

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration ) Grievant: Class Action  
between )  
UNITED STATES POSTAL SERVICE ) Post Office: Staten Island, NY  
and ) Case No. B00V-4B-C06256097  
AMERICAN POSTAL WORKERS UNION ) APWU No. 06NA14  
BEFORE: Joseph S. Cannavo, Jr., Arbitrator

APPEARANCES:

For the U.S. Postal Service: T'Nagh Bryant  
Labor Relations Specialist

For the Union: Joseph LaCapria  
National Business Agent

Place of Hearing: Staten Island, NY

Date of Hearing: March 4, 2011 & June 2, 2011

EXTENSION GRANTED

Date of Award: August 8, 2011

Relevant Contract Provision: Article 15

Contract Year: 2006-2010

Type of Grievance: Arbitrability

Award: Grievance is resolved. Postal Service to comply  
with April 16, 2008 Pre-Arbitration Settlement.

**AWARD SUMMARY**

Having found that an unethical settlement was sought and received by the prior Advocate for the Postal Service; and having found that this matter has gone on long enough, and as a final resolution of this grievance, the Arbitrator finds that the Postal Service must comply with the prior Pre-Arbitration Settlement that it agreed to on April 16, 2008. Specifically, the Postal Service shall increase the LDC 32 Staffing at the Staten Island VMF, from whatever level it is currently at, to twelve (12). The Union's monetary remedy request is rejected.

Joseph S. Cannavo, Jr.  
Joseph S. Cannavo, Jr., Arbitrator

ISSUE

Is the grievance arbitrable?

PRELIMINARY STATEMENT

Hearings were held before this Arbitrator between September 2009 and May 4, 2010. The subject grievance was in regards to the staffing at the Staten Island VMF. The Union presented its case in chief and rested after the first day of hearing.

Thereafter, there were two additional days of hearing scheduled; and on both occasions, the Advocate for the Postal Service requested a continuance as she could not either locate or produce her own witness. Subsequently, a hearing was scheduled on May 4, 2010 at the main Post Office in Staten Island, New York. At that time, the Arbitrator was informed that the original advocate for the Postal Service was no longer employed by the Postal Service and working for another government agency; and that she was replaced by the advocate herein. On that date, May 4, 2010, the Advocate for the Postal Service argued that the grievance before the Arbitrator was not arbitrable as the matter had been settled after the Union presented its case; and that this settlement took place between the prior Advocate for the Postal Service and the

newly elected Local President. There was a disagreement between the Parties in regards to whether or not the prior Advocate for the Postal Service and the new Local President had the authority to settle a grievance after the Union opened and closed its case at arbitration; and without consultation with the Advocate for the Union.

On November 29, 2010 the Arbitrator submitted an Interim Invoice for all of the prior days that had been applied to this matter. Attached to that Interim Invoice the Arbitrator directed the Parties as follows:

"At the direction of the Arbitrator, the Parties were advised to either: 1) submit briefs regarding the authority of a Local Union President to settle a grievance after the NBA had presented and rested his case; or 2) have the matter rescheduled for an evidentiary Hearing on the subject matter.

As of this date, the Arbitrator has heard nothing official from the Parties. As such, the Interim Invoice is being submitted."

Subsequently, the Parties agreed to have an Evidentiary Hearing before the Arbitrator on the subject matter of whether or not the Advocate for the Postal Service and the newly elected president had the authority to settle the grievance after the record was opened and closed by the Union and without consultation with the National Business Agent who presented that

case. Hearings were held on March 4 and June 2, 2011. It is from those hearings and the raising of the threshold issue of arbitrability by the Postal Service from which this Arbitration arises.

#### THE CONTENTIONS OF THE PARTIES

##### The Position of the Postal Service

The Postal Service argues that the grievance is not arbitrable and that the issue is moot. The Advocate for the Postal Service notes that the Union contends that the Local President did not have the authority to settle this grievance. However, the Advocate states that she understands that a Local Union can withdraw or settle a grievance; and that the National Agreement does not say that a Local Union cannot settle a grievance. The Advocate states that the agreement that was reached by the prior Advocate for the Postal Service and the newly elected Local President did not work in the Union's favor. However, the Advocate argues that past practice provides that the Parties can and do settle cases and grievances. The Advocate states that if a case is open and it is settled, they tell the Arbitrator. The Advocate notes that in the grievance that was

presented before this Arbitrator, the Union was seeking additional staffing by three (3) Motor Vehicle employees; but that the settlement gave them one (1) LVC position. Furthermore, the Advocate notes that the Union and the Postal Service did accept this settlement. The Advocate states that this is a settlement; and that the meaning of a settlement is that both Parties signed off on an agreement; and that is it. The Advocate states that the newly elected Local President signed the settlement and that it is what it is, a settlement; and that he was elected to represent; and that he did represent the membership of his Local Union. The Advocate notes that while the Advocate for the Union, herein, did put his time in the case, there are cases where records are open and the Parties resolve it; and that this is no different. The Advocate states that this is one of those cases that has been resolved and settled.

In her post-hearing submission, the Advocate for the Postal Service states that there is a past practice in the Northeast Area that no matter what level, the Local Union, NBA, or any Management Official have the authority to settle a grievance. The Advocate for the Postal Service refers to the former Advocate who testified that she never had a problem doing this; and that she has settled cases that were already in Arbitration.

Furthermore, the Advocate for the Postal Service states that the National Agreement does not provide that the Parties cannot settle at the arbitration level. The Advocate states that the Union grieves only when it does not work in their favor; and that the Union did not grieve other settlements that were made at that same time between the former Advocate for the Postal Service and the newly elected Local President. The Advocate notes that the Local Union initiated the grievance and later engaged in discussions to settle. The Advocate states that there was a mutually agreed upon remedy that is only subject to enforcement.

The Advocate notes that the newly elected President testified that he wished not to pursue the grievance any longer. The Advocate further notes that the newly elected Local President secured other settlements at that time and it was a win/win for all; and that the former Advocate for the Postal Service testified that it was the Local Union President who approached her to get his friend back to work (who had been removed); and that they resolved this case and others. Now, the Advocate for the Postal Service states that the Advocate for the Union is saying that these grievances are worth a lot of money and that the former Advocate for the Postal Service and newly elected President did not have the authority to resolve this grievance.

The Advocate notes that at least one and possibly two employees were brought back from removal by the settlements that were made.

She asked if Management should re-impose the Notices of Removal given to those employees; as this would be the natural consequence of what the Union is seeking. The Advocate states that the Union is not grieving the settlements that it favored and that this is not new; and that there are always times when cases, even open for arbitration, get resolved.

The Postal Service states that it is not asking the Arbitrator to make a decision on the 'ins and outs' of the APWU. The Advocate states that what is before the Arbitrator is internal problems within the Union itself. The Advocate states that the Postal Service states that there are rules on the validity of the settlement of the case before Arbitrators, and before this Arbitrator. She states that historically, there are times when the Parties do not like the settlements they make but they have to live with them.

On the basis of the foregoing, the Postal Service prays that the Arbitrator review the arbitral authority that was presented to him after the Arbitration Hearing; and that the Arbitrator find that the grievance is not arbitrable as it has been resolved by the Parties.

The Position of the Union

The Union states that the grievance presented to the Arbitrator is arbitrable and that the Union is entitled to a ruling by the Arbitrator in regards to the merits of that grievance. The Advocate states that the Arbitrator noted that the Postal Service raised the question of arbitrability due a settlement after the Union closed its case and rested. The Advocate for the Union states that this case was open and that the Postal Service was given five (5) opportunities to present its own case. However, the Advocate states that an improper and unauthorized settlement was entered into by the Postal Service and the newly elected Local President. The Advocate for the Union asks if this was a valid settlement that was entered into by the former Advocate for the Postal Service and the newly elected Local President on January 12, 2010. The Advocate for the Union states that this is an unusual situation, as the Union presented its witnesses and rested its case. The Advocate urges that the Arbitrator cannot ignore the merits of the case; and that the Arbitrator gave the Postal Service two (2) weeks to produce the witness or the Arbitrator would rule on the merits. The Advocate states that the Union wants the Arbitrator to issue

an award based on the merits; but now the Postal Service states that the matter is moot as the case has been settled. The Advocate notes that in response to the Arbitrator's directive, the Union opted for an Evidentiary Hearing; as did the Postal Service. The Advocate states that the issue is whether or not the January 12, 2010 settlement dispenses of this case. The Advocate for the Union notes that the Postal Service contends that the newly elected Local President can resolve this case. However, the Advocate notes that the Postal Service promised a witness but could not get one; and that it therefore went to the newly elected Local President to secretly resolve the grievance. The Advocate states that it is not the obligation of the Union to put its case forward; and that the Postal Service referred the Arbitrator to arbitral authority which states that "a settlement is a settlement". The Advocate asks if the settlement of January 12, 2010 bars the Arbitrator from rendering a decision. The Advocate strongly argues that the answer to this question is "NO"; and he further notes that the Arbitrator ruled that he would issue a decision if the Postal Service could not produce a witness and go forward with its case. The Advocate further notes that this same issue was previously settled in 2005 and 2006.

The Advocate for the Union states that the Postal Service

argues that the settlement of January 12, 2010 resolves this issue. However, the Advocate also states that the newly elected Local President did not know that this grievance was already in arbitration; that he never had the case file; and that he never withdrew the grievance. The Advocate notes that the settlement was signed on January 12, 2010 while resumption of this hearing was scheduled for January 19, 2010. Again, referring to the January 2010 settlement, the Advocate for the Union states that it does not provide resolution to the grievance; and in support of this the Advocate states that the Union did not withdraw its request for arbitration. The Advocate notes that the Arbitrator chose the date of January 19, 2010 for the Postal Service to finally produce its witness; and that the Arbitrator stated that the Postal Service had to produce its witness or that he would render an award based on the case presented by the Union.

However, the Advocate for the Unions states that the Postal Service response to the Arbitrator was to enter into a devious agreement.

In his post hearing statement, the Advocate for the Union states that this case is simple and that the testimony was limited and that the Local President testified as to what he signed and what it meant. The Advocate notes that the Arbitrator

issued an Interim Award and asked whether the grievance was settled by the Postal Service Advocate after the Union had rested. The Advocate further notes that the Arbitrator noted that the Postal Service could not produce its witness; and that at the direction of the Arbitrator, there were two options before the Parties; and those options were to either brief the issue or have an evidentiary hearing on the question of arbitrability. The Advocate for the Union states that the Parties chose the evidentiary hearing that lead to this award.

The Advocate for the Union referred to the testimony of the former Advocate for the Postal Service. The Advocate notes that she testified that she did not recall who called her. The Advocate notes that the Local Union President testified that when he settled the case, he settled the compliance issue; and noted that it says nothing about withdrawing the case. The Advocate notes that the Arbitrator mandated the Postal Service to produce the witness or else he was going to issue an award. The Advocate notes that in the grievance before the Arbitrator, the Union was requesting the staffing that was authorized. In this regard, the Advocate notes that the Postal Service was authorized to staff the positions with fourteen (14) employees but that there are currently only eight (8) employees. The Advocate states that the

Postal Service did not honor the 2008 settlement. The Advocate also notes that the Postal Service presented evidence of cases scheduled for Arbitration; and that the former Advocate for the Postal Service knew that her witness was not going to show up. The Advocate states that once the Union opened the case and rested, the Postal Service Advocate did not have the authority to do an 'end run' and settle the case with the newly elected Local President. The Advocate states that the former Labor Relations Specialist did not have the right to 'horse trade' in this matter.

The Advocate for the Union states that the Union presented its case; and that if the Arbitrator rules that the case can go forward, he is to issue a decision based on the merits. The Advocate for the Union reminds the Arbitrator as to what is at issue. He states that the Arbitrator heard the Local Union President testify "no" when asked if he withdrew this case from Arbitration' and that is what he signed off on. The Advocate asks if the Arbitrator could believe that an Advocate for the Postal Service would knowingly enter into a settle and then claim that it was meant to be something else. The Advocate for the Union urges that closure on this case is needed; and that the Union has the right to go forward; and that the Postal Service

can still present a case; or at the very least, the Postal Service can honor the agreement that it made with the newly elected Local President. The Advocate for the Union states that a continuance was granted to the Postal Service in good faith because the Postal Service had difficulty getting its witnesses; but that the actions of the former Advocate for the Postal Service were obviously not good faith actions. The Advocate notes that the Union was asking for twelve (12) positions and that it wants its case heard and ruled upon. The Advocate for the Union notes that the former Labor Relations Specialist/Advocate did not put in a withdrawal form for the newly elected Local President to sign.

On the basis of the foregoing, the Union prays that the grievance be found to be arbitrable and that the Arbitrator render a decision on the record.

THE TESTIMONY

Gerald Gheraldi testified that he is the Local Union President; and that he has worked for the Postal Service for twenty-four (24) years. The witness testified that he assumed the position of Local President on January 1, 2010; and that this is his first arbitration. The witness identified a document dated January 12, 2010; and stated that this is the settlement that he entered into with the former Advocate for the Postal Service. He stated that he had also seen a Pre-Arbitration Agreement that was shown to him dated April 16, 2008; and that this agreement was entered into between the Postal Service and the Advocate for the Union herein, Joseph LaCapria; and that the Agreement included, among other things, an increase in LVC staffing to twelve (12) which would represent two (2) additional Mechanics. The witness testified that this is what the former Advocate for the Postal Service had with her when she wanted to settle the grievance; and he noted that it provides that the garage was due two (2) more people but that there was noncompliance with that settlement. The witness stated that the former Advocate for the Postal Service told him that she would give him one (1) LVC32; and that he asked why he could not get two (2). The witness testified

that the former Advocate held up a bid sheet and showed a person ready to retire but he did not know that; and that they got one (1) position that was agreed to. The witness testified that no one else from the Postal Service was involved with this settlement meeting. The witness testified that the former Advocate for the Postal Service stated that she needed to settle the pre-arbitration cases because they did not fill the positions in the garage and that she said she would give one (1) LVC32 position. The witness again testified that he asked why he could not get two (2) and that she said there was already one (1) there and that the garage would come up to twelve (12); and that he said that would be good. The witness also noted that Paragraph 3 of the January 12, 2010 settlement that he entered into provided that the Union would agree to withdraw their most recent grievance ending in the numbers 9473 dated December 2009 in view of the fact that the non-compliance issue has been resolved. The witness testified that he settled this grievance on the basis of the #3 Paragraph of the January 12<sup>th</sup> letter; and that he asked the former Advocate why the case number on #3 was different from the case number on top of the page. (It is noted that the case number on top of the settlement sheet is the case number that is before this Arbitrator.) The witness testified that the former

Advocate said to him: "Don't worry about it. Everything is settled." The witness testified that he signed the document and she said nothing about an arbitration and that he didn't know there was an arbitration on this matter; and that he did not have a case file. The witness stated that the meeting lasted for about 1-1/2 minutes; and it sounded simple; and that she said he had eleven (11) LVCs and that she would put it up to 12; and that he said ok. The witness also testified that shortly after he was elected President, the former Advocate for the Postal Service approached him and said that they had 40 to 50 grievances to get rid of that the prior president did not finish; and that she said they had to get right on it. The witness testified that this occurred on December 16, 2009; and that they agreed to meet on January 12, 2010. The witness testified that on that date everything on the settlement was negotiated, typed and signed. He stated that there were not 40 grievances but that they discussed other grievances; and he stated that there was no other grievance listed on Line 3 other than the one referred to, above.

On cross examination the witness testified that Joe Mastriani was present for part of the meeting; and that he has been a Union Official for nine (9) years; and that he knew the former Advocate for the Postal Service; and that he told her that

the Advocate was good and that if he needed his services he would be there and that he had just stopped by. The witness testified that when he did the settlement on January 12, Joe was there; and also there when he discussed and signed it. The witness testified that Mastriani is a Motor Vehicle Craft employee. The witness testified that on January 12, he signed other settlements. He identified another settlement regarding the payment of two (2) hours of overtime to a Clerk for alleged violation of Article 8. The witness noted that this document was also typed up and signed on January 12. He also identified another settlement for that date regarding the payment of another two (2) hours at the overtime rate for an alleged violation of Article 8; and further identified four (4) settlements at \$250.00 each for the Maintenance Craft. He testified that the case numbers were on the forms and that he signed all of these on January 12. The witness testified that in regards to this last settlement, he noted that the former Advocate for the Postal Service said that five (5) Custodians should get paid because the Contractors worked three (3) weeks; and that she said she would give him \$1,000 for four (4) custodians at \$250.00 each; and that he said he would determine who would get the money. The Local Union President testified that these grievances had been appealed

to arbitration. He further testified that the Maintenance Craft National Business Agent, Rick Logan, called him and was not pleased with what he did. Furthermore, the witness testified that the Postmaster gave him an employee back who had been removed. The witness stated that the Postmaster agreed to take back Clerk Choi; but that he wanted the RI-399 payment changed from quarterly to every six months. The witness also testified that John Broscia also had a removal and that the Postmaster gave him his paper work but that his record was not that bad. The witness testified that he met with the former Advocate for the Postal Service and asked to see what she thinks and that she said it was beyond her. However, the witness testified that they met on January 12, 2010 and that the former Advocate for the Postal Service asked what he wanted; and that she raised the issue of Mr. Broscia who was removed; and that she said she had a LCA for him. The witness testified that he told her he would have to call Broscia and that she asked him why he would have to call him. The witness testified that after he called the removed employee, he informed the former Advocate for the Postal Service that he had to think about it; and he testified that the Advocate "went berserk" and started yelling at him. The witness testified that he again spoke to the removed employee who accepted the

deal.

On redirect examination the witness stated that the Postal Service did not honor the settlement in regards to the grievance before this Arbitrator, which settlement is dated January 12, 2010. He also testified that he did not file a Non-Compliance Grievance. He stated that he did not get the two (2) LDCs. He said that the Advocate told him it was because of the pre-arb not adhered to and that she was increasing it from 10 to 12; but that she only gave him one job. The witness testified that the Advocate told him that there was a new bid; but he states that it was not new and was from someone who retired. The witness testified that in his grievance, the Union is looking for three (3) positions on top of the twelve (12).

Myra Cordero testified that she is a Human Resource Specialist at the Social Security Administration; and that she was a Labor Relations Specialist for the Triboro District of the Post Office. The witness testified that she is familiar with this case; and that in December 2009 the new Local President came to her to negotiate the grievance; and that they did speak and meet and got together. The witness testified that they met a few times before he actually took office on January 1, 2010. She stated that he brought in documents regarding one of his friends

who had been removed and wanted her to look it over. The witness testified that she told him that it was done; and that one of the things was a ULP and that she told him it was out of her hands. The witness testified that she also spoke to the Local President about his friend who was fired and if they could bring him back. She stated that she was willing to discuss these cases and that Management wanted to develop a different relationship with the new Union regime and start fresh. The witness testified that one of the Local President's main concern was to resolve a removal. She stated that she told him that Management had some issues it wanted to resolve. The witness also testified that she and Fred Fisher, the defeated Local President, continued to meet before he left office; and that he said he was not going to transition with the new President. The witness testified that the new Local President told her that he tried to call the NBAs but that no one got back to him. The witness stated that she continued to encourage the new Local President to call the NBAs; and that he was also concerned about being in the 'red'. The witness testified that she worked for both the Area and the District; and that she did Step 2s and 3s; and that it did not matter if a case was on the docket. She stated that if you could settle it, you did; and that there were washes and that she and the former Local

President settled cases that were at the arbitration level. The witness testified that she and the current Advocate for the Union have resolved grievances no matter what stage the grievance was at. The witness testified that the newly elected President wanted Joe Broscia to return to work; but that she explained that there would have to be give and take; and that there is a case with LaCapria (meaning this case). The witness testified in regards to the removed employee that there was a LCA agreed to. The witness also testified that the Postmaster wanted to meet with the removed employee, presumably personally, as this was his third removal. The witness stated that the date was changed because he wanted him back sooner; and that she wrote it up and they called her regarding the change. The witness testified that they were able to resolve another grievance that was before this Arbitrator; and that at the time there was a settlement that there was an In-Service Announcement posted. The witness testified that the settlement said that they would settle on twelve (12) employees but that it went up to thirteen (13). The witness stated that the newly elected President came to her office in Brooklyn and that he requested a position and that she spoke to the Compliment Coordinator and that they agreed. The witness stated that Broscia was returned to work and that the

grievance before her was resolved. The witness testified that former Local Union Fisher had put in a non-compliance. She stated that Paragraph 3 of the January 12 settlement resolved the non-compliance grievance. The witness also testified that she had discussions with the newly elected President regarding the case before this Arbitrator; and she stated that he knew about negotiations and knew they could work things out for his best friend. The witness stated that she explained this case to the new President and told him that LaCapria wanted fourteen (14) positions and that she offered him the same as she offered LaCapria, which was twelve (12) positions; but that she thinks they wanted more, up to fourteen (14). The witness referred to the Triboro VMF Staffing and noted that for Staten Island, there were fourteen (14) positions authorized for the LDC 32. The witness testified that after she made the settlement, she had additional conversations with the new Local President; and that he said LaCapria yelled at him for an hour; and said that he should not have made the settlement. The witness testified that the new Local President told her that LaCapria said she had bamboozled him. The witness said that she explained to the Local President what the settlement was and he said that he would stand by his settlement. The witness testified that the Local

President felt that he had done something wrong and that she told him she has signed many settlements with Local Presidents. The witness also testified that there was another time where she had an arbitration pending and that she made a settlement. The Parties agreed that there are times that Local Presidents in the Postal Service will resolve grievances pending arbitration.

The witness was referred to the settlement regarding this grievance entered into on January 12. She testified that at the top there is the case number for this grievance ending in 6097. She stated that this was the case before Arbitrator Cannavo. She also testified that Paragraph 3, regarding non-compliance, was in regards to another case. She stated that the Local President had another Shop Steward present at one time but that he wasn't sworn in yet.

On cross examination the witness was shown the Triboro VMF Staffing form showing an authorization for fourteen (14) LDC 32 employees. She testified that she had never seen this document before. In this regard, the Arbitrator notes that this document was marked as a "Management" exhibit. The witness testified that this document is created by the Compliment Coordinator. The witness was asked if it was true that this document authorized the compliment; and that she answered in the affirmative but also

stated that she does not know what the LDC 32 Compliment is. The witness again testified that the new Local President said that LaCapria had screamed at him; and that he also said he had called the NBA but that no one called back. The witness testified that she drafted the settlement dated January 12, 2010. She agreed that the case was scheduled for Arbitration on January 19, 2010 and that she and LaCapria were the Advocates. The witness was asked if the Union had rested its case; and she responded that she did not remember. She stated that the case was open before Arbitrator Cannavo and the Union put its case on. The witness was asked if she recalled the Arbitrator's instructions, and she said that she did not. The witness testified that she settled the case on January 12, 2010; and that it had been continued to January 19 prior to that.

On redirect examination, the witness testified that the settlement was designed to show that there was an agreement between her and the Local President. The witness testified that the settlement resolved the case before Arbitrator Cannavo and also resolved the non-compliance matter noted in Item No. 3 of the settlement; and that because of this settlement, Item No. 3 became moot.

On re-cross examination the witness testified that she

signed the settlement knowing that the matter was continued and knowing that the case was open and knowing that the Union had rested.

#### DISCUSSION AND OPINION

In matters of alleged contract violation, the burden of proof is on the Union to establish that the Postal Service violated the National Agreement. In order to meet this burden of proof, the Union must identify the facts that it alleges amounted to a violation of certain provisions of the National Agreement. It must then identify the provisions of the National Agreement that it alleges were violated; and it must then, through testimony and documentation, combine the two in order to demonstrate a violation. The Union must also establish the intent of the contract language it alleges was violated. If the contract language is clear and unambiguous, the Union can rely on the plain and simple meaning of that contract language. If the contract language is not clear and unambiguous, the Union can establish its intent by relying on bargaining history, arbitral authority, the Contract Interpretation Manual, local and national settlements, past practice and customs and practices in the industry.

In rebutting the Union's case, the Postal Service can rely on the same arsenal.

After reviewing the arguments, documentation and testimony offered by the Parties, the Arbitrator makes the following

ruling. The basis for this decision is as follows:

RIGHT OR WRONG, the Arbitrator is putting an end to this matter. The facts of this case are, for the most part, not in dispute. The record established that the Union presented its entire case before the Arbitrator and rested. Subsequently, the prior Advocate for the Postal Service requested two (2) continuances; each time stating that she was not able to produce her witness. Over strong objections from the Union, the Arbitrator granted the continuances. However, he admonished the prior Advocate for the Postal Service that if she did not produce her witness and put on the Service's case at the January 19, 2010 hearing, the Arbitrator would issue an award based on the case presented by the Union. The Arbitrator was subsequently advised that the January 19, 2011 date was canceled. He was later advised that the matter was rescheduled before him on May 4, 2010. At that hearing, the present Advocate for the Postal Service appeared before the Arbitrator. She advised that the Service's prior Advocate had left the Postal Service for another government agency. She further argued that the matter was no longer arbitrable as the prior Advocate for the Postal Service had settled the grievance with the newly elected local Union President. A copy of that settlement was presented to the

Arbitrator. Both Parties presented their arguments advancing their positions as to whether the matter was arbitrable or not. After a contentious exchange of arguments, the Arbitrator advised the Parties that he would determine the arbitrability issue, but only after the Parties either: 1) submitted briefs; or 2) participated in an evidentiary hearing. The Parties opted for the evidentiary hearing. This hearing was held on March 4, 2011 and June 2, 2011. At the March 4, 2011 hearing, the Postal Service presented its oral arguments; and rested. The Union then presented its oral arguments and presented a witness. That witness was the newly elected local Union President. The Union then rested and the Postal Service informed the Arbitrator of its intent to present rebuttal testimony from the former Advocate for the Postal Service. The prior Advocate for the Postal Service appeared and testified at the June 2, 2011 hearing.

The Arbitrator finds that the current Advocate for the Postal Service was asked to unravel and present to the Arbitrator an argument of arbitrability based on the devious and unconscionable conduct of the prior Advocate for the Postal Service. In this regard, the Arbitrator notes that even prior to the newly elected local Union President taking office, and contrary to her testimony, the prior Advocate for the Postal

Service contacted the newly elected and yet to be installed local Union President on December 16, 2010 in an effort to resolve the instant grievance and other grievances. The Arbitrator finds that the prior Advocate for the Postal Service made absolutely no effort to contact the Advocate for the Union in an effort to resolve this grievance. What is more, she made no effort to contact the out-going local Union President. The fact of the matter is that the Advocate for the Union had presented and rested his case. As such, the prior Advocate for the Postal Service had absolutely no business whatsoever to reach out to the newly elected and yet to be installed local Union President.

This guy wasn't even a shop steward prior to being elected president; and clearly had no understanding of what was being presented to him. The unethical conduct by the prior Advocate for the Postal Service continued on January 12, 2011, less than two (2) weeks after the local Union President took office. At this meeting, the prior Advocate for the Postal Service did not have a case file to show the newly elected President. To make matters worse, the prior Advocate for the Postal Service did not even inform the newly elected local Union President that the matter had been arbitrated and presented by the Union; and that the Union had rested. It is significant to note that the newly

elected local Union President is from the Clerk Craft. The matter before the Arbitrator pertains to the Motor Vehicle Craft. Additionally, the record established that the prior Advocate for the Postal Service also cajoled the newly elected President to settle maintenance craft contracting out cases. For all of this, the newly elected local Union President testified that he was yelled out by both the Motor Vehicle NBA and the Maintenance NBA. He was clearly over his head and out of his league; and the prior Advocate for the Postal Service knew this.

It is important to note that the issue before this Arbitrator dealt with Management's non-compliance with a Pre-Arbitration Settlement dated April 16, 2008. That grievance was in regards to the LDC staffing at the Staten Island VMF. In that settlement, the Union agreed to withdraw the grievance from the arbitration process. In exchange, the Postal Service agreed to pay a lump sum of \$25,000.00 to be allocated by the Union. The Postal Service also agreed to "increase the current LDC staffing from ten (10) to twelve (12) in the form of two (2) additional mechanics." The newly elected local Union President testified that he was shown this settlement and pressed the Advocate for compliance with two (2) positions, as she offered only one (1). It is clear from the newly elected local Union President's

testimony that the prior Advocate really gave him the 'run around' with her explanation as to why only one (1) position was being offered. Consequently, the settlement that was forced upon the Advocate's prey read: "The service agrees to increase the current staffing at Staten Island VMF by adding one LDC 32 position; this will increase the current staffing to twelve (12) LDC 32 positions." The Arbitrator notes that at the time of this last hearing, the Staten Island VMF LDC 32 Staffing authorized fourteen (14) such positions. However, that is not what the Union seeks before this Arbitrator.

At the evidentiary hearing, the current Advocate for the Postal Service argued that it is not uncommon for the Parties to resolve 'pending' arbitrations. The prior Advocate for the Postal Service similarly testified. The Advocate argued that there is nothing to stop a local Union president or anyone else with authority from resolving a grievance scheduled for arbitration. Arbitral authority was presented. However, the Postal Service was unable to produce any arbitral authority, Step 4 Decision or any past practice that stands for the proposition that a grievance presented before an arbitrator can be settled without the knowledge of the Advocate who presented that case. In the instant case, there was ample opportunity for

the prior Advocate to reach out to the Union's Advocate after he rested. The fact of the matter is that the prior Advocate for the Postal Service knew that she could not produce a witness; and knew that she had no case to present. Consequently, she 'rooted out' this unsuspecting 'schlep'; made him feel like 'somebody'; and, persuaded him to sign a settlement for a grievance over which he had no authority and no knowledge.

The unethical conduct of the prior Advocate for the Postal Service was reinforced at the arbitration hearing. She violated the Arbitrator's Number 1 rule: 'YOU LIE, YOU DIE'. In this regard, the Arbitrator notes that the prior Advocate for the Postal Service incredibly testified that she did not remember that the Union rested its case!!! Are you kidding me! She did a dance at two (2) hearing dates that cost the Postal Service a lot of money begging for a continuance so that she could produce a witness. Then, to add insult to injury, the prior Advocate testified that she did not recall the Arbitrator's instruction that if she did not produce a witness at the January 19, 2010 hearing, he would issue an Award based on the case presented by the Union. It is clear that the prior Advocate knew she could not produce such a witness. As such, she sought out the newly elected and yet to be installed local Union President to resolve

this matter; and did so with total disregard of the Arbitrator's instructions, the Advocate for the Union and the process that we all participate in. Thus, the above denials made by the prior Advocate can only be interpreted for what they are. If she had the nerve to make these statements in her testimony before this Arbitrator, there is no telling what she told this unsuspecting newly elected local Union President. Also, while the current Advocate for the Postal Service made a valiant effort to rehabilitate this incredible testimony, it was too little, too late.

At the beginning of this Discussion and Opinion, the Arbitrator stated that 'right or wrong', this matter will come to an end. There is only so much money and time either Party can afford; and this is especially true when unethical behavior forced the Parties to litigate more than necessary. To continue with this matter would be embarrassing to the Advocates and the Arbitrator.

On the basis of the foregoing, the Arbitrator is re-imposing the April 16, 2008 Pre-Arbitration Settlement on the Parties. Based on that settlement, regardless of how many LDC 32s are currently employed at the Staten Island VMF, and in accordance

with that settlement "...Management will increase the current LDC staffing from ten (10) [or no matter how many are currently in existence] to twelve (12)..." It is noted that this is essentially what was contained in the January 12, 2010 settlement imposed on the newly elected local Union President. However, the Arbitrator notes that at the hearing before him, the Union additionally sought forty (40) hours pay for each position that was not provided pursuant to the April 16, 2008 Pre-Arbitration Settlement. This monetary remedy sought by the Union, conspicuously left out of the January 12, 2010 imposed settlement, is rejected herein.

The Arbitrator shall retain jurisdiction over the implementation and interpretation of this Award and Remedy.

AWARD

The grievance and this matter is resolved.

Management to comply with the April 16, 2008 Pre-Arbitration Settlement, in accordance with the findings, above.