C-23104

REGULAR ARBITRATION PANEL

In the Matter of Arbitration	)	
	)	
between	)	Class Action Grievance
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS	)	Post Office: Monterey, California
	)	
	)	Case No. F94N-4F-C 99162061 99048
and	)	
	)	
UNITED STATES POSTAL SERVICE	)	
	)	

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Employer: Ms. Deborah J. Gilmore

For the Union: Mr. Manuel L. Peralta, Jr.

PLACE OF HEARING: Monterey, California

DATES OF HEARINGS: April 27, 2001
July 3, 2001

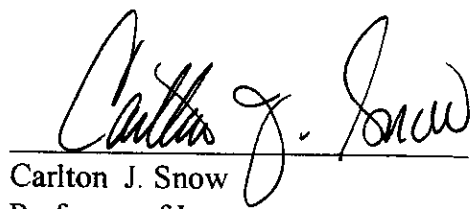
POST-HEARING BRIEFS: August 27, 2001

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated Articles 5 and 31 of the National Agreement by unilaterally terminating a past practice. Additionally, the Employer violated Articles 15, 17, and 31 of the National Agreement by failing to provide sufficient time to process the grievance and to make witnesses available to union representatives.

It is the Employer's contractual obligation to cooperate fully in an effort to develop all necessary facts for processing a grievance. The Union shall receive reimbursement for all documentable costs it incurred in using outside facilities to make copies that, pursuant to the past practice, should have been made at the postal facility. The Employer shall restore the Union's access to the copiers with the understanding that management may charge the Union the Employer's actual, documentable costs for making copies. The arbitrator shall retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow
Professor of Law

Date: November 5, 2001

REGULAR ARBITRATION PANEL

IN THE MATTER OF ARBITRATION	)	
BETWEEN	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS	)	ANALYSIS AND AWARD
AND	)	Carlton J. Snow Arbitrator
UNITED STATES POSTAL SERVICE (Class Action Grievance) (Monterey, California) (Case No. F94N-4F-C 99162061 99048)	)	

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from 1994 to 1998. Hearings occurred on April 27 and July 3, 2001. Ms. Deborah J. Gilmore, Labor Relations Specialist, represented the United States Postal Service. Mr. Manuel L. Peralta, Jr., Regional Administrative Assistant, represented the National Association of Letter Carriers.

The hearings proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-

examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The arbitrator tape-recorded the proceedings as an extension of his personal notes. The advocates fully and fairly represented their respective parties.

There were no challenges to the substantive or procedural arbitrability of the dispute, and the parties stipulated that the matter properly was before the arbitrator. The parties initially met for a hearing on April 27, 2001 in a conference room of the postal facility located at 565 Hartnell Street in Monterey, California at which time the Employer came prepared to arbitrate a narrower issue than the broad issue preserved by the Union when it processed the grievance. Since the Employer requested a continuance, the parties reconvened on July 3, 2001. The parties ultimately submitted the matter on the basis of evidence presented at the hearing as well as post-hearing briefs, and the arbitrator officially closed the hearing on August 27, 2001 after receipt of the final brief in the matter.

II. STATEMENT OF THE ISSUE

Issues before the arbitrator are as follows:

Did the Union's use of the Employer's copy machine free of charge constitute a binding past practice?

If so, did the Employer violate the parties' National Agreement when it changed the Union's access to the copier?

If so, what is the appropriate remedy?

Did the Employer violate Articles 17 and/or 31 of the National Agreement?

If so, what is the appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

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 action 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 5 - PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

IV. STATEMENT OF FACTS

In this case, the Union seeks the right to continue an alleged past practice of using the copy machine in the postal facility for processing grievances. In 1998, new management changed access codes on copy machines at the facility and instructed union officials to seek permission before using the machines. Additionally, management began charging the Union $.15 a page for making copies.

The Union challenged the decision of the Employer in 1999, and a dispute also emerged between the parties with regard to management's denial of sufficient time for Union officials to process the grievance. The Employer ultimately denied all aspects of the grievance.

When the parties were unable to resolve their differences, the matter proceeded to arbitration.

V. POSITION OF THE PARTIES

A. The Union

It is the position of the Union that the Employer violated a past practice when management changed the Union's access to copiers and began charging $.15 a page. Additionally, the Union maintains that management violated Article 5 of the National Agreement and took unilateral action prohibited by the parties' agreement when it terminated the past practice.

The Union also contends that the Employer violated Articles 16, 17, and/or 31 of the National Agreement by failing to provide the Union with sufficient time to process the grievance. Moreover, management allegedly failed to make witnesses available to the Union so that it could prepare a case properly. Accordingly, the Union maintains that it should prevail on both issues in this case.

B. The Employer

The Employer maintains that no past practice exists between the parties and that no condition of employment has been changed by management with regard to copiers at the Monterey facility. According to the Employer, it never intentionally entered into a limitation on a managerial right by permitting the Union access to the copy machines owned and operated by the Employer. It is the position of the Employer that management unilaterally established the privilege of letting the Union use the copy machine and that, therefore, it had the right unilaterally to abolish the privilege. The Employer insists that the Union had no right to use the copier without charge.

Moreover, the Employer contends that the parties' negotiated agreement expressly authorizes management to charge $.15 a page for duplication. The Employer contends that it has no responsibility to fund administrative overhead for the Union. Union dues should cover such costs, in the view of the Employer.

With regard to the alleged procedural violation, the Employer contends that, although the Union included Articles 17 and 31 in the original grievance, there was no discussion of the alleged procedural violation at Step 2 or Step 3 of the grievance procedure. The Employer argues it was

reasonable for management to conclude that the Union had decided not to pursue this aspect of the grievance. On the merits, the Employer contends that the Union received sufficient time to process the grievance.

VI. ANALYSIS

A. Revisiting Testimony

The Union argued that it long had made use of the copy machine at the Monterey facility for processing grievances. Mr. Joseph Martin, Shop Steward and vice-president of the Branch, testified that management permitted the Union to use the copier for at least eight or nine years and, perhaps, longer. Evidence suggested that, as early as 1989, management permitted the Union to use the copier for processing grievances without charge. For small amounts of copying, the Union typically used the copier in the timekeeper's office. For large numbers of copies, the Union, first, obtained permission from management which was always forthcoming and, then, proceeded to produce the copies.

Ms. Cramer, president of the Branch, testified that management long had been aware of the fact that the Union used the copy machines at the facility. According to Mr. Martin and Ms. Cramer, union officials often used the copiers in the presence of supervisors. They contended that, prior to 1998, no manager ordered them to discontinue such activity.

Mr. Darryl Stokes served as interim postmaster in Monterey for seven months in 1998. He testified that he was unaware of the Union's use of the copier. At the same time, he testified that the only discussions

management had with the Union regarding use of the copier occurred when the Union sought to make large numbers of copies. He did not unravel the ambiguity.

In September of 1998, Mr. James Korthof became postmaster in Monterey and remained in that position for two years. On assuming his duties, he made several changes, including changing carrier start and return times, changing methods of processing grievances, and made several changes to the facility itself. He soon became aware of the Union's use of the copiers for 20-30 minutes at a time.

Mr. Korthof consulted with past Postmaster Stokes, and Mr. Stokes allegedly told Mr. Korthof that he attempted to restrict the Union's use of the copiers. There were two copiers on the premises, one upstairs and one downstairs. The Union used both machines to copy case files. Mr. Korthof also testified that employees and members of the military had used the copiers, in addition to the Union.

In February of 1999, Postmaster Korthof installed access codes on the copy machines and told the Union to seek permission before using the machines. He did not consult with Union officials before installing access codes. He maintained that he merely made a business decision pursuant to his managerial right to do so. Hence, he saw no need to consult

the Union. Additionally, he informed the Union that there would be a $.15 charge for making duplicate copies and relied on the Administrative Support Manual as the basis for the charge. Rather than paying the fee, union officials used outside sources to make copies because it was cheaper to go elsewhere.

Evidence submitted to the arbitrator established that it did not cost the Employer $.15 a page to make copies from its machines. The data showed that from February,1999 to February, 2000, the Employer's cost for copies was $.018 a copy plus $.01 a page. From February, 2000 to February, 2001, the Employer's cost was $.019 per copy plus $.01 per page. The current cost for copies is $.023 a copy plus $.01 a page.

B. The Matter of Past Practice

The Employer argued that this is not a dispute about past practice and that it had complete authority to change access to the copiers and to charge the Union $.15 a page for using the equipment. As support for its analysis, the Employer relied on Sections 352.71 and 352.722 of the Administrative Support Manual. Section 352.71 of ASM 12 states:

> Fair and equitable fees permit the furnishing of records to members of the public while recovering the full allowable direct cost incurred by the Postal Service. The Postal Service uses the most efficient and least costly methods in complying with requests for records. (*See* Joint Exhibit No. 5, p. 149.)

Although the parties did not submit a full copy of ASM 12 to the arbitrator, it is reasonable to construe Section 352.722 as directly linked to Section 352.721. The entire portion of Section 352.72 deals with "standard rates." Section 352.722(a) states:

> Except where otherwise specified in postal regulations, the fee for duplicating any record or publication is $.15 per page. (see also 352.722(d).) (*See* Joint Exhibit No. 5, p. 151.)

Section 352.722(d) focuses on special copying charges involving photocopies, money orders, return receipts, domestic delivery records, international mail records, and sexually oriented advertising. The point is that these provisions in the Administrative Support Manual appear to deal with charges to members of the public. It is reasonable to conclude that Section 352.71, if it has been incorporated into the National Agreement pursuant to Article 19, does not govern the Union's use of the copy machine in this case.

In Article 5 of the National Agreement, the Employer agreed not to take unilateral action affecting wages, hours, and other terms and conditions of employment. (*See* Joint Exhibit No. 1, p. 7.) If use of the

copier rose to the level of a past practice, it constituted a working condition and was far more than a gratuitous benefit which could be unilaterally altered by management. If the Union's persistent use of the copier evolved into a past practice, what once might have been a gratuity moved beyond the reach of management's unilateral control. Nor would the Employer's reliance on a management instruction entitled "Limited Personal Use of Government Office Equipment" alter this conclusion due to the fact that the management instruction was not issued until April 25, 2000, long after the alleged past practice arose and also after the grievance had been filed. (*See* Employer's Exhibit No. 10.) But did use of the copier rise to the level of a past practice?

Few topics in labor arbitration have received as much arbitral comment as the topic of past practice. It is virtually impossible to explore fundamental principles of past practice without reference to seminal research done on the subject by the eminent Richard Mittenthal, past-president of the National Academy of Arbitrators. His was the first cohesive analysis of the subject, and he set forth principles that had been universally adopted by labor arbitrators in the United States. (*See* Mittenthal, 14 NAA 30 (1961).) Others have merely built on the foundation

he provided. (*See, e.g.*, St. Antoine, *The Common Law of the Workplace* 81 (1998).)

Arbitrators share a high degree of consensus about the fact that, for a past practice to exist, activity in a workplace must have (1) clarity and consistency; (2) longevity and repetition; (3) acceptability; and (4) mutuality. According to the Employer's theory of the case, the disputed activity in this case failed to rise to the level of a past practice because there allegedly was no mutual acceptance of the Union's free access to the copy machines. In support of its theory, the Employer relied on a number of cases and, in particular, one that quoted Dean Harry Shulman. (*See* Case No. F94N-4F-C 99173606.) Dean Shulman of the Yale Law School stated:

> There are other practices which are not the result of joint determination at all. They may be mere happenstance, that is methods that developed without design or deliberation. Or they may be choices by management in the exercise of managerial discretion as to convenient methods at the time. In such cases, there is no thought of obligation or commitment for the future. Such practices are merely present ways, not prescribed ways of doing things. (*See Ford Motor Company,* 19 LA 237 (1952).)

In the case on which the Employer relied, where the arbitrator quoted Dean Shulman, evidence before the arbitrator with regard to consistency and longevity of the alleged past practice was conflicting. Based on the totality of the record in that earlier case, the Union failed to meet its burden of

proving that the Employer bound itself to a pattern of conduct that rose to the level of a past practice.

The facts of this case, however, are remarkably clear and the evidence unrebutted. The Union used copiers at the Monterey Post Office for over a decade with the full cooperation of management. Managers observed the activity without objection. In addition to unrebutted testimony from union officials Martin and Cramer, Mr. Wildman, officer in charge from November, 1997 to June, 1998, testified that he was aware of the Union's use of the copiers and that it never posed any sort of administrative problem while he served in Monterey.

Mr. Stokes, interim Postmaster in 1998 for seven months, gave testimony that was unpersuasive. First, he stated unequivocally that he was unaware of the Union's use of the copiers. On cross-examination, he testified that the only problems regarding the Union's use of the copiers came when large numbers of copies were being made. Moreover, Postmaster Korthof testified Mr. Stokes told him that he, Mr. Stokes, had tried to restrict the Union's use of the copiers. Mr. Stokes never denied the assertion.

The Employer also relied on a 1986 award by Arbitrator James Sherman, current president of the National Academy of Arbitrators, as

supporting the Employer's theory that an awareness of activity in and of itself does not meet the test of mutuality. Arbitrator Sherman stated that:

> Awareness alone does not satisfy the requirement of mutuality in such cases (of an alleged past practice). "Mutuality" in this context means that Management committed itself in some manner to continue in return for a promise of some type on the employees' part. (*See* Case No. F1C 3W C 46005 (1986).)

It is unnecessary for two reasons to determine whether this is a correct explication of the doctrine of past practice. The dispute before Arbitrator Sherman involved the consumption of food and drink in the Accountables Cage, and this is hardly a condition of employment equivalent to using copy machines to engage in the crucial union work of processing grievances. More importantly, the activity under review in this case was specific, recurring over a long period of time, and required the cooperation of management. Supervisors were involved in helping union officials schedule copying projects that involved a large number of pages. Even if it is correct that mere supervisory awareness is not tantamount to mutuality, supervisors in Monterey were more than merely aware that, on occasion, union officials made extensive use of photocopiers at the facility.

The totality of the record submitted to the arbitrator established that the Union's use of copiers at the facility was far more than merely a convenient way of accomplishing a task in the moment. It was the

established, recurring way of doing things. By the time either Messrs. Stokes and Korthof attempted to restrict the Union's use of the copier, the activity already had evolved into a past practice. Accordingly, management could no longer unilaterally terminate the activity.

The Employer responded that the activity could not have become a past practice because it violated clear and unambiguous contractual language. As evidence, the Employer pointed to the Administrative Support Manual as the source of the ostensibly unambiguous contractual language. The problem, of course, with the argument is that, (assuming such a limitation on past practice exists), the language on which the Employer relied referred to a request made by members of the public. There is no hint in the regulations of any intent to cover copy work by union officials done in conjunction with advancing the management-union relationship.

The Employer also relied on a 1983 national level arbitration award by Arbitrator Aaron in support of a decision to charge the Union $.15 a copy. (*See* Case No. H1C-4B-C 1416 (1983).) The dispute before Arbitrator Aaron in 1983 dealt with costs incurred by the Employer in obtaining information for the Union, information which the Employer had to

pay employees to gather. The parties' agreement permitted the Employer to recover its costs in obtaining information for the Union.

The Aaron decision has no precedential value in this regional case because the facts and the focus of the two cases are entirely different. What Arbitrator Aaron found was that the Employer has a right to recover costs for gathering data requested by the Union, especially when those costs are reasonable and, in fact, are the same costs charged to the general public. Managers in Monterey, however, charged the Union a fee well above its cost. While it might be reasonable to expect the Employer to seek a profit from copies and information obtained by the public, the same conclusion would not apply when management attempted to gain a profit from fees charged to the Union when it acts in its representative capacity for members of the bargaining unit.

Union officials in Monterey were not acting as members of the public. Nor were they making copies for commercial uses, as defined by the Administrative Support Manual. The Union was not making copies in an effort to further a commercial purpose or a trade or for profit motives. Quite to the contrary, the Union was making copies to process grievances in an effort to maintain stable, more peaceful relations with the Employer. The Employer simply failed to be persuasive that the Administrative Support

Manual sections on which it relied govern the dispute in this case. Accordingly, it must be concluded that the National Agreement is silent with regard to the Union's use of copiers in Monterey.

In the presence of a silent agreement, a past practice of parties may become binding on them as long as the practice does not conflict with the negotiated agreement and complies with general requirements elucidated by Arbitrator Richard Mittenthal. There is no merit to the assertion that the past practice in this case lacked mutuality and consistency. (*See* Employer's Post-hearing Brief, p. 7.) The practice was in place for over a decade. There was no evidence that it was an "on-again, off-again" kind of activity. During this time, the Union regularly used the copier to process grievances. Likewise, the activity met the requirement of acceptability and mutuality due to the fact that management permitted the Union to use the copier and even helped schedule large copying projects.

Clearly, an employer has discretionary authority to regulate its equipment against abuse. But there was no evidence in this case showing that charging a fee of $.15 a page was a regulation instituted by management in an effort to combat equipment abuse. Imposing the regulation on the Union seemed more designed to discourage the Union

from using the copiers, and such unilateral action was inconsistent with the past practice.

The Employer also argued that it did not violate Article 5 of the National Agreement by taking unilateral action in this case. As support for its argument, the Employer relied on a 1988 regional arbitration decision in which the arbitrator reasoned that a violation of Article 5 "is conditional upon proof that some other section of the National Agreement has been violated, for Article 5 clearly and unambiguously states that the Employer is barred from taking unilateral action which violates the terms of the agreement." (*See* Case No. S4M-3V-C 34300 (1988).) Assuming for sake of discussion that this analysis is correct, the test is easily met in this case.

The Employer, in addition to violating Article 5 of the National Agreement, also violated Article 31 in this case. Article 31 states:

> The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. (*See* Joint Exhibit 1, p. 106.)

The activity in this case which rose to the level of a past practice enabled the Union to obtain relevant information for processing grievances. By charging the Union a copy rate that was $.08 higher than local retail copiers,

local management chilled grievance processing and failed to make relevant information available to the Union in accordance with the past practice.

C. Grievance Processing: A Review of Procedural Facts

The Union filed a grievance with regard to the use of the copier in February of 1999. After a denial at Step 1, Mr. Martin appealed the grievance to Step 2 on March 10, 1999. At that point, Mr. Martin alleged that management had provided insufficient time properly to prepare the grievance for Step 2.

At Step 2, the Employer met with Union Steward Ed Nugent. On March 27, 1999, Branch president Patty Cramer requested 8.5 hours to interview Mickey Nowicky, Ed Nugent, Joseph Martin, Joe Haidich, Dave Wildman, Marshall Perry, Jim Korthof, and Cindy Rasmussen about this grievance. Ms. Lee, Customer Service Supervisor, answered Ms. Cramer's request but did not indicate that Ms. Cramer would receive the time requested. Ms. Lee was unable to recall whether she denied Ms. Cramer's

request. Ms. Cramer testified that she interviewed Mr. Martin but did so on her own time.

On March 10, March 25, and March 29, Shop Steward Nugent made requests for union time to process several grievances. On Mach 13, 1999, management approved four hours for Grievance Nos. 99047, 99048 (this grievance), 99049, and 99050. Mr. Nugent's request on March 25 received two hours to process each grievance, including this grievance. Mr. Nugent's request for time on March 29 indicated that he was spending much of his time on Grievance No. 99054, and he sought additional time for that grievance as well as Grievance Nos. 99047, 99048, 99049, 99059, and 99060. Ms. Lee responded on March 31, but her response did not indicate how much time was to be allotted.

According to Ms. Lee, she had no indication from union officials that they were not receiving sufficient time to process grievances. Ms. Cramer testified that she interviewed Mr. Nugent and secured his statement off the clock on April 3, 1999. On that date, this grievance was denied at Step 2 and appealed to Step 3. In addition to a claim with regard to the Union's use of the copying equipment, the Union also alleged that the Employer was failing to provide sufficient time for the Union to process the grievance.

At Step 3, the grievance was remanded for "further development of the facts and for further consideration." Following the remand, the Union and Employer were unable to resolve the grievance. Accordingly, the Union re-appealed the grievance, and a second Step 3 meeting took place on March 13, 2000. The grievance was denied at Step 3. On April 25, 2000, the Employer issued the management instruction limiting the personal use of government office equipment. These were the procedural facts that provided the background for propelling this dispute into arbitration.

Article 15.1 (Section 2), (Step 2) states that:

> The parties' representative shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. (*See* Joint Exhibit No. 1, p. 68, emphasis added.)

Article 31 requires the Employer to provide the Union with requested information. As previously discussed, the Employer may seek reimbursement from the Union for its reasonable costs incurred in obtaining information from its records.

The parties have negotiated a system that calls for cooperation between managers and union officials who engage in investigating, presenting , and adjusting grievances. Shop stewards are required to receive permission from their supervisors in order to engage in such official

duties. The parties have promised each other that supervisors will not unreasonably deny such requests. The parties have stated that:

> [A Union official] shall obtain access through the appropriate supervisors to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied. (*See* Joint Exhibit No. 1, p. 83.)

These are the contractual commitments of the parties.

On March 27, 1999, Branch president Cramer requested time to interview several witnesses about this grievance. Supervisor Lee gave a vague response but did not indicate approval of the request. She testified that she made no arrangements for Ms. Cramer to contact witnesses. In preparation for the arbitration hearing, the Employer prepared a document that appeared to show ample time being granted union officials to process this dispute. But the document lacked persuasiveness. Even though it listed hours allegedly spent on this grievance by union officials, Supervisor Lee testified that for at least one of the entries she was completely uncertain how much of the six hours listed on the document was spent on this grievance.

The Employer submitted a number of forms allegedly documenting the use of union time on this grievance. Of the seven forms,

however, only one entry on March 29, 1999 indicated that time was spent on this grievance and only 14 minutes. (*See* Employer's Exhibit No. 5, p. 3.) Although the second entry on the exhibit appeared to relate to the "copier" grievance, Supervisor Lee testified that it did not. Despite the fact that many of the entries on the exhibit do not relate to this grievance, they corresponded with time Supervisor Lee listed as time Mr. Nugent used to process this grievance. As noted earlier, the document was prepared the day of the arbitration hearing.

In addition to claiming that management provided insufficient time to process the grievance, the Union also contended that the Employer refused to make witnesses available to the Union. Supervisor Lee testified that she did not know if witnesses were made available to Ms. Cramer, Branch president. Management, however, had an obligation to know whether witnesses requested by the Union had been made available. One document indicated 27 minutes provided to Ms. Cramer on March 18, 2000 to process this grievance, but Ms. Lee did not know if witnesses had been provided. (*See* Employer's Exhibit No. 8, p. 3.) Given the amount of time, it is reasonable to infer from the evidence that all the witnesses, if any, were not provided at this time.

The Employer relied on a decision by Arbitrator Fletcher in support of its argument that it provided the Union with sufficient time in this case to process the grievance. (*See* Case No. E90-T-1E-C 93049658; APWU Case No. 93-1691 (1993).) In the case before Arbitrator Fletcher, he failed to find a contractual violation because there was no proof that the union actually made a legitimate request for union time to investigate and process the dispute. Nor did Arbitrator Fletcher have persuasive evidence that management refused to provide such time.

The facts of this case are not at all parallel to those of the dispute before Arbitrator Fletcher. The Union clearly established in this case that it made a request for union time, including written requests by Ms. Cramer and Mr. Nugent. Moreover, the Employer's responses to those requests were vague and failed to indicate whether time was given and, if so, for what grievance. Moreover, the Employer's summary of union time provided for the grievance lacked evidentiary weight due to internal inconsistencies. The summary, based partly on memory, had been prepared the day before the arbitration hearing, which, in some instances, was over two years after requests had been made. What the totality of the evidence established was that management failed to cooperate with the Union in fully developing facts relevant to processing the grievance. Such

conduct was inconsistent with the contractual requirement of Article 15. The Employer simply failed to rebut the Union's evidence that management did not provide witnesses necessary for processing this grievance.

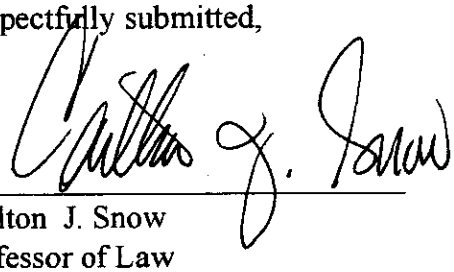
The Employer also relied on a decision by Arbitrator Duda in which he concluded that the Employer provided union officials sufficient time to process a grievance. (*See* Case No. H94 N 4 HD 99292640; GTS 48108 (2000).) In that case, the Employer submitted highly persuasive evidence of the fact that management provided sufficient time for grievance processing but that the union failed to use it. The instant case differs substantially due to the fact that the Employer failed to submit to the arbitrator even substantial evidence that it provided sufficient time for union officials to process the grievance. An additional distinction is the fact that this case contained a second allegation to the effect that management failed to provide witnesses to the Union pursuant to its reasonable request, and clear and convincing evidence established the truthfulness of the Union's assertion. The totality of the record established that the Union proved its case with regard to a violation of Articles 15 and 31.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated Articles 5 and 31 of the National Agreement by unilaterally terminating a past practice. Additionally, the Employer violated Articles 15, 17, and 31 of the National Agreement by failing to provide sufficient time to process the grievance and to make witnesses available to union representatives.

It is the Employer's contractual obligation to cooperate fully in an effort to develop all necessary facts for processing a grievance. The Union shall receive reimbursement for all documentable costs it incurred in using outside facilities to make copies that, pursuant to the past practice, should have been made at the postal facility. The Employer shall restore the Union's access to the copiers with the understanding that management may charge the Union the Employer's actual, documentable costs for making copies. The arbitrator shall retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow
Professor of Law

Date: November 5, 2001