

C#13792

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration)	
between)	
UNITED STATES POSTAL SERVICE)	
and)	Case Nos.: H7V-1K-C 31669
AMERICAN POSTAL WORKERS UNION)	H7V-3S-C 40533
and)	H7V-1K-C 37022
NATIONAL ASSOCIATION OF)	HOV-3E-C 3100
LETTER CARRIERS (Intervenor))	H7V-1N-C 33344
and)	
NATIONAL POSTAL MAIL HANDLERS)	
UNION (Intervenor))	

BEFORE: Professor Carlton J. Snow

APPEARANCES: For the U.S. Postal Service:
Mr. Kevin B. Rachel

For the American Postal Workers Union:
Mr. Lee W. Jackson

For the National Association of
Letter Carriers:
Mr. Keith E. Secular

For the National Postal Mail
Handlers Union:
Mr. Bruce R. Lerner

PLACE OF HEARING: Washington, D. C.

DATE OF HEARING: March 15, 1994

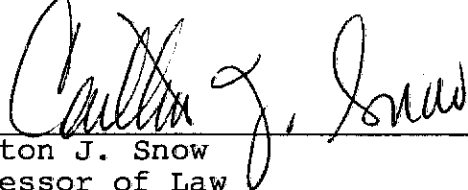
POST-HEARING BRIEFS: May 11, 1994

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievance is procedurally arbitrable and that national level arbitration is an appropriate forum for resolving the grievance on the merits. A national level arbitrator has jurisdiction to proceed to the merits of the case. It is so ordered and awarded.

DATE: _____

8-5-94



Carlton J. Snow
Professor of Law

IN THE MATTER OF ARBITRATION)	
)	
BETWEEN)	
)	
UNITED STATES POSTAL SERVICE)	
)	
AND)	
)	
AMERICAN POSTAL WORKERS UNION)	ANALYSIS AND AWARD
)	
AND)	
)	
NATIONAL ASSOCIATION OF)	Carlton J. Snow
LETTER CARRIERS (Intervenor))	Arbitrator
)	
AND)	
)	
NATIONAL POSTAL MAIL HANDLERS)	
UNION (Intervenor))	
(Case Nos.: H7V-1K-C 31669)	
H7V-3S-C 40533)	
H7V-1K-C 37022)	
HOV-3E-C 3100)	
H7V-1N-C 33344)	

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from November 21, 1990 through November 20, 1994. A hearing occurred on March 15, 1994 in a conference room of U.S. Postal Service Headquarters located at 475 L'Enfant Plaza S.W. in Washington, D.C. Mr. Kevin B. Rachel, Labor Relations Representative, represented the United States Postal Service. Mr. Lee W. Jackson of the O'Donnell, Schwartz & Anderson law firm in Washington, D.C., represented the American Postal Workers Union. Mr. Keith E. Secular of the Cohen, Weiss & Simon law firm in New York, N.Y. represented the National

Association of Letter Carriers. Mr. Bruce R. Lerner of the Bredhoff & Kaiser law firm in Washington, D.C. represented the National Postal Mail Handlers Union.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties. Ms. Oveda Hancock of Aaron Reporting Services, Inc. reported the proceeding for the parties and submitted a transcript of 86 pages.

There were no challenges to the substantive arbitrability of the dispute, but the American Postal Workers Union maintained that the dispute is not procedurally arbitrable. The National Association of Letter Carriers and the National Postal Mail Handlers Union intervened in the case. They submitted post-hearing briefs in support of the Employer's contention that the dispute is procedurally arbitrable at the national level. The arbitrator officially closed the hearing on May 11, 1994 after receipt of the final post-hearing briefs in the matter.

II. STATEMENT OF THE ISSUE

The American Postal Workers Union framed the issue on the merits as follows:

Whether the Employer violated terms of the collective bargaining agreement between it and the American Postal Workers Union by issuing to employees OF-346 licenses endorsed for motor vehicles which the employees' position does not require them to drive?

The Employer framed the issue on the merits as follows:

Whether the Postal Service violated its collective bargaining agreement with the American Postal Workers Union by allowing bargaining unit employees, who hold positions for which the national position description does not explicitly refer to such driving duties, to have an OF-346 license?

The issues before the arbitrator is as follows:

(1) Is the grievance procedurally arbitrable?

If not, what is an appropriate remedy?

(2) Did the Employer violate the collective bargaining agreement with the American Postal Workers Union by issuing an OF-346 license to bargaining unit employees who hold jobs for which the position description does not require driving duties? If so, what is an appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Section 4. Arbitration

A. General Provisions

9. In any arbitration proceeding in which a Union feels that its interests may be affected, it shall be entitled to intervene and participate in such arbitration proceeding, but it shall be required to share the cost of such arbitration equally with any or all other Union parties to such proceeding. Any dispute as to arbitrability may be submitted to the arbitrator and be determined by such arbitrator. The arbitrator's determination shall be final and binding.

D. National Level Arbitration

1. Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.

IV. STATEMENT OF FACTS

In this dispute, the American Postal Workers Union challenged the procedural arbitrability of the grievance and contended that the grievance does not raise an interpretive issue of general application, as required by Article 15.4.D.1 of the parties' collective bargaining agreement. The procedural question in dispute between the parties cannot be resolved without reference to the merits of the dispute. Such

background information will provide a useful context for understanding the nature of the dispute between the parties. Because, however, the arbitration hearing was bifurcated, none of the parties has presented testimonial evidence on the merits of the dispute. But five grievance documents involving the five cases at issue in the proceeding have been admitted into the record. (See, APWU Exhibit Nos. 1-5).

The American Postal Workers Union filed the five grievances at issue in the case. The grievances in each of these disputes arose when the Employer, at its various locations, issued an OF-346 driver's license to bargaining unit employees with endorsements for vehicles which position descriptions of those employees did not require them to drive. In each instance, the American Postal Workers Union challenged management's decision to issue the license in question. The OF-346 license includes certain endorsements which authorize a person holding the license to drive certain vehicles.

An employee is not authorized to drive a Postal Service vehicle without an OF-346 license with a specific endorsement for a particular type of vehicle. The American Postal Workers Union maintained that the parties' collective bargaining agreement and provisions of handbooks and manuals prevent the Employer from issuing OF-346 licenses with endorsements to drive certain vehicles to employees whose job description does not require them to drive those same vehicles. According to the American Postal Workers Union, if operation of a particular type of vehicle is not contained within the official job

description of a job classification (such as, "Mail Handler" or "Letter Carrier"), the Employer may not change or add to the qualification standards. The American Postal Workers Union argued that issuing such licenses to employees outside the Motor Vehicle Craft allowed individuals to perform Motor Vehicle Craft work in violation of the parties' National Agreement, specifically, Articles 1, 19, 39, Handbook EL-827, or the Postal Operations Manual, and Postal Manual EL-201 and EL-203.

It is the belief of the Employer that there are no contractual restrictions on its issuance of OF-346 licenses and that, under Article 3 of the parties' agreement, management has discretion to issue OF-346 licenses for any vehicle to any employee. According to the Employer, Article 3 of the parties' collective bargaining agreement grants it an exclusive right to assign employees and to determine methods, means, and personnel to conduct efficient operations of the enterprise. The Employer asserts that no craft has exclusive jurisdiction over the operation of any vehicle. The Employer argued that language of Handbook EL-827 regarding the surrender of OF-346 licenses is intended to insure that such licenses are surrendered when they are no longer necessary. According to the Employer, its regulations require that an employee have an OF-346 license for the type of vehicle driven, even if the employee only occasionally drives a vehicle. The Employer argued that determining whether any driving is

required as a part of a duty assignment is strictly a managerial function.

Each of the five grievances proceeded to Step 3 of the parties' grievance-arbitration procedure. In its Step 3 decision, the Employer initially took the position that each case did not present an "interpretive issue of general application" and that each case, therefore, was not appropriate for national level arbitration. (See, APWU Exhibit Nos. 1-5). In each of the five cases, however, the Employer later referred the grievance to Step 4 of the parties' grievance-arbitration procedure, contending that the grievances presented an interpretive issue of general application. The American Postal Workers Union consistently has taken the position that the grievances at issue do not raise an interpretive issue of general application.

At the national level arbitration hearing, the American Postal Workers Union restated its position that the dispute is not procedurally arbitrable because it does not involve an interpretive issue under the agreement between the parties.

The merits of the dispute involve five separate grievances. Four of the grievances arose during the term of the 1990-94 collective bargaining agreement between the parties. One of the grievances arose during the 1987-90 agreement. Only Case No. H7V-1K-C 31699 from Manchester, New Hampshire arose during the term of the 1987-90 collective bargaining

agreement. The American Postal Workers Union, however, argued that there has been no change in the parties' agreement which materially affects its position with regard to this dispute. (See, APWU Post-hearing Brief, 3).

In deference to an acknowledged practice of the parties and without objection from any party, the arbitrator honored the request of the American Postal Workers Union to bifurcate the issue of arbitrability from the merits of the case. Accordingly, the arbitrator adjourned the hearing after a presentation of evidence and argument from the parties that related solely to the issue of procedural arbitrability. The single issue before the arbitrator at this juncture, therefore, is whether or not the dispute is procedurally arbitrable.

V. POSITION OF THE PARTIES

A. The American Postal Workers Union

The American Postal Workers Union maintains that the dispute is not procedurally arbitrable because it fails to raise an interpretive issue of general application, as required by the grievance-arbitration procedure in the parties' agreement. It is the position of the American Postal Workers Union that Article 15.4.V.1 prevents the arbitrator from hearing the dispute on its merits at the national level. The contractual provision states:

Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level. (See, Joint Exhibit No. 1, p. 69).

It is the position of the American Postal Workers Union that there is no interpretive issue in this case because there allegedly is no legitimate undecided dispute about the meaning to be attached to specific language in the National Agreement. According to the American Postal Workers Union, the parties must attach different meanings to the same contractual language in order for an interpretive issue to be present at the national level. On the merits, the American Postal Workers Union maintains that the Employer violated the parties' agreement, including Articles 19 and 39 as well as a number of Postal Service handbooks and manuals. The violation allegedly occurred when management issued OF-346 licenses to bargaining unit members with endorsements for vehicles which job descriptions of those employees did not require them to drive. According to the American Postal Workers Union:

[The Employer does not] take issue with [its] interpretation of the cited provisions of the National Agreement or of the cited provisions of the Handbooks and Manuals. Instead, Postal Service [takes] the position that Article 3 of the National Agreement gives it the exclusive right to assign employees and to decide who should receive OF-346 licenses with endorsements to drive particular vehicles. (See, APWU's Post-hearing Brief, 10).

The American Postal Workers Union asserts the Employer is not arguing that provisions of the National Agreement at issue here have a meaning other than the one ascribed to them by the APWU. The American Postal Workers Union maintains

that the Employer disputes the application of those provisions to facts presented by the five disputed grievances. The American Postal Workers Union contends that, in order to resolve the dispute on its merits, the arbitrator is not required to choose between competing meanings for the same contractual language but, rather, is required to decide whether certain contractual language (together with Handbook and Manual provisions) should be applied to facts presented by the underlying grievance. It is the belief of the American Postal Workers Union that resolving the merits of the grievance at the national level will disrupt a delicately balanced system of arbitration constructed by the parties over a period of many years.

It is also the position of the American Postal Workers Union that the Employer, in its Step 3 decision in each of the five grievances, cast the issue presented by the merits of the dispute as one not involving an interpretive issue of general application. According to the American Postal Workers Union, the Employer now is engaged in forum shopping by referring these grievances to national level arbitration because three regional level arbitration awards have been decided in favor of the American Postal Workers Union's position on the merits of the underlying grievance. The APWU contends that the Employer should be bound by its earlier assertion that these grievances do not present an interpretive issue of general application.

The American Postal Workers Union also argued that the

merits of the grievances do not present an interpretive issue of general application because the issue has been decided at the regional level in the Union's favor on three separate occasions. According to the American Postal Workers Union, an issue must be legitimate and undecided in order to raise an interpretive issue for national level arbitration. Such allegedly are not the facts in this case.

Finally, a close scrutiny of the facts in this case allegedly shows that there is no interpretive issue of general application at stake in the dispute. According to the American Postal Workers Union:

What the facts of this case show is that over a period of about five years, five cases have appeared at the national level involving the same issue on the merits. Clearly, the existence of five cases over a period of four or five years does not show that there is a widespread confusion nationally over the meaning of any particular provision of the collective bargaining agreement. Thus, no issue of 'general application' is presented. (See, APWU's Post-hearing Brief, 12-13).

Since the dispute allegedly is not appropriate for national level arbitration, the American Postal Workers Union argues that the five grievances should be remanded to regional arbitration for a solution at that level.

B. The Employer

The Employer contends that the dispute is procedurally arbitrable. It is the position of the Employer that there is a legitimate conflict about the meaning to be attached to specific language in the agreement and, that, therefore, the dispute raises an interpretive issue of general application. On the merits, the Employer maintains that it fundamentally disagreed with the meaning and result which the American Postal Workers Union seeks to derive from its interpretation of the postal handbooks and manuals provisions incorporated into the National Agreement pursuant to Article 19. The Employer maintains that the argument of the American Postal Workers Union to the effect that various position descriptions limit work which employees may perform is a misinterpretation of those provisions. According to the Employer, the various position descriptions provide a general statement of duties of the position and exist for the purpose of assigning an appropriate rate of pay. It is the belief of the Employer that the American Postal Workers Union has interpreted Section 444 of the EL-827, as well as Section 142 of the EL-303.

According to the Employer, the present dispute involves an interpretive issue because neither party has attempted to resolve the dispute by referencing the factual circumstances underlying the grievances at issue. Rather, both parties have relied on provisions of the National Agreement as well

as provisions of handbooks and manuals incorporated by Article 19 into the parties' agreement. Accordingly, the Employer concludes that the dispute involves conflicts regarding the meaning to be attached to language in the parties' agreement and that, therefore, it raises an interpretive issue. That issue is one of general application, according to the Employer, because its resolution has the potential to affect the assignment of driving duties in many of its operations.

C. The National Association of Letter Carriers

The National Association of Letter Carriers agrees with the Employer that the present dispute raises an interpretive issue of general application and, therefore, is procedurally arbitrable at the national level. According to the National Association of Letter Carriers, grievances advanced by the American Postal Workers Union rest on an interpretation of numerous provisions of national handbooks and manuals incorporated into the National Agreement by Article 19; and it is the belief of the NALC that the interpretation of the American Postal Workers Union is at odds with the Employer's interpretation of those provisions and Article 3 of the parties' agreement. The National Association of Letter Carriers, therefore, concludes that this dispute involves a conflict over the appropriate meaning to be attributed to specific

language in the parties' agreement, and such a dispute allegedly cannot be resolved without resort to general principles of contract interpretation. Thus, the dispute involves an interpretative issue, in the opinion of the National Association of Letter Carriers.

It is also the position of the National Association of Letter Carriers that merely because similar grievances have been arbitrated at the regional level does not remove the dispute from the jurisdiction of an arbitrator at the national level. The National Association of Letter Carriers contends that regional arbitrators themselves have recognized the interpretive nature of the dispute before them. Because regional arbitration awards are not binding at the national level and national level arbitration awards are binding at the regional level, the National Association of Letter Carriers argues that the present dispute is a legitimate, undecided conflict involving the meaning of specific language in the agreement.

The National Association of Letter Carriers also argued that, in at least one of the underlying grievances, the American Postal Workers Union advanced an interpretation of Article 7.2 in the National Agreement that Arbitrator Garrett specifically rejected in Case No. AW-NAP-5753. Accordingly, it is the position of the NALC that this dispute involves a "fundamental question as to the meaning of a national arbitral precedent." (See, NALC's Post-hearing Brief, 5-6).

D. The National Postal Mail Handlers Union

It is the position of the National Postal Mail Handlers Union that the present dispute is procedurally arbitrable at the national level. According to the National Postal Mail Handlers Union,

The argument and the testimony introduced by the APWU and the USPS during the . . . hearing clearly demonstrates that the parties to these consolidated cases dispute not only the meaning of the APWU/USPS collective bargaining agreement (including Articles 3 and 39), but also the meaning of various provisions found in handbooks, manuals, and published regulations of the Postal Service (including Section 444 of EL-827. . . ; Section 142 of EL-303 . . . ; and Chapter 7 of the Postal Operations Manual. (See, NPMHU's Post-hearing Brief, p. 2).

According to the National Postal Mail Handlers Union, the present dispute involves a conflict between the parties regarding the meaning to be attached to specific contractual language and, as such, is a dispute that involves an interpretive issue.

The National Postal Mail Handlers Union also contends that the interpretive issue presented by this case is of general application. The Union asserts that the fact that the same issue has arisen in at least five grievances from various localities as well as that the American Postal Workers Union has submitted regional awards in at least three other cases that are factually parallel demonstrate that the issue presented is one of sufficient general application to meet requirements of procedural arbitrability under Article 15.4.D.1 of the parties' agreement.

VI. ANALYSIS

A. A Narrowed Dispute

The parties agreed to bifurcate the merits of the dispute from the issue of procedural arbitrability. Accordingly, the issue before the arbitrator is a narrow one. The question to be resolved is whether or not the grievance is procedurally arbitrable at the national level. Article 15.4.A(9) mirrors the teaching of the U.S. Supreme Court that issues of procedural arbitrability involve primarily contract interpretation and should be resolved by an arbitrator. (See, John Wiley & Sons v. Livingston, 376 U.S. 543 (1964)). As the parties have agreed:

Any dispute as to arbitrability may be submitted to the arbitrator and be determined by such arbitrator. The arbitrator's determination shall be final and binding. (See, Joint Exhibit No. 1, p. 66).

It is appropriate for an arbitrator to resolve issues of procedural arbitrability not only because such disputes routinely implicate principles of contract interpretation but also because procedural issues often are intertwined with the underlying merit of the dispute. The parties in this case have maintained a long collective bargaining relationship, and they have negotiated a sophisticated grievance-arbitration procedure with several tiers of arbitration, including national level arbitration, regional arbitration, and expedited arbitration. It is the substantive issue raised by a grievant which determines the appropriate forum.

Regular regional arbitration cases typically involve removals or suspensions for more than fourteen days. Cases involving a sanction of fourteen days or less without interpretive overtones may be appropriate for expedited arbitration. The parties have agreed that certain cases may be resolved by either regular regional arbitration or expedited arbitration. They have designed their grievance-arbitration procedure, however, to restrict the jurisdiction of national level arbitration proceedings to cases involving interpretive issues of general application. They expressly have consigned ultimate interpretive authority to national level arbitration. They implicitly concluded that debate about national issues should occur in a national level proceeding because such a setting encourages more dispassionate investigation among leaders in the organization who have access to the most complete data and systematic analysis. Ultimate authority, of course, resides with the parties at the bargaining table, but the parties designed a system that left the final work in determining fundamental interpretive issues of general application to national arbitrators, unless modified at the bargaining table.

Article 15.4.D.1 which requires only cases involving interpretive issues of general application to be arbitrated at the national level restricts an arbitrator's jurisdiction at the national level. In order to test the procedural arbitrability of a dispute at the national level, an arbitrator must determine that it presents an "interpretive issue under

this agreement or supplement thereto of general application" (See, Joint Exhibit No. 1, p. 69). Such an assessment cannot be made in a vacuum and requires some review of facts in the case.

The American Postal Workers Union argued the Employer has conceded that the present dispute does not involve an interpretive issue of general application. Management allegedly did so in its Step 3 decision for each of the five underlying grievances. According to the American Postal Workers Union, the Employer now should be bound by its earlier determination that the present dispute is not procedurally arbitrable at the national level. A contrary conclusion allegedly would allow the Employer to engage in "forum shopping" by referring disputes that have been settled at the regional level, such as the present dispute, to national level arbitration. It, however, is clear from previous national level arbitration decisions that a party may change its position on the issue of procedural arbitrability at the arbitration hearing if that party now believes that an interpretive issue is involved. (See, e.g., Case Nos. H4C-4A-C 7931; H4C-4C-C 13068; H4C-4K-C 33596; H4C-3C-C 4857; and H7N-1A-C 25966).

B. APPLICATION OF THE CONTRACTUAL TEST

As previously has been stated:

An 'interpretive issue' exists when there is a reasonable conflict about the meaning to be attributed to the symbols of expression used by the other party. That is, an 'interpretive issue' exists when there is a legitimate dispute about the meaning of language contained in the contract. (See, Case No. H4C-3W-C 28547, p. 22).

An interpretive issue must be distinguished from an issue involving only an application of specific language in the agreement to a particular set of facts. Parties may agree on the meaning of specific language in an agreement and, yet, dispute the effect of that meaning in a particular case. For instance, the parties agreed in a case before Arbitrator Mittenthal that the labor contract authorized an arbitrator to award interest on a monetary award as a result of the employer's post-award conduct. The parties, however, disagreed about whether interest should be awarded under the facts of that particular case.

Arbitrator Mittenthal determined that the grievance did not present an interpretive issue under the National Agreement because both parties agreed the labor contract allowed an arbitrator to award interest based on the employer's post-award conduct. Whether an arbitrator should or should not award interest on the basis of the Employer's post-award conduct constituted an individual case and did not involve an interpretation of language in the parties' agreement. It, therefore, did not present an interpretive issue. As

Arbitrator Mittenthal stated:

The Union apparently [thought] that the Postal Service was asserting, as a contractual principle, that an arbitrator could never award interest on a money award because of management's post-award conduct. At the arbitration hearing, it quickly became evident that this was not the Postal Service's position. Interest, in other words, might in appropriate circumstances be awarded on account of post-award conduct. That being so, there was no longer an interpretive issue under the National Agreement before this national arbitrator. (See, Employer's Exhibit No. 5, p. 2).

Drawing a distinction between an interpretive issue and an issue involving only an application of language in the parties' agreement, the meaning of which is undisputed, can be most difficult. Ultimately, the issue cannot be resolved without a thorough examination of the nature of the dispute on its merits. To determine whether the grievance in this particular matter presents an interpretive issue, it is necessary to review some aspects of the merits of the case.

C. A Review of Some of the Facts

Applying the working definition of an "interpretive issue" leads to a conclusion that the present dispute involves an interpretive question. Grievance documents from the five consolidated grievances show that the parties disagreed about the proper interpretation of provisions in their National Agreement and handbooks and manuals. Handbooks and manuals have been incorporated into the parties' agreement pursuant

to Article 19. It states:

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. . . . (See, Joint Exhibit No. 2, p. 99).

The American Postal Workers Union offered the following assessment of the merits of the case:

Both the National Agreement, together with cited provisions of the Postal Service Handbooks and Manuals, forbid the Postal Service to issue OF-346 licenses with endorsements to drive certain vehicles to employees whose job descriptions do not require them to drive those same vehicles. In circumstances where employees' job descriptions do not require them to drive a certain vehicle but those employees do in fact possess an OF-346 license to drive that vehicle, the Postal Service must require that employee to surrender the OF-346 license with the endorsement for vehicles not required by his job descriptions. (See, APWU's Post-hearing Brief, 4-5).

In support of its position on the merits of the case, the American Postal Workers Union relied on Articles 1; 19; and 39 of the National Agreement; EL and R Manuals, Section 2.1 and 231.2; Postal Manual EL-201; Postal Manual EL-303 with special reference to Sections 142, 150, 151, and 153; Postal Operations Manual Sections 714, 721, and 722; Postal Handbook EL-827, Sections 444, 120(J), and Chapter 8. (See, APWU's Post-hearing Brief, 6).

Not surprisingly, the Employer saw the merits differently. According to the Employer:

APWU seeks the establishment of a strict, nationally-applicable rule that would prevent management from permitting certain employees to drive certain

types of vehicles. The APWU derives as the source for this rule Handbook and Manual provisions incorporated in the contract pursuant to Article 19. The Postal Service vigorously disagrees with the APWU's claim that these Handbooks and Manuals can be conferred with the meaning which the APWU gives them. Rather, the Postal Service asserts that no such rule exists, and that pursuant to its Handbooks and Manuals, it is fully entitled to permit letter carriers and mail handlers to carry the authorization to drive any postal vehicle. (See, Employer's Post-hearing Brief, 15).

In its Step 4 decision, the Employer again asserted its authority to issue licenses to a broader array of workers than the APWU believed permissible. At Step 4, the Employer characterized its position as follows:

Management has the discretion to issue OF-346s to any employee to drive any vehicle. There are no contractual restrictions on the issuance of OF-346s. Article 3 grants management the exclusive right to assign employees and to determine the method, means and personnel to conduct operations. (See, APWU's Exhibit No. 1).

In concluding that the grievance before the arbitrator is not procedurally arbitrable, the American Postal Workers Union argued that:

The Postal Service did not, at Step 4 or earlier in the grievance procedure in these cases, take issue with the APWU's interpretation of the cited provisions of the National Agreement or of the cited portions of the Handbooks and Manuals. Instead, the Postal Service took the position that Article 3 of the National Agreement gives it the exclusive right to assign employees and to decide who should receive OF-346 licenses with endorsements to drive particular vehicles.

The Postal Service has not taken the position that the terms of the EL and R Manual, the Postal Operations Manual, the EL-201 Manual, the EL-303 Manual, or Article 1 or 19 of the National Agreement have a meaning other than the one ascribed to them by the APWU. Rather, the Postal service

seems to dispute, whether these provisions, saying what they do, shall be applied to the facts of the situations presented by the five arbitration cases at Bar. Thus, with regard to the merits of the issue presented by the five cases at Bar, the Arbitrator is not required to choose between competing meanings with the same contract language, but rather is required to decide whether certain contract language, together with Handbook and Manual provisions, should be applied to the facts presented. (See, APWU's Post-hearing Brief, 10-11).

Such an argument failed to be persuasive. The parties are in vigorous disagreement about the meaning to be attributed to language in their agreement. The American Postal Workers Union argued that cited provisions of handbooks and manuals as well as Article 1 of the parties' agreement restricted the Employer's issuance of OF-346 licenses to employees whose job descriptions do not contain driving requirements or duties. The Employer maintained with equal vigor that those same provisions do not restrict its issuance of OF-346 licenses to any employee. In other words, the dispute between the parties cannot be resolved without interpreting the meaning of language in the collective bargaining agreement, including language in handbooks and manuals. Such a dispute calls out for an authoritative contract interpretation and the compact between the parties has named a national level arbitrator as the one who should determine the meaning of the agreement in a dispute of this sort.

It is important to distinguish the central issue on the merits in this dispute from an issue involving an application, rather than an interpretation, of provisions in the parties'

National Agreement. The Employer has not argued in this case that employees at issue held bid positions for which job descriptions included driving requirements. Neither has the American Postal Workers Union argued that the Employer improperly added driving duties to job descriptions and, as a result, improperly issued an employee an OF-346 license. Rather, the parties are in disagreement over whether the Employer's issuance of OF-346 licenses is limited in any manner by provision of the agreement cited by the American Postal Workers Union.

The American Postal Workers Union argued that the present dispute involves only a factual determination regarding whether the Employer issued OF-346 licenses to employees who hold positions for which the job descriptions do not include driving requirements. In arguing that the merits of the dispute involve only those factual inquiries, the American Postal Workers Union relied on its own interpretation of relevant language in handbooks and manuals. In other words, if the language means what the Union says it means, then the grievances present only factual inquiries. The Employer, however, does not agree that the language in the handbooks and manuals means what the American Postal Workers Union says it means. Rather, the Employer argued that there are no contractual provisions which restrict the issuance of OF-346 licenses to any employee, regardless of the individual's position description. Thus, the interpretive issue in this case is "whether"

the Employer's issuance of OF-346 licenses to employees is restricted by language in the parties' agreement.

On the merits, the present dispute involves an interpretive issue because its resolution depends on whose interpretation of the language in the parties' agreement is correct. Resolution of that issue depends on the parties' intended meaning at the time they agreed to provisions of the labor contract at issue in this case. Whose meaning should prevail must be determined by using standard principles of contract interpretation. Because there is a legitimate dispute about reasonable expectations of the parties and about whose meaning should prevail, the dispute involves an interpretive issue appropriate for resolution at the national level.

Further support for this conclusion is found in three regional arbitration decisions involving the same issue on the merits as the dispute presently before the arbitrator. (See, APWU's Exhibit Nos. 6, 7, and 8). In each of those regional cases, an arbitrator applied principles of contract interpretation to resolve disputes about the intended meaning of language in the parties' agreement. For example, one arbitrator concluded that

The parties' inability to reach a resolution on this issue appears to be a result of their conflicting interpretations of the language contained in the relevant Handbooks and Manuals. In the instant grievance it may be that the language in each Handbook was as clear and definite as the Parties intended it to be when originally constructed. However, the result is a lack of clarity when the contract is construed as a whole because there is an absence of harmony when its various parts are brought together.

In the instant grievance the determination has been reached through the application of arbitral standards regarding the interpretation of contract language and the principle which demands that clear and specific contract language must be given precedence over language that is general or ambiguous. (See, APWU's Exhibit No. 6, p. 12, emphasis added).

The parties have decided that, under their system, interpretive issues of general applicability may be heard by a national arbitrator. The conclusion of the regional arbitrators must be overlaid with the definition of an "interpretive issue." As previously has been determined,

An 'interpretive issue' exists when there is a legitimate dispute about the meaning of (the expectations of parties to an agreement), and standard rules of contract interpretation must be applied in order to clarify the competing definitions of 'meaning' within the parties' agreement. (See, APWU's Exhibit No. 17, p. 23).

Three regional arbitrators resolved the merits of the present dispute by ascertaining the meaning of the parties' agreement through applying general rules of contract interpretation. Their decisions support a conclusion that the merits of the present dispute involve an interpretive issue appropriate for resolution by a national arbitrator. This result is consistent with the parties' grievance procedure which has been designed to produce uniformity of interpretation and to encourage dispassionate investigation by individuals with a coherent understanding of operations on a national level.

The American Postal Workers Union also has argued that the present dispute is not procedurally arbitrable because

the merits of the case already have been resolved in its favor by three regional level arbitration decisions. Since an interpretive issue must involve an undecided issue between the parties, it allegedly would violate the parties' agreement to permit national level arbitration of an issue that already has been thrice decided. It is clear from the design of the parties' grievance-arbitration procedure that the parties have not intended to bind a national level arbitrator by a regional arbitration award. It is an important source of guidance, and the reasoning in such decisions generally deserves respect and study. The common law of the industry with respect to these parties, however, is that they deliberately have designed a precedential system with regard to the impact of national level arbitration decisions in regional level arbitration proceedings.

D. An Issue of General Applicability

The American Postal Workers Union argued that the present dispute is not procedurally arbitrable because the Employer failed to prove the existence of a widespread organizational problem, that is, the dispute allegedly did not involve an issue of general application. As the American Postal Workers Union described it:

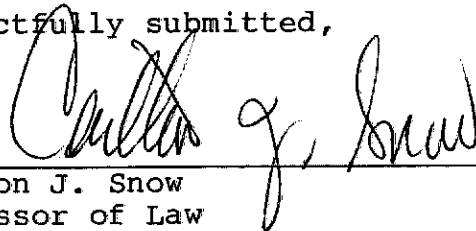
What the facts in this situation show is that over a period of about five years, five cases have appeared at the National level involving the same issue on the merits. Clearly, the existence of five cases over a period of four or five years does not show that there is a widespread confusion nationally over the meaning of any particular provision of the Collective Bargaining Agreement. Thus, no issue of 'general application' is presented. (See, APWU's Post-hearing Brief, 12-15).

It is clear from the evidence that the dispute in this case has arisen periodically. Nor can the merits of the dispute be resolved without interpreting several provisions of handbooks and manuals that are of general application. This is sufficient to meet the threshold requirement of the parties' agreement to overcome a challenge to the procedural arbitrariness of an interpretive issue at the national level.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the grievance is procedurally arbitrable and that national level arbitration is an appropriate forum for resolving the grievance on the merits. A national level arbitrator has jurisdiction to proceed to the merits of the case. It is so ordered and awarded.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Carlton J. Snow", written over a horizontal line.

Carlton J. Snow
Professor of Law

Date: 8-5-94