

C#11716

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration)
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 between)
)
UNITED STATES POSTAL SERVICE) Case No. H7N-5C-C 12397
)
 and)
)
NATIONAL ASSOCIATION OF)
LETTER CARRIERS)
)
 and)
)
AMERICAN POSTAL WORKERS UNION)
)

BEFORE: Professor Carlton J. Snow

APPEARANCES: For the U.S. Postal Service: John C.
Oldenburg

For the NALC: Keith E. Secular

DATE OF HEARING: December 19, 1991

PLACE OF HEARING: Washington, D.C.

POST-HEARING
BRIEFS: January 27, 1992

AWARD:

Having carefully considered all evidence submitted by the parties in this matter, the arbitrator concludes that the parties are free, if it is the desire of either, to seek an evidentiary hearing before an arbitrator at the local level in order to explain the nature of the supervisory files at issue. If such a hearing is held, the arbitrator in the matter shall mandate a process by which the particular required information is to be divulged, consistent with the analysis of the original report in the matter. It is so ordered and awarded.

DATE:

March 9, 1992

Carlton J. Snow
Carlton J. Snow
Professor of Law

IN THE MATTER OF ARBITRATION)
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 BETWEEN)
)
UNITED STATES POSTAL SERVICE)
)
 AND ANALYSIS AND AWARD
)
)
NATIONAL ASSOCIATION OF) Carlton J. Snow
 LETTER CARRIERS)
)
 AND Arbitrator
)
)
AMERICAN POSTAL WORKERS UNION)
(Case No. H7N-5C-C 12397))
(Remedy Award)

I. INTRODUCTION

This matter came for a decision pursuant to the arbitrator's retained jurisdiction granted in this case. The arbitrator issued an initial award on July 29, 1991. At that time, the arbitrator had retained jurisdiction in the matter to resolve problems resulting from the remedy in the award.

Pursuant to the arbitrator's retained jurisdiction, a hearing with regard to remedy took place on December 19, 1991 in a conference room of the U.S. Postal Service headquarters located at 475 L'Enfant Plaza S.W. in Washington, D.C. Mr. John C. Oldenburg, Senior Attorney in the Office of Field Legal Services, represented the United States Postal Service. Mr. Keith E. Secular of the Cohen, Weiss and Simon law firm in New York City represented the National Association of Letter Carriers. Although the American Postal Workers Union was a party to the original arbitration proceeding, no one

represented the APWU at this hearing.

The hearing 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. Ms. Kim Petrarca of Diversified Reporting Services, Inc. recorded the matter for the parties and submitted a transcript of 60 pages. The arbitrator also retained extensive personal notes during the hearing. The parties fully and fairly represented their respective parties.

Those present at the hearing agreed the matter had properly been submitted to arbitration and offered no challenges to the substantive or procedural arbitrability of the Dispute. They authorized the arbitrator to resolve all questions raised with regard to implementing the award in Case No. 87N-5C-C 12397. The two participating parties submitted the matter to the arbitrator on the basis of post-hearing briefs, and the arbitrator officially closed the hearing on January 27, 1992 after receipt of the final brief in the matter.

II. STATEMENT OF THE ISSUES

The issues before the arbitrator are as follows:

- (1) What is scope of the arbitrator's retained jurisdiction?
- (2) What steps must the parties take to implement the award in Case No. H7N-5C-C 12397?

III. STATEMENT OF FACTS

In this case, one of the parties to a national level arbitration conducted pursuant to Article 15.3(D) of the parties' National Agreement has invoked the arbitrator's retained jurisdiction in order to resolve questions regarding the remedy set forth in the original award. In the initial grievance in the matter, the National Association of Letter Carriers challenged the Employer's refusal to make available to the Union personnel files of two supervisory employes. The Union sought the files because they were believed to be relevant to the Union's preparation for a pending discharge grievance filed in behalf of a local union member. The American Postal Workers Union intervened at the national level in the dispute and participated in the initial hearing. Following a hearing in the matter, the arbitrator found that the Employer had violated the parties' collective bargaining agreement by refusing disclosure of the requested information. To remedy the violation, the arbitrator issued an award

requiring the Employer to disclose the requested information and setting forth a process by which the disclosure was to be arranged.

The original decision stated:

Although the disclosure of the requested information is required, the parties shall have ninety days from the date of this report to meet and negotiate a methodology by which the information is to be divulged, consistent with the analysis set forth in this report. If the parties fail to agree, either may seek an evidentiary hearing before an arbitrator in order to explain the true nature of a supervisory employe file; and the arbitrator will render an award mandating the process by which the requested information will be disclosed. The arbitrator shall retain jurisdiction in this matter to resolve any problems resulting from the remedy in the award.

Unable to reach agreement during the 90 day period set forth in the award and being in disagreement with regard to how to proceed in the matter, the National Association of Letter Carriers invoked the arbitrator's jurisdiction; and a remedy hearing in the matter took place. The American Postal Workers Union did not join the other parties in the remedy negotiations and did not appear at the remedy hearing.

V. POSITION OF THE PARTIES

A. The Union

The National Association of Letter Carriers argues that the parties have, for the most part, resolved the question of methodology with regard to disclosing the requested information and disagree primarily with regard to the scope of the arbitrator's retained jurisdiction. According to the Union, the present issues are limited to questions with regard to two documents originally requested by the Union in the local discharge grievance. Those questions, according to the Union, are specific to the local grievance and are not relevant to future cases involving union requests for information from supervisory personnel discipline records.

The National Association of Letter Carriers contends that the arbitrator must resolve the questions of fact with regard to the nature of the particular supervisory files at issue in the local matter. The NALC argues that the arbitrator has no authority beyond the specific request for information which was the subject matter of the original grievance. It is the belief of the Union that it would exceed the arbitrator's authority to grant the remedy sought by the Employer.

B. The Employer

The Employer, as a threshold matter, argues that the American Postal Workers Union must be bound by any decision in this matter, notwithstanding the failure of the APWU to appear at the remedy hearing. According to the Employer, the intervention of the American Postal Workers Union in the dispute between the National Association of Letter Carriers and the Employer cannot be limited at this late date by a unilateral withdrawal after the award or by merely choosing not to participate. It is the position of the Employer that, pursuant to Article 15.4.A.6 of the National Agreement, all decisions by an arbitrator are final and binding. This contractual obligation, argues the Employer, cannot be avoided once intervention has been permitted and the issue in dispute has been resolved.

On the merits of the dispute, the Employer maintains that the award in dispute requires the arbitrator to conduct an evidentiary hearing on the true nature of supervisory discipline files in order to construct the methodology for the disclosure of information in supervisory personnel files consistent with the original award. The Employer maintains that its proposed methodology should be adopted by the arbitrator as a fair method of balancing the conflicting interests of unions, management, and affected employes. According to the Employer, the arbitrator must construct a methodology for disclosure as a remedy in this case, whether or not he accepts the Employer's proposed methodology.

It is the belief of the Employer that the methodology selected by the arbitrator must resolve all anticipated issues of access to supervisory files. According to the Employer, the remedy in issue requires, either by negotiation or by ruling of an arbitrator, that a methodology which is binding on the APWU, the NALC, and the Employer, be developed with reasonable dispatch.

V. ANALYSIS

A. Background

There is no disagreement between the parties with regard to the posture of the matter before the arbitrator. Both the Employer and the National Association of Letter Carriers agree that the arbitrator's retained jurisdiction in Case No.

H7N-5C-C 12397 supplies the basis for resolving this matter.

The original complaint in this case involved a claim by the National Association of Letter Carriers that the refusal of local postal management to provide information requested in a separate pending discipline grievance violated the parties' collective bargaining agreement. The arbitrator sustained this grievance on July 29, 1991.

The portion of the original award now in dispute states:

Although the disclosure of the requested information is required, the parties shall have ninety days from the date of this report to meet and negotiate a methodology by which the information is to be divulged, consistent with the analysis set forth in this report. If the parties fail to agree, either may seek an evidentiary hearing before an arbitrator in order to explain the true nature of a supervisory employe file; and the arbitrator will render an award mandating the process by which the requested information will be disclosed. The arbitrator shall retain jurisdiction in the matter to resolve any problems resulting from the remedy in the award.

The parties present at the remedy hearing stipulated that meetings took place but that they failed to reach agreement. Moreover, the parties disagreed with respect to how to proceed. Accordingly, the National Association of Letter Carriers properly has invoked the arbitrator's retained jurisdiction.

B. Scope of the Arbitrator's Retained Jurisdiction

The issue decided in Case No. H7N-5C-C 12397 involved a matter of contractual interpretation. The arbitrator concluded that the refusal of local postal officials to divulge specific requested information violated the parties' National Agreement. While that conclusion at the national level is of precedential value with regard to the Union's request for similar information, the award itself addressed only the specific informational issue which formed the subject matter of the grievance.

It is the remedy for the particular violation of the parties' collective bargaining agreement which now is at issue. That remedy required the parties to meet and negotiate a "methodology by which the information is to be divulged, consistent with the analysis set forth in this report." The analysis set forth in the original report detailed the Unions' right to information under terms of the parties' collective bargaining agreement. It, therefore, established boundaries with respect to what types of information could be obtained.

The remedy in the original award provided the parties with an opportunity to develop their own particular procedures for divulging the required information. The remedy, however, addressed only the specific violation complained of by the NALC in the grievance at issue, that is, the failure of particular local managers to divulge particular requested information. The scope of the remedy, therefore, was established by the first sentence of the cited portion of the

original award.

The second sentence of the award in the original report established a mechanism which either party to the contemplated remedy negotiation had a right to invoke once the mandated 90 day period of negotiation had been completed. That mechanism is "an evidentiary hearing before an arbitrator in order to explain the true nature of a supervisory employee file." The remedy required an arbitrator, after the evidentiary hearing, to "render an award mandating the process by which the requested information will be disclosed." The "requested information" is the information sought by the National Association of Letter Carriers which became the grievance sustained in the award at issue.

The third sentence of the cited portion of the award retained jurisdiction "in this matter to resolve any problems resulting from the remedy in the award." Jurisdiction retained in the third sentence of the award is not the same as jurisdiction anticipated by the second sentence. The evidentiary hearing anticipated in the second sentence of the award merely provided a mechanism to backstop the negotiations mandated in the first sentence of the award.

It was the parties who were to carry out the burden of finding a procedure for the disclosure of the particular information requested by the National Association of Letter Carriers in the local discharge grievance. The information to be divulged was that information "consistent with the analysis set forth in [the original] report." Only if the

parties failed in their negotiation could either seek an evidentiary hearing to resolve factual issues with regard to the nature of the requested file.

The scope of such an evidentiary hearing cannot exceed the scope of the parties' task. The contemplated arbitration was to provide a mechanism for the resolution of issues it was hoped would be settled by good faith negotiation. The scope of the negotiations, therefore, established the scope of the jurisdiction of the arbitrator should the evidentiary hearing provision of the award be invoked.

Once negotiation between the parties failed and a party sought an evidentiary hearing, the arbitrator chosen by the parties should assume responsibility for resolving issues left unresolved by the parties. Like the parties themselves, the arbitrator must look to the analysis of the original report and determine from facts presented what information is to be revealed. It was anticipated that the arbitrator would render a decision, considering the analysis in the original report, and direct the Employer with respect to the most effective means of divulging the requested information.

The arbitration mechanism set forth in the second sentence of the cited portion of the award, like the negotiation itself, is strictly a local matter. Facts relevant to a particular request for information in a particular grievance are simply beyond the scope of this arbitrator's retained jurisdiction in this matter. The arbitrator retained jurisdiction to "resolve any problems resulting from the remedy in the award."

Problems resulting from the remedy in the original award are not the "particulars" of the information request at issue in the grievance. They, rather, are problems with the mechanism mandated to resolve the "particulars."

Both parties have styled the award as a "remand." That representation is misleading. The issue of disclosure, that is, the issue in the grievance sustained by the arbitrator, was not remanded to the parties. Nor was the nature of the information to be disclosed remanded. Those issues were resolved in the Union's favor. The remedy was remanded to correct damage done by the particular violation of the parties' National Agreement.

The mandated remedy is not a "remand." It is a prescription to implement the award. The parties were offered 90 days to agree to a disclosure procedure. At the end of that time, either party could seek an evidentiary hearing with a ruling by an arbitrator. That arbitrator would then rule, based on an evidentiary hearing and consistent with the analysis in the national level award, on what information must be disclosed in the local discharge grievance.

The prescription for implementation is a complete remedy. Jurisdiction by this arbitrator was retained in the last sentence of the cited portion of the award only to resolve any problem between the parties with regard to what was required by the remedy. Such problems are limited by the structure of the remedy, and they do not include factual issues regarding the particular information requested by the National

Association of Letter Carriers.

In the present matter, the arbitrator's retained jurisdiction properly has been invoked to correct a misunderstanding between the parties with regard to the requirements of the award. From evidence presented in the matter, it is clear that the parties have exhausted the 90 day period of negotiation without developing a mutually agreeable methodology by which the information the NALC requested in the local discharge grievance is to be divulged. Either party, therefore, is free to seek local arbitration where, after an evidentiary hearing on the nature of the supervisory employe files, the arbitrator shall establish, consistent with the original analysis in this case, a process by which the requested information will be disclosed.

C. Absence of the American Postal Workers Union

The Employer interpreted the arbitrator's award and retained jurisdiction as extending to the development by the parties of a national methodology for handling future claims that sought information contained in supervisory employee files. Because of that misapprehension, the Employer was greatly concerned that all parties to the original award be bound by the decision rendered under this arbitrator's retained jurisdiction. As it is now clear that this arbitrator's retained jurisdiction did not extend nearly so far,

much of the Employer's concern is dissipated.

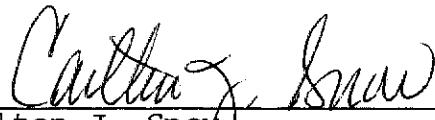
The Employer is correct in its claim that intervention in a dispute and participation in the proceeding makes a subsequent award in the case "final and binding" on the intervenor. This arbitrator's ruling that the Employer violated the parties' collective bargaining agreement when it refused the information request of the NALC is binding on the APWU, notwithstanding the election of the APWU not to participate in the present dispute between the NALC and the Employer regarding the implementation of the award.

As a practical matter, the present decision does not have an impact on the APWU. The APWU concluded that its interests were adequately protected by the NALC's participation in negotiations over the disclosure of the particular information at issue. It is reasonable to conclude that the APWU also decided its interests in regard to the invocation of this arbitrator's retained jurisdiction were adequately protected without its participation. That was a reasonable decision for the APWU to make, and it is not appropriate for an arbitrator to examine such an internal business decision further.

AWARD

Having carefully considered all evidence submitted by the parties in this matter, the arbitrator concludes that the parties are free, if it is the desire of either, to seek an evidentiary hearing before an arbitrator at the local level in order to explain the nature of the supervisory files at issue. If such a hearing is held, the arbitrator in the matter shall mandate a process by which the particular required information is to be divulged, consistent with the analysis of the original report in the matter. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow
Professor of Law

Date: March 9, 1992