




## American Postal Workers Union, AFL-CIO

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1300 L Street, NW, Washington, DC 20005

**To:** Local and State Presidents  
Regional Coordinators  
National Business Agents  
National Advocates  
Resident Officers

**From:** Greg Bell, Director   
Industrial Relations

**Date:** February 6, 2007

**Re:** Award on Closing Health Units

Enclosed is a copy of a national arbitration award by Arbitrator Linda Byars denying the APWU's grievance over the Postal Service's violation of Articles 5, 14 and 19 of the National Agreement when it closed medical/health units in postal facilities. (*USPS #Q90C-4Q-C 94005723; 12/18/2006*)

This case arose after the Postal Service started closing 59 of the 110 existing health units in postal facilities in 1993. The APWU filed a Step 4 grievance challenging management's actions on the basis that the Postal Service has a responsibility to provide emergency medical assistance to ill and injured employees in accordance with the requirement to provide employees with safe working conditions. Moreover, it asserted that the parties have an established practice of maintaining medical units on postal premises and the unilateral change violated the National Agreement. In addition, the Step 4 said that the union had not been notified under Article 19 of a change in regulations regarding staffing of nurses in postal facilities. The Postal Service denied the grievance and it proceeded to arbitration.

At arbitration, the union argued that management's actions violated Section 862.1 of the Employee and Labor Relations Manual, which provides that postal facilities will be staffed with licensed physicians and/or registered nurses and such other professional medical personnel as appropriate. It maintained that the Postal Service's closure of medical facilities has in effect rescinded Section 862.1 of the ELM without providing the union with an opportunity to meet and discuss the change and challenge it as inconsistent with the Agreement and/or as not being fair, reasonable or equitable. In addition, the union contended that where medical/health units existed, there was an established practice of maintaining the medical units as a condition of employment and closing them without notification to the APWU or an opportunity to bargain over the change violated Article 5 of the Agreement.

The Postal Service countered that the ELM provision does not require that it maintain health units in order to meet its obligation under that provision “to provide and maintain work environments that are conducive to and promote good health and safety.” It asserted that management had never maintained health units in all facilities before the closing of medical/health units in 1993. Moreover, it contended that requiring the staffing of all postal facilities with licensed physicians and/or registered nurses and other professional medical personnel would not be consistent with the language of Article 14.

The arbitrator agreed with the Postal Service’s contentions, and said that its interpretation “gives meaning to the contractual provisions and does so more compellingly” than the APWU’s interpretation. She reasoned that management’s “contractual obligation to ‘make Health Services available for the treatment of job related injury or illness where [the Employer] determines they are needed’ includes the express right to determine the source of health services.” “The Postal Service ‘may’ staff a health/medical unit at the installation for such purpose as outlined in Article 14.3.C where ‘funds, spaces and personnel are available,’ but it is not contractually required to do so,” according to the arbitrator.

She stressed also that the only possible way of reconciling language in ELM Section 862.1 and Article 14 is to find that the ELM language specified the staffing for facilities that had medical/health units before the closings and for those sites that retained medical/health units after the closures. Moreover, she said that the Postal Service was not required to change Section 862.1 of the ELM in order to close a medical/health unit, and Article 14 doesn’t limit the discretion granted to the Postal Service to an “original decision to establish medical/health units at certain facilities.” In addition, the Postal Service’s discretion to decide “the source of health service” was negotiated and again included in Article 14 of the parties’ 1990-1994 Agreement, according to the arbitrator.

She then rejected the union’s argument that the Postal Service violated Article 5 by unilaterally closing health units without bargaining over the change with the union. Noting that Article 5 prevents the Postal Service from taking 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,” Arbitrator Byars found that there was no showing by the union that closing medical/health units violated the “terms and conditions of the Agreement.” “To the contrary,” the arbitrator concluded, “the contractual language of Article 14, as well as the bargaining history, shows that the Parties bargained with respect to the obligations under Article 14, and the Postal Service retained the discretion to decide the source of health services.”

Enclosure



## BACKGROUND

Prior to 1993 the Postal Service had on-site medical and health units in about 110 of its 37,000 facilities when it made the decision to begin closing them at many of the facilities where they had long existed. The nurses working at the health units, who since 1992 have been represented by the National Postal Professional Nurses (NPPN)<sup>1</sup>, negotiated to impasse certain issues during their first negotiations with the Postal Service including a dispute over the closing of the medical/health units. The unresolved disputes were appealed to interest arbitration, and the award by Arbitrator Gladys Gershenfeld, signed by the panel of arbitrators in May 1993, determined, among other issues, the criteria for selecting the health units that would remain open during the term of the 1992 Collective Bargaining Agreement.<sup>2</sup> The award directed the parties to sign and execute the Memorandum of Resolution (MOR) dated April 28, 1993, which provided in Paragraph 1:

For the test period of the 1992-1995 Collective Bargaining Agreement, the Postal Service will maintain and staff health units in locations

<sup>1</sup> The Postal nurses first organized around 1970 and have been represented by various labor organizations since then. [Transcript p. 17.]

<sup>2</sup> The APWU objected to the introduction of the Gershenfeld award and testimony related to it because the APWU was not a party to the interest arbitration that resulted in the award. The Parties agree that the APWU is not bound by the Gershenfeld Award (Transcript p. 222); however, the objection by the APWU on the grounds of relevancy is overruled and the award and testimony admitted as background information. [Transcript pp. 222-223.]

identified in Attachment 1.<sup>3</sup> Those health units not identified in Attachment 1 will be phased out as soon as possible. It is not the intent of the Postal Service to maintain and staff on-site medical/health units on a full-time basis in any postal facilities other than those identified in Attachment 1. [USPS Exhibit No. 2.]

By letter dated October 29, 1993, the American Postal Workers Union (APWU) initiated a Step 4 grievance protesting the reduction of medical units in Postal facilities. The appeal states:

The union interprets the National Agreement as requiring the employer to provide safe working conditions. Included in this responsibility is the requirement to provide emergency medical assistance to ill and injured employees. The parties have an established practice of maintaining medical units on postal premises for this purpose and the unilateral change to this practice is in violation of the Agreement.

APWU has not been notified pursuant to the provisions of Article 19 of a change to the staffing of medical units or to any regulations restricting the staffing of nurses in postal facilities. [Joint Exhibit No. 2.]

By letter dated June 6, 1995, the Postal Service denied the grievance, and by letter dated June 15, 1995 the APWU appealed to arbitration. The Grievance came before the Arbitrator at hearing on July 17, 2006 in Washington, D.C., and the record was closed with the submission of post-hearing briefs dated October 27, 2006. The Parties agree that the Grievance is properly before the Arbitrator. [Arbitrator's

<sup>3</sup> Attachment 1 of the MOR listed 51 facilities where medical/health units would remain open during the contract period.

Notes.] The Parties were unable to agree to a statement of issue but proposed the following statements of issue.

#### STATEMENTS OF ISSUE

##### Proposed by the APWU

Did the Postal Service violate Articles 5, 14, and 19 of the National Agreement when it unilaterally closed medical and health units in postal facilities and if so, what shall be the remedy?

##### Proposed by the Postal Service

Whether the Postal Service violated Articles 14 and 19 of the Agreement when it decided to close certain on-site health units pursuant to the Gershenfeld interest arbitration award.

#### OPINION

The APWU maintains that the Postal Service violated Article 19 of the National Agreement and cites §862.1 of the Employment and Labor Relations Manual (ELM) as relevant contract language.<sup>4</sup> The APWU maintains that in 1993 the

<sup>4</sup>At arbitration the APWU refers to other provisions of Chapter 860 of the ELM and to the EL-806 Handbook. However, since a decision in this case turns on other contractual provisions, it is not necessary to rule on the Postal Service's objection to new argument. The same reasoning applied to § 862.1 of the ELM would apply to the additional provisions referred to by the APWU. Similarly, the decision does not turn on the Postal Service argument with respect to Article 3, and therefore it is not necessary to address the APWU's objection to new argument from the Postal Service.

Postal Service stopped conforming to the policy set forth in §862.1 of the ELM, which states:

It is the policy of the Postal Service to provide and maintain work environments that are conducive to and promote the good health and safety of all employees. To furnish the highest quality treatment for employees, postal facilities will be staffed with licensed physicians and/or registered nurses and such other professional medical personnel as is appropriate. [APWU Exhibit No. 3.]

The APWU submits that the Postal Service has, in effect, rescinded §862.1 of the ELM by closing the medical/health units but without providing the APWU the opportunity to meet and discuss the change and to challenge the change as inconsistent with the National Agreement and/or as not being fair, reasonable, or equitable as required by Article 19 of the National Agreement.

The Postal Service maintains that the language relied on by the APWU does not require the Postal Service to maintain health units to meet its obligation "to provide and maintain work environments that are conducive to and promote the good health and safety" of its employees. As the Postal Service submits, the language relied on by the APWU cannot be interpreted as the Union asserts. To do so would mean that all "postal facilities must be staffed with licensed physicians an/or registered nurses and such other professional medical personnel as is appropriate." Such was clearly not the case before the closing of the medical/health

units in 1993, nor would such be consistent with the language of Article 14 of the National Agreement.

Distinguishing the instant case from those cases cited by the APWU, the specific language relied on by the APWU does not limit the general language of Article 14 in the manner claimed by the APWU. The ELM language specified the staffing at postal facilities that had medical/health units before the closing and continued to specify the staffing in those facilities that still had medical/health units after the closings. Otherwise, it would not be possible to reconcile the ELM language with that of Article 14 of the National Agreement.

Also, contrary to the APWU's argument, the Postal Service's interpretation of Article 14 does not render meaningless the contractual language relied on by the APWU. Although the APWU presents its interpretation as the only logical way to give meaning to all the contractual language cited, the interpretation by the Postal Service also gives meaning to the contractual provisions and does so more compellingly.

Article 14, Section 3, Implementation, provides in §C as follows:

The Employer will make Health Service available for the treatment of job related injury or illness where it determines they are needed. The Health Service will be available from any of the following sources: U.S. Public Health Service; other government or public medical sources within the



area; independent or private medical facilities or services that can be contracted for; or in the event funds, spaces and personnel are available for such purposes, they may be staffed at the installation. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers' Compensation Programs, including employee choice of health services. [Joint Exhibit No. 1.]

As the Postal Service maintains, its contractual obligation to "make Health Service available for the treatment of job related injury or illness where [the Employer] determines they are needed" includes the express right to determine the source of health services. The Postal Service "may" staff a health/medical unit at the installation for such purpose as outlined in Article 14.3.C where "funds, spaces and personnel are available," but it is not contractually required to do so.

For the reasons stated, the record does not demonstrate that the Postal Service was required to change §862.1 of the ELM in order to close a medical/health unit. Also, contrary to the APWU's argument, the record does not contain an explicit, or implicit, admission by the Postal Service that the closure of medical units did not conform to the language of §862.1 of the ELM that was in effect at the time the APWU filed the Grievance.

The APWU's assertion that the discretion granted to the Postal Service in Article 14 was limited to its original decision to establish medical/health units at certain

facilities is also not a reasonable interpretation of the language. The Parties negotiated and again included the discretion to decide the source of health service in Article 14 of its 1990-1994 collective bargaining agreement.

The APWU further contends that where medical/health units did exist, there was an established practice of maintaining the units as a condition of employment and that closing even one of the medical/health units without notification to the APWU or the opportunity to bargain over the change is a violation of Article 5.<sup>5</sup> Article 5 prevents the Postal Service taking 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."<sup>6</sup> However, there was no showing by the APWU that the closing of medical/health units violated the terms and conditions of the Agreement.<sup>7</sup> To the contrary, the contractual language of Article 14, as well as the bargaining history, shows that the Parties bargained with respect to the obligations under

<sup>5</sup> The Postal Service objected to a change in the APWU's argument regarding past practice. However, the argument is moot given the decision on the merits.

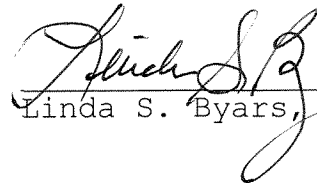
<sup>6</sup> The Postal Service also objects to the APWU's reliance on Article 5 at arbitration, when it is not referred to in the APWU's Step 4 Grievance appeal dated October 29, 1993 (Joint Exhibit No. 2). However, the appeal refers to a "unilateral" change thereby indirectly referring to Article 5 of the National Agreement, and therefore Article 5, which expressly restricts unilateral action, is referred to in this decision.

Article 14, and the Postal Service retained the discretion to decide the source of health services. Accordingly, the Arbitrator finds for the Postal Service and makes the following Award.

AWARD

The Postal Service did not violate Articles 5, 14, and 19 of the National Agreement when it closed medical/health units in postal facilities. The Grievance is denied.

DATE: December 18, 2006

  
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Linda S. Byars, Arbitrator

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<sup>7</sup> There was no claim by the APWU that the action grieved was inconsistent with the Postal Service's obligations under law.