

C-23767

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	(Grievant: Class Action
)	
between	(Post Office: Millinocket, Maine
)	
UNITED STATES POSTAL SERVICE	(USPS Case: B94N-4B-C-97105300
)	
and	(
)	
NATIONAL ASSOCIATION OF	(
LETTER CARRIERS, AFL-CIO)	

BEFORE: Steven Briggs

APPEARANCES:

For the U.S. Postal Service: Howard J. Kaufman, Esq.

For the Union: Keith E. Secular, Esq.

Hearing Dates/Places:

February 22 & April 25, 2002

October 17, 2001

USPS Headquarters
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

NALC Headquarters
100 Indiana Ave., NW
Washington, DC 20001-2144

Date of Award: October 29 , 2002

Relevant Contract Provision: Articles 3, 19, 34 & 41

Contract Year: 1990-1994

Type of Grievance: Contract Interpretation

Award Summary: Management does not have the right to inspect city delivery routes on all six (6) days of a mail count and route inspection week.



Steven Briggs

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BACKGROUND

In order to ensure that city letter carrier delivery routes contain an appropriate daily workload (i.e., eight hours of work), the United States Postal Service (USPS; the Employer; the Postal Service) periodically conducts mail counts and route inspections. Counts and inspections are of great importance to the Employer, to the National Association of Letter Carriers (NALC; the Union), and to the approximately 250,000 city delivery letter carriers the Union represents. Ideally, they ensure an even distribution of work across letter carrier routes, and assure that the Postal Service receives a full day's work for a full day's pay.

The mail count and route inspection processes are described in Chapter 2 of "Management of Delivery Services: Methods Handbook, Series M-39" (the M-39 Handbook), a document developed by the Employer for use by its supervisors and managers. They are also described in Chapter 9 of "City Delivery Carriers Duties and Responsibilities: Methods Handbook, Series M-41 (the M-41 Handbook). According to Article 19 (Handbooks and Manuals) of the 1990-1994 National Agreement between the parties, the portions of "all handbooks, manuals and published regulations" of the Postal Service that "directly relate to wages, hours or working conditions . . . shall contain nothing that conflicts with this Agreement . . ."

The M-39 Handbook specifies that within 21 days prior to the start of a count and route inspection management must review the count procedures "to teach the carrier how to accurately complete count forms (1838-C and 1838-A) during the period of count and inspection." Part of that process includes a "dry-run count," which requires affected carriers to count hypothetical mail volume data and enter the appropriate figures on dry-

run forms (i.e., 1838-C and 1838-A). Managers review each completed dry-run form for accuracy, error and omissions. Errors and omissions must then be discussed with the carriers who made them. At management's option, any carrier may be required to perform a second dry-run count.¹

Mail counts on all letter delivery routes must be performed for six consecutive delivery days for one-trip routes and for five consecutive delivery days (excluding Saturday) on two-trip routes. According to M-39 §221.131:

The carrier should count and record the mail every day except on the day of inspection when the mail must be counted and recorded by a manager. On one or more days during the count week, each route will be inspected by a manager. When management performs the mail count the carrier serving the route, upon request, may verify the mail count. . . .²

On the day of an inspection, the line items on form 1838-C (Carrier's Count of Mail – Letter Carrier Routes Worksheet) are recorded by a manager. On all other days those items are recorded by the letter carrier. The Form contains 23 line items, each of which references a specific office function. The following examples are illustrative: Line 1 – routing letter-size mail; Line 15 – withdrawing mail where applicable (from distribution cases, trays, sacks, and/or hampers); Line 18 – break (local option); Line 19 – vehicle inspection; Line 20 – personal needs; Line 21 – recurring office work not covered by form; Line 22 – waiting for mail (office) and all other office activities not performed on continuing basis . . .; and Line 23 – counting mail and filling out Form 1838-C worksheet.

Not surprisingly, disputes can and do occur between management and letter carriers concerning line item entries to Form 1838-C. Consider Lines 21 and 22, for

¹ M-39, §217 (Dry-Run Count), pp. 81-85.

example, each of which covers miscellaneous functions not specifically identified in other line items. As noted, Line 21 covers office work performed on a continuing basis, while Line 22 focuses on non-recurring office work. Line 21 items are included in the final evaluation of the route. Time spent on Line 22 work is subtracted from the final evaluation. Thus, the decision whether to record work on Line 21 or Line 22 can be quite controversial.

The M-39 Handbook in effect prior to 1974 provided for route inspection on a single day of any designated count and inspection week. The relevant clause is quoted below:

Inspection of a route is the observation by a supervisor of a carrier's office and street work for an entire day, and includes counting and recording the mail handled and the time used.³

On June 14, 1974 the Postal Service published a revised edition. For the first time, it contained a reference to "days" of inspection in the plural:

The carrier will count and record the mail every day except on the day of inspection when the mail will be counted and recorded by a manager (static routes excepted). On one or more days during the count week, each route will be inspected by a manager except those routes designated as static routes.⁴ (emphasis added)

Sometime in 1997 Northeast Area Postal Service management decided to conduct multiple day route inspections, including some to be performed six times in succession over six consecutive days. Six-day inspections were subsequently conducted in Millinocket, as well as in Boston, Buffalo, Hartford, New York, Providence, Rochester, and Springfield, Massachusetts. Several grievances resulted, including a class action

² M-39 Handbook, June 30, 1996 edition, §221.131.

³ M-39 Handbook, January, 1973 edition, §221.1.

grievance filed by NALC Branch 391 in June, 1997.⁵ It protested route inspections in the Calais, Maine installation, where management performed the count and inspection tasks on all six days of the count and inspection week, thereby precluding city letter carriers from completing Form 1838-C.

The class action grievance was ultimately appealed to Step 4, and then to the national arbitration forum. The parties mutually appointed Steven Briggs to hear and decide the matter. Hearings were conducted in Washington, D.C. on October 17, 2001, and on February 22 and April 25, 2002, during which time both parties were afforded full opportunity to present evidence and argument in support of their respective positions. Once the parties' timely posthearing briefs were received by the Arbitrator, the record was closed.⁶

ISSUE

At the February 22, 2002 hearing the parties mutually granted the Arbitrator the authority to frame the issue of record. The NALC believes the issue should be constructed as follows:

Whether management has the right to inspect city delivery routes on all six (6) days and, if so, does management have the right to count the mail and make all applicable entries on PS Form 1838C each day of the inspection?

⁴ M-39 Handbook, June 14, 1974 edition, §221.131.

⁵ The parties submitted as the relevant contract their 1990-1994 Agreement, identified as Joint Exhibit 1.

⁶ The Postal Service included as an attachment to its July 23, 2002 posthearing brief two excerpts from the June, 2002 *Postal Record* (an NALC publication). In a letter to the Arbitrator dated July 31, 2002 the NALC objected to receipt of those documents as evidence, arguing that they were "submitted after the close of the record." The Postal Service argued in an August 5, 2002 letter to the Arbitrator that the items in question were published "while briefs were being prepared in this matter," and that their content is "entirely consistent with (its) position argued and briefed ..." The Arbitrator has concluded that receipt of the articles in question would be patently unfair to the Union. Significantly, they were submitted after the hearings were completed. The Union had no notice of the Employer's intent to submit them, and it had no opportunity prior to their submission to offer comments about the documents' admissibility. Second, since the Union had no idea the documents were going to be submitted, it had no chance in its posthearing brief to comment about their content. Accordingly, the two June, 2002 *Postal Record* excerpts attached to the Employer's posthearing brief are rejected, and any reference to them which might appear in that brief will be disregarded by the Arbitrator.

The Postal Service would have the issue of record defined more broadly. Its suggested formulation is quoted below:

Whether the National Agreement or any handbook or manual prohibits the Postal Service (from) inspecting city carrier routes during the count and inspection week for multiple days, up to and including all six days if desired by postal management? (parenthetical clarification added)

The grievance itself very specifically protests six-day inspections wherein city letter carriers were not allowed to Complete Form 1838-C on any of those days. It does not focus more broadly on multiple-day inspections, which could be anywhere from two to six days. Postmaster Jane Russell responded in a July 7, 1997 letter that "... management did indeed have the right to perform this week long inspection." It seems clear from the grievance and management's initial response that the original dispute calls into question whether management can inspect on all six days of a count and inspection week, thereby precluding letter carriers from completing Form 1838-C. A close reading of subsequent grievance chain documents fosters the same conclusion. Consider, for example, the Postal Service's formal articulation of "the interpretive issue" in its November, 1997 "Management Appeal to Step 4:"

Does management have the right to designated every day of an annual count and inspection of city delivery routes as the day of inspection and if so, does management have the right to count the mail and make all applicable recordings on PS Form 1838-C each day of inspection?

In a March 3, 1998 grievance document the parties mutually agreed that no national interpretive issue even existed. Two months later, in second "Management Appeal to Step 4" stemming from a May 14, 1998 Step 4 discussion, the Postal Service took the position that an interpretive issue was indeed present, expanding it from all

previously crafted issue statements to include inspections “on more than one day, including all six (6) days if management so chooses?” The Union’s May 27, 1998 response was consistent with the parties’ discussions at earlier steps, in that it maintained a limited focus on whether management can schedule “all six days of the count as days of inspection.” In a Step 4 decision dated August 1, 1998, the Postal Service once again seemingly attempted to broaden the scope of the disputed issue by asserting its right to “inspect city delivery routes on more than one day, including all six (6) days ...” And in contrast to its earlier position, it asserted as well that “... no national interpretive issue is fairly presented in this grievance ...”

Fast forward to the 2001/2002 hearings in these National Arbitration proceedings. Since neither party argued that this dispute does not involve a national interpretive issue, the Arbitrator need not address that question. It can be reasonably assumed from the absence of such arguments at this level that a national interpretive issue has been presented for resolution in this forum.

Turning to the substance of the dispute, it seems abundantly apparent from the scope of the parties’ arguments in the original Millinocket, Maine grievance that a six-day inspection was the cause of it. The Union essentially protested the effects of that action, namely, that the affected city letter carriers were not allowed to complete Form 1838-C. Had the inspections been done on multiple days, but less than six days, that defining characteristic of the parties’ disagreement would not exist. That is, on days during the count and inspection week on which inspections were not performed, the carriers would have completed the Form. It therefore seems to the Arbitrator that the six-day inspection is what brought this dispute to the national level.

On the basis of the foregoing analysis, the Arbitrator has framed the issue of record in the following manner:

Under the National Agreement and Handbooks M-39 and M-41, may the Postal Service properly inspect city carrier routes on all six days of the count and inspection week? If so, does management have the right to count the mail and make all applicable recordings on Form 1838C each day of inspection?⁷

PERTINENT AGREEMENT PROVISIONS⁸

ARTICLE 3 – MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
 - B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
 - C. To maintain the efficiency of the operations entrusted to it;
 - D. To determine the methods, means, and personnel by which such operations are to be conducted;
- ...

ARTICLE 19 – HANDBOOKS AND MANUALS

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.

...

⁷ The issue as framed by the Arbitrator is consistent with the interpretive issue identified by the parties at Step 4, namely, "Does management have the right to designate every day of an annual count and inspection of city delivery routes, as the day of inspection and if so, does management have the right to count the mail and make all applicable recordings on PS Form 1838C each day of inspection?"

⁸ Quoted from the parties' 1990-1994 Agreement.

ARTICLE 34 – WORK AND/OR TIME STANDARDS

- A. The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.
- B. The Employer agrees that any work measurement systems or time or work standards shall be fair, reasonable and equitable. The Employer agrees that the Union concerned through qualified representatives will be kept informed during the making of time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards. The Employer agrees that the National President of the Union may designate a qualified representative who may enter postal installations for purposes of observing the making of time or work studies which are to be used as the basis for changing current or instituting new work measurement systems or work or time standards.
- C. The Employer agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union or Unions concerned as far in advance as practicable. . . .

ARTICLE 41 – LETTER CARRIER CRAFT

Section 3. Miscellaneous Provisions

- S. City letter carrier mail counts and route inspections and adjustments shall be conducted in accordance with Methods Handbook M-39, Management of Delivery Services, as modified by the parties' Memorandum of Understanding dated July 21, 1981 and October 22, 1984 (incorporated into December 24, 1998 Award).

THE PARTIES' POSITIONS

Union Position

The Union asserts that under the National Agreement and Handbooks M-39 and M-41, the Postal Service may not properly inspect city carrier routes on all six days of the count and inspection week. Its principal arguments in support of that position are summarized on the following few pages:

1. It is management's burden to show that the M-39 and/or M-41 Handbooks explicitly authorize six-day inspections; it is not the Union's burden to show that they prohibit them.
2. National arbitration awards have consistently supported the principle that route inspections, evaluations and adjustments must be conducted in strict compliance with the M-39 Handbook.⁹ None of those decisions even remotely suggest that a close issue involving the conduct of a route inspection, evaluation or adjustment may be resolved by falling back on some notion of management discretion or reserved rights.
3. Mike Piasecki, Manager of Post Office Operations, Central Illinois District, acknowledged that the M-39 Handbook does not contain any provision specifically authorizing six days of inspection during a count and inspection week.
4. The mere plural reference to "one or more days" in M-39 is ambiguous at best with regard to the advance scheduling of all six days of the count week as "days of inspection."
5. Section 215.1 of M-39 refers to "the scheduled date" of an inspection. Additional days of inspection may be authorized, but only through a later "decision" for which a day's advance notice is required. That two-step approach comports with the interpretation of Union witnesses Schlepitz and Mullins --- that additional days of inspection are authorized only to address unanticipated problems with the original day of inspection.

⁹ Case Nos. NB-S 5674 (Gamsler); NC-NAT-3455 (Fasser, Jr.); ND-NAT-0001 (Garrett); N8-W-0039 (Aaron); H7N-1T-C 39547 (Mittenthal).

6. Section 215.1 is the only provision of the M-39 which touches upon the decision-making process by which additional days of inspection may be scheduled. Section 221.12 refers to hand-held computers used on the “day(s)” of inspection. The remaining three M-39 sections which reference more than one day simply state that routes may be inspected on “one or more days.”
7. The overwhelming majority of references to the “day of inspection” in both the M-39 and M-41 Handbooks are in the singular, and there are at least 19 of them. The predominance of those singular references lends further credence to the proposition that the M-39 authorizes the advance scheduling of only one day of inspection.
8. Management’s interpretation that “one or more days” can mean inspections on all six days of the count and inspection week creates major structural inconsistencies within the M-39 Handbook, and between it and the M-41 Handbook as well. Those inconsistencies stem from the dozens of provisions and exhibits in both handbooks which detail the functions and responsibilities of letter carriers in the route inspection process, all of which are nullified by a six-day inspection.
9. Without the above-noted carrier input, a six-day inspection violates management’s contractual obligation to conduct “[c]ity letter carrier mail counts and route inspections and adjustment ... in accordance with Methods Handbook M-39.” The Employer’s position must be rejected for that reason alone.

10. Amendments to the M-39 must be interpreted in light of the context in which they were drafted. Prior to 1974, the M-39 provided for only a single day of inspection. It further provided that carriers would count the mail and complete Form 1838-C on all days other than the inspection day. The 1974 amendment merely added the following sentence: “[o]n one or more days during the count week, each route will be inspected by a manager except those routes designated as static routes.” The document does not suggest that any major changes in the then-existing practice were contemplated. Indeed, the cover letter accompanying the revised M-39 addition stated that the changes therein were made “to reflect current policies, to clarify language, and to simplify forms and procedures for promoting effective management.”
11. Retired Postal Service management official Darvin Schlepitz testified on the Union’s behalf. Part of his 28-year career (1964-1992) required him to train route inspectors. He was responsible for all changes to the M-39 and M-41 Handbooks from 1980 until 1992. According to Schlepitz, if the intent of the new 1974 language had been to authorize six-day inspections, that intent would certainly have been communicated to the field, “because it would have been a major departure from what had been the process.” (Tr. 164-165)
12. The June 14, 1974 edition of the M-39 was published only six months after Arbitrator Gamser issued his seminal December, 1973 Award --- the first national award involving the M-39 (USPS and NALC, Case No. N-

NAT-2992). That Award established that the route inspection procedure was a “work measurement system” within the meaning of Article 34, and that it could be changed only through the stringent process set forth in that Article. Against that backdrop, it is inconceivable that the Postal Service would have sought to authorize a major structural change in the route evaluation procedure --- one that completely eliminated the historic role of the letter carrier in counting mail and recording work functions --- by placing the ambiguous reference to “one or more days” in the M-39.

13. At the national level, management has never previously asserted a right to conduct six-day inspections. Thus, there is no arbitral precedent precisely on point. But Arbitrator Gamser’s 1973 M-39 Award and regional awards by Arbitrators Searce (USPS and NALC, Case No. S7N-3C-C 29133 [1991]) and Klein (USPS and NALC, Case No. D90N-4D-C 950681D48 [1996]) are relevant.
14. The testimony of Employer witness Michael Piasecki was inconclusive. Though he had some personal experience with six-day inspections, Piasecki conceded that he could only recall doing them in St. Charles, Illinois sometime in the 1980s. That testimony is hardly evidence of an accepted practice.
15. Management witness Larry Hughes testified that during the 1970s and 1980s he was personally involved with route inspections in Norcross Georgia; Tuscaloosa, Alabama; and Marietta, Georgia. He acknowledged, however, that only in Marietta had six-day inspections taken place, and he

could not remember how many. As weak as it was, that testimony was rebutted by Union witness Harold Owenby. In the 1980s Owenby served as secretary of the Marietta Branch. He testified that except for special inspections where management was monitoring a carrier whose performance was suspect, no six-day inspections ever took place in Marietta as claimed by Mr. Hughes.

16. Management witness Robert Hart described his extensive personal experience with route inspections in the midwest during the 1980s and 1990s. He admitted, though, that he was aware of six-day inspections having been conducted only in St. Charles, Missouri. Hart also acknowledged that he did not know how many times the St. Charles routes had been inspected, or how many routes had been inspected on all six days.
17. Employer witness Charles Baker testified that as a labor relations representative in Santa Barbara, California, he had advised managers they could conduct multiple-day inspections. He subsequently indicated that he had never been a delivery supervisor, and that he had not been personally involved in route inspections. And Baker could recall only a single instance of a six-day special inspection involving a carrier whose performance was suspect.
18. Union witnesses Joan Hurst (Pacific Area NALC Regional Administrative Assistant and former route inspection co-leader), Steve McNeese (former NALC national trainer in the co-leader process and experienced route

inspection authority in the Western Area), and John McMahon (Vice President of the NALC Boston branch) all testified that the consistent practice in their respective areas has been to conduct inspections on only one day of the count and inspection week. Similarly, Robert Herdlein (NALC Executive Vice President in the Buffalo branch) testified that there had not been any six-day inspections in Buffalo until March, 2000, when management announced it would inspect routes in the Battavia Post Office on all six days of a scheduled inspection. That inspection and other six-day inspections were grieved, and some of them were resolved by a memorandum of understanding which committed the Postal Service to resuming the prior practice in Buffalo of inspecting on only one day.

18. It is clear from the above summary that even at the local level there has never been an accepted practice of scheduling six-day inspections.
19. The grievance should be sustained. An award should be issued declaring that management may not inspect a route on all six days of the count and inspection week, which prevents the letter carrier from counting the mail and completing Form 1838-C. Moreover, the grievance should be remanded to the parties for further discussion in light of the award.

Employer Position

The Postal Service asserts that under the National Agreement and Handbooks M-39 and M-41, it may properly inspect city carrier routes on all six days of the count and inspection week. The main arguments advanced by the Employer may be summarized as follows:

1. The Postal Service is under Congressional mandate to maintain its efficiency of operations. To that end, the language of Article 3 (Management Rights) has not changed in any National Agreement since the enactment of the Postal Reorganization Act in 1970.
2. The national concepts enunciated in Article 3 are an integral part of this dispute. Under that umbrella, the Postal Service invested in and initiated Delivery Point Sequence (DPS), a technology that allows city letter carriers to receive large amounts of mail in delivery sequence. That advance reduced the amount of office time they need to case mail themselves. In turn, it allowed the Postal Service to increase the number of deliveries on a route. To ensure that each route took eight hours to deliver daily, the Postal Service added route examiners to its ranks. Thus, when DPS was introduced in the 1990s, it became critical that many routes be inspected on multiple days.
3. In a 1975 Step 4 grievance settlement the parties agreed that both the M-39 and M-41 Handbooks provided management with the contractual right to conduct inspections on more than one day. Moreover, the settlement placed no limitation on the number of inspection days.

4. Over the years, that settlement and pertinent sections of the M-39 and M-41 Handbooks formed the basis of Michael Piasecki's advice to the field that there was no prohibition against management conducting six-day route inspections (Tr. 224).
5. Section 221.131 of the M-39 Handbook clearly states that "[T]he carrier should count and record the mail every day except on the day of inspection when mail must be counted and recorded by a manager. One or more days during the count week, each route will be inspected by a manager." (emphasis added) Similarly, M-41 §912 states "[A] physical inspection of the route shall be made on one or more days during the count week by a route examiner who accompanies the carrier during his full tour."
6. The route inspection process is just one tool that management uses to make route adjustments. According to M-41 §911.3, "[T]he data obtained during the count and inspection period, along with current management records and the manager's knowledge of the route, are the basis for making route adjustments." That is consistent with the testimony of Mike Piasecki, who noted that a route can be adjusted on the basis of a count and inspection, but that according to the M-39, management does not have to rely on statistics from Forms 1838, 1840 and 3999 (Tr. 198).
7. The determination of when and how often to count mail under the current manuals is when management determines it is "operationally necessary." (See M-41 §912)

8. The credible evidence is that over the years, in multiple locations throughout the United States, with Union knowledge, management has conducted route inspections up to and including all six days. Operations Specialist Piasecki, who has extensive operations experience as a route examiner and delivery manager, testified that he has personally conducted six-day inspections and for years has been advising Postal Service managers they can count and inspect on multiple days, up to and including six days (Tr. 209).
9. Robert Hart, former Manager of Delivery Programs for the Midwest Area, was an active participant in the Joint Inspection Process with the NALC. Hart assisted Midwest Area performance clusters in establishing and administering route examination training and procedures. He testified that he routinely conducted multiple days of inspection, “including all six days.” Moreover, even after the Postal Service decided to withdraw from the Joint Inspection Process, the Midwest Area and the NALC continued it in offices with five or more city routes. According to Hart, in each case where the routes were inspected for multiple days, the Union was notified and raised no objection (Tr. 268).
10. Larry Owens and Greg Petrin, both of whom are specialists in the route inspection process, testified about their knowledge of multiple days of inspection, including all six days.
11. The appearance of the singular word “day” in the M-39 and M-41 Handbooks is inconclusive. That form of the word is simply illustrative of

the procedures to be utilized on a given inspection day. At most, it reflects the predominant situation that existed in 1975.

12. The Union's position seems to shift from Vice President Mullins' opinion that there can be but a single day of inspection, to Union Counsel's position that there can be multiple-day inspections, but not six-day inspections (Tr. 7, 22), to Vice President Young's testimony that multiple-day inspections (including all six days) can take place only with Union concurrence (Tr. 144), to Union witness Darvin Schlepitz' claim that inspections of more than three days can take place only in "rare" instances (Tr. 167). Fatal to the Union's position is that none of those witnesses could point to handbook language in support of their claims.
13. The number of inspection days has historically been tied to the extent to which management has devoted resources to the route inspection process. Thus, when Union witness Schlepitz developed his familiarity with route inspection in the 1970s, management did not commit significant resources to it. That changed with the introduction of DPS in the 1990s, when it became prudent to conduct route inspections more frequently and more intensely.
14. Once local management determines that in the interest of operational efficiency multiple-day inspections should be conducted, the M-39 and M-41 Handbooks make it crystal clear that examiners --- not carriers --- must complete Form 1838-C on the days of inspection.

15. In multiple-day inspections city carriers still have a role. They are provided “dry-run” training, so they fully understand the route inspection process. They can offer comments to the inspector on inspection days, and nothing prevents carriers from making corrections to inspector notations.
16. On multiple-day inspections of less than six days, city carriers use their dry run training to complete Form 1838-C on days when no inspection is conducted.
17. The Union’s reliance on Regional Arbitrator James Scearce’s 1991 Award is misplaced, inasmuch as the Postal Service would be subject to a grievance if it did not count and record mail on the days a manager accompanies a carrier.
18. The NALC’s “past practice” argument is specious. It seems to suggest that if at one time mail was not counted for multiple or all six days, Postal Service management is somehow estopped from counting all six days in the future --- despite the absence of any contract or handbook language prohibiting the counting of mail for multiple days, up to and including all six days.
19. In view of the clear and unequivocal Article 3 and M-39 and M-41 Handbook language providing management with the right to count and inspect on multiple days, past practice evidence should be given no weight.

20. Even though multiple and six-day inspections were done less frequently in the past than they are presently, management's former sporadic use of that right does not extinguish it.
21. The Special Route Inspection language of the Handbooks provides additional support for the claim that they permit multiple-day and six-day inspections. According to M-39 §271 and M-41 §918, a carrier can request a Special Route Inspection if there is some evidence the route takes more than eight hours to complete. Such inspections are conducted in the same manner as annual route inspections.
22. Special Route Inspections often occur over multiple days, including all six days, as resources are often available to do so. If six-day inspections were prohibited by Handbook language, the prohibition would likely apply to Special Route Inspections as well.
23. Posting requirements do not prevent more than a limited number of inspection days during a count and inspection week. The Handbook provisions for notice prior to an inspection week are separate from the specific M-39 and M-41 language delineating when an examiner can cancel one or more routes being inspected. (See, for example, M-39 §233).
24. Union witness Schlepitz was indeed an expert on many delivery programs and policies, but his knowledge of the route inspection process was limited. It was gleaned from his 1970s experience in Bell, California, where management apparently decided to inspect only on a single day. In

addition, the unit review process was the dominant method in the 1980s, and Schlepitz retired in 1992. Thus, his delivery expertise is somewhat dated --- especially in the area of route inspection. Moreover, Schlepitz had no familiarity with the specifics of the 1975 Step 4 settlement language which specifically provides for “days of inspection.”

25. Postal Service witness Piasecki developed his expertise as a route inspector and expanded his knowledge of the process during his lengthy stay at headquarters, advising and training postal personnel on the route inspection process throughout the 1990s.
26. The Union failed to understand the difference between Form 1838-C and Form 1838. Management provides carriers with a copy of the former so they have an opportunity to correct any errors or dispute a management notation. Form 1838 requires management to provide in summary fashion the results of the inspection within approximately 50 days. And the matter of who completes the 1838-C is a bit of a red herring. In fact, there are many instances where carriers refuse to complete the form when, arguably, the Handbook requires such completion.
27. The Union never alleged a violation of Article 34 until the first day of hearing in these proceedings. And it presented no evidence that any standard was changed as contemplated by that provision. Indeed, the only known standard within the letter carrier craft is the requirement that they case letter mail and flat mail at a minimal rate of 18 and 8 per minute, respectively. The route inspection process does not alter that standard.

28. If the Postal Service is found to have violated a Handbook provision, it still has the right to change it under the umbrella of Article 19. Contrary to the Union's suggestion, the Arbitrator has no authority to direct the parties to negotiate such changes.
29. Carriers can question the results of the route inspection process either through the grievance procedure or by a Special Route Inspection. Thus, a six-day inspection does not deny them a voice in the process.
30. Union witness Schlepitz acknowledged that carriers have been known to complete the 1838-C in their own best interest. Thus, a management decision to inspect on multiple days, and up to six days, is appropriate. That is especially true in light of changes in the city carrier workplace.
31. The grievance should be denied in its entirety.

OPINION

Introductory Comments

In agreement interpretation cases generally, arbitrators are responsible for identifying and enforcing the mutual intent the parties embraced when they negotiated the language at issue. The logical starting point is the negotiated language itself. If that language is not absolutely clear, it then becomes appropriate to consider such forms of parol evidence as bargaining history and past practice. The sole purpose of doing so is to clarify the ambiguity found in the written agreement.

Conventional arbitration authority also holds that unions have the burden of proof in agreement interpretation disputes. Accordingly, the NALC must demonstrate by a

preponderance of the evidence that under the National Agreement and Handbooks M-39 and M-41 the Postal Service may not properly inspect city carrier routes on all six days of the count and inspection week.

The Agreement Language

The Employer relies on Article 3 (Management Rights) to argue that in pursuit of operational efficiency it has the right to conduct six-day inspections. Certainly, Article 3 confirms the parties' mutual acknowledgement that the Postal Service has broad managerial authority, especially where efficiency of operations is concerned. But its rights under that Article are not unfettered. Rather, they are limited by other provisions of the National Agreement, and they must be interpreted in ways consistent with those provisions.

Article 19 specifically refers to all of the Employer's "handbooks, manuals and published regulations" that directly relate to wages, hours or working conditions. The parties agree that the M-39 and M-41 Handbooks fall into that category. According to Article 19, then, those documents "shall contain nothing that conflicts with (the) Agreement." It follows that the Postal Service is contractually prohibited from engaging in any action under the mantle of Article 3 which violates or is repugnant to the M-39 and/or the M-41 Handbooks.

It has already been established that the mail count and route inspection mechanism is a "work measurement system" within the meaning of Article 34.¹⁰ Whether the Union raised an Article 34 allegation at previous steps in the grievance procedure or not, according to its terms work measurement systems must be "fair,

reasonable and equitable.” In turn, since relevant portions of the M-39 and M-41 Handbooks are designed to help managers and city letter carriers operationalize the count and inspection processes, those provisions must be interpreted and applied consistent with the contractual standards contained in Article 34.

The final Agreement provision cited by the parties as being directly relevant to the present dispute is Article 41 (Letter Carrier Craft). Section 3.S. of that provision requires simply that mail counts and inspections be conducted in accordance with the M-39 Handbook.

The Arbitrator has concluded that none of the foregoing Agreement provisions are clear and unambiguous with regard to whether the Postal Service has the contractual authority to conduct six-day inspections. Since relevant portions of the M-39 and M-41 Handbooks contain provisions specific to the count and inspection processes, and since Article 41 requires the Postal Service to conduct those processes in accordance with the Handbooks, the Arbitrator now turns to the M-39 and M-41 for evidence concerning the contractual legitimacy of a six-day inspection.

The M-39 and M-41 Handbooks

Neither of the Handbooks in question speaks definitively about whether six-day inspections are permissible. Each party’s principal argument with regard to the applicable Handbook language rests on the appearance of the singular form of the phrase “day of inspection” in the Union’s case, or upon the plural “days of inspection” in the Employer’s. In their respective posthearing briefs the parties cited and quoted many Handbook examples of the singular and plural “day” or “days,” even attaching some

¹⁰ NALC and USPS, Case No. N-NAT-2992 (Gamser), 1973.

degree of significance to the appearance of one form more often than the other. Having examined relevant portions of the M-39 and M-41 Handbooks, the Arbitrator has concluded that both single and multiple-day inspections are contemplated therein.

Section 221.131 of the M-39 Handbook supports that conclusion quite readily:

The carrier will count and record the mail every day except on the day of inspection when the mail will be counted and recorded by a manager. On one or more days during the count week, each route will be inspected by a manager. When management performs the mail count the carrier serving the route, upon request, may verify the mail count. Where hand-held computers are used on the day(s) of inspection, the route examiner will complete entries on Form 1838-C in the usual manner, except for line item elapsed time totals and mailpiece count totals by category. The calculations remain the same as previously performed manually. The carrier will continue to make timeclock entries on Form 1838-C for beginning, leaving, returning, and ending times. Total mail counts and times will be provided to the carrier on a computer generated facsimile of Form 1838, *Carrier's Count of Mail – Letter Carrier Routes (Mgt. Summary)*.

Two obvious conclusions may be drawn from the above provision, as well as from many others in the M-39 and M-41 Handbooks: (1) the language contemplates both one-day and multiple-day inspections; and (2) it underscores the importance of mail counts by and input from both carriers and management.

As discussed, the former conclusion stems from the Handbooks' mixed use of both the singular "day" and plural "days" in various provisions. Turning to the carrier participation issue, M-39 Section 221.131 indicates that the carrier "will" count and record the mail on days when an inspection is not being conducted. Underscoring the importance of carrier participation in those tasks, the Postal Service has invested a significant amount of time and financial resources in their training. The Dry-Run Count provisions of the M-39 are illustrative.

But whenever a six-day inspection is performed, affected carriers do not perform official mail counts or complete Form 1838-C. What, then, would be the purpose of a Dry-Run Count under those circumstances? The Employer's claim that it would be done simply to help carriers understand the count and inspection processes is not persuasive.

The Arbitrator understands that management may use data from more sources than a route inspection in order to make route adjustments. According to M-41 Handbook §911.3, "current management records and the manager's knowledge of the route" may be used as well. But neither that provision nor Mr. Piasecki's testimony that management does not have to rely "solely" on data generated from Forms 1838, 3999 and 1840 have convinced the Arbitrator that a six-day inspection with no 1838-C input from a letter carrier is contractually appropriate.

Unfortunately, neither Handbook contains a specific authorization for or a prohibition of six-day counts. It seems logical to assume, though, that since six-day counts preclude carriers from performing their own counts and completing Form 1838-C themselves during an inspection week, they would be repugnant to one apparent purpose of the Handbooks --- direct carrier participation.

As noted, the above conclusion is based on ambiguous Handbook language. In an attempt to shed light on that ambiguity the Arbitrator turns now to the parties' practice under the Handbooks.

Practice Under The Handbooks. When parties subject to ambiguous, yet contractually binding written language have applied that language knowingly, consistently and frequently, over a significant period of time, it is reasonable

to conclude that the application they have embraced reflects the intent of the written language at issue. For that reason, arbitrators routinely consider “past practice” evidence.

In the present case both parties submitted such evidence. Employer witnesses Piasecki and Hughes described their experience with six-day inspections. While both were credible gentlemen, neither could recall the specific dates of those inspections. They did not provide supporting documentation of their occurrence either. Moreover, neither Piasecki nor Hughes described what might be considered their widespread use. The same may be said for the testimony of management witness Hart. Employer witness Baker testified that as a labor relations representative, he had often advised managers about what he believed was their right to conduct multiple-day inspections. But like his management colleagues also called to testify, Baker’s recollection about six-day inspections was “not exact” (Tr. 399). He could recall but a single instance where one was actually conducted. The testimony of Postal Service witnesses Owens and Petrin was also inconclusive with respect to the existence of a widespread, consistent national practice regarding six-day inspections.

Union witnesses Hurst, McNeese, Herdlein and McMahon all testified about what they characterized as consistent practices in their respective geographical areas. Like the management witnesses identified in the preceding paragraph, all four were credible. Hurst, McNeese and McMahon each claimed that only one-day inspections had been conducted in their areas. Herdlein described a similar practice in the Buffalo branch, noting that it was not until March, 2000 that a six-day inspection was performed there. While the testimony of Hurst, McNeese, Herdlein and McMahon lends general support to

the Union's position, it falls short of convincing the Arbitrator that six-day inspections are impermissible under the M-39 and M-41 Handbooks.

Another reflection of the parties' practice may be found in grievance settlement documents. The Postal Service relies on an October 23, 1975 Step 4 settlement which, it claims, confirms management's right to conduct inspections on more than one day. It notes as well that the settlement places no limitation on the number of inspection days. While that that settlement document places no limitation on the number of inspection days, though, neither does it expressly confirm the propriety of a six-day inspection. In fact, the settlement does not so much as mention inspections of a six-day duration. The Arbitrator therefore does not find the October 23, 1975 M-00254 Step 4 settlement to be persuasive.

For past practice evidence to be considered conclusive in this national arbitration forum, it must be far more comprehensive than that presented by either party here. The National Agreement covers the continental United States and then some. It is quite possible that regional practices not contemplated by its drafters might have developed over the years. Be that as it may, it is the Arbitrator's job to resolve the more global interpretive issue of whether six-day inspections were mutually contemplated by those who negotiated the National Agreement, and were recognized by those who drafted the M-39 and M-41 Handbooks as being consistent with that Agreement. The mixed past practice evidence in the record does not provide sufficient proof to resolve those questions.¹¹

¹¹ National Arbitrator Mittenthal adopted similar reasoning in USPS and NALC, APWU (Intervenor), Case No. H1N-NA-C-7 (1985).

The Intent Behind The Handbooks. Bargaining history evidence concerning the M-39 and M-41 Handbooks is non-existent in the conventional sense, because they were not negotiated at a bargaining table. Accordingly, neither party submitted negotiation notes or written proposals into the present arbitration record. However, both parties called as a witness someone who was responsible for national level training with regard to the interpretation and application of the M-39 and M-41 Handbooks. The Union called retired management official Darvin Schlepitz; the Employer called former city carrier and former Mass Instructor for Delivery Operations Mike Piasecki. Both of those gentlemen testified concerning the intent behind the Handbooks.

Mr. Schlepitz, a recognized expert in delivery operations, was responsible for all M-39 and M-41 changes nationwide between 1980 and 1992. During those years he was the Employer's principal officer for those Handbooks (Tr. 161). Schlepitz could accurately be characterized as a dyed-in-the-wool management advocate, called adversely by the Union in these proceedings because of his insight into the M-39 and the intent behind it.

With regard to that intent, Schlepitz testified as follows:

Q Now if the intent of that change (i.e., the 1974 amendment adding the plural "days") had been (to) authorize six-day inspections, do you believe that that would have been communicated to the field?

A Yes, it would have been because it would have been a major departure from what had been the process. (Tr. 164-165)

Mr. Schlepitz further testified that during his tenure of national responsibility for route inspection, he did a two-hour satellite training session. During that September 19,

1991 videotaped presentation, two different field divisions asked about the propriety of six-day inspections. In both responses Schlepitz referenced a regional arbitration award, adding comments to the effect that six-day inspections violate the M-39 Handbook because they preclude letter carriers from counting their own mail on any of those days.

In explanation of his broadcast responses, Mr. Schlepitz testified as follows:

Q In your opinion, given your familiarity with the M-39 and the M-41, is this six-day inspection consistent or inconsistent with what's provided there?

A A six-day inspection is inconsistent with everything in the handbooks. It's inconsistent with past practice so far as Postal Service.

When I was at headquarters, part of my job was to provide technical guidance and support to district offices and regional offices, you know, when they had a question over something, and I would provide guidance to them. But I never had a question from the regions, can we inspect all six days.

And if I had gotten such a question while I was at headquarters, I would have told them no. (Tr. 169-170)

With regard to letter carrier participation in the process, Schlepitz testified that their input on Form 1838-C is an important element of a fair evaluation of their routes. He testified as well that both the M-39 and M-41 Handbooks contemplate letter carrier completion of that Form as part of the mail count and route inspection process. That testimony comports with the Arbitrator's own analysis of the Handbook language itself.

On balance, and even though Mr. Schlepitz retired from the Postal Service in 1992, the Arbitrator was favorably impressed with his testimony concerning the intent behind the M-39 and M-41 Handbooks. That intent was established well before 1992, and there is no convincing evidence in the record to demonstrate that since then it has

changed so drastically as to completely preclude letter carriers from completing Form 1838-C.

Like Schlepitz, Postal Service witness Piasecki has an impressive knowledge of the mail count and route inspection process. Beginning in 1993 he became responsible for its application across all areas and districts. Piasecki and Schlepitz worked together for a time prior to the latter's retirement in 1992. In an October 24, 1991 memorandum to Field Division General Masters/Postmasters, they indicated that if a given letter carrier refused to participate in the mail count process, inspections could be conducted on all six days of the inspection week. But that factual circumstance is an obvious exception to what appears to be the much more common situation where a letter carrier wants to perform the mail count and complete Form 1838-C. Accordingly, it does not support the general proposition, as advanced by the Postal Service in these proceedings, that it has the right to conduct six-day inspections at will.

Mr. Piasecki testified about the six-day inspection issue, but his responses were always linked to his own interpretation of M-39 Handbook provisions. As noted, those provisions are ambiguous, and their accurate interpretation is the very objective of this national arbitration proceeding. Mr. Piasecki's interpretation is certainly important, and it was considered carefully. But the Arbitrator was not convinced from that consideration that the Postal Service has the general right to conduct six-day inspections.

Additional Comments

Obviously, selected city letter carriers might be inclined to complete Form 1838-C in ways they think might result in a light workload. But that potential disadvantage to

carrier participation in the mail count and inspection process does not overcome the obvious M-39 endorsement of carrier participation. Consistent with Mr. Schlepitz' interpretation of the Handbook, the Arbitrator concludes that such participation is contemplated by the "fair, reasonable and equitable" standards set forth in Article 34.

It is true that city letter carriers can question inspector entries to Form 1838-C. They can also request Special Route Inspections if they disagree with the end result of a route inspection. But neither of those mechanisms provide for the level of direct carrier input contemplated by the M-39 and M-41 Handbooks.

The Arbitrator understands that in a dynamic environment an organization like the United States Postal Service must maintain the ability to respond to change. Clearly, it has a legitimate interest in and contractual right to pursue operational efficiency in appropriate ways. But in light of the current M-39 and M-41 Handbook provisions, six-day inspections which completely preclude letter carriers from counting mail and completing Form 1838-C are not among them.

AWARD

After careful study of the record in its entirety, including all of the evidence and argument submitted by both parties, the Arbitrator has decided that under the National Agreement and Handbooks M-39 and M-41, the Postal Service may not properly inspect city carrier routes on all six days of the count and inspection week. The grievance is hereby remanded to the parties for further discussion in light of this Award.

Signed by me at Chicago, Illinois this 29th day of October, 2002.



Steven Briggs