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NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE -and- AMERICAN POSTAL WORKERS UNION -and- NATIONAL ASSOCIATION OF LETTER CARRIERS Intervenor -and- MAIL HANDLERS DIVISION, LABORERS INTERNATIONAL UNION OF NORTH AMERICA Intervenor	GRIEVANT: Class Action Philadelphia, Penn. CASE NO. H4T-2A-C 36687

BEFORE: Richard Mittenthal, Arbitrator

APPEARANCES:

For the Postal Service:	Mary Anne Gibbons Attorney Office of Labor Law
For the APWU:	Anton G. Hajjar Attorney (O'Donnell Schwartz & Anderson)
For the NALC:	Keith E. Secular Attorney (Cohen Weiss & Simon)
For the Mail Handlers:	Laurence E. Gold Attorney (Connerton Ray & Simon)

Place of Hearing: Washington, D.C.

Date of Hearing: May 23, 1990

Date of Post-Hearing Briefs: October 25 and November 6, 1990

AWARD: The Postal Service violated APWU's rights under Article 17, Section 3 and Article 31, Section 2. The remedy for this violation is provided in the foregoing opinion.

Date of Award: November 16, 1990.

Richard Mittenthal
Arbitrator

BACKGROUND

This grievance protests the Postal Service's refusal to provide APWU with the minutes of certain Employee Involvement/ Quality of Work Life (EI/QWL) meetings held jointly by the Postal Service and the Mail Handlers. APWU insists that this denial of information was a violation of Article 17, Section 3 and Article 31, Section 2 of the National Agreement. The Postal Service disagrees. NALC has intervened in support of one phase of APWU's position. The Mail Handlers have intervened in support of the Postal Service's position.

The EI/QWL concept was introduced in postal facilities in September-October 1982. Three of the four major unions - NALC, Mail Handlers, and Rural Letter Carriers - agreed to participate in the process. APWU is not a participant. The purpose of the program, broadly stated, is to "improve...the working life..." of employees and "enhance the effectiveness of the Postal Service." Management and each of the three unions above have established joint committees at local, regional and national levels to implement the EI/QWL concept. The committees attempt to identify and solve problems which affect the employees' work and the quality of their work life with the object of achieving greater job satisfaction and smoother operations. The committees, however, are "not intended to be a substitute for collective bargaining or the grievance procedure." And "no agreement or understanding reached as a result of the QWL process may negate or interfere with the National Agreement..."[1]

The Philadelphia Bulk Mail Center (BMC), Business Annex, has a 045 operation (non-preference letter distribution) and a 075 operation (non-preference flat secondary distribution). APWU clerks had been responsible for sorting this mail into cases by zip code and scheme knowledge, removing the sorted mail, bundling or banding it, and placing it in the appropriate receptacle, either a sack or an all-purpose container (APC). The latter task was part of the so-called dispatch function. These arrangements had evidently been in effect for some years.

M. Gallagher, the then President of APWU Local 7048, was told by a Mail Handler in September 1986 that this particular dispatch function had been discussed in EI/QWL meetings

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[1] The quotations in this paragraph are taken from the October 15, 1982 Understanding (Statement of Principles & Committee Responsibilities) signed by the Postal Service and the Mail Handlers.

involving Management and the Mail Handlers and changes in this function were being considered by Management. Gallagher heard that the dispatch area was to be redesigned and that this would likely mean a "change in jurisdiction", namely, a re-assignment of dispatch work from APWU employees to Mail Handler employees. He therefore submitted the following request to Management on September 18:

> ...We request that the following documents...be made available to us in order to properly identify whether or not a grievance does exist and, if so, their relevancy to the grievance:
>
> 1. Request copies of all the minutes of all Employee Involvement/Quality of Work Life meetings ...

He apparently made clear that he was referring to Management-Mail Handler minutes.

Gallagher's request was passed along to the appropriate department. He spoke with W. Traugott, the then Acting Employee & Labor Relations officer in the BMC. He claims that Traugott advised him "he would provide that information as soon as he could get it" and that Traugott expressed no reservations about satisfying APWU's request. However, he was later informed that Traugott was having difficulty getting the minutes because P. Brown, the Coordinator for the local EI/QWL group, was not sure these minutes could be given to APWU. And he was still later informed that his request had to be referred to the national EI/QWL group for an answer. APWU became impatient with the delay and filed a grievance (CG-426) on November 1. It cited Articles 17 and 31 and complained of Management's failure to "provide the Union an opportunity to review the minutes of all...[EI/QWL] meetings."

In the meantime, evidently in late October, Management redesigned this dispatch function. APWU employees continued to distribute the mail, casing and bundling, at the 045 and 075 operations. But they now put the bundles in a utility cart. The cart was moved to a dispatch area by Mail Handler employees who then placed the bundles in APCs. These employees matched the "labels", perhaps this refers to zip codes, on the bundles with the "labels" on the APCs. They did not require scheme knowledge for this task. APWU believed that dispatch work had been improperly transferred from APWU jurisdiction to Mail Handler jurisdiction. It filed a grievance (CG-424) on October 24 and complained that the duties in question were "clearly clerical distribution activities" which were part of APWU's jurisdiction.

As for the grievance now before the arbitrator, the grievance protesting the failure to provide the EI-QWL minutes, Management's Step 1 representative was a Supervisor of Mails. She referred the grievance to Step 2 because "information is not available to me on QWL meetings." At Step 2, only Gallagher and Traugott were present. There is a difference of opinion as to what was said. Gallagher alleges he told Traugott that the dispatch change had an impact upon the APWU bargaining unit and was a by-product of EI/QWL discussions and that the minutes of those discussions were hence "relevant." He insists that Traugott did not raise the question of "relevancy" and that Traugott simply said he would give the minutes to the APWU if he had them but he had been unable to obtain them. Traugott, however, alleges that Gallagher offered no explanation as to why he wanted the minutes. Nor, according to Traugott, did he ask Gallagher for an explanation.

The Step 2 answer, prepared on November 20 by someone on Traugott's staff, read in part:

> A review of the facts indicates that the APWU Local 7048 has no contractual right to access to the minutes of the quality of work life meeting. The record indicates that the APWU declined during contract negotiations to participate in the QWL process. Therefore, their elimination from the program was by choice. Management has no obligation (and since another craft union is a primary participant), and no right to make this information available to the APWU.

Gallagher sought to correct Management's Step 2 answer on November 29. He advised Traugott in writing that he had "clearly indicated" at the Step 2 hearing that APWU had "sufficient reason to question discussions...in QWL meetings as we...suspect that on occasion our bargaining unit positions are the topic."

Traugott formally replied on December 2, 1986, to Gallagher's September request for information. He noted on the request form that the request was "denied" because he had been "unable to secure copies of minutes from QWL Committee." The Postal Service-Mail Handlers committee decided at the national level on February 3, 1987, that the minutes of any committee meeting could not be released without the consent of both such parties.

The grievance was heard in Step 3 on March 2, 1987. Management denied the grievance on the ground that APWU "has

not established the relevancy of their request to review the records in question." An appeal to regional arbitration followed but the Postal Service took the position that a "national interpretive issue" was involved. Hence, a Step 4 meeting was held on March 22, 1988. Management again denied the grievance, emphasizing the following points:

> Whether an APWU bargaining-unit position is discussed during an EI-QWL meeting is immaterial. No action has been taken as a result of such meetings which would affect any positions within the APWU crafts. The APWU has chosen not to participate in the EI/QWL process, therefore, the information from EI/QWL meetings would not be necessary for the enforcement, administration, or interpretation of the National Agreement.
>
> In addition, because the Union has not claimed that any action has been taken which affected an APWU craft position, the minutes would not even be necessary to determine whether a grievance exists.

APWU found this answer unsatisfactory and appealed the case to national level arbitration on May 12, 1988.

Meanwhile, the other grievance (CG-424) concerning the merits of the work jurisdiction issue was moving through the grievance procedure. It reached regional arbitration in April 1989. Arbitrator Condon held that the Postal Service did not violate Regional Instruction 399 "when it assigned Mail Handlers to perform functions in the PA 045 & 075 areas." His ruling, in short, was that the dispatch function once performed by APWU employees could properly be reassigned to Mail Handler employees under the peculiar circumstances of that case.

The relevant provisions of the 1984 National Agreement read in part:

Article 17, Section 3

> The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses

during working hours. Such requests shall not be unreasonably denied. (Emphasis added)

Article 31, Section 2

The Employer will make available for inspection by the Unions all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information. (Emphasis added)

DISCUSSION AND FINDINGS

The APWU contends it had a right to the minutes of EI/QWL meetings held jointly by Management and the Mail Handlers at the Philadelphia BMC. It asserts that its representatives are responsible for filing and processing grievances, that they meet this responsibility in part by obtaining from Management "relevant information..." and "necessary" records or other documents, and that the minutes in question contained such "relevant" and "necessary" materials. It urges, accordingly, that Management's refusal to provide such minutes was a violation of Article 17, Section 3 and Article 31, Section 2. It alleges that it had reason to believe the minutes referred to a possible rearrangement of certain dispatch work, a rearrangement which could and later did result in the reassignment of work from APWU employees to Mail Handler employees. It claims that the minutes promised to reveal what was, from its standpoint, an improper intrusion on APWU's work jurisdiction. NALC supports one phase of APWU's position.

The Postal Service completely disagrees with APWU's analysis of the case. It argues, for the following reasons, that Management committed no violation of the National Agreement. First, it says APWU has failed to show that the requested minutes were "necessary" records or contained "relevant information." It stresses that EI/QWL committees do not engage in collective bargaining and cannot "negate or interfere" with the terms of the National Agreement. It maintains that because these committees therefore cannot discuss any subject which could impact APWU contract rights, the minutes could not possibly be "relevant."

Second, the Postal Service urges that only Management actions, not Management thoughts or discussions, can produce a legitimate grievance. It emphasizes that EI/QWL committees can merely recommend, that the APWU could have no grievance until Management acted on such recommendation, that APWU's request for information in September 1986 occurred before any rearrangement of the dispatch function (i.e., before any alleged intrusion on APWU's work jurisdiction), and that the request was hence inappropriate. Third, it maintains that the minutes in question were the joint property of Management and the Mail Handlers, that such minutes could be turned over to APWU only with the consent of both parties on the committee, and that no such joint consent was given. The Mail Handlers support the Postal Service position.

I - The Right to Information

The National Agreement plainly provides APWU with a means of acquiring from Management information it may need in filing or processing grievances. Article 17, Section 3 gives Union representatives the right to "obtain access...to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists..." The Union representative must first "request" such information. Not all "requests" need be granted but Section 3 states that a request "shall not be unreasonably denied." Thus, when a request is made and denied and a grievance is filed protesting the denial, the issue is whether the denial was "unreasonable." The answer to that question is likely to turn on whether the information sought was "necessary..."

Similarly, Article 31, Section 2 gives Union representatives the right to "inspect...all relevant information necessary for...enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance..." The Union representative must first "request" such information and Management then "will furnish" it. Management may of course refuse to furnish information if it is not "relevant" or if it has nothing to do with "enforcement, administration or interpretation" of the Agreement. These latter words relate in large part to the Union's responsibility with respect to the filing and processing of grievances.

Article 31, Section 2 has been the subject of two national level arbitration awards. The first, Case No. H4N-NA-C 17, by Arbitrator Bernstein is dated August 1988. There, NALC had requested individual employee data which it alleged was "necessary for both collective bargaining and contract

administration." Its request sought a list of city carriers by name and by sex, date of birth (i.e., age), minority code, handicap code, and veteran's preference code. It insisted that this information was needed on an "ongoing" basis and asked that it be furnished "quarterly." The Postal Service rejected the request and NALC grieved.

The arbitrator denied the grievance. He explained that Article 31, Section 2 of the 1981 National Agreement required Management to furnish "on a regular, ongoing basis" nothing more than the following employee information: "name, full address, and social security number; craft designation; health benefits enrollment code number; post office name, finance number and class." He held that NALC was asking for further data "on a regular ongoing basis" and was therefore improperly "attempt[ing] to expand the scope of..." Article 31, Section 2 through arbitration. His ruling stressed that NALC had couched its request in an inappropriate manner, that it had sought information it could not have "on a regular, ongoing basis." But the arbitrator went on to say, by way of dicta, that if NALC requested this same information "on an infrequent basis", its request would have been justified and Management would have had to provide such information.

The second award, Case No. H7N-NA-C 34, by Arbitrator Mittenthal is dated November 1989. There, several months after the Bernstein award, NALC had requested the same data Bernstein had said it was entitled to on an "infrequent" or "occasional" basis. It sought certain additional information as well. I held, following the principles expressed in the Bernstein award, that NALC was entitled to all such information other than the individual minority code.

What is significant in this case was the Postal Service argument that NALC failed to show that the information requested was "relevant or necessary for collective bargaining and/or contract administration" My decision noted that NALC had explained in Step 4 that this information was to be used for "telephone surveys" of its members. Those surveys, according to the Bernstein award, were to be conducted among "specific subgroups of the bargaining unit - women, blacks, veterans, etc. - to ascertain their particularized needs and desires so that they can properly be represented in the Union's bargaining proposals." On the basis of NALC's claim that such information was "necessary" for collective bargaining, Bernstein had held and I expressly agreed:

> ...This is a sufficient showing to comply with the [Article 31, Section 2] mandate that the data sought must be "relevant information necessary for

collective bargaining."

> ...[T]he arbitrator [cannot be made] the judge of the Union's bargaining needs. The decision as to what data is needed to prepare the Union's bargaining proposals is one that only the Union can make. If it asserts that it needs this data for that purpose, and there is no reason to conclude that the assertion is not truthful, that is enough to satisfy the mandate of [Article 31, Section 2]...

These findings should be kept in mind in evaluating the "relevancy" arguments made in the instant case.

II - Relevancy of Requested Information

The parties disagree as to whether the minutes APWU requested were "relevant" or "necessary" within the meaning of Articles 17 and 31. APWU says these minutes were "relevant" and "necessary." The Postal Service says they were not.

To place this disagreement in sharper focus, certain facts bear repeating. An APWU representative was informally advised that Management and the Mail Handlers, at their EI/QWL meetings, had discussed the rearrangement of a dispatch function in the BMC and perhaps a reassignment of work which might result from such a rearrangement. APWU believed that such discussions may have impinged on its work jurisdiction in violation of the National Agreement. It hence asked for the minutes of these meetings. Management refused to provide this information. APWU grieved. The Postal Service does not deny that such discussions took place at EI/QWL meetings. It claims, however, that the minutes of these meetings would not be "relevant" or "necessary." Neither APWU nor the arbitrator has seen the minutes in question.

Perhaps the minutes contained nothing which could arguably be the basis for the filing of a grievance. In that event, APWU's request would not be "relevant." But perhaps the minutes did contain material which could arguably support the filing of a grievance. Suppose, for instance, that EI/QWL discussions went beyond their permissible limits and suggested some kind of bargain over work jurisdiction.[2] APWU could then understandably believe that a violation of Article 1 or some other provision of the National Agreement may have occurred. In that event, its request would be "relevant."

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[2] This is pure supposition and should not be read to suggest what actually happened at any EI/QWL meeting.

APWU was plainly at a disadvantage in this situation. Because it had not seen the minutes, because it had not been informed as to precisely what the minutes said, APWU was confronted by special difficulties in establishing the "relevancy" of its request. However, APWU had good reason to believe that EI/QWL discussions between Management and the Mail Handlers involved a possible new work flow through the BMC. It knew that such a change might well have an adverse impact on APWU's work jurisdiction. It knew too that work jurisdiction issues are grievable under the National Agreement. Given these circumstances, where APWU asserts it needs EI/QWL minutes for purposes of contract administration and there is no reason to conclude this assertion is not truthful, that is enough to demonstrate "relevancy." APWU has a right under Article 17 to "review...records necessary for ...determining if a grievance exists..."; APWU has a right under Article 31 to "relevant information...necessary to determine whether to file a grievance..."

No doubt some type of investigation precedes the submission of a grievance. Information is developed and a decision is made by APWU as to whether or not a grievance is warranted. If there seems to be no merit in a particular complaint, presumably no grievance would be filed. It is for the APWU alone to "determin[e]...if a grievance exists...", to "determine whether to file...a grievance..." If the information it seeks has any "relevancy" to that determination, however slight, its request for this information should be granted. Assume for the moment that the EI/QWL minutes were not "relevant" to the work jurisdiction grievance filed five weeks after APWU initially requested these minutes. That assumption cannot control the disposition of the present case. Whether a piece of information is "relevant" to the merits of a given claim is one thing; whether such information is "relevant" to APWU's determination to pursue (or not pursue) that claim through the filing of a grievance is quite another. The latter question allows "relevancy" a far broader reach and should have permitted the APWU, for the reasons already expressed, to receive the appropriate EI/QWL minutes. The Postal Service view that APWU's request for these minutes was a mere "fishing expedition" is not persuasive.

III - Other Postal Service Defenses

The Postal Service emphasizes that APWU requested the minutes in September 1986 and that any EI/QWL meetings preceding this request would have involved mere discussions, maybe recommendations, but certainly no Management action. It

contends that there could be no legitimate grievance until Management acted, until Management actually rearranged the dispatch function and perhaps reassigned work. It believes that APWU's request for the minutes therefore could not have been "relevant" and was properly denied.

This argument has in part already been answered. Surely, the restrictions on permissible subject matter for EI/QWL groups could be ignored in a given meeting and work jurisdiction could become a matter of group discussion and perhaps even tacit agreement. That may not be what happened. But the only way APWU could discover what was actually said in these meetings was to examine the minutes. Management refused to allow APWU to do so. It thus prevented APWU from making an informed and measured "determin[ation]" as to whether "a grievance exists" or whether "to file...a grievance." That was improper under Articles 17 and 31.

Even if Management was correct in rejecting APWU's request in September 1986, the fact is that a grievance was filed on October 24, 1986, protesting an alleged incursion on APWU's work jurisdiction. The APWU request for the minutes was still pending as of October 24.[3] By then, however, Management had rearranged the dispatch function and perhaps reassigned work. Management had acted but nevertheless continued to refuse APWU's request for the minutes. What the minutes contained I do not know. They could possibly have revealed the kind of considerations which prompted the reassignment of the dispatch function; they could possibly have revealed some conflict between what Management told the Mail Handlers and what Management later told APWU in processing the work jurisdiction grievance; and so on. They could very well have proven "relevant" to APWU's case on the merits. APWU had a right under Article 17 to "review... records necessary for processing a grievance..."; APWU had a right under Article 31 to "relevant information...necessary to determine whether...to continue the processing of a grievance ..." These rights were simply not honored.

The Postal Service alleges further that APWU's request was for "all" the minutes of "all" EI/QWL meetings of Management and the Mail Handlers at the BMC. It maintains that this request was too broad, too unfocused, and that hence its denial was not unreasonable.

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[3] Management did not formally reject APWU's request until it issued its Step 2 answer to the present grievance on November 20, 1986.

The difficulty with this argument is that it would have been a simple matter for Management to insist that APWU make its request more specific. Management's representative in Step 2, for example, admitted he did not ask why APWU wanted the minutes. The APWU representative, I believe, would have provided the specifics if asked. Indeed, he claims he told Management in Step 2 what APWU's concerns were. He submitted a written correction to Management's Step 2 answer in which he stated that "we clearly indicated in our Step 2 hearing..." that APWU has reason to believe that "our bargaining unit positions are the topic..." of EI/QWL meetings. Surely, the Management and APWU representatives should have known by Step 2 - and most likely did - that APWU's request concerned information relating to the work jurisdiction grievance which had been filed in late October 1986, several weeks earlier.

The Postal Service asserts finally that the minutes were the joint property of Management and the Mail Handlers. It says these minutes cannot be released to APWU, or anyone else, without the consent of the parties to this particular EI/QWL arrangement. It stresses that such mutual consent had not been given.

This argument is not convincing. APWU has a right to obtain from Management information which satisfies the "relevancy" or "necessary" test in Articles 17 and 31. As explained in Part II, its request for the minutes in this case did satisfy these tests. Nothing in either article suggests that the parties meant to exclude EI/QWL minutes from the "documents, files and other records" which are subject to the discovery procedure. True, Article 17, Section 3 states that "requests shall not be unreasonably denied" and thus infers that a request can properly be denied for good reason. It may be that some matters discussed at EI/QWL meetings are so confidential or personal that Management would have good reason to deny disclosure. But I am not convinced, on the evidence before me, that an administrative decision not to release any minutes without the joint consent of Management and the Mail Handlers constituted good reason for refusing APWU's request. The minutes sought by APWU were potentially "relevant" and "necessary" to the work jurisdiction issue raised by APWU and should therefore have been provided.

IV - Summary

My ruling must be that the Postal Service violated Articles 17 and 31 by refusing to grant APWU's request for EI/QWL minutes, specifically, those portions of the minutes which related in any way to the rearrangement of the dispatch function and the possible reassignment of work due to such

rearrangement. The denial of this request was not reasonable.

As for the remedy, Management must now provide APWU with the information it sought. Of course this disclosure will occur far too late. Arbitrator Condon has already decided the merits of the work jurisdiction grievance in favor of the Postal Service. Should the information revealed in the minutes suggest that the Condon award was in error, should such information suggest that Condon may have ruled differently had he been privy to these minutes, APWU should be free to bring the grievance back to regional arbitration. Condon could then reconsider the matter and determine whether he would have decided the merits of the dispute differently had he possessed this additional piece of information.

AWARD

The Postal Service violated APWU's rights under Article 17, Section 3 and Article 31, Section 2. The remedy for this violation is provided in the foregoing opinion.

Richard Mittenthal, Arbitrator