Airs #244

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In the Matter of the Arbitration Between: C# 00748

UNITED STATES POSTAL SERVICE

AND Case No. H1C-NA-C5

AMERICAN POSTAL WORKERS UNION

Hearings held July 29, September 24, & November 30, 1982

Before Richard I. Bloch, Esq.

APPEARANCES:

For the Union

J. P. Richards
Director
Industrial Relations

For the Employer

J. K. Hellquist
General Manager
Labor Relations Division
Central Region

OPINION

Facts

In December of 1981, the Postal Service sent the Union a Notice of Intent to amend the Employee and Labor Relations Manual.

In January, the Union acknowledged receipt of the letter and requested a meeting, in accordance with Article 19 of the National Agreement. The parties met in February to discuss the case.

In April, the Employer incorporated the proposed change into Part 546.212 of the Employee and Labor Relations Manual. The matter was subsequently appealed to arbitration.

At the outset, the Employer contends that this grievance is not arbitrable. It is this issue alone to which this Opinion responds.

Issue

Is the matter arbitrable?

Management Position

The Employer contends (1) that the subject grievance is not arbitrable inasmuch as it does not directly relate to wages, hours, and working conditions as they apply to employees covered by the Agreement.

Additionally, the Employer says the grievance is untimely.

Union Position

The Union maintains, among other things, that the terms of Article 19 are unclear with respect to required time limits. Additionally, it says that, as a matter of past practice, the Employer has routinely waived imposing such time limits and may not enforce them in this case.

Relevant Contract Provisions

ARTICLE 19 - Handbooks and Manuals - 1981 National Agreement

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate

> to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.
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> Notice of such proposed changes that directly relate to wages, hours, or working conditions, will be furnished to the Unions at the national level at least sixty (60) days prior to issuance. At the request of the Unions, the parties shall meet concerning such changes. If the Unions, after the meeting, believe the proposed changes violate the National Agreement (including this Article), they may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Unions upon issuance.

Analysis

By agreement, the parties have established procedures and, significantly, time limits that are applicable to changes in handbooks and manuals.

The second paragraph of Article 19 sets forth three requirements. First, notice of a proposed change must be furnished the Union by the Employer at least sixty days prior to issuing the change. Second, if the Union so requests, the parties must meet concerning the changes. Finally, the Union is given the right to submit the issue to arbitration, assuming this is done "within sixty (60) days after receipt of the notice of proposed change."

The Union claims that the contract provision is ambiguous. Since most meetings occur beyond sixty days from receipt of the proposed change, it claims, it is impossible to comply with the requirement of requesting arbitration thereafter (but still within sixty days).

The language is not ambiguous. It requires filing after the meeting but also within sixty days following receipt of the original notice. That much is clear. Nor does it appear from the language that the procedure is somehow inherently impossible. The language gives the Union the right to request a meeting and upon request, it "shall" be held. Clearly, Management would not be allowed, for example, to decline a timely meeting, then challenge an otherwise timely grievance on the basis of failure to have met. But the respective responsibilities are clear enough from the language and by no means impossible to perform.

The Union says, however, that the parties have routinely waived time limits on appeals to arbitration. This, it is claimed, provides the foundation for a similar waiver in this case. Yet, even assuming practice is somehow relevant in the face of otherwise clear contract language, the record reveals no clear support for the Union's contentions.

In evidence are numerous examples of correspondence, many that fail to address the issue and some that do, but

that were issued well after this dispute surfaced. From a review of all the documents, however, one may conclude that, to the extent there has been any practice, it has been both mixed and a bit muddled. Employer Exhibit 11 is a copy of a May, 1982 letter sent to the Union wherein the Postal Service raises precisely the sort of timeliness objection presented in this case. The Union, for its part, says it has never seen the letter. Other correspondence from the Employer raises timeliness questions, but with respect to the obligation to meet and discuss, as opposed to filing for arbitration.[1] The Union cites this exchange as reflecting a practice of applying time limits to requesting a meeting--no other conclusion can be reached, it says. But that incident does not compel the conclusion that the parties had uniformly agreed to modify the contract and thus leave submission to arbitration open-ended. And that simply is not what the Agreement says.

The negotiating history requires no contrary conclusion.

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[1]A March 24, 1981, letter from the Service, for example, claims that in a given case, the Union waived its right to request a meeting "by failing to notify the Postal Service within thirty days, of your desire to meet to discuss these changes." Under the 1978 Agreement, there was a thirty, rather than a sixty-day time limit, but the language was otherwise consistent, requiring that matters be submitted to arbitration within thirty days after receipt of the notice of change.

Management testifies that the change in the current contract from a previous thirty-day limit to the current sixty-day limit came at the Union's request--the thirty days being insufficient time to review the matter prior to arbitration. Here again, there is some dispute as to the accuracy and the underlying intent of these discussions. What counts, however, is that, as indicated above, the language in the contract is clear. The time limit for submitting a case to arbitration is sixty days from "receipt of the notice of proposed change."

In this case, the notice of intent to amend the Employee and Labor Relations Manual was sent to the Union on December 30, 1981. On January 11, 1982, the Union's Director of Industrial Relations formally requested a meeting in accordance with Article 19. That meeting occurred February 19, 1982. There was, at that time, no resolution of the matter.

On April 8, the Postal Service published the contested revision. The Union appealed the matter to arbitration on June 9, 1982. By these facts, it is apparent that the appeal to arbitration was untimely. It was well beyond the sixty days of the notice of intent to amend; indeed, the appeal to arbitration was even beyond sixty days from the time the regulation was actually amended. The finding, therefore, is that the grievance was untimely.

AWARD

The grievance is untimely and, therefore, not arbitrable.

Richard I. Bloch, Esq.

May 12, 1983