

REGULAR REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration

between

United States Postal Service

and

**American Postal Workers Union,
AFL-CIO**

Post Office: Fort Smith, AR

USPS Regional Case No:

G06C-4G-C 10363764

Local No. FS201038

Class Action Grievance

Before: ANN S. KENIS, ARBITRATOR
Arb. Case No. 35

Appearances:

For the Postal Service: Tricia R. Marks, Labor Relations

For the Union: Dennis Taff, National Business Agent

Place of Hearing: 3318 S. 74th St., Fort Smith, AR 72917

Date of Hearing: April 12, 2012

Date of Award: May 9, 2012

Contract Provisions: Articles 5, 19 and ASM 273.17

Contract Term: 2006-2010

Award

The grievance is hereby sustained, in part. Local management's installation of a video camera to monitor a hallway area constituted a unilateral change in working conditions in violation of Article 5 of the National Agreement and a violation of ASM 273.172. The Service is ordered to discontinue the use of the camera. No monetary damages are awarded.

Ann S. Kenis

ANN S. KENIS, Arbitrator

I. STATEMENT OF THE ISSUE

Whether the Postal Service violated Articles 5 and 19 of the National Agreement by installing a video camera in the hallway of the Fort Smith, Arkansas post office, and, if so, what shall the remedy be?

II. PERTINENT CONTRACTUAL PROVISIONS

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.

ARTICLE 19 – HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relates to wages, hours or working conditions, as they apply to employees covered by the 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 the Agreement and that are fair, reasonable and equitable...

III. ADMINISTRATIVE SUPPORT MANUAL (ASM)

273.17 Closed Circuit Television System Security

273.171 Scope

This section clarifies the use of closed circuit television (CCTV) in administrative and security applications. It does not affect the manner in which the Postal Inspection Service or OIG utilizes CCTV equipment for criminal investigations.

273.172 Policy

The Postal Service uses CCTV systems for the protection of its employees, mail, and postal assets and to monitor automated mail flow operations. The purpose of CCTV systems is to provide visual verification in conjunction with intrusion detection devices or exit alarms and doors equipped with exit alarms or access control devices. CCTV systems are to function as deterrents, and if a crime occurs in the monitored area, to record evidence of it. The administrative and security uses of CCTV systems are limited to the following:

- a. CCTV systems are installed to view parking lots, building exteriors, employee and visitor entrances, other access controlled entrances, emergency egress only, post office box areas, public access areas, and designated high-value locations, such as registry areas.
- b. CCTV systems are not installed to view work areas to evaluate the performance of employees.

- c. CCTV systems do not utilize “dummy” or nonfunctioning CCTV cameras.
- d. Security in the postal retail store.

273.173 Responsibility

The following units have these responsibilities:

- a. *Postal Inspection Service* - The inspector in charge of the division in which the facility is located is responsible for determining the need for quantity, type, and location of CCTV systems and cameras as described in this section.
- b. *Security Control Officer* – The security control officer (SCO) is responsible for overseeing the procurement, installation, maintenance, and repair of CCTV systems, and for maintaining a minimum of the most recent 32 days of video recording tapes or disks. The SCO also assures that the information from the CCTV camera is monitored and/or properly recorded 24 hours a day...

IV. FACTUAL BACKGROUND

This class action grievance protests the placement of a video camera in the hallway of the Fort Smith, Arkansas post office. The matter came to the attention of Union Steward Thomas Clinton Henry Jr. sometime in 2010 when an employee reported that the camera had been installed. Henry testified that he filed an information request, asking for the name of the Postal Inspection Service Inspector who made the decision to place the camera in the post office. Postmaster Sanford Logan responded that the “initial installation of the GMF camera system occurred in January 2005 before I became Postmaster. No records exist of any Postal Inspector making the decision.” Henry stated that this particular camera was not part of the initial installation of cameras outside of employee entrances and on the dock. This camera was installed years later by management, without notification to the Union.

According to Henry, the location of the camera does not fall within any of the permissible reasons listed in ASM 273.172. The hallway is not a public access area and the camera does not monitor an entrance to the building. In the Union’s view, the installation of this camera was intended to have a chilling effect on employees who would otherwise read the information on the Union bulletin board. In addition, management cannot justify monitoring employees using the

washroom or the break room. The Union concluded that the placement of the camera was a term and condition of employment subject to the National Agreement. The instant grievance was submitted to protest management's unilateral and improper action.

Plant Manager Robert Thomas testified that there has been an ongoing process of upgrading the security system at this facility. Currently, there are cameras at all the entrances to the building as well as on the dock. Thomas stated that the camera in question is simply an extension of the system that is already in place. It is not used to monitor employee performance. Management is not attempting to discourage employees from reading the bulletin board either.

Thomas acknowledged that ASM 272.173 states that the chief postal inspector will determine the need for cameras and their location. Thomas indicated that management originally spoke with the postal inspector in charge of the Arkansas district and received his approval before installing the cameras. The only admonition was not to place cameras on the workroom floor. Therefore, when a need arose to enhance security in the hallway area, management believed it acted correctly and properly when the camera was put in place. Thomas explained that there was a concession stand in the break room sponsored by an organization for the blind. The concession had to be discontinued as a result of theft. This caused enough concern to warrant the placement of the security camera in the area, Thomas stated. In addition, he noted that employees enter the locker room off the workroom floor through this same hallway. Management has the right to use the camera to "function as a deterrent" under ASM 272.172.

The Arbitrator viewed the camera at issue. It is on the wall, in the vicinity of a locked entrance to the building, but it is pointed at the hallway which has the entrances to the break room and the bathrooms. The bulletin board is across from the camera. Down the hallway is the entrance to the workroom floor. Thomas explained that the camera, and all the other cameras, are

tied in to a motion activation system. The monitor in his office shows that when a camera detects movement, such as when employees are working on the dock, then that is what is shown on the monitor. Thomas stated that no one monitors the camera and the DVR is not reviewed very often.

V. CONTENTIONS OF THE PARTIES

A. THE UNION

The Union contends that the installation of the camera at issue was a unilateral action by the Service in violation of the National Agreement. Article 5 requires notification and discussion with the Union prior to taking action which affects the terms and conditions of employment. That did not happen here. The Postal Service is not insulated from complying with the contract even if management obtained approval from a postal inspector when the camera system was first put in place. The original camera system clearly falls within ASM guidelines; this camera does not, the Union insists. The only purpose served by this camera is to view employees. It is placed in the hallway area to monitor employees going to the washroom and the break room. In addition, this camera impermissibly monitors employees reading the bulletin board. The camera is an invasion of privacy and it violates the ASM. For these reasons, the Union requests that the Arbitrator sustain the instant grievance in its entirety.

B. THE SERVICE

The Service argues that the Union failed to meet its burden of proof in this contract dispute. No employee has been disciplined and there is no intention on the part of management to use the camera to monitor employee performance. There has been no showing of harm or any evidence that the camera affects the terms and conditions of employment at this facility. Under

these circumstances, the Service asserts that notification and discussion in accordance with Article 5 were not required.

Equally important, this camera was merely an extension of the existing system. The system was installed for security purposes. Management contends that it can reasonably be assumed that the OIG approved the system when it was installed in 2005 or the Union would have filed a grievance at that time. There has been no violation of the ASM. The provisions in the ASM clearly provide for the installation of such equipment for the protection of employees and the mail. Moreover, employees do not have any reasonable expectation of privacy in the hallway of a postal facility.

Neither the Union nor the Arbitrator can dictate when and where cameras can be installed. That is a right of management. This Arbitrator should not substitute her judgment for management's in this instance. Based on all these factors, there has been no violation of the National Agreement and therefore the grievance must be denied.

VI. FINDINGS AND DISCUSSION

This case involves the installation of a video camera in the hallway of the Fort Smith, Arkansas postal facility. The parties have provided the Arbitrator with prior awards which have addressed this issue. Those awards fall into two camps. In the first group of cases, cited by the Postal Service, arbitrators have concluded that even though the installation of closed circuit television systems (CCTV's) affects working conditions at the facility, there is no violation of Article 5 if the action was taken solely by the OIG for the purpose of conducting criminal investigations.¹ Arbitrator Newman, for example, concluded that neither ASM requirements nor

¹ *USPS and APWU*, Case No. J06C-1J-C 08352354 (Newman, 2009); *USPS and APWU*, Case No. E00C-1E-C 03013465 (Hauck, 2005); *USPS and APWU*, Case No. E94C-4E-C 98114417 (Winston 2003).

the Article 5 prohibition of unilateral action on matters affecting the terms and conditions of employment applies to action taken for criminal investigation purposes by the OIG.

In the second group of cases, cited by the Union, arbitrators have sustained grievances where management at the facility – not the OIG -- unilaterally decided to install CCTV's without first meeting with the Union to discuss the need to take such action. In those cases, the cameras at the facility did not fall within any of the permissible categories under ASM 273.172. Because Article 5 was violated, and the ASM 273.172 did not provide a justifiable reason for management's actions, the Service's reliance on Article 3, the management rights provision of the National Agreement, was deemed misplaced.²

The instant case falls within the second group, I must conclude. Notwithstanding the Service's arguments to the contrary, the awards cited by both parties recognize that the installation of CCTV's is a mandatory subject of bargaining that affects the working conditions of employees. In accordance with Article 5 of the National Agreement, the Postal Service is prohibited from acting unilaterally in that circumstance. It is undisputed that management did take unilateral action when it installed the camera at issue in this case. There was no prior discussion with the Union prior to the installation.

Management offers several explanations in its defense. First, it asserts that the CCTV system was originally installed pursuant to the authorization of the OIG and this particular camera was merely an extension of that original authorization. That argument is not persuasive because the evidence provided by the Service in support of its position is inconsistent, contradictory and lacks probative value. In his response to the Union's request for information in connection with this grievance, the Postmaster expressly stated that there was no record of any

² *USPS and APWU*, Case No. H06C-4H-C 08233700 (August, 2009); *USPS and APWU*, Case No. A00C-1A-C 06063279 (Butler, 2008).

postal inspector making the decision to install the camera system. When Plant Manager Thomas issued his Step 2 denial, however, he referenced for the first time a conversation with an OIG inspector who purportedly approved the installation of the cameras. This hearsay statement contradicts the Postmaster's response. The Postal Service did not present any evidence or testimony at hearing to resolve this apparent inconsistency. Accordingly, it is difficult to know whether to credit the Postmaster or the Plant Manager.

But even if we were to give the Postal Service the benefit of the doubt and find that the OIG or a Postal inspector authorized the initial CCTV installation, it does not necessarily follow that management could circumvent Article 5 when it installed the camera in the hallway five years later. There is no evidence that the OIG or the Postal Inspection Service were involved in the determination to install the camera in the hallway. There is no evidence that the camera was intended for use in criminal investigations, which would be within the purview of the OIG or Postal inspectors. There is no evidence that the OIG or the Postal Inspection Service were monitoring the camera. Had those facts been established, the outcome might be different. Under those circumstances, I might agree that the action could be taken unilaterally. The OIG and the Inspection Service are entities separate from the Postal Service, and they are not required to provide notice to the Union of their actions, as the cases cited by management have held. But that is not what occurred at the Fort Smith facility.

Second, the ASM does not provide a mandate for Management's actions. ASM 273.172 allows for administrative and security uses of cameras such as this one, but they are limited to specific areas. This camera was not installed to view a parking lot, an entrance or a high value location. The interior hallway is not an area of public access. Put a bit differently, the hallway

video camera is not encompassed within the permissible uses for such equipment under ASM 273.172.

While it is understandable that the Service wants to enhance security and deter theft, its ability to do so is subject to Article 5 and to the provisions of the ASM as incorporated through Article 19 of the National Agreement. Under the circumstances presented, I find that when management unilaterally installed the video camera in the secure hallway of the facility, there was a violation of Article 5 and 19 of the National Agreement. Management is ordered to discontinue the use of the camera.

Finally, the Union seeks a monetary remedy in the event this grievance is sustained. However, damages typically are awarded to make employees whole. Monetary remuneration must be related to the losses suffered by the aggrieved individuals. In the instant case, the difficulty in determining a proper remedy lies in making a determination of just what damages employees have incurred. The Union has not identified any employee who was disciplined or whose work performance was evaluated based on the activities monitored by the hallway camera and no precedent awards have been cited to support the Union's request. Accordingly, I decline to award the Union's request for monetary relief.

VII. AWARD

The grievance is hereby sustained, in part. Local management's installation of a video camera to monitor a hallway area constituted a unilateral change in working conditions in violation of Article 5 of the National Agreement and a violation of ASM 273.172. The Service is ordered to discontinue the use of the camera. No monetary damages are awarded.

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