In the Matter of the Arbitration between NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO and UNITED STATES POSTAL SERVICE	Case No. N8-W-0214 Use of Bulletin Board (Tacoma, Washington) C# 03224 OPINION AND AWARD

APPEARANCES:

For the NALC*- Cohen, Weiss, and Simon
Keith E. Secular, Esq.

For the USPS- Wyneva Johnson, Esq.
Office of Labor Law

Pursuant to the provisions of the current collective bargaining agreement between the above-captioned parties, this case was duly processed through to and presented in arbitration before the Undersigned. The hearing was held at the offices of the USPS in Washington, DC, on January 23, 1981. Thereafter, post-hearing briefs were submitted and exchanged.

THE ISSUE:

At the opening of this hearing, the parties stipulated that the issue could be defined as follows:

> "Whether Management at the Tacoma, Washington, Post Office properly prohibited the Union from posting a notice on the Union bulletin board listing the names of non-members. If not, shall Management be prohibited from preventing the Union from using the bulletin board in this fashion in the future?"

---

* At the opening of the hearing, Mr. John P. Richards, Director of Industrial Relations for the AFL-CIO, appeared for the purpose of noting that the AFL-CIO joins with and supports the position taken

STATEMENT OF THE CASE:

The parties stipulated at the opening of the hearing that many of the facts are not in dispute. They can be noted as follows:

During the period between November 17 and November 19, 1979, Management removed the notice at the Lakewood Station, and the notices also posted at other stations were removed pursuant to Management's instructions by sometime on or after November 19, 1979.

The decision to remove these notices was made by Mr. Roy Olson, the Director of Employee and Labor Relations for the Tacoma, Washington, Post Office.

DOCUMENTS CITED:

The Collective Bargaining Agreement

Article III (Pertinent Part) 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....

C. To maintain the efficiency of the operations entrusted to it;

D...

Article XXII BULLETIN BOARDS

The Employer shall furnish separate bulletin boards for the exclusive use of each Union party to this Agreement, subject to the conditions stated herein, if space is available. If sufficient space is not vailable, at least one will be provided for all Unions signatory to this Agreement. The Unions may place their literature racks in swing rooms,

if space is available. Only suitable notices and li ature may be posted or placed in literature racks. There shall be no posting or placement of literature in literature racks except upon the authority of officially designated representatives of the Unions.

The Notice in Issue Which Was Posted (Undated)

Carriers listed below are NON-UNION MEMBERS WHO WILL Soon Receive A Pay Increase of $749.00 Annually or .36¢ Per Hour. THIS IS DUE TO A UNION NEGOTIATED CONTRACT SEE A SHOP STEWARD and JOIN THE UNION

Clark, V.C. - Lakewood

Kaszokski, S.A. - T.A.F.

Western Region Notice Dated November 11, 1975

Subject: Majority Union Bulletin Board Postings of Non-Members

To: District Managers
General Managers, Bulk Mail Centers

Some months ago, it was determined that the posting on union bulletin boards of non-members was neither illegal nor improper.

A reassessment of this position has been made and it is now determined that such postings constitute a potential source of operational disruptions.

In our view, the controlling considerations in this area must be our primary obligation to insure that postal operations are not disrupted and that postal employees not be subjected to undue pressures at postal installations in the course of their employment. In these circumstances, beginning immediately, majority unions shall not be permitted to display notices listing the names of non-members on bulletin boards provided under the National Agreement.

Please notify those offices under your jurisdiction of the above.

/s/ R. H. Stevens, Director
Office of Labor Relations

CONTENTIONS OF THE PARTIES:

The Union contended that the removal of the above-quoted notice, which had been posted on November 11, 1979, was a violation of the provisions of Article XXII as well as a violation of the National Labor Relations Act proscribed by the opening provision of Article III of the Agreement.

The Union argued that the contents of the notice were suitable within the meaning of Article XXII. The Postal Authorities, according to the Union, cannot unilaterally decide upon the suitability of notices. Whether a notice is suitable must be decided upon the basis of some objective standard or criteria. The purpose of this notice, just as was the purpose of a similar one posted in 1976 without management objection, was to encourage membership in the Union.

The Union argued that the language of the notice was a "straight-forward exhortation" addressed to non-members to join the Union. As a result of the posting, a number of non-member employees did so. The Union has a contractually recognized right to solicit membership in the Union, pursuant to Article XXXI, in non-work areas of the Employer's premises. In this case, according to the Union, Tacoma Management had no evidence that the notice was a disuptive force on the work floor. Such a conclusion would have to be based upon mere assumption.

The Union also argued that it did not waive the right to grieve the action taken at Tacoma because it failed to raise a national grievance when the directive to management was issued in the Western Region in November of 1975. That internal memorandum did not have the force or effect of modifying the National Agreement. Merely acknowledging the existence of such a memorandum does not signify union acquiescence. Likewise, the Union contended that in 1975 and 1978 it had only attempted to get contractual language in Article XXII which would have permitted the Union to post items of a political nature on the bulletin board. The Union did not seek nor think it necessary to seek any change in the language of that provision to post items dealing with collective bargaining or other union business.

Finally, the Union argued that removing this notice violated the National Labor Relations Act and for that reason was in violation of Article III as well. The Union argued here that this type of notice was a manifestation of protected concerted activity. The Union referred to Old Dominion Br. No. 496, NALC, AFL-CIO v. Austin, 418 U.S. 264 (1974), where the U. S. Supreme Court held that the publication of a list of non-union members and branding them as "scabs" fell within the protection of Section 7 of the Statute. In the instant case, as in Austin, the Union argued that the Local Union was in the midst of an organizing campaign to get non-members to join. Unlike Austin, in the instant case, the Union did not employ any lurid language to describe the non-members or to incite its own members. The Union also cited a number of other NLRB decisions wherein the employer was not permitted to censor materials appearing on bulletin boards provided by contractual arrangement.

The Union claimed that there was no evidence presented to establish how or why this notice could prove disruptive of postal operations at the facilities where it was posted. The Union conceded that if a direct link could be established between the contents of a notice and actual disruptions the employer could act to restore order and such action might be to order the removal of the offending notice.

Management contended that the notice was disruptive in that it had received reports of carriers arguing with shop stewards at various stations and there was an E.E.O.C. complaint filed.

Management further contended that the testimony and other evidence offered by the Union to support a claim that a similar notice was posted in 1976 and was not challenged by management did not have sufficient probative value to support such a claim.

The USPS pointed out that in 1975 a clear and unambiguous restriction on the Unions' right to post lists of non-members had promulgated. The Union did not choose to grieve that directive and the practice of prohibiting such postings has remained unchallenged thus rising to the status of a past practice .

Finally, the Postal Service contended that in bargaining during 1975 the Union sought to gain unilateral control over the decision on removing any notices from bulletin boards or literature from racks. The USPS successfully resisted such an attempt. In 1978, the Postal Service claimed that the Unions attempted to remove the word "suitable" and permit all notices regardless of

content suitability to be posted. This effort also failed, and Management contended that the Union was required now to recognize nize that the Postal Service had the exclusive right to determine what constituted a suitable or unsuitable notice.

OPINION OF THE ARBITRATOR:

The Postal Service's principal contention was that the specific language of the Agreement gave management the right to prohibit the posting of what it considered to be unsuitable material. The Undersigned is in agreement that the language of the Agreement does not give the unions an unfettered right to post any material on the bulletin boards which they consider is suitable for such posting. That language reads, "...only suitable notices and literature may be posted or placed in literature racks." Management certainly, under this language, may challenge the contents of the proposed notices and literature on the grounds that such material is not suitable for publication in such fashion on post office premises and more particularly in work areas.

When management does prohibit a posting on union bulletin boards on the grounds that the material is unsuitable, it is required to establish that it has just cause for reaching such a conclusion. The decision on suitability must be bottomed upon factual evidence that the posting will prove or has proven to be a cause of disruption or dissension and thus has had or will have an adverse impact upon productivity or efficiency.

If the testimony and other documentation offered by Management did establish that this could be or was the consequence of such a posting, the Arbitrator would have to sustain management's right to prohibit such a posting. From within the four corners of the Agreement would come the authority for such a finding in the provisions of Article III dealing with management's exclusive right to maintain the efficiency of the operations. Resort to external law would not require that the unions be allowed to post inflamatory, prejudicial, or derogatory statements. It would be reasonable to assume that the results of such a posting would undermine management's ability to direct the work force and the enterprise efficiently and productively. That would be the primary purpose of the prohibition and not to strip away the rights of employees to engage in certain protected concerted actions which are detailed under the provisions of Section 7 of the National Labor Relations Act.

To establish a reasonable basis for assuming that the results of publishing and posting the names of non-members would interfere with efficient postal operations, the Postal Service offered the following testimony:

Roy A. Olson, Management Sectional Center Director of Employee and Labor Relations at Tacoma stated that he denied the Union the right to post the notice here in controversy because of the contents of the letter issued in 1975 denying the unions the right to post the names of non-members. He also said he felt the notice was "disruptive" because, "We had several phone calls from letter carriers regarding how this notice could come down." He also claimed that there was one EEO complaint filed. He testified further that he had been advised that there were verbal confrontations between shop stewards and carriers at several units. Mr. Olson, on cross-examination, admitted that he personally did not witness any confrontations between stewards and letter carriers.

There was no additional evidence offered by the Postal Service to support the claim that the contents of the notice caused management any work shop floor problems.

Based upon the testimony from Mr. Olson, outlined above, the Undersigned had to find that Mr. Olson was prompted to remove the notice because he was advised of the existence of a 1975 letter which indicated such postings should be prohibited. That was his principal motivation. He only learned from others about so-called confrontations between stewards and letter carriers. He also learned of telephone calls from carriers about having the notice taken down. One EEO complaint was filed, and as Mr. Olson testified, it was later withdrawn in the informal stage after the notice came down. Mr. Olson did not testify about the long existing dispute between some members of the national workforce and the national unions about which organizations deserve to represent them and receive dues payments. Nothing in Mr. Olson's testimony supported a conclusion that the notices did, in fact, caused sufficient disruption or dissension so as to interfere with the orderly conduct of business, or that a failure to remove such notice would inevitably lead to such a result.

For the reasons set forth above, and after due deliberation, the Undersigned makes the following

A W A R D

The grievance filed by the NALC in Case No. NS-W- 0214 is sustained. Management is directed not to interfere with the posting of notices containing the names of non-members unless or until the Postal Service can prove that this material is unsuitable for posting because it has caused or will cause an adverse impact upon the ability of postal authorities to direct the work force and to manage its operations efficiently and productively.

HOWARD G. GAMSER, ARBITRATOR

Washington, DC
July 14, 1981