Heights Station, Cleveland Post Office, and is also the NALC Steward at this station. This grievance is in the nature of a class grievance concerning whether supervisors Swirskey and Hanlon improperly relabeled nine carrier cases, including Homes' own case, during September, 1980. According to the testimony presented, Supervisor Hanlon had become manager, station and branches, Shaker Heights Station on February 11, 1980. As soon as Hanlon took over as Station Manager, he began to insist that the carrier's cases be relabeled in accordance with what the Service denominates MIP/SOP (Method Improvement Program/Standard Operating Procedure). According to the testimony of Supervisor Swirskey, discussion and instruction by supervision to get the carriers' letter cases in compliance with MIP/SOP had actually begun prior to February, 1980, when Hanlon took over as branch manager.

The circumstances surrounding this grievance are extremely simple and relatively undisputed. From February, 1980 on, Hanlon and Swirskey nagged, scolded and told the carriers that they should

get their cases in compliance with MIP/SOP. Absolutely no evidence was presented that the interaction between the two supervisors and the carriers concerning the relabeling question was ever more than individual requests (rather than direct orders to the group) to relabel to get into compliance with the standard Postal Service procedure. Supervisor Swirskey asserted that he ordered individuals so to do, but conceded on cross-examination that his orders never were tied to a threat of discipline nor did they constitute a "direct order" in the sense it is usually understood in labor relations, i.e., that the order must be obeyed or some appropriate disciplinary action would be taken by management.

The carriers at the Shker Heights Station, primarily through their Steward, Holmes, countered that the relabeling project should be done all in one instance, either on an overtime basis or through the use of auxiliary help or curtailing of mail to obtain a reduction in street time for the affected carriers. Supervision disagreed with the carriers' position. Instead, the Service maintained that the relabeling project could and should be done during slow periods in five or ten minute increments per day, during the normal office time. Thus, to the Service, relabeling required no overtime or other special help or relief. Both Swirseky and Hanlon strongly asserted that the relabeling project could easily have been done in five or ten minute segments in this manner, and that the carriers were clearly failing to perform work as required by management, in violation of the collective bargaining agreement.

In September, 1980, Supervisor Swirskey relabeled seven carrier cases to comply with MIP/SOP. Station Manager Hanlon relabeled two more cases in this manner. As Swirskey testified, he was motivated to do this relabeling because Hanlon ordered him so to do. Specific causation was an impending annual route inspection to be given on or about October, 1980. Swirskey and Hanlon believe that the route inspection could not have been really accurate unless the letter carrier cases were in compliance with MIP/SOP. Therefore, based on these three factors,(Hanlon's direction, the MIP/SOP requirements, and the impending route inspection) Swirskey relabeled cases as noted Union Exhibit 2.

According to Swirskey, while he was relabeling cases, individual carriers would look at what he was doing, and tell him how dumb or crazy the carrier thought the new system was. One carrier, who was a t that time also a 204(b) supervisor, observed Swirskey's procedures and ultimately relabeled his case to be in compliance with the MIP/SOP standards. No other carrier really asked questions of Swirskey as to methodology; but instead, according to Swirskey, the observing carriers basically ridiculed the system or indicated that they could not do this work in five or ten minute segments. As noted above, this was consistent with the carrier's posture in this matter from the time the project was first suggested, either the prior February, or perhaps at an even earlier date. Swirskey testified as to no group meetings, or group instructions or demonstrations concerning how to relabel cases during the time he engaged in relabeling. At best, his testimony suggests that he answered questions (or would have answered questions if propounded) <u>while doing what all parties concede</u>

was ordinarily bargaining unit work.

Hanlon's testimony on the above-described points basically tracks Swirskey's testimony. According to Hanlon, he relabeled two cases to get them in compliance with MIP/SOP as primarily an act of frustration based on the carrier's lack of cooperation with his suggestions from February through August, 1980. Hanlon strongly maintained that relabeling could have been done in five to ten minute segments during normal work hours, especially during "under time" periods when mail was light (for example, in August). Hanlon testified that he only stopped relabeling cases when called on it by Steward Holmes. Hanlon believed at that point that he was on shaky ground in continuing the relabeling and broke off this action. This was just after Holmes' own route case had been relabeled by supervision. Some time later (March through April, 1981) Gene Keeling, a full-time carrier relabeled the remaining fourty-two letter cases at the Shaker Heights Station. This job took approximately 200 man hours of work. While Keeling was doing this task, a substitute for his route was arranged was arranged and Keeling performed the task approximately five hours per day. The remainder of his work day (approximately two hours) was worked in the higher 204(b) acting supervisory status. Keeling was paid on a straight time basis.

The Union asserts that each relabeling job for a particular case should have taken approximately eight hours time. The Union's testimony reveals that this figure was established at a meeting of the carriers at the station and their best estimate as to how

long the project should take. Evidence presented by supervisor Swirskey with reference to the time involved was that a case could be relabeled in from four to five hours. Actual time utilized by Keeling in relabeling showed that the task took approximately five hours per case. Thus, the actual evidence presented sharply differs from the Step 2 answer dated November 12, 1980 (Joint Exhibit 2, page 4). In the Step 2 answer, management contended that only three cases were relabeled by supervisors and that these cases were relabeled for model and instructional purposes, pursuant to Article I, Section 6 (A) 2 exception to the proscription against supervisors doing bargaining unit work. From the testimony actually presented at hearing, there is no question that nine letter carrier cases were relabeled and that no group instruction or demonstration was either intended or actually occurred.

V. CONTENTIONS OF THE PARTIES

A. The Union

The Union's theory can be set forth quite succintly. First, the Union contends that it hs overwhelmingly proved its case that there were nine carrier cases involved and that management admitted that Swirskey and Hanlon relabeled them. Moreover, the Union notes that there is no dispute that this work under ordinary circumstances is bargaining unit work. Of course, there is no question that the bargaining unit involved here contains more than 100 employees.

Second, with reference to the remedy proposed here, the Union notes that even management concedes that relabeling a case takes from four to five hours work time. Actual work time involved

was at least five hours for Mr. Keeling, the man who actually performed the work. In addition, Keeling was removed from his route to do these tasks, not in five to ten minute segments but in five hour blocks of time, stretching over a three month period. This clearly contradicts management's assertions concerning the matter at issue, the Union contends. The Union's evidence, is based in part on a compilation of opinion from all the carriers present at the station. This evidence reveals that the carriers believe the eight hours work is in reality necessary to properly relabel a mail case according to the MIP/SOP standards.

Most important, the Union emphasized that the evidence presented shows absolutely no use of the relabeled cases for either a demonstration or instructional purpose. Clearly nine cases were relabeled, not two or three cases, which might have had some instructional base. It is clear from uncontested testimony that the primary motivation was to get relabeling done for the annual route inspection and not to instrct the carriers in how to relabel, as management asserts. Since it is conceded that relabeleing cases is bargaining unit work (See Section 121.21 of the M-41, quoted above and introduced as Union Exhibit 2), there is no question that this grievance should be sustained in its entirety. Supervisor Hanlon conceded this fact when he admitted that he broke off relabeling only when called on it by Union Steward Holmes. At that point, Hanlon perceived that he was on "shaky ground", precisely because he was in fact totally wrong in his actions.

Accordingly, this grievance should be sustained in its entirety.

B. The Employer

The Employer asserts that the Union has clearly failed to meet its burden of proof in this matter.

First, management notes that the carriers involved herein were clearly instructed, told and directed to do the relabelling involved herein for nine months or more prior to management's contested action. Moreover, Supervisor Swirskey testified that he gave direct orders that the work should be done. Moreover, management presented credible testimony which revealed that the work could have been done in five to ten minute segments during ordinary work hours. To management, the letter carriers understood what to do in this situation, but instead chose to attempt to obtain improper overtime for work that could clearly have been appropriately scheduled during the normal work day. Supervisor Hanlon suggested that the relabeling could have been done during slow times and especially during August. Therefore, the relabeling by supervision was proper in spirit, especially when viewed in the light of the upcoming and impending October annual inspection.

Second, management asserts that since the carriers were refusing to perform work as instructed, the situation made it necessary to provide instruction and training to carriers to show them how to label their cases. This necessity resulted in supervisors Swirskey and Hanlon relabeling nine carrier cases while individual carriers looked on and either asked questions, (1 carrier), or made light of the situation (all the rest of the carriers). Although the carriers did not respond to the good faith training and demonstration provided by management, the ap-

propriateness of this training cannot be contested, management asserted.

With reference to the remedy issue, management contended that there is no question that no additional work hours were required. Both Swirskey and Hanlon credibly testified that this was in fact so. Obviously, the work could have been done over the nine or more months involved herein, and especially during slow times, in the five to ten minute segments requested by management. Employer Exhibit 1, a precedent settlement involving management doing bargaining unit work in violation of Article 1, Section 6a, shows that hours worked by management shall be paid only"for the time involved at the applicable rate" and to the carrier or carriers "who would have been assigned [by management] the work in question." Since no additional work hours were really necessary, and the office time of each carrier was ample, there is no damage involved herein, even if a violation of the contract is found. However, in the alternative, management has the right to assign the work to the carrier or carriers it determines should have done the work. In this case, management strongly asserts, the obvious choice for the work was carrier Keeling. Therefore, any applicable monetary remedy should go to Keeling, and not to the Grievant and the eight other carriers whose cases were actually relabeled by the Supervisors involved.

Last, management asserts that, at any rate, since the work could have been done during regular hours (by curtailing mail, by auxiliary help, or by the use of a substitute and one designated carrier to do the job, as Keeling was in fact designated), the

remedy must be granted as straight time and certainly not on the overtime basis improperly demanded by the Union.

For all the foregoing reasons, this Grievance should be denied in its entirety, management asserts.

VI. DISCUSSION AND OPINION

After careful consideration of the matter, including the analysis of the evidence on the record and the inherent probabilities of the testimony given, I find for the Union and sustain this Grievance in its entirety.

From the documentation supplied, and the testimony actually presented at hearing, the Union has clearly proved that the two supervisors involved herein were doing bargaining unit work in violation of the applicable contract section. Moreover, as must be obvious from reading the above summary of facts and contentions of the parties, management in this matter has completely failed to present convincing evidence in support of its position that the relabeling of the nine carrier cases involved was in fact done for instructional or demonstrational purposes, so to fall into the exception contained in Article I, Section 6(2). No groups of employees were brought together to view the relabeling process. No demonstration or instruction was given by either supervisor as to how to relabel according to the standards of MIP/SOP. Instead, the management witnesses themselves show that the primary motivation here was to get the work of relabeling done in time for the annual route inspection. This is clearly a bargaining unit task, even if the particular employees refuse to perform it. Management has ample powers under the disciplinary clauses of the National

Agreement to deal with insubordination or failure to perform work. The fact that no evidence of a substantial nature could be garnered at hearing to show that a direct order - including threat of discipline, implied or actual - was given to the carriers, further undercuts management's position that instruction or demonstration was needed to get relabeling underway.

This Arbitrator is obviously not in any way making a finding concerning the underlying dispute in this manner, i.e., whether the relabeling work should have been done during ordinary work hours in five to ten minute segments or whether it should have been done all at once, either on an overtime basis or with auxiliary help for the involved carriers and/or the curtailment of mail and resulting shortening of street time. That question would be an entirely different grievance. This Arbitrator notes, however, that the path management chose here was obviously not to directly confront this issue, but instead to attempt to do the work themselves, primarily with the view of being in good shape for the impending annual inspection. Such actions fall within the forbidden zone of Article I, Section 6(a) and the two supervisors clearly violated this section by their actions. Indeed, station manager Hanlon was correct in his fear that he was on shaky ground when he was called for his actions by Union Steward Holmes.

The real issue in this case is, then, not the merits but the remedy involved. Management strongly asserts that the work could have been done during the normal work hours by each involved carrier, and that therefore there is a technical violation, at best, requiring no remedy. I agree with the Union that management's

actions herein - including its failure to use discipline available to it - meant that the work was in fact done in five hour blocks of time, and not five to ten minute increments. I therefore find that the case relabeling for the nine cases deprived bargaining unit employees of five hours work per case or a total of 45 hours work. Moreover, I find unpersuasive the employer's contention that Keeling would have been assigned this work in the first instance. Station manager Hanlon quite clearly testified to the contrary and stated that he only assigned Keeling to work several months later, when fear of contract violation stymied Hanlon's first preference. It is quite clear from the facts that Hanlon desired each carrier to relabel his own case at the relevant time involved herein. Therefore, the full-time regular carriers involved herein, as set forth on Union Exhibit 2, were each deprived of five hours bargaining unit work by Hanlon's inappropriate action. Employer Exhibit 1, the precedent settlement relied on by management, is not inconsistent with this finding in any way, I believe.

I part company with the Union in its assertion that over or a permium rate is involved herein. Certainly, station manager Hanlon was consistent in his posture that the work involved herein could have been done during normal work hours. Even viewing the Union's argument in its best light, the affected Grievants herein should have been allowed to curtail mail or, in management's discretion, could have received auxiliary help to cut down street time to allow the requisite office time for the relabeling. Therefore, an overtime remedy is not appropriate under these facts. I so hold.

VII. AWARD

1. The Grievance is hereby sustained.

2. Each carrier named on Union Exhibit 2 is entitled to five hours pay at straight time for the work done on his or her case by supervisors Swirskey and Hanlon, in violation of Article I, Section 6(a).

January 6, 1982
Evanston, Illinois

ELLIOTT H. GOLDSTEIN
Arbitrator