

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration )	Grievant: Crain, Sherrie
) )	
between                          ) )	Post Office: Cleveland, MS
) )	
United States Postal Service          ) )	USPS Case No.: G11N-4G-C 13330774
) )	289613029
and                              ) )	
) )	
National Association of Letter Carriers, AFL-CIO )	NALC DRT No.: 08-284922

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 AUG 31 2015  
 NALC REGION 8

BEFORE: Louise B. Wolitz, Arbitrator

APPEARANCES:

For the U.S. Postal Service:	James A. Higginbotham
For the NALC:	Corey Walton
Place of Hearing:	210 S. Chrisman Ave., Cleveland, MS
Date of Hearing:	June 11, 2015
Briefs Postmarked:	July 13, 2015
Briefs Received:	July 15, 2015
Date of Award:	August 24z, 2015


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VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS

AWARD SUMMARY:

We find that this grievance is arbitrable. We find that Supervisor Richard Grant clearly violated the Joint Statement on Violence and Behavior in the Workplace, the Mississippi District Zero Tolerance policy on Workplace Violence and Behavior in the Workplace, M-39 115.4, ELM 665.16, Article 19 of the National Agreement based on the incident that occurred with Letter Carrier Sherrie Crain on August 13, 2013. We further find that Management violated Article 15 of the National Agreement, previous DRT decisions, and Formal A agreements when they again failed to meet at the first Formal A and failed to comply with settlements associated with this case. We find that the Union did not bear its burden of proof that postmaster Lorenzo Terry violated the above or that Management in the Cleveland MS. installation failed to address an employee's concerns of a hostile work environment. We issue seven remedies on pages 9 - 11 below.

  
 Louise B. Wolitz, Arbitrator 8/24/15

**RELEVANT PROVISIONS:*****AGREEMENT between United States Postal Service and National Association of Letter Carriers AFL-CIO 2011 - 2016*****ARTICLE 15****GRIEVANCE-ARBITRATION PROCEDURE*****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. A grievance shall include, but is not limited to, the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of this Agreement, or any local Memorandum of Understanding not in conflict with this agreement.*

....

**ARTICLE 19****HANDBOOKS AND MANUALS**

*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. Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed changes. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance....*

***M-39 Methods Handbook******Management of Delivery Services******Section 115- DISCIPLINE***

### **115.4 Maintain Mutual Respect Atmosphere**

*The National Agreement sets out the basic rules and rights governing management and employees in their dealings with each other, but it is the front-line manager who controls management's attempt to maintain an atmosphere between employer and employee which assures mutual respect for each other's rights and responsibilities.*

....

### **EMPLOYEE & LABOR RELATIONS MANUAL**

#### **665.16 Behavior and Personal Habits**

*Employees are expected to conduct themselves during and outside of working hours in a manner which reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal personnel be honest, reliable, trustworthy, courteous, and of good character and reputation.... Employees are expected to maintain satisfactory personal habits so as not to be obnoxious or offensive to other persons or to create unpleasant working conditions.*

### **JOINT STATEMENT ON VIOLENCE AND BEHAVIOR IN THE WORKPLACE**

*We all grieve for the Royal Oak victims, and we sympathize with their families, as we have grieved and sympathized all too often before in similar horrifying circumstances. But grief and sympathy are not enough. Neither are ritualistic expressions of grave concern or the initiation of investigations, studies, or research projects.*

*The United States Postal Service as an institution and all of us who serve that institution must firmly and unequivocally commit to do everything within our power to prevent further incidents of work-related violence.*

*This is a time for a candid appraisal of our flaws and not a time for scapegoating, fingerpointing, or procrastination. It is a time for reaffirming the basic rights of all employees to a safe and humane working environment. It is also the time to take action to show that we mean what we say.*

*We openly acknowledge that in some places or units there is an unacceptable level of stress in the workplace; that there is no excuse for and will be no tolerance of violence or any threats of violence by anyone at any level of the Postal Service; and that there is no excuse for and will be no tolerance of harassment, intimidation, threats, or bullying by anyone.*

*We also affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness. The need for the USPS to serve the public efficiently and productively, and the need for all employees to be committed to giving a fair day's work for a fair day's pay, does not justify actions that are abusive or intolerant. "Making the numbers" is not an excuse for the abuse of anyone. Those who do not treat others with dignity and respect will not be rewarded or promoted. Those whose unacceptable behavior continues will be removed from their positions.*

*We obviously cannot ensure that however seriously intentioned our words may be, they will not be treated with winks and nods, or skepticism, by some of our over 700,000 employees. But let there be no mistake that we mean what we say and we will enforce our commitment to a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights are not tolerated.*

*Our intention is to make the workroom floor a safer, more harmonious, as well as a more productive workplace. We pledge our efforts to these objectives.*

....

#### **THE MISSISSIPPI WORKPLACE VIOLENCE/ZERO TOLERANCE POLICY**

*A Postal Service employee has a right to perform his or her duties in an atmosphere free of threats and assaults and other acts of workplace violence. It is time once again to set forth the expectations of all employees, craft and management, regarding inappropriate workplace behavior and actions.*

*Workplace violence, whether in the form of physical assault, verbal, written, or implied threat, or verbal altercation and/or intimidation, will not be tolerated within the Mississippi District. As grown, mature, and professional adults, we must control our stresses and tempers during the daily performance of our assigned duties. I can think of no situation that would necessitate resolution by resorting to workplace violence in any form. Any individual who resorts to workplace violence, including verbal or displayed threatening or intimidating remarks or actions, will be subject to severe disciplinary action, to include removal.*

*Most incidents involving physical assaults or verbal threats begin as a simply verbal altercation. **DO NOT** enter into a verbal or physical altercation with another employee or Postal customer for **ANY** reason! **LEAVE** the area and report the incident or situation to your immediate supervisor. Failure to do so may result in escalation of the situation, and you may be charged accordingly.*

***It is policy within the Mississippi District that any employee involved in a physical assault, threat incident, or verbal or physical altercation with another employee or postal patron will be immediately placed in a non-duty status (with or without pay depending on the situation) pending a complete investigation of the incident.***

*While these actions may seem drastic to some, they are only intended to establish and maintain a working environment free from fear of workplace violence. If you find that you are experiencing excessive anger, hostility, or depression, remember your*

*Employee Assistance Program (EAP) is available to help you explore appropriate outlets and/or methods for dealing with your frustrations or feelings. If you are having other problems, which will prevent you from complying with the expectations set forth above, it is strongly recommended you seek the assistance needed to cope with the problem or situation. EAP services are free and confidential.*

#### **THE HEARING:**

The hearing on this matter was held at 210 S. Chrisman Ave., Cleveland, MS on June 11, 2015. 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 Union called witnesses Sherrie Crain, Letter Carrier, Union Steward and Grievant; Steven Lassen, Sr., Regional Administrative Assistant, Region 8 and Formal A representative; and Richard W. Grant II, Supervisor of Customer Service in Indianola, MS, formerly Supervisor of Customer Service in Cleveland, MS. The Postal Service called Lorenzo Terry, Postmaster; Cathy Austin, District Complement Coordinator; Mike Dubois, Director of Labor Relations, Mississippi District; Dana Amos, Manager Postal Operations, Central Mississippi; and Miranda F. Jackson, Manager of Human Resources, Mississippi District. The parties entered Joint Exhibit 1, the National Agreement and JCAM; Joint Exhibit 2, the case file, 411 pages; Joint Exhibit 3, Letter of Warning in Lieu of Time off Suspension (14 day) issued to Richard W. Grant, July 23, 2014; Joint Exhibit 4, Settlement Agreement with MSPB; Management Exhibit 1, ELM excerpts; Management Exhibit 2, Letter of Decision issued to, Richard Grant, February 24, 2014. The parties agreed to file briefs to be postmarked July 13, 2015 which were timely received by the arbitrator on July 15, 2015. The arbitrator has read and considered carefully the case file, her notes on the witness testimony, and the excellent briefs and arbitration citations submitted by the parties.

#### **THE ISSUES:**

The Postal Service argued first that this grievance is not arbitrable. So the first issue is: Is this grievance arbitrable?

If the grievance is found to be arbitrable, the issues, as listed by the Step B Team are:

- 1) Did Supervisor Richard Grant again violate the Joint Statement on Violence and Behavior in the Workplace, the Mississippi District Zero Tolerance policy on Workplace Violence and Behavior in the Workplace, and Articles 14, 15, 19 of the National Agreement, M-01242, M-01243, through his actions on August 13, 2013, and by the pattern of behavior that has developed in the Cleveland, MS Installation, and if so, what should the remedy be?
- 2) Did Postmaster Lorenzo Terry again violate the Joint Statement on Violence and Behavior in the Workplace, the Mississippi District Zero Tolerance Policy on Workplace Violence and Behavior in the Workplace, and Articles 14, 15,

- 19 of the National Agreement, M-01242, M-01243 by failing to establish and maintain from his subordinates an atmosphere free of threats and assaults, and by the pattern of behavior that has developed as a result of his inaction in the Cleveland MS Installation, and if so, what should the remedy be?
- 3) Did Management violate Sections 115.4 of the M-39 Handbook via Article 19 of the National Agreement by failing to maintain an atmosphere of mutual respect in the Cleveland, MS Installation, and if so, what should the remedy be?
  - 4) Did Supervisor Richard Grant of the Cleveland, MS Installation, violate the ELM Section 665 via Article 19 of the National Agreement while on duty, and if so, what should the remedy be?
  - 5) Did Management in the Cleveland, MS Installation violate the JSVB, the Mississippi District policy on Workplace Violence, M-39 Section 115 of the M-39 via Article 19, Articles 14, 15 of the National Agreement and ELM Chapter 8 via Article 19 when they failed to properly address an employee's concerns of a Hostile Work Environment, and if so, what should the remedy be?
  - 6) Did Management violate Article 15 of the National Agreement, previous DRT Decisions, Formal A Agreements, when they again failed to meet at the first Formal A, and failed to comply with settlements associated with this case, and if so, what should the remedy be?

#### **IS THIS GRIEVANCE ARBITRABLE?**

The Postal Service argued at the beginning of this hearing that the grievance is not properly before the arbitrator. The Union is seeking action against a supervisor, Rick Grant, for violating the JSVBW. The Service agrees that Supervisor Grant did put his hand on the grievant, in violation of the JSVBW. The Service argues that this has been handled by putting him on administrative leave, taking him off the workroom floor, and issuing him a letter of proposed removal and demoting him to a Level 6 clerk. The Postal Service's LMOU with the APWU prevented his transfer into the clerk craft. Supervisor Grant went to the MSPB to contest his discipline. Mr. Grant and Postal Service Human Resources Management agreed to change his demotion to a Letter of Warning in lieu of a 14 Day Suspension, to remain in his record for two years. The Postal Service maintains that this was proper discipline for Supervisor Grant's behavior. To now address the same misconduct is double jeopardy. Additional discipline is unwarranted because Supervisor Grant has already been disciplined for his actions.

The Union argued that is a JSVBW case. The Postal Service has made a mockery of the JSVBW. The Union's forum to resolve grievances under the National Agreement is this arbitration forum. This case is about a physical assault on a craft employee. There is a history of unacceptable conduct on the part of this supervisor and management attempting to curb his behavior. There is now a physical assault on a letter carrier. For all of this, management has given him a Letter of Warning. They did a back door deal to save his job. The Union has a right to a ruling on the

contractual violation. His case was never heard by the MSPB because of the back door settlement agreement. Therefore, this is not double jeopardy.

The arbitrator told the parties at the hearing that her authority is under the National Agreement. Under the National Agreement, she finds that this case is arbitrable. It has properly gone through the grievance procedure. The Union was not part of any settlement agreement. There is nothing in this history that robs the Union of its contractual rights. There is no double jeopardy here.

The arbitrator finds that this grievance is arbitrable. We proceeded to the merits of the case.

#### **BACKGROUND:**

There is no argument between the parties about whether or not Supervisor Grant is guilty of conduct that violated the JSVBW. The Postal Service acknowledges that Supervisor Grant put his hands on a letter carrier. The circumstances here are not in contention. This grievance is really about the contractual remedy. The Postal Service contends that Postal management has already acted, first to remove Supervisor Grant, then to demote Supervisor Grant, and, ultimately, in the context of an MSPB appeal and settlement talks, to issue Supervisor Grant a Letter of Warning in lieu of a 14-Day Suspension for "inappropriate conduct". Supervisor Grant was originally returned by this Settlement Agreement (Joint Exhibit 4) to his position as Supervisor of Customer Service in Cleveland, MS. After strong Union protest and further talks, a Supervisor of Customer Service position opened up in Indianola, MS. Supervisor Grant was transferred out of Cleveland to the position of Supervisor of Customer Service in Indianola, where he serves today.

#### **POSITION OF LETTER CARRIER SHERRIE CRAIN:**

Letter Carrier Sherrie Crain testified that on August 13, 2013 she and Supervisor Grant had an altercation on the loading dock after she had put in a 3996. They were walking through the rear double doors to re-enter the building. Supervisor Grant was walking in front of her. She was pushing her cart in. Supervisor Grant told her to get to her case and finish casing her mail. She said, "*that's what I'm doing.*" Supervisor Grant took her arm, squeezing it harder. His thumb was over a nerve in her arm on which she had had surgery. She screamed and was yelling *ouch*. He finally let go. She tripped and fell on the floor. She was on the floor, holding her arm. She looked up and Supervisor Grant was with the phone, over her. He then went to his phone and called the Postmaster. He said to the Postmaster on the phone, "*You better get in here, the psychotic bitch is at again.*" Carrier Crain said that she had been assaulted. She called 911. She filed an incident report. The police took her statement. An EMT looked at her arm. The Postmaster came out. There were bruises on her arm (Joint Exhibit 2 pages 85-87). There is a thumb print and fingerprints on the back side. Postmaster Lorenzo put herself and Supervisor Grant off the clock. She went to the police station to file a report. She then went to her doctor's office.

The thumb print was noted on the X-rays. You can see a thumb print and a handprint (Joint Exhibit 2, see pages 82-87). When she was informed that Mr. Grant was being returned to her office as her supervisor, she protested that this is a safety issue. She filed forms to report a safety hazard and unsafe condition. The Postmaster said that it was not a safety issue because the incidents took place prior to Mr. Grant leaving the office after he was disciplined by management. The Postmaster said it was a management issue.

There is a history, documented in the file, of cease and desist orders issued to Supervisor Richard Grant by the Step B team for violating Article 15, 17, 19 and 31 (see pages 125, 127, 128, 129, 130, 132) and for failing to treat Steward Sherrie Grant in a professional manner. Supervisor Grant was ordered many times to attend training and to cease and desist his unprofessional behavior.

The incident at issue here is the most serious of these many past incidents. Since Supervisor Grant's "inappropriate conduct" has clearly been acknowledged by the Postal Service in its response to this incident, we do not need to belabor it here.

#### **POSITION OF SUPERVISOR RICHARD W. GRANT:**

We note that Supervisor Richard W. Grant II was called by the Union to testify at this hearing. He testified that he has been with the Postal Service for 18 - 20 years and in a supervisory capacity for 14 - 16 years. He testified that he did not grab Ms. Crain's arm and did not touch her. He said that he never touched her. He said that he asked her what she was doing. He said that on the day in question, she gently lowered herself to the floor, lay down and rolled around until she could be seen. He acknowledged that he called her a psychotic bitch. He said that she did not fall to the floor, that she only said that she fell to the floor. He remembered being interviewed by the Postal Inspectors. He never said that he held her arm. He never touched her. He may have grazed her. He was telling her where to go. He was not happy, but he was not angry. It was the fourth or fifth time that he was telling her. His hand fell behind her arm. It was a leading gesture. He did not mean to touch her. The past incidents in the record are all about Sherrie Crain. He was never informed that he failed a polygraph test. The Postal Inspectors are not telling the truth. He did not grab her arm. He felt that she was wasting time. She was out there for five minutes. He was following her because she was wasting time. He needed to make sure that she was working. She clenched her own arm.

On cross examination, Supervisor Grant said that he has remorse for calling her a psychotic bitch. He wasn't given the opportunity to apologize. He would be willing to apologize if she would. She would have to give him an apology because it is a lie. The Postal Service does not have a zero tolerance policy. Nationwide, there is yelling at managers and abusing manager with grievances.

#### **CREDIBILITY DETERMINATION:**



The incident at issue here is the most serious of these many past incidents. Since Supervisor Grant's "inappropriate conduct" has clearly been acknowledged by the Postal Service in its response to this incident, we do not need to belabor it here. We find that Sherrie Crain's testimony regarding the incident at issue is credible and that Supervisor Grant's testimony that he never touched her and that she purposefully fell on the floor is not credible. The Postal Service, in its own investigation and disciplinary response to Supervisor Grant, clearly agrees that he "laid his hands" on Sherrie Crain inappropriately.

We will turn here to the issues posed above in turn, and to the question of what should be the remedy?

**1) Did Supervisor Richard Grant again violate the Joint Statement on Violence and Behavior in the Workplace, the Mississippi District Zero Tolerance policy on Workplace Violence and Behavior in the Workplace, and Articles 14, 15, 19 of the National Agreement, M-01242, M-01243, through his actions on August 13, 2013, and by the pattern of behavior that has developed in the Cleveland, MS Installation, and if so, what should the remedy be?**

We must answer yes to this question as it relates to a violation of the Joint Statement on Violence and Behavior in the Workplace and the Mississippi District Zero Tolerance policy on Workplace Violence and Behavior in the Workplace. We find that Supervisor Richard Grant clearly violated the Joint Statement on Violence and Behavior in the Workplace and the Mississippi District Zero Tolerance policy on Workplace Violence and Behavior in the Workplace. He did so by forcibly grabbing Sherrie Crain's arm, causing pain and bruising, which showed up on pictures and X-rays. He did so, not to guide her, but in anger. We further find that instead of assisting her when she fell on the floor, he called the Postmaster and told him that *the psychotic bitch is at it again*. He acknowledges the statement, but still does not acknowledge that he grabbed her arm, causing pain and bruising, or that he did so in anger. His testimony continues to be not credible.

Supervisor Grant also clearly violated M-39 115. 4 and ELM 665.16, and thus, Article 19, by his inappropriate conduct. We take no position on Articles 14, 15, M-01242 and M-01243 because these arguments have not been fully developed by the Union.

Moreover, this was the most serious incident in a history of inappropriate behavior by Mr. Grant for which he has been issued seven cease and desists dealing with his hostile behavior and four mandates to stop his inappropriate behavior. He has been ordered to take all available training. Yet, this incident still occurred.

We cannot fail to note that the unacceptable incidents cited in this file all involved Sherrie Crain. We have no documented complaints in this file from any other letter carrier. Therefore, in fashioning a remedy, we are most concerned that Supervisor Grant never again is placed in a position in which he supervises Sherrie Crain.

So, the first remedy we order is that:

**REMEDY 1: The Postal Service is hereby directed to never again place Richard W. Grant in a position in which he has any direct or indirect supervisory or management authority over Letter Carrier Sherrie Crain. His continued inability to treat her professionally and safely mandates this directive for her personal safety.**

**REMEDY 2: Richard W. Grant is hereby ordered to cease and desist from behavior that violates the Joint Statement on Violence and Behavior in the Workplace and the Mississippi Workplace Violence/Zero Tolerance policy,**

**REMEDY 3: Richard W. Grant is to write a letter of apology to Letter Carrier Sherrie Crain in which he acknowledges his inappropriate physical touch on August 13, 2013 and clearly apologizes for it and promises not to repeat inappropriate physical touching of any letter carrier. A copy of this letter is to be posted on the bulletin board in the Cleveland, MS Post Office for thirty days and placed in Mr. Grant's personnel file.**

**2)Did Postmaster Lorenzo Terry again violate the Joint Statement on Violence and Behavior in the Workplace, the Mississippi District Zero Tolerance Policy on Workplace Violence and Behavior in the Workplace, and Articles 14, 15, 19 of the National Agreement, M-01242, M-01243 by failing to establish and maintain from his subordinates an atmosphere free of threats and assaults, and by the pattern of behavior that has developed as a result of his inaction in the Cleveland MS Installation, and if so, what should the remedy be?**

Postmaster Lorenzo Terry was not directly involved in this incident. Therefore, on the basis of this incident, the Union has not borne its burden to prove that Postmaster Lorenzo Terry has violated the Joint Statement on Violence and Behavior in the Workplace, the Mississippi District Zero Tolerance policy on Workplace Violence and Behavior in the Workplace, and Articles 14, 15, 19 of the National Agreement, M-01242 or M-01243 by failing to establish and maintain from his subordinates an atmosphere free of threats and assaults. However, we do remind Postmaster Terry that it is his responsibility to establish and maintain from his subordinates an atmosphere free of threats and assaults.

**3)Did Management violate Sections 115.4 of the M-39 Handbook via Article 19 of the National Agreement by failing to maintain an atmosphere of mutual respect in the Cleveland, MS Installation, and if so, what should the remedy be?**

We find that based on the incident central to this case, management did fail to maintain an atmosphere of mutual respect in the Cleveland, MS Installation.

**REMEDY 4: We direct management to cease and desist violating Sections 115.4 of the M-39 Handbook via Article 19 of the National Agreement by failing to maintain an atmosphere of mutual respect in the Cleveland, MS. Installation.**

**4)Did Supervisor Richard Grant of the Cleveland, MS Installation, violate the ELM Section 665 via Article 19 of the National Agreement while on duty, and if so, what should the remedy be?**

We find that Supervisor Richard Grant of the Cleveland, MS Installation clearly violated the ELM Section 665 via Article 19 of the National Agreement while on Duty. REMEDIES 1, 2, 3 above speak to this violation. In addition, we add:

**REMEDY 5: Supervisor Richard Grant shall cease and desist violating the ELM Section 665 via Article 19 of the National Agreement while on duty. He shall include acknowledgement of this violation in his letter of apology to Sherrie Crain in REMEDY 3 above.**

**5)Did Management in the Cleveland, MS Installation violate the JSVB, the Mississippi District policy on Workplace Violence, M-39 Section 115 of the M-39 via Article 19, Articles 14, 15 of the National Agreement and ELM Chapter 8 via Article 19 when they failed to properly address an employee's concerns of a Hostile Work Environment, and if so, what should the remedy be?**

We find that management in the Cleveland, MS Installation did not violate the JSVB, the Mississippi District policy on Workplace Violence, M-39 Section 115 of the M-39 via Article 19, Articles 14, 15 of the National Agreement and ELM Chapter 8 via Article 19 when they failed to properly address an employee's concerns of a Hostile Work Environment. Management did, in fact, address this incident, although without the participation of the Union, and, understandably, not to the Union's satisfaction.

**6)Did Management violate Article 15 of the National Agreement, previous DRT Decisions, Formal A Agreements, when they again failed to meet at the first Formal A, and failed to comply with settlements associated with this case, and if so ,what should the remedy be?**

We find that management did violate Article 15 of the National Agreement, previous DRT Decisions, and Formal A Agreements when they again failed to meet at the first Formal A, and failed to comply with settlements associated with this case.

**REMEDY 6: We direct Management to cease and desist violating Article 15 of the National Agreement, previous DRT Decisions, and Formal A Agreements by failing to meet at the Formal A.**

**REMEDY 7: We direct management to cease and desist failing to comply with settlement agreements.**