

C# 00723

.....
UNITED STATES POSTAL SERVICE

CASES NOS. M-NAT-196
and M-W-166

and

NATIONAL POST OFFICE MAIL HANDLERS,
WATCHMEN, MESSENGERS AND GROUP
LEADERS DIVISION OF THE LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA, AFL-CIO
.....

Issued:

July 30, 1975

BACKGROUND

These two cases were presented to the Impartial
Chairman in a consolidated hearing on April 15, 1975. They
arose under the July 20, 1971 National Agreement and involve
issues arising from failure to make dues deductions from the
pay of employees in proper fashion. Both parties filed com-
prehensive briefs as of June 3, 1975.

1

The issues arise under Article XVII, Section 7 of
the 1971 National Agreement reading:

2

"SECTION 7. Checkoff. A. In conformity with
Section 2 of the Act, 39 U.S.C. 1205, with-
out cost to the Unions, the Employer shall
deduct and remit to the appropriate Union
the regular and periodic Union dues from the
pay of employees who are members of such
Union, provided that the Employer has re-
ceived a written assignment which shall be

irrevocable for a period of not more than one year, from each employee on whose account such deductions are to be made. The Employer agrees to remit to each Union all deductions to which it is entitled prior to the end of the month for which such deductions are made. Deductions shall be in such amounts as are designated to the Employer in writing by each Union.

"B. The authorization of such deductions shall be in the following form:

AUTHORIZATION FOR DEDUCTION OF UNION DUES

United States Post Office Department or
United States Postal Service

Date _____

I hereby assign to _____
Union

from any salary or wages earned or to be earned by me as your employee (in my present or any future employment by you) such regular and periodic membership dues as the Union may certify as due and owing from me, as may be established from time to time by said Union. I authorize and direct you to deduct such amounts from my pay and to remit same to said Union at such times and in such manner as may be agreed upon between you and the Union at any time while this authorization is in effect.

"This assignment, authorization and direction shall be irrevocable for a period of one (1) year from the date of delivery hereof to you, and I agree and direct that this assignment, authorization and direction shall be automatically renewed, and shall be irrevocable for successive periods of one (1) year, unless written notice is given by me to you and the Union not more than twenty (20) days and not less than ten (10) days prior to the expiration of each period of one year.

"This assignment is freely made pursuant to the provisions of the Postal Reorganization Act and is not contingent upon the existence of any agreement between you and my Union.

Signature of Employee

Type or Print Name of Employee

Street Address

City, State

Employee's Clock Number

Employee's Social Security No.

Date of Signature

Date of Delivery to Employer

(Form to be revised to conform to P.S. machine requirements as on S.F. 1187.)

"C. Notwithstanding the foregoing, employees' dues deduction authorizations (Standard Form 1187) which are presently on file with the Employer on behalf of a Union party to this Agreement, shall continue to be honored and given full force and effect by the Employer unless and until revoked in accordance with their terms."

(Underscoring added.)

In accordance with provisions in the Postal Manual, a checkoff system already was in effect in the Postal Service prior to Postal Reorganization and negotiation of the 1971 National Agreement. Under Article XVII, Section 7-C all existing dues checkoff authorization forms (Form 1187) were to continue in effect unless and until revoked in accordance with their terms. These existing authorizations could be revoked

at any time, but no such revocation could become effective except during stated intervals, twice a year. The dues deduction authorization form (Form 1187) also included the following language, differing somewhat from the language in Article XVII, Section 7-B:

"I hereby authorize the above-named agency to deduct from my pay each pay period, or the first full pay period of each month, the amount certified above as the regular dues of the [appropriate labor organization]..."

Grievance M-W-166 arose in the Phoenix, Arizona, Post Office. On December 10, 1971 Mail Handler Claybrooks signed a one-year irrevocable checkoff "Authorization for Deduction of Dues," subject to the provisions of Article XVII, Section 7-A and -B of the 1971 National Agreement. Around April 22, 1972, however, he submitted to the Postal Service a standard Form 1188 seeking to revoke his dues checkoff authorization. Upon receipt of his de-authorization form, the Postal Service promptly discontinued deduction of dues from Claybrooks' pay, contrary to Article XVII, Section 7-B. Under this provision Claybrooks' dues checkoff authorization properly could have been revoked only within the limited 10-day period prescribed therein. This would have occurred in late November of 1972. 4

Early in October of 1972 Mail Handler Local 88 filed a grievance protesting the failure to deduct and transmit Claybrooks' dues. In a December 8, 1972 letter the Mail Handlers held that, while the Postal Service was liable for 5

the back dues which had not been collected, it could not recoup such back dues from Claybrooks' pay. Ultimately, the Postal Service acknowledged its error in handling Claybrooks' revocation form and advised National Director Johnson, by letter of January 16, 1973, that:

"Without prejudice to our position relative to the filing of a grievance by the union, we have considered the substance of the complaint that cancellation of the authorization for deduction of union dues from the salary of Mr. Robert J. Claybrooks, during pay periods 11-72 through 22-72, was contrary to provisions of the National Agreement and established policy of the Postal Service.

"Deduction of union dues from Mr. Claybrooks' salary was resumed in pay period 23-72. Arrangements were made to deduct \$27.00 from his salary in pay period 24-72, and to remit this amount to the union in full payment of dues not withheld and remitted during pay periods 11-72 through 22-72. The cause giving rise to the grievance no longer exists; therefore, the case is closed."

(Underscoring added.)

Not being satisfied with the apparent Postal Service position that payment of the back dues to it was contingent upon deducting such accumulated dues from Claybrooks, the Mail Handlers thereupon carried the case before the Impartial Chairman.

The major grievance here is M-NAT-196. It arose in the Western Region because of administrative errors in the USPS Data Processing Center involving the final pay period of 1972. As a result there was no deduction of Mail Handler dues from the pay of about 1,000 Mail Handlers in the area involved. The error soon was discovered and acknowledged on December 27, 1972. Retroactive adjustments in the employees' pay were made by taking a double deduction of dues in the January, 1973 dues withholding period from those of the involved employees who received pay in that period. There apparently was no payment to the Mail Handlers of dues owed for the December period by individuals who in January and thereafter earned no wages in the Postal Service.

On January 15, 1973 the Union filed a Step 4 national level grievance, claiming violation of Article XVII, Section 7, because of the failure to deduct Mail Handler dues for the December, 1972 pay period, and asserting that the Postal Service was barred from deducting--in any given month--more than the authorized monthly dues which accrued in that specific month. The Mail Handlers thus urged that the Postal Service could not recoup from the individual employees for its earlier failure to make a proper dues deduction. On February 15, 1973 the Mail Handlers submitted this dispute to arbitration and requested that it be heard with the Phoenix case.

CONTENTIONSa. Mail Handlers

The Mail Handlers see three issues here: (1) whether in any one month the Postal Service may deduct from an employee's pay more than the authorized monthly dues for that month; (2) whether the Postal Service is liable to the Mail Handlers for a failure to make proper dues deductions; and (3) whether the Postal Service may correct its earlier error, in failing to deduct dues from a given employee, by a later deduction from the employee's pay.

The Mail Handlers assert that both Article XVII, Section 7 of the 1971 National Agreement and provisions in the two dues checkoff authorization forms now in use, prohibit any dues deduction by the Postal Service which would exceed dues owing in each particular month. Section B of the old Form 1187 (introduced in the early 1960's) only authorizes the Postal Service to deduct from an employee's pay "each pay period or the first full pay period of each month the amount certified above as the regular dues of ... (the Union)." This language, say the Mail Handlers, clearly does not authorize the Postal Service to deduct, in any one pay period or month, an amount greater than that specified in the Form 1187.

Article XVII, Section 7-A, requires the Postal Service to "deduct and remit to the ... (Union) the regular and periodic Union dues from the pay of employees who are members ..."

The Mail Handlers stress that this provision also specifies a time limit within which the deducted dues must be remitted--

that is, prior to the end of the month "for which such deductions are made." The final sentence in this provision declares that deductions are to be made "in such amounts as are designated to the Employer in writing by each Union." The 1971 checkoff form itself states that the Mail Handlers Union "hereby certifies that the regular dues of this local Union for the above-named member are currently established at \$ (a specified amount) per month." Reading these various provisions together, the Mail Handlers find an express prohibition against any dues deduction by the Postal Service in an amount larger than that due monthly.

The Mail Handlers also urge that the Postal Service alone is liable to the Union for damages whenever it fails to deduct monthly dues from an employee member, as required. In no way can such liability be contingent upon recoupment from the employee. Here the Mail Handlers cite various judicial decisions holding the employer solely liable to the Union for the dues amounts not properly deducted pursuant to valid checkoff authorizations. Finally, the Mail Handlers cite a decision in United Steelworkers vs. United States Gypsum Co., 492 Fed. 2d 713 (CCA 5, 1974), where a successor employer had refused to honor its predecessor's dues checkoff agreement with the certified Union. In an earlier arbitration, Arbitrator Rolf Valtin had directed the Company to pay to the Union a sum equivalent to the total dues which should have been deducted (plus interest) and denied to the employer any right to recoup from individual employees. The Federal Circuit Court held this award to be within the remedial authority of the Arbitrator. The Mail Handlers note that Arbitrator Valtin asserts in his Opinion (56 LA 363) that it would be inequitable to those employees still in the Company's employ to deduct back dues from

their wages when deductions could not be made from employees who had left the Company. The Arbitrator also doubted the over-all propriety of making retroactive dues deductions and indicated that such action might be subject to legal challenges by employees which would further delay payment to the Union of the dues money which had been improperly withheld.

Were the Arbitrator to permit the Postal Service to make "multi-deductions" for dues in any given month, the Mail Handlers urge, this might do violence to the "Prohibition of Unilateral Action" set forth in Article V of the 1971 National Agreement. In addition, such a ruling allegedly would violate Article XV, Section 3, which declares that the Arbitrator may not alter, amend, or modify the National Agreement. In Article XXVIII, moreover, the parties have established special provisions for the Postal Service to recover shortages in fixed credits assigned to employees. The lack of any such provision for deduction of uncollected back dues would make such a deduction tantamount to an unauthorized garnishment of a federal employee's wages without reasonable notice and a fair hearing.

13

b. Postal Service

The Postal Service asserts that the Union is not a proper party in the Claybrooks' grievance, M-W-166. It claims that the Union's right to be reimbursed for the back dues was "fully remedied at the outset" so that the only remaining issue is whether the Postal Service was entitled to recoup from Claybrooks. This, says the Postal Service, properly may be the subject only of an individual grievance by Claybrooks if he has any objection to the recoupment.

14

As for M-NAT-196, which followed the errors in the Western Region, the Postal Service asserts that it also involves no more than a claim that an employee's pay should not have been reduced by recoupment for the earlier failure to deduct dues. The Postal Service thus seeks to characterize this as an "employee rights" grievance, which the Union cannot initiate in Step 4 as a national level grievance involving interpretation of the National Agreement.

15

The Postal Service discounts the Mail Handler substantive argument as strained, since it rests so heavily upon use of the words "regular and periodic" in Article XVII, Section 7 of the 1971 Agreement. These, it says, obviously modify the word "dues" and not the word "deduction." In short, the real intent of this language simply is to make clear that the checkoff cannot cover special assessments or fees other than regular and periodic dues. Indeed, the 1971 National Agreement does not limit Management to a particular time or pay check in making appropriate dues deductions. The Postal Service also claims that even under the old authorization language, there was a procedure for retroactive adjustment of errors.

16

The Postal Service can find no precedent which might appear to support the argument of the Union here, other than the unique decision in the United States Gypsum case. There, however, the employer had repudiated the entire collective bargaining agreement in a manner which the Arbitrator characterized as a "blatant defiance of the clear state of the law." (56 L.A. 363, 391) The Award in that case, therefore, undertook to remedy many violations of the collective bargaining agreement, which had occurred over a period of years, and not merely the refusal to check off dues.

17

FINDINGS

No extended discussion of the Postal Service procedural arguments is warranted. Case M-NAT-196 clearly presents interpretive issues, involving application of the 1971 National Agreement, which properly may be raised at the Step 4 level under Article XV, Section 2. In Case M-W-166 the Mail Handlers were entitled to appeal from the final ruling of the Postal Service, if only because of the implication therein that payment of Claybrooks' back dues to the Mail Handlers was contingent upon deduction of the requisite amount from Claybrooks' pay after the error had been discovered. M-W-166 was consolidated for hearing with M-NAT-196, moreover, and now presents no substantive issues going beyond those in M-NAT-196.

18

Turning to the merits, it would seem clear that the dues deduction authorization forms here are not intended to authorize the deduction of a greater amount, in any one pay period or month, than the amount actually owing as Union dues in that month. On the other hand, there is no warrant for reading into either the checkoff authorizations or Article XVII, Section 7, a prohibition against subsequent recoupment of excess amounts paid to an employee as a result of innocent administrative error in calculating net pay due such employee. The language cited by the Mail Handlers is entirely silent on this matter, and cannot reasonably be read to imply such a prohibition.

19

There should be little doubt that errors made in calculating net pay due to employees--whether involving underpayment or overpayment--normally are corrected promptly upon

20

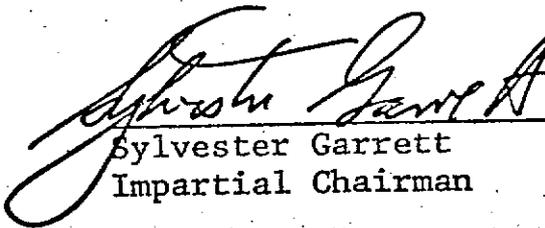
discovery. The correction of such an error in calculating net pay in no way requires advance authorization by the employee, nor is it the kind of action which must be expressly authorized under the National Agreement. The obligation to pay employees correctly necessarily inheres in the employer-employee relationship. The right to correct errors in payment of wages to employees thus is protected under Article III of the National Agreement as a routine function in operating the enterprise. While the Mail Handlers cite the United States Gypsum decision (56 L.A. 363) to the contrary, that case did not involve minor or isolated innocent errors in failing to make dues deductions from individuals--instead the employer there simply had repudiated the entire collective bargaining agreement over a period of years and the Arbitrator was required to fashion stringent remedial action in light of this dominant fact in that case.

This is not to suggest, however, that the Postal Service may refuse to pay erroneously uncollected back dues to the Union until it recoups from the individual employees involved. The Postal Service obligation to make dues payments to the Union under Article XVII, Section 7-A is clear and specific: "The Employer agrees to remit to each Union all deductions to which it is entitled prior to the end of the month for which such deductions are made." Thus where the Service negligently fails to make deductions which should be made from employees pursuant to valid checkoff authorizations, it nonetheless is liable to the Union for the amounts which should have been deducted. In Case M-NAT-196, therefore, the Service must reimburse the Union for any such uncollected dues, even if it may not have been able to recoup the requisite

amounts from some individual employees. While the Mail Handlers also suggest that 9% interest should accrue to it where any such payments have not yet been made, there is no evidence here to warrant application of such an unusual remedy.

AWARD

1. Neither the checkoff authorization forms in use under the July 20, 1971 National Agreement nor Article XVII, Section 7 of that Agreement may be construed to authorize deduction of dues from an employee's pay in any given month in an amount exceeding the dues which actually are owing by the employee for the month in question. 22
2. Where dues for any given month are not deducted from the pay of an individual employee, by the Postal Service, pursuant to a valid checkoff authorization, the Service nonetheless is obliged under Article XVII, Section 7-A of the 1971 National Agreement to pay over to the Mail Handlers the amount of dues which should have been deducted. 23
3. Where innocent failure to check off dues pursuant to a valid checkoff authorization results in an overpayment of wages to an individual employee, no authorization by the individual is required to permit the Postal Service to recoup the amount of such overpayment in a subsequent pay period or pay periods. 24


Sylvester Garrett
Impartial Chairman

National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO

NATIONAL HEADQUARTERS: 905-16th STREET N.W. WASHINGTON, D.C. 20006 (202) 737-8066

17

August 6, 1975

art XVII S.7



OFFICIALS

Peter Fasco
General President, LIUNA

Terence J. O'Sullivan
General Secretary-Treasurer, LIUNA

Lonnie L. Johnson
Mail Handler National Director

Norman Orenstein
Mail Handler Financial Director

TO: Mozart G. Ratner, Esquire
Donald M. Murtha, Esquire
Daniel B. Jordan, General Counsel
Bill Peer, Attorney
Rial M. Rainwater, President, NRLCA
James H. Rademacher, President, NALC
→ J. Joseph Vacca, Executive Vice President, NALC
Antonio R. Huerta, Secretary-Treasurer, NALC
Francis S. Filbey, General President, APWU
Emmet Andrews, Director Industrial Relations, APWU
Bernard Cushman, Attorney

POLICY & STEERING COMMITTEE

Northeast Region

Ronald Moe
2400 Johnson Avenue
Bronx, New York 10463

Eastern Region

Frederick D. Rogacki
121 Alpine Place
Cheektowago, New York 14225

Central Region

Herbert Walker
9970 Dunraven Drive
Cincinnati, Ohio 45239

Western Region

Alvin S. Gant
2201 Renfrew Court
San Jose, California 95132

Southern Region

Claudis Johnson
3209 Proswimmer Drive
Houston, Texas 77088

RE: Arbitration Cases M-NAT-196 and M-W-166

Gentlemen:

Enclosed please find a copy of the arbitral award of Sylvester Garrett in the above referenced cases issued July 30, 1975. Garrett's decision sustains our position that the Postal Service may not defer payment of checkoff money following the end of the month for which it is owed. The Service unsuccessfully contended that, where through innocent administrative error it failed to checkoff union dues, it was not liable for payment of those dues until it could make a recoupment in the succeeding pay period from the employees involved. Furthermore, Garrett held that even where it would be impossible to recoup the dues owed -- e.g., the employee had left the Postal Service prior to discovery of the error -- the Service must immediately pay the full checkoff amount.

However, Garrett was unwilling to grant employees a free ride. True, where through administrative error the Service fails to deduct the checkoff amount, it may only make a single checkoff deduction in the following month. But Garrett finds that the employer has an independent right to recoup under the management powers inherent in Article III.

Sincerely yours,

Theodore T. Green

Theodore T. Green
Counsel

/ba
Enc.

M-NAT-196

UNITED STATES POSTAL SERVICE

CASE NO. M-NAT-196

and

Issued:

NATIONAL POST OFFICE MAIL HANDLERS,
WATCHMEN, MESSENGERS AND GROUP
LEADERS DIVISION OF THE LABORERS'
INTERNATIONAL UNION OF NORTH
AMERICA, AFL-CIO

January 26, 1976

SUPPLEMENTAL OPINION

BACKGROUND

By letter dated October 1, 1975, the Mail Handlers seek clarification of Paragraph 2 in the July 30, 1975 Award in this case, reading:

1

"Where dues for any given month are not deducted from the pay of an individual employee, by the Postal Service, pursuant to a valid checkoff authorization, the Service nonetheless is obliged under Article XVII, Section 7-A of the 1971 National Agreement to pay over to the Mail Handlers the amount of dues which should have been deducted."

Case M-NAT-196 resulted from a December, 1972 error by the Postal Service in failing to make requisite monthly dues deductions from the pay of about 1,000 Mail Handlers in the Western Region. After the error was discovered the Postal Service took a double dues deduction from the involved employees in January of 1973 and then paid over the December dues of such individuals to the Union. In its January 15, 1973 grievance the Union claimed violation of Section XVII, Section 7--saying that the Postal Service was barred from deducting, in any given month, more than the authorized monthly dues which had accrued for that specific month. Thus it argued that the Postal Service was barred from recouping from individual employees in a later month for an earlier failure to make proper dues deductions. 2

Paragraph 3 of the Award disposed of this Union argument as follows: 3

"Where innocent failure to check off dues pursuant to a valid checkoff authorization results in an overpayment of wages to an individual employee, no authorization by the individual is required to permit the Postal Service to recoup the amount of such overpayment in a subsequent pay period or pay periods."

Shortly after issuance of the Award, the parties disagreed as to application of its Paragraph 2. On September 11, 1975, Assistant Postmaster General-Labor Relations Gildea wrote that the Postal Service deemed Paragraph 2 to constitute 4

only a "declaratory statement of contractual interpretation." His letter went on to state that the paragraph applied only "where developed facts establish that there remain uncollected dues owing to the Mail Handlers Union, following our dues payment in January 1973 of December 1972 dues that had not been collected." Gildea's letter also indicated that all questions as to whether the Union actually had lost any dues as a result of the Postal Service December 1972 error in the Western Region had been "fully litigated" at the hearing and that there had been no evidence that the Mail Handlers had not received dues on behalf of any individual employee who actually had owed such dues for December of 1972.

Mail Handler National Director Johnson then requested the Impartial Chairman to provide clarification of the above quoted paragraph from the July 30, 1975 Award. His letter indicated a belief that "a certain unspecified number of employees working in December had no wages from which recoupment could be made in January." Thus, he asserted that the Union never had received dues which should have been deducted in December for such employees. In the Mail Handler view, Paragraph 2 of the Award clearly required the Postal Service to pay to the Mail Handlers any dues owing for December of 1972 but which never were paid to the Union.

The Johnson letter then included the following:

"The USPS's view seems to be that the Mail Handlers Union was required to prove the amount which was not deducted in either December or January for particular individuals, by name, at the hearing. In the absence of such proof, no relief could be

granted goes the USPS argument. This misstates the ground rules for a check-off system. The employer bears the responsibility for maintaining records sufficient to process check-off claims. It is enough that the Mail Handlers demonstrated that a certain class of members did not have dues deducted in December nor recouped in January. Your award instructs the USPS to reimburse the union for the amount of checkoff owed regardless of its ability to recoup. It only remains for someone to compare the list of those for whom no dues were deducted in December with those for whom recoupment was made in January. It is the employer's record keeping system which erred and it is the employer which contracted for the burden of checking off; therefore, the employer should take the necessary administrative steps to correct its prior misadministration of the system. To interpret your decision otherwise significantly alters the notion of a checkoff system such that the union is forced to assume the primary responsibility for its maintenance."

National Director Johnson then requested the Impartial Chairman to advise the parties that the second paragraph of the Award required the Postal Service to pay to the Mail Handlers any dues owing for December of 1972 which the Postal Service had been unable to recoup from individuals later. 7

On October 28, 1975, USPS Regional Labor Counsel Mahon wrote a comprehensive reply to Johnson's October 1, 1975 letter, stating that no clarification of the Award was warranted. Mahon held that Paragraph 2 of the Award set forth a principle, which was not really disputed by the Postal Service, and that "when facts are developed which bring it into play, it will be followed." Mahon stressed, however, that no facts had been developed at the hearing in Case M-NAT-196 which would support the request for clarification. Thus he advised that the Union was in error in claiming that the evidence had shown that some employees owing dues for December of 1972 had no wages from which recoupment could be made in January of 1973. Regional Labor Counsel Mahon also noted the lack of evidence to show any specific failure to pay over dues which had not been collected in December of 1972. One Union official, whose dues had not been deducted for December, and who did not work in January, personally paid his dues to the Union so that there was no reason for the Postal Service to pay an additional sum on his behalf. The only other individual mentioned at the hearing was off because of illness in December and no dues were owed by him under established Mail Handler policy.

8

In addition to denying that dues still were owing for any specific individual for December of 1972, the Postal Service rejects the Mail Handlers' suggestion that--unless its view of the meaning of Paragraph 2 of the Award is sustained--it will be "forced to assume the primary responsibility" for maintenance of the checkoff system. The Postal Service urges that it would be futile now to attempt to ascertain whether any further monies are due as a result of a December 1972 error. The Service deems it inconceivable that

9

the Union does not have its own accurate record of monthly dues as paid by each member. It follows that if in fact there is some individual for whom December 1972 dues were not properly deducted, the Union should establish this fact. The Postal Service has no way to determine whether (1) dues were paid voluntarily to the Union by an employee or (2) dues were not actually owed under internal Union policy. Thus the Postal Service sees no basis here for any clarification of the Award and characterizes the request for clarification as an effort to modify the Award in a manner not supported by the evidence.

FINDINGS

The precise scope of the differences between the parties concerning application of Paragraph 2 of the July 30, 1975 Award seems not entirely clear from the letters of National Director Johnson and Regional Labor Counsel Mahon. Part of the problem may arise from the fact that Case M-NAT-196 essentially was a national level grievance seeking, in effect, an advisory opinion interpreting Article XVII, Section 7 of the 1971 National Agreement. It also, however, embodied a direct claim by the Mail Handlers for payment to it of all dues owing for December of 1972 under Article XVII, Section 7.

The July 30, 1975 Award took the form of an advisory opinion. There was, moreover, no definite showing by the Union that dues properly owing to it for December of 1972, by any specific individual, never had been received by it. While there was some evidence concerning the situations of two individual employees, nothing in the July 30, 1975 Opinion and Award was intended to reflect any finding as to whether there

10

11

might be some individual as to whom dues might still be owing the Mail Handlers Union for December of 1972. There in truth seemed to be no necessity that this be explored in detail, since the Award itself seemed adequate to provide the parties with practical guidelines for dealing with all such situations.

Now the Mail Handlers seem to interpret Paragraph 2 as imposing an absolute obligation upon the Postal Service to pay over dues (for any given month) where an erroneous failure to deduct such dues occurs, even if the individual employee already has paid his dues directly to the Union.

12

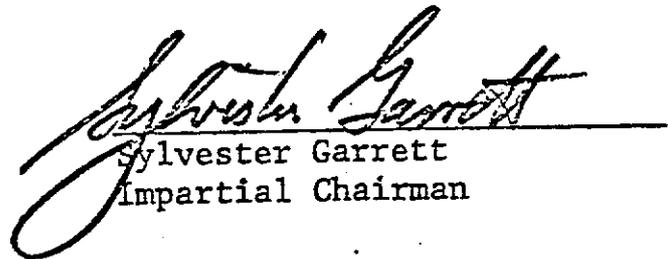
The Impartial Chairman did not anticipate that any such issue might arise between the parties, and it now may be dealt with quite simply. Nothing in Paragraph 2 may be construed to require the Postal Service to pay over dues to the Mail Handlers on behalf of an employee who already has paid his dues to the Union. In any case where the Mail Handlers claim error by the Postal Service in failing to deduct dues for a given individual and in not thereafter correcting the error by payment to the Union, the Mail Handlers should establish that the dues actually are owed by the individual in question. There is no reason to suppose that the Mail Handlers do not keep accurate records of dues payments by, or on behalf of, its individual members.

13

It may be noted in closing that the July 30, 1975 Award was not addressed only to errors which arose in December of 1972. Since the Award is in the form of an advisory opinion, it will continue to apply over the indefinite future, unless modified or supplanted by agreement of the parties. Finally, there can be no doubt thereunder that the Postal

14

Service must pay over to the Union any dues which it erroneously fails to deduct from any individual employee (and which have not been paid directly by the employee) whether or not it is able later to recoup from the employee.


Sylvester Garrett
Impartial Chairman