UNITED STATES POSTAL SERVICE
POST HEARING BRIEF
CASE No's. F90N-4F-C 94024038 and F90N-4F-C 94024977

U-2

HEARING DATE: APRIL 2, 1996

PLACE OF HEARING: USPS HEADQUARTERS
475 L' ENFANT PLAZA
WASHINGTON D.C. 20260-4127

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STATEMENT OF FACTS

On May 8, 1993 local branch 2203 (Torrance, California) of the National Association of Letter Carriers (NALC) filed grievance No. F90W-4F-C 94024977 alleging harassment of letter carriers by a 204-B (acting supervisor) and requesting as a corrective action that the individual 204-B not be allowed to act as a supervisor of letter carriers in the future. On December 12, 1993 a similar grievance (F90W-4F-C 94024038) was filed requesting that the same 204-B not be allowed to supervise letter carriers.

Both grievances were consolidated and were scheduled for Regional arbitration. A full and complete hearing was conducted on April 21, 1995 and both parties chose to submit post hearing briefs. Upon receiving the NALC's post hearing brief the Postal Service advocate discovered that the NALC was maintaining for the first time that by signing the Joint Statement on Violence and Behavior in the Workplace that management had "given away exclusive rights under article 3 . . . to hire, promote, transfer, assign and retain employees in positions within the Postal Service." (See Employer Exhibit 41, p. 8, underscoring original)

Alarmed by this new contention, the Postal Service advocate referred this interpretive issue to step 4. (See Jt. Ex. 2 and 3 at p. 9) The parties at the national level were

unable to resolve their differences and the instant case was heard in National arbitration on April 2.

INTERPRETIVE ISSUE PRESENTED

The position taken by the NALC in their Regional post hearing brief, the issue referred to step 4 by the Postal Service, the issue discussed by the parties at step 4, the issue identified in the step 4 decision and the issue appealed to national arbitration by the NALC is as follows:

> Whether management has "given away exclusive rights under Article 3, Section B" to hire, promote, transfer, assign and retain supervisors, by signing the Joint Statement on Violence and Behavior in the Workplace. (See Jt. Ex. 2 and 3, p. 2)

For the first time at the hearing the NALC submitted a new and different issue. The NALC framed the issue as "whether the Joint Statement on Violence and Behavior in the Workplace established standards of conduct applicable to supervisors which are enforceable by the union through the grievance procedure, if so, whether an arbitrator may grant as a remedy in an appropriate case of supervisory misconduct an order that the supervisor no longer supervise letter carriers." (Tr. 9)

The NALC's newfound issue misses the mark. The moving papers in this case clearly establish that the NALC's Regional post hearing brief included a specific position

statement that gave rise to the interpretive issue as identified by the Postal Service in the appeal to step 4 and in the step 4 denial. The NALC's proposed issue statement may be fodder for another interpretive issue on another day but it certainly was not the issue sent to step 4 and not the issue discussed at step 4 by the parties as demonstrated by the record evidence. (See USPS Ex. 41, p. 8, and Jt. Ex. 2 and 3 at p. 2) Prior to the hearing the NALC had never disputed the accuracy of the issue statement as contained in the Step 4 denial.

Furthermore, the issue proposed by the NALC would have the arbitrator delve into remedial authority of an arbitrator under the National Agreement. However, the parties have not placed this issue before the arbitrator. The only issue placed before this arbitrator is whether management has "given away exclusive rights under Article 3, Section B" to hire, promote, transfer, assign and retain supervisors, by signing the Joint Statement on Violence and Behavior in the Workplace. If it is held that management intended to "give away exclusive rights" by signing the Joint Statement then after such rights are identified and specified in the award, the grievances must be remanded back to the Regional Arbitrator for application.

This was recognized by the NALC at Tr. 9:

> I think we have an agreement that all we are asking you to do is to decide the interpretive issue as it may emerge from these discussions and that the underlying

grievances, which came from Torrance, California, will be resolved back at the regional level, depending upon your resolution of the interpretive issue before you. (Tr. 9)

Ultimately, as the arbitrator has no independent authority to create issues, the issue must come from the parties themselves as developed in the moving papers. In this case that means accepting the issue sent to step 4 by the Postal Service as articulated in the undisputed step 4 decision and as appealed to national arbitration by the NALC.

DISCUSSION

OVERVIEW

While the facts of this case are very straightforward the emotional impact of this issue is immense. This is a case that was born in the aftermath of a violent, heinous, ruthless murder spree by one Postal employee. The murders in Royal Oak truly changed not only how the Postal Service viewed itself but how the Postal Service came to be viewed by the general public. The term "going Postal", meaning to go berserk in a violent way, came into the popular culture as a result of the Royal Oak murders. The Royal Oak murders truly touched the lives of every Postal employee and changed the way we do business.

As a result of the Royal Oak murders top Postal management sought to establish joint leadership committees comprised of

management associations and labor unions. Those joint leadership committees were in no way intended to be an extension of labor negotiations, rather they were intended to dispel the autocratic militaristic management style that many have come to associate with the Postal Service. The Joint Committee on Workplace Violence led the way with the seminal Joint Statement of Violence and Behavior in the Workplace. This positive statement was followed up by an unprecedented joint telecast by the nine signatories on the Postal Satellite Television Network (PSTN) heralding a new unified front against violence in the workplace. (See USPS Ex. 44)

The Joint Statement of Violence and Behavior in the Workplace ushered in a new spirit of cooperation. The parties pledged to work together to end the senseless violence in the workplace. Unfortunately for every single Postal employee, the NALC has chosen to walk away from the spirit of the Joint Statement and now has decided, albeit through the post hearing brief of a field advocate at the Area level, that the Joint Statement was nothing more than extended contract negotiations for the NALC. They somehow have convinced themselves that all nine signatories to the Joint Statement were meeting on the NALC's behalf when they met to sign the Joint Statement. Any global understandings within the Postal Service concerning cooperation and jointness to end the violence have been conveniently forgotten.

The MALC's actions in this case are disingenuous. Pure and simple, they seek to exploit the aftermath of the Royal Oak murders in claiming that the Joint Statement was intended to grant them new and additional contractual rights. Essentially, this case is a search for the common meaning of the parties. As the instant arbitrator stated in National Case No. E7N-5C-C 12397, (Attachment A, p. 8):

> While the search in a contract interpretation case is for the common meaning of the parties, such meaning is dependent on the context and legal realities extant when the agreement came into existence.

The common meaning of the parties is of course critical in this case. As discussed below, the MALC is the only party to the Joint Statement that has taken the position that the Joint Statement is "a part of the working agreement". The common meaning of the other signatories is that it was a commitment to change the culture of the corporation. The unique context under which the Joint Statement came into existence, i.e., the aftermath of the Royal Oak murders, suggests nothing less. The MALC has failed to prove anything more.

Additionally, the legal realities extant when the agreement came into existence indicate that it was legally impossible for the parties to enter into a contractual agreement with an interpretation as advocated by the MALC. To do so would be to violate every principle of privy of contract and trammel over supervisory due process rights and management's

absolute discretion in selecting supervisors. The NALC can not meet their burden of proof in this case. Even if the nine (9) signatories had somehow stumbled into a contractual agreement while four (4) of the parties later disavowed any such agreement, the NALC's interpretation of the Joint Statement renders such an agreement legally unenforceable.

The bottom line in this case rests upon doing the right thing in the aftermath of the Royal Oak murders. The Postal Service did the right thing in convening the Joint Committee and pursuing the Joint Statement. The Postal Service should not be penalized for doing the right thing. The NALC is walking away from its own role in agreeing to the Joint Statement and is attempting to enforce aspects of "an agreement" never discussed or formally considered by the parties at the time of signing nearly 5 years ago, but conjured up by NALC for the first time in the instant proceedings. They should not be rewarded for this obvious overreaching.

WHAT IS THE JOINT STATEMENT?

The character of the Joint Statement is pivotal to this case. The critical issue is what did the parties intend when they issued the Joint Statement. Such an analysis may best be made by first looking at what the Joint Statement undisputedly is. It is clearly a statement jointly issued by the nine signatories.

It is a statement of values that the parties agree on. It is an expression of mutual interest to change the culture of the Postal Service. It is an expression of mutual frustration and regard. It is an expression of sorrow. It is a reaffirmation of everyone's commitment to a violent free work place. It is an agreement to work together to prevent violence. It is a commitment to end violence in the workplace. It is an instrument of healing.

Whatever it is called, it is surely a unique, powerful and emotional response to a singularly tragic event - the Royal Oak murders.

WHAT THE JOINT STATEMENT IS NOT

The Joint Statement clearly is not a Memorandum of Understanding (MOU). The Joint Statement clearly is not a Letter of Intent (LOI). The Joint Statement clearly is not a grievance settlement. The Joint Statement clearly is not an arbitration settlement or award. The Joint Statement clearly is not an amendment to or an extension of the National Agreement. Nor was it ever intended to create an enforcement right in any one of the nine (9) signatories. By its very mutuality of focus, it obviated any such outcome.

THE NATIONAL AGREEMENT CONTROLS

This is a rights arbitration and accordingly the negotiated rights of the parties as expressly set forth in the National Agreement must control. Article 1 Section 2 states:

> Section 2. Exclusions
>
> The employee groups set forth in Section 1 above do not include, and this Agreement does not apply to:
>
> 1. Managerial and supervisory personnel;
> 2. Professional employees;
> 3. Employees engaged in personnel work in other than a purely non-confidential clerical capacity;
> 4. Security guards as defined in Public Law 91-375, 1201(2);
> 5. All Postal Inspection Service employees;
> 6. Employees in the supplemental work force as defined in Article 7;
> 7. Rural letter carriers; or
> 8. Mail handlers.

Article 3 states in part:

> The employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
>
> 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;

D. To determine the methods, means, and personnel by which such operations are to be conducted; (underscoring added)

The NALC's theory in this case is that "by placing their signature to this document they have in effect made it apart of the 'Working Agreement'. By their signature and commitment to this document they have given away exclusive rights under Article 3, Section B. . .". (See NALC Regional post-hearing brief, USPS Ex. 41, p. 8) Obviously, unless the NALC can prove that there has been a negotiated change to Articles 1 and 3 of the National Agreement there is no way they can prevail. In order to prove that the Joint Statement amends Articles 1 and 3 above, the NALC must prove that that is what the parties intended. No such proof has been offered by the NALC.

THE INTENT OF THE PARTIES IS CRITICAL

In order to understand the intent of the parties when they issued the Joint Statement it is imperative to consider the unique circumstances that led up to the drafting and creation of the Joint Statement. It is undisputed that the ruthless and senseless murders of four Postal employees at the Royal Oak office was the catalyst for the Joint Statement. While no murder is an ordinary act, it is safe to say that the Royal Oak murders were especially chilling

and shocking in that a direct connection existed between the murders and a disciplinary arbitration arising from the discharge of a letter carrier.

Upon learning of the arbitration award the carrier went looking for his supervisor, found him in his office and killed him. The carrier next went to the office of the Labor Relations advocate who presented the case for the Postal Service looking to kill him as well. Unable to locate his victim of choice, the gunman shot and killed another Labor Relations Specialist. He went on to kill 2 more employees, shot and seriously wounded several others and then committed suicide at the work site.

The murders prompted several members of what was to become the National Committee on Workplace Behavior, to personally visit with families of the victims, to attend funeral services and to share in the sorrow and grief of the tragedy.

Eventually, the Royal Oak murders were viewed as not just another example of societal violence spilling into the workplace but rather as a sign that something may be wrong with the very fabric that comprised the Postal corporate culture. Royal Oak was a turning point for the Postal Service. The Royal Oak murders impacted every aspect of the institution. As Kenneth Vlietstra, Executive Director of the National Association of Postmasters of the United States (NAPUS), testified:

> Royal Oak changed our total organization. Prior to the Royal Oak incident the Postal Service had said "we're just a microcosm of larger society. And we are a vast employer. And these are just -- the acts of violence that we have experienced were something that we are just going to have out of sheer numbers." But for the first time after Royal Oak the Postal Service says, "I think we do need to look internally. Is there something that is causing this or lending greater probability to acts of violence for the first time?" And the change that Mike (Coughlin) has mentioned in the context was for the first time "Let's just start under the premise that there is something. Now let's go and find it." (Tr. 157)

With this mind set it was decided to bring together top management and the elected leaders of every management association and labor union to try and send a message to stop the violence. This leadership committee then undertook the task of trying to prevent anther Royal Oak tragedy. Eventually this committee became the National Committee on Workplace Behavior. With the murders still fresh in their collective memories, the Committee members approached their task of changing the corporate culture with unparalleled cooperation.

As stated by David Cybulski:

> We never strayed into politicking. We never strayed into trying to pin blame on any particular group. The

conscientious approach taken in the early days of this committee to the Royal Oak tragedy itself, I think, was one of the most commendable experiences that I have had with regard to working jointly with as elaborate a group as this representing such distinctly different, at times, points of view. (Tr. 90)

Cybulski went on to explain how the rationale for the Joint Statement came about:

Following an exploration, again, of the circumstances leading to the tragedy, the thought developed at the table that we should perhaps communicate what is it that we are doing. We are working collegially. We are trying to jointly approach these issues, as complex as they are. And there are 800,000 people out there who only read the papers and watch the 7 o'clock news. They have no idea if we are at each other's throats right now, if we are talking to one another, if we are even dealing with the issues.

And its really pressing on all of us to try to communicate to those employees, supervisors, postmasters, managers, craftemployees, executives alike that there has been some soul-searching here. But more importantly, there has been a recognition here that there is something about the Postal culture and perhaps something about the Postal climate that we need to address and address in a more universal way rather than

management exclusively issuing a statement or the labor union exclusively issuing a statement.

And I think that led to the development of the joint statement as a concept. (Tr. 90)

Clearly, the Joint Statement was intended to be a joint communiqué to the 800,000 Postal employees nationwide. It was intended to be a first step in changing the corporate culture. Such a unique occurrence as the Joint Statement in which nine (9) independent and diverse labor unions and management associations jointly issue one communiqué was certain to have a positive impact. The mere notion of these parties standing jointly on so significant an issue could only be received as positive by our employees.

Given these unique, powerful and compelling circumstances, there can be little doubt that the Joint Statement was certainly intended to be an instrument of healing. A joint communiqué indicating how the parties jointly felt about violence in the workplace was a logical starting point. The parties did the right thing in issuing the Joint Statement. The Postal Service did the right thing in attacking the problem through the joint committee. The focus of the parties was to address and commit to our 800,000 employees, bargaining and non bargaining alike, that we share their concerns and needs. It was not written to address letter carriers only, and was certainly not intended to create a right of enforcement in the letter carriers union at the expense of management's due process and related contractual

rights -- rights long recognized under the enabling legislation which gave rise to the Postal Service in 1971 (39 USC 1001 (e)).

THE NALC IS ALONE IN IT'S INTERPRETATION OF THE JOINT STATEMENT

It is significant to note that of all nine member groups that comprise the joint committee, only the NALC has come forward with their peculiar and strained interpretation. The NALC failed to produce any other group that had the same interpretation as they. Not a single signatory of the Joint Statement besides the NALC has taken the position that the Joint Statement somehow modified Articles 1 and 3 of the National Agreement. Even the NALC's colleague unions have failed to come forward with such an interpretation.

Armando Olvera, recent past President of the National League of Postmasters and signatory of the Joint Statement on behalf of the Association, testified convincingly that the purpose of the Joint Statement was to "show some unity between labor and management and Postal headquarters that we did not want another recurrence of Royal Oak." (Tr. 141) He also testified that there was never any intent to alter, amend or modify any nationally negotiated labor contract. (Tr. 140) Mr. Olvera further testified that based on his experience as a Postmaster who has engaged in local implementation negotiations that he would not characterize the activity of the joint committee as contract negotiations.

Kenneth Vlietstra, Executive Director of the National Association of Postmasters of the United States (NAPUS), gave credible testimony that the discussions leading up to the issuance of the Joint Statement were never considered contract negotiations by the parties. He testified that the parties "never at one time looked at a contract in the development or discussion of this statement or any of our deliberations". (Tr. 146) He also testified that there was never any discussion of giving the NALC standing to be involved in supervisory personnel matters. (Tr. 148) Mr. Vlietstra testified that NAPUS would not have signed the Joint Statement if it was understood that it give the NALC standing to meddle in supervisory personnel matters.

Vincent Palladino, President of the National Association of Postal Supervisors (NAPS), provided convincing testimony that the intent of the Joint Statement was " . . . to let everyone know an awareness that we had a problem in dealing with one another and that we had to try to correct that situation." (Tr. 169) He also testified that the NALC's standing to interfere in supervisory personnel issues was never discussed but if it had been that NAPS would have left the committee. (Tr. 170) Clearly, NAPS does not support the NALC's interpretation of the Joint Statement.

The bottom line here is that of the nine parties that were involved in the discussions that led up to the Joint Statement the NALC stands alone in its interpretation. Furthermore, four of the parties, the Postal Service, League

of Postmasters, NAPUS and NAPS testified against the NALC's interpretation of the Joint Statement. On the basis of this testimony alone the NALC's grievance must fail.

THE PARTIES SECOND JOINT STATEMENT PROVIDES INVALUABLE INSIGHT

The same nine parties that issued the original Joint Statement also issued a second Joint Statement on Violence and Behavior in the Workplace. (USPS Ex. 30) This document provides invaluable insight into the parties' intent. In the second Joint Statement the parties characterized the original Joint Statement as follows:

> In our Joint Statement of February, we affirmed our belief that dignity, respect and fairness are basic human rights, and we pledged our efforts toward a safer, more harmonious, as well as a more productive workplace. (USPS Ex. 30, underscoring added)

This document undermines the NALC's theory of the case. It confirms that the parties pledged their efforts not to short circuit the existing dispute resolution processes, but rather to create a safer, more harmonious, as well as a more productive workplace. The parties themselves, including the NALC, affirmatively state this in the second Joint Statement.

In the last paragraph of the second Joint Statement it is stated:

> This problem-solving approach is not intended as a substitute for existing dispute resolution processes, but an informal, cooperative approach to significant workplace relationship problems wherever they may occur. (USPS Ex. 30, underscoring added)

Clearly, the first Joint Statement was not intended to grant the NALC standing to control supervisory promotions, removals, reassignments, merit increases, etc., through the NALC grievance/arbitration procedure. In light of the undisputed language of Article 3, this would be a completely incongruous, if not absurd result. Any such issues must be decided through the established non-bargaining administrative and statutory procedures to ensure that the supervisor in question receives due process. For example, the Employee and Labor Relations Manual (ELM) contains non-bargaining Disciplinary, Grievance, and Appeal Procedures at Chapter 650 (USPS Ex. 25). If a non-bargaining employee is facing disciplinary action, this chapter sets forth elaborate due process safeguards that must be complied with. The most basic of which are the right to notice, appeal and representation. Furthermore, the NALC grievance/arbitration procedure cannot substitute for Chapter 650 procedures and all of the due process safeguards contained therein. Individual supervisors would have no standing to appeal under these procedures. A collectively bargained grievance procedure to which supervisors, managers and Postmasters have no access could, and would, be used by the NALC to adversely affect the supervisors' employment status. This

is contrary to every precedent established in the Postal Service's 25 year collective bargaining experience.

Similarly, promotions to non-bargaining unit positions are covered by established regulations found in Handbook EL-311 at Chapter 540. (USPS Ex. 28) These procedures do not call for appeal of promotions by the NALC through the grievance/arbitration procedures. This is corroborated by Publication 59, Executive and Administrative Schedule (EAS) Evaluator Information, (USPS Ex. 29) and the EAS Application Review/Interviewing Participant's Manual (USPS Ex. 27). Likewise, meritorious salary increases or special awards granted to non-bargaining personnel is not subject to the NALC grievance/arbitration procedure.

As expressly stated in the second Joint Statement the informal problem solving approach was not meant as a substitute for existing dispute resolution processes. As already discussed, Articles 1 and 3 expressly precludes NALC involvement in these areas. The assertion that the Joint Statement served to modify any and all administrative rules and regulations governing supervisory discipline, promotions, awards, transfers, reassignments, promotions, etc., and thus making them all subservient to the NALC grievance/arbitration process is absurd. There was no proof offered that this is what the nine signatories to the Joint Statement intended and to now allow for this outcome would open a literal Pandora's box of never ending legal challenges by pitting separate and distinct appeal rights against each other, i.e., those that are exclusive to

supervisory employees and those that are exclusive to labor. To think that the parties envisioned and approved this predictable chaos demonstrates just how strained the NALC's contentions are in this proceeding.

THE NALC'S THEORY IS VIOLATIVE OF MSPB LAW

It is undisputed that supervisors, veteran preference and non-veteran preference alike, have standing to appeal adverse actions to the Merit Systems Protection Board (MSPB) (See Cybulski testimony at Tr. 137). In the event that the NALC successfully seeks an adverse action against a supervisor in labor arbitration that also gives rise to standing before the MSPB, the NALC's theory would have the Joint Statement supercseding MSPB law found at Title 5, United States Code.

Not only was such an overreaching notion never discussed or considered by the Joint Committee, even if it had, the Committee certainly had no authority to modify an act of Congress. There is no possible way that the Joint Committee could have modified individual statutory rights through the issuance of the Joint Statement on Violence and Behavior in the Workplace. Yet this is what the NALC is championing in this grievance. To grant this grievance would be to fly in the face of Title 5, United States Code.

As testified to by Mr. Cybulski, setting aside MSPB statutory and case law was never discussed by the Joint

Committee and if it had been he did not believe that the Committee would have had the authority or ability to do so:

Q. Are there other appeals or any forums that non-bargaining employees can appeal to?

A. Well, the more formal process, of course, and probably the one most ordinarily utilized is the MSPB process because that is a separate statutory process independent of the Postal Service. The Merit Systems Protection Board has jurisdiction over any cases involving a reduction in pay or grade of postal manager or supervisor, and that process is spelled out by federal law.

It is a rather elaborate one presided over by, when I practiced law, (by) a presiding official -- I think the title has probably changed once or twice since then -- essentially an objective third party who has the responsibility to take evidence. And there are rather strict rules of evidence that apply in those proceedings. And to issue a decision that may then be appealed by the employee to the full Merit Systems Protection Board here in Washington.

And the board (MSPB) has an obligation, again, to review the proceedings below and issue a final administrative decision. And from that administrative decision a further appeal may then be taken to the federal circuit. And the federal circuit is the

exclusive forum for judicial review for these proceedings.

Q. Was it your intent that we change that procedure through the joint statement?

A. No, it was not our intent, and I frankly can't imagine with regard to the MSPB that we would have any authority or ability to do so.

Q. Was it ever discussed?

A. No, it was not.

This testimony was never rebutted by the NALC. It is clear from the evidence of record that the force and effect of the Joint Statement on Violence and Behavior in the Workplace as now advanced by the NALC was never even discussed, much less intended by the Joint Committee. It is also clear that the Joint Committee never had the legal authority to make such an agreement even if they intended to do so. The NALC's interpretation that labor Arbitrators have the authority to review MSPB decisions as a result of the Joint Statement simply does not make sense, runs afoul of MSPB law, and is not supported by the evidence of record.

THE NALC'S THEORY IS VIOLATIVE OF INDIVIDUAL DUE PROCESS RIGHTS

According to the NALC theory of the case, all supervisory personnel matters are subject to the NALC grievance/arbitration procedure. For example, if the NALC felt that a certain supervisor was not treating its members properly it could ask an arbitrator (as they have in the instant case) to prohibit that individual from working as a supervisor in the future. Or they could demand that the supervisor/Postmaster be reprimanded, or disciplined, or transferred, or not promoted, etc. Any such action would constitute an adverse action against the individual supervisor/manager/Postmaster and would consequently be violative of that individual's due process rights.

The negotiated grievance/arbitration procedure is essentially a private dispute resolution system sanctioned by Federal labor laws that the NALC and USPS have voluntarily entered into as a means of resolving their disputes. Supervisors, managers and Postmasters have no standing whatsoever in labor arbitration. (It is significant to note that even in the instant case the Management Associations had no standing except as fact witnesses.) If the NALC were to prevail in this case this arbitrator would be creating a forum in which the interested party, i.e., supervisors, managers and Postmasters, had no standing to represent themselves. Such an arrangement would be unprecedented and would constitute a flagrant violation of individual due process rights.

How would the supervisor be represented? Are we to appoint guardian ad litems in labor arbitration cases? If so, who will bear the cost? Will Management Associations have input into future collective bargaining or the composition of union arbitration panels now that their members' livelihood depends on the arbitrators' awards? These are but a few of the issues that would need to be addressed should the NALC prevail in their grievance, and the NALC's unwillingness to include the management associations in it's domain is already well documented. (See unrebutted testimony of Vincent Palladino regarding NAPS request, and NALC rejection, to participate in Employee Involvement proceedings, Tr. 172 - 173)

It is inconceivable that a private dispute resolution procedure, which is conducted behind closed doors, that has no published awards and provides for no review or appeal process, could be the proper forum for deciding supervisory personnel matters. Despite NALC arguments to the contrary, this can not be the logical result of the Joint Statement on Violence and Behavior in the Workplace. It simply doesn't make sense. As testified to by the USPS, NAPS, NAPUS and the League of Postmasters, not only was such an outrageous setup never agreed to, it was never even discussed.

If the NALC were to prevail all of the following supervisory personnel actions would be fair game in the grievance/arbitration procedure without supervisor representation:

- involuntary reassignments
- suspensions
- discharge
- involuntary transfers
- reduction in grade
- written reprimands
- loss of promotional opportunity
- forced "training"
- adverse merit reviews

Essentially, it would be an unchecked open season for craft employees to engage in defamation of supervisors' character. It would be an exercise in public humiliation for supervisors. Is there any doubt that the NALC or any other union would not stand for such an arrangement if their members were on the receiving end? Such an arrangement should shock anyone's sense of fair play and due process.

ARBITRATOR HAS NO LEGAL STANDING TO INTERFERE WITH INDIVIDUAL SUPERVISOR'S EMPLOYMENT

As noted earlier, this is a rights arbitration. The arbitrator's authority flows from the National Agreement. Individual supervisors are not a party to the labor agreement nor are they represented by a party to the labor agreement. There is no way that two parties can contract to exercise rights over an independent third party supervisor. Simply put, the arbitrator is a creature of the contract and may only apply whatever authority the parties give to him.

The parties do not have the authority to bind independent third parties and therefore can not bestow such authority on an arbitrator.

It is a basic legal axiom that one who is not privy to the contract is not bound by it. To do otherwise runs headlong into the constitutional bar against involuntary servitude. There is no legal way for the NALC and the USPS to grant an arbitrator of their choosing standing to rule on a supervisor's livelihood. The individual supervisor, nor the management associations, has no input whatsoever into the makeup of the arbitration panels. It is blatantly unfair to the individual supervisor to force them to be subjected to the arbitrator's authority without any voice in the selection process.

THE NALC THEORY DEVIATES THE FINAL AND BINDING NATURE OF LABOR ARBITRATION

Litigation by individual supervisors would defeat the "final and binding" effect of labor arbitration. The arbitration award can never be binding on the individual supervisor because they are not a party to the National Agreement. Therefore, as discussed above, individuals can not be expected to surrender their constitutional due process rights just because the NALC says so. Such an arrangement would not only defeat the "final and binding" effect of labor arbitration but it would place the employer in an untenable situation.

For example, if a labor arbitrator suspends a supervisor as a result of a NALC grievance, the NALC would have every right under the National Agreement to enforce the award. On the other hand the supervisor will be free to appeal the adverse action through MSPB, Chapter 630 of the EAM, EEO, etc. If these appeals result in a finding contrary to the arbitration award what is the employer to do? Faced with two equally binding decisions the employer would be in an untenable situation. Both the NALC and the supervisor would sue for enforcement. This clearly defeats the "final and binding" requirement found at Article 15.4.A.6 of the National Agreement.

Creating such an illogical result was never intended by the nine (9) signatories to the Joint Statement. As noted earlier, only the NALC holds such a twisted interpretation of the Joint Statement. Placing the employer in the position of having to honor two opposite and equally enforceable decisions is absurd. To knowingly do so would exceed this arbitrator's authority.

THE NALC THEORY REPRESENTS UNACHIEVED BARGAINING DEMANDS

The NALC position in this rights arbitration also represents unachieved bargaining demands. That is to say, the NALC is now attempting to gain something through rights arbitration that they failed to achieve through collective bargaining. This alone should be dispositive of the case.

The record indicates that during the 1994 contract negotiations the NALC made the following proposal:

> Article 41 Letter Carrier Craft
> Proposal
> The NALC proposes to add a section to Article 41 in regards to having a safe and violent free work environment. In addition, the section will incorperate words to the effect that management will treat all letter carriers with dignity and respect.
> (See USPS Ex. 2)

This proposal was rejected by management. (See USPS Ex. 3)

Finally, the NALC proposed specific contract language that would have amended Article 3:

> Article 3 - Management Rights
>
> Too often managers abuse their authority, subjecting letter carriers to unnecessary harassment and coercion. Such practices can have a devastating impact on employee morale and union-management relations.
>
> NALC proposes to amend Article 3 to include the following section:
>
> The employer shall not in any way intimidate, harass, coerce or overly supervise any employee in the

performance of his or her duties. The Employer will treat employees with dignity and respect at all times.

Any alleged violation of this section shall be subject to the grievance procedure. (See USPS Ex. 4)

By attempting to add this language to the National Agreement the NALC was trying to create a new enforceable contract right. This is evidenced by the sentence "Any alleged violation of this section shall be subject to the grievance procedure." That sentence was added because the NALC knew that in the past such allegations were not subject to the grievance procedure. (It is significant to note that these proposals came 2 1/2 years after the signing of the Joint Statement. If the Joint Statement had already modified the National Agreement as now alleged by the NALC, there would have been no need to make such proposals.)

This NALC strategy was confirmed by the testimony of William Young, NALC National Vice President, during the parties' interest arbitration hearings that arose out of the unsuccessful contract negotiations in 1994. Regarding the above mentioned NALC Article 3 proposals Mr. Young testified:

Q. Okay. What was the purpose of the NALC proposal?

A. We are proposing to amend Article 3 to prohibit managers from intimidating, harassing, coercing, or oversupervising employees. We would require that all

employees be treated with dignity and respect. I would like to point to the fact that, over 13 years ago, the parties instituted a process called employee involvement. The purpose of this process was to change the culture of the organization.

In the original vision statement, we suggested that the parties would be better served by treating each other with dignity and respect. Thirteen years latter, we have still not accomplished that goal. (See USPS Ex. 14, p. 2811)

and:

The National Association of Letter Carriers proposes to incorporate language into Article 3 that would allow grievances to be filed and adjudicated when these violations of these principles occur. (See USPS Ex. 14, p. 2815, underscoring added)

and:

This proposal is asking managers to treat employees in exactly and precisely the manner that upper management tells us they want their managers to treat employee. The problem has been in enforcement, in compliance, in getting people to follow what we're told is the company line. (See USPS Ex. 14, p. 2816, underscoring added)

and on cross examination it was acknowledged that:

Q. Turning to the Article 3 proposal, was something similar to that advanced in the 1990 national negotiations?

A. I wouldn't be surprised. I don't have a memory of it, but this is a subject that's been of considerable interest to us for a long -- like I said, for 13 years, we tried to accomplish it.

Q. But if it was, it wasn't attained, right?

A. If it was attained, we wouldn't be here with a proposal, so I think your right. (USPS Ex. 14, p. 2836)

and;

As a matter of fact, I'd point out to you that, in at least two circumstances that I'm aware of, we've actually gone to arbitration on the conduct of supervisors and had arbitrators tell us that, because we don't have such a clause, there's -- they have no jurisdiction over it. (USPS Ex. 14, p. 2838)

What could be more telling! This is nothing less than an admission from the National Vice President of the NALC that the contract rights that the NALC now asserts do not exist. This is the same witness that the NALC described in the interest arbitration hearing as ". . .head of the NALC's Contract Administration Unit and, as such, is the person best suited in the NALC to address the technical details of

our proposals." (USPS Ex. 14, p. 2808) Mr. Young expressly stated during the interest arbitration hearings that the lack of such rights was the rationale for their negotiations proposals. The NALC can't have it both ways. Either the Joint Statement created contractual rights or it didn't. Mr. Young expressly stated that such contractual rights did not exist.

The instant National arbitration hearing represents the NALC's third bite at this apple. Their first failure was in contract negotiations as discussed above. Their second failure was in interest arbitration. Now they are attempting yet a third try couched under the guise of a preexisting contractual right in rights arbitration. If persistence alone were evidence, the NALC would have a strong case. Unfortunately for the NALC, persistence is not evidence. Even the testimony of Mr. Young is contrary to their position in any rights arbitration.

THE NALC'S THEORY LEADS TO ABSURD RESULTS

As discussed earlier, application of the NALC theory would lead to opposite and equally enforceable decisions thereby placing the employer in an untenable situation. This is not the only absurdity that would arise if the NALC were to prevail.

The NALC argues that the Joint Statement gives them standing to meddle in supervisory personnel matters despite clear and unambiguous contract language to the contrary. According to

the NALC, a bridge has been created between all nine signatories that gives each group the right to interfere in the personnel matters of the other groups. In theory a nurse could file a grievance with the nurses union over the harassing behavior of a letter carrier. The nurses arbitration panel would take jurisdiction over the matter and rule on the letter carrier's discipline even though the letter carrier had no standing to appear or be represented at the nurse's arbitration hearing.

Similarly, Postal Police Officers could file grievances against Mailhandlers, Mailhandlers against Letter Carriers, Letter Carriers against Nurses, Mail Handlers against Letter Carriers, etc. Every union could file against supervisors, managers and Postmasters which could lead to conflicting awards from different arbitrators over the same supervisory behavior. As can plainly be seen, such an interpretation of the Joint Statement is nonsensical and unworkable.

There is no evidence that the signatories of the Joint Statement ever intended to create this morass of conflicting administrative review procedures. The NALC's theory in this case would have absurd results.

THE NALC'S INTERPRETATION WOULD HAVE A CHILLING EFFECT ON FUTURE LABOR/MANAGEMENT/MANAGEMENT ASSOCIATION RELATIONS IF SUSTAINED

As demonstrated by the facts of this case, the Postal Service, it's labor unions and management associations, were

confronted with a tragedy of great dimension. The Service did the right thing by convening a joint committee comprised of labor unions and management associations. The committee issued a joint communiqué as a first step toward changing the corporate culture. The NALC voluntarily engaged in these joint committee discussion and was a party to the joint communiqué.

To now allow the NALC to twist the intent of the Joint Statement to serve their own interests and over reaching intentions would be to send a signal to every other union and management association that joint leadership committees are to be avoided. If that is to be the legacy of Royal Oak then we will be heaping tragedy upon tragedy. Sustaining this grievance would do violence to the inroads made after the Royal Oak murders and would give credence to all the nay sayers who look at joint leadership with cynicism.

AMBIGUOUS LANGUAGE TO BE CONSTRUED AGAINST THE DRAFTER

An undisputed rule in contract construction is that if there is an ambiguity, such ambiguity is construed against the drafter of the document. Section 206 of the Restatement of the Law, Contracts 2d states:

> Interpretation Against the Draftsman
>
> In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party

who supplies the words or from whom a writing otherwise proceeds.

In the instant case the language in question was drafted by Mr. Sembrotto. If he intended to modify Articles 1 and 3 of the National Agreement he certainly could have said so in the document. Instead he chose to remain silent on such issues. He remained silent on such issues at the Committee meetings leading up to the joint statement and he decided not to include such language in the Joint Statement itself.

Mr. Sembrotto's decision to not include such language must be held against the NALC in the instant grievance. He drafted the language in question. He alone chose the words he chose. If his intent was to modify the National Agreement it was a well kept secret. Perhaps this was intentional because, as several of the management associations testified, they would have left the committee or not signed the document if it was known to them that that was the intent behind the Joint Statement.

One thing is clear, the Joint Statement does not expressly modify the National Agreement. If Mr. Sembrotto's intent was to make modifications to the National Agreement then it was incumbent upon him to include such language in the Joint Statement. He failed to do so.

THE JOINT STATEMENT WAS NEVER TREATED AS A CONTRACT MODIFICATION

From its very inception the Joint Statement did not have the trappings of a contractual document. It was a singular response to a uniquely powerful and emotional event, the Royal Oak murders. It was issued by a joint committee comprised of the unlikely bedfellows of Postal labor unions and management associations. The joint committee did not include the NALC's joint bargaining partner and party to their National Agreement, the APWU. The Joint Statement was a communiqué designed to inform 800,000 employees of the state of affairs in the wake of the Royal Oak tragedy.

All of this is evidenced by how the parties reacted to the Joint Statement. Upon issuance, the Joint Statement was distributed to every Postal facility as an oversize glossy poster suitable for framing and posting in the workplace. (See Jt. Ex. 5) This glossy poster was also reproduced in both English and Spanish. (See Jt. Ex. 6) This type of activity is hardly consistent with a contractual modification. It is consistent with the parties desire to communicate a new openness and working relationship between labor unions and management associations to stop the violence. It is consistent with the goal of changing the corporate culture.

The Postal Satellite Television Network (PSTN) broadcast (USPS Ex. 44) by the nine (9) signatories of the Joint Statement also demonstrates the parties' intent. Not once

in this broadcast did the NALC ever mention anything about gaining a new contractual right regarding supervisory personnel matters. There were several opportunities during the 2 hour telecast to explain to the world how this new "administrative review procedure" would work but once again the NALC chose to keep their interpretation a secret.

Concerning the PSTN broadcast itself, it is clear from the parties' presentation on the video that their intent was not to modify the National Agreement. While the NALC has the burden of production, burden of persuasion, and the ultimate burden of proof in this matter, the parties' silence on the issue at hand in the PSTN broadcast speaks volumes in the Postal Service's favor. The lack of affirmation of the NALC's position during the broadcast is clear proof that there was no intent to modify the National Agreement.

In addition to the PSTN broadcast many of the nine (9) parties published articles explaining the intent of the Joint Statement. (See USPS Ex.'s 15, 16, 17, 18, 19, 20, 21, 22, and 23). Not one of these articles supports the NALC's interpretation of the Joint Statement. Not even the NALC's own publications contained their current interpretation of the Joint Statement. One would think that the NALC would have announced to the world, or at least to their dues paying members, that they had successfully negotiated a new contractual right. The absence of such pronouncements supports the Postal Service's position in this case.

THE PARTIES HAVE ESTABLISHED A PAST PRACTICE OF MAKING CONTRACT MODIFICATIONS THROUGH MOU'S AND LOI'S

In this industry it has been customary to make modifications to labor agreements outside of the established collective bargaining period by executing either a Letter of Intent (LOI) or a Memorandum of Understanding (MOU). This is evidenced by Joint Ex. 1 and USPS Ex.'s 9, 10 and 43.

Joint Ex. 1 is the parties 1990 National Agreement. Contained in the National Agreement starting at page 262, are a multitude of LOI's and MOU's that have been executed outside of formal contract negotiations during the term of the various National Agreements. Those executed by the NALC and/or the APWU include:

Hearing Impaired, p. 262
Article 7.3, p. 265
Article 7, 12, 13 - Cross Craft and Office Size, p. 265
Maximization/Full-time Flexible - APWU, p. 266
Conversions under the Maximization Memorandum - APWU, p. 266
Maximization/Full-time Flexible - NALC, p. 267
Article 8 Memorandum, p. 268
Annuity Protection, p. 270
APP Beneficiary Notice, p. 271
Granting Step Increases, p. 272
Annual Leave Carryover, p. 272
PTF Court Leave, p. 273
Leave Policy, p. 274

Special Count and Inspection-City Delivery Routes, p. 312

Child Care Task Force, p. 313

In addition to these LOI's and MOU's in the National Agreement, there are many others that have been executed over the years. For instance USPS Ex. 10 is a MOU executed by the then Joint Bargaining Committee comprised of the NALC, APWU, Mail Handlers and National Rural Carriers Association. Not only does this document demonstrate that the use of LOI's and MOU's is widespread in the industry, but also that it dates back to at least January 24, 1973.

USPS Ex. 9 is a series of 6 MOU's executed between the NALC and the USPS during the term of the 1990 National Agreement. Again, this demonstrates how the parties have historically made modifications to the National Agreement. These 6 MOU's were not developed through a Joint Committee consisting of labor unions and management associations. They came about as a result of negotiations between the parties concerning specific contractual issues. This is how the parties do business in this industry. At the very least there was no intent nor expectation on the part of the Postal Service that the Joint Statement on Violence and Behavior in the Workplace would have the same force and effect as a LOI or MOU. If the parties wanted to execute an LOI or MOU on the issue of violence in the workplace they could have done so. They chose not to.

Similarly, USPS Ex. 43, the Mail Handlers 1990 National Agreement, demonstrates that other unions in this industry independent of the NALC, also use LOI's and MOU's to modify their labor agreement.

Beginning at p. 108 the Mail Handler agreement contains the following published LOI's and MOU's:

Education and Training Fund, p. 108
Striving for Excellence Together, p. 109
Light Duty Bidding, p. 110
LWOP in Lieu of SL/AL, p. 112
Leave Sharing, p. 112
Annual Leave Carryover, p. 114
Layoff and Reduction in Force, p. 114
Interest on Back Pay, p. 115
Supervisors Performing Bargaining Unit Work, p. 115
Cross Crafts, p. 116
Part-time Regulars, p, 116
USPS Divisions, p. 117
Casuals, Accounting Period Report, p 118
PSDS - Operation Numbers Accounting Period Report, p 119
Casuals in Excess of 10%, p. 120
Improper By-pass Overtime, p. 120
Annuity Protection Program, p. 121
Part-time Flexible Court Leave, p. 122
Holiday Scheduling, p. 123
Sack Sorter Machine Operator, p. 124
Article 15, p. 125

Task Force on Discipline, p. 126
Modified Article 16, p. 127
Letters of Warning, One Time Purge, p. 128
Committee On Benefits, p.128
On-The-Job Instructors Compensation, p. 129
Article 30, Local Implementation Procedures, p. 130
Article 31, Computer Tape Accounting Period Report, p. 131
Operations 110-129 and 180-189 Clarifying Instructions, p. 133
Clean Air Act Committee, p. 134
Uniform Program, p. 135
Footwear/Uniform Allowance Program, p. 136
Veteran's Preference, p. 137
Step 4 Procedures, p. 139
Eligibility for Lump Sum Payments, p. 140
Lump Sum Eligibility Committee, p. 141
Step Increase, Unsatisfactory Performance, p. 141
Regional Instruction 399, p. 143

As you can see, not only is the use of LOI's and MOU's an accepted past practice in this industry but it certainly would lead anyone working in this industry to expect that if a contractual amendment was intended that it would be through the use of a LOI or MOU and not through a joint committee comprised of labor unions and management associations.

THE PARTIES' USE OF JOINT STATEMENTS

In contrast to the widely accepted use of LOI's and MOU's, the use of joint statements has been rare. In fact the only other example of the parties executing a joint statement is the Joint Statement of Reaffirmation of Support for the Letter Carrier Craft and the U.S. Postal Service Employee Involvement (EI) Process. (See USPS Ex: 32) This document is entitled "Joint Statement". It is undisputed that this EI Joint Statement does not give rise to contractual obligations.

William Young, National Vice President of the NALC and "head of the NALC's Contract Administration Unit" (USPS Ex. 14, p. 2008) expressly acknowledged that the EI Joint Statement did not create any contractual commitments. He testified in the 1994 Interest Arbitration hearing as follows:

> We are proposing to amend Article 3 to prohibit managers from intimidating, harassing, coercing, or oversupervising employees, we would require that all employees be treated with dignity and respect.
>
> I would like to point to the fact that, over 13 years ago, the parties instituted a process called employee involvement. The purpose of this process was to change the culture of the organization.
>
> In the original vision statement, we suggested that the parties would be better served by treating each other

with dignity and respect. Thirteen years later, we have still not accomplished that goal. (See USPS Ex. 14, p. 2811)

and;

The National Association of Letter Carriers proposes to incorporate language into Article 3 that would allow grievances to be filed and adjudicated when these violations of these principles occur. (See USPS Ex. 14, p. 2815)

and;

We had a series of proposals that we lumped togetherand called cultural proposals, and one of the main ones that we had there was an effort to get employee involvement written into the contract, to make it mandatory. (See USPS Ex. 14, p. 2816) (underscoring added)

It is undisputed that the EI Joint Statement did not create contractual commitments. The NALC has failed to show why the Joint Statement on Violence should be given contractual weight when the EI Joint Statement had none. If the parties intended to modify the National Agreement they would have engaged in union to management negotiations that would have resulted in either a LOI or MOU. Instead they formed a Joint Committee comprised of labor unions and management

associations and issued a Joint Statement. The parties actions speak volumes as to their intent.

THERE WAS NO MUTUAL ASSENT TO APPLY THE JOINT STATEMENT AS THE MALC PROPOSES

In order for there to be a binding contractual commitment there must have been mutual assent by the parties that this is what they intended. As already established, there was no intent to apply the Joint Statement as advanced by the MALC. The rules of contract interpretation are clear.

As stated in the Restatement of the Law, Contracts 2d, Section 20:

> Effect of Misunderstanding
>
> (1) There is no manifestation of mutual assent to an exchange if the parties attach materially different meaning to their manifestations and
>
> (a) neither party knows or has reason to know the meaning attached by the other; or
>
> (b) each party knows or each party has reason to know the meaning attached by the other.
>
> (2) The manifestation of the parties are operative in accordance with the meaning attached to them by one of the parties if
>
> a) that party does not know of any different meaning attached by the other, and the other knows the meaning attached by the first party; or

(b) that party has no reason to know of any different meaning attached by the other, and the other has reason to know the meaning attached by the first party.

If the NALC entertained thoughts during the discussions leading up to the Joint Statement that the Joint Statement somehow modified the National Agreement, they certainly kept these thoughts to themselves. As was testified to at the hearing by the Postal Service, League of Postmasters, NAPS and NAPUS no such discussions were entered into by the parties. As discussed previously, as drafter of the original document Mr. Sombrotto had an affirmative obligation to include such language in the draft if that was his intent. He failed to do so. Not even the NALC publication The Postal Record contained such information. (See USPS Ex. 10)

Assuming that the NALC harbored these secret thoughts during the discussions leading up to the issuance of the Joint Statement, how were the other eight (8) parties to know? The NALC never made their intentions known. The difficulty here of course is how do the parties achieve mutual assent if eight (8) of the parties had no reason to know the meaning attached by the NALC? In fact, based on the extensive use of MOU's and LOI's in this industry to make contractual changes in mid term, it can be argued that the presumption must be that there was no contractual change intended. This is especially true in light of the fact that the only other Joint Statement up to that date was the NALC

Employee Involvement statement which was recognized as being outside of the contract.

Obviously, the NALC has failed to meet their burden of showing that mutual assent was present.

PREVIOUS STEP 4 SETTLEMENT IS DISPOSITIVE OF THIS ISSUE

Significantly, the Postal Service and the NALC have addressed this very issue previously at the National level. In a Step 4 settlement dated July 8, 1983 (See USPS Ex. 8) the parties stated:

> After further review of this matter, we mutually agreed to close this case, because it is management's prerogative to select employees who will be assigned as 204-B supervisors.

This is a clear acknowledgment by the NALC that "it is management's prerogative to select employees who will be assigned as 204-B supervisors." The NALC should not be allowed to walk away form this Step 4 agreement. The parties have always recognized, through the express language contained in Article 1, that the National Agreement does not pertain to supervisors. Indeed, Article 1 which defines coverage of the National Agreement specifically excludes supervisors. This Step 4 settlement certainly reinforces that principle. This Step 4 alone should be dispositive of this case.

THE NALC'S THEORY IS VIOLATIVE OF THE NATIONAL LABOR RELATIONS ACT

Section 8(b)1(B) prohibits a labor organization from restraining or coercing an employer in the selection of its representatives for the purposes of collective bargaining or the adjustment of grievances. Section 8(b)1(B) states:

> (b) It shall be an unfair labor practice for a labor organization or its agents - (1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

There is no doubt that supervisors are responsible for the adjustment of grievances. Article 15, Section 2, Step 1, of the National Agreement states:

> (a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days . . .
> (b) In any such discussion the supervisor shall have authority to settle the grievance.

Plainly, the NLRA prohibits the NALC from restraining or coercing the employer in the selection of supervisors who engage in collective bargaining or the adjustment of grievances. All supervisors adjust grievances and a good

deal of them engage in collective bargaining. Therefore, the MALC's interpretation of the Joint Statement also flies in the face of the NLRA.

The reason for the prohibition on such activity is obvious. If the union had control over the selection of management's representatives they would have control of the entire collective bargaining process and grievance procedure. Such a result is unacceptable and must be avoided. By seeking the contractual rights they are now asserting in this grievance the MALC is attempting to gain influence and/or control of the management representatives. By threatening to file grievances that would affect supervisor promotions, merit increases, and job opportunities as well as remove them from their jobs without due process, the MALC would be in position to unduly influence the collective bargaining process in violation of the NLRA. Indeed, such considerations were a driving force behind the Taft-Hartley amendments to the NLRA.

SUMMARY

This is a contract rights arbitration. The arbitrator must search for the correct interpretation of the parties' contract. This search must start with the contract itself. The National Agreement at Article 1 expressly excludes supervisors and managers from coverage. Article 3 expressly gives management the exclusive right to hire, promote, transfer, assign, and retain employees and to suspend, demote, discharge, or take other disciplinary action.

Nothing in the National Agreement modifies management's exclusive right in matters governing supervisory personnel.

The NALC argues that the Joint Statement modifies the express language of Articles 1 and 3. In interpreting the Joint Statement the arbitrator must search for the common meaning of the parties, and such meaning is dependent on the context and legal realities extant when the agreement came into existence. The content is clear. The parties were responding directly to the Royal Oak murders. That is the content in which the nine (9) signatories met, discussed and signed the Joint Statement. The legal realities of the situation were that none of the parties had the authority to give away individual statutory or constitutional due process rights. The notion that these nine (9) diverse groups came together to devise a system that creates such a result strains credibility.

CONCLUSION

For the many reasons articulated above, the NALC has failed to meet it's burden of proof. It has not proven that the common meaning of the parties in the Joint Statement was intended to supersede or alter and amend Articles 1 and 3 of the National Agreement. It has not proven that the nine (9) parties had the legal authority, much less the intent, to implement their interpretation of the Joint Statement as articulated by the NALC.

To the contrary, the evidence points in the other direction. The NALC is the only signatory to hold their twisted interpretation of the Joint Statement. Four (4) of the parties affirmatively testified at the hearing that the NALC's newfound interpretation was never discussed nor agreed to by the parties.

By any measure of logic, contact interpretation, due process, and common sense, the NALC has failed to meet their burden of production, persuasion and their ultimate burden of proof. Accordingly, this grievance must be denied in its entirety.

Submitted by:

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May 30, 1996
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