

C# 03368

A,B,C

In the matter of

The United States Postal Service
Lancaster, New York

and

Case # E1N-2W-C 1828
E1N-2W-C 1829
E1N-2W-C 1830

National Association of Letter Carriers
Branch #3
Buffalo, New York

Possehl/Costanzo/Klock
Administrative Leave

This matter concerning the refusal to grant administrative leave during a heavy snow fall has come on to arbitration before the undersigned through procedures set up by the parties in Article 15 of the National Agreement. A hearing was held at the Buffalo, New York, Main Post Office on February 15, 1983. The Postal Service was represented by James Gardner, Labor Relations Executive. Russell J. Barbera, Local Business Agent, was spokesman for the Union. Others in attendance at the hearing were

For the Union

Gerald J. Kaczmarczyk	Letter Carrier
Francis Krajewski	Letter Carrier
Davis Klock	Letter Carrier
Anthony Costanzo	Letter Carrier
Donald Possehl	Letter Carrier
Linda Daniels	Witness

For the Postal Service

Veronica VanSchoonhoven	Postmaster, Lancaster, N.Y.
Edward Lott	Labor Relations Representative

Witnesses were questioned and documentary evidence submitted. Both parties filed post-hearing briefs, dated March 4, 1983.

RECEIVED

MAR 21 1983

ROBERT J. MASSARONI

The Issue

The parties agreed upon the following statement of the issue.

Did the Postal Service violate Article 519 of the Employee and Labor Relations Manual and Article 14 of the Local Agreement by not granting the grievants administrative leave on January 11, 1982?

Article 519 of the E&LRM reads as follows in pertinent part:

519.1 Definition Administrative leave is absence from duty authorized by appropriate postal officials, without charge to annual or sick leave and without loss of pay.

519.211 General. Acts of God involve community disasters such as fire, flood or storms. The disaster situation must be general rather than personal in scope and impact. It must prevent groups of employees from working or reporting for work.

.212 Authorizing administrative leave for Acts of God

a. Postmasters and Installation Heads. Postmasters and other installation heads have authority to approve administrative leave for up to 1 day.

.213 Determining the Cause of Absence. Postmasters and other appropriate postal officials determine whether absences from duty allegedly due to "Acts of God" were, in fact, due to such cause or whether the employee or employees in question could, with reasonable diligence have reported for duty.

The Local Agreement reads:

Article XIV Section 2.

2) When the head of the local government, local enforcement agency or fire department declares a state of emergency exists either generally or in a specific limited area of the locality, which prohibits or in the opinion of the employer warrants the curtailment or termination of postal operations, the Union will be immediately notified. To the extent that it is reasonably possible, affected employees will be advised regarding the situation. When local conditions, commonly referred to as "acts of God" occur, the current provisions of the Postal Employees and Labor Relations Manual will apply and the installation head shall provide employees affected with appropriate leave.

As the facts will show, there is no dispute that an "Act of God" in the form of a severe snow storm struck the area surrounding Lancaster, N.Y. on the night of January 10 and early morning of January 11, 1982. The dispute appears to center on three aspects of the issue: 1) the nature of the radio announcements

concerning the emergency and the bearing these announcements have with regard to the status of postal service employees under emergency conditions; 2) the extent to which the grievants expended reasonable diligence in their efforts to report for duty; and 3) the facts upon which the Postmaster relied in making judgments to grant or withhold administrative leave from the grievants for their absence on January 11, 1982.

The Facts

As noted above, a state of emergency existed in Lancaster, N.Y. and surrounding areas during the morning and early afternoon of January 11, 1982, as a result of a blizzard which began the evening of January 10 and continued until about 9:00 am. the morning of January 11. The grievants are letter carriers in the Lancaster, N.Y. Post Office, working a shift from 7:30 am. to 4:00 pm.

Snow began falling in the area in the early evening of Sunday, January 10 and continued until about 9:00 am. Monday, January 11. The snow was accompanied by high winds and drifting which made driving hazardous and many roads impassable. At about 5:00 am. public officials in the Lancaster area declared a state of emergency. (Jt. Exs. #4, #5 and #6) The written order included the following phrases

"Vehicular traffic is prohibited on any roads within the town, except for emergency vehicles and persons engaged in essential services. Essential services include medical personnel, highway, fire and police personnel, other essential governmental employees, tow truck operators, utility company employees, food service personnel, building maintenance and security personnel, and news media employees."

As Stanley J. Keysa, Supervisor, Town of Lancaster, noted in his letter

".....the written order was not picked up by the police until after 9:00 a.m. and is very possible that the police dispatch center was giving a more abbreviated form of information as to that time, stating that only emergency vehicles were permitted on the road."

The grievants testified that radio broadcasts from State and Local police did

in fact state that only emergency vehicles were permitted on the road, no mention being made that "persons engaged in essential services" were exempt, including "other essential government employees" which all parties agreed covered postal service employees. There is no dispute that schools and private businesses were closed.

Of 13 carriers scheduled for work in Lancaster Monday, January 11, seven actually appeared, though some were from a half hour to three hours late. Postmaster VanSchoonhoven testified that the Lancaster Post Office was open for business as usual from 8:30 am. to 5:00 pm. Although there were no outside deliveries, carriers who appeared for work had plenty of mail to sort due to weekend deliveries. The customer window was open and box holders picked up mail. Dispatches of mail were made on January 11 and Lancaster received dispatches from the General Post Office. Of the six carriers who did not appear, three were granted administrative leave and three were denied such leave. For the Lancaster Post Office as a whole, about 60% of all employees scheduled for work the morning of January 11 actually reported. Those who were late in reporting were granted administrative leave for the time lost by lateness.

The facts concerning the three carrier grievants who were denied administrative leave and filed grievances are as follows, based upon their own testimony.

Donald Possehl lives in Lancaster between $\frac{1}{2}$ and 1 mile from the Post Office. Got up - called police - told emergency - all cars keep off road. No mention that postal employees were exempt from restriction against driving. Three cars in his driveway. Could not shovel to remove other cars to get his out. Snow was knee deep. Called Post Office twice - talked with clerk and with custodian. No call from Post Office.

Anthony Costanzo lives about 5 miles from the Lancaster P.O. He testified that he arose earlier than usual. He telephoned the Lancaster police who informed him that a state of emergency had been declared and that only emergency vehicles were allowed on the Lancaster streets. He called the Post Office and told them a state of emergency existed and he could not come in. He stated that snow had drifted in front of his garage. There was no call from the Post Office. He assumed there was no work.

David Klock stated that he had been visiting his girl friend in Williamsville (about 7 miles from the Lancaster P.O.) Sunday night watching the football game. At the time he planned to leave there was heavy snow and wind. He stayed there overnight. The next morning snow was deep and his car was buried. Linda Daniels, Klock's girl friend, called her employer, Scott Aviation, in Lancaster, was told "plant closed don't come in". Klock called the Post Office told the Post Office he couldn't make it, that the streets were not cleared and there was no traffic. He said he, his girl friend and neighbors shovelled out about 10 am. but the streets were not ploughed until 2 or 3 pm.

The Postmaster testified that she interviewed each employee who claimed administrative leave and made an independent inquiry about the snow conditions in each of their areas. She concluded that of the six claimants, three had made an effort to get to work but were prevented by unusual conditions. The remaining three, the Postmaster concluded, were at the time residing in areas where it was possible to move about, either because they were within walking distance of the Post Office (Possehl less than 1 mile) or close to a main thoroughfare which was cleared. They could have tried to get in but did not try.

When administrative leave was denied to Possehl, Costanzo and Klock they each filed a grievance. The grievances were rejected and have now become the subject of this arbitration. (Jt. Exs. #1A, #1B and #1C)

The Union Position

The Union's first argument is that Carriers Possehl and Costanzo called the Lancaster police regarding weather conditions and were informed that a state of emergency had been declared and all but emergency vehicles should stay off the road. Costanzo identified himself as a postal worker but the police insisted that he should not drive on town roads. Klock's girl friend, Ms. Daniels, called her employer and was informed that the plant was closed. Klock called the Lancaster Post Office and informed the Post Office that he could not get in to work. He left his telephone number but was not called back. The Union holds that the message from the Lancaster police was that the grievants should not drive on the town roads. The police announcements made no distinction between

postal workers and other citizens. The inclusion of postal workers among those performing essential services and thus exempt from the driving restriction was only noted later. (See letter of Stanley J. Keysa, Supervisor, Town of Lancaster, Jt. Ex. #4)

When the grievants awoke they took notice of the depth of the snow and drifting. It continued snowing until about 9:00 am. At that time all three grievants made efforts to clear cars and driveways. However, the streets, except for major trunk highways through the area, were not ploughed until two or three o'clock in the afternoon. All three grievants called the Post Office in timely fashion, informing the person who answered (either clerk or custodian, no supervisor) that it was not possible to get in to work. The Union notes that another Carrier (R.A. Krajewski) who lives near Costanzo also could not get in to work. He telephoned the Post Office as did the others, but he was granted administrative leave, the grievants were not. Also noted by the Union is the fact that all carriers in the Depew, N.Y. Post Office were told not to come in and were granted administrative leave. Further, some 800 employees in the Buffalo Post Office did not report for work and were granted administrative leave. There is no justification, argues the Union, for refusing administrative leave to the grievants when others similarly situated were granted the leave. The Postmaster's refusal to grant leave was discriminatory and capricious.

Finally, the Union contends that the basis upon which the Postmaster made her judgment to deny administrative leave was inadequate. The Postmaster testified that she interviewed each of the grievants about the situation on the morning of January 11 and questioned them regarding the efforts they made to get to work. She then drove into the areas where those requesting administrative leave claimed residence to determine accessibility to main highways. This investigation was January 12, one day later, and obviously did not reveal conditions as they were Monday morning. The Postmaster also stated that she

lived in Lockport, some 20 miles from Lancaster and was able to get to the Lancaster Post Office about 1 hour late using highways that Klock and Costanzo would have used. She admitted, however, that she did not know what the side streets were like or when they were ploughed. All in all, in the Union's opinion, the Postmaster did not have a solid factual basis for granting leaves to some employees and not to the grievants.

The Union urges that the grievants be granted administrative leave for January 11, 1982.

The Postal Service Position

The Postal Service contends that, although weather conditions were bad, much of the Post Office business went on as usual in the Lancaster Post Office. Between 55% and 60% of all employees reported for work. Those who were late were given administrative leave to cover the hours they were late. There was enough mail to be cased to keep all carriers who reported occupied for the full 8 hours. The Post Office windows were open and busy. A dispatch of mail was received at the Lancaster Post Office during the day and another dispatch sent out that evening. Except for the actual route delivery of mail, none of the Post Office functions was curtailed. In other words, business activity at the Post Office, though somewhat reduced was, in general, carried on as usual.

The Postmaster made a reasonable investigation of each employee's failure to report for work. She interviewed each employee who requested administrative leave, asking questions about weather conditions in his area and what efforts were made to get to work. In addition, the next day after the storm she visited the areas where these employees lived to appraise the problems of getting to work. She testified as to these conditions at the hearing and was able to cite specific reasons for granting leave to Krajewski, for example, and denying leave to Costanzo and Klock, although all three lived near each other.

Krajewski tried to shovel his car out early in the morning. He tried to walk but the snow was over his knees. He lives 3/4 of a mile from the main highway. She also talked to State Police about conditions in certain areas. As a result of her investigations, the Postmaster granted four administrative leaves, and granted administrative leave to cover all those who reported late. Several employees requested annual leave for January 11, and these requests were granted. Hence, a personal and thorough investigation was made by the Postmaster of every request for leave and her decisions were based upon the facts developed.

The Postal Service argues that all employees are aware that the Postal Service is considered an essential activity in time of emergency. There should have been no doubt in the grievants' minds that they were essential and hence exempt from the driving restriction set forth in the declarations of a state of emergency. (Jt. Exs. #4, #5 and #6)

Both the E&LRM 519.213 and Article 14 Section 2 of the Local Agreement (which supports the provisions of the Manual) make the judgment of the Postmaster and other installation heads or appropriate officials, the decisive factor in determining whether administrative leave shall be granted due to an "act of God" and whether "the employees in question could, with reasonable diligence, have reported for duty". The Postmaster did not close down operations at the Lancaster Post Office and she made a careful investigation of the circumstances related to the grievants' efforts to get to work before making a decision with respect to their requests for administrative leave. Nothing in the E&LRM demands that the Postmaster must grant administrative leave. The decision to grant or withhold leave must be based upon the facts of each individual case. In the judgment of the Postmaster, Possehl lived within walking distance of the Post Office but made no effort to get there. Klock and Costanzo travel roughly the same area as the Postmaster in getting to work, but neither of them made a diligent effort to report for work.

The Postal Service, therefore, argues that the grievances should be denied.

Award and Opinion

The wording of E&LRM Section 519 regarding administrative leave is clear and unambiguous.

519.212 Authorizing Administrative Leave for Acts of God

a. Postmasters and Installation Heads. Postmasters and other installation heads have authority to approve administrative leave for up to 1 day.

.213 Determining the cause of Absences. Postmasters and other appropriate postal officials determine whether absences from duty allegedly due to "Acts of God" were, in fact, due to such cause or whether the employee or employees in question could, with reasonable diligence have reported for duty.

The Local Agreement Article XIV Section 2 endorses the provisions of Section 519 of the Manual. The Local Agreement states:

.....When local conditions commonly referred to as "acts of God", occur, the current provisions of the Postal Employees and Labor Relations Manual will apply and the installation head shall provide employees affected with appropriate leave.

The critical factor in approving administrative leave is the judgment of the Postmaster as to whether an absence was caused by an "act of God" and whether the employees in question "could, with reasonable diligence, have reported for duty".

There is no requirement in these sections which makes granting of administrative leave mandatory even when a state of emergency exists. The Manual and the Local Agreement require that the Postmaster make a judgment as to whether administrative leave should be granted or should not be granted. There is nothing automatic about the granting of administrative leave.

The judgment of the Postmaster, in this case, to deny administrative leave to Possehl, Costanzo and Klock was made only after the Postmaster made a personal investigation of the snow conditions in the area where the grievants

were residing and of their efforts to report for work. On the basis of the facts assembled, it is possible that another Postmaster would have concluded that administrative leave was justified, but Section 519.212 and 213 places the responsibility for making the judgment on the Postmaster, Installation Head or other appropriate Postal Official.

There is no evidence that the judgment of the Postmaster was capricious or discriminatory. She did make a personal investigation of all those applying for administrative leave. At the hearing she was able to provide clear factual reasons, on an individual case by case basis, for her refusal to grant leave to the three grievants and to grant leave to four other employees who were not able to get to work on January 11. No allegations were made that the Postmaster had other unannounced reasons for denying leave to Possehl, Costanzo and Klock.

In the neighboring community of Depew, N.Y. in which similar blizzard conditions prevailed, apparently the Postmaster took the view that it was unreasonable for any of the carriers to come in to work. All carriers were granted administrative leave. (Un. Ex. #1) Also in Buffalo, administrative leave was granted on a much more liberal basis than in Lancaster. Nevertheless, the E&LRM makes it clear that the decision is that of the Postmaster of an installation, not a consensus of area postmasters or installation heads. Nor is there any obligation to "follow the leader" in making administrative leave decisions.

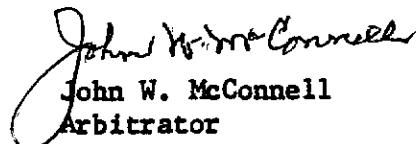
The testimony of Union witnesses indicated that Postmaster VanSchoonhoven used a different approach to the question of administrative leave than did her predecessor. Her investigation of conditions and efforts of employees requesting leave was more intensive and her standards more demanding than previously applied, or I might add, than those of Postmasters in surrounding communities. But the fact that Postmaster VanSchoonhoven kept a tighter check on leave requests does not make her decisions wrong. She granted or denied administrative leave on the

basis of the facts she assembled through personal investigation as she was required to do by Section 519 of E&LRM. There is no evidence of bias or discrimination in arriving at the decisions on leave. Consequently there was no violation of Section 519 of the Employee and Labor Relations Manual nor of Article 14 of the Local Agreement in not granting administrative leave to the grievants.

Award

The Postmaster did not violate Section 519 of the Employee and Labor Relations Manual nor Article 14 of the Local Agreement in not granting administrative leave to Carriers Possehl, Costanzo and Klock on January 11, 1982.

Respectfully submitted,


John W. McConnell
Arbitrator

March 16, 1983