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UNITED STATES POSTAL SERVICE and NATIONAL POST OFFICE MAIL HANDLERS, WATCHMEN, MESSENGERS AND GROUP LEADERS DIVISION OF THE LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO	Arbitration Cases Nos. MB-NAT-562 MB-NAT-936 Inglewood, California ISSUED: January 19, 1977

BACKGROUND

This national level arbitration involves two grievances, which took form at the Inglewood, California, Post Office, wherein the Mail Handlers Union asserts that introduction of a new policy and procedure at Inglewood improperly restricts the rights of Union Stewards protected under Article XVII of the 1973 National Agreement and also violates Articles V and XIX. A hearing was held on September 8, 1976 and briefs thereafter filed as of November 18, 1976. 1

Article XVII, Sections 3 and 4, are particularly significant here. They read: 2

> "Section 3. Rights of Stewards. When it is necessary for a steward to leave his work area to investigate and adjust grievances, he shall request permission from his immediate supervisor and such request shall not be unreasonably denied. In the event his duties require he leave his work area and

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enter another area within the installation or post office, he must also receive permission from the supervisor from the other area he wishes to enter and such request shall not be unreasonably denied.

"The steward or chief steward may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance, and shall have the right to interview the aggrieved employee, supervisors, and witnesses during working hours. Such requests shall not be unreasonably denied.

"While serving as a steward or chief steward, an employee may not be involuntarily transferred to another shift or to another facility unless there is no job for which he is qualified on his shift or in his facility, provided that this paragraph shall not apply to rural carriers.

"Section 4. Payment of Stewards. The Employer will authorize payment only under the following conditions:

Grievances:

Steps 1 and 2--The aggrieved and one Union steward (only as permitted under the formula in Section 2A) <u>for time actually spent in grievance handling</u>, including investigation and

meetings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance.

Meetings called by the Employer for information exchange and other conditions designated by the Employer concerning contract application.

"Employer authorized payment as outlined above will be granted at the applicable straight time rate, providing the time spent is a part of the steward's (only as provided for under the formula in Section 2A) regular work day."

(Underscoring added.)

Late in 1974 Inglewood Post Office supervision became concerned that some Union Stewards might be taking excessive time to investigate and adjust grievances. On September 9, 1974 Acting Director of Mail Processing Ford sent a memorandum to all Inglewood Mail Processing Supervisors stating, in relevant part: 3

"It is Management's responsibility to determine amount of 'reasonable time' to be allowed steward to investigate and/or prepare grievance (Oper 560). When such time is requested, require from steward a specific time limit and necessary information to justify that time involvement.

"If you are satisfied time request is justified, approved [sic] request (using Form 7020, in duplicate) with the understanding with steward that steward will return to work no later than end of time approved. This will eliminate need for supervisor's harassing stewards to leave lunch room--which practice is demeaning to steward, distasteful to supervisor, and a waste of supervisor's time--which must stop. If a steward doesn't return by prescribed time, deal with that as a disciplinary problem. If steward needs more time, it is his responsibility to request same, which starts process over.

"If agreement can't be reached on appropriate amount of time, refer matter to Tour Supt for resolution."

(Underscoring added.)

The Form 7020, to which reference is made in the second paragraph, above quoted, was developed by the Postal Service for general use throughout its operations. The Form is referenced specifically in Part 431 of Methods Handbook M-65, reading:

> "431 Form 7020, Authorized Absence from Workroom Floor, will be used to record authorized absences from assigned duties on the workroom floor, e.g., scheme examination, visits to the medical unit, etc. At the time Form 7020 is issued, record the personnel change on Form 2345 to the closest six minute interval. Upon the employees return, collect Form 7020 and record the change to the closest six minute interval on Form 2345. The leaving and returning times on Form 7020 must coincide with time entries on Form 2345."
>
> (Underscoring added.)

Form 7020 includes the following: 4

NAME OF EMPLOYEE OR NO. OF EMPLOYEES		DATE
	SUPERVISOR'S INITIALS	TIME
LEAVE UNIT →		
ARRIVE →		
LEAVE →		
RETURN TO UNIT →		
REASON FOR ABSENCE		
SEE REVERSE SIDE FOR INSTRUCTIONS.		

PS Form 7020 Dec. 1970 AUTHORIZED ABSENCE FROM WORKROOM FLOOR

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(Reverse Side)

INSTRUCTIONS

Use this form when employees leave for scheme examinations, medical unit, guide duty, civil defense, time devoted to grievances, consultations with personnel section and consulation with administrative officials.

The tour supervisor will insure the collection of this form from work center supervisors for transmittal to the Chief Accountant who will total time recorded on Forms 7020 and charge to appropriate operation number.

(Underscoring added.)

Following issuance of Acting Director Ford's September 9, 1974 Memorandum, the Inglewood Post Office discontinued using Form 7020 to record time away from work by Stewards on Union business, in early 1975, and substituted a locally developed form entitled "Request for Official Time to Conduct Union Business." This reads as follows:

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"REQUEST FOR OFFICIAL TIME TO CONDUCT UNION BUSINESS

DATE_____ APPROXIMATE TIME REQUESTED_____HOURS _____MINUTES
REQUESTED FOR WHAT PURPOSE _____

IF CONFERRING WITH ANOTHER EMPLOYEE - HIS/HER NAME _____

IF REVIEW OF RECORDS NEEDED, WHAT RECORD NEEDED _____

REQUEST TO MAKE LOCAL TELEPHONE CALLS RELATING TO UNION BUSINESS (NO MESSAGE UNITS, TOLL OR LONG DISTANCE CALLS.)

NUMBER CALLED _____

_____ BEGIN TIME
_____ END TIME

_____
SIGNATURE OF REQUESTING EMPLOYEE

_____
TITLE - UNION ORGANIZATION

REQUEST TO LEAVE WORK AREA

SUPERVISOR INITIALS		TIME
	LEAVE WORK AREA	
	ARRIVE OTHER AREA	
	LEAVE OTHER AREA	
	RETURN WORK AREA	

SIGNATURE OF APPROVING SUPERVISOR
DATE REQUEST GRANTED _____

IF REQUEST IS DENIED - STATE REASON AND DATE DENIED _____

USE OTHER SIDE IF NEEDED

IF REQUEST IS DELAYED BEYOND DATE OF REQUEST, STATE REASON. (DOCUMENT ON A DAILY BASIS WHY REQUEST CANNOT BE GRANTED.)

USE OTHER SIDE IF NEEDED ROUTE TO: Tour Supt.

As a result of these developments the present grievances were filed directly in Step 4 on October 18, 1974 and February 26, 1975, as national level grievances. Local 303 of the Mail Handlers also filed unfair labor practice charges claiming violation of Sections 8-A-1 and 8-A-5 of the National Labor Relations Act. On March 18, 1975 the NLRB declined to issue a complaint pending completion of the present arbitration proceeding. 6

The Union now contends that the local policy enunciated in the September 9, 1974 Memorandum, and implemented through the new form introduced at Inglewood, violates not only Article XVII, Section 3 of the National Agreement, but also Article XIX, which provides: 7

> "Copies of all handbooks, manuals, and regulations of the Postal Service that contain sections that relate to wages, hours, and working conditions of employees covered by this Agreement shall be furnished to the Unions on or before January 20, 1974. Nothing in any such handbook, manual, or regulation shall conflict with this Agreement. Those parts of any such handbook, manual, or regulation that directly relate to wages, hours, or working conditions, as they apply to employees covered by this Agreement, 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.

"Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Unions at the national level at least 30 days prior to issuance. The parties shall meet concerning such changes, and if the Unions believe that the proposed changes violate the National Agreement (including this Article), they may submit the issue to arbitration in accordance with Step 4 of the grievance-arbitration procedure within 30 days after receipt of the notice of proposed change."

(Underscoring added.)

The Union stresses that the September 9, 1974 Memorandum assumes that it is Management's responsibility to determine the "reasonable time" to investigate a grievance and seeks to limit a Steward, in advance, to a fixed amount of time for such activity. To require a prior determination of the amount of time to investigate a grievance, says the Union, is inconsistent with Article XVII, Section 3. It agrees that this Section requires the Steward to request permission to leave his work area, and gives the Supervisor the right to deny permission to leave the work area, but nowhere does it suggest that a Supervisor can impose a fixed time limit upon a Steward, requiring that the Steward return to work at some specific time. Violation of Article XIX also is seen, in that use of Form 7020 is specified for this purpose in Methods Handbook M-65, Part 431, but the Form in

this respect has been replaced by an entirely new local form. In the Union view Article XIX requires the USPS to continue to use Form 7020 as provided in Methods Handbook M-65 until such time as notice is given to the Union of a proposed change, for negotiations pursuant to Article XIX. Although the Service claims that the new local form was necessary because of alleged abuse by Stewards at Inglewood, this is precisely the kind of problem which should be explored in the negotiations between the parties under Article XIX.

The Postal Service does not agree that the September 9, 1974 Memorandum at Inglewood asserts a Management right to determine the amount of time a Steward properly may spend on Union business. The Service concedes that one sentence may be so interpreted, if read out of context, but suggests that in context it should be construed to mean "that management must determine whether the amount of time that is requested for investigation or preparation of a grievance can be reasonably accommodated with the needs of the Postal Service." Such a reading of the Memorandum, says the Service, reveals that Inglewood supervision is not concerned with the total time spent investigating a grievance but only with the "impact of the time requested on operational needs." Under this analysis, the approval of a request for an hour to investigate a grievance does not establish that no more than an hour should be spent on the investigation, but only that the Steward can be spared only for an hour at the time he wishes to be absent from his work area. Any such a determination, so the argument runs, necessarily is without prejudice to further requests for time to investigate the same grievance. Thus the Service stresses that the last sentence in the second paragraph of the Memorandum reads: 8

"If steward needs more time, it is his responsibility to request same, which starts process over."

Insofar as the local Memorandum relates to the writing of a grievance, it is equally inoffensive, according to the Service. Here it quotes from Article XVII, Section 4: 9

> "The Employer will also compensate a steward for the time reasonably necessary to write a grievance."
>
> (Underscoring added.)

Indeed, the Service does not now claim that the local Memorandum instructs supervisors to determine that the time requested to prepare a grievance constitutes the amount necessary to complete the task. It urges:

> "Instead, the Memorandum simply requires supervisors to balance a request for time to prepare a grievance against operational needs. Nothing in the 1973 National Agreement limits management's right to do so."

Given the right of the Service under Article XVII, Section 3, to determine the reasonableness of a Steward's request for permission to leave his work area, there is nothing in the Agreement to prohibit the Service from requiring a Steward to fill out a form including a blank space labeled "Approximate Time Requested." There was no impropriety in discontinuing use of Form 7020 for this purpose, says the Service, since Form 7020 was not designed for use in requesting authorization to leave a work area. Thus the Service suggests that Form 7020 is simply a record of the movement of an employee from one work area to another, where a request for such movement already has been authorized. (It stresses that Part 431 of the M-65 Handbook states that Form 7020 will be used to record authorized absences.) 10

Form 7020 has no value as a source of information for a Supervisor in determining the reasonableness of a request by a Steward for permission to leave his work area. The new local form thus is not a substitute for Form 7020, but actually is a supplementary form seeking information that Management is entitled to have. Since the Service is fully authorized under Article XVII, Sections 3 and 4, to determine the reasonableness of requests to leave the work area, it follows that to assess the reasonableness of such a request, the Supervisor must know how much time away from the work area is being requested and to require that this be provided on a form. 11

FINDINGS

The two grievances here present separate but related issues: first, whether the local September 9, 1974 Memorandum is consistent with Article XVII, Sections 3 and 4; and, second, whether the local form instituted early in 1975 to effectuate the Memorandum conflicts with an established procedure under the M-65 Manual, and protected by Article XIX. 12

The September 9, 1974 Memorandum indicates on its face that it is Management's responsibility to determine what is a reasonable time to investigate or prepare a grievance. It includes no reference to Article XVII, Sections 3 or 4, nor does it state that a request by a Steward for time to investigate a grievance "shall not be unreasonably denied." The critical language quoted earlier in this Opinion from the September 9, 1974 Memorandum is preceded by an underlined assertion "B. Union Stewards taking too much time preparing Step 2A grievances." The Memorandum instructs a Supervisor that if you "are satisfied time request is justified" the request should be approved on condition that the Steward will return "no later than end of time approved." If the Steward does not return "by prescribed time," moreover, this is to be dealt with as a "disciplinary problem." Finally, the Memorandum advises that if agreement "can't be reached on appropriate amount of time" the matter should be referred to the Tour Superintendent. 13

Further light is shed upon the objective meaning of the September 9, 1974 Memorandum by reference to the form developed locally to implement it. This requires the Steward to (1) furnish in advance the names of other employees who may be interviewed, (2) indicate in advance what records may be needed, and (3) to identify (by number) any local telephone calls which may be made and the time to be involved in the call. It also includes a line captioned "If request is delayed beyond date of request, state reason. (Document on a Daily Basis why request cannot be granted.)" Lastly, the Form is routed to the Tour Superintendent. 14

These various restrictive provisions apparently were designed to combat abuses which were thought to have developed at Inglewood in taking excessive time for investigation and preparation of grievances. This surely is a proper Management objective, generally speaking, but the problem here is whether the Inglewood program is permissible under Articles XVII and XIX of the 1973 National Agreement. This is by no means only a local problem--if such a unilateral program is permissible at Inglewood, it is equally permissible throughout the entire Postal Service. 15

While the Postal Service brief includes an unusually skillful effort to depict the Memorandum as no more than an effort to require a Supervisor to determine whether a Steward "can be spared" from his job at the time he or she seeks permission to leave, there is nothing in the Memorandum itself which supports this narrow interpretation of its purpose. 16

The fact is that the Memorandum does not accurately state the substance of Article XVII, Section 3, particularly since it assumes that a Supervisor is entitled to determine in advance the amount of time necessary to investigate a grievance and requires the Steward to specify the time likely to be required and to provide detailed information in advance "to justify" such time requirement. The Memorandum implies that the decision as to whether any such request is "justified" lies within the discration of the individual Supervisor, and provides no standards to guide the exercise of such discretion nor any reference to the controlling language of Article XVII, Section 3. 17

Thus it now should be made clear that Article XVII, Section 3, does not authorize the Service to determine in advance the amount of time which a Steward reasonably needs to investigate a grievance. Since the September 9, 1974 Memorandum is inaccurate in this and other significant respects, it should be withdrawn and given no effect. This is not to say, of course, that Management cannot (1) ask a Steward seeking permission to investigate, adjust, or write a grievance to estimate the length of time that the Steward anticipates he or she will be away from his or her work station; or (2) that a Supervisor cannot decline to release a Steward from duty during a period of time when his or her absence during such period will unnecessarily delay essential work; or (3) that a Supervisor, in advance, may not specify a time period during which the Steward's absence will unnecessarily delay essential work. Nor does this decision in any way bar the Service from taking necessary action, consistent with the Agreement, in any case where it can be established that a Steward has improperly obtained 18

permission to leave his or her work station under the guise of investigating or preparing a grievance.

The special form developed at Inglewood early in 1975 was designed to implement the September 9, 1974 Memorandum and hardly can be used except to effectuate that Memorandum. In addition, Part 431 of Methods Handbook M-65 states that Form 7020 will be used to record authorized absences from assigned duties, and the instructions on Form 7020 make it applicable to "time devoted to grievances." The local form at Inglewood in fact has been substituted for Form 7020 when Stewards seek to leave their work stations. 19

It is well settled by now that employee representation by a Union Steward or Grievance Committeeman constitutes a significant working condition, or condition of employment. Thus the matter here in issue falls within the scope of Article XIX. 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 XIX. Since the procedure there set forth has not been invoked by the Postal Service, it would follow that the Inglewood form must be withdrawn. 20

AWARD

The grievances are sustained as indicated in this Opinion. The September 9, 1974 Memorandum and the local form developed to implement that Memorandum must be withdrawn and given no effect. 21

Sylvester Garrett
Impartial Chairman

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