



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

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

From: Greg Bell, Director *GB*
Industrial Relations

Date: November 30, 2006

Re: Challenge to ELM 460

Enclosed you will find a copy of a recent national-level award sustaining the APWU's Article 19 dispute over changes in ELM 460 dealing with collection of postal debts from bargaining unit employees. Arbitrator Linda Byars ruled that the ELM 460 provision allowing for collection of postal debts by the Postal Service in increments greater than 15% of an employee's disposable pay or 20% of the employee's biweekly gross pay per pay period, whichever is lower, violates the Memorandum of Understanding on debt collection and Article 28.4.B of the National Agreement. The arbitrator also indicated that during arbitration proceedings, the Postal Service agreed with the APWU to amend language in Section 462.35 of the ELM (currently Section 462.42) which allowed the offset to be calculated on a one-time basis upon the salary amount at the time the offset is started. Arbitrator Byars noted that the Postal Service agreed to conform the ELM provision with the MOU and the practice of computing the offset "pay period to pay period rather than one initial time." (*USPS #Q90C-4Q-C 95054061; 11/24/2006*)

This case arose after the Postal Service, APWU and NALC reached an agreement in a Memorandum of Understanding following the unions' challenge to changes made to Chapter 460 of the ELM regarding collection of postal debts from bargaining unit employees. The relevant parts of the agreement are Paragraph 7 of the MOU which provides that "[n]o more than 15% of an employee's disposable pay or 20% of the employee's biweekly gross pay, whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount." Paragraph 8 of the MOU provides that the parties agree to incorporate the MOU's Paragraph 7, as well as Paragraph 6 which deals with staying collection of debts, into Article 28, Section 4 of the 1994 Agreement. Subsequently, those paragraphs were incorporated into the 1994 National Agreement.

Soon after the MOU was signed by the Postal Service, management provided the APWU with the proposed revisions to the Employee and Labor Relations Manual based on the MOU. Included in the revisions was Section 462.35 of the ELM (currently Section 462.42) which provided that “*Except as specified below, the maximum salary offset to collect a debt that is owed to the Employer, and for which the Postal Service has not been granted a federal court judgment, is 15 % of an employee’s biweekly disposable pay, or 20% of the employee’s biweekly gross pay, whichever amount is lower when the salary offset is started*” [Emphasis added] The section to which the above ELM section refers is ELM 463.1 which was in effect at the time and provides that “[i]n accordance with section 124 of Public Law 97-276 (October 2, 1982), 5 U.S.C. 5514 note (1982), *the Postal Service may deduct up to one-fourth (25%) of an employee’s ‘current pay’* in monthly installments or at officially established pay periods to satisfy a debt determined by a federal court owed to the Postal Service. . . .” [Emphasis added] In addition, ELM Section 463.21 was in effect at the time and provides that “[t]he requirements governing the collection of employer claims specified by a pertinent collective bargaining agreement are not applicable to the collection by salary offset of a Postal Service claim if a federal court has granted judgment upholding the debt.”

The APWU responded to the proposed revisions by objecting to the revision contained in ELM Section 462.35 (currently Section 462.42) on the basis that the MOU does not provide for any exception for debts resulting from a federal court judgment which has been entered against an employee and in favor of the Postal Service. We asserted that “[t]he phrase ‘and for which the Postal Service has not been granted a federal court judgment,’ should be omitted.” The APWU later appealed to arbitration the Postal Service’s revisions to ELM 460. Following the union’s appeal, some other revisions we opposed were changed based on union input but the exception to limits negotiated in Paragraph 7 of the MOU remained in the revised ELM 460.

During the arbitration proceedings, the APWU argued that the language of Paragraph 7 of the MOU, as incorporated into Article 28.4.B of the National Agreement, which limits the amount that can be deducted from an employee’s pay to “satisfy a postal debt” is clear and applies to any and all postal debt whether determined administratively or by court judgment. Moreover, we contended that the Postal Service’s changes to the Debt Collection Act regulations in ELM 460 which provide for collection of debts in excess of the amount specified in Article 28, Section 4 of the National Agreement and the MOU, when based on a court judgment, are in conflict and inconsistent with Article 28, Section 4 and the MOU regarding debt collection procedures.

The Postal Service countered that the APWU failed to meet its burden of proving that Paragraph 7 of the MOU was an intentional waiver of management’s statutory right to deduct up to 25% of an employee’s pay for postal debt upheld by a federal court judgment. It maintained that the MOU concerned the administrative salary offset procedure that was addressed during discussions leading to the signing of the MOU and not the court judgment offset procedure which was not a part of the APWU’s initial challenge and was not addressed in negotiations. To support its contention, management cited testimony of a Postal Service lawyer-participant in

negotiations which indicated that the parties' agreement in Paragraph 7 was limited to administrative debts being collected through the grievance-arbitration procedure.

In her decision, Arbitrator Byars stated first of all that "the Postal Service failed to show the mutual understanding it asserts in this case, i.e., the exception to Paragraph 7 [of the MOU] for postal debt upheld by federal court judgment." She cited the fact that "there is no language in the introductory paragraph or Paragraph 7 of the MOU or in Article 28.4.B of the National Agreement for an exception based on court judgment salary offsets" Moreover, "noticeably absent from the introductory paragraph and Paragraph 7 of the MOU as well as Article 28.4.B of the National Agreement is any reference to administrative salary offsets" and "the language includes no reference to . . . section 124 of Public Law 97-276, 5 U.S.C. 5514 'note' [setting out collection of 25% of pay in the case of court judgments], which section 463.1 of the ELM refers" Also, Arbitrator Byars said that despite testimony presented by a Postal Service lawyer, there is no evidence in the record that a distinction was actually made by the Postal Service to the unions regarding administrative debts and court judgment debts when the specific language of Paragraph 7 of the MOU was negotiated.

The arbitrator then reasoned that the APWU met its burden of proof in this case since "[t]he best evidence of the parties' intention is the MOU" and "[o]n its face, Paragraph 7 of the MOU is clear and unambiguous." In addition, she cited the Postal Service's acknowledgement that its practice has been to apply the limits of Article 28.4.B to all postal debt including federal court judgments since the MOU was entered into 12 years ago. This evidence, according to Arbitrator Byars, demonstrates "an agreement to waive any right the Postal Service may have had to collect up to 25 percent of an employee's pay to recover a postal debt." Moreover, she noted that even if she accepted the Service's contention that the APWU did not raise early concerns regarding ELM 460 language setting out different limits for collection of federal court judgments, "it was not unreasonable for the APWU to conclude from the language negotiated in Paragraph 7 that the Postal Service was willing to waive any right it might have had to offset a higher percentage when collecting postal debt."

Accordingly, Arbitrator Byars ruled that the evidence established that "when the Postal Service entered into the MOU, it waived any right it may have had to collect in increments of more than that agreed to in Paragraph 7 of the MOU for any debt owed by a postal employee to the Postal Service." She observed that even though ELM 460 contained Section 463.21 that excluded federal court judgments from requirements of collective bargaining agreements, "once the parties agreed to Paragraph 7 of the MOU, the APWU could reasonably rely on the agreed upon language as an exception to section 463.21 of the ELM." The arbitrator noted, however, that the legal right of other federal agencies to collect debts from postal employees with federal court judgments has not been waived by the Postal Service's actions.

Attachment

NATIONAL ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION.

between

UNITED STATES POSTAL SERVICE

AND

**AMERICAN POSTAL WORKERS UNION
AFL-CIO**

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.CASE NO.: Q90C-4Q-C 95054061
.COLLECTION OF POSTAL DEBTS
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BEFORE: Linda S. Byars

APPEARANCES:

For the APWU: Anton G. Hajjar

For the USPS: Larissa O. Taran
Laura M. Taylor

Place of Hearing: Washington, D.C.

Date of Hearing: March 17 and May 19, 2006

Post-Hearing Briefs: Dated October 19, 2006

Award Summary

The ELM 460 language that provides for collection of postal debts by the Postal Service in increments greater than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay per pay period, whichever is lower, violates the MOU and Article 28.4.B of the National Agreement. Accordingly, the APWU's Article 19 appeal is sustained.

BACKGROUND

In 1982 Congress passed the Debt Collection Act (DCA), Public Law 97-365 (USPS Exhibit No. 2). Section 5514 of the DCA (USPS Exhibit No. 3) is the salary offset portion and is the relevant part for discussion in this case. Appended to section 5514 of the DCA is a "note" reflecting a separate statute passed contemporaneously with the DCA, Public Law 97-276, Section 124 (USPS Exhibit No 4). Following the passage of the DCA, the Postal Service promulgated new regulations, Chapter 450 of the Employee and Labor Relations Manual (ELM)- Recovery of Postal Debts From Nonbargaining-Unit Employees, and Chapter 460 of the ELM - Collection of Postal Debts From Bargaining Unit Employees (USPS Exhibit No. 5).¹ By cover letter dated August 5, 1985 (USPS Exhibit No. 7), the Postal Service provided the American Postal Workers Union (APWU) and the National Association of Letter Carriers (NALC) a draft of the proposed ELM 450 and 460.

In response to the proposed regulations, the unions filed an Article 19 appeal that came before Arbitrator Richard Mittenthal on April 28, 1992. In his decision dated August 12, 1992, Arbitrator Mittenthal found the protest to ELM 460 arbitrable and the protest with respect to ELM 450

¹ The Postal Service also proposed changes to two finance handbooks, the F-1 and F-16, to handle claims against postal employees made by agencies other than the Postal Service.

not arbitrable. A hearing began on the merits before Arbitrator Mittenthal, but rather than submitting briefs on the merits of the dispute the parties entered into post-arbitration negotiations. [APWU Exhibit No. 3, p. 14.]

As a result of the negotiations, the parties reached an agreement in a Memorandum of Understanding (MOU), signed by Anthony J. Vegliante for the Postal Service on April 21, 1993, by Thomas A. Neill for the APWU on July 15, 1994, and by Lawrence G. Hutchins for the NALC on July 20, 1994. Paragraph 7 of the MOU, which follows, is relevant to the discussion in this case:

No more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay, whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount. [USPS Exhibit No. 1, APWU Exhibit No. 5.]

In Paragraph 8 of the MOU, the Parties agreed to incorporate Paragraph 7 (and Paragraph 6) of the MOU in Article 28, Section 4 of the 1994 National Agreement. The Parties also recognized that ELM 460 would require revision to incorporate the terms of the MOU.

After the parties signed the MOU but before the Postal Service revised the regulations based on the MOU, a disagreement arose concerning whether rights delineated in Paragraph 6 of the MOU, which stayed the collection of debt regardless of the amount, became effective in July 1994 when

the MOU was signed by all three parties or in July 1995 when the Postal Service promulgated the revised regulations. By award dated May 9, 1997, Arbitrator Carlton J. Snow found that Paragraph 6 of the MOU became effective upon signing of the MOU in July 1994, and he sustained the grievance in the case before him.

As agreed, Paragraphs 6 and 7 of the MOU were incorporated in the National Agreement, and the 1994-1998 Agreement (APWU Exhibit No. 6) contained the following new language in Article 28, Section 4, Collection Procedure:

A. If a grievance is initiated and advanced through the grievance-arbitration procedure or a petition has been filed pursuant to the Debt Collection Act, regardless of the amount and type of debt, collection of the debt will be delayed until disposition of the grievance and/or petition has (have) been had, either through settlement or exhaustion of contractual and/or administrative remedies.

B. No more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount.

Also, by routing slip dated November 1, 1993, Muriel Aikens Arnold for the Postal Service provided Tom Neill for the APWU with proposed ELM revisions based on the MOU. Included in the proposed revisions was Section 462.35 of the ELM, "Limit on Amount of Salary Offset to Collect Debt," stating:

Except as specified below, the maximum salary offset to collect a debt that is owed to the Employer, and for which the Postal Service has not been granted a federal court judgment, is 15 percent of an employee's biweekly disposable pay, or 20 percent of the employee's biweekly gross pay, whichever amount is lower when the salary offset is started. A greater salary offset may be made if the employee or the Union, as appropriate, agrees with the Employer, in writing, on such greater amount. [APWU Exhibit No. 7.]

By Letter dated November 5, 1993, Mr. Neill outlined the APWU's concerns with the proposed ELM language and his submissions for making the proposed ELM language fully consistent with the MOU. Among his comments on the proposed ELM language was the following with respect to Section 462.35:

Paragraph 7 of the MOU provides that "[n]o more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay, whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount." There is no exception for debts resulting from a federal court judgment which has been entered against an employee and in favor of the Postal Service. The phrase "and for which the Postal service has not been granted a federal court judgment," should be omitted. [USPS Exhibit No. 9 and APWU Exhibit No. 8.]

By letter dated March 22, 1995 and signed by Manager of Contract Administration Sherry A. Cagnoli, the Postal Service submitted to the unions its revisions to ELM 450 and ELM 460. [Joint Exhibit No. 2, p. 3.] In a letter dated May 22, 1995 and signed by President Moe Biller, the Union appealed to arbitration the revisions to ELM 450 and ELM

460. Also, by memorandum dated May 24, 1995, Mr. Neill advised Ms. Arnold of the sections of the proposed ELM 460 with which it had "problems." [USPS Exhibit No. 11.] Some revisions to the ELM 460 not relevant to the instant case were made based on the unions' input, and the regulations were promulgated in a Postal Bulletin dated July 6, 1995 still containing the language objected to by Mr. Neill, i.e., the exception claimed by the Postal Service to the limits negotiated in Paragraph 7 of the MOU.

On March 17, 2006 the Article 19 appeal came before the Arbitrator at hearing in Washington, D.C. The hearing continued on May 19, 2006 for the Postal Service to present the testimony of managing counsel for the law office in the northeast area, James Friedman. At the conclusion of the hearing on May 19, 2006, the Parties agreed to submit post-hearing briefs. By letter dated August 18, 2006, the Postal Service advised the Arbitrator of the Parties' agreement to extend the briefing schedule until September 7, 2006. Enclosed with the letter was a copy of the transcript of the April 28, 1992 arbitration hearing in Case No. H4C-NA-C34 before Arbitrator Richard Mittenthal, which was marked as an exhibit during the May 19th hearing (Transcript pp. 77-78), as well as a copy of an October 26, 1983 letter from the Postal Service to OPM regarding implementation of the salary offset provisions of the DCA, which was identified on page 30

of the May 19, 2006 hearing transcript and which the Postal Service asked in its August 18, 2006 letter to be marked and received as USPS Exhibit No. 15.² After further agreement between the parties to extend the briefing schedule, the Parties submitted their post-hearing briefs by cover letters dated October 19, 2006.

STATEMENTS OF ISSUE

The parties agree that the Union's Article 19 appeal is properly before the Arbitrator (Transcript p. 10), and propose the following statements of issue.³

As Proposed by the APWU

Are the Postal Service's changes to the DCA regulations in ELM 460 which provide for collection of debts in excess of the amount specified in Article 28, Section 4, of the National Agreement and the MOU, when based on a court judgment, in conflict or inconsistent with Article 28, Section 4 of the National Agreement and/or the MOU regarding the DCA, or unfair, unreasonable or inequitable; and if so, what shall be the remedy? [APWU Post-Hearing Brief, p. 11.]

² On November 8, 2006 the APWU stated that it had no objection to the admission of USPS Exhibit No. 15.

³ In order to conform with the MOU and the practice of computing the offset "pay period to pay period rather than one initial time," the Postal Service agreed with the APWU to amend the language in Section

As Proposed by the Postal Service

Whether the Postal Service, pursuant to the MOU, waived its statutory right to offset up to 25 percent of an employee's current pay to collect federal court judgments, and therefore whether the Postal Service's retention in ELM 460 of the right violated the parties' collective bargaining agreement? [USPS Post-Hearing Brief, p. 3.]

OPINION

It is the Postal Service's position that there are two distinct procedures for collecting debt, the administrative salary offset procedure, which was addressed during discussions leading up to the signing of the MOU, and the court judgment offset procedure, which the Postal Service maintains was not part of the APWU's initial protest of ELM 460 and was not addressed during the negotiations of the MOU. The Postal Service maintains that, pursuant to Section 124 of Public Law 97-276, it may offset a higher percentage of pay, i.e. up to 25 percent, in order to collect the amount owed when the postal debt has been upheld by federal court judgment. The Postal Service points to Section 463.21 of the ELM, which has remained essentially unchanged since first promulgated and specifically states:

462.35 of the ELM by deleting part of the language objected to by the

The requirements governing the collection of employer claims specified by a pertinent collective bargaining agreement are not applicable to the collection by salary offset of a Postal Service claim if a federal court has granted judgment upholding the debt. [Joint Exhibit No. 2.]

The Postal Service maintains that the APWU bears the burden of proving that the language of Paragraph 7 of the MOU constitutes an intentional waiver of the Postal Service's statutory right to deduct up to 25 percent of an employee's pay for postal debt upheld by federal court judgment.

The APWU maintains that when it agreed to Paragraph 7 of the MOU, as incorporated in Article 28.4.B of the National Agreement, limiting the amount that can be deducted from an employee's pay to "satisfy a postal debt," it did so with the understanding that the language meant any and all postal debt whether it was determined administratively or by court judgment. The APWU submits that it is the clear language that controls in this case.

If, as the Postal Service maintains, the parties understood that Paragraph 7 of the MOU as incorporated in Article 28.4.B of the National Agreement was not intended to apply to all postal debt but only to administrative debt under the Debt Collection Act, the APWU's attempt to gain at arbitration that which it did not negotiate would discredit its position at arbitration. However, the Postal Service

Union, i.e., "when the salary offset is started." [Transcript p. 19.]

failed to show the mutual understanding it asserts in this case, i.e., the exception to Paragraph 7 for postal debt upheld by federal court judgment.

Clearly, there is no language in the introductory paragraph or Paragraph 7 of the MOU or in Article 28.4.B of the National Agreement for an exception based on court judgment salary offsets," as explicitly addressed in section 463 of the ELM. Also, noticeably absent from the introductory paragraph and Paragraph 7 of the MOU as well as Article 28.4.B of the National Agreement is any reference to administrative salary offsets, as specifically included in section 462 of the ELM and as specifically referred to in Paragraphs 1, 2, 3, 4, and 5 of the MOU. Moreover, the language includes no reference to section 5 of the Debt Collection Act, 5 U.S.C. 5514(a), which section 462.31 of the ELM refers, or to section 124 of Public Law 97-276, 5 U.S.C. 5514 "note," which section 463.1 of the ELM refers, and on which the Postal Service seeks to distinguish the exception it claims to Paragraph 7.

In support of its position, the Postal Service presented the testimony of James Friedman, who as managing counsel for the Postal Service's northeast area office, participated in the negotiation of the MOU. Mr. Friedman testified:

And in paragraph 7, we agreed that as to these administrative debts that we were collecting

through the grievance arbitration process or through the judicial officer department regulations for non-bargaining unit employees up till now, and for the same procedure thereafter for bargaining unit employees, for those debts we would give bargaining unit employees the benefit of whichever percentage worked to their advantage, 15 percent of disposable pay or 20 percent of gross pay. [Transcript p. 61.]

However, there is no reference in Paragraph 7 to "administrative debt" as the Postal Service seeks to distinguish in this case and no evidence that such a distinction was made by the Postal Service to the unions when they negotiated Paragraph 7 of the MOU.

Contrary to the Postal Service's argument, the APWU did produce evidence to support its stated position. The best evidence of the parties' intention is the MOU. On its face, Paragraph 7 of the MOU is clear and unambiguous. Even if, as the Postal Service urges, the Arbitrator were to give consideration to the negotiating history as recalled by one of the participants, other parole evidence suggests an opposite conclusion from the one claimed by the Postal Service.

The Postal Service's acknowledgement that the practice has been to apply the limits of Article 28.4.B to all postal debt including that upheld by federal court judgment during the twelve years since the parties entered into the MOU also demonstrates, as the APWU maintains, an agreement to waive any right the Postal Service may have had to collect up to 25

percent of an employee's pay to recover a postal debt. Contrary to the Postal Service's argument, its practice in this case is more significant than its retention of the language of ELM 463.21 and the higher percentage outlined in ELM 460 for postal debt upheld by federal court judgment. Even if, as the Postal Service maintains, the record had shown conclusively that the APWU did not raise any concern with the proposed ELM 460 language setting out the distinct federal court judgment procedure during the numerous discussions held between the parties' representatives or during the APWU's presentation of its case before Arbitrator Mittenthal, it was not unreasonable for the APWU to conclude from the language negotiated in Paragraph 7 that the Postal Service was willing to waive any right it might have had to offset a higher percentage when collecting postal debt. The Postal Service may not have intended the waiver when it agreed to the language in Paragraph 7 of the MOU, but it permitted the language that the Union reasonably relied on when it entered into the terms of the MOU.

It is not necessary, to decide if the continuing resolution, appended as the "note" to the DCA, applies to debts owed by postal employees to the Postal Service as well as to other agencies, as the Postal Service submits in this case. The record demonstrates that when the Postal Service entered into the MOU, it waived any right it may have had to

collect in increments of more than that agreed to in Paragraph 7 of the MOU for any debt owed by a postal employee to the Postal Service.⁴

The Postal Service submits that ELM 460 has included section 463.21, which excludes debt upheld by federal court judgment from the requirements of collective bargaining agreements, since the ELM 450 and 460 provisions were first promulgated. However, once the parties agreed to Paragraph 7 of the MOU, the APWU could reasonably rely on the agreed upon language as an exception to section 463.21 of the ELM.

The Postal Service submits that it could not have agreed to waive the statutory right to offset up to 25 percent of pay in order to collect a debt upheld by federal court judgment because that right belongs not only to the Postal Service but to other federal agencies collecting such claims from postal employees. However, the Postal Service could waive a right to offset up to 25 percent for debt upheld by court judgment to satisfy a debt owed to the Postal Service. As the parties agreed, the Article 19 appeal in this case applies only to debt owed by a postal employee to the Postal Service.

The Postal Service further maintains that the APWU's position is not credible given the absence of any evidence to

⁴ The parties agree that Paragraph 7 of the MOU as incorporated in Article 28.4.B of the National Agreement does not address debt owed by a postal employee to other government agencies and that any dispute

show that the APWU took the position it takes at arbitration at any time other than in Mr. Neill's November 5, 1993 letter. Although, as the Postal Service maintains, there is no specific mention by Mr. Neill in his May 24, 1995 memorandum of the position the Union takes at arbitration, the APWU is not limited at arbitration by such omission, and in fact, Mr. Neill's May 24, 1995 memorandum states that the language of section 462.42 of the ELM "should track Paragraph 7 of the MOU." [USPS Exhibit No. 11.] Moreover, given Mr. Neill's November 5, 1993 letter, the Postal Service could not have been surprised by the APWU's position at arbitration.

The Postal Service also questions the sincerity of the timing of the APWU's signing of the MOU and without clarifying the disagreement over the meaning of Paragraph 7 of the MOU. However, it was not the language of the MOU with which the APWU disagreed. It is the APWU's position that the language of Paragraph 7 of the MOU clearly includes any and all postal debt without exception for postal debt upheld by federal court judgment, and it is not necessary to change the language of the MOU to clarify the APWU's understanding. Contrary to the position of the Postal Service, signing the MOU after the Postal Service promulgated the revised ELM 460 language does not constitute a waiver of the APWU's objection to the ELM provision, and the language

concerning debt owed by a postal employee to another agency is not

of 463.21 of the ELM, relied on by the Postal Service, does not nullify the language of the parties' agreement. The record demonstrates that the signing of the MOU by the APWU was related to the delay necessary for the other unions to consider the proposed changes to ELM 460.

Neither the introductory paragraph nor Paragraph 7 of the MOU excludes postal debts upheld by federal court judgment. The other paragraphs of the MOU containing reference to administrative salary offsets under the DCA provide for the "due process" rights sought by the APWU for debt collected pursuant to the DCA; whereas, Paragraph 7 limits the amount that can be deducted from an employee's pay to satisfy the debt. That "a court has already applied due process and adjudicated a debt," as Mr. Friedman testified (Transcript p. 24), is not persuasive that it is therefore fair, reasonable and equitable to offset more than the limits of Paragraph 7 of the MOU because the debt was upheld by federal court judgment. There are two distinct ways of determining postal debt, as the Postal Service maintains, but there is only the one way of collecting it by payroll deduction and that is the method outlined and agreed upon in Article 28.4 of the National Agreement.

The appeal in this case as in the case before Arbitrator Mittenthal contests the promulgation of the ELM

before the Arbitrator.

460 provisions which address administrative salary offset under the authority of section 5 of the DCA as well as court judgment salary offset under the authority of section 124 of Public Law 97-276. The parties negotiated the language of the MOU to settle that dispute, and given the agreed upon language it was not unreasonable for the Union to believe that the limits in Paragraph 7 applied to all postal debt. Moreover, and as already stated, the Postal Service's acknowledgment at arbitration that its practice has been to apply the limits of Article 28.4.B regardless of the way the debt was determined is, as the APWU maintains, also consistent with the language. Accordingly, the Arbitrator finds for the APWU and makes the following Award.

AWARD

The ELM 460 language that provides for collection of postal debts by the Postal Service in increments greater than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay per pay period, whichever is lower, violates the MOU and Article 28.4.B of the National Agreement. Accordingly, the APWU's Article 19 appeal is sustained.

DATE: November 24, 2006


Linda S. Byars, Arbitrator