

**MODIFIED ARTICLE 15
ARBITRATION PANEL**

In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE
and
AMERICAN POSTAL WORKERS UNION

Grievant: DEAN SMITH

Post Office: SPRINGFIELD, MA

Case No.: B06T-1B-C 09301917

**Local Grievance 09SK015
USPS Grievance 09-714**

AAA Case No. 11 390 00876 10

Before: RANDALL M. KELLY, Arbitrator

Appearances:

For the United States Postal Service:

NITA FOURNIER, Labor Relations Specialist
NORMAN R. BETOURNAY, Maintenance Manager

For the American Postal Workers Union:

STEVEN DISE, Arbitration Advocate
DEAN SMITH, Grievant
DAN KURALT, Local Union President
STUART A. KIBBE, III, Shop Steward

Place of Hearing: APWU Office, Springfield, MA

Date of Hearing: May 3 and 18, 2010

Date of Award: June 17, 2010

Relevant Contract Provisions: Article 5, 17, LMOU; past practice

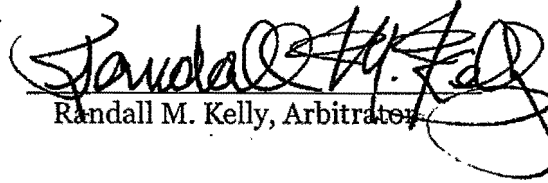
Contract Year: 2006-2010

Type of Grievance: Contract

AWARD

1. That for reasons set forth herein, the Postal Service violated Article 17.5 of the National Agreement and Item #23 of the Local Memorandum of Understanding when it disapproved Local Union Vice President Dean Smith's request for a change of schedule in order to attend the Joint Labor/Management meeting while "on the clock" on July 8, 2010;
2. That Springfield Management is directed to cease denying a change of schedule to the Grievant as Union Vice President to attend Labor Management meetings at times when he is not regularly scheduled;

3. The Grievant is to be compensated for four hours at straight time for having to attend the July 8, 2010 Labor Management Committee meeting on his own time; and
4. The grievance is sustained.


 Randall M. Kelly, Arbitrator

Stipulated Issue:

Did the Postal Service violate Article 5 and/or Article 17.5 of the National Agreement and/or Item #23 of the Local Memorandum of Understanding when it disapproved Local Union Vice President Dean Smith's request for a change of schedule in order to attend the Joint Labor/Management meeting while on the clock? If so, what shall be the remedy?

Background Facts and Circumstances of the Dispute:

The Grievant, Dean Smith, is employed as a MPE Mechanic on Tour 3 in the Springfield P&DC. He was elected Local Union Vice President in the most recent union elections, taking office in June, 2009 (all dates hereinafter are 2009 unless otherwise indicated).

On July 5, the Grievant submitted a Request for Temporary Change of Schedule for Personal Convenience to his supervisor with a notation that it was to attend a Labor-Management Meeting on July 8 (p. 7 of Jt. Exh. 4). On July 7, Maintenance Manager William Waller disapproved the request without comment.

The Grievant filed a timely grievance protesting that management violated his contractual rights as a union officer and asked he be made whole for 4.5 hours at the overtime rate for attending the meeting on his own time. The Union pursued the grievance through the contractual Modified Article 15 grievance procedure to arbitration. Being unresolved, it is properly before me for final and binding arbitration pursuant to the terms of the local parties' Modified Grievance and Arbitration Procedure.

Cited LMOU Provision:

ITEM #23

Local Area Labor Management Committee
All Crafts

- A. The local APWU Labor-Management Committee shall consist of representation from the American Postal Workers' Union which will be allowed six (6) representatives on the clock and such management representatives as the Postmaster shall select. The date, time, and place of the meeting shall be designated as per item D (below) of this Memorandum. Any additional Union Representatives will be off the clock.

OPINION

The Grievant was elected Local Union Vice President in the most recent union elections, taking office in June, 2009. His full-time position in the Service is as a MPE Mechanic on Tour 3 with the hours of 3:00 p.m. to 11:30 p.m. with Tuesdays and Wednesdays off.

By letter to then Union President Fred Lowney dated May 12, the Lead Plant Manager Wayne Hoppock informed the Union that management believed that its application of Article 17 was "not in conformance with the Collective Bargaining Agreement" and that management was making certain changes to that application. The letter states, in pertinent part:

In order to aid in sustaining the viability of the organization, we have been reviewing expenses and opportunities to control costs during which we discovered APWU steward union costs to be \$1,086,678.00 of FY 2008. In addition, upon further review, it appears that our application of Article 17 has not been in conformance with the Collective Bargaining Agreement which has contributed to these cost overruns.

It is not the intention of management to continue to provide a schedule of unconditional union time to Union Officers and Craft Directors who are not duly designated as acting in an official steward capacity. It is essential that APWU elected officers and craft directors fulfill the obligation to their respective bid positions, unless authorization for union time has been requested and approved through appropriate managers.

The practice of changes of schedule to move said officers, craft directors and stewards off their assigned tours will not continue. All requests for changes of schedule of a personal nature will continue to be evaluated and provided on an as needed basis when the ability to do so falls within operational demands and the needs of the Service. It is not management's intention to obstruct day to day union activity, but to insure employees meet the obligations of their bid position, and properly request Union activity time as needed, under contractual guidelines.

* * *

Recognizing the importance of communication between Labor and Management, the Springfield management team will continue to participate in the Local/Area Joint Labor Management Committee meetings. These meetings will be held on a monthly basis for the purpose of discussing, exploring, and considering with Management matters of mutual concern. The payment of attendees will be “. . . at the applicable straight time rate, providing the time spent is a part of the employee’s or steward’s (only as provided under the formula in Section 2A) regular work day.” It is Management’s position that in accordance with Item #23 of the Local Agreement, the APWU will be authorized six (6) representatives on the clock to attend such meetings. This is believed to mean that payment would only be made if the meeting time was a part of the steward’s regular schedule.

It is expected that the Union would notify Postal Management as far in advance as possible of the names of any representatives they desire to attend such meetings so that Management can meet operational and staffing needs.

* * *

I realize that some of the above differs from some practices within the Springfield complex and I would like to take the opportunity to discuss these matters with you. Due to the nature of the discussion, I would like a meeting with you and one designee (Mgmt. Exh. 1).

When a new Local Union President was elected, Dan Kuralt, Hoppock sent him a copy of the May 12 letter on June 1. That letter included the following:

Please call to set up a meeting to discuss this subject. I would appreciate a response by June 10, 2009 to schedule this meeting. If I haven’t heard from you to schedule this meeting by June 10, it will imply your concurrence and the changes will be implemented without any further discussion (Mgmt. Exh. 2).

Kuralt testified that he responded to the Article 17 letter in detail with the Union’s objections, including an objection that Union officers should be given changes of schedule to attend Labor Management Committee meetings on the clock. The parties met twice but were not able to resolve the issues. Kuralt testified that the Union did not waive any of its objections to the memo.

The Grievant testified that after he was elected local Vice President, Tour Manager William Waller and Maintenance Manager Norm Betournay met with

him and Steward Kibbe to explain their interpretation of Article 17 of the contract. They told the Grievant and Kibbe that nothing in the National Agreement or LMOU allowed the Grievant as Vice President to be off any time he wanted for Union business. The Grievant offered examples of times he would need time off, including Labor Management Committee Meetings, but Waller and Betournay insisted that he would only be granted time for such Union business if it occurred during his regular tour, in this case, Tour 3.

According to the LMOU, Labor Management Committee Meetings in Springfield are regularly scheduled on the second Wednesday of each month. The Grievant testified that he submitted a Request for Temporary Change of Schedule in June to attend the June Labor Management Committee Meeting. At first, Maintenance Manager Waller disapproved the request, but after the Grievant met with him, Waller ultimately approved the request.

On July 5, the Grievant submitted a Request for Temporary Change of Schedule for Personal Convenience to his supervisor with a notation that it was to attend a Labor-Management Committee Meeting on July 8 (p. 7 of Jt. Exh. 4). He requested a change of day off (Wednesday is one of his off days) and a change of schedule to allow him to attend the meeting scheduled for 1:00 p.m.

On July 7, Manager Waller disapproved the request without comment (p. 7 of Jt. Exh. 4). The Grievant testified that all such requests for changes of schedule have been similarly denied and he has protested the denial every month. The Grievant has attended the monthly Labor Management Committee meetings on his days off.

Lead Maintenance Manager Betournay testified that this issue first arose when the Grievant requested a change of schedule for three weeks after the election to work on the transition of the new officers. Betournay denied the request, telling the Grievant that there was no provision in the contract or LMOU requiring that he be given time off for a transition.

As to the Labor Management Committee meetings, Betournay testified that all Maintenance bids are based on preventive maintenance schedules and workloads and the resulting staffing needs. Especially in the prime vacation period, staffing is tight and mechanics cannot be spared. According to

Betournay, there is no provision in the National Agreement that requires that management give Union officers paid time to attend Labor Management Committee meetings. He testified that he relied on the contract and the Service's internal Questions and Answers regarding Article 17 (Mgmt. Exh. 3). The provision of the National Agreement he cited is Article 17.4. Section 3 sets forth the rights of stewards and Section 4 deals with "Payment of Stewards". There is a provision for the payment of stewards when handling grievances and for "Meetings called by the Employer for information exchange and other conditions designated by the Employer concerning contract application." Section 4 concludes:

Employer authorized payment as outlined above will be granted at the applicable straight time rate, providing the time spent is a part of the employee's or steward's regular work day.

According to the Service, this means that Union representatives need only be granted paid Union time if it is during his or her regular tour and scheduled work day. It supports that position with the Questions and Answers re: Article 17 on its internal website. The pertinent Q & A states:

Q. What union activities are paid for by the Postal Service?

A. A properly designated union steward who is otherwise on-the-clock is entitled to straight time pay for the following union activities:

[1-6 are for grievance related activities under 17.4]

7. Meeting called by the Employer	17.4
8. Labor-Management Meetings	17.5
9. New employee orientation	17.6

A designated union officer is entitled to paid union time for items 1-6 [grievance related activities] if it is within the limits set forth in 17.2.B.

A designated union officer is entitled to paid union time for items 7-9 in compliance with 17.4, 5, and 6 (Mgmt. Exh. 3).

The Service relied on Regional Arbitration awards holding that management is not required to give employees or stewards changes of schedule for various union activities. In Case No. E00V-1E-C 05071287 (2006), Arbitrator James P. Martin held that management did not violate the agreement, nor past

practice, and did not act arbitrarily or capriciously when it denied a Union Craft Director a change of schedule to attend an arbitration hearing as a technical advisor. In Case No. E06C-1E-C 07191825 (2008), Arbitrator Lynne M. Gomez held that the Service did not violate the contract when it denied an employee's request for a change of schedule to attend a union conference in Washington, D.C. Article 24 .2, Leave for Union Conventions, does not require that an attendee be given a change of schedule and management did not act arbitrarily when it denied the request.

In Case No. B94N-4B-C 97062402 (1997), Arbitrator Sherrie Rose Talmadge held that it was not arbitrary to deny an employee's request for a change of schedule for a doctor's visit despite the fact that prior management had been quite liberal in granting such requests.

The Union position is that the language of Article 17.5 when combined with the language of Item #23 of the LMOU makes clear that union officers, as opposed to union stewards, are entitled to paid union time for Labor Management meetings even when otherwise off-the-clock.

Article 17.5, Joint Labor-Management Committee Meetings, provides for national, regional and local level meetings to discuss, explore and consider matters of mutual concern. The only direct reference to the local meetings provides that they will meet as needed, but not less than once every quarter "unless otherwise provided in the parties' local memorandum of understanding." Significantly, there is a provision concerning payment of union representatives at the national and regional meetings:

E. Meetings at the national and APWU regional/USPS Area levels will not be compensated by the Employer. The Employer will compensate one designated representative from the Union concerned with the special subject matter of the meeting for actual time spent in such meeting at the applicable straight time rate, providing the time spent in such meetings is a part of the employee's regular scheduled work day.

The parties negotiated the current language of Item #23 of the LMOU in 1984. Prior to that, there was no reference to "on the clock" (U. Exh. 3). The current language provides:

Local Area Labor Management Committee

All Crafts

- B. The local APWU Labor-Management Committee shall consist of representation from the American Postal Workers' Union which will be allowed six (6) representatives on the clock and such management representatives as the Postmaster shall select. The date, time, and place of the meeting shall be designated as per item D (below) of this Memorandum. Any additional Union Representatives will be off the clock.

According to the Union, management has always given Union officers paid union time to attend Labor Management meetings and has always given Union officers changes of schedule to allow them to attend Labor Management meetings "on the clock" (U. Exhs. 1-2). The Service disputed that the Union officers attending the meetings were on tours other than Tour 2, but there are, in fact, examples of some Union officers on other tours. According to the Union, this established a binding past practice that demonstrates an authoritative interpretation of the contract provisions and cannot be unilaterally discontinued by management (see JCIM, Article 5).

Management rebuts that it does not have to continue past practices or LMOU provisions that are in conflict with the terms of the National Agreement, relying on national awards from Arbitrator Nicholas H. Zumas (Case No. H1C-NA-C-36 (1987) and Arbitrator Richard Mittenthal in Case No. H1C-NA-C-25 (1984). The Service asserts that the practice of granting changes of schedules to Union officials for Labor Management meetings, if it in fact existed, was contrary to the clear terms of Article 17.4 of the National Agreement.

The Union concludes with the assertion that the only way that the local parties can be on equal footing at the joint Labor Management meetings and the only way that its officers can be "on the clock" at such meetings is if management is required to give Union officers changes of schedules to attend such meetings when the meeting is not scheduled on their schedule work day or tour; that they are not stewards handling grievances under Article 17.4, but union officers who have additional rights under Article 17.5 and the LMOU.

- B. A close reading of Article 17 and the LMOU convince me that management is required to approve requests for a change of schedule for a duly

elected Union officer to attend a scheduled Joint Local Labor Management Committee meeting when such meeting is scheduled outside his tour or on his scheduled day off. Management is correct that Article 17.4 limits the payment for union time unless the employee is otherwise on the clock, i.e., on his regular tour and work day. However, that provision is limited to payment of stewards performing grievance related duties or to attend a meeting called by management. A Union officer is not attending a Labor Management meeting as a steward but as a representative of the Union as an institution. Indeed, management's own Q & A re: Article 17 recognizes as much. After stating that a "properly designated union steward [or Union officer acting as a steward] who is otherwise on-the-clock is entitled to straight time pay for [listed] union activities," it sets forth a separate and distinct standard for Union officers when acting in his or her capacity not as a steward, but as an officer.

A designated union officer is entitled to paid union time for items 7-9 in compliance with 17.4, 5, and 6 (Mgmt. Exh. 3).

Item 7 is a meeting called by management, item 9 is new employee orientation, and item 8 is for a Labor Management meeting under Article 17.5, not Article 17.4. If the parties had intended to limit payment of Union officers for attending local Labor Management meetings, they could have included the language of Article 17.5.E regarding National and Regional/Area Labor Management meetings. They did not do so.

Finally, the language of Item #23 of the LMOU is clear. Up to six properly designated local Union representatives (not acting as stewards) are to be allowed to attend the Labor-Management Committee meetings "on-the-clock". On-the-clock must be interpreted to mean in a paid status. Whenever the parties use the term "on-the-clock", they mean in a paid status (see, e.g., Article 16.5). When the parties want to limit an employee from using a change of schedule to remain on-the-clock, they certainly know how to do so (see, Article 17.4). If the Union officer would not otherwise be a paid status when attending a Labor Management meeting, he must be granted a change of schedule to allow him to be in a paid status. This is the way that the parties interpreted this provision for many years (see U. Exhs. 1-2) and reinforces my conclusions. I find that management

violated Article 17.5 of the National Agreement and Item #23 of the LMOU when it denied the Grievant, the elected local Union Vice President, a change of schedule to attend a joint Labor Management Committee meeting at a time when he was not regularly scheduled. Management is directed to cease denying a change of schedule to the Grievant as Union Vice President to attend Labor Management meetings at times when he is not regularly scheduled. As to remedy, the Grievant is to be compensated for four hours at straight time for having to attend the July 8, 2010 Labor Management Committee meeting on his own time.