

## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

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

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

**Date:** July 13, 2006

**Re:** National Award on Attendance Control Supervisors Issuing Discipline

Enclosed you will find a copy of a recent national-level arbitration award on the issue of whether management's use of attendance control supervisors, not only to monitor employee attendance, but to issue discipline for attendance-related offenses, violates the National Agreement. Arbitrator Das ruled that "the Unions [APWU and NPMHU] have not established that issuance of discipline by attendance control supervisors is precluded by Article 16.8 or other sections of the National Agreement, provided such an exercise of management authority is administered consistent with other applicable provisions, as discussed in this opinion." He stressed that though the "Unions have raised a number of legitimate concerns," "[v]arious provisions of the National Agreement address the Unions' concerns and impose requirements and limitations on the exercise of management rights." According to Arbitrator Das, even if discipline may be issued by attendance control supervisors, "the imposition of a suspension or discharge must not only be reviewed and concurred in by the appropriate authority, but it also must be consistent with Article 16.1 and any other applicable contract provision, and must not impair the application of Article 15.2." (*USPS #Q98C-4Q-C 01059241; 7/7/2006*)

This case arose after the Postal Service initiated a Step 4 dispute on the issue of whether "the National Agreement specifies that there is only one management official who may issue discipline to each employee." When discussions failed to resolve the dispute, the APWU appealed it to national arbitration. The National Postal Mail Handlers Union had had a similar dispute with the Postal Service and intervened in this case at arbitration.

The APWU argued that the terms of the Joint Contract Interpretation Manual (JCIM) clearly provide that the immediate supervisor shall normally be responsible for imposition of discipline. We maintained that such a provision is binding on the parties, but acknowledged that there could be "abnormal" circumstances that justified imposition of discipline by someone other than an employee's immediate supervisor. We further asserted that prior to the first collective

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bargaining agreement, postal regulations specifically assigned both the responsibility of counseling employees and imposing discipline only to supervisors, as opposed to giving that authority to any management official. Moreover, the APWU asserted that Article 16.2 specifically uses the term “supervisor” in relation to being responsible for discussing minor offenses with an employee, and the only official that would normally have enough contact with the employee to observe and discuss such offenses is the employee’s immediate supervisor. Therefore, it would not be reasonable to conclude that the term “supervisor” in Article 16.2 would have a different meaning than that term as it is used in Article 16.8. The APWU further cited the Management Instruction on Attendance Control (EL-510-83-9) issued in 1983 soon after a GAO report on employee absences in the Postal Service which indicated that “involvement of first-line supervision is critical in absence control and determining appropriate disciplinary action based upon individual circumstances.” The APWU maintained that consistent with this instruction, management has informed the unions that the immediate supervisor will play a central role in attendance control and specifically assigned responses to leave requests to immediate supervisors.

Moreover, we referred to ELM Section 113.2(b), which indicates that a “supervisor” is “one who has a direct responsibility for ensuring the accomplishment of work through the effort of others,” as evidence that officials with direct contact with craft employees in a work capacity should have responsibility over imposition of discipline. Also, the APWU contended that there is no merit to the argument that the absence of the word “immediate” before supervisor in Article 16.8 when viewed in conjunction with Article 15.2(a), which mentions “immediate supervisor,” warrants a finding that the parties did not intend such a meaning in the former provision. We contended that such an argument ignores the binding guidance of the JCIM or Contract Interpretation Manual (CIM for the Mail Handlers) and the purpose of Article 15 which is to clarify with precision with whom grievances should be filed. Furthermore, we maintained that history indicates that the term “supervisor” has been interpreted, at least “normally,” to mean immediate supervisor. Also, we maintained that the need for immediate supervisors to make initial disciplinary decisions is reasonable in order to ensure that discipline is not imposed for attendance-related matters only on the basis of mathematical formulas. We further cited the RMD settlement in support of this contention, as evidence that its goal was not consistent with bypassing an immediate supervisor and delegating responsibility for discipline for absenteeism to any management official. Finally, the APWU argued that there has been no agreement between the parties not to cite or reference the JCIM at the national level.

The NPMHU asserted similar positions as the APWU. It argued also that it is undisputed that its Contract Interpretation Manual (CIM), with a provision on Article 16.8 that is similar to the one in APWU’s JCIM, may be cited in national arbitration. Also, the Mail Handlers argued that the Postal Service obtained an agreement from the National Rural Letter Carriers Association in 1995 to remove any reference to a supervisor imposing discipline from Article 16.8; therefore, it cannot now seek to unilaterally achieve from the NPMHU and APWU what it accomplished in negotiations with the NRLCA.

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The Postal Service countered that it has a managerial right under Article 3 to determine which supervisory or management officials have responsibility to discipline employees, and the definition of supervisor includes all levels of supervisors or managers except where limited by the National Agreement. It argued that neither Article 3 nor Article 16 contains any limitation on that right. Moreover, management contended specifically that Article 16.8 places no restriction on who in management may impose discipline, only on who may review a request for discipline. It argued that the parties clearly knew when the meaning of supervisor could be limited, as evidenced by use of the term "immediate supervisor" in Articles 15 and 17. Also, the Postal Service contended that Articles 16.6 and 16.7, which indicate that the "Employer" is the party to suspend an employee, does not limit such discipline to an immediate supervisor. It further maintained that its witnesses have testified that starting three decades ago in two separate locations supervisors who monitor attendance also have administered discipline. Management argued finally that the JCIM and CIM do not support the unions' position in this case, since the phrase "normally the responsibility ..." in relation to immediate supervisors issuing discipline clearly means such responsibilities are not exclusive and is no more than a description of the way employees traditionally have been disciplined. It maintained also that internal postal guidelines cited by the unions, including those in the ELM that relate to supervisors, are not contractual obligations. Finally, the Postal Service contended that the JCIM cannot be cited by the APWU in this case because there has been an agreement by the parties that it would not be cited in arbitration.

Arbitrator Das determined, first of all, that the provision of the JCIM relating to Article 16.8 may be cited in national arbitration. He found that though there is no language in the JCIM or any other agreement that explicitly addresses citation of the JCIM, "top officials of both parties stated that it was their position that once the parties agreed on the substance of the JCIM the parties should live by it at all levels." He said that such a position is consistent with the MOU in the National Agreement that led to adoption of the JCIM and statements in the JCIM introduction. Arbitrator Das indicated also that the parties have done nothing further in this case than to cite the agreed-to JCIM provision regarding Article 16.8 and to "let it speak for itself, which is precisely what the Postal Service originally proposed and conforms to the parties' agreement in the Preface that "[t]he JCIM is self-explanatory." Moreover, he stressed that there is no dispute that the provision on Article 16.8 in the Mail Handler CIM may be cited in national arbitration, and it "make[s] little sense that the parties would agree on an interpretation of a provision of their contract – and agree that they are bound by that interpretation – and then ask a National arbitrator to rule on an issue relating to that provision without the benefit of their agreed interpretation."

The arbitrator then indicated that the issue in this case is "whether the Postal Service's use of attendance control supervisors (whatever their particular title), not only to monitor employee attendance, but to issue discipline for attendance-related offenses is in conflict or inconsistent with Article 16.8." He noted that under Article 3, the Postal Service has a right to determine which management officials may impose discipline, "except as otherwise restricted by the provisions of the applicable National Agreement or applicable laws and regulations." Das

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stressed, however, that “[i]n administering discipline, the Postal Service is, of course, bound to comply with the requirements set forth in Article 16.1” including that discipline should be corrective, not punitive in nature and no employee may be disciplined except for just cause. However, he found that “as a general proposition” it cannot be concluded that “only an employee’s immediate supervisor ... can initiate discipline or must normally initiate discipline for it to be consistent with Article 16.1.” Moreover, the arbitrator stated that Article 16 does not use the phrase “immediate supervisor” whereas that terminology is used in two other provisions, Articles 15.2 and 17.3. He thus concluded that “the parties, when drafting the National Agreement, had the concept of ‘immediate supervisor’ in mind ... [and] ... under general principles of contract interpretation, it is reasonable to conclude that when the parties use the term ‘supervisor,’ rather than ‘immediate supervisor,’ in a particular provision the former is not confined to the latter, absent an indication to the contrary.”

Das then observed that Article 16.8 “focuses not on which supervisor may initiate discipline, but on the need for review and concurrence by the appropriate higher authority.” Moreover, he said that GAO documents from the early 1980s “do not ... establish a contractual commitment to the unions that would bar the Postal Service ... from assigning a supervisor the responsibility not only to monitor attendance of all or some employees at a particular facility, but also to initiate attendance-related disciplinary action, provided it is done in a manner consistent with Articles 16.1 and 15.2.” He also found that application of discipline by attendance control supervisors at the JFK Airport Facility in New York City, as contained in Postal Service testimony, is not “inherently inconsistent with Article 16.1 or with other Postal Service commitments, in particular, the March 2003 Step 4 settlement relating to implementation of the Postal Service RMD/eRMS.” He reasoned that the attendance control supervisors at this facility are not at a higher level than supervisors that monitor employee work performance on the floor, and they regularly consult with floor supervisors. Moreover, according to the arbitrator, management testimony indicated that that floor supervisors at this facility are capable of exercising Article 15.2 authority to settle grievances. In addition, Das determined that ELM Section 113.2’s definition of supervisor does not exclude attendance control supervisor from its scope, and supervisors as specified in the record in this case do not have subordinate employees with managerial responsibility and are therefore “first line supervisors.” He noted that nothing in Article 16.2 indicates that attendance control supervisors are precluded from discussing attendance-related issues with an employee prior to discipline, and Article 16.3 does not limit who may issue a letter of warning. Citing management testimony concerning two facilities as well as arbitration awards that denied grievances on attendance control supervisors issuing discipline involving four other facilities, Das ruled that “there has not been a sufficiently uniform and consistent practice in the application of Article 16.8 to establish that the parties mutually understood that provision to preclude issuance of discipline by attendance control supervisors. He also accepted testimony, on NRLCA’s agreement to omit the words regarding a supervisor imposing discipline from Article 16.8, that this measure was intended to be a “cosmetic” change.

Arbitrator Das finally concluded that though the JCIM and CIM interpretations of Article 16.8 should be considered “self-explanatory and binding on the parties,” “both manuals

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explicitly state they are not intended to alter in any way the parties' rights, responsibilities or benefits under the respective National Agreement." Turning to the key sentence in issue, "[i]t is normally the responsibility of the immediate supervisor to initiate disciplinary action," he reasoned that the parties intended the terms "immediate supervisor" to have the same meaning as in Articles 15.2 and 17.3 of the National Agreement and he indicated that such terminology, "unless otherwise locally agreed ... does not refer to a supervisor, such as an attendance control supervisor who does not oversee an employee's work performance on the floor of the facility." However, ultimately, Das rejected the unions' argument that exceptions to immediate supervisors issuing discipline are required to be confined to abnormal circumstances when immediate supervisors are unavailable or unable to appropriately issue discipline. "The sentence on which the Unions rely here is not written in mandatory terms" and "is more descriptive than prescriptive." Therefore, according to the arbitrator, it "does not connote that a supervisor other than the employee's immediate supervisor can initiate discipline only in circumstances where it would not be feasible or appropriate for the immediate supervisor to do so."

Enclosure

GB/MW:jm  
OPEIU#2  
AFL-CIO



National Arbitration Panel

In the Matter of Arbitration )  
 )  
 between )  
 )  
 United States Postal Service ) Case No.  
 )  
 and ) Q98C-4Q-C 01059241  
 )  
 American Postal Workers Union )  
 )  
 and )  
 )  
 National Postal Mail Handlers )  
 Union - Intervenor )

Before: Shyam Das

Appearances:

For the Postal Service: Peter J. Henry, Esquire  
Laura M. Taylor, Esquire

For the APWU: Arthur M. Luby, Esquire  
Brenda C. Zwack, Esquire

For the NPMHU: Bruce R. Lerner, Esquire  
Lauren McGarity, Esquire

Place of Hearing: Washington, D.C.

Dates of Hearing: December 14, 2004  
April 26, 2005

Date of Award: July 7, 2006

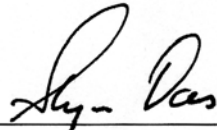
Relevant Contract Provisions: Articles 3, 15.2 and 16,  
and MOU Re: Joint Contract  
Interpretation Manual

Contract Year: 2002-2003

Type of Grievance: Contract Interpretation

#### Award Summary

The dispute in this case is resolved on the  
basis set forth in the above Findings.



Shyam Das, Arbitrator



BACKGROUND

Q98C-4Q-C 01059241

On January 4, 2001, the Postal Service sent a letter to the American Postal Workers Union stating:

In accordance with the provisions of Article 15, the Postal Service is initiating a dispute at Step 4 of the grievance procedure on the following interpretive issue:

Whether the National Agreement specifics [sic] that there is only one management official who may issue discipline to each employee.

The facts giving rise to this dispute are:

The American Postal Workers at the local level, in Case E98C-1E-D 00036123, asserts that the Postal Service violated the National Agreement when a attendance coordinator supervisor, whose responsibility encompasses attendance control, issued discipline.

The Postal Service's position is that the allocation of responsibility for issuing discipline is a management right pursuant to Article 3 of the National Agreement. Therefore, the assignment of authority to an attendance coordinator supervisor is consistent with the National Agreement.

After discussion at Step 4 failed to resolve this matter, the APWU appealed the dispute to National arbitration. The National Postal Mail Handlers Union, which has a similar dispute with the Postal Service, intervened in this case at arbitration.

At arbitration, the Unions made it clear that they are not contending that only the employee's immediate supervisor can

issue discipline in attendance related (or other) matters, but that the National Agreement contemplated that this responsibility "normally" would be exercised by this official.<sup>1</sup>

The key contractual provision relied on by the Unions is Article 16.8, but they stress that provision needs to be read in context of other provisions, particularly Article 16.1, Article 16.2 and Article 15.2 (Step 1). The Postal Service insists that it has never agreed to limit its explicit, statutory right, recognized in Article 3, to entrust supervisors and managers with the authority and responsibility to maintain efficiency, good order and discipline in the workplace. These provisions of the APWU National Agreement (the NPMHU National Agreement includes corresponding provisions) state as follows:

ARTICLE 3  
MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

A. To direct employees of the Employer in the performance of official duties;

B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

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<sup>1</sup> The parties' respective articulations of the issue in this case are not precisely the same, but the gist of the dispute is clear enough and was fully addressed by all of the parties. No party has raised any procedural objection to the arbitrator deciding the dispute as it was presented at arbitration.

C. To maintain the efficiency of the operations entrusted to it;

D. To determine the methods, means, and personnel by which such operations are to be conducted;

\* \* \*

ARTICLE 15  
GRIEVANCE-ARBITRATION PROCEDURE

\* \* \*

Section 2. Grievance Procedure Steps

Step 1:

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause....

(b) In any such discussion the supervisor shall have authority to settle the grievance....

\* \* \*

ARTICLE 16  
DISCIPLINE PROCEDURE

Section 1. Principles

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination,

pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay.

## Section 2. Discussion

For minor offenses by an employee, management has a responsibility to discuss such matters with the employee. Discussions of this type shall be held in private between the employee and the supervisor. Such discussions are not considered discipline and are not grievable. Following such discussions, there is no prohibition against the supervisor and/or the employee making a personal notation of the date and subject matter for their own personal record(s). However, no notation or other information pertaining to such a discussion shall be included in the employee's personnel folder. While such discussions may not be cited as an element of prior adverse record in any subsequent disciplinary action against an employee, they may be, where relevant and timely, relied upon to establish that employees have been made aware of their obligations and responsibilities.

\* \* \*

## Section 8. Review of Discipline

In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and

concurrent in by the installation head or designee.

In associate post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurrent in by a higher authority outside such installation or post office before any proposed disciplinary action is taken.

\* \* \*

The relevant contractual provisions essentially have been in effect since the first National Agreement was negotiated in 1971.

The APWU and the NPMHU each rely, in part, on contract interpretation manuals they have negotiated with the Postal Service. Both the APWU/USPS Joint Contract Interpretation Manual (JCIM), finalized in June 2004, and the NPMHU/USPS Contract Interpretation Manual (CIM), finalized in July 2003, in discussing Article 16.8 of the respective National Agreement, state: "It is normally the responsibility of the immediate supervisor to initiate disciplinary action."<sup>2</sup> The Postal Service agrees that the Mail Handler CIM may be cited in this

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<sup>2</sup> The Mail Handlers CIM includes the following parenthetical statement: "(Note that, as of this writing, the parties at the National level have an ongoing dispute regarding whether discipline can be issued by other than the employee's immediate supervisor.)"

proceeding, but insists that the APWU JCIM may not be cited at National level arbitration.<sup>3</sup>

For at least 25 years, the Postal Service at some facilities has assigned supervisors to monitor employee attendance, and those supervisors typically are not the employees' floor supervisors. At the heart of the present dispute is whether these attendance control supervisors properly may issue discipline for attendance violations or whether, at least normally, such discipline has to be issued by the employee's "immediate supervisor" who oversees the employee's work performance on a day-to-day basis.

The Unions point out that the relevant contractual provisions, for the most part, reflect the practices that were in effect prior to Postal Reorganization, including supervisors' responsibilities for counseling employees and administering discipline. In 1982, the U.S. General Accounting Office issued a report entitled "Postal Service Needs Stricter Control Over Employee Absences." In commenting on a draft of this GAO report, the Postmaster General stated:

The Postal Service has recognized the need for more effective absence controls, and plans are under way to develop a nationally directed attendance-control program. We will examine the feasibility of more extensive reporting and tracking procedures

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<sup>3</sup> It was agreed that the Postal Service may cite the JCIM on the merits of the dispute without prejudice to its position that JCIM may not be cited in National arbitration, and that the arbitrator would rule on the latter issue in deciding this case.

for unscheduled absences and have also begun discussions with the unions to explore possible areas for a joint approach to attendance-control matters.

We believe the involvement of first-line supervision is critical in absence control and in determining appropriate disciplinary action based upon individual circumstances. We will do nothing to diminish the first-line supervisor's responsibility for controlling absences and will not issue a "cookbook" set of rules that will relieve him of the need to use good judgment in identifying and disciplining employees with attendance problems. However, we do envision a more structured and centrally managed program that will provide a facility-level review of attendance control, possible goal setting, and active assistance to first-line supervisors in exercising their responsibilities.

The final GAO report recommended that: "The control office should notify supervisors of employees with potential attendance problems and ensure that disciplinary actions are timely and progressively severe." The GAO report also stated: "The Service believes as we do that the involvement of firstline supervision is critical in absence control and in determining appropriate disciplinary action based upon individual circumstances."

A Management Instruction relating to Attendance Control issued soon after the GAO report on October 1, 1983 (EL-510-83-9) states: "Each supervisor continues to have direct responsibility for ensuring the regular and dependable attendance of his subordinate employees." A Supervisor's Guide

to Attendance Improvement issued in May 1984 (EL-501) states: "Effective control of attendance can only be accomplished at the individual employee level. Therefore, the direct responsibility for effective attendance improvement lies at the level of the immediate supervisor." The Unions assert, as the APWU's Director of Industrial Relations Greg Bell testified, that this is and has been the historical practice at the Postal Service. An August 1990 Supervisor's Guide to Handling Grievances (EL-921), the Unions add, implicitly recognizes that the employee's immediate supervisor who handles grievances at Step 1 is also the supervisor who issues discipline, when it states: "Just because the discipline was fully discussed at the time of issuance is no reason for the supervisor to breeze through Step 1 with a quick, 'Grievance Denied.'"

The Unions also point to a Step 4 settlement reached in March 2003 between the Postal Service and the APWU relating to implementation of the Postal Service Resource Management Database and its web-based enterprise Resource Management System, in which the parties agreed:

RMD/eRMS enables local management to establish a set number of absences used to ensure that employee attendance records are being reviewed by their supervisor. However, it is the supervisor's review of the attendance record and the supervisor's determination on a case-by-case basis in light of all relevant evidence and circumstances, not any set number of absences, that determine whether corrective action is warranted. Any rule setting a fixed amount or percentage of sick leave usage after which an employee will be, as a



matter of course, automatically disciplined is inconsistent with the National Agreement and applicable handbooks and manuals. Any corrective action that results from the attendance reviews must be in accordance with Article 16 of the National Agreement.

The Unions do not claim that this settlement was intended to resolve the present dispute -- which predates the settlement -- but they do contend that the stated goal is not consistent with the Postal Service's position that, at its sole discretion, it may bypass the immediate supervisor and delegate the responsibility to discipline employees for absenteeism to any management official.

The Postal Service presented testimony regarding an unwritten attendance control program in effect at the JFK Airport facility in New York City for at least the past 25 years. There is a leave administrator assigned on each tour (600+ employees) who monitors attendance and handles all aspects of leave administration. This leave administrator has the responsibility to administer discipline related to attendance and leave. The floor supervisors review their employees' attendance status with the leave administrators on average once every pay period. A management witness said it would be rare for a leave administrator to issue discipline without having first consulted with the employee's floor supervisor. The leave administrator also has access to the employee's personnel file, if needed. Step 1 grievances relating to discipline issued by the leave administrators to Mail Handler employees at JFK are handled by the leave administrators, whereas grievances from APWU employees are handled by the floor supervisors, based on

the APWU's choice. The Management witness estimated that 30-35% of the APWU grievances are resolved or settled at Step 1 by removing the discipline.

Sandra Savoie, a headquarters Labor Relations Specialist, testified to the assignment of attendance supervisors in Dayton, Ohio in the late 1970s and early 1980s when she worked there. Those supervisors discussed attendance issues with employees and issued discipline, when warranted. She also testified to a variety of other contexts in which supervisors other than an employee's immediate floor supervisor have imposed discipline for a variety of misconduct and noted there are situations where employees have multiple floor supervisors during the course of their work day.

#### APWU POSITION

The APWU contends that the parties have agreed that the immediate supervisor shall normally be responsible for the imposition of discipline. The key issue is the interpretation of the term "supervisor" used in Article 16.8. The APWU argues that the Postal Service's contention that the term "supervisor" refers to any management official, and therefore, any management official can impose discipline on a craft employee makes no sense either in the context of Article 16 or the parties' bargaining history and practice.

Prior to Postal Reorganization, postal regulations distinguished between Directors, Postmasters and Supervisors, and specifically assigned both the responsibility of giving

counsel and advice to employees and, then, imposing discipline, especially after counseling fails, only to supervisors. This allocation of responsibility, the APWU asserts, was carried forward into collective bargaining. Article 16 lays out the steps of progressive discipline. The first time the term "supervisor" is used in Article 16 is in Section 2, which assigns the specific task of discussing minor offenses with the employee to the supervisor. Obviously, the only official who normally would have enough day-to-day contact to observe and discuss minor offenses is the employee's immediate supervisor. Any lack of clarity on the matter is resolved by the further requirement that such discussions be held "in private between the employee and supervisor." In context, it is clear that the supervisor referred to in Section 2 is the immediate supervisor, the official with day-to-day working contact with the employee, not someone in another building or off-site computerized attendance control office.

The next time the term "supervisor" is used in Article 16 is in Section 8, which is the final point in the progressive discipline process. There is no reason to believe, the APWU maintains, that the term "supervisor" as used in Section 8 would have any different meaning than in Section 2. There also appears to be no reason why the official who is responsible for ensuring the employee has been given adequate private guidance on his responsibilities (and maybe the only official who knows this guidance has been given), would not also normally be responsible for determining that this guidance has not worked and that suspension or termination is called for. This is particularly so in the realm of absenteeism where the Postal

Service has repeatedly assured the Unions that the immediate supervisor will play the central role in attendance control and management has specifically assigned the immediate supervisor the task of responding to requests for scheduled and unscheduled absences (EL-510-83-9).

This application of the term "supervisor" also is consistent with the definition of that term in Section 113.2(b) of the Employee and Labor Relations Manual (ELM) which states that a "supervisor" is "one who has a direct responsibility for ensuring the accomplishment of work through the effort of others." The concept of "direct responsibility" obviously refers to officials with direct contact with craft employees in their work capacity, a matter confirmed by numerous other provisions of the ELM in which the "supervisor" is responsible for performance evaluations of employees. The APWU argues it is simply not plausible to believe that the term "supervisor" means one thing for the purposes of private, non-disciplinary discussions, performance evaluations, or handling scheduled and unscheduled absences, but something completely different for purposes of imposition of discipline.

The APWU insists that while the contract, as well as Postal Manuals, clearly support the Unions' interpretation of "supervisor", the terms of the JCIM definitely resolve the matter. The JCIM provides the following binding guidance with respect to Article 16.8: "It is normally the responsibility of the immediate supervisor to initiate disciplinary action...."

The APWU freely concedes that "normally" does not mean "always", and that there may be "abnormal" circumstances which justify delegating imposition of discipline to someone other than the employee's immediate supervisor. Both Union and Postal Service witnesses provided a number of examples of such situations, all of which involved unusual operational circumstances, beyond the fact that an employee is being disciplined. The normal practice, however, is for discipline to be issued by the immediate supervisor.

The APWU rejects the Postal Service's contention that if the parties had intended to limit the imposition of discipline to "immediate supervisors" they would have used that term as they did in subparagraph (a) of Article 15.2 (Step 1). The APWU maintains this is not a tenable argument because it does not explain the binding guidance of the JCIM (or the Mail Handler's CIM) and it also ignores the purpose and structure of Article 15. It is crucial to define with precision exactly when and with whom grievances must be filed because rights are waived (and there is potential liability) if grievances are not timely filed. There is no agreement -- as there is with respect to Article 16 -- that the role of the immediate supervisor in handling the first step is only the "normal" practice. Moreover, the APWU asserts, this line of argument proves too much. If the Postal Service is correct that every time the parties fail to condition the term "supervisor" with "immediate" it, by default, refers to all levels of management, that would apply to the use of the term "supervisor" in subparagraph (b) and subsequent subparagraphs of Article 15.2 (Step 1). Yet, it

is clear from the context that those references to "supervisor" mean immediate supervisor.

The APWU insists that the failure to condition "supervisor" with "immediate" proves nothing, and that in order to surmise the intended application of the term both its context and history must be examined. These make it perfectly clear that "supervisor" means -- at least normally -- immediate supervisor. This context is further clarified by the admonition in Article 15.4 that: "The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in settlement of substantially all grievances...at the lowest possible step and recognize their obligation to achieve that end." It simply defies logic and experience to suggest that reasonable settlements at the lowest level are likely when supervisors are reviewing -- not their own decisions -- but the decisions of someone labeled an attendance control expert or specialist whom the supervisor may or may not interact with or know.

The Postal Service has cited a decision of the Eleventh Circuit Court of Appeals, USPS v. NALC, 847 F.2d 775 (1988), in which the court stated that the "Collective Bargaining Agreement does not suggest that *only* the immediate supervisor can issue the disciplinary notice." The APWU points out that this decision, in which the court referenced, but then ignored the principles of the *Steelworkers Trilogy*, is not consistent with the applicable law in the District of Columbia Circuit. In any event, the APWU stresses, the Unions do not

contend that only the immediate supervisor may issue discipline, only that the contract contemplates that he or she "normally" will do so, and the Eleventh Circuit's opinion was issued long before the parties' binding agreement in the JCIM that this is in fact the correct application of Article 16.8.

The APWU stresses that the requirement that the official making the initial disciplinary decisions normally be the employee's immediate supervisor meets the Unions' concern that, particularly in attendance related matters, discipline will not be meted out based on a cookbook or mathematical formula, but rather will be leavened by human interaction with an official with direct contact and responsibility for the worker. The Unions also recognize that there are common sense exceptions to this rule. By contrast, the Postal Service has not articulated any interest or need supporting its interpretation, aside from its desire to preserve unfettered discretion wherever possible.

Finally, the APWU insists there is no agreement between the parties not to cite or reference the JCIM at the National level. The National Agreement not only contains no restriction on the citability of the JCIM, but the Memorandum of Understanding directing creation of the JCIM states that the parties "will be bound by these joint interpretations." There also is nothing in the JCIM itself which states that the parties are foreclosed from referencing it in National arbitration.

NPMHU POSITION

The NPMHU's position parallels that of the APWU. It points out, however, that there is no dispute that the Mail Handler CIM may be cited in National arbitration.

The NPMHU believes it is significant that Article 16.8 uses the specific term "supervisor" and not a more general term such as "manager", "management official" or "employer". The word "supervisor" suggests a specific individual who has direct, personal, and ongoing contact with the employee. The term plainly refers to a person who has the responsibility for overseeing employees' day-to-day activities. Any argument that because the parties could have used the term "immediate supervisor" the reference to "supervisor" should not be interpreted to mean immediate supervisor is completely undercut by the CIM jointly developed by the Postal Service and the Mail Handlers. The CIM specifically and unequivocally interprets the provisions of Article 16.8 to mean that "[i]t is normally the responsibility of the immediate supervisor to initiate disciplinary action." Therefore the only remaining question should be what constitutes an abnormal circumstance that would justify issuance of discipline by someone other than the immediate supervisor.

The NPMHU submits that poor attendance by an employee is not, in and of itself, an abnormal circumstance that makes it impossible or inappropriate for the employee's immediate supervisor to issue discipline. Rather, poor attendance is a routine type of misconduct and, by its very nature, generally



does not require emergency action or an immediate response in the absence of an immediate supervisor. A requirement that normally discipline be initiated by an employee's immediate supervisor is also consistent with other provisions of Section 16.1 of the National Agreement in which the parties have agreed that in administering discipline a basic principle shall be that discipline shall be corrective in nature, rather than punitive, and that there shall be just cause for any discipline that is issued. Because attendance control supervisors lack critical information about an employee's overall job performance, they cannot responsibly judge which sanctions will be corrective and which punitive. Similarly it is only the immediate supervisor, in contrast to an attendance control supervisor, who is in a direct supervisory relationship with the employee and therefore is in a position to balance the employee's alleged infraction against any mitigating factors to determine whether just cause for discipline exists.

The NPMHU points out that in 1995 the Postal Service and the National Rural Letter Carriers Association -- which was one of the parties to the 1971 National Agreement which first included the language now found in Article 16.8 of the NPMHU and APWU Agreements -- agreed with the Postal Service to change that provision in the NRLCA National Agreement. They agreed to remove any reference to a supervisor imposing discipline. Moreover, in a jointly prepared and published "analysis of changes" the parties explicitly acknowledged that this change "clarifies the parties' position that discipline may be imposed

by a manager other than the rural carrier's supervisor."<sup>4</sup> The NPMHU insists that the Postal Service may not seek to achieve by fiat against the NPMHU and the APWU what it has accomplished through negotiations with the NRLCA.

The NPMHU also asserts that the evidence in the record shows that the Postal Service's attendance control system, as initially conceived in the early 1980s, was not designed to remove the traditional disciplinary role of the immediate supervisor. Rather attendance control supervisors were to assist the immediate supervisor by flagging attendance related problems. The evidence in this case as to prior practice shows that discipline, including attendance related discipline, principally has been handled by the immediate supervisor. Even the management testimony regarding the practice at JFK shows that immediate supervisors are involved in the decisions to impose discipline and that it would be rare for a leave administrator to issue discipline without having consulted with the supervisor regarding the individual employee.

To the extent the Postal Service contends it can divide discipline into subject areas so that employees are subject to discipline by multiple "immediate supervisors" for one job, which implicitly concedes that only the immediate supervisor may issue discipline as set forth in the CIM, its position contradicts the clear language of the ELM. Section

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<sup>4</sup> The parties stipulated at this arbitration hearing that the Postal Service would have presented testimony that the NRLCA and the Postal Service bargaining representatives agreed at the bargaining table that this change was cosmetic in nature.

122(b) of the ELM provides that each position should be "subject to the line authority of only one higher position." Similarly, Section 143.21 states that "[s]ubordinate positions never report administratively to more than one higher level supervisor." As the ELM makes clear, the NPMHU argues, there is only one supervisor for each position. It is that supervisor who, under Section 16.8 of the National Agreement, normally must impose suspension or discharge. The NPMHU also maintains that if an individual employee has multiple immediate supervisors, as the Postal Service seems to argue is possible, then no individual supervisor will have the kind of direct knowledge about the employee that is necessary for discipline to meet the fundamental requirements of Article 16, namely that discipline be corrective in nature and imposed only for just cause.

#### EMPLOYER POSITION

The Postal Service insists it has not agreed to forego its managerial right and duty to select which supervisory or management officials have responsibility to discipline employees. A "supervisor", as that term is understood in labor relations, is one who is authorized by an employer to maintain discipline and order in the workplace. The term "supervisor" has that functional meaning in the National Labor Relations Act, which provides the foundation for postal labor relations. That definition likely informed the meaning of that term when the parties negotiated their initial contract in 1970. Because postal facilities typically have multiple layers of supervisors and managers, that definition includes all levels of supervisors and managers, as all have been invested with the responsibility

to maintain efficiency and order in the workplace. Only where there is some explicit limit as, for example, in Article 15.2 (Step 1) do the contracts refer to a particular level of supervision.

Article 3 says the Postal Service may discipline employees. Significantly, it does not say only an employee's immediate supervisor may impose discipline. Article 16 lists three levels of progressive discipline and discusses discipline at length, but includes no limitation on the Postal Service's right to entrust any particular level of supervisors with the authority and responsibility to maintain discipline. Neither Union, the Postal Service stresses, offered any evidence that the parties ever discussed such fundamental limits on the Postal Service's ability to manage the efficiency of its workers.

The Postal Service insists that Article 16.8 only provides a general rule that no supervisor may impose substantial discipline until after the discipline has been approved by the top managerial official in the facility (or designee). This provision reinforces the Postal Service's position, because there is no limitation on who may discipline employees, only who must review it in the first instance. In contrast, the use of the term "immediate supervisor" in Articles 15 and 17<sup>5</sup> shows the parties knew very well how to use that phrase when they wanted to limit or define which supervisors were to be involved in an activity.

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<sup>5</sup> Article 17.3 provides that a steward shall request permission from the "immediate supervisor" to leave his or her work area on specified Union business.

The Postal Service maintains that the predominant weight of postal and private arbitral awards demonstrate that employers retain discretion to entrust authority in persons and positions of their choice. Moreover, the Court of Appeals for the Eleventh Circuit has ruled on the issue in contention here (USPS v. NALC). In vacating a regular-level arbitral award that overturned the removal of an employee who had stolen mail because a higher level supervisor had terminated the employee, the court explained that the collective bargaining agreement "does not suggest that only the immediate supervisor can issue the disciplinary notice." Given that the parties have made no material changes to the relevant parts of the contract since that decision, the Postal Service submits it is binding in this case.

Testimony of Postal Service witnesses further demonstrates that the Postal Service retains discretion to assign responsibility to its supervisors and managers to maintain discipline and the Postal Service has exercised such authority for over three decades. Those witnesses testified without contradiction that at JFK in New York City and in Dayton the Postal Service has assigned responsibility for monitoring irregular attendance to supervisors who do not work directly with the employees, and those leave administrators administer discipline. The witnesses also testified without contradiction that an employee may work for multiple floor supervisors on any given day. Significantly there is no restriction in either Union's contract that prohibits the Postal Service from entrusting different types of supervisors to monitor different

kinds of employee activity, as the Service deems most efficient in carrying out its responsibility.

Provisions in Article 16.6 and 16.7 which state that "the Employer" may indefinitely suspend employees where the Employer has reasonable cause to believe the employee is guilty of certain crimes and may place employees off-duty under certain circumstances further erode the Unions' claim that only an employee's immediate supervisor may discipline an employee.

The Postal Service also contends that the phrase "immediate supervisor" does not have the restrictive meaning asserted by the Unions. In 1984 the APWU and the Postal Service agreed that the meaning of "immediate supervisor" for purposes of Article 15.2 (Step 1) must be determined locally. More recently, the National parties have varied that general rule as it applies to part-time flexible employees working outside their home office by establishing a presumption that Step 1 grievances will be handled at the facility where the grievance arose. Also, as testified to at arbitration, the Mail Handlers at the JFK facility have met with leave administrators at Step 1 to discuss attendance related discipline for over eight years. Accordingly, even if Article 16 were interpreted by reference to Article 15, which it should not be, the phrase "immediate supervisor" does not have the restricted meaning sought by the APWU.

The Postal Service argues that the joint interpretive manuals, the JCIM and the CIM, also do not support the Unions' position in this case. In the first place, each manual

specifically disclaims any intention to vary the terms of the contract. Accordingly, if the National Agreement does not contain a limitation on the right to assign responsibility to discipline, the interpretation manual cannot create it. Moreover, even if the manual were a commitment, it only states "normally the responsibility..." which plainly means such responsibilities are not exclusive. Rather than being a commitment or a restriction, that statement is no more than a description of a way the Postal Service traditionally has disciplined employees -- supervisors normally do so. Simply because in the run of cases "immediate supervisors" normally discipline their employees, however, does not reflect an agreement that only such supervisors may do so; nor is the statement in the manuals a waiver of the rights and responsibilities conferred by Congress upon the Postal Service in the Postal Reorganization Act.

The Postal Service also argues that there is a major difference between a description of what normally happens and an agreement that only that process is authorized. The Postal Service has never agreed that normally discipline has to be issued by the immediate supervisor, rather, the statement in the manuals means it is a normal responsibility of an immediate supervisor to discipline employees, not that other supervisors and managers are prohibited from maintaining good order and discipline, too.

The Postal Service states that the manuals describe the assignment by the Postal Service of the normal responsibility to initiate discipline to first level

supervisors. That responsibility is normally conferred on one or more "floor" supervisors with respect to employee productivity and upon other first level supervisors with respect to monitoring unscheduled absences. As such, the manuals describe normal practices, but they do not prohibit the Postal Service from also assigning or reassigning those responsibilities to other management representatives, for example, the next level of supervisor, or bar those supervisors and managers from exercising their own responsibilities to maintain order and discipline in the workplace.

The Postal Service insists there is no contractual requirement that supervisors with the authority to discipline must possess a certain level of knowledge of the employee to be disciplined. Information required to correct and to discipline employees is available to managers on an as needed basis.

The Postal Service contends that use of the term "immediate supervisor" in Article 15 does not support the Unions' view that the term must also apply elsewhere in the contracts. There is no reason an immediate supervisor who is authorized to adjust a grievance at Step 1 could not correct a mistake made by a colleague or even a superior. There also is no evidence that attendance control supervisors are higher level supervisors than the employee's floor level supervisor who may handle the Step 1 grievance.

The Postal Service argues that internal postal guidelines cited by the Unions do not reflect contractual obligations and are subject to change by the Postal Service.



The NPMHU has asserted that Section 113.2 of the ELM defines a supervisor as meaning a person who has no subordinates with managerial responsibility, thus indicating only first level supervisors meet that definition. The Postal Service maintains there is no evidence that the parties understood that particular definition of supervisor to apply whenever the term supervisor is used in the collective bargaining agreement. Indeed, the cited version of the ELM was written long after the parties negotiated their initial collective bargaining agreement, which included the provisions at issue here. Moreover, if the NPMHU were correct, there would be no reason to limit the breadth of positions covered by the parties' understandings of the term "supervisor" by inserting the modifier "immediate" before "supervisor" in Articles 15.2 and 17.3. Other sections of the ELM also use the term "supervisor" in a broader context. Finally, even assuming that the ELM and the guidelines cited by the APWU refer only to a first level supervisor, the Postal Service is free to change that restriction whenever it wishes because the right to designate the individuals in whom to repose authority and responsibility to maintain order and discipline in the workplace is not subject to compulsory bargaining.

the issue of whether the JCIM may be cited in this case, the Postal Service maintains that both the introductory language of the JCIM and the testimony presented at arbitration regarding the parties' adoption of that document establish that there was an agreement by the parties that it would not be cited at National arbitration. Moreover, if the parties decide to change that agreement they will also need to resolve how the JCIM may be cited.

FINDINGSCitation of JCIM in National Arbitration

The 2000-2003 APWU National Agreement includes the following Memorandum of Understanding:

Re: Joint Contract Interpretation Manual

The United States Postal Service and the American Postal Workers Union have engaged in extensive discussion on ways to improve the parties' workplace relationship, as well as ways to improve the Grievance/Arbitration procedure. Accordingly, the parties have agreed to establish a joint contract manual that will contain the joint interpretation of contract provisions. The parties will be bound by these joint interpretations and grievances will not be filed asserting a position contrary to a joint interpretation. The parties agree to initiate the process of establishing a joint contract interpretation manual no later than 90 days from the signing of this agreement.

The parties finalized the JCIM in June 2004. The Introduction and Preface, in relevant part, state as follows:

## INTRODUCTION

The United States Postal Service and the American Postal Workers Union have engaged in extensive discussion on ways to enhance the parties' workplace relationship, including methods to improve the Grievance/Arbitration procedure. Consistent with that

goal, the parties agreed to jointly establish a manual which outlines areas of agreement on contract application.

This Joint Contract Interpretation Manual (JCIM) represents the mutual agreement of the national parties on the interpretation/application of the issues discussed in this document and no inference should be drawn from the absence of national settlements, agreements or arbitration awards.

A primary purpose of this JCIM is to provide the local parties with guidance and to require consistency with contract compliance. The parties are bound by this manual and grievances should not be initiated which assert a position contrary to the JCIM.

#### PREFACE

The JCIM is self-explanatory and is not intended to, nor does it, increase or decrease the rights, responsibilities or benefits of the parties under the National Agreement and it shall be applied by the parties at the lower grievance steps in an effort to settle grievances at the lowest possible level.

If introduced in area/regional level arbitration, the JCIM will speak for itself and the parties' advocates will not seek testimony on its content.

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The evidence shows that prior to mutual adoption of the above language, the APWU modified a Postal Service proposal by deleting the words "at all levels" following the reference to "[t]he parties" in the last sentence of the Introduction, and,

added the words "in area/regional level" before the reference to "arbitration" in the second paragraph of the Preface. Testimony as to communications between certain representatives of the parties regarding these APWU changes does not all march in one direction, but there is little question that the Postal Service believed the APWU position was that the JCIM could not be cited in National arbitration. APWU President William Burrus, who made the changes, denies this was the intent, although there is testimony that at least one high-ranking APWU official indicated the contrary to a high level Postal Service official.

In any event, there is no language in the JCIM or any other agreement that explicitly addresses citation of the JCIM in National arbitration. Moreover, in the present proceeding top officials of both parties stated it was their position that once the parties agreed on the substance of the JCIM the parties should live by it at all levels. This position is consistent with both the MOU in the National Agreement that led to adoption of the JCIM and statements in the JCIM Introduction that it "represents the agreement of the national parties on the interpretation/ application of the issues discussed in this document..." and that "[t]he parties are bound by this manual...."

The Postal Service legitimately raises the point that if it thought it would be permissible for the JCIM to be cited at National arbitration it would have insisted on some agreed to criteria. As I indicated in a sidebar at the hearing, that is something the parties need to address, but for purposes of this case I think it is significant that neither party has sought to

do anything but cite the agreed-to JCIM provision regarding Article 16.8 and let it speak for itself, which is precisely what the Postal Service originally proposed and conforms to the parties' agreement in the Preface that "[t]he JCIM is self-explanatory."

Furthermore, the explication of Article 16.8 in the JCIM is identical, insofar as relevant to this case, to that in the Mail Handler CIM, which there is no dispute may be cited in National arbitration. It also seems to make little sense that the parties would agree on an interpretation of a provision of their contract -- and agree that they are bound by that interpretation -- and then ask a National arbitrator to rule on an issue relating to that provision without the benefit of their agreed interpretation. One need only consider the consequences of a National arbitration decision written without awareness of a contradictory or inconsistent JCIM provision that the parties have agreed is binding on them and on all area/regional arbitrators.

Under all these circumstances, I conclude, at least for purposes of this case, that the provision of the JCIM relating to Article 16.8 may be cited in this National arbitration.

#### Article 16 Issue

Under Article 3 (Management Rights) the Postal Service has the right to determine which management personnel may initiate disciplinary action against employees, except as

otherwise restricted by the provisions of the applicable National Agreement or applicable laws and regulations.

In administering discipline, the Postal Service is, of course, bound to comply with the requirements set forth in Article 16.1 that:

In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause....

But it cannot be concluded as a general proposition that only an employee's immediate supervisor -- leaving aside for the moment who that is -- can initiate discipline or must normally initiate discipline for it to be consistent with Article 16.1. Nor is the Postal Service required to articulate a need or interest that is subject to arbitral scrutiny to support an exercise of its management rights that is not in conflict or inconsistent with its contractual obligations.

Article 16 contains no use of the term "immediate supervisor." That term is found, however, in two other provisions of the National Agreement, Articles 15.2 and 17.3. This shows that the parties, when drafting the National Agreement, had the concept of "immediate supervisor" in mind.<sup>6</sup>

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<sup>6</sup> The Postal Service has entered into Step 4 agreements with both the APWU and the NPMHU which provide that who is the "immediate supervisor" of an employee at a particular installation, for purposes of Article 15.2, is to be determined locally or regionally. (Postal Service Exhibits 20 and 22.)

Thus, under general principles of contract interpretation, it is reasonable to conclude that when the parties use the term "supervisor," rather than "immediate supervisor," in a particular provision the former is not confined to the latter, absent an indication to the contrary.<sup>7</sup>

Article 16.8, which the Unions principally rely on, states:

Section 8. Review of Discipline

In no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or designee.

In associate post offices of twenty (20) or less employees, or where there is no higher level supervisor than the supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in by a higher authority outside such installation or post office before any proposed disciplinary action is taken.

(Emphasis added.)

Article 16.8 addresses the issuance of discipline (suspensions and discharges) for all offenses, not just those

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<sup>7</sup> Within the particular context of Article 15.2 (Step 1), for example, it seems clear that the reference to "the supervisor" in the subparagraphs following subparagraph (a) are to the "immediate supervisor" referred to in subparagraph (a).

relating to attendance issues. It seems inappropriate, however, to attempt in this case to provide a blanket determination regarding the interpretation and application of Article 16.8's reference to the imposition of disciplinary action by "a supervisor." The underlying grievances in this case referred to in the Step 4 documents relate to attendance control supervisors issuing discipline, and that was the focus of the arbitration hearing. This decision will be confined to that particular context; that is, whether the Postal Service's use of attendance control supervisors (whatever their particular title), not only to monitor employee attendance, but to issue discipline for attendance-related offenses is in conflict or inconsistent with Article 16.8.

Article 16.8 focuses not on which supervisor may initiate discipline, but on the need for review and concurrence by the appropriate higher authority. The regional arbitration cases cited by the Unions where discipline imposed by a higher authority than the employee's immediate supervisor was overturned, usually on "due process" grounds, either were based on the arbitrator's finding of a lack of the necessary separate review and concurrence or premised on the arbitrator's determination that the imposition of discipline by the higher authority deprived the employee of his rights under Article 15.2, because the immediate supervisor handling the grievance at



Step 1 did not have the authority to settle the grievance.<sup>8</sup> Other regional arbitration decisions cited by the Postal Service have dismissed grievances protesting that discipline was imposed by a supervisor other than the employee's immediate supervisor in a variety of contexts, including issuance of discipline by attendance control supervisors.

In the early 1980s when the GAO issued its report on Postal Service control of absenteeism, there is no question that the Postal Service emphasized the continuing role of first line supervisors in absence control and in determining appropriate disciplinary action. This is reflected in contemporaneous Postal Service documents which the Unions have cited. Those documents, which set forth Postal Service policy at that time, do not, however, establish a contractual commitment to the Unions that would bar the Postal Service, for example, from assigning a supervisor the responsibility not only to monitor attendance of all or some employees at a particular facility, but also to initiate attendance-related disciplinary action, provided this is done in a manner consistent with Articles 16.1 and 15.2.

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<sup>8</sup> The Eleventh Circuit Court of Appeals in a 1988 decision (USPS v. NALC) vacated a regional arbitration decision which overturned the removal of an employee who had stolen mail because the Post Master, rather than the employee's immediate supervisor, terminated the employee, which the arbitrator deemed to be a "due process" violation. On the facts of the case, the Court concluded that this determination was arbitrary or capricious, and that any procedural error was corrected and nonprejudicial. In its decision, the Court stated: "The Collective Bargaining Agreement does not suggest that *only* the immediate supervisor can issue the disciplinary notice."

Evidence was presented in this case regarding the attendance control program administered at the JFK facility in New York City for at least the past 25 years. Attendance control supervisors -- referred to as leave administrators -- are responsible for attendance and leave matters for all employees on their tour. These supervisors are not at a higher level of management than the supervisors who oversee work performance on the floor, and they regularly consult with the employees' floor supervisors, in particular before imposing discipline. As described in this record, I cannot conclude that this application of discipline is inherently inconsistent with Article 16.1 or with other Postal Service commitments, in particular, the March 2003 Step 4 settlement relating to implementation of the Postal Service RMD/eRMS. At the JFK facility, Mail Handler employees file Step 1 grievances protesting discipline issued by a leave administrator with the leave administrator, whereas APWU employees do so with their floor supervisors, apparently based on each local Union's determination. The testimony indicates that the floor supervisors are fully capable of exercising Article 15.2 authority to settle grievances over discipline issued to APWU employees by leave administrators.

It also is worth pointing out that an attendance control supervisor is not excluded from the definition of "supervisor" in Section 113.2 of the ELM: "--one who has a direct responsibility for ensuring the accomplishment of work through the efforts of others. Normally a supervisor has no subordinate employees with managerial responsibility for others." An employee who fails to meet his or her obligation to

report to work hinders the "accomplishment of work." The specific attendance control officers referred to in this record did not have subordinate employees with managerial responsibility for others; they were first line supervisors, albeit they specialized in attendance control. There also does not appear to be any reason why an attendance control supervisor cannot function consistent with the principles of "sound supervision" set forth in Section 372 of the ELM, provided they consult with an employee's floor supervisor, as was testified routinely is done at the JFK facility.<sup>9</sup>

There also is nothing in Article 16.2 that would preclude an attendance control supervisor from discussing attendance issues with an employee prior to imposition of any discipline. Nor does Article 16.3 limit who may issue a letter of warning. With appropriate access, as needed, to an employee's personnel file and consultation with an employee's work floor supervisor, an attendance control supervisor can take into account mitigating factors -- and the employee and the Union can always raise those in the grievance and arbitration procedure. An attendance control supervisor also may be in a better position to provide consistency in applying attendance-related discipline in a particular facility, so as to lessen the likelihood of uneven or disparate treatment, which is an important component of "just cause."

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<sup>9</sup> The observations in this paragraph are not intended to equate the term "supervisor" in Article 16.8 with any particular use of that term in the ELM.

While the practice at many, if not most, postal facilities may have been that employees' immediate supervisors who oversee other work performance issues also have been responsible for initiating discipline for attendance matters, that has not been uniform. In addition to the JFK facility in New York and Dayton, as to which testimony was presented in this proceeding -- and where the matter apparently was not grieved -- attendance control supervisors have issued discipline at other locations, including Atlanta, Baltimore, Harrisburg and Dallas, where grievances protesting such management action were denied by regional arbitrators.<sup>10</sup> Thus, there has not been a sufficiently uniform and consistent practice in the application of Article 16.8 to establish that the parties mutually understood that provision to preclude issuance of discipline by attendance control supervisors.

The evidence presented by the NPMHU regarding the modification of Article 16.8's counterpart in the NRLCA National Agreement in 1995 does not show that those parties agreed to a substantive change in the meaning of that provision, only that they agreed to "clarify" it. Moreover, according to a Postal Service witness, Postal Service and NRLCA representatives agreed at the bargaining table that the change in language was "cosmetic."

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<sup>10</sup> As the APWU points out, not all of these decisions squarely addressed the issue presented in this case. No regional arbitration case has been cited which held that issuance of discipline by an attendance control supervisor was contractually impermissible. One case cited by the NPMHU, Case No. N7M-1A-D 38367 (1992) may have some tangential bearing on this issue, but is difficult to decipher.

The APWU and NPMHU grievances underlying the present Step 4 disputes each involved a Union protest of the imposition of discipline by an attendance control supervisor on the basis that supervisor was not the employee's immediate supervisor. The preceding paragraphs basically describe the contractual and factual context at the time the present Step 4 disputes were initiated and discussed.

Subsequently, the respective parties reached agreement on the JCIM and CIM. In addressing Article 16.8, the Mail Handler CIM includes a note referring to the existence of a National level dispute "regarding whether discipline can be issued by other than the employee's immediate supervisor." This note is of some significance in that it seems to recognize that an attendance control supervisor is not the employee's "immediate supervisor." The Postal Service's acquiescence at the JFK facility in the local APWU's position that grievances protesting discipline issued by leave administrators are to be presented to the employee's floor supervisor in Step 1 also may reflect management's recognition that the leave administrators, while they may be supervisors, may not be the employee's "immediate supervisor," as that term is used in Article 15.2. Other evidence in this record further supports that conclusion

The Unions view the JCIM and CIM provisions interpreting Article 16.8 as conclusive on the matter in dispute in this case. Consistent with the parties' understandings, the interpretations in these interpretive manuals should be considered self-explanatory and binding on the parties. As the Postal Service stresses, however, both manuals explicitly state

they are not intended to alter in any way the parties' rights, responsibilities or benefits under the respective National Agreement. They are intended to provide guidance as to the agreed-to meaning of specific contractual provisions.

The pertinent language in the APWU JCIM states as follows:

#### CONCURRENCE

It is normally the responsibility of the immediate supervisor to initiate disciplinary action. Before a suspension or removal may be imposed, the discipline must be reviewed and concurred in by a manager who is a higher level than the initiating or issuing supervisor. This act of review and concurrence must take place prior to the discipline being issued.

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The Mail Handler CIM includes exactly the same language prefaced by the statement that: "Concurrence is a specific contract requirement to the issuance of a suspension or a discharge."<sup>11</sup>

The key sentence in the JCIM and CIM relied on by the Unions reads: "It is normally the responsibility of the immediate supervisor to initiate disciplinary action." I conclude that the parties intended the term "immediate supervisor" in this sentence to have the same meaning as it does in Articles 15.2 and 17.3 of the National Agreement. For

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<sup>11</sup> The CIM and JCIM each also contain additional language regarding Article 16.8 that is not relevant here.

reasons already stated, I conclude that, unless otherwise locally agreed,<sup>12</sup> this term does not refer to a supervisor, such as an attendance control supervisor who does not oversee an employee's work performance on the floor of the facility.

The Unions agree that the wording of the JCIM and CIM allow for exceptions, but they argue from the use of the words "[i]t is normally the responsibility..." that such exceptions must be confined to abnormal circumstances, as, for example, where the immediate supervisor is unavailable or compromised in some way so as not to be able to appropriately issue the discipline. In context, this language does not support such a restrictive reading. Article 16.8, which does not use the term "immediate supervisor," broadly applies to discipline for all offenses, and focuses on the requirement for review and concurrence. Notably, the following two sentences in the JCIM and CIM which address review and concurrence both use mandatory ("must") language. The sentence on which the Unions rely here is not written in mandatory terms. It is more descriptive than prescriptive. It does not, in my view, connote that a supervisor other than the employee's immediate supervisor can initiate discipline only in circumstances where it would not be feasible or appropriate for the immediate supervisor to do so.

Accordingly, for purposes of this case, issuance of attendance-related discipline by an attendance control supervisor at a particular facility, when the Postal Service deems that to better meet the needs of the Service, does not

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<sup>12</sup> See footnote 6.

conflict with the interpretation of Article 16.8 set forth in the JCIM and CIM. Of course, the imposition of a suspension or discharge must not only be reviewed and concurred in by the appropriate higher authority, but it also must be consistent with Article 16.1 and any other applicable contract provision, and must not impair the application of Article 15.2.

The issue in this case does not lend itself to simplistic conclusions. The Unions have raised a number of legitimate concerns. The Postal Service seeks to preserve its management rights. Various provisions of the National Agreement address the Unions' concerns and impose requirements and limitations on the exercise of management rights. In the final analysis, however, the Unions have not established that issuance of discipline by attendance control supervisors is precluded by Article 16.8 or other sections of the National Agreement, provided such an exercise of management authority is administered consistent with other applicable contractual provisions, as discussed in this opinion.

AWARD

The dispute in this case is resolved on the basis set forth in the above Findings.

  
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Shyam Das, Arbitrator