IN THE MATTER OF REGULAR PANEL ARBITRATION
BETWEEN

UNITED STATES POSTAL SERVICE
(Employer)

-and-

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO
(Union)
_______________________________________/

Grievants: **Class Action**
Post Office: **Anchorage, Alaska**
USPS No: E16N-4E-C 20434963
USPS No: E16N-4E-C 20434965
NALC No: 20-516 & 20-517
DRT No: 02-5129967 & 02-519966

BEFORE: **Doyle O'Connor**

APPEARANCES:

For the Service: **Mark Eppihimer**
For the Union: **James P. Frankford IV**

Place of Hearing: Anchorage, AK, via video
Date of Hearing: December 17, 2021
Record Closed: December 22, 2021
Date of Award: January 18, 2022

Relevant Provisions: Article 15 and local 'Price-DeHate' Settlement Agreement

Contract Year: 2019-2023

Type of Grievance: Contract breach, failure to properly meet on disputes

Award Summary: The grievance is granted. The Employer improperly failed to meet with the Union regarding pending disputes, in the manner to which the parties have expressly, and repeatedly, agreed.

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Doyle O'Connor
Arbitrator

Issue

The Union in the Step B Decision offered the following statement of the issues:

> Did Management violate Article 15 of the National Agreement and, the Price/DeHate agreement, previous Step B decisions, and Formal A grievance settlements, by failing to have the correct manager on the [Price-DeHate] conference call, and by not conducting the call in a timely manner? If so, what is the appropriate remedy?

The Employer in the Step B Decision added the additional issue:

> Is the grievance procedurally defective and/or not arbitrable due to the Union advancing the grievance without a Formal A meeting? If so, what is the appropriate remedy?

The DRT was unable to resolve the underlying dispute and the matter advanced to Arbitration.

Contentions[1]

The Union contends: The Union assertions relate to two separate underlying grievances (the substantive merits of which are not addressed in this arbitration) regarding which the Union sought a teleconference pursuant to a special procedure known as the Anchorage Price-DeHate Agreement, which in turn anticipates prompt teleconferences to attempt to resolve local disputes. The Union further asserts that the Employer's failure also violates multiple Settlements and Arbitration Awards earlier enforcing the Price-DeHate Agreement.

The Union further asserts that the Employer has violated the National Agreement, and waived the bringing of certain substantive claims, by failing in its mandatory obligation to schedule or attend a Formal Step A conference on the grievance, resulting in a complete failure on the part of Management to develop or disclose any factual basis for its claims.

The Postal Service contends: The USPS denies that it violated the Price-DeHate Agreement, asserting that it had a managerial employee available for the call even if it was not the one directly involved in the dispute. The Employer further argues that prior facially-binding Settlement Agreements, related to the

[1] Four cases were on the docket initially, with only two addressed through the hearing process.

Price-DeHate Agreement, are not to be followed as the Employer asserts that they were improvidently entered into by the Service.

The Service further asserts that the underlying grievances are not arbitrable, because a Formal A meeting was not held, for which it would hold the Union responsible.

Based on its failure to comply with the mandatory obligation to develop grievance facts at earlier stages in the process, the Employer called no witnesses and introduced no proofs.

Relevant Rules and Contract Language

The parties rely on Article 15 of the National Agreement, which governs the Grievance process and the 2005 Price-DeHate local agreement, as well as myriad prior Settlements and Awards implementing the Price-DeHate process (*the relevant portion of which is set forth below)*:

Anchorage Alaska
Addendum to 9-8-2005 Agreement

The process is to be followed prior to the N.A.L.C. filing any Article 17 or 31 grievance in the Anchorage installation:

1. The local parties are to discuss and try to resolve any article 17 or 31 issue using the Joint Contract Administration Manual for guidance.

2. If there is a disagreement at the local level, Branch 4319 will contact the N.B.A.'s office and let them know when they and their management counterpart will be available for a conference call. The branch will let the N.B.A. know during this call what information is not being provided and how it is relevant.

3. The N.B.A. (or designee) will contact the Area Manager of Labor Relations (or designee) and set up a time to call the local parties.

4. The N.B.A. and Labor representative will call the local parties to listen to the dispute (usually in the same day.)

5. If the N.BA and Labor representative resolve the dispute they will tell the local parties how to proceed.

6. If the N.B.A. and Area Labor are unable to resolve the issue the N.B.A. or designee will let Branch 4319 know they are free to file a grievance on the dispute.

7. The local may grant extensions when appropriate. The parties will comply with previous grievance settlements.

Facts

The description of facts relevant to this matter will be unusually truncated, as is essentially mandated by the particular language used by the parties in agreeing that contentions not made below cannot be brought forward at arbitration. In keeping with that established mandate, and with the fact that no Formal Step A meeting had occurred and no Employer contentions had been provided at that level, the Employer did not present any witnesses at the Arbitration hearing. The facts as presented by the Union are therefore uncontested.

Two underlying grievances led to the present dispute. The merits of those underlying grievances are not before this Arbitrator. One grievance involved an allegation that the Employer improperly cancelled previously scheduled 'steward time' involving Steward Frankford (who was the advocate in the present hearing). The other grievance involved a claim that the Employer improperly refused to notify the Union when a carrier had requested to confer with their Union steward regarding a demand that the employee work overtime. The parties separately resolved those grievances.

The grievances before this Arbitrator involve the Union's assertion that it initially requested a special teleconference regarding the two underlying grievances, pursuant to the local Price-DeHate Agreement, and that when the conferences were held the Employer did not have the relevant management person, with whom the dispute had arisen, present for the teleconference, thereby defeating the intended purpose of the conference to seek resolution of disputes at the lowest level. Again, the Union's factual claims are necessarily undisputed.

DISCUSSION

A. Role of the Arbitrator in Deciding a Case

As the advocates are of course aware, although individuals whose interests are affected by such decisions often are not aware, an Arbitrator is a mere creature of the Contract and is bound to apply its terms as drafted by the parties. As

famously noted by Justice Douglas, an arbitrator "*does not sit to dispense his own brand of industrial justice*", or typically to assess the wisdom of actions that were taken, or the wisdom of underlying agreements, rather the faithful arbitrator applies the rules created by the Contract between the parties. See, *Steelworkers* v *Enterprise Wheel*, 363 US 593 (1960). The task in issuing a Decision is to examine the facts and determine if the disputed action was proper under the applicable language of the CBA, or other binding agreements.

It is the binding agreements between the parties, and not the Arbitrator, which creates the respective rights and obligations. As will be seen below, that understanding is central to the resolution of this dispute.

This particular type of case is peculiar to these parties, in that, in a rational effort to encourage voluntary resolution at the lowest level, the national parties have agreed that any contentions not brought forward at a Formal Step A meeting shall not ordinarily be advanced in arbitration. While in this type of case the Union still has the burden of proof, the Arbitrator is constrained to essentially accept as true the factual allegations as made without hearing rebuttal testimony.

The role of the Arbitrator is further constrained in this particular case as the Union requests only a minimal cease and desist remedy and a directive that the Employer in the future comply with obligations that it has regardless contractually undertaken to perform.

B. Arbitrability Issue

At hearing, but not in its post-hearing written closing argument, the Employer relied on the assertion that the grievance was not arbitrable because there had not been a Formal Step A conference, for which the Employer blamed the Union. The argument is without merit.

The Formal Step A conference was scheduled. The Union Steward sought, and was granted, 'steward time' in order to prep for and attend the Formal A, scheduled for October 19, 2020. The Employer unilaterally cancelled the

Steward's leave time[2]; Frankford then converted the time to 'emergency annual leave'; the Employer took the unilateral position that because Frankford was on 'emergency annual leave' he was therefore deemed by the Employer supposedly not 'available' for the Formal A, which management then canceled without seeking an extension of time. The cancellation of the Formal A was entirely caused by the Employer and cannot therefore rationally serve as a bar to the Union further pursuing its claims.

The arbitrability defense asserted for the first time at Arbitration is rejected as being without any merit.

C. Merits of the case

The undisputed facts establish that the Anchorage Installation had long-standing difficulties with apparently repetitious disputes over steward time, Union requests for information, and interviews as covered by Articles 17 and 31 of the CBA. It appeared that the effort at resolution of the issues was exacerbated by the geographic distances involved for upper level Union and Employer representatives attempting to keep the grievance machinery moving. The National parties have long sought, by various mechanisms including the default-type restrictions provided in Article 15, to compel on-site Employer and Union representatives to actually talk to each other, exchange information, and thereby get minor disputes resolved expeditiously at the lowest possible level.

The regional representatives came up with a sensible solution to trying to efficiently resolve these low-level and relatively minor disputes that was entirely consistent with the settle-at-the-lowest-level goal of the National parties. That solution was the Price-DeHate Agreement.

The Price-DeHate Agreement created a mechanism whereby the parties could rationally truncate disputes. The local parties were expressly directed to try to resolve their own disputes. Failing at that, the local Branch Union is to contact the regional Union National Business Agent (NBA). That NBA would then call the Area Manager of Labor Relations and the two of them (or their designees) would

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[2] A later Formal Step A Decision found the cancellation of that leave time to have been a violation of the National Agreement.

then set up a phone call with the local Union rep and the local Employer rep to *'listen to the dispute'* with the NBA and the Area Manager having the obvious goal of using their presumptively greater knowledge, authority, and experience to try to cut through any local nonsense and get the dispute resolved, consistent with the respective obligations under the National Agreement. Failing at that, the NBA could then authorize the local Union rep to *'feel free to file a grievance'*. Significantly, the Price-DeHate agreement reminds the parties that they are to "*comply with previous grievance settlements"*. The Price-DeHate Agreement closes with leaving a window period for the NBA and Area Manager to discontinue the agreement by March 18, 2006, and there is no indication that a decision was made at the regional level to end the Price-DeHate Agreement, which therefore remains controlling.

It is inescapable, both from the language of the Price-DeHate agreement and from the testimony at hearing, that the purpose of the teleconference between the local parties and the higher-ranking regional representatives is to have the actual disputants give their pitch to the regional representatives in the hope that doing so would bring clarity and, thereby, resolution. For either the Union or the Employer to show up for the teleconference with an individual other than the actual disputant, who presumptively has direct knowledge of the dispute, undercuts the purpose of the teleconference and renders it a pointless exercise. Notwithstanding having reached the Price-DeHate Agreement, and notwithstanding the obvious appropriateness of showing up to a meeting with the actual people possessing the facts, it appears that compliance by Anchorage management has been repeatedly illusory.

The Union cites to an exhaustive, and frankly exhausting, litany of dispute resolutions reached with Anchorage, all of which in essence merely have management agreeing to do things in the fashion that they have already committed to doing them. Those agreements and settlements are nonetheless repeatedly and inexplicably violated.

Agreements between Labor and Management are binding and must be complied with by both parties. Even though such a proposition is painfully

obvious, it was underscored by Postmaster Donahoe in his May 31, 2002 letter to all levels of management reminding them that:

> Compliance with grievance settlements is not optional. No manager or supervisor has the authority to ignore or override a signed grievance settlement.

The message does not seem to have impressed some individuals. As soon after as January 2003, the management at Anchorage was compelled to enter into a legally binding agreement with the National Labor Relations Board, to settle pending charges by promising that they would then and into the future:

> Comply with grievance resolution agreements, grievance settlements (including the Agreement) and final arbitration awards . . .

Despite the above, the Anchorage Installation remained embroiled in disputes over compliance with prior agreements. Management participated in the Price-DeHate calls, but repeatedly failed to have the appropriate manager with knowledge of the situation on the call. As a result, additional grievances were generated, cluttering the dispute resolution process, and appropriately enough resulting in additional binding agreements, often at the Formal A level. In the following cases Formal A settlements were reached 18-445 E16N-4E-C 19000501, 18-421 E16N-4E-C 18400862, and 18-385 E16N-4E-C 18345080, with each settlement again solemnly promising that:

> Management agrees to comply with the provisions of the Price/DeHate Agreement in the future by having the local supervisor/manager/204B who is involved in the dispute participate in the conference call. This is in order to better facilitate resolving the issue for the local parties.

Despite the very plain language of those settlements, management persists in failing to comply with the obligation to have the relevant and knowledgeable manager on the call. Indeed, in the present case the Employer openly asserts in its closing argument that it does not feel bound by those settlements, as they were purportedly '*bad decisions*'. In making such an argument the Employer underscores its own bad faith bargaining, and indeed commits an express violation of the prior NLRB settlement by which it solemnly committed to the relevant Federal prosecutorial and adjudicatory agency, in a binding settlement,

that it would in the future comply with all signed grievance settlement agreements.

Nor is this the first arbitration case to address the question of the Employer's obligation to comply with prior settlements, nor is it the first to reach the obvious and indeed inescapable conclusion that they must comply. The Union, at Step B, cited to directly on point Awards by Arbitrator John Abernathy, case C-13895, and Janice Irving, case C-21019, both arising out of Anchorage and both affirming the proposition that reneging on prior agreements is impermissible and constitutes bad faith. The Union further relied at Step B on Awards between the parties arising at other locations, and reaching the same inevitable conclusion, including by Arbitrator Glynis Gilder, case C-34487, Arbitrator Claude Ames, case C-19934, and Arbitrator Carlton Snow, in case C-23988.

The Price-DeHate Agreement was designed to facilitate the early and expeditious resolution of a particular class of disputes. The Anchorage management has repeatedly sabotaged that effort by attempting to evade the plain language of that Agreement. The Anchorage management has nonetheless repeatedly renewed its supposedly solemn agreement to comply with all prior settlements and with the Price-DeHate Agreement in particular. Here, the Anchorage management has again violated the Price-DeHate Agreement by not having the appropriate supervisor present for the teleconference, thereby subverting the efficacy of the conference. In the present case, the Anchorage management openly attempts to disavow prior Formal A Settlements by which it reaffirmed its commitments.

In the face of such recalcitrance, a violation must be found and remedied.

D. Remedies

As noted above, the Union simplified this case by seeking a minimal remedy; as put in its Opening Statement, the Union sought an order that:

> 1. Management shall cease and desist violations of Article 15 of the National Agreement by failing to comply with signed grievance settlements.

2. Management shall cease and desist violations of the Price/DeHate agreement.

3. Management shall participate in Price/DeHate conference calls, in accordance with Formal A settlements E16N-4E-C 19000501, E16N-4E-C 18400862, & E16N-4E-C 18345080, by having the manager/supervisor who is involved in the dispute on the call.

4. Or any other remedy deemed appropriate by you Mr. Arbitrator.

The Union had below, but not in this proceeding, sought the additional remedy that:

"Further violations will result in enhanced remedies, monetary or otherwise."

Given the multiple prior violations, and more importantly, given the repeated acknowledgment by management that it had violated its obligations and the repeated promises that it would not do so in the future, and given that the violations strike at the core of the parties agreed upon dispute resolution system, an enhanced financial remedy would not be inappropriate. Indeed, such a financial remedy is not a remedy that an Arbitrator would lightly create.[3] Here, the Union has not sought a specific financial remedy from the Arbitrator and so none will be awarded, although such a financial award was appropriately made by Arbitrator Janice Irving in case C-21019, involving the same Anchorage installation. The parties should in the future proceed with the clear understanding that in the event of another indistinguishable violation, an Arbitrator, including this one, might well award a substantial financial remedy to better deter additional violations.

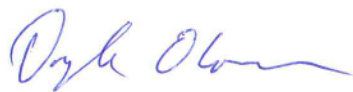
AWARD

The grievance is granted. The Employer must comply with its clear obligations under the National Agreement regarding grievance resolution efforts, and in particular under the Price-DeHate local Agreement, and the myriad later settlements and Awards arising from the Price-DeHate agreement. In particular, the Employer is ordered to:

[3] The parties' CBA, unlike some, does not allow for the shifting of Arbitration fees to the losing party, even where a position was taken that was found to be frivolous. If such an option existed here, it would likely have been applied.

1. Cease and desist from violating Article 15 of the National Agreement, and the duty to bargain in good faith, by failing to comply with prior signed grievance settlements, including those from Formal A or Step B, and NLRB settlement agreements;
2. Cease and desist from failing to comply with the terms of the Price-DeHate local agreement, as those terms have been interpreted in prior grievance settlements and awards and as interpreted in this Award;
3. In particular, management must participate in Price-DeHate conference calls, when requested, and in accordance with the prior Formal A settlements in grievance cases E16N-4E-C 19000501, E16N-4E-C 18400862, & E16N-4E-C 18345080, by having the manager/supervisor on the call who was directly involved in, and the decision maker in, the underlying dispute;
4. Where the manager/supervisor initially involved with the Union in a particular dispute was factually not the initial decision maker regarding the issue in dispute but was merely transmitting a decision already made at another level, the Employer may, without violating the terms of this Award, substitute in at the teleconference, or have additionally participate, the supervisor/manager who *actually made* the decision and has direct knowledge of the facts, but not merely one who by status or title *could have made* the decision, as long as notice of the substitution is given to the Union in advance of the teleconference;
5. The Area Manager of Labor Relations, or designee, must, within ninety days of this Award, initiate and conduct training for the Anchorage management team that directly and emphatically reaffirms the unarguable obligation of managers and supervisors, as a basic condition of their continued employment in management, to comply with prior grievance settlements and Awards

No further relief is necessary or awarded at this juncture.



Doyle O'Connor, Arbitrator

Dated: January 18, 2022