

C# 10910

**WESTERN REGION
REGULAR ARBITRATION PANEL**

In the Matter of the Arbitration))) -Between-)) UNITED STATES POSTAL SERVICE)) -And-)) NATIONAL ASSOCIATION OF) LETTER CARRIERS, AFL-CIO) _____)	GRIEVANT: Class POST OFFICE: Canoga Park, CA CASE NO: W7N-5T-C 26753 NALC GTS NO: 16634
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BEFORE: CARL B.A. LANGE III, Arbitrator

APPEARANCES:

For the U.S. Postal Service: DONALD E. VANNOY, JR.
Regional Labor Relations Executive
13031 West Jefferson Boulevard
Inglewood, CA 90311-9203

For the Union: MANUEL L. PERALTA, JR.
Regional Administrative Assistant
3636 Westminster Avenue, Suite A
Santa Ana, CA 92703

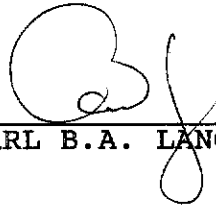
Place of Hearing: 8201 Canoga Avenue
Canoga Park, California

Date of Hearing: February 6, 1991
Record Closed: March 16, 1991

AWARD:

Management did not follow the letter and spirit of Arbitrator Lange's Stipulated Award in cases W7N-5T-C 16324 and W7N-5T-C 16325, dated May 21, 1990. The Vehicle Operations-Maintenance Assistant position at the Canoga Park Post Office shall be awarded to David Bellum consistent with the terms of this Award.

Date of Award: June 10, 1991



CARL B.A. LANGE III

BACKGROUND
(Class Grievance - VOMA Promotion)

Pursuant to the terms of the National Collective Bargaining Agreement ("National Agreement") between the **UNITED STATES POSTAL SERVICE** ("Service" or "Employer"), and the **AMERICAN POSTAL WORKERS UNION, AFL-CIO** ("APWU" OR "Union"), and the **NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO** ("NALC" or "Union"), the undersigned was selected from the USPS/NALC Western Region Regular Arbitration Panel to serve as the Arbitrator in this matter.

This matter arises out of a "Stipulated Award" rendered by the undersigned Arbitrator in two prior grievances, case numbers W7N-5T-C 16324 and W7N-5T-C 16325. The grievants in the two original cases had challenged the Service's determination that neither one of them satisfied the "minimum qualifications" for a bid to the Vehicle Operations-Maintenance Assistant ("VOMA") position at the Canoga Park Post Office. Instead, the Service promoted a junior qualified employee to the position. The VOMA position is a level 6 "senior qualified bidder" position. Prior to the appointment of the junior employee, there had been three other attempts to fill the VOMA job at Canoga Park. Each of the prior attempts had been challenged by the Union as procedurally defective, each challenge had been upheld, and each time the process was redone.

According the Stipulated Award, at the hearing on May 15, 1990, it became apparent to all parties that:

" . . . [p]rocedural errors during the applicant screening process denied the Grievants' right to appropriate consideration of their bids for the VOMA position."

In addition, the bid documentation that had been reviewed by management during the selection process were unable to be located, notwithstanding the requirement of the "Personnel Operations Handbook" ("EL-311") that bid documentation be maintained for two years. Since the documentation was not available at the hearing, the Arbitrator was unable:

" . . . to make an independent determination as to whether either, or both, or neither, of the Grievants meets the minimum qualifications for the VOMA position."

Following settlement discussions, representatives of the Service and the Union agreed, in the form of the above-referenced Stipulated Award, to a procedure whereby the Grievants would be:

" . . . given an opportunity to apply for and to be considered for the VOMA position on the basis of 'senior qualified' pursuant to Chapter 5 of the 'Personnel Operations Handbook' (EL-311)."

The procedural aspects of the Stipulated Award provided that (1) each Grievant would "resubmit a PS Form 1717, 'Bid for Preferred Assignment'" along with a statement of "'current information' pursuant to Section 511.6 of the EL-311"; (2) the Service would select three impartial people from outside of the Van Nuys Division "who are knowledgeable of and experienced with the selection procedures set forth in the EL-311"; (3) the panel would be charged with the determining if either one of the Grievants satisfied "the requirements for 'minimum qualifications'" for the VOMA position. The panel's task would consist of reviewing the "Official Personnel File of each Grievant as well as the 'current information' offered in support of each bid." The Stipulated Award contemplated that, based on the panel's review, the dispute over who was appropriately determined to be the senior qualified bidder for the Canoga Park VOMA position finally would be settled.

The panel, which was comprised of a Manager of Vehicle Programs, a Superintendent of Postal Operations, and a Postal Operations Analyst, all from the Long Beach Division, met in mid-July of 1990 for the purpose of implementing the terms of the Stipulated Award and reconsidering the bids of the two original applicants. The panel ultimately determined that neither of the applicants satisfied the minimum qualifications for the position. The Union challenged that determination through the grievance procedure.

An evidentiary hearing commenced on February 6, 1991, at the postal facility located at 8201 Canoga Avenue, Canoga Park, California. The Service was represented by Don Vannoy, Regional Labor Relations Executive. The Union was represented by Manuel Peralta, Regional Administrative Assistant. The parties agreed that there were no issues of procedural or substantive arbitrability to be resolved and that the matter was properly before the Arbitrator.

During the course of the hearing, the parties were afforded a full and complete opportunity to be heard, to call, examine and cross-examine witnesses, to develop arguments, and to present relevant evidence. All witnesses who appeared before the Arbitrator were duly sworn. David Bellum and Charles Darby, on whose behalf the Union carried the instant grievance, were present at the hearing. Each testified on his own behalf.

An official transcript of the hearing was not made. The parties submitted post-hearing briefs. The Union's Post-hearing Brief, accompanied by an arbitration award in support of its position, was received by the Arbitrator on March 4, 1991. The Service's Post-hearing Brief, also accompanied by supporting material, was received by the Arbitrator on March 16, 1991. The matter was deemed to be submitted for decision as of March 16, 1991, upon receipt of the Service's Post-hearing Brief.

The Issue

The parties stipulated that the issue to be determined should be stated as:

"Did management follow the letter and spirit of Arbitrator Lange's Stipulated Award in cases W7N-5T-C 16324 and W7N-5T-C 16325, dated May 21, 1990?

"If not, what is the appropriate remedy?"

Relevant Stipulations

At the beginning of the hearing, the parties agreed to several relevant stipulations as follows:

1. The review panel reviewed the Arbitrator's Stipulated Award.
2. The panel was provided, for its review, the material enumerated in the June 22, 1990, letter from Margaret Ross.
3. The "updated supervisory evaluations" were provided under separate cover.
4. Neither of the Grievants was interviewed by the review panel.
5. Each of the Grievants followed the applicable provisions of the EL-311 in the submission of their applications for the VOMA position.
6. The person who designated the review panel members, Mr. Shapiro, is the uncle of the Winnetka (Canoga Park) Station Manager, Mr. West.

The Union's Position

The Union claims that the information submitted by the Grievants was not considered by the review panel in a fair and objective manner. The Union asserts that the panel's determination that neither Bellum nor Darby met the minimum qualifications for the VOMA position was a pretext designed to protect the status quo, i.e., the appointment of a less senior qualified employee. The Union points out that the impartial panel did not interview either Bellum or Darby, even though both of them had been interviewed by the selection panels in each of the earlier bid review processes. The Union further argues that communication between the review panel and management at the Canoga Park Post Office tainted the determination process. Finally, the Union asserts that both Bellum and Darby meet the minimum qualifications for the VOMA position.

As to the remedy, the Union requests that the Arbitrator designate one of the Grievants as the Canoga Park VOMA. Further, the Union requests the assessment of a 50% straight time premium for each hour worked since June 21, 1990, which was 30 days following the date of the Stipulated Award, as a penalty for the additional delay in the designation of one of the Grievants as the most senior qualified bidder.

The Service's Position

The Service argues that the review panel followed the criteria of the "Personnel Operations Handbook" as it reviewed the Grievants' bids for the VOMA position, that the panel properly considered "updated supervisory appraisals" pursuant to section 522.25, and that the panel used the Stipulated Award "as a guideline."

The Service objects to any consideration by the Arbitrator of what it characterized as "additional documentation" regarding the Grievants' qualifications that was submitted for the first time at the arbitration hearing. In support of that argument, the Service asserts that the information contained in Union Exhibits 1-5 related to the original grievances cited in the Issue Statement and should not be considered "current information" as that term is used in the Stipulated Award.

The Service answers the Union's allegations regarding the panel's failure to conduct interviews of the Grievants by pointing out that both had been interviewed "at least two previous times and were not selected for the VOMA position." The Service posits that "it is hard to imagine that an interview would make any difference."

Finally, the Service argues that:

" . . . an Arbitrator should not substitute his judgement in place of the Review Panel recommendation. Rather, a finding for reversal should be based upon any procedural errors."

Relevant Provisions of the National Agreement

The 1987-1990 National Agreement between the United States Postal Service and the American Postal Workers Union, AFL-CIO, and the National Association of Letter Carriers, AFL-CIO, (Jt. Exhibit 1) provides:

"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 in 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 15

"GRIEVANCE-ARBITRATION PROCEDURE

"Section 1. Definition

"A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

"Section 2. Grievance Procedure - Steps

"Step 1:

"(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or Union representative. . . .

"(d) The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:

- "1. Detailed statement of facts;
- "2. Contentions of the grievant;
- "3. Particular contractual provisions involved; and
- "4. Remedy sought.

"Step 2:

"(a) The standard grievance form appealing to Step 2 shall be filed with the installation head or designee. In any associate post office of twenty (20) or less employees, the Employer shall designate an official outside of the installation as the Step 2 official, and shall so notify the Union Step 2 representative.

...

"(h) The Union may appeal an adverse Step 2 decision to Step 3. Any such appeal must be made within fifteen (15) days after receipt of the Employer's decision unless the parties' representatives agree to extend the time for appeal. Any appeal must include copies of (1) the standard grievance form, (2) the Employer's written Step 2 decision, and, if filed, (3) the Union corrections or additions to the Step 2 decision.

"Step 3:

"(a) Any appeal from an adverse decision in Step 2 shall be in writing to the Regional Director for Human Resources, with a copy to the Employer's Step 2 representative, and shall specify the reasons for the appeal.

...

"(d) The Union may appeal an adverse decision directly to arbitration at the Regional level within twenty-one (21) days after the receipt of the Employer's Step 3 decision in accordance with the procedure hereinafter set forth; provided the Employer's Step 3 decision states that no interpretive issue under the National Agreement or some supplement thereto which may be of general application is involved in the case.

...

"Section 3. Grievance Procedure - General

"A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in settlement or withdrawal of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end.

...

"Section 4. Arbitration

"A. General Provisions

...

"5. Arbitration hearings normally will be held during working hours where practical. Employees whose attendance as witnesses is required at hearings during their regular working hours shall be on Employer time when appearing at the hearing, provided the time spent as a witness is part of the employee's regular working hours.

"6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. . . .

...

"9. In any arbitration proceeding in which a Union feels that its interests may be affected, it shall be entitled to intervene and participate in such arbitration proceeding, but it shall be required to share the cost of such arbitration equally with any or all other Union parties to such proceeding. Any dispute as to arbitrability may be submitted to the arbitrator and be determined by such arbitrator. The arbitrator's determination shall be final and binding.

..."

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.

..."

Relevant Provisions of the Personnel Operations Handbook

The Personnel Operations Handbook ("EL-311") provisions that relate to the instant matter (Jt. Exhibit 3) state:

"Chapter 5

"Assignment, Reassignment, and Promotion

"510 General Policies

...

"511.3 Eligibility

"511.31 Type of Appointment. An employee serving under a career appointment is eligible for reassignment or promotion. An employee serving under a temporary or casual appointment is not eligible for promotion.

...

"511.5 Selective Factors

...

"511.53 Documentation

...

"511.532 Records. In all cases where selective factors are used, the installation must keep records documenting the reasons for their use as well as the measuring criteria. The documents should be annotated and signed by the installation head or designee to show that the factors were analyzed and that a judgement was made regarding their acceptability. The annotated and signed documents should then be filed at the installation. To support job relatedness, the documentation should be kept for a period of 2 years from the time it was used for a selection. See 265.3 for use of selective factors in making appointments from a register.

"511.6 Current Information. Employees are responsible for providing current information about their experience, education, training, and other qualifications in order that their personnel records are up-to-date. Employee relations personnel must furnish employees any assistance needed in properly documenting this information.

...

"525 Selection Procedures

"525.1 General

...

"525.112 Many positions which are filled through the bidding procedure on a senior qualified basis (e.g. Accounting Clerk, Bulk Mail Clerk, Personnel Clerk) have a qualification standard which differs markedly from the standards for entry level positions. Responsible officials must insure that successful bidders meet the minimum qualifications. . . .

"525.12 Senior Qualified Craft Positions. Seniority determines the relative standing of the career employee who is qualified and eligible to bid for such positions. Selections are made on the basis of seniority among those employees who meet the minimum qualifications.

...

"525.2 Evaluation

...

"525.22 Evidence. The evaluation process consists of determining the degree to which each element of the qualifications is met. In making this determination, all pertinent evidence must be considered. Pertinent evidence may include interviews, supervisory appraisals, the written application specifying experience and training (after checking for accuracy), certificates of course completion (accompanied by the school catalog specifying course content when requested), examination results, personnel records, and any other evidence tending to show that the employees does or does not possess the required qualifications.

...

"525.3 Ranking

"525.31 Determining Factor. If the position is one to be filled on a senior qualified basis, seniority is the determining factor in ranking qualified bidders.

..."

ANALYSIS AND CONCLUSION

The instant matter is similar to a regular contract interpretation case where an Arbitrator is called upon to review the Employer's application of the terms of a written agreement to a specific fact situation. Unlike a regular contract case, however, in the instant matter the Arbitrator himself played a role in the creation of the document, the Stipulated Award, that is the subject of the dispute. In such a situation, the Arbitrator's understanding of the foundational aspects of the document may constitute a fundamental

factor in the ultimate determination as to adherence, or the lack thereof, to the terms (the "letter") of the Stipulated Award.

In a case such as the instant matter, the first concern must be a determination as to whether the terms of the Stipulated Award are clear and unambiguous. If they are, then the Employer's actions will be reviewed on the basis of their adherence to those terms. At no point during these proceedings has either party asserted that any of the specific terms of the Award were either unclear or ambiguous.

As set forth in the "Background" discussion, the Stipulated Award arose out of an earlier arbitration proceeding on the separate grievances of Mr. Bellum and Mr. Darby, when it became apparent that "the Grievants' right to appropriate consideration of their bids for the VOMA position" at the Canoga Park Post Office had been denied. The Award created a three-member panel of "impartial individuals" that was comprised of managers from outside of the Van Nuys Division. The panel's unusual composition was determined to be necessary in order to reduce the potential that the selection process might be influenced by the desire to ratify an earlier selection and to maintain the status quo at Canoga Park. Thus, the "spirit" of the Award was to ensure that the Grievants' bids for the VOMA position would be considered in an atmosphere that was free of the perception of preconceived bias or favoritism.

In the Arbitrator's opinion, the process utilized by the panel in the implementation of the Stipulated Award failed to comply with the "letter and spirit" of the Award. With regard to the "letter" of the Award, paragraph 3 specifically required, as a part of the process, that the panel's consideration of the bids include a "review of the Official Personnel File of each Grievant as well as the 'current information' offered in support of each bid." Mr. Cullen, a member of the panel, testified in a straightforward and credible manner as to his belief that:

" . . . the panel followed the 'letter and spirit' of [the] Award. They considered the job description, bid notice, qualification packages and supervisor's updated evaluations and information submitted by applicants in determining the grievants' qualifications . . . consistent with the provisions of the EL-311 which has been identified as the criteria for selection procedures . . . " (Service Post-hearing Brief, at page 7)

However, Cullen also testified, on direct examination and on cross examination, that the panel did not review the Official Personnel File ("OPF") of either Mr. Bellum or Mr. Darby. Another panel member did not recall seeing the OPFs at any time during the review process. Both panel members testified that telephone contacts were made with Canoga Park for additional information and clarification regarding the evaluations. On the one hand, the panel considered less than what was specifically required by the specific terms of

the Award when it did not review either Bellum's or Darby's OPF. Yet, on the other hand, the panel considered more than what was required by the specific terms of the Award when it reviewed the supervisor's updated evaluations and subsequently contacted Canoga Park management.

As indicated throughout this "Analysis and Conclusion," the "spirit" of the Stipulated Award was based upon the premise that the Canoga Park Post Office, as well as the Van Nuys Division, would be excluded from involvement in the review process since each had an actual or perceived interest in maintaining the status quo and in preserving the selection of a less senior applicant. The panel left the process open to allegations of tampering and improper influence when the Canoga Park station was contacted for additional information and clarification relative to the bidders. The panel members testified that consideration of the supervisor's updated evaluations and personal contacts with management at Canoga Park definitely influenced their ultimate conclusion that neither bidder satisfied the minimum qualifications.

Assuming for the purposes of argument, that the "supervisor's updated evaluations" (Jt. Exhibit 4, pp. 5, 20, 21) and the direct contacts with Canoga Park management were an acceptable part of the "evaluation process," the panel should have sought additional "pertinent evidence" or interviewed the bidders in order to assure that they had given the required "appropriate consideration" before the final determination was made. The Stipulated Award did not suggest that any of the other review activities listed in section 525.22 of the EL-311, cited on page 9 above, were to have been utilized. The Award only required that the panel be "knowledgeable of and experienced with the selection procedures set forth in the EL-311."

The EL-311 does not mandate that bidders be interviewed or even that a selection panel gather other "pertinent evidence" on its own. In this case, the futility of a requirement that the bidders be interviewed in light of the negative supervisory evaluations is buttressed by the assertion in the Service's Post-hearing Brief (at pages 8-9) that:

" . . . it is hard to imagine that an interview would make any difference in this instant case, since the applicants were interviewed at least two previous times and were not selected for the VOMA position."

In other words, regardless of what might be raised or discussed in an interview setting, nothing would change the basic assumption that neither bidder satisfied the minimum qualifications for the position.

In the Arbitrator's opinion, the panel itself did not exhibit any preconceived bias against either of the bidders. And, the panel's deliberations seemed to be free of favoritism toward the current

Canoga Park VOMA. While the panel was supposed to be as impartial as possible in its deliberations, it was not acting in a vacuum. The panel had to realize that the use of Long Beach Division management employees to determine who would be the VOMA at an installation in the Van Nuys Division was out of the ordinary. The panel members had reviewed the Stipulated Award. Based on the preamble to the Award, they were informed that the prior selection processes had been flawed and that the process established by the Award had to be as free from procedural and substantive errors as possible.

In the context of the instant matter, the panel's failure to review Mr. Bellum's and Mr. Darby's OPFs as required by the specific terms of the Stipulated Award, in conjunction with the interaction between panel members and Canoga Park management, effectively denied the "appropriate consideration" that the respective applications deserved and that the "letter and spirit" of the Stipulated Award contemplated. Although it may have been possible to overcome the technical failure to review the OPFs by requesting that Bellum and Darby provide additional "pertinent evidence" or clarification in support of their applications, no such request was made. As a result, the bidders were not provided an opportunity to have their applications reviewed in atmosphere free from the perception of preconceived bias or favoritism (i.e., the influence of the Canoga Park station) as required by the "spirit" of the Award. Thus, the "spirit" of the Award was compromised and the entire Award was rendered meaningless.

In many instances, an Arbitrator would remand an issue of this type to another selection panel in order to allow the Employer to benefit from a selection panel's experience and expertise in such matters. As Arbitrator Fogel pointed out in case number W4N-5H-C 34956, Roseville, California (November 1, 1988), the judgements as to which bidders do or do not meet the minimum qualifications for a position properly reside with the management officials who make up the selection panel. The panel's judgements must be reasonable and must not be arbitrary or capricious. In addition, Fogel stated that:

" . . . at a minimum, Management must be able to articulate logical bases for distinguishing between who is qualified and who is not."

Arbitrator Dennis, in case number N4N-1J-C 16572, South Hadley, Massachusetts (November 14, 1987), noted:

" . . . based on reasonable standards and a fair evaluation of each bidder's known qualifications, Postal Management has the right to make the decision as to who is qualified for the job and who is not."

Where the history of a grievance suggests that the ultimate result of a remand would be the same (i.e., for whatever reason or

reasons, it would be determined that the bidders did not meet minimum qualifications), an Arbitrator often will interpose his or her judgement in order to bring the dispute to a conclusion.

As to the matter of whether either or both of the bidders meet the minimum qualifications for the VOMA position, the Arbitrator is required to independently consider the documentation that has been utilized through the course of the latest bid review process, as well as relevant testimony and evidence introduced during the subsequent challenges through the grievance procedure. At this point, the Arbitrator's consideration is restricted to an attempt to determine whether the documentation, testimony, and evidence indicates that either bidder satisfies the stated minimum qualifications.

As Mr. Bellum is the senior of the two bidders, it is appropriate to consider his application and supporting documentation first. If the Arbitrator's review indicates that Bellum meets the minimum qualifications for the position, then he must be designated as the Canoga Park VOMA. At that point, it would be unnecessary to consider Mr. Darby's bid in order to properly conclude this matter.

Written information regarding Bellum's application for the position is contained in Joint Exhibits 2 and 4, and in Union Exhibits 1, 2, 4 and 9. As indicated in the "Background" portion of this Award, the Service vigorously objected to the admission of Union Exhibits 1 through 5. Since Union Exhibits 3 and 5 relate to Mr. Darby, the Service's objections to those documents will not be addressed at this point. With regard to Union Exhibits 1, 2 and 4, the Service argues that those documents "were a part of the initial grievance." As such, the Service asserts, they do not constitute the "current information" referenced in the Stipulated Award and, further, are not "current information" as that term is utilized in section 511.6 of the EL-311. The Service argues that the Union is seeking:

" . . . to introduce documents in arbitration that are not current in an attempt to claim Management did not consider all information relative to the grievants' qualifications."

In the opinion of the Arbitrator, the Service's objections are not well founded. Union Exhibit 1, is a copy of the "Supervisor's Recommendations" page from a "Postal Service Form 991, Application for Supervisory Position." At the hearing, both parties agreed that the panel created by the Stipulated Award did not consider the document. The agreement is consistent with the testimony that the panel did not see or review the contents of Bellum's OPF, where the document logically would have been located. Even if the document was not in Bellum's OPF, it was signed by Mr. Lambert, as the Station Manager of Winnetka Station in Canoga Park. The Service, through Lambert and his next higher level manager, was aware of the document's existence and of its content. Lambert was the author of one of the "updated supervisory evaluations" that was relied on by

the panel for its determination that Bellum did not meet the minimum qualifications. The form is dated April 26, 1989, below the signatures of Lambert and the Canoga Park SPO. Contrary to the Service's assertion, Union Exhibit 1 is admissible as "current information" as that term is referenced in the Stipulated Award and as it is utilized in section 511.6 of the EL-311. In addition, the document is admissible for purpose of testing the consistency and veracity of the updated supervisory evaluation written by Lambert.

Union Exhibit 2 is a copy of the "moving papers" in grievance case number W7N-5T-C 16324, cited above, that resulted in the Stipulated Award. The question of whether the panel considered Union Exhibit 2 during its deliberations is not relevant to the issue of its admissibility in this proceeding. As the grievance document that is the progenitor of the Stipulated Award, Union Exhibit 2 is admissible in a proceeding related to or arising from the terms of that Award. Whether any of the facts or assertions contained in Union Exhibit 2 are relevant to a determination that Bellum meets the minimum qualifications is addressed in the following analysis of his application.

Union Exhibit 4 is a copy of Mr. Bellum's "Application For Federal Employment" which is dated August 20, 1963. The document is, or should be, a part of Bellum's OPF. Regardless of the fact that the panel may not have reviewed this document and regardless of the fact that the document is dated more than 27 years ago, it is relevant to any consideration of an application for a promotion (see section 525.22 of the EL-311). Union Exhibit 4 is admissible in this matter.

The qualifications required for the VOMA position are listed on Union Exhibit 10, a Postal Service Form 1796 "Qualification Rating" sheet. The 1796 indicates 12 "elements" of the job that are rated by the person who completes the form. In the order that they appear on the form, the elements are:

- (1) "B-4. Ability to work without immediate supervision."
- (2) "B-5. Ability to perform preventive maintenance."
- (3) "B-10. Ability to maintain records and prepare reports."
- (4) "B-19. Ability to instruct."
- (5) "a. Sufficient knowledge of automotive equipment to evaluate commercial repair invoices."
- (6) "b. Ability to determine the efficiency of motor vehicle assignments and schedules and develop and recommend improvements."
- (7) "Ability to use reference materials."
- (8) "Dexterity and safety in performing common duties of position."
- (9) "Ability to interpret instructions, specifications, etc."
- (10) "Ability to work with others."
- (11) "Ability to plan and organize work."
- (12) "Exemplary attendance."

The elements are rated on a five-step progressive scale from "Not Demonstrated," to "Low," to "Potential," to "Satisfactory," to "Superior." Mr. Bellum's rating by the panel on the form 1796 (Jt. Exhibit 4, p. ??) are set forth in the middle column below. Based on the record of this matter, the Union argues that Bellum should be rated in each of the categories as indicated in the right column:

<u>Element</u>	<u>Panel Rating</u>	<u>Union Rating</u>
(1)	Low	Superior
(2)	Not Demonstrated	Satisfactory
(3)	Low	Superior
(4)	Not Demonstrated	Satisfactory
(5)	Low	Satisfactory
(6)	Not Demonstrated	Superior
(7)	Potential	Satisfactory
(8)	Not Demonstrated	Satisfactory
(9)	Low	Satisfactory
(10)	Satisfactory	Satisfactory
(11)	Not Demonstrated	Satisfactory
(12)	Satisfactory	Satisfactory
Overall:	Not Qualified	Qualified

The Arbitrator's analysis of each of the 12 rated elements for the VOMA position to Mr. Bellum's application follows. The Arbitrator applied the criteria of paragraph C of the "Instructions For Rating Competitors" on the 1796 in his determination of the rating to be applied to each element. In addition, the rationale for each rating is explained in the same paragraph. The ultimate conclusion that Bellum satisfied the minimum qualifications for the position was guided by paragraph E of the "Instructions."

Element #1: B-4. Working without Supervision.

Rating: Potential

Rationale: The April 1989 Form 991 recommendation by Station Manager Lambert (Union Exhibit 1) was positive and indicated potential. It was written at a time when there was no reason to preserve the status quo or to downgrade Bellum. SPO Madrigal agreed with the overall assessment, but stated his understanding that Bellum had supervised at another station. The "updated" Lambert evaluation (Jt. Exhibit 4. p. 20) is not consistent with the earlier recommendation. Without a credible explanation of why the 204b experience that had earlier been praised was now such a disaster, the second Lambert evaluation must be rejected as pretextual. Supervisor Cascio's statement (Jt. Ex. 4, p. 21) validated the "Potential" rating

Element #2: B-5. Performing Preventive Maintenance.

Rating: Potential/Satisfactory

Rationale: The panel's "Not Demonstrated" rating cited Bellum's written statement (Jt. Exhibit 4, pp. 11-13). In direct contrast to the rating and to the notation, Bellum's statement actually indicated a 30-year history of performing preventive maintenance tasks.

Element #3: B-10. Records and Reports.

Rating: Satisfactory

Rationale: Lambert's statement on the Form 991 indicated the 204b supervisor tasks (presumably including record keeping and reports) were performed satisfactorily. The second "updated" evaluation has been rejected, as indicated in the discussion of Element #1. Although Cascio's statement attempted to link "forwards" from a dense, multi-family housing delivery route to inadequate record keeping skills, his discussion regarding Union records indicated that the standard for "Satisfactory" had been met based on skills or abilities "demonstrated on the job or in details, outside work . . ." (PS Form 1796).

Element #4: B-19. Ability to Instruct.

Rating: Satisfactory

Rationale: Although rated "Not Demonstrated" by the panel, there was no indication of how the panel reached that conclusion. Cascio wrote that Bellum "is occasionally called upon to instruct employees." Since management determined to utilize Bellum as an instructor, it follows that management considered Bellum at least minimally satisfactory in this area.

Element #5: a. Automotive-related knowledge.

Rating: Potential

Rationale: The panel's "Low" rating indicated that it was based upon Bellum's written statement. Actually, Bellum's statement showed that the rating should be at least "potential."

Element #6: b. Efficiency - Scheduling Matters.

Rating: Potential

Rationale: While there is no direct linkage to VOMA tasks, Bellum's experiences as a 204b included matters related to scheduling. Lambert's 1989 recommendation indicated potential success as a supervisor with responsibilities for scheduling and other tasks related to the efficiency of the Service.

Element #7: Use of Reference Materials.

Rating: Potential/Satisfactory

Rationale: Although the panel rated Bellum as "Potential" based upon his written statement, Cascio's statement showed that the rating could be "Satisfactory."

Element #8: Dexterity and Safety.

Rating: Low

Rationale: The panel rated the element "Not Demonstrated" with no explanation. Cascio wrote that Bellum's dexterity was limited "due to an accident." The June 1989 ratings on the 1796s of the prior selection panel (Union Exhibits 2I, 2J, 2K), are all marked "Low" on this element. There is nothing in the record of this matter that would justify a lower rating in 1990 than the rating given in 1989.

Element #9: Interpreting Instructions.

Rating: Potential

Rationale: The panel "Low" rating of this element cited the supervisor's evaluation. The 1796s of two members of the 1989 panel rated this element as "Potential" and the other one rated it "Satisfactory". The 1989 ratings, in conjunction with the Form 991 recommendation, are more consistent and more credible than the updated supervisor's evaluations.

Element #10: Working with Others.

Rating: Satisfactory

Rationale: There is nothing in the record that would support a modification of the panel's rating.

Element #11: Planning and Organization

Rating: Potential

Rationale: Although rated "Not Demonstrated" by the panel, there was no explanation of the basis for the rating. The panel apparently did not rely on Lambert's updated evaluation. Bellum's written statement regarding his stint as a 204b indicated a good measure of planning and organizing tasks. The Form 991 recommendation indicated that Bellum should be rated "Potential."

Element #12: Attendance.

Rating: Satisfactory

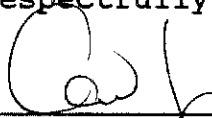
Rationale: There is nothing in the record that would support a modification of the panel's rating.

Based on the foregoing analysis of the elements that comprise the standards listed on the 1796 for the VOMA position, the Arbitrator concludes that David Bellum meets the minimum qualifications and is entitled to the position of Vehicle Maintenance-Operations Assistant at the Canoga Park Post Office, effective upon receipt of this Award. Bellum's seniority date in the position will be July 17, 1990, the date following the meeting of the review panel. The Union's request for a 50% straight time premium for all hours worked since June 21, 1990, is denied.

AWARD

Management did not follow the letter and spirit of Arbitrator Lange's Stipulated Award in cases W7N-5T-C 16324 and W7N-5T-C 16325, dated May 21, 1990. The Vehicle Operations-Maintenance Assistant position at the Canoga Park Post Office shall be awarded to David Bellum consistent with the terms of this Award.

Respectfully submitted,



CARL B.A. LANGE III