

C#00283

In the Matter of the Arbitration : Case No. NLC-1M-C6141
- between - : (F. NOLAN)

AMERICAN POSTAL WORKERS UNION :
- and - :
UNITED STATES POSTAL SERVICE :
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Long Island NY Area Local
American Postal Workers Union

Appearances: Bernard Schwartz - American Postal Workers Union
Donald Sutcliffe - United States Postal Service

DECISION AND AWARD

The undersigned was duly designated by the parties to hear and determine a dispute between them. The issue stipulated to be decided is "Whether or not the denial of annual leave violates the employee's right under the collective bargaining agreements and the past practice."

A hearing was held on November 9, 1982 at which the following facts were established. Article 10, Section 3 of the National Agreement deals with the choice of vacation period. In subdivision D2 thereof it states "Employees who earn 20 or 26 days annual leave per year shall be granted up to fifteen (15) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed fifteen (15) days, shall be at the option of the employee." Section D3 then permits two (2) selections to be made during the choice period pursuant to local implementation procedures. A Memorandum of Understanding was

entered into between the Long Island, New York Area Local and the Holbrook, New York Post Office running from 1981 through 1984 (Mg.'s Ex. 1). This agreement provides that choice vacation bidding shall commence on March 1st and end March 31st; that the choice vacation period will be from the last week in May, all of June, July, August and to September 15th. It permits two (2) selections during the choice period in units of either five (5) or ten (10) working days, the total not to exceed the ten (10) or fifteen (15) days as per the National Agreement. It further provides that the maximum number of employees off during choice period will be two (2) in July and August and one (1) during the remainder of choice time.

In the instant case, the grievant was granted the three (3) weeks he requested during the choice period. Thereafter, he requested two (2) more weeks during the choice period. These are open weeks not selected by other employees and do not conflict with the agreement that no more than two (2) employees shall be off at one time. The grievant made this additional request to devote that time to his duties as a Scout Master. He asserts that this procedure had been the practice in the Holbrook Office as long as anyone could remember and his absence would have no effect on the operation of the office.

His request was denied by Postmaster O'Neill who had assumed this position in April, 1982. When the decision was grieved, he rejected the grievance on the ground that the request for an additional two (2) weeks in the choice period was in direct viola-

tion of Article 10, Sec. 3D2 of the 1981 National Agreement. The past practice argument was brushed aside with the flat statement, "I became Postmaster at Holbrook Post Office effective 4/17/82 and this is my policy."

A reading of Section 3 of Article 10 of the National Agreement clearly shows that the main thrust was to set up an overall nationwide program to guarantee that the employees would get their vacations, at their options, during the most desireable times of the year. Subdivision 3A states "It is agreed to establish a nationwide program for vacation planning -- with emphasis upon the choice vacation period(s) or variations thereof" (underlining supplied). Subdivision 3B states "Care shall be exercised to assure that no employee is required to forfeit any part of such employees annual leave" and 3C states "The parties agree that the duration of the choice vacation period(s) in all postal installations shall be determined pursuant to local implementation procedures." (underlining supplied). The whole scheme of the section is geared to assuring employees of vacations during choice periods, the only restriction being that an employee is not entitled to more than fifteen (15) days. He gets that much as a matter of right, what he may get thereafter is a matter of discretion.

The Union's claim here that there is a long history permitting more than fifteen (15) days is not disputed. The new Postmaster decided to ignore past practice and stick to his interpretation of the contract. It is generally accepted that certain,

but not all, clear and long standing practices can establish conditions of employment as binding as any written provision of the agreement. (Alpena General Hospital, 50 LA 48, 51). Arbitrators have often ruled custom to be binding where a "benefit" of peculiar personal value to the employees was involved. I see the right to request additional leave in an open week of the choice period as being such a benefit. I find no prohibition against such a practice in either the National or Local Area agreement.

AWARD

The grievance is sustained. Employees should have the right, under past practice, to request additional annual leave in the choice period where there is an open spot and the limit of the number of employees off is maintained. Such a request should not be unreasonably denied.

Walter M. Colleran
WALTER M. COLLERAN

Dated: November 22, 1982
Carden City, New York

STATE OF NEW YORK)
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COUNTY OF NASSAU) ss.:
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On November 22, 1982, before me personally came WALTER M. COLLERAN, to me known and known to be to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Nancy V. Rotola
Notary Public

NANCY V. ROTOLA
NOTARY PUBLIC, State of New York
No. 30-471142
Qualified in Nassau County
Commission Expires March 30, 1983