

2465 (E1C-2M-C)

In the matter of
United States Postal Service
Charleston, W.Va.

and
American Postal Workers Union
Charleston Local

Case #E1C-2M-C 2465
Martin/ delay in release of stewards
to discuss grievances

In accordance with Article 15 of the Agreement between the parties,
the undersigned was designated to arbitrate an unresolved grievance con-
cerning the right of union stewards to investigate an alleged grievance within
one hour of the request for a steward. A hearing on the above matter was held
in Charleston, W.Va. on June 22, 1983. The Union was represented by Cecil
Romine, National Vice President. Spokesman for the Postal Service was Kenneth
Giles, Labor Relations Specialist. Others in attendance at the hearing were

For the Union

Marvin L. Leshner
James Glaspell

Union President
Retired Postal Worker

For the Postal Service

Richard A. McVey

Supervisor, Employment and Services

Witnesses were questioned and documentary evidence submitted. Both parties
made oral summations.

The Issue

The parties agreed upon the following wording of the issue.

Did Management violate Article 17 of the Agreement when
stewards were not released to hold grievance discussions
and employees not permitted to see a steward within one
hour as per past practice in Charleston?

If so, what is the remedy?

The specific grievance, representative of some twenty similar grievances, was filed at Step 2 on 4/13/82 by J.A. Martin.

Martin states

On Saturday March 27, 1982, the Grievant requested Union representation from 204B acting Supervisor T. Whiteside at approximately 6:15 pm. in the location of the LSM consoles. The Grievant was approached later in the evening by 204B Whitesides and was told that acting tour Superintendent J. Beane said no one would be allowed to see a steward that night. The Union contends this is a violation of the Postmaster's policy letter of March 25, 1974 and past practices. For over 6 years the past practice at this office has been that an employee requesting to see a steward shall be released from their duties within an hour of such request.

This practice has worked successfully during this period of time until management unilaterally discontinued it.

The Step 2 reply was in part as follows

.....Due to mail conditions and excessive leave Management was unable to release grievant and steward at this time..... Tour III had approximately twenty-five employees off on leave consisting of 195.83 total hours. Additionally the grievant's scheduled days off were Sunday and Monday and upon return to work on Tuesday was afforded the right to see a steward. Management contends that due to Mail conditions and excessive leave that the grievant was not unreasonably denied the right to see a steward in this instant case. (Jt. Ex. #2 "O")

The nub of this case is that for many years the management of the Charleston Post Office had followed a practice, put in writing, of releasing stewards to see employees on grievances within one hour of the request. This was a local refinement of the contractual provision found in Article 17, which reads

When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied.

On May 12, 1981, a memo from J.E. Adkins, Acting MSC Manager, to all supervisors rescinded the communication of March 25, 1974 from George E. Wright which established the one hour limit as a policy of the Charleston Post Office. In effect, Mr. Adkins' letter abolished the one hour limit within which time the Union steward should be released to carry on Union business and reverted

to the more general standard established in Article 17, that requests by stewards should not be unreasonably denied.

In the months that followed the Adkins memo, some 22 grievances have been filed protesting the unilateral change in policy. These grievances have now come on to arbitration. The Martin grievance reported above is representative of all others of a similar content.

The Facts

The general facts forming the background of this arbitration case are not in dispute, but there is substantial disagreement with respect to some important details. There is no doubt that George Wright, Postmaster in Charleston in 1974, laid down a policy for his supervisors to the effect that requests by stewards for released time to pursue grievances should be approved within one hour. (Jt. Ex. #3 Wright's memo to all managers) The memo states

.....you should not delay the meeting unless it is an absolute necessity due to dispatch of mail or other critical duties and then arrangements should be made for their meeting within the hour.

The Union submitted a number of communications and grievance settlements dating from 1975 to 1981 indicating management understood and would comply with this policy. (Un. Exs. #2 through #6; Un. Exs. #8,10,11)

What is not agreed upon is the process by which the policy set forth by George Wright came into existence. It is the Union testimony (James Glaspell) that Union protests of delay in stewards being released to handle grievances led to a Union demand for zero time release, and when that was not agreed upon, then a 30 minute release. That also failing, the Union contends, an agreement was reached at a labor-management meeting that stewards would be released within the hour. George Wright then followed this agreement with his memo to "All Managers" dated March 25, 1974.

The Postal Service (Richard McVey testimony) denies that the one

hour limit was a negotiated item. It was not the result of a labor-management meeting agreement. The policy was decided upon and the memo issued by George Wright as a result of protests about delay, but it was not a negotiated settlement.

The Union could produce no evidence to support its contention - no written and signed agreement and no copies of labor-management meeting minutes - that the policy was negotiated.

There is no question, however, that for the next six years after 1974 management adhered to the one-hour policy for released time as confirmed by memos and grievance settlements.

On May 12, 1981, a memo to all supervisors written over the signature of J.E. Adkins (per Pauley), Acting MSC Manager/Postmaster, specifically rescinded the policy of George Wright dated March 25, 1974. Supervisors were advised to comply with the policy established by the Agreement in Article 17, namely, that stewards' requests to leave their area to pursue grievances would not be unreasonably denied.

Some 22 Union grievances on this issue are now before the arbitrator.

The Union Position

The Union argues that a policy and past practice of some six or seven years standing was unilaterally and illegally changed. It is the Union position that the policy ~~ann~~^{en}unciated by George Wright was a negotiated policy and therefore cannot be changed except by negotiation. Mr. Adkins' memo to all supervisors of May 12, 1981 changed the existing policy unilaterally without consultation with the Union. Mr. Glaspell, Union President in 1974, testified that there were numerous Union protests at the supervisors' delay in releasing stewards to meet with employees regarding grievances. He further testified that the Union made proposals to limit the time within which a steward

should be released. This issue was discussed at a labor-management meeting and the parties agreed upon a one hour limit.

The Union denies that it is prohibited from negotiating this issue by the provisions of Article 30. The one hour limitation is simply a practical definition of what the terms reasonable and unreasonable mean.

As a remedy, the Union proposes that the Postal Service be directed to implement the one hour policy as in the past until the Union and Management can agree upon a modification of that policy.

The Postal Service Position

The Postal Service contends that there is no contractual obligation to release a steward within one hour of his request to see a grievant or to secure papers or otherwise investigate a grievance. The National Agreement (Article 17) states that such request for released time shall not be unreasonably denied. The guideline of one hour was not negotiated at the National Level nor at the Local Level. If it had been, the stipulation would have been included in the National Agreement or the Local Memorandum.

The Postal Service argues that a Local Agreement setting a one hour limit within which a steward should be released would be a violation of Article 30 of the National Agreement which identifies those items which may be negotiated locally. Such a limit on the time within which stewards must be released is not one of those items.

The memo of March 25, 1974, establishing a one-hour guideline for the release of stewards was an inter-office memo. As such it was a private document. That a copy somehow was obtained by the Union does not make it a formal public policy. Certainly there is no evidence that the guidelines were negotiated. An agreement between the Union and Management, even at the local level would have been consummated by a sign-off on Labor-Management meeting minutes or a signed document. There is neither. It is, therefore, perfectly proper for an

inter-office memo setting forth guidelines to be rescinded by another inter-office memo without consultation with the Union. The only agreement between labor and management regarding released time for stewards is Article 17 of the National Agreement. It is observance of that Agreement which is urged by the memo of J.E. Adkins issued on May 12, 1981.

The Postal Service argues that the grievances submitted by the Union indicating management's acceptance of the one hour policy do not specifically support the one hour policy (Un. Exs. #10,11) but rather the Article 17 provision of "not be unreasonably denied".

Since the negotiators at the national level did not choose to set a time limit within which stewards are to be released following a request, the local units are bound by the conclusions of the national negotiators. Local labor and management units may not negotiate beyond the provisions of the National Agreement unless specifically permitted to do so by Article 30.

Award and Opinion

The Postal Service places great emphasis upon the fact that any specific limitation on the time within which a steward must be released is outside the local negotiable items listed in Article 30. Therefore, concludes the Postal Service argument, the Charleston policy of a one hour limit is not contractual and consequently it is not necessary to negotiate changes. In my opinion, it is quite clear from the Agreement that local labor unions and managements cannot demand negotiation of items outside those listed in Article 30. However, there would seem to be no barrier to a mutually agreed upon provision which more clearly defines or makes more specific a provision of the National Agreement. I am firmly convinced, nevertheless, that a determination on that issue is not within the authority of this arbitrator, and, fortunately, a resolution of the grievances before me do not require a decision on that issue.

The Union was unable to produce any evidence that the policy of one hour within which a steward should be released to investigate a grievance was negotiated. There was no written signed agreement. There was no copy of Labor-Management committee minutes indicating such agreement. It must be accepted, therefore, that Mr. George Wright's memo to supervisors constituted his unilateral response to Union complaints about the delay experienced by stewards in following up on grievances.

Even though the memo was the unilateral announcement of a policy, it did without question initiate a past practice. The policy applied to a large number of employees. It was mutually understood and accepted. It dealt with an important factor in labor-management relations. It was consistently applied for over six years. It was a precise guideline for implementing a provision of the Agreement.

It is not necessary to negotiate a change in a past practice, particularly one that was initiated by management even though in response to urging by the Union. Past practices are not imbedded in concrete. However, the change in policy should have been an item for discussion in Labor-Management meetings before the change was implemented. A reasonable justification for the change should have been set forth with an opportunity for comment by Union representatives. Apparently no reasons for the change were communicated to the Union. None are set forth in Adkins' memo of May 12, 1981. (P.S. Ex. #1)

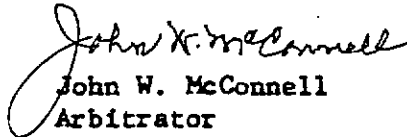
All this, of course, is now water over the dam. Although I believe Management erred in the way it brought about a change in a long standing policy, I do not believe there has been a violation of the Agreement. The Union, of course, still retains the protection of Article 17 of the National Agreement and if there is unreasonable delay in releasing a steward, or summoning a steward, the Union still may file a grievance. It must, however, ^{now} prove the

unreasonableness of any delay.

Award

Management did not violate Article 17 of the Agreement when stewards were not released to hold grievance discussions as per past practice in the Charleston, W.Va. Post Office.

Respectfully submitted,


John W. McConnell
Arbitrator

June 28, 1983