

C-19162

REGULAR ARBITRATION PANEL
WESTERN REGION

In the Matter of Arbitration)	CASE NO. E90N-4E-C 94051426
)	
Between)	GTS NO. 27184
)	
UNITED STATES POSTAL SERVICE)	GRIEVANT: CLASS ACTION
HENDERSON, NEVADA)	
)	DATES OF HEARING: 01/08; 3/4, 5;
And)	5/8, 9; 8/21, 22/97; 5/7, 8, 21/98
)	
NATIONAL ASSOCIATION OF LETTER)	HEARING LOCATION:
CARRIERS, AFL-CIO)	HENDERSON, NEVADA
_____)	
		ARBITRATOR'S DECISION AND AWARD

BEFORE:

CLAUDE D. AMES, ARBITRATOR

APPEARANCES:

For the Employer:

John W. Dockins, Esq.
Labor Relations Specialist
955 L'Enfant Plaza, S.W.
Washington, D.C. 20001-2144

For the Union:

Alan J. Apfelbaum
Regional Administrative Assistant
89 Pioneer Way, Suite D
Mountain View, CA 94041-1501

AWARD:

The Postal Service violated Articles 14 and 19 of the National Agreement by failing to correct Robert C. Thompson's inappropriate supervisory behavior towards postal employees in the Letter Carrier Craft. The appropriate remedy for Mr. Thompson's inappropriate behavior is set forth in the Remedy Section of the Arbitrator's Decision. The Union's grievance is sustained.

DATE OF AWARD:

February 19, 1999



CLAUDE D. AMES, Arbitrator

I.

INTRODUCTION

This arbitration proceeding came on regularly for hearing pursuant to the then current 1990-1994 National Collective Bargaining Agreement ("CBA") between the parties, UNITED STATES POSTAL SERVICE (hereinafter "Employer" or "Service") and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO, BRANCH NO. 2502 (hereinafter "Union" or "NALC"). Western Regional panel member Claude D. Ames was selected to hear the above-referenced grievance. Hearings were held on January 8; March 4, 5; May 8, 9 and August 21, 22, 1997; May 7, 8, and 21, 1998, at the James C. Brown, Jr., Postal Facility located at 1001 E. Sunset Road, Las Vegas, NV. Alan J. Apfelbaum, Regional Administrative Assistant, represented the Class Action grievants and the National Association of Letter Carriers, AFL-CIO. John W. Dockins, Labor Relations Specialist, appeared on behalf of the United States Postal Service.

The case presented for arbitration involves a Class Action grievance by the Union seeking to remove a postal supervisor from any future position of supervisory control over members of the Letter Carrier Craft, pursuant to the parties' National Joint Statement on Violence. The Union maintains that the issue involves one of safety requiring the Arbitrator to issue a cease and desist order against the postal supervisor who has engaged in acts of violence and threatened assault on other letter carrier craft members. The Postal Service objects to the Union's grievance citing both procedural and substantive arbitrability challenges to the Arbitrator's jurisdiction to issue an award which directly restricts Management's exclusive right under the CBA to manage its workers and determine appropriate staffing and supervisory appointments.

The hearing began with a moment of silent prayer in memory of our fallen friend and

colleague James "Jim" Brown, Jr., who tragically died in the call of duty. A more lasting tribute and expression of our love for Jim is contained in the epilogue, attached hereto at the conclusion of the Arbitrator's Decision.

The arbitration hearing proceeded in an orderly manner with all parties being given an opportunity for the examination and cross-examination of witnesses, introduction of documents and rebuttal testimony. All witnesses appearing were duly sworn under oath. The Service raised continued procedural objections of timeliness to the Union's grievance and challenges to the Arbitrator's authority to hear matters which directly impact upon supervision of Management personnel. The Service's arbitrability objections were noted for the record and as discussed in the Arbitrator's Decision, are hereby denied. Post-summation hearing briefs were stipulated by the parties to be filed with the Arbitrator and were received in a timely manner.

II.

ISSUES PRESENTED

The parties were unable to mutually fashion an appropriate issue that they could agree upon and have stipulated to allow the Arbitrator to frame the issue(s).

The issue presented by the Union is as follows:

3. Did the Employer, through the actions of Mr. Thompson, in October of 1991 violate Article 14 of the National Agreement and/or Article 19 of the National Agreement, Section 115.4 of the M-39 Handbook and/or the Joint Statement on Violence and Behavior in the Workplace?
4. Did the Employer further violate the Joint Statement by returning Mr. Thompson to a supervisor capacity over Letter Carriers?
5. Did the Merit Systems Protection Board violate the terms of

the National Agreement?

6. If so, what is the remedy?

The issue presented by the Employer is as follows:

Was the reinstatement of Supervisor Robert C. Thompson pursuant to an MSPB decision a violation of the National Agreement?

The issue as framed by the Arbitrator after a careful review and analysis of the evidence presented is:

Did the USPS violate Articles 14 and 19 of the National Agreement by failing to correct Supervisor Robert C. Thompson's inappropriate behavior toward employees in the Letter Carrier Craft?

If so, what shall be the appropriate remedy?

III.

RELEVANT CONTRACT PROVISIONS AND REGULATIONS

ARTICLE 1 - UNION RECOGNITION

Section 1. Unions

The Employer recognizes the National Association of Letter Carriers, AFL-CIO as the exclusive bargaining representative of all employees in the bargaining unit for which it has been recognized and certified at the national level - City Letter Carriers.

Section 2. Exclusions

The employee groups set forth in Section 1 above do not include, and this Agreement does not apply to:

- A. Managerial and supervisory personnel;
- B. Professional Employees;
- C. Employees engaged in personnel work in other than a purely non-confidential clerical capacity;

D. Security guards as defined in Public Law 91-375, 1201(2)

E. All Postal Inspection Service employees.

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 14 - SAFETY AND HEALTH

Section 1. Responsibilities

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility. The Employer will meet with the Union on a semiannual basis and inform the Union of its automated systems development programs. The Employer also agrees to give appropriate consideration to human factors in the design and development of automated systems. Human factors and ergonomics of new automated systems are a proper subject for discussion at the National Joint Labor-Management Safety Committee.

Section 2. Cooperation

The Employer and the Union insist on the observance of safe rules and safe procedures by employees and insist on correction of unsafe conditions. Mechanization, vehicles and vehicle equipment, and the work place must be maintained in a safe and sanitary condition, including adequate occupational health and environmental conditions. The Employer shall make available at each installation forms to be used by employees in reporting unsafe and unhealthful conditions. If an employee believes he/she is being required to work under unsafe conditions, such employee may:

- [a] notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary;
- [b] notify such employee's steward, if available, who may discuss the alleged unsafe condition with such employee's supervisor;
- [c] file a grievance at Step 2 of the grievance procedure within fourteen (14) days of notifying such employee's supervisor, if no corrective action is taken during the employee's tour; and/or
- [d] make a written report to the Union representative from the local Safety and Health Committee who may discuss the report with such employee's supervisor.

Upon written request of the employee involved in an accident, a copy of the PS Form 1769 (Accident Report) will be provided.

Any grievance which has as its subject a safety or health issue directly affecting an employee(s) which is subsequently properly appealed to arbitration in accordance with the provisions of Article 15 may be placed at the head of the appropriate arbitration docket at the request of the Union.

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

Step 2:

- (C) The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Step 2 appeal unless the parties agree upon a later date. In all grievances appealed from Step 1 or filed at Step 2, the grievant shall be represented in Step 2 for all purposes by a steward or a Union representative who shall have authority to settle or withdraw the grievance

as a result of discussions or compromise in this Step. The installation head or designee in Step 2 also shall have authority to grant or settle the grievance in whole or in part.

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 contained 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.

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 proceeding of a grievance under this Agreement. Upon such 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.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or his designee. All other requests for information shall be directed by the National President of the Union to the Vice President, Labor Relations.

Nothing herein shall waive any rights the Union may have to obtain information under the National Labor Relations Act, as amended.

IV.

PRELIMINARY STATEMENT

This arbitration proceeding was originally scheduled for hearing on March 21, 1996, at the postal facility located in Henderson, Nevada. It was filed as a Step 2 Class Action grievance by the National Association of Letter Carriers, AFL-CIO. Manuel L. Peralta, Jr., Regional Administrative Assistant, and James L. Stankovich, 3rd Vice President, represented the Class grievants. The late James C. Brown, Jr., Senior Labor Relations Specialist, represented the United States Postal Service. Then as now, the Union sought to remove a postal supervisor [Robert C. Thompson] from any present or further supervisory role over members of the Letter Carrier Craft, pursuant to the parties' National Joint Statement on Violence. According to the Union, allegations of violence against Supervisor Thompson involving threats of physical assault and intimidation of carriers constitute violence in the workplace and issuance of a cease and desist order by the Arbitrator. The Postal Service objected to the grievance citing a lack of subject matter jurisdiction by the Arbitrator to juxtapose his opinion for those of Management to determine appropriate staffing and supervisory appointments.

According to the Service, the parties' Joint Statement on Violence applied exclusively to bargaining unit employees and not supervisory or professional employees, pursuant to the Employer's Management Rights clause, contained in Article 3 of the National Agreement. The Union objected to the Service restrictive and limited interpretation of the Joint Statement on Violence and urged the Arbitrator to proceed to hear the Class Action grievance. The Service asserted that issues raised by the Union presented important questions requiring a National interpretation of the parties' Joint Statement on Violence and Behavior in the Workplace and

clear guidelines for enforcement.

The Arbitrator concurred and abstained from making any permanent ruling on the matter until the issues could be properly addressed and clarified by Professor Carlton Snow of the National Arbitration Panel. On August 16, 1996, Professor Snow issued a national decision (Joint Exhibit No. 11) holding *inter alia*, "the Joint Statement on Violence and Behavior in the Workplace constitutes a contractually enforceable agreement between the parties." He further held that the Union shall have access to the negotiated grievance procedure set forth in the parties' Collective Bargaining Agreement to resolve disputes arising under the Joint Statement. Based on Professor Snow's decision interpreting the Union's contractual right of enforcement under the Joint Statement, the Arbitrator convened eight (8) days of hearings beginning on January 8, 1997 and ending on May 21, 1998. Testimony was received from twenty-eight (28) witnesses over a period of sixteen (16) months, coupled with the introduction of extensive exhibits in support of the parties' respective positions.

V.

STATEMENT OF FACTS

Supervisor Robert C. Thompson, Manager of Customer Services at the Huntington Beach Post Office, was appointed Postmaster for the Henderson, Nevada Post Office in July 1991. Mr. Thompson, a 30-year employee with the Post Office, transferred from the Santa Ana Postal Division to Henderson, Nevada. While at the Santa Ana Division, Mr. Thompson was the recipient of numerous complaints from letter carriers regarding his discourteousness, alleged verbal abuse and physical threats against them, while carrying out his duties. Allegations were further raised regarding Mr. Thompson's verbal harassment and the abusive manner in which he

dealt with carriers in the performance of their duties. The record is unclear as to whether or to what degree any administrative action was taken against Mr. Thompson by the Service to correct his behavior while in Southern California, other than counseling and required retraining in relevant Management Human Resource classes.

Almost immediately upon his arrival at the Henderson Post Office, as if his prior conduct or reputation had preceded him, complaints began to increase as never before by carriers at the Henderson Post Office regarding Mr. Thompson's managerial style and intimidating manner. On October 16, 1991, these carriers officially complained to the Union's then National Business Agent Thomas H. Young, Jr. Henderson carriers informed Mr. Young and the Union's Regional Assistants of a series of incidents that had occurred involving Mr. Thompson since his July arrival at Henderson. Specifically, the incident of October 11, 1991, involving an alleged physical threat by Mr. Thompson to "kick" carrier Scott Carmody's "ass through the goal post of life." According to Carmody's complaint, he was ordered by Mr. Thompson to clock out immediately as he returned from his afternoon route and was then escorted out the door. Carrier Carmody had just completed his route and was on overtime and did not have an opportunity to turn in his Arrow Key, accountables and money that he had collected throughout the day. The carrier had to sneak back into the building with the assistance of other carriers; and without Mr. Thompson's knowledge, in order to clear his accountables and turn in his registered items. The carriers further informed Union officials of several other incidents in which Mr. Thompson engaged in inappropriate and intimidating conduct towards carriers, including an alleged physical assault against carrier Glenn Willis. Glenn Willis testified that he had been physically pushed by Mr. Thompson while casing his mail at the Henderson Post Office and that Willis had pushed him

back. Willis indicated that he felt intimidated by Mr. Thompson's physical size.

On October 18, 1991, Tom Young contacted Don Vannoy, Labor Relations Specialist, Denver Region, and advised him of the complaints that carriers had lodged with the Union against Mr. Thompson at the Henderson Post Office. As indicated in Union Exhibit "E", the Service agreed to "freeze" the time limits for the Union to initiate any action while the Region would look into the matter and if Tom Young was not satisfied, the time limits under the agreement would be protected. Mr. Vannoy, conducted his investigation on behalf of the Region and notified the Union on October 21, 1991, that in his opinion there was not a strong case against Mr. Thompson. Mr. Vannoy indicated that Mr. Thompson's statement [kicked through goal post of life] in which Thompson denies ever using "ass", could be understood in more ways than as a physical threat against Mr. Scott Carmody. The Union initiated its own investigation of the matter arising out of complaints from carriers at the Henderson Post Office. Their investigation was then broadened after being informed of prior incidents of physical abuse, intimidation and complaints against Mr. Thompson in the Southern California "Simi Valley" and Santa Ana areas. The record is unclear as to whether any formal administrative actions were taken by the Service against Mr. Thompson as a result of these allegations in Simi Valley or Santa Ana, other than to participate in a Human Resource training class. On or about December 1991 and/or February 1992, the Union completed its investigation and forwarded to USPS Area Director Gerry Sanchez and Labor Relations Specialist Don Vannoy, a copy of the investigation regarding Mr. Thompson. The Union's investigation was officially conducted by Thomas H. Young, Jr., and Regional Administrative Assistant, Manuel L. Peralta (Union Exhibits "E" and "G").

On August 26, 1992, Carl M. Merrick, a letter carrier at the Henderson Post Office,

(Union Exhibit "J"), personally informed Postmaster General Marvin Runyon in writing of carrier complaints against their Postmaster Robert C. Thompson since his appointment in July of 1991. In Mr. Merrick's letter to Postmaster General Runyon, Mr. Thompson was accused of disparaging carriers at the Henderson Post Office, creating an unsafe working environment by having his wife and girlfriend engage in a physical altercation in his office in which a training supervisor had to unlock the office so that Mr. Thompson could separate the two combatants; Thompson observed being intoxicated on two occasions at work and engaging in harassment of employees. Mr. Merrick also complained to the Postmaster General that after "a good-old-boy" investigation was conducted of these incidents, nothing was done. Mr. Merrick raised in his letter an incident in which Mr. Thompson physically escorted carrier Scott Carmody out of the back door of the Post Office. Thompson indicated that he would "kick his [Carmody's] ass through the field post of life". Another carrier was intimidated by Thompson who had inquired about the altercation and was physically shoved back into his case. Mr. Thompson is alleged to have responded, "It's none of your damn business," when the carrier inquired as to the commotion. Mr. Merrick complained of Mr. Thompson's managerial and intimidating style which, according to Mr. Merrick, caused several qualified supervisors to seek immediate transfers from the Henderson Post Office to the Las Vegas Office as a result of his behavior.

On November 10, 1992, Mr. Merrick's letter was responded to by M. R. Dornbush, District Manager of the Las Vegas Post Office. Merrick's letter had been referred by Postmaster General Runyon to District Manager Dornbush for an investigation and appropriate action, if warranted, against Mr. Thompson (Union Exhibit "J"). But, in an unrelated matter to Merrick's letter and the complaints raised by the Union and carriers at the Henderson Post Office, the

Service formally initiated a Notice of Proposed Adverse Action against Mr. Thompson on October 19, 1992. This action involved separate charges against Thompson unrelated to earlier complaints against him as Postmaster (USPS Exhibit No. 1).

In its adverse action against Mr. Thompson, the Service proposed to demote him from the Henderson, Nevada Postmaster position, a Level EAS-22, with an annual salary of \$59,086.00, to a clerk position Level 5, Step 0, with a reduced annual salary of \$33,476.00. The bases for the alleged action by the Service were twofold: violation of the Code of Ethical Conduct by failing to give 8-hours work for 8-hours pay and falsification of time cards by receiving pay for non-performance of postal duties. The proposed adverse action was initiated by Director of City Operations, David M. Spaur in concurrence with MSC District Manager Michael R. Dornbush (USPS Exhibit No. 1). The proposed demotion by the Service was effective on November 28, 1992. It was immediately appealed by Mr. Thompson to the United States Merit Systems Protection Board (MSPB), Docket No. DE0752930126I1, before Administrative Law Judge (ALJ) Steven L. Chaffin (USPS Exhibit No. 2). The Service's adverse action was affirmed by the MSPB on April 12, 1993. The ALJ concluded that the appellant [Thompson] did commit the misconduct as alleged by the Agency. Mr. Thompson then timely petitioned the MSPB in Washington, D.C., for full review of the Administrative Law Judge's decision. His petition was granted for review and Mr. Thompson then argued *inter alia* on review, that as a Postmaster, he was exempt from the Fair Labor Standards Act (FLSA) and was therefore entitled under the ELM, to take up to four hours of "personal absence" per day, which did not require that he obtain prior approval, or that it be charged to official leave, in light of an injury previously sustained to his back while on duty. The MSPB subsequently reversed the Agency's action and entered an

order canceling the appellant's demotion. The MSPB ordered the Agency to cancel Mr. Thompson's demotion and to restore him to the position of Postmaster, EAS-22, effective November 28, 1992.

On April 22, 1994, the Postal Service and Robert C. Thompson entered into a Negotiated Settlement Agreement consistent with the MSPB decision. In the Negotiated Settlement Agreement, Robert C. Thompson agreed to be assigned as Manager of Customer Services at Sparks, Nevada, effective May 9, 1994. The Union challenged Management's Settlement action in reinstating Robert C. Thompson to any supervisory position over members of the Letter Carrier Craft as a safety hazard to its members and violation of the Joint Statement on Violence and Behavior in the Workplace. In a Step 3 meeting between Area Labor Relations Specialist Don Vannoy and Union Regional Administrative Assistant Manuel Peralta, the Agency informed the Union that local Management had entered into a Settlement Agreement with Mr. Thompson as a result of the MSPB decision in which he was ordered returned to duty. However, Mr. Vannoy indicated that the Union was not entitled to the terms of the Settlement Agreement indicating that the Union had not proven its relevancy for requesting said Agreement in their case. The Agency took the position that the Union was further acting outside of the scope of the bargaining agreement by requesting that the manager [Thompson] be removed from his position and issued discipline for his misconduct.

The Agency maintains that absence any information to the contrary, the Union has failed to demonstrate a clear violation of the Collective Bargaining Agreement involving Supervisor Thompson, which is not contractually binding on Management's employees (Joint Exhibit No. 4). The Union now appeals to arbitration the Agency's Step 3 decision to its grievance and seeks an

appropriate remedy based on Professor Snow's national decision interpreting the parties' rights under the Joint Statement on Violence and Behavior in the Workplace (Joint Exhibit No. 11).

VI.

POSITION OF THE PARTIES

Union's Position:

The Union disagrees with the Service's belief that the Joint Statement takes Robert C. Thompson's MSPB rights away. The Merit Systems Protection Board (MSPB) operates as a separate entity from that of the Grievance-Arbitration Procedure. As Tom Young testified, nothing in the Grievance-Arbitration Procedure prevents Robert C. Thompson from filing a complaint with the MSPB. If the Service believes that managers are losing their MSPB rights, or it conflicts with Article 1A of the National Agreement, then the Service may pursuant to Article 15, Section 2, Step 3.(c), make an issue interpretative, thereby sending the case to Step 4. If they believe the Union sought an inappropriate remedy, then they could have taken the instant case to Step 4. The fact that they did not speaks volumes. Robert C. Thompson has been provided due process with an opportunity to cross-examine the Union witnesses as well as provide testimony and documentation to refute our claim. The Union has made no challenge to MSPB's ruling with regard to Mr. Thompson not providing the Service with 8-hours work for 8-hours pay. The Joint Statement comments that all employees provide a fair day's work for a fair day's pay, the Union's argument deals with an abusive manager who failed to treat employees with dignity and respect, not with his work ethic. Therefore, no violation of Robert C. Thompson's right to seek redress from the MSPB exist.

The Union contends that the overwhelming evidence supports its position that the Service

was and has been for many years aware of Robert C. Thompson's behavior patterns. During Robert C. Thompson's testimony, he admits that the Service had sent him to remedial training on several occasions. Manuel Peralta also testified that Mr. Thompson had been sent to training relating to his inability to deal with employees in a dignified manner. The testimony of Joe Naso, President of Simi Valley APWU Local in the 1980's, supports the Union's contention that since at least 1980, the Service has been aware of complaints against Robert C. Thompson. In addition, Joe Naso provided numerous grievance files to support his allegation that objections to Robert C. Thompson had been documented.

The Union is confident that the Service will argue in their brief that the Arbitrator does not have the authority to fashion a remedy in a case such as this wherein the Union seeks to have Robert C. Thompson removed from his administrative duties. The Union holds that the Arbitrator does the authority to issue the remedy requested by the Union in this case. That authority was given him by the national arbitral award issued by Arbitrator Snow on August 16, 1996 (Joint Exhibit No. 11). Arbitrator Snow held that the Joint Statement on Violence and Behavior in the Workplace constitutes a contractually enforceable agreement between the parties. Arbitrator Snow then proceeds in very clear, precise and unambiguous language to reaffirm the parties' negotiated principle in its grievance procedure, as set forth in the Collective Bargaining Agreement. The Union's authority to bring forth this grievance and the Arbitrator's authority to resolve all disputes arising under the Joint Statement on Violence and Behavior in the Workplace, is clearly established by Arbitrator Snow's national decision.

REMEDY: A national level arbitration decision by Howard Gamser (NCS-5426, (C-3200), recognized the inherent powers of an arbitrator to fashion an appropriate remedy for

breaches of the terms of an agreement, even where no specific provisions defined the nature of such remedy is to be found in the agreement. Article 15, Section 4.D.1 of the Contract, gives the decisions of national level arbitrators authoritative precedential value. It is clear that absent a clear message, the Service believes that they may violate the National Agreement with impunity. The Union strongly believes the remedy request is appropriate considering the type of violation that occurred, and contractual requirements which hold the Service responsible for their actions. Therefore, the Union is seeking Mr. Thompson's removal from his position with the Service. Alternatively, the Union seeks as a condition of reinstatement that Mr. Thompson submit to a fitness-for-duty examination (physical and mental), and the he be barred from future supervisory authority over letter carriers. Finally, the Union requests that Mr. Thompson make a written apology to all employees in the Henderson Post Office for his inappropriate behavior.

Employer's Position:

The NALC has coyly couched this grievance in the context of enforcing the Joint Statement in regards to Mr. Thompson's supposed actions on October 11, 1991. There are several problems with this argument: First, their own Union papers acknowledge that the grievance is being filed over the return of Mr. Thompson to a supervisory position. It is stated in the NALC Step 3 appeal, dated May 16, 1994, that "In the instant grievance, the Employer through their agents, have advertently reinstated Mr. Thompson". (Joint Exhibit "B"). Second, the timing of the instant grievance, fourteen (14) days after the MSPB Settlement, leaves no doubt that the Union grieved the MSPB decision/settlement. Further, the alleged behavior of Mr. Thompson even by the Union's own admission, occurred prior to the existence of the Joint Statement and cannot possibly be in violation of a document which did not exist. Finally, the

NALC filed no grievance whatsoever at the time of the alleged behavior. Not only did they fail to grieve the non-existence Joint Statement, they failed to grieve any violation based on the alleged conduct of Mr. Thompson. Hence, the Union's disingenuous attempt to boot-strap twenty (20) years of vacuous, vague, nebulous and downright inaccurate and unreliable accusations into this "untimely" grievance, must be denied as defective.

Not only did the alleged conduct occur prior to the 14-day requirement for filing a grievance by the Union, it also occurred prior to the existence of the Joint Statement itself. According to the Union, the action that broke the camel's back and warrants keeping Thompson out of the workplace as a supervisor, occurred on October 11, 1991. It is undisputed that the Joint Statement was executed on February 14, 1992. Nothing in the Joint Statement makes its application retroactive. The truth of the matter is that since the Joint Statement has been issued, there has been no allegations whatsoever of wrongdoing by the NALC against Mr. Thompson. As indicated by the evidence record, the only specific fact circumstances relied upon by the Union in their case relates to the events of October 11, 1991. Again, it is significant to note that this was before the Joint Statement even existed. Mr. Thompson is alleged to have physically attacked and pushed Glenn Willis across the workplace floor and threatened to "drop-kick Scott Carmody's ass through the goal post of life". These allegations do not hold up under scrutiny. The credibility of the Union's witnesses Scott Carmody, Glenn Willis and Dale Stremcha, fail in comparison and rate of credibility to that of the Union's witnesses and recognition by Management of Mr. Thompson's work ethic and professionalism as indicated in his numerous awards received.

Nothing in the Joint Statement on Violence and Behavior in the Workplace states that employees are to be removed without due process or appeal rights. Yet, this is what the NALC is

asking the Arbitrator to buy into. Due process is essential and fundamental to any dispute resolution system in existence in modern Western civilization. The NALC seeks not only to violate Mr. Thompson's statutory appeals rights in the MSPB forum and its decision and settlement implementing the decision, but also seeks to do so without affording Mr. Thompson basic fundamental rights of due process. The Union seeks to deny Mr. Thompson who is an indispensable party to this proceeding, standing to be present at the arbitration hearing, denial of legal counsel or representative of his choice, and denial of his basic right to confront accusers and detailed specificity of the allegations leveled against him by the Union. The Union recognized through its own witnesses that statutory due process rights of other individuals are not diminished by the Joint Statement. As such, Mr. Thompson is not a party to the proceeding or one who can be affected by them. Mr. Thompson cannot be reinstated by the MSPB to his former position as Postmaster of Henderson and removed from it by the Arbitrator at the same time. According to the NALC's own witnesses, the MSPB decision/Settlement must be honored.

Absent hard facts and credible testimony from Union witnesses who have been discredited by their prior inconsistent statements and testimony, the Union comes forward with insufficient evidence to sustain its grievance or request that Mr. Thompson be removed from future supervisory control over members of the Letter Carrier Craft. The Union has shown however, sufficient evidence of its vendetta against Mr. Thompson and went out of their way to create problems for him. The NALC's grievance is fundamentally defective on its face for lack of standing to grieve the MSPB decision (Settlement Agreement). Not only are the allegations against Mr. Thompson improper, but come after the existence of the Joint Statement on Violence and is a denial of his fundamental of due process. The Union's grievance should be denied.

VII.

DECISION

A. The MSPB's Decision Does Not Bar Enforcement of the Parties' Agreement.

The MSPB's decision does not bar a violation enforcement under the parties' National Agreement nor supercede the Arbitrator's authority to act pursuant to that Agreement. It is well established, as noted in the case of *United Steel Workers of America v. Enterprise Wheel & Car Corp*, 363 U.S. 593 (1960), that an arbitrator is a "creature of the contract"; and an arbitration award is enforceable only so long as its draws its essence from the Collective Bargaining Agreement. The parties' Agreement manifest their intent to be mutually bound by expressed provisions under the contract which govern their day-to-day Management-Labor relations. The contract not only embraces traditional negotiated agreements specifically delineating the parties' obligations, limitations, restrictions, and rights as agreed, but also provisions which include recognition of other documents, either mutually bargained or developed unilaterally by Management, setting forth the Employer's Standard Operating Procedures, or postal rules and regulations. These documents are incorporated by reference into the National Agreement under Article 19 (Handbooks and Manuals) as if mutually negotiated by the parties' objective manifestation and are given equal status and recognition under their Agreement.

The parties' National Agreement is a recognition of their mutual assent and intent to be bound by the provisions contained therein. Article 15 (Grievance-Arbitration Procedure) set forth the parties' definition of a grievance in Section 1 as follows:

"A grievance is defined as a dispute, difference, disagreement or complaints between the parties related to wages, hours and conditions of employment. The grievance shall include but is not limited to, the complaint of an employee or

of the Union 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. [Emphasis added.]”

The primary function of an arbitrator when interpreting contract language is to ascertain the parties' true intent and then give full force and effect to their mutual assent under the agreement. In the instant case, the parties' National Agreement clearly establishes provisions which govern their day-to-day interaction and establishes the arbitrator's authority to hear all matters involving disputes, differences, disagreements or complaints relating to wages, hours and other conditions of employment. The arbitrator's authority also include matters involving complaints of an employee or the Union which involves the interpretation, application or compliance with Article 15 or any provision of the agreement. As such, the Arbitrator is authorized and hereby determines, that the Union's grievance was timely filed and is properly before him. It is noted for the record that there was no objection at the Step 2 or indication at Step 3 by Management of any impropriety in the timely filing of the Union's grievance and therefore in the absence of a reservation of right preserving its continued objection to the Union's grievance, the Arbitrator finds that Management has waived its timeliness objection and is thereby estopped from seeking enforcement of this provision. (See, Union Exhibit "E").

The MSPB's decision does not alter nor supercede the parties' Agreement or the Arbitrator's authority to act under such an agreement for the following reasons: The MSPB's decision regarding Mr. Thompson and the basis for Mr. Thompson's appeal are factually distinguishable from the Union's grievance which raises substantial safety allegations and the threats of physical violence and intimidation against carrier craft employees. The Service's adverse action against Mr. Thompson (USPS Exhibit No. 1) accuse him of a form of theft in

failing to work eight (8) full hours for eight (8) hours of pay and fraudulent conduct for allegedly concealing and falsifying his time records. The Service's action of a reduction in pay grade (EAS-22) and demotion from his Postmaster position, address fundamental employment issues governing all postal employees from the Postmaster General to Entry Level employees: a fair day's work for a fair day's pay. The adverse action taken against Mr. Thompson by the Service did not allege or address carrier craft employee complaints against him for threats of physical violence, intimidation or raise any safety allegations. Those matters were never charged by the Service against Mr. Thompson nor introduced as "new matters" by Thompson in his petition for review or in the Service response before the MSPB Board in Washington, D.C. As a result, the subsequent decision by the MSPB Board overturning Mr. Thompson's demotion and reduction has no injunctive or effect upon the Arbitrator which would prevent the exercise of his authority, as clearly established under the parties' National Agreement. Further, the subsequently negotiated settlement between the Service and Mr. Thompson assigning him to Sparks, Nevada, is a unilateral managerial act by the Service in determining the best utilization and the most efficient production of its work force, including its managerial staff. Per se, the Arbitrator does not find the Agreement in and of itself a violation of the parties' National Agreement. However, as will be discussed below, the specific duties that Mr. Thompson performs at the Sparks, Nevada Post Office as Manager Customer Service, may impact upon and even violate specific enforcement provisions of the National Agreement pursuant to Articles 14 and 19, if it is determined that Mr. Thompson's supervisory conduct while at Henderson was inappropriate.

B. Mr. Thompson's Inappropriate Behavior Has Been Sufficiently Documented.

The Union has come forth with a preponderance of evidence clearly setting forth a pattern and practice of Mr. Thompson's inappropriate supervisory behavior. The demonstrated pattern of inappropriate behavior extends as far back as 1980 when Mr. Thompson was in Simi Valley, California, also while at the Santa Ana Division and up to the present grievance, involving inappropriate behavior among carriers at the Henderson Post Office. The inappropriate behavior consists of physical threats, intimidating tactics, verbal abuse, discourteousness toward carriers, raising of his voice and physical violence against carriers. The testimony of Joe Naso, a postal employee for 35 years and President of Simi Valley APWU during the 1980's, testified convincingly that Management was aware of numerous complaints filed against Mr. Thompson by his local APWU. He characterized Mr. Thompson as being insensitive, rude, disruptive, retaliatory, harassing of clerks, and Mr. Naso was threatened to be fired. Mr. Naso filed numerous grievances in support of these allegations which were fully documented against Mr. Thompson. He indicated that Mr. Thompson was directed by the Service to sign a Letter of Apology for his inappropriate behavior as a result of the grievances filed against him. Most disturbing was Mr. Naso's testimony that fellow clerk and good friend Ed Jotkowitz, who is Jewish, was the recipient of one of Mr. Thompson's derisive and racial insults. According Mr. Naso, and subsequently corroborated by Mr. Jotkowitz' testimony, Mr. Thompson while at Simi Valley, made the following comment in the presence of Mr. Jotkowitz who was the only Jewish individual in the Break Room: "I guess Hilter missed one". The comment, even if meant to be humorous, was insensitive and insulting. Carl Merrick, a letter carrier at Henderson, Nevada, testified regarding a letter that he wrote to Postmaster General Runyon complaining of Mr.

Thompson's intimidating behavior and physical manner that he displayed towards the carriers. Merrick further testified that on several occasions, he observed Mr. Thompson under the influence of alcohol while at work. Mr. Merrick also corroborated the testimony of Jacque Law, a fellow letter carrier at Henderson, who testified that on October 11, 1991, Mr. Thompson confronted her when she returned from the street at approximately 6:00 p.m. She testified that Mr. Thompson confronted her on the back dock and began to throw a "fit of rage" accusing her of time wasting practices (Union Exhibit "L"). She indicated that she was so afraid of Mr. Thompson and that he intimidated her. She went home that evening thinking that she would be fired the next day. Scott Carmody testified as to the problems that he had with Mr. Thompson at the Henderson Post Office including an incident on October 11, 1991. Carmody returned to the office at approximately 6:00 p.m. and was confronted by Mr. Thompson on the back dock in a loud voice who instructed him to clock off and go home immediately and escorted him out the door. Carmody indicated that he attempted to explain to Mr. Thompson that he had just completed his route with overtime and had not turned in his accountable mail and Arrow Key. Mr. Thompson told Mr. Carmody that if he did not leave, he [Thompson] would "kick his ass through the goal post of life". Mr. Carmody testified that he felt threatened and physically intimidated by Mr. Thompson if he did not obey his order. It was only later after Mr. Thompson left the post office that Mr. Carmody could sneak back into the Henderson Post Office, with assistance from other carriers, to turn in his registers and Arrow Key as he was required to do by postal rules and regulations. Glenn Willis, a letter carrier now retired from the Henderson, Nevada Post Office, testified that Mr. Thompson verbally and physically assaulted him by pushing him in the chest. The altercation was never reported. He indicated that he felt intimidated by the

supervisor's action towards him and other carriers at Henderson. On cross-examination, it was disclosed that Mr. Willis was the recipient of a ten (10) day suspension in 1982 prior to the arrival of Mr. Thompson for failure to report a vehicle accident. However, Mr. Willis stood by his account of the event.

The litany of witnesses coming forward indicating the physical abusive nature of Mr. Thompson, his intimidating tactics, and bullied behavior, are sufficient documentation by the Union of this supervisor's pattern of inappropriate behavior to sustain its grievance of a safety violation of Article 14 of the parties' National Agreement. Under Section 1 (Responsibilities) of this Article, "It is the responsibility of Management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate and assist Management to live up to his responsibility." It is abundantly clear from the overwhelming evidence presented at the hearing, that Management violated this provision by failing to live up to its responsibility to correct a known safety violation in the form of inappropriate conduct of Supervisor Thompson toward carriers. Notwithstanding the Service argument in its post-hearing brief discounting the credibility of the Union's Chief Steward Dale Stremcha for his alleged failure to get along with Management and equally outrageous behavior as testified to by Supervisor Joe Elliott, or discounting the accusations of Scott Carmody's "drop kick through the goal post of life," and Glenn Willis' accusations regarding the physical assault by Mr. Thompson, the great weight of the evidence against this supervisor is still substantial and demonstrates a horrific picture of an individual who is out of control and has been for a long period of time. Although the evidence record does not make Mr. Thompson out to be an ogre or menace to the Post Office, given his numerous postal awards and accommodations for efficiency

and his management productivity; which are clearly noted and viewed as commendable, however, such accommodations over a 30-year postal career cannot and does not justify inappropriate behavior by a supervisor, or any employee within the Postal Service. Even when viewing the evidence presented in a light most favorable to the Service position, through the testimony of witnesses and numerous arbitrable awards and decisions submitted by the Service, the clear and present conduct complained of by Mr. Thompson is still undeniable and cannot be condoned. The Arbitrator is particularly moved by the testimony and recollections of female employees who appeared at the hearing to speak out against Mr. Thompson and his inappropriate behavior. The carriers were not only from the Henderson Post Office, but also resulting from his tour in the Southern California Simi Valley/Santa Ana Division. Female carriers testified of being physically and emotionally intimidated by Mr. Thompson's harsh comments, threatening manner and his in-your-face presence towards them. This conduct constitutes a hostile working environment by a supervisor and an unsafe working condition, which the Union placed Management on actual notice of, and was not corrected. The Service argument that the Union was out to make trouble for Mr. Thompson at the Henderson Post Office by filing this grievance and by bringing up Mr. Thompson's prior history in Simi Valley and Santa Ana, California, as a means to discredit him, is neither well grounded nor supported by the evidence record. The facts remain that the evidence speaks for itself and support the grievance filed. The Service was on actual notice prior to these incidents in Henderson, Nevada, of Mr. Thompson's inappropriate behavior but failed to act appropriately when requested to do so.

C. The Joint Statement On Violence and Behavior in the Workplace Does Apply to Mr. Thompson's Behavior and Does Not Violate His Right of Due Process.

Professor Snow's national arbitration decision determining the parties' responsibilities and obligations under the Joint Statement on Violence and Behavior in the Workplace states at page 14: An examination for the purpose of the Joint Statement, the actual verbage itself, and the dispute resolution processes used by the parties provide objective manifestations of their intent. It is un rebutted that the principle purpose of the parties in publishing the Joint Statement was to lend their mutual weight to an anti-violence campaign in the workplace. Words used by the parties express their concern that combating violence in the workplace was such a high priority, it was necessary to take an unprecedented step to jointly issue a credo against violence. To convey the intensity of their commitment to reducing violence in the workplace, the parties stated:

The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence....but let there be no mistake that we mean what we say and will enforce our commitment to a workplace where dignity, respect, and fairness are all basis human rights, and where those who do not respect those rights are not tolerated."

The Joint Statement goes on to specifically address a misconception held by some supervisors and postal employees that the signatories to the Joint Statement on Violence signing for themselves, assignees, agents, representatives, and successors in interest, intended to correct stating:

"Making the numbers" is not an excuse for the abuse of anyone. Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions". (See, Joint Exhibit No. 11).

It is a well established principle in labor relations that Management has inherent discretionary authority (expressly stated in Article 3 of the National Agreement) to direct, hire,

promote, transfer, assign and retain employees within the Postal Service and to suspend, demote, discharge and take other disciplinary action against such employees. Management also has the right to determine the method, means and personnel by which such operations are to be conducted and to maintain the efficiency of the operations entrusted to it. The powers of Management are not merely limited to those expressly stated in the parties' National Agreement, but also include those inherent powers which cover management and supervisory personnel who are not parties to the collective bargaining process. However, supervisors and other management personnel are constructively bound by the Collective Bargaining Agreement negotiated by the Service as its agents, representatives, and parties in interest in carrying out the parties' collective bargaining process. As such, Article 19 (Handbook and Manuals) of the National Agreement incorporates by reference all postal rules and regulations, including Section 115 of the M-39 Handbook (Mutual Respect by Management of Employees), and the parties' Joint Statement on Violence and Behavior in the Workplace, as if collectively bargained, and are given equal dignity, status and recognition under the National Agreement. These postal manuals, rules, regulations and statements, are equally binding upon Management personnel and supervisors as they are upon bargaining unit employees. Equal dignity and respect equates to reciprocity and civility in the workplace. These well established postal principles are formally restated and incorporated in the Joint Statement on Violence and Behavior in the Workplace, and are applicable to all parties under Article 19 of the National Agreement. The Joint Statement on Violence and Behavior in the Workplace is not only applicable but also enforceable against Management supervisors such as Mr. Thompson.

The Service argues in its post-hearing brief that such an application and removal would be

a violation of Mr. Thompson's right of due process, specifically lack of notice and right to legal counsel or representative of his choice. The Service further argues that the Union seeks to violate Mr. Thompson's statutory appeal rights in the form of his MSPB decision and settlement implementing that decision by seeking to retroactively apply the Joint Statement to circumvent it. Finally, the Service argues that the alleged misconduct of Mr. Thompson was prior to the existence of the Joint Statement and to apply it retroactively would violate his right of due process. In support of the Service arguments regarding Mr. Thompson's right of due process, the Service relies upon several arbitral decisions by the instant Arbitrator (Case No. WOC-5A-566, 5/21/93, Case No. WOT-5A-C 14135, 11/26/93, and Case No. WOC-5A-D 1146, 2/10/92), for the general principles affirming an employee's right of due process to a full and fair hearing, and a reasonable opportunity to correct an employee's behavior, once placed on notice to do so by Management. Those rights of due process are still affirmed by the Arbitrator. However, as stated earlier, Mr. Thompson's MSPB rights are not at issue here, neither compromised, infringed upon or denied, by the parties' Joint Statement on Violence and Behavior in the Workplace, as incorporated in their National Agreement. The Statement applies universally and unrestrictively to all postal employees. The language utilized by the parties in their Statement is clear and unambiguous. It refers to all of us who serve that institution "by requiring us" to firmly and unequivocally commit to do everything within our power to do prevent further incidents of work-related violence". The language is also unequivocal in its breath and is intended to include not only postal employees, but those who serve the postal institution as independent contractors, such as arbitrators, as an institution, in the Joint Statement's applicability. The Service's adverse action directed towards Mr. Thompson was clearly distinct and distinguishable from the instant

grievances alleging inappropriate behavior and physical violence by a supervisor towards letter carriers at the Henderson Post Office. The subsequent Settlement Agreement negotiated by the Service with Mr. Thompson as a result of the MSPB reversal action, does not conflict with or affect the Arbitrator's authority to fashion an appropriate remedy or the NALC's contractual right to seek enforcement of the Joint Statement against supervisory employees, including Mr. Thompson. The Union's right to challenge Management's decision for violating the "Joint Statement" while in the exercise of its duties under Article 3 of the National Agreement has been upheld by Professor Snow as follows:

"The grievance procedure of the National Agreement may be used to enforce the parties' bargain and arbitrators have available to them the flexibility found in arbitrable jurisprudence when it comes to formulating remedies, including removing a supervisor from his administrative duties."

The Service argument that Mr. Thompson was denied his right of due process by denial of his choice of counsel and inadequate notice during these proceedings does not deny the NALC's contractual right to enforce the National Agreement or the Arbitrator's authority to act pursuant to it. The grievance maintained by the Union is not directed personally at Mr. Thompson per se as an individual or defendant, but in his official capacity as a postal supervisor and management personnel under the National Agreement. Therefore, in the absence of any direct legal challenge by Mr. Thompson to his appearance at the arbitration proceeding and his three (3) days of subsequent hearings before the Arbitrator in which he knowingly and willingly understood his rights and freely appeared, the Service argument is moot. Further, the due process arguments asserted by the Service in its post-hearing brief raises fundamental issues of standing, i.e., whether or not the Postal Service has the right to assert due process arguments for Supervisor Thompson

in his individual and personal capacity as opposed to a Management employee. It would appear after a close analysis and examination of the Service post-hearing brief that its due process argument is misdirected, since it goes to the fundamental rights of Mr. Thompson as a private individual and not in his official capacity as a employee of the Postal Service. In the absence of Mr. Thompson asserting his constitution due process challenges to the NALC's grievance, the Service lacks standing to assert them on his behalf. Notwithstanding this fact, the Joint Statement of Violence and Behavior in the Workplace applies both universally and non-discriminatively to all of us including arbitrators, who serve the Postal institution.

D. Enforcement of the Joint Statement on Violence and Behavior Applies to All Parties.

Finally, the evidence record does not support nor does the Arbitrator find, any basis for the Service argument that Mr. Thompson cannot be held accountable for his supervisory conduct under the Joint Statement which occurred prior to its existence. The Postal Service argument here is clearly disingenuous given the national intent of the signatories to the Joint Statement on Violence and Behavior in the Workplace who grieved for the Royal Oak victims which is the basis for implementing the Statement. The Joint Statement was clearly intended, as originally proposed by Mr. Vincent Sombrotto, President of the National Association of Letter Carriers, and subsequently agreed as manifested in its final language, to be immediately incorporated by reference into Article 19 of the parties' 1990-1994 National Agreement. Clearly, the evidence indicates an objective manifestation that the Statement's applicability was intended prospectively as well as retrospectively by the parties. Further, the Joint Statement merely restates in one document, existing postal rules and regulations regarding violence in the workplace previously

established and known to all of "us", bargaining unit employees as well as Management personnel. Notwithstanding the global applicability of the document to all of "us", the Service appears to be utilizing a strict scrutiny standard in asserting the Statement's non-applicability based on the due process of Mr. Thompson. This argument lacks currency because Mr. Thompson is not personally on trial in this arbitration proceeding. Nor is this a criminal proceeding. A denial of Thompson's due process rights is not at issue here given the fact that it does not result in a deprivation of his liberty. However, if the Postal Service strongly believes that Mr. Thompson's rights are abridged under this proceeding and that management has an obligation to protect the due process rights of this individual as a supervisor, then it may clearly exercise the provisions bargained under Article 15, Section 2, Step 3(e) and those set forth under Article 15, Section, Step 2, Step 4(a) of the National Agreement. Further, the Service may also seek redress for any alleged violations under the Joint Statement of Mr. Thompson's rights if it feels compelled to do so, under Article 15, Section 4-D-1 which reads as follows:

"Only cases involving interpretive issues under this Agreement or supplements thereto of general applications will be arbitrated at the national level."

Notwithstanding this established forum of redress for the Service if it chooses to assert the procedural due process rights of Mr. Thompson in this matter, a more fundamental and substantive finding by the Arbitrator holds that under the doctrine of relation back, the parties' Joint Statement on Violence and Behavior in the Workplace entered into on February 12, 1992 (during the same period of time in which the Union was processing its grievance) relates back to and encompasses the documented inappropriate behavior of Supervisor Thompson. Under this doctrine, a presumption of knowledge is attributed to this 30-year supervisory employee

regarding mutual respect, violence in the workplace, harassment and intimidation of employees and the Postal Service rules and regulations prohibiting such inappropriate behavior by all employees, including Management personnel.

To accept the Service argument of the Joint Statement's non-applicability to Mr. Thompson would in essence, knowingly condone inappropriate behavior and misconduct by a supervisory employee with management control over bargaining unit employees. Such a position as taken by the Service is in direct contravention of the parties' intent in formulating its clear joint expression against postal violence as indicated in its Statement. Moreover, to accept the Service position of non-applicability, the Arbitrator would have to set aside the overwhelming testimony of credible witnesses as to Mr. Thompson's demonstrated pattern of inappropriate behavior consisting of intimidation, physical threats, bullying tactics and discourteousness toward employees. The Arbitrator would also have to set aside the unrebutted testimony of Michael Lindemon, Carrier Supervisor at the Henderson Post Office, that he observed Mr. Thompson lose his temper on various occasions and that he felt that Mr. Thompson was "unstable". Mr. Lindemon then testified to a more disturbing and troubling incident involving Mr. Thompson, that is, "having a gun on postal premises". According to Mr. Lindemon and subsequently corroborated during examination by Mr. Thompson; on one occasion Mr. Lindemon accompanied Mr. Thompson out to the Henderson Post Office parking lot and was shown a gun that Mr. Thompson kept in his personal vehicle. Mr. Thompson's personal vehicle was parked on postal premises with the gun inside his automobile. During examination of Mr. Thompson on this and other aspects of the allegations against him, he affirmed Mr. Lindemon's prior testimony of having been shown a gun on postal premises at the Henderson Post Office. Mr. Thompson

acknowledged owning a gun that he carried in his car and that he showed it to another employee at the Henderson Post Office. Although he acknowledged his awareness that possessing a gun inside a post office building was illegal and not permitted. He was not aware that it was also illegal and not permitted to possess a gun in his personal vehicle in the postal parking lot. The evidence record is unclear and inconclusive as to whether Management was aware of the gun incident involving Mr. Thompson and, if so, whether it took any corrective or administrative disciplinary actions against him. Suffice to say, as the Union summarizes in its post-hearing brief: "based on similar incidents, if Mr. Thompson were a letter carrier, he would have been fired many times over".

E. Remedy.

As established by the Professor Snow in his national decision regarding enforcement of the Joint Statement on Violence and Behavior in the Workplace, "Arbitrators have available to them the flexibility found in arbitrable jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties." Professor Snow supports his opinion by well established labor law arising out of a series of seminal cases known as the *Steelworkers' trilogy*, decided in the United States Supreme Court case of *United Steel Workers of America v. Enterprise Wheel & Car Corp., supra*, in which the court states,

"there [formulating remedies] the need is for flexibility in meeting a wide variety of situations. A draftsman may never have thought of what specific remedy should be awarded to meet a particular contingency."

In the case at hand, the Union has submitted numerous national level arbitration decisions for their authoritative precedential value, including decisions regarding remedy by national level Arbitrators Howard Gamser (NC-S-5426), (C-3200); Neil Burnstein (Case No. H1N-1J-C

23240), and National Arbitrator Benjamin Aaron (Case No. H1N-5F-D 2560, (C-4519)); for the proposition that arbitrators have broad authority under the parties' National Agreement to fashion appropriate and specific remedies based upon the factual circumstance(s) presented. The Union has clearly demonstrated for the record specific incidences of Mr. Thompson's pattern of inappropriate behavior in violation of the parties' Collective Bargaining Agreement. The Union sadly believes that the only remedy for Mr. Thompson is removal. However, it does recognize that removal is not the only possible remedy which is available for the Arbitrator to consider and has set forth four (4) possible remedies or variations of such, for the Arbitrator's consideration and review. On the other hand, the Service in its post-hearing brief remains steadfast in its position that the Union has failed on all accounts and, therefore, request that the grievance must be denied in its entirety. According to the Service, to do otherwise would do violence to the concepts of fundamental fairness, due process and individual statutory rights.

In fashioning an appropriate remedy based upon the factual circumstances, an arbitrator is obligated to balance the conduct complained of against the remedy that is being requested for such a violation. In the instant case, the Union comes forth with sufficient evidence of a pattern and practice of the inappropriate behavior and conduct exhibited by Supervisor Thompson over a long period of time and specifically while Postmaster at the Henderson Post Office. The Union seeks Mr. Thompson's permanent removal from all future postal employment. However, it recognizes that the Arbitrator has the authority to weigh all remedies and give them equal consideration and to determine the appropriate one based upon the evidence presented. Here, removal of the supervisor from future postal employment is inappropriate. The Arbitrator believes that based upon Mr. Thompson's long period of employment with the Postal Service, his

numerous awards and accommodations, his excellent work record, and the respect shown him by fellow managers and employees, based upon his various postal duties; are factors which mitigate and weigh against supervisor Thompson's removal at this time. Therefore, the appropriate remedy is as follows:

1. Mr. Thompson shall be formally counseled by the Service regarding postal policies and the prohibition of the possession of firearms on postal premises both inside of postal facilities and outside in postal parking lots. Mr. Thompson is to be warned that any further incident(s) of possession of a firearm on postal premises whether inside the building or outside in his vehicle in the postal parking lot, will result in his immediate and summary removal from postal employment;
2. Mr. Thompson will also be counseled and given a copy of the Joint Statement on Violence and Behavior in the Workplace, with full explanation of its meaning and intent;
3. Mr. Thompson shall submit to a fitness-for-duty examination (both physical and mental) by Board certified specialist in their medical fields for the examinations in question, pursuant to the selection procedure set forth in Article 13 of the National Agreement. The fitness-for-duty examination shall determine whether or not Mr. Thompson possesses both the physical and mental ability to work safely as a postal employee. The report shall be confidential and shall be disseminated to the Western Area Labor Relations Director, the Area Medical Office and to the Regional National Business Agent;
4. If Mr. Thompson is found to be unfit for duty (either physically or mentally) as determined by Board certified specialists, the Postal Service shall not return him to duty until such time as he is determined fit by further Board certified evaluations of his condition;
5. That upon Mr. Thompson's return to duty that he be restricted administratively by the Service in the exercise of supervisory control or authority, absent emergency circumstances or direct management overview, from any day-to-day supervisory authority over employees of the Letter Carrier Craft;
6. That Mr. Thompson issue a written general apology to carriers at the Henderson Post Office for any inappropriate conduct, behavior or discourteousness, that he may have exhibited or may have been perceived by others, as having exhibited, while Postmaster at the Henderson Post Office; and

7. The Arbitrator shall retain jurisdiction over this matter for a period of sixty (60) days to resolve any disputes regarding implementation of the remedy.

Accordingly, for the reasons stated above, the Union's grievance is sustained.

AWARD

The Postal Service violated Articles 14 and 19 of the National Agreement by failing to correct Robert C. Thompson's inappropriate supervisory behavior towards postal employees in the Letter Carrier Craft. The appropriate remedy for Mr. Thompson's inappropriate behavior is set forth in the Remedy Section of the Arbitrator's Decision. The Union's grievance is sustained.

Dated: February 19, 1999



CLAUDE D. AMES, Arbitrator