

REGULAR ARBITRATION PANEL

C#09436

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In the Matter of the Arbitration	Grievant:	Class Action
between	Post Office:	GMF Boston
UNITED STATES POSTAL SERVICE	Case No:	(Mgt.) N7N-1E-C 23918
and	Case No:	(Mgt.) N7N-1E-C 23926
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	NALC Case No:	89-2494 GTS No: 5690 89-248N GTS No: 5682

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BEFORE: Thomas J. Germano, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Robert J. LoPreste, Labor Relations  
Assistant

For the Union: Carl Soderstrom, Trustee Branch 34, NALC

Place of Hearing: 25 Dorchester Avenue, Boston, Massachusetts

Date of Hearing: October 17, 1989

AWARD: Grievances granted. These cases are arbitrable.

Date of Award: October 20, 1989

  
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Thomas J. Germano, Arbitrator

Pursuant to the terms of the Collective Bargaining Agreement between the United States Postal Service ("Postal Service") and the National Association of Letter Carriers ("Union"), the undersigned has been duly designated to hear and render a final and binding award concerning the immediate issue in dispute between the Parties.

A hearing was held on October 17, 1989, at the postal facility 25 Dorchester Avenue, Boston, Massachusetts. At that time the Parties were accorded a full and fair opportunity to present witnesses, documentary evidence and oral argument in support of their respective positions.

#### ISSUE

The issue before this Arbitrator involves the question of arbitrability. While the Union argues that the grievances are arbitrable, it is the Postal Service's contention that they are not.

#### BACKGROUND OF THE CASE

Because both grievances address the same basic issue and contentions they were presented simultaneously and as one case for which the Parties requested only one Award.

The grievance involves the Union's request for information it deems necessary to properly process a number of grievances. This information is in the form of approximately one hundred and twenty hours of videotapes which were recorded by the Postal Inspection Service.

The Postal Service claims that the grievance was resolved at a Step 3 meeting between the Parties at which time the Union, which had previously been provided with a 90 minute edited version of the tapes, was offered the opportunity to remand the case back to Step 2 of the Grievance Procedure or to purchase the entire set of unedited videotapes.

The Union did not agree to remand the case back to Step 2 nor did it agree to purchase the tapes. According to the Union, it wanted to preview the tapes before paying \$500. for "a pig in a poke" namely, tapes that might only be partially relevant to the Union's grievance processing needs.

Additionally, the Union said that it believed the price for copying the tapes was too high and it wanted to explore the possibility of obtaining copies at a lower cost.

The Postal Service contends that the price to the Union for copying the tapes was \$150. and the Union was made aware of this option a few weeks before the Step 3 meeting in a letter to the NALC Branch 34 President dated May 19, 1989, from the Postal Service's Director of Human Resources for the Boston Division.

The Postal Service further argued that it complied with the Union's requested remedy, namely to be given access to the entire set of unedited videotapes and that the Union has attempted to alter its original remedy after a Step 2 decision and following a Step 3

resolution by asking for a preview of the tapes rather than just access to them, which has been granted.

#### RELEVANT CONTRACT LANGUAGE

##### Article 31 Union - Management Cooperation Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

#### TESTIMONY AND EVIDENCE

The Postal Service Representative who heard these grievances at Step 3 testified that she "was under the impression that these cases were resolved". In fact, documentary evidence in the form of a letter dated June 23, 1989, from this witness to the Union's National Business Agent supports this belief. The letter's last sentence reads: "therefore, it is Management's contention that this grievance is resolved".

The problem with this letter is that in addition to an obvious error which the witness corrected, there are other contradictions and semantic inconsistencies contained in the letter. These include:

"The Union's request for all the unedited videotapes is unreasonable".

This statement implies that the Union was still seeking to view all the videotapes at least through the Step 3 meeting.

"None of the 120 hours of tape requested were relied upon in the actions taken involving letter carriers from the Back Bay Station".

This was contradicted by other paragraphs in the letter and then corrected by the witness who said some of the tape was used as a basis for disciplining carriers.

The letter continued:

"Management recognizes that the Union was offered an opportunity to review the requested tapes in the May 19, 1989 correspondence, however, this offer was made prior to the Inspection Services issuing the pre-trial diversion letters to the involved letter carriers. As was later discussed with you and through discussions which took place between the Inspection Service and other Union Officials, the Union was informed that the tapes are not available for viewing. With these five remaining removal cases, the videotapes could be evidence in a criminal proceeding and, therefore, the Inspection Service cannot release custody of these tapes.

The Inspection Service can provide copies of these tapes and, as was previously argued, the Union would accept responsibility for all costs incurred. See Article 31.

Therefore it is Management's contention that this grievance is resolved".

How Management could contend that the grievance was resolved considering the content of its own letter is puzzling. If anything

is clear it would be that there is no final resolution but rather a possibility that copies of the tapes could be provided if the Union would accept responsibility for all costs.

The May 19, 1989 letter referred to in the Step 3 decision reads:

"Despite the fact that an edited version of the video tapes has been provided to you for review, you appear to maintain that the entire library of videos, as well as some specific excerpts from videos, also should be provided to you. We fail to see how all of the tapes are relevant and necessary (pursuant to Article 31.3 or Article 15.2 (Step 2:d) to your processing of these grievances. Nevertheless, the Inspection Service is willing to make the tape available for your review. Alternatively, we are willing to contract with a commercial video business to copy the tapes in the immediate future. Since Article 31.3 contemplates that the "Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information" in the event you desire that we proceed to copy these tapes please advise me in writing that you are willing to reimburse us for all such costs."

According to the testimony of the Union's representative at the Step 3 meeting, the Union never responded as requested in the May 19 letter because it was not willing to reimburse the Postal Service for the cost of copying the video tapes. This witness

stated that what the Union wanted was to view the unedited tapes before purchasing them in order to determine the relevance, if any, of the tapes to the grievances it was investigating. In fact, said this witness, that is the entire nature of this grievance. Furthermore, this witness claimed that he conveyed his disagreement with Management's offer at the Step 3 meeting and in a subsequent phone call to the Postal Service's Step 3 representative. Upon receipt of Management's Step 3 decision, he appealed the case to arbitration.

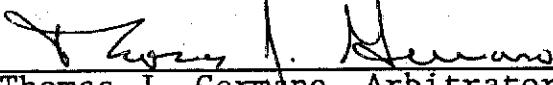
#### ANALYSIS OF THE CASE

Throughout the entire grievance process the Union requested to view the video tapes. The Union was not satisfied with the edited version of the tapes provided by the Postal Service and continued to seek access to the entire set of tapes. Management's offer to charge the Union for copies of the tapes rather than allow the Union to view the tapes as requested, did not satisfy the Union, was never accepted by the Union and did not satisfy the grievances' requested remedy. Absent any resolution of the grievances at Step 3, which would have required the Union's agreement and of which there is no evidence of, the Union had every right to move the grievance to the next step of the procedure.

#### AWARD

Grievances granted. These cases are arbitrable.

Dated: October 20, 1989

  
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Thomas J. Germano, Arbitrator