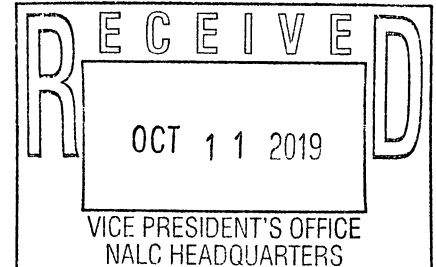


## REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	)	Grievant: Contract
	)	
between	)	Post Office: Pleasanton, CA
	)	
United States Postal Service	)	USPS Case No.: F16N-4F-C 19190007
	)	
and	)	NALC DRT: 01-464944
	)	
National Association of Letter	)	
Carriers, AFL-CIO	)	

BEFORE: Louise B. Wolitz, Arbitrator

For the U.S. Postal Service: Howard E. Gibbs  
 For the NALC: Stephanie Baiungo  
 Place of Hearing: 4300 Black Ave., Pleasanton, CA  
 Date of Hearing: June 27, 2019  
 Briefs Postmarked: August 2, 2019  
 Briefs Received: August 5, 2019  
 Date of Award: September 13, 2019



## AWARD SUMMARY:

We must find that the Postal Service was in violation of Article 19 of the National Agreement/JCAM via the Administrative Support Manual (ASM) Sections 322, 324 and 325. We sustain the Union's grievance on the violation of Article 19. The Postal Service in Pleasanton shall cease and desist using the local form they have been using. The Postal Service shall cease and desist requiring carriers to initial/sign for gas cards. The Postal Service shall immediately discontinue the use of the locally developed form and destroy all previous locally developed forms used to initial/sign for gas cards. The Postal Service in Pleasanton shall use the nationally developed PS Form 3867 to have carriers sign for accountable items. We find no violation of Article 15 in this case. The Union has not argued where Article 15 has been violated. The Step B decision in Berkeley is not relevant to the case here because a Step B decision establishes precedent only in the installation from which the grievance arose (see JCAM, p. 15-8). Pleasanton and Berkeley are not in the same installation.

*Louise B. Wolitz, Arbitrator*  
 Louise B. Wolitz, Arbitrator 9/13/19

**RELEVANT PROVISIONS:**

***National Association of Letter Carriers (AFL-CIO) and United States Postal Service: NATIONAL AGREEMENT 2016-2019***

....

**ARTICLE 3**

**MANAGEMENT RIGHTS**

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

- A. To direct employees of the Employer in the performance of their official duties.*
- B. ....*
- C. To maintain the efficiency of the operations entrusted to it;*
- D. To determine the methods, means and personnel by which such operations are to be conducted.*

JCAM:

*.... While postal management has the right to "manage" the Postal Service, it must act in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of agreement, and memoranda....*

**ARTICLE 5**

**PROHIBITION OF UNILATERAL ACTION**

*The Employer will not take any actions affecting wages, hours, and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law. (The preceding Article, Article 5, shall apply to City Carrier Assistant Employees.)*

....

JCAM, 5-1 – 5.3

**Prohibition on Unilateral Changes.** Article 5 prohibits management taking any unilateral action inconsistent with the terms of the existing agreement or with its obligations under law. Section 8(d) of the National Labor Relations Act prohibits an employer from making unilateral changes in wages, hours or working conditions during the term of a collective bargaining agreement.

### **Past Practice**

The following explanation represents the national parties' general agreement on the subject of past practice. The explanation is not exhaustive and is intended to provide the local parties general guidance on the subject. The local parties must insure that the facts surrounding a dispute in which past practice plays a part are surfaced and thoroughly developed so an informed decision can be made.

### **Defining Past Practice**

In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice:

*First, there should be clarity and consistency.*

*Second, there should be longevity and repetition.*

*Third, there should be acceptability.*

*One must consider, too, the underlying circumstance which give a practice its true dimensions.*

*Finally, the significance to be attributed to a practice may possibly be affected by whether or not it is supported by mutuality.*

### **Functions of Past Practice**

In the same paper, Arbitrator Mittenthal notes that there are three distinct functions of past practice:

**To Implement Contract Language.** Contract language may not be sufficiently specific to resolve all issues that arise.

**To Clarify Ambiguous Language.** Past practice is used to assess the intent of the parties when the contract language is ambiguous, that is, when a contract provision could plausibly be interpreted in one of several different ways.

**To Implement Separate Conditions of Employment.** Past practice can establish a separate enforceable condition of employment concerning issues where the contract is "silent" This is referred to by a variety of terms, but the one most frequently used is **the silent contract**.

....

## **ARTICLE 15 – Grievance-Arbitration Procedure (JCAM, 15-1)**

### **15.1 Section 1. Definition**

*A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment.*

**Broad Grievance Clause.** *Article 15.1 sets forth a broad definition of a grievance. This means that most work related disputes may be pursued through the grievance/arbitration procedure. The language recognizes that most grievances will involve the National Agreement or a Local Memorandum of Understanding. Other types of disputes that maybe handled within the grievance procedure may include:*

*\* Alleged violations of postal handbooks or manuals (Article 19)*

## **ARTICLE 19**

### **HANDBOOKS AND MANUALS ( JCAM, 19-1, 19-2)**

*Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.*

*Local Policies. Locally developed policies may not vary from nationally established handbook and manual provisions (National Arbitrator Aaron, H1N-NAC-C-3, February 27, 1984, C-04 162). Additionally, locally developed forms must be approved consistent with the Administrative Support Manual (ASM) and may not conflict with nationally developed forms found in handbooks and manuals.*

*National Arbitrator Garrett held in MB-NAT-562, January 19, 1977 (C00427) that “the development of a new form locally to deal with stewards’ absences from assigned duties on union business – as a substitute for a national form embodied in an existing manual (and thus in conflict with that manual) – thus falls within the second paragraph of Article 19. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the form must be withdrawn.*

### **Administrative Support Manual (ASM)**

#### **32 Forms Management**

#### **321 Policy**

*A form captures, transmits, and stores data used to support postal business processes. Certain completed forms become official postal records and have legal or contractual implications.*

### **322 Classes of forms**

#### **322.1 Postal Forms**

##### **322.11 Postal Service (PS) Forms**

*PS forms are forms prescribed and approved by Headquarters functional organizations. These forms are used by one or more elements of the postal organization on a national or Headquarters basis. Publication 223, Directives and Forms Catalog, lists PS forms and their supply source.*

##### **322.13 Local Forms**

*Local forms are designed by field units for local Postal Service use only. Local forms are neither listed in Publication 223 nor stocked in the material distribution centers.*

#### **322.3 Field Management**

*Field managers must:*

- a. Follow all policies and guidelines in corporate directives (such as Postal Bulletin articles, management instructions, and handbooks) when completing or processing a form.*
- b. Ensure that the correct forms are used to support business processes.*
- c. Ensure that completed forms are managed, retained, and disposed of as described in Handbook AS-353, Guide to Privacy, the Freedom of Information Act, and Records Management.*
- d. Ensure that local forms do not interfere or conflict with nationally approved forms.*

### **324 Development, Coordination, and Clearance**

#### **324.1 Development**

*Headquarters organizational units approve the requirements for new or revised forms within their functional areas. Forms Management analyzes and designs the form and assigns an identifying number.*

#### **324.2 Coordination and Clearance**

*The originating office obtains the necessary clearances from other affected organizational units before a new or revised form is approved. Required clearances include:*

*The originating office obtains the necessary clearances from other affected organizational units before a new or revised form is approved. Required clearances include:*

---

*Type of Form*

*Required Clearance*

---

*Forms that affect wages, hours, and other terms and conditions of employment, or that concern any work and/or time standards or studies relating to any bargaining unit employees.*

*PS. Through the vice president of Labor Relations using the clearance option 3 memo (see MI AS-310-96-3, Management of Policy and Procedure-Paper and On-Line).  
Local: Through the appropriate area Human Resources manager.*

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*PS and local forms that:*

- a. Collect personally identifiable information about a customer, employee, or other individual (such as name or Social Security number) directly from those individuals.*
  - b. Are completed by a customer, employee, or other individuals.*
- 

*Through the manager, Records Office, using the clearance option 3 memo (see MI AS-310-96-3) for Privacy Act considerations (for details see Handbook AS-353, Guide to Privacy, the Freedom of Information Act, and Records Management)*

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*PS forms that are stocked in the material Distribution centers.*

*Through Inventory Management, Purchasing and Materials, Headquarters, on Form 189, Stocking Plan for Directive and Forms.*

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### **325.2 Modifying PS Forms**

*Clear any modifications or revisions to PS forms with Forms Management.*

### **328 Suggestions About Forms**

*Submit suggestions that affect policy through the Ideas Program. The Ideas Program does not cover minor changes to forms. Examples of minor changes include rearranging or redefining data elements so that they are clearer to the user; altering the format, such as by changing the size; or simply moving or removing a line to make completion or filing easier.*

### **Handbook M-41**

#### **26 Accountable Items**

#### **261 Accountability Procedures**

#### **261.1 Acquiring Accountable Items**

*261.11 Accountable items are keys, postage due, customs duty, and special services mail.*

*261.12 Generally, carriers are required to call at the finance cage for accountable items. They may be called in groups by call of route numbers or by passing a paddle (see glossary for paddle system). At some offices, the items are delivered to the carrier at his/her case.*

*261.24 Accountable Mail Matter Received for Delivery (Exhibit 261.24)*

*261.241 Check name and address on each article to determine if it is for an addressee who has moved or who lives on another route. If addressee has moved, supply the new address. If for another route, return article to clerk.*

*261.242 Verify registered number appearing on article with entry on Form 3867.*

*261.243 Sign (surname and initial) Form 3867 opposite entries if correct. Multiple entries may be bracketed and a single signature entered. Individual responsibility is assumed by the carrier upon receipt.*

*Exhibit 261.24\**

**UNITED STATES  
POSTAL SERVICE**

**Accountable Mail Matter Received for Delivery**

Date	Registered No., COD No., Total Express Mail, Total Certified, Total Return Receipt for Merchandise, or Total Receipt for Recorded Delivery	R, RA or AO	COD Amount Due Sender	Money Order Fee
------	---	-------------	-----------------------------	--------------------

Delivery Clerk's or Carrier's Signature; Total	Clearing Clerk's Signature	Reason for Nondelivery; Disposition
--	----------------------------------	---

- Please note: This accurately reflects the information requested on the form, but not the placement of the categories on the form. They are all lined up on one line, with space for recording the information. There are also instructions on abbreviations to be used in recording the information which we have omitted here.*

*This form was in the file as part of the Step B decision (Joint Exhibit 2, p.5)*

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## THE HEARING:

The hearing on this matter was held at 4300 Black Ave., Pleasanton, CA on June 27, 2019. Each party had a full opportunity to present its evidence, witnesses and argument and to cross examine each other's witnesses. All witnesses were sworn. The parties entered into evidence Joint Exhibit 1, the National Agreement and JCAM and Joint Exhibit 2, the Case File. Each party made an Opening Statement. The Union called witness Jose Ochoa, Executive Vice President of NALC Branch 1111 and retired letter carrier. The Postal Service called witness Gurjant Singh Ahosa, Postmaster of Pleasanton. At the close of the hearing, the parties agreed to file briefs, to be postmarked August 2, 2019 which were timely received by the arbitrator on August 5, 2019. The arbitrator has carefully reviewed the evidence in the Case File, her notes on the testimony at the hearing, and the Opening statements, Briefs and arbitration citations submitted by the parties.

## THE ISSUE:

The parties agreed that the issue before the arbitrator is: Did Management violate Article 15 of the National Agreement/JCAM including Article 19 via the Administrative Support Manual (ASM) Sections 322, 324 and 325 when they created a local form requiring carriers to initial or sign when receiving Gas cards? If so, what is the appropriate remedy? The parties agreed that the issue is properly before the arbitrator.

## POSITION OF THE UNION:

The Union argued in its Opening Statement that this is not just about a form. Management discontinued the use of the Postal Service form and created their own form. It is different from the nationally developed form. It was not promulgated according to the ASM. Management will argue that use of its form is a past practice. Management says it has used this form for years. However, the contract is not silent on this issue. Management has committed an ongoing violation of the contract. The arbitrator should sustain this grievance and instruct the Postal Service to discontinue use of this form and destroy all forms that were signed and initialed by the carriers.

The Union's witness was Jose Ochoa. He testified that he was employed by the Postal Service starting in 1984 and is now retired from the Postal Service. He is currently Executive Vice President of NALC Branch 1111. He has held this position for six years. He supervises offices and enforces the contract. He has been overseeing the Pleasanton Post Office for a year or a year and a half. He stopped overseeing the Pleasanton Post Office about two months ago. Pleasanton got new shop stewards about seven months ago. Mr. Ochoa testified that he found out that local management had developed a form requiring carriers to sign for gas cards. He



met at Formal A with the Postmaster on April 4, 2019. They agreed that carriers were required to sign or initial gas cards. He filed an ongoing grievance. This is a violation of the contract. He found out through conversations with the steward. A Step B Decision for a similar grievance in Berkeley by the Bay Valley DRT on February 19, 2019 resolved the Berkeley grievance by determining that Management violated Article 15 & 19 via the Administrative Support Manual (ASM) when they required carriers to sign/initial locally developed forms when receiving a gas card. The Step B decision instructed Management to cease and desist from any further violation of the cited provisions and further said that upon receiving this decision Management will destroy all forms carriers initialed or signed when receiving gas cards. Mr. Ochoa said that he provided a copy of this decision to the stewards in Pleasanton. He thought that they would just show it to the Postmaster and the problem would be solved. The Postmaster said that Pleasanton is not in the same installation as Berkeley. The Berkeley decision was not precedent setting for Pleasanton. He informed his stewards of the Postmaster's position. The stewards said that they had been doing this in Pleasanton for a long time. Mr. Ochoa said the he wrote the contentions in Joint Exhibit 2, p. 17 on April 4, 2019. The Union contended that gas cards are not recognized accountables per the guidelines of the M-41, Section 261.11. Accountable items are keys, postage due and special services mail. Even if the gas cards were recognized by the M-41 as accountables, management may not locally create forms in violation of the ASM Sections 322, 324 and 325, specifically when it mandates carrier to sign or initial such form. Locally developed policies may not vary from nationally established handbook and manual provisions (see National Arbitrator Aaron H1N-NAC-C-3, C-04162). Additionally, locally developed forms must be approved consistent with the administrative support manual (ASM) and may not conflict with nationally developed forms found in handbooks and manuals. The Union cited M-01517, which said, *"Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance and those steps should be documented."* Mr. Ochoa said that he showed the Berkeley Step B decision to the Postmaster. Management kept insisting that use of the local form was a past practice in Pleasanton. It has been the practice for a long time. Both the Union and Management were aware of the practice. Management said that the contract is silent. However, Mr. Ochoa said that the contract is not silent about this issue. It cannot be a past practice if it is a violation of the contract. Mr. Ochoa referenced a Fourth step agreement I94N-41-C 97116055, Waterloo, IA, signed by Richard A. Murmer, Labor Relations Specialist, and Vincent R. Sombrotto, President, National Association of Letter Carriers, on May 26, 1998. (Joint Exhibit 2, p. 19) The agreement said: *The issue in this grievance is whether management violated the National Agreement when it used a locally developed form. During our discussion, we mutually agreed that no national interpretive issue is present in this case. We also agreed that the issuance of local forms, and the local revision of existing forms is governed by Section 325 of the Administrative Support Manual (ASM). The locally modified form at issue was not promulgated according to ASM 325.12.*

*Therefore, management will discontinue using this form.* Yet, the postmaster kept insisting that it was a past practice. It cannot be a past practice if it is in violation of the contract. The agreement quoted above is binding. Mr. Ochoa said that he remembered signing for accountable mail on an official Postal Service form. The same form was used throughout his entire career for accountables. There is a column where the carrier signed for a specific accountable. The carrier initialed and dated the form, one for each travel. Accountable items are items that the parties agreed upon. They are arrow keys, certified, registered, C.O.D, Express Mail. Dog spray is not an accountable. The satchel is not an accountable. The gas card is not an accountable. Most offices have an internal form and the carrier has a personal pin. Management can set an internal procedure. The M-41 defines accountables on pages 20 and 21. This regulation has not changed at all over the years. There is a locally developed form that management developed in Pleasanton. It is on pages 22-27 of Joint Exhibit 2. They keep revising it. This is the form that is the subject of this grievance. This form, revised 09/04/18, has the following columns:

ROUTE #	ARROW/COLL KEY	VEHICLE KEY	GAS	SPRAY	CARRIER NAME	CLERK NAME
---------	----------------	-------------	-----	-------	-----------------	---------------

The carriers initial for each item. There is no Postal Service number at the bottom of this form. They keep revising it. Management cannot revise a national form. The form lists multiple items. Dog spray (SPRAY) is not an accountable item. The carrier initials on arrow key, vehicle key, gas key. The forms in the record show continual revision. They took dog Spray off. Now they have a clearing clerk and a column for initials, when it was revised on 12/04/18. This form is for the whole unit, not individuals. One does not know what gas card it is referring to. Are the gas cards assigned to the carrier, the route or the truck? He believes that they are assigned to a route and a vehicle. When the form was revised on 3/22/19, the Spray was back (Joint Exhibit 2, p. 34). Mr. Ochoa testified that the local form is not consistent with the nationally developed form. The national form is used throughout the country. There is a procedure for local management to make changes. Management here did not follow the procedures for this form. The Union would not have a problem if management had developed a local form to track the gas cards, an internal control form that the carriers were not required to sign.

On cross examination, Mr. Ochoa said that there are four Vice Presidents in the NALC Branch. He was the second Vice President for about a year in Pleasanton. The local form was used when he was here. There was no reason for him to know that they were using this form. Mr. Ochoa testified that he found out that they were using this form when new local stewards brought it to his attention. The new stewards were here for six to eight months. The stewards prior to that had been stewards for ten years. He found out about the forms when the new stewards brought it to his attention. He understood that the forms had been used for some time. Management told him that the forms had been used in Pleasanton for years. Nobody showed him evidence that they had been used for so long. He did not ask

the former stewards who were here for ten years how long the forms had been used. He does not know of any steward filing a grievance on this form in Pleasanton. He does not know of any discipline having been issued for not signing this form. Mr. Ochoa acknowledged that the Step B decision in Berkeley is not a precedent for Pleasanton. He acknowledged that management has an obligation for accountability. Dog Spray is not an accountable item. Dog Spray is critical to have on the street, but it is not an accountable item. Mr. Ochoa acknowledged that he has heard of gas cards being inappropriately used. He acknowledged that management has a right to control the cards and a right to develop procedures for accountability. However, a gas card is not an accountable item. Management has the right to control it. Management can track who gave the card to a carrier, when it was used, when it was returned. The form on page 22 has the initials of a clerk.

On redirect examination, Mr. Ochoa said that the former shop stewards had been shop stewards in Pleasanton for at least ten years. He had no reason to ask them about this. He was not aware that management was using this form. He oversaw this office for a year or a year and a half. Usually issues are brought to his attention by the stewards. Otherwise, he is unaware of what happens in individual offices. He oversees seven to eight stations. To his knowledge, management is not using the national form.

On re-cross examination, Mr. Ochoa said that he filed this grievance when he found out that it was an ongoing violation. It is timely to file a grievance on something that happens on a daily basis. He filed it on the day the Union found out. The former stewards knew about the form being used. They did not know that it was a violation. There cannot be a past practice that is violating the contract. The contract is not silent on this question. The Postmaster has been here in Pleasanton since 2010. The M-41 lists accountables. It lists the process for local forms. A past practice cannot remain if it is violating the contract.

On redirect examination, Mr. Ochoa said that the National Agreement incorporates the M-41 and the ASM (Administrative Support Manual). 261.24 in the ASM has a nationally developed form which was created by Postal Headquarters and accepted by the NALC. Management in Pleasanton did not have authority to modify this form. Management in Pleasanton should have been using this form.

In its brief, the Union argues that evidence and testimony have unequivocally shown that the Service violated Articles 15 and 19 of the National Agreement/JCAM via the Administrative Support Manual (ASM) when they created a locally developed form requiring carriers to initial/sign when receiving gas cards. The Union has demonstrated through evidence and testimony by a preponderance of evidence that the Service at the Pleasanton Installation has created a locally developed form without obtaining the proper clearance through the appropriate channels. Not only did the Pleasanton management create and use this unapproved local form, they replaced and discontinued use of a nationally approved PS Form that is to be used when receiving accountable items. M-01325 (Joint Exhibit 2, p. 19) clearly states:

*During our discussion, we mutually agreed that no national interpretive issue is presented in this case. We also agreed that the issuance of local forms, and the local revision of existing forms is governed by Section 325 of the Administrative Support Manual (ASM). The locally modified form at issue was not promulgated according to ASM 325.12. Therefore, management will discontinue using this form.*

Jose Ochoa testified un-rebutted that the PS Form 3867, assigned per route, is the official form used when carriers receive accountable items in accordance with the Handbook M-41. Mr. Ochoa testified unrefuted that the locally developed form was inconsistent with the PS Form 3867. He testified that the official PS Form 3867 has columns for date, types of accountable items, carrier's signature, clearing clerk's signature, and disposition. Mr. Ochoa testified that the form at issue here does not contain a PS Form number and has columns for vehicle keys, dog spray, and gas cards, which are not accountable items in accordance with the Handbook M-41. These columns are not on the official PS Form 3867. He testified that the carrier must sign in different spots on the form, whereas the carrier signs in only one place on the PS Form 3867. Mr. Ochoa testified unrefuted that the form has been revised by Pleasanton management at least three times, adding and deleting columns. Mr. Ochoa testified unrefuted that management does not have the authority to revise a nationally developed form, the proper procedures were not followed before instituting the use of the local form, and it is inconsistent with the nationally developed PS Form 3867.

The Union argues that management is not using a properly developed form to keep track of accountable items. This form does not have proper clearance from the Human Resource Manager and is clearly a violation of the ASM and M-01325 because it conflicts with the nationally approved Accountable Mail Matter Received for Delivery PS Form 3867.

The Union argues that the management argument that the issue in dispute is considered a past practice at the Pleasanton installation since it is alleged the form has been in use for 17 years and no grievance was ever filed is irrelevant. The real issue is that it is in conflict with the National Agreement and must be discontinued. Article 19 of the CBA incorporates all USPS Handbooks and Manuals. There is specific language in both the Handbook M-41 and the ASM pertaining to the PS Form 3867 for accountable items and the general use of PS Forms and locally developed forms. The form in question does not implement contract language, a requirement of past practice. The form in question conflicts with more than one USPS Handbook and Manual. The ASM defines very clearly the classes, uses and implementation of forms, such as PS Forms, Local forms, Standard forms, and Optimal forms. The language regarding these forms is not ambiguous. PS Forms are used by the organization on a national or Headquarters basis. The Handbook M-41 clearly defines the use of the PS Form 3867 for receiving accountable mail matter for delivery by Letter Carriers. This form has been prescribed and approved by Headquarters and its use is clear. The language is not ambiguous. So the function of past practice to clarify ambiguous language does not exist in this case. The forms

used by the Pleasanton Postal Office in question here do not meet the definition of past practice.

It was undisputed at the hearing that gas cards are not accountable items as defined by the Handbook M-41. It was further undisputed that Pleasanton management is requiring Letter Carriers to sign for items that are not accountable items on the same form used for signing for accountable items. The specific item at issue in this case is gas cards. While PM Ahosa testified that gas cards are not an accountable item, he stated he needed to have accountability for them due to misuses. However, he has required Pleasanton Carriers to sign for them as if they are an accountable item.

PM Ahosa further testified that a PIN number is assigned to each carrier and that he implemented a process where gas cards are only issued on Wednesdays and Saturdays. He testified that he could determine which carrier used a specific gas card by identifying them by PIN number and/or looking to see who was assigned to the route on the specific day. He also stated that by issuing the gas cards on only two days per week, he only must focus on those two days when reconciling the reports.

Mr. Ochoa testified that the gas cards are assigned to the route and not to the carrier. He testified that each carrier is assigned a PIN number to use when using the gas card. He also testified that the carrier using the gas card must turn in a receipt when returning the gas card. These receipts are then reconciled by management.

Mr. Ochoa testified that management has the right to keep track of the gas cards by using a log or report filled out by the clerk issuing the gas card. He also testified un rebutted that carriers are not required to sign for the gas cards since they are not an accountable item.

Pleasanton management currently has more than one safeguard in place to monitor the use of the gas cards. Requiring the carriers to sign for this non-accountable item is not only in violation of Article 19, it is also an abuse of management discretion.

The Union argues that Postmaster Ahosa testified that as the postmaster he is required to know the instructions in the USPS Handbooks and Manuals. However, when asked on cross examination if he was familiar with the PS Form 3867 in Exhibit 261.24 from the Handbook M-41 (Joint Exhibit 2, p. 6), he stated that he was unaware of the form. He further testified that he could not recall the form used to sign for accountable items when he carried mail, and that he never paid attention to it. Any employee who has carried mail is required to sign only one form each and every day when receiving accountable items for delivery. That form is the nationally developed and approved PS Form 3867, created specifically for this procedure. While one may not remember the specific form number or exact details, one should at least remember the form was the same every day. The Union contends that as a

carrier for nine years, Postmaster for at least 17 years, and a USPS employee for 34 years, PM Ahosa should at least be familiar with the PS Form 3867. As a carrier, he was signing a form indicating he received accountable items which he was responsible for. For him to state that he never paid attention to the form is not believable. As Postmaster in Pleasanton, he surely should be aware of the form and the requirement of having carriers sign for accountable items.

The Union concludes that there is absolutely no dispute that the Service violated Article 15 and 19 of the National Agreement/JCAM via the Administrative Support Manual (ASM) when they created and used a locally developed form for carriers to initial/sign for gas cards. The Service failed to promulgate this locally developed form in accordance with the provisions of the ASM prior to using it. The Service also took it upon themselves to discontinue and replace the nationally approved PS Form 3867 signed by city letter carriers when receiving accountable items for delivery. Furthermore there is no dispute that gas cards are not an accountable item and are not required to be signed for in accordance with the Handbook M-41.

The Union has shown that the appropriate remedy is to discontinue the use of the locally developed form, destroy any/all prior locally developed forms with carriers' signatures for accountable items, and instruct Pleasanton management to use the PS Form 3867 for receipt of accountable items.

The Union requests that the arbitrator sustain the Union's grievance; find that the Service violated Articles 15 and 19 of the National Agreement via the Administrative Support Manual (ASM); order the Service to cease and desist requiring carriers to initial/sign for gas cards; order the Service to immediately discontinue use of the locally developed form and destroy all previous locally developed forms used to initial/sign for gas cards; instruct the Service to use the nationally developed PS Form 3867 when signing for accountable items.

#### POSITION OF THE POSTAL SERVICE:

The Postal Service said in its Opening Statement that this is a contract case where the Union has the burden of proof to show that management at the Pleasanton Post Office violated the CBA by the use of a document that is and has been in use in the Pleasanton Post Office since as far back as 2002. The Union also has the burden to show that by using the document referenced in this case that involves having employees that use the government gas cards on a daily basis is violation of the contract or any other manual. Management will provide testimony that the document being referenced in this case has been used in this office since at least 2002, 17 years. This grievance is the first. There is no mention of any other grievance being filed on this document and none is referenced in this case. Testimony will be provided that will show that the City Carriers at the Pleasanton Post Office and many other offices use the same process to ensure that some accountability is kept for the gas cards that are being taken and used daily by

carriers to fill the postal vehicle that they operate daily with gas. The carriers simply put their initials and in some cases their name on the sheet to show that they took specific gas card with them to put gas in a vehicle that they would be operating that day or the next. No other information is provided or used for any other reason.

The agency will show through testimony what this document is and how this document is and has been used and also provide testimony to show that in no way has this document deprived or harmed any employee in the Pleasanton Post Office of any right or privilege they would otherwise have or should have had. The document being made reference to in this grievance is not in conflict with any other document, form, nationally or locally found in any handbook or manual.

This document without contradiction is a long standing past practice with at least 17 years of longevity. The 17 year time frame itself makes the grievance untimely filed. Based on the information provided above and the testimony during the hearing this grievance should be denied as there was no violation as the union has alleged.

The Postal Service's witness was Gurjant Singh Ahosa, Postmaster of Pleasanton. Mr. Ahosa testified that he has been Postmaster of Pleasanton since November 2002. He did the Formal A on this grievance. Postmaster Ahosa testified that he is familiar with the documents on pages 22-27 of Joint Exhibit 2. He testified that these documents were in use when he came to Pleasanton in 2002. There has to be accountability for gas cards. If there were no accountability, you wouldn't know who had a card. If there were no accountability, anyone could use the card, for personal use, candy, cigarettes. Accountability is important. Dog Spray is very important, but it is not an accountable item. There have been no grievances on this document and they have had no issues with it. The former steward in Pleasanton had been the steward for 29 – 30 years. He was aware of this form. It was signed every day. They got a new steward in July of last year. The carriers were signing this form (see page 22). The accountables clerk initials the form when the carrier returns at the end of the day. The accountables clerk is signing off that the items were returned at the end of the day. Mr. Ochoa has been in Pleasanton for over two years. Before him, Steward Hershel Jones had no issues about the form. There have been no complaints about this document for 25 years.

On cross examination, Postmaster Ahosa said that carriers are assigned a pin number to use a gas card. On February 19<sup>th</sup> (page 25), no carrier signed off for dog Spray. They all had the dog spray with them. They keep the dog Spray in their satchel. They sign for gas cards only on Wednesday and Saturday. On page 34, on April 3, 2019, there are no clerk signatures on the form. Nobody cleared these carriers. The clerk didn't sign off. Accountables are mainly COD and certified mail. Postmaster Ahosa said that he has worked for the Postal Service for 34 years, nine of those carrying mail. He is not aware of a nationally developed form for accountables. He has never seen the form in Exhibit 261.24 on page 5, labeled Accountable Mail Matter Received for Delivery. He is a little bit familiar with the ASM.

On redirect examination, Postmaster Ahosa said that gas cards are used on Wednesday and Saturday. He goes online to certify transactions only on Wednesday and Saturday. He consolidates what the receipts say. He looks at each receipt and verifies the transaction for the card.

The Postal Service says in its brief that this is a contract case where the union has the burden of proof to show that management at the Pleasanton Post Office violated the CBA by the use of a document that is and has been in use in the Pleasanton Post Office since as far back as 2002. This document has been in place for 17 years. The Union also has the burden to show that by using this document that involved having employees initial or sign the document when they use a government gas card on a daily basis is a violation of the contract or any other manual. The Postal Service argues that the union did not meet that burden and should not prevail in this case.

Postmaster Gurjant Ahosa provided credible and un rebutted testimony about the sign-in sheet and the reason for the document. He also provided testimony that this grievance is the first and only grievance filed on this document in at least 17 years. Testimony was also provided and un rebutted that all the City Carriers at the Pleasanton Post Office were aware of this document and the reason for it, which was to ensure that some accountability is kept for the gas cards and other items that are being taken and used daily by all the carriers. This includes filling up the postal vehicle that they operate daily with gas as needed.

The carriers simply put their initials, and in some cases their names, on the sheet to show that they took a specific gas card with them to put gas in the postal vehicle that they would be operating that day or the next day. No other information is provided or used for any other reason or purpose. No reference has been made to any harm of any employee in the Pleasanton Post Office or of any right or privilege they would otherwise have had absent the document in question. Postmaster Ahosa explained that there are accountability reasons that involve the gas cards which are the same as a credit card and the use of the card and other items must be tracked to know who used those items on any given day. Postmaster Ahosa testified that no one to his knowledge has ever been disciplined for the use of or not using the sign in sheet since he has been Postmaster. One of his stewards had been in Pleasanton for over thirty years and another in excess of ten years. Neither of the stewards ever made any complaints or filed any grievance about the spread sheets and using the spread sheets. No one has complained or filed a complaint about them. He said that he believed that it was Vice President Jose Ochoa who instructed the local steward to file the grievance. Postmaster Ahosa stated that the spread sheets are reconciled on Wednesdays and Saturdays.

Postmaster Ahosa said that some of the other accountable items that are tracked are vehicle keys, Arrow keys, Dog Spray and Express Mail, C.O.D. and registered mail. The clerks sign the sheets because the clerks have liability also for the cards and other items on the sign in sheet as part of their official duties as the accountable



clerks. The union did not rebut the testimony by Postmaster Ahosa or his responses on direct and cross.

Postmaster Ahosa said at the Formal A in this grievance (Joint Exhibit 2, p. 29) that: *"All gas cards must have accountability. It is a matter of SOX compliance and is monitored by the OIG. The sign outs have been a long standing, well established, and well understood past practice that has existed since the onset of the Voyager program without opposition. I, Gurjant S. Ahosa have been in Pleasanton since 2002 and we have used these forms for daily signatures since 2002 and before."*

The union witness, Vice President Jose Ochoa, testified that he has been Vice President for the Pleasanton Post Office for a year and a half. The grievance was filed in March or April. He said there is no reason. Mr. Ochoa testified that one steward had been in Pleasanton for about a year and there was a steward who had been in Pleasanton for over 30 years and was aware of the document being referenced in this grievance for at least 17 years or more. Mr. Ochoa said that he just became aware of the sheet when he filed the grievance. This is not credible testimony. Unrebutted testimony was given that there were no correction actions or complaints about the document prior to the filing of this grievance.

The document in this grievance is not in conflict with any other document, form, nationally or locally found in any handbook or manual. This document without contradiction is a long standing past practice with at least 17 years of longevity. The 17 year time frame itself makes this grievance untimely filed. The Postal Service concluded with a discussion of what is a past practice.

#### DISCUSSION:

The issue statement before us is: Did Management violate Article 15 of the National Agreement/JCAM including Article 19 via the Administrative Support Manual (ASM) Sections 322, 324 and 325 when they created a local form requiring carriers to initial or sign when receiving Gas cards? If so, what is the appropriate remedy?

Postal management in Pleasanton is not using the PS Form 3867, titled Accountable Mail Matter Received for Delivery (see p. 7 above or Joint Exhibit 2, p. 5, part of the Step B Decision), a nationally recognized and produced form with a PS number, 3867, to keep account of accountable mail. Rather, the Pleasanton Post Office is using a form it locally developed, and revised on 07/25/2018; 09/04/18; 12/04/18; 03/20/2019; and 03/22/2019; and (see Joint Exhibit 2, pages 21-27; 33-35). This form lists the routes, and has columns for the carriers to initial: Arrow/Coll Key; Vehicle Key; Gas: Spray: and Carrier Name and Clerk Name. The headings on the column are sometimes changed in revisions. For example Spray (Dog Spray) sometimes appears and sometimes does not. The parties agree that this local form has been in use for many years. Postmaster Gurjant Singh Ahosa testified that he came to Pleasanton in 2002 and this form was being used then. The form has been

used in Pleasanton for at least 17 years.. The parties also agree that no grievances have been filed or problems raised in that time about the use of this form. The Postal Service maintains that therefore use of this form is a past practice in Pleasanton and should not now be discontinued. On March 18, 2019, the Union officially grieved the use of this form and asserted that Management is violating the National Agreement Article 19 and the Administrative Support Manual (ASM) by continuing to use this form. The local Union contends that gas cards are not recognized accountables per the guidelines of the M-41, Section 261.11. Accountable items are keys, postage due and special services mail. The Union argues that carriers should not be required to initial for gas cards or other items that are not accountable items, such as dog spray. Moreover, the Union argues that this form was created in violation of the ASM sections 322,324 and 325, specifically when it mandates carriers to sign or initial this form.

It is undisputed that the form requires carriers to initial for gas cards, which are not accountable items. It is also undisputed that the form has been used in Pleasanton for 17 or more years and not been questioned. It is further undisputed that the form is not an official, nationally developed PS form with a PS number. Nor has the form been developed in accordance with the provisions of Administrative Support Manual 322, 324 and 325. The Postal Service makes no argument that the form satisfies the provisions of Administrative Support Manual 322, 324 and 325. Rather, the Postal Service argues that since it has been in effect for so many years without a grievance or a problem, it is a past practice which has become a part of the National Agreement. The Union argues that it cannot be a past practice that has become a part of the National Agreement because it is inconsistent with the National Agreement and with Postal form 3867, which is the form that officially tracks accountables. The local form requires signatures or initials or things that are not accountables, like gas cards, which the official form does not. The Union specifically objects to requiring carriers to initial or sign for non-accountable items like gas cards or dog spray. The Union argues that the Postal Service has other processes in place to keep track of gas cards and their use and identify who has used them. These are locally developed internal procedures that do not require carrier signatures and to which the Union does not object. There is also no contention in this file that the form in question here has ever been approved by Headquarters, Labor Relations or the appropriate area Human Resources manager, as required by ASM 324.2. Thus, this form is inconsistent with the National Agreement and cannot be approved. ASM 324.1 clearly says that Headquarters organizational units approve the requirement for new or revised forms within their functional areas. There has been no such approval for the form in question here. There is no evidence that any coordination or clearance has ever been obtained. There is no approval of the form from Labor Relations or the Human Resources Manager or the record office or any Headquarters level official. That it has been used for many years without being questioned does not protect its continued use. Since it is inconsistent with the National Agreement, and the National Agreement, through Article 19 and the Administrative Support Manual does provide a proper process, and there is a nationally developed form which should be used for

accountables, we find that past practice does not protect the continued use of this form.

We therefore must find that the Postal Service was in violation of Article 19 of the National Agreement/JCAM via the Administrative Support Manual (ASM) Sections 322, 324 and 325. We sustain the Union's grievance on the violation of Article 19. The Postal Service in Pleasanton shall cease and desist using the local form they have been using. The Postal Service shall cease and desist requiring carriers to initial/sign for gas cards. The Postal Service shall immediately discontinue the use of the locally developed form and destroy all previous locally developed forms used to initial/sign for gas cards. The Postal Service in Pleasanton shall use the nationally developed PS Form 3867 to have carriers sign for accountable items. We find no violation of Article 15 in this case. The Union has not argued where Article 15 has been violated. The Step B decision in Berkeley is not relevant to the case here because a Step B decision establishes precedent only in the installation from which the grievance arose (see J-CAM, p. 15-8). Pleasanton and Berkeley are not in the same installation.