

REGULAR ARBITRATION PANEL

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In the Matter of Arbitration)		
Between)	GRIEVANT:	Class Action
UNITED STATES POSTAL SERVICE)	POST OFFICE:	Gadsden, AL
and)	CASE NO.:	H06C-4H-C 08233700
AMERICAN POSTAL WORKERS UNION)	APWU NO.:	G0856

BEFORE: **Glenda M. August, Arbitrator**

APPEARANCES:

For the USPS:	Diane Bennett
For the APWU:	Billy Woods
Place of Hearing:	700 Chestnut St. Gadsden, AL 35901
Date of Hearing:	December 1, 2009
Date of Award:	January 29, 2009
Relevant Contract Provision:	Article 3, Article 19 and ASM 273.17
Contract Year:	2008
Type of Grievance:	Contract

AWARD: The grievance is sustained. The National Agreement does not provide a basis for the placement of web cameras in the lobby at the Gadsden, Alabama Facility.

The right to monitor the lobby with web cameras shall be negotiated with the Union before any future utilization.

Glenda M. August

GLENDA M. AUGUST
Arbitrator

I. ISSUE

Did the Postal Service violate the Collective Bargaining Agreement by placing a camera in the lobby of the Retail Unit of the Gadsden, Alabama Post Office under ASM 273.17? If so, what is the appropriate remedy?

II. STIPULATIONS

No discipline has been issued as a result of the web camera's surveillance.

III. RELEVANT CONTRACT PROVISIONS

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;
- E. To prescribe a uniform dress to be worn by designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

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.

ADMINISTRATIVE SUPPORT MANUAL

Issue 13 (July 1999)

273.17 Closed Circuit Television System Security

273.172 Policy

The Postal Service uses CCTV systems for the protection of its employees, mail, and postal assets, and to monitor automated mail flow operations. The purpose of CCTV systems is to provide visual verification in conjunction with intrusion detection devices or exit alarms and doors equipped with exit alarms or access control devices. CCTV systems are to function as deterrents, and if a crime occurs in the monitored area, to record evidence of it. The administrative and security uses of CCTV systems are limited to the following:

- a. CCTV systems are installed to view parking lots, building exteriors, employee and visitor entrances, other access controlled entrances, emergency egress only, Post Office box areas, public access areas, and designated high-value locations, such as registry areas.
- b. CCTV systems are not installed to view work areas to evaluate the performance of employees.
- c. CCTV systems do not utilize "dummy" or nonfunctioning CCTV cameras.
- d. Security in the postal retail store.

IV. FACTS

In March 2008, Management placed a camera in the lobby of the Gadsden, Alabama Post Office. The cameras were installed behind the counter line at the facility under the direction of the District Manager.

The cameras were installed, according to Management, to monitor customer traffic and to evaluate customer service efficiency.

As a result of the installation of the cameras, the Union inquired about the utilization and the validity of the cameras at the Gadsden Post Office. When no response was received, the Union filed this grievance on June 6, 2008.

V. UNION'S CONTENTIONS

The Union contended that Management violated the National Agreement and the Administrative Support Manual (section 273.172) when it placed web cameras in the lobby of the Gadsden Post Office.

It was the Union's position that Management utilized the cameras to monitor employees' performance. The Union further contended that such monitoring was not authorized under the mandate of the National Agreement and that in the absence of authority it must be negotiated by the parties.

In support of its position, the Union relied on the language submitted by Management in its Step 2 decision and the opinion provided by Arbitrator Fred Butler in case number AOOC-1A-C 06063279. In that case Arbitrator Butler stated that Management could not place cameras in the swing room without discussing the matter with the Union prior to installation.

VI. MANAGEMENT'S CONTENTIONS

Management averred that the lobby cam system did not fall within the guidelines of a closed circuit television system for security. Specifically, it was stated by Management that the cameras took still pictures via desktop computers for monitoring customer lines.

Article 3 of the National Agreement provided authority to utilize web cameras according to Management. Web cameras have been in use for several years in large cities; nationwide according to Management's witnesses.

Lastly, Management stated that the cameras did not fall under the provisions of the ASM.

VII. DISCUSSION AND OPINION

Imperative to the dispute in this case are the provisions of Administrative Support Manual 273.173:

273.173 Responsibility

The following units have these responsibilities:

a. *Postal Inspection Service* — The inspector in charge of the division in which the facility is located is responsible for determining the need for, quantity, type, and location of CCTV systems and cameras as described in this section.

b. *Security Control Officer* — The security control officer (SCO) is responsible for overseeing the procurement, installation, maintenance, and repair of CCTV systems, and for maintaining a minimum of the most recent 32 days of video recording tapes or disks. The SCO also assures that the information from the CCTV camera is monitored and/ or properly recorded 24 hours a day. At least once a year, one-third of the tapes must be replaced.

The Union has argued that ASM 273.173 does not encompass the lobby web cameras at the Gadsden, Alabama facility. Management has partially agreed with the Union's position on this point. The Union noted that Management established this position in its Step 2 decision when it provided . . . it is easy to recognize that the camera installed at the Gadsden Post Office is not a CCTV system, and does not fall under the guidelines of ASM 273.17."

Management further stated that the cameras were placed behind the counter line under the mandate of Article 3 to provide efficiency to its customers. In contrast the Union argued that Management cannot unilaterally place cameras in the lobby where the National Agreement does not specifically provide a mandate for the actions. The Union explained that Management must negotiate the right under the National Agreement.

The parties are correct in their assessment of section 273.173 of the Administrative Support Manual. The cameras are not within the description of CCTV which records for security surveillance. Thus, it must be examined under Article 3 as argued by Management.

Article 3 gives management the following rights:

**ARTICLE 3
MANAGEMENT RIGHTS**

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- 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;
- E. To prescribe a uniform dress to be worn by designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

Management argued that Article three was the basis for the camera installation in the Gadsden facility. Specifically, Management stated that the cameras were utilized to ensure efficiency in customer service. Management also stated that the cameras were not used to monitor the performance of the employees at the Gadsden facility.

The Union strongly contested Management's position when it argued that Management could not masquerade a contractual violation with the language of Article 3. It was the Union's position that Management must negotiate for the right to place cameras in the lobby where the National Agreement was silent on that issue.

The Union submitted the rationale of Arbitrator Fred Butler in case number AOOC-1A-C 06063279, on the issue of camera installation affecting working conditions. Arbitrator Butler opined:

Because it is determined that the installation of cameras in the employee swing room affect their working condition, management had an obligation to meet with the Union to discuss the need prior to unilaterally taking this action.

According to the testimony of Mr. McCarthy, Supervisor Customer Services, management had in the past met with the Union to discuss proposals that would affect the employees working conditions. However in this case, it did not do so.

Management violated Article 5 when it unilaterally installed the surveillance camera in the employee swing room without first attempting to negotiate this matter with the Union.

This Arbitrator agrees with the rationale of Arbitrator Butler on the issue of camera installation. Management cannot unilaterally place the cameras in the lobby in an intrusive manner and then attempt to justify its actions under Article 3.

The authors of the National Agreement did not provide any intent of allowing Management to place cameras behind the lobby counter line for monitoring the lobby area except in security surveillance (CCTV) instances. The cameras at the Gadsden facility do not fall in this category thereby indicating a violation of the National Agreement.

Management is instructed to discontinue the use of the cameras by removing them immediately. In an attempt to reach an Agreement with the Union, Management can negotiate the possible placement of the cameras to monitor customer service only.

AWARD

The grievance is sustained. The National Agreement does not provide a basis for the placement of web cameras in the lobby at the Gadsden, Alabama Facility.

The right to monitor the lobby with web cameras shall be negotiated with the Union before any future utilization.

Glenda M. August

GLENDAM. AUGUST
Arbitrator

January 29, 2010
New Iberia, LA