

In the Matter of the Arbitration Between:

UNITED STATES POSTAL SERVICE

AND

AMERICAN POSTAL WORKERS UNION

Case No. H1T-5H-C 11097
Class Action (Hoffman & Nelson)

Hearing held December 2, 1983

Before Richard I. Bloch, Esq.

APPEARANCES:

For the Union

Richard I. Wevodau
Director, Maintenance Craft Division

For the Employer

L. G. Handy
Program Manager, Contract Administration

OPINION

Facts

During 1982, Grievants Linn Nelson and Paul Hoffman had each applied for and been placed on the Sacramento, California Post Office's Promotion Eligibility Register for Electronic Technician, Level 9. Messrs. Hoffman and Nelson occupied the number 1 and 2 positions, respectively. Both were sent to Norman, Oklahoma for formal training for the position. However, Nelson failed the training course and Hoffman withdrew. Thereafter, the names of both employees were removed from the ET-9 PER.

On December 27, 1982, a class action grievance was filed

by the Sacramento APWU Local, charging that Management had violated Article 38, Section 2(C) of the 1981-84 National Agreement by unilaterally removing the names.

Issue

Was it a violation of the labor agreement for Management to have unilaterally removed Grievants' names from the PER?

Union Position

The Union maintains, at the outset, that the grievance is not arbitrable inasmuch as it had been previously settled in two Step 4 agreements.

On the merits, the Union says that once an individual is on the PER, he is thereby considered qualified and may not be removed merely as a result of having failed a training course.

Management Position

Management denies the matter has been settled. Additionally, it contends that the labor agreement specifically provides for the right to update PER's, with nothing therein constraining its right to remove someone entirely.

Relevant Contract Provisions

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;
- 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;

E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and

F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

ARTICLE 38
MAINTENANCE CRAFT

. . . Section 2. Posting

. . . C. Promotion

1. The Employer will maintain existing, or establish as necessary, a promotion eligibility register to be used for the purpose of filling vacancies in the particular occupational group and level. A promotional eligibility register shall be established for each occupational group and level for which there is a position existing in the installation. The register shall remain in effect throughout the life of this Agreement. Upon notification from an employee of the acquisition of new or additional training, education, or experience pertinent to the qualifications for the position, the Employer will update the existing register within 10 days of receipt of such notification. Such employee notification must be furnished within thirty (30) days of the acquisition of such additional training, education, or experience. The promotion eligibility register shall not be updated during the period of time a vacant position is in the process of being filled. Employees shall be listed on this register in order of qualifications, and all positions for promotion shall be awarded to the best qualified applicants, except those positions set forth in Section 1, E8 of this Article.

. . . 5. Upon entry into the maintenance craft in an installation, an employee may request to be placed on the appropriate preferred assignment and/or promotion eligibility registers. Within 90 days of the effective date of this agreement, maintenance craft employees who are not on a promotion eligibility register(s), may apply for inclusion on the appropriate promotion eligibility register(s).

Analysis

The Union directs the Arbitrator's attention to the con-

tents of two Step 4 Agreements, both dated May 3, 1983 and involving Grievants from Boston and New Haven.¹ The terms of the written settlement are not, themselves, dispositive of the instant issue. Both letters, in identical terms, state the issue as whether Management "violated Article 38 of the National Agreement when updating and establishing promotion eligibility registers (PER)." They continue:

During our discussion, we agreed to the following:

1. Established promotion eligibility registers will not be updated or modified except as provided in Article 38.2C.1 and 38.2C.5.

2. When an existing promotion eligibility register is being updated either by a request from an employee who is already on the register in accordance with Article 38.2C.1 or by adding a newly qualified employee in accordance with 38.2C.5, the individual employee involved will be placed according to his/her qualification without changing the standings, relative to each other, of other employees on that register.

3. Issues involving relative qualifications for placement on registers will be processed as non-interpretive.

On their face, these agreements provide no specific guidance in this case. Paragraph 3 reflects the understanding that questions of individual, relative qualifications are to be processed as "non-interpretive" issues. Among other things, this would channel them to regional, rather than national, arbitration. Paragraph 2 commits Management to maintain relative standings of existing registrants when adding newly-qualified employees in accordance with 38.2C.5. That portion of the

¹The cases were HIT-1E-C 8238, HIT-1E-C 8241 (Boston) and HIT-1J-C 8036 (New Haven).

agreement applies to facts not at issue here. Paragraph 1 says merely that the parties will abide by the requirements of 38.2C.1 and 38.2C.5. The final disposition applicable to employees involved in those cases is not apparent from either the evidence or testimony in this case, but it is clear that the protest was lodged not over unilateral removal of an individual from the PER, but rather on claims of improper low ranking in one case (New Haven) and of unilateral modification of relative rankings in the other (Boston). The Union suggests that, if Management is prohibited from unilaterally modifying relative rankings in placing new employees, it follows that it is prohibited from removing one from the list entirely. This argument is not without some force. However, while it is appropriate that it be considered in terms of the merits of the dispute, the Arbitrator finds that the facts of the Boston and New Haven grievances were sufficiently dissimilar from those of the instant case that one may not find this case to have been resolved. Otherwise stated, one may not conclude, on the basis of the Fourth Step agreements, that the parties were settling the issue of any and all employer actions relative to the Promotion Eligibility Registers.

Resolving the question of involuntary removal from the PER requires some scrutiny of what membership on that list means, and what rights and entitlements flow therefrom. As will be noted, the labor agreement nowhere specifically answers that question and it is apparent from the evidence that such mem-

bership may mean different things in different circumstances.

As a general matter, employees meeting certain basic eligibility requirements are placed on the Register.² In the process of placing individuals on the Register, Management

²See, for example, a "Maintenance Bulletin" issued by the Postal Service in October of 1975 (Union Exhibit 16) which discusses, among other things, establishment and implementation of Promotion Eligibility Registers. That Bulletin states, in relevant part:

IX. PROMOTION ELIGIBILITY REGISTERS

Each employee in the Maintenance Craft will be provided with a Promotion Preference Selection Form during the first pay period in January of each year. All employees desiring to be considered for promotions will list the positions they wish to be considered for. Employees who are on leave or away at training courses will be furnished the forms by mail. A list of existing positions will be posted to assist them in making their selections. Employees should list all position titles in which they are interested and for which they are eligible and qualified. They should also include all positions for which they expect to become eligible during the coming year. All forms must be returned by the closing date indicated on the form but no later than the second pay period in January. No employee will be permitted to change or amend promotion preferences until the following January.

The Maintenance Manager will review the forms and indicate on each form the positions for which each employee is eligible. The Manager will then evaluate the qualifications of the employee for each of the positions selected. This evaluation should be made on PS Form 1796 using the qualification standards found in the standard position descriptions and should result in a numerical index of qualification. Eligible candidates who have selected a position title will be ranked according to their qualification index. A promotion eligibility register will be prepared for each position (salary level and occupation group) listing the candidates in that order.

All employees meeting the basic eligibility requirements for promotion to positions of their preference will be placed on the promotion eligibility register for that position in order of qualifications. . . .

makes determinations as to minimal qualifications as well as to relative rankings. And, on the basis of certain occurrences, relative rankings may be changed. An individual who achieves additional training, for example, may be elevated, relatively, when the Registers are "updated"³ and will, therefore, be closer to the head of the line and the concomitant right to receive "developmental training" which, according to Article 38(3)(B)(2)(B), is offered to qualified volunteers who are "first on the appropriate Promotional Eligibility Registers."

Unanswered by the contract, however, is the question of what happens if an individual fails to successfully complete the developmental training. One may conceive of a variety of possibilities: For example (as the Union here suggests), the person might remain in precisely the same position on the list and therefore be first in line to receive the same training again; he or she might remain in that slot for the purpose of receiving training on another aspect of the desired job; the person might be moved down on the list until such time as the normal rotation brings him or her back into a priority position; or (as Management contends) the person might be removed from the list entirely, as was the case here. Conceivably there are other alternatives. The National Agreement does not address this question.

On the one hand, as the Union notes, there is a "catch 22" inherent in at least one of these possibilities. To be

³See Article 38(2)(C)(1).

promoted, an individual is often required to have successfully completed certain developmental training.⁴ However, in order to receive the training, one must be on the PER. Thus, removal from the list is tantamount not only to negating any developmental training opportunities but also to imposing a higher standard for staying on the list than for first ascending to it. On the other hand, were one to conclude that an individual may remain on the list indefinitely, an employee who is forever capable of passing the exam would not only retain first priority in terms of further developmental training but would also constitute a "block" to any other individual desiring such training and a subsequent promotion. Particularly in the absence of any language on point, one may not conclude that this was the intent of the parties.

The question remains, then, as to when, if ever, one may be removed from the Register. The answer lies in the standards applicable to inclusion on the Register. One placed there is not necessarily immediately eligible for promotion--the clear necessity for some training in certain circumstances belies

⁴Various qualifications standards, including the ET9, clearly incorporate exam requirements as a prerequisite for the promotion:

Completion of the appropriate examination is required as the selection criterion for a training course at the Postal Service Training and Development Institute. Successful completion of this course is a prerequisite for the ensuing OJT training at the applicant's installation. Only after successful completion of this OJT training is the applicant promoted to a PS-9 or PS-10 as described above.

that assumption. Rather, a person need possess only certain basic qualifications which make him or her eligible for further training. Some training, while important, may only be on a limited portion of the job. It may be that failure under those circumstances should not reasonably be equated with overall lack of qualifications. But other training may be on job elements that are comprehensive and that constitute the core and character of the classification. Failure in those circumstances may be reflective of an inability to progress in areas that are essential to successful incumbency. When, in the exercise of reasonable judgment, it may be determined that failure of developmental training is tantamount to demonstrating a lack of broad, basic qualifications, then continued standing on a register requiring those same attributes is inappropriate and Management may remove that individual without violating the labor agreement.

These are facts that must be determined on an individual, case-by-case basis. In some cases, failure to pass the exam on one administration may not reflect the type of basic lack that would justify immediate removal from the list. In other situations, a given test may have covered such a narrow portion of the job that, reasonably speaking, the person should be considered potentially available for other assignments within the same classification that would not involve those duties. If this be the case, fairness may dictate the conclusion that an employee does not lack minimal qualifications. As indicated

above, however, the nature of these inquiries requires careful, indeed, meticulous, examination of the facts relevant to each individual job.

In general, then, it may not be said that the mere act of removing an individual from the Promotion Eligibility Register is to be regarded as a contract violation. Where failure of a particular examination for a particular classification justifies the conclusion that the person lacks even those minimal qualifications as would entitle him or her to standing on the Register, such actions should be found justified. But since the individual had previously been deemed potentially eligible for promotion, the burden is on Management to justify the premise that the failure or failures demonstrates otherwise.

The record in this case contains no specifics concerning the individual Grievants and the ruling in this case sets to rest not the question of their standing on the list (which by virtue of the Step Four agreements cited earlier is a non-interpretive issue) but concludes that the National Agreement does not constrain Management, in the appropriate circumstances, from removing an individual from the Promotion Eligibility Register.

AWARD

The grievance is denied to the extent indicated in the above Opinion.


Richard I. Bloch, Esq.

June 8, 1984