

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Grievant: Class Action

G06C-4G-C 12004902

Greenville, MS

Local# GML 1118

Arbitrator: William Holley

Date: May 11, 2012

ISSUE: Did the Postal Service violate the Collective Bargaining Agreement by placing a camera in the lobby of the Greenville, Mississippi Post Office? If so, what shall be the remedy?

Applicable Contract Language

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.**

(The preceding Article, Article 3, shall apply to Transitional Employees)

ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

Section 1. Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A

grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

**ARTICLE 5
PROHIBITION OF UNILATERAL ACTION**

**The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.
(The preceding Article, Article 5, shall apply to Transitional Employees)**

**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.

**Administrative Support Manual
Issue 13 (July 1999)**

311 Definition

Policy and procedure information is used by postal employees to perform their jobs and by the public to do business with the Postal Service. Such information:

- a. Contains policy statements, regulations, guidelines, procedures, and similar material issued by Headquarters.**
- b. Is systematically managed by Corporate Information Services to ensure that it is current, accurate, and accessible as appropriate on paper, the Internet, Postal Service Intranet, local area networks, and CD-ROMs.**
- c. Is published through the established Postal Service document architecture to enable systematic management.**

273.17 Closed Circuit Television System Security

273.171 Scope

This section clarifies the use of closed circuit television (CCTV) in administrative and security applications. It does not affect the manner in which the Postal Inspection Service or OIG utilizes CCTV equipment for criminal investigations.

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.**

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.

Mr. Arbitrator,

The instant grievance before you today involves Management unilaterally placing a camera within the lobby of the Greenville, MS Post office sometime in 2011. Management has taken the position that they are allowed to do that under the guise of Article 3 of the Collective Bargaining Agreement (CBA). Clearly, the Administrative Support Manual (ASM) states different and this is the only reference to any kind, make, shape, or form of camera mentioned within the CBA or any of the countless handbooks or manuals that are incorporated into the CBA through Article 19. The Service has stated in their Step 2 decision that the camera in question does not fall under the guidelines of ASM 273.17, therefore there is no language within the four corners of the contract which authorizes this camera if that is the case.

The Union would also like to point out to the agreed to language in the Joint Contract Interpretation Manual concerning Article 3 which states:

The Postal Service's "exclusive rights" under this article are essentially the same as its statutory rights under the *Postal Reorganization Act* 39 U.S.C. § 1001(e). While management has the basic power to "manage" the Postal

Service, it must do so in accordance with applicable laws, regulations, contract provisions, arbitration awards, letters of intent and memoranda of understanding. Consequently, many of the management rights enumerated in Article 3 are limited by negotiated contract provisions.

This is basically the Union's case in chief, that where there is no provision for Management actions then it must be negotiated.

The installation and utilization of cameras in a union shop has been conditional upon good faith collective bargaining:

In Ford Motor Co. v. N.L.R.B., the Supreme Court described mandatory subjects of bargaining as such matters that are "plainly germane to the working environment" and "not among those managerial decisions, which lie at the core of entrepreneurial control."

In Colgate- Palmolive Company and Local 15, International Chemical Workers Union, AFL-CIO; Administrative Law Judge Richard H. Beddow Jr. found that the installation of surveillance cameras is both germane to the working environment, and outside the scope of managerial decisions lying at the core of entrepreneurial control.

In NLRB Case 9-CA-32158, Colgate-Palmolive Company and Local 15, International Chemical Workers Union, AFL-CIO, the Board found the installation of surveillance cameras is analogous to physical examinations, drug/alcohol testing requirements, and polygraph testing all of which the Board found to be mandatory subjects of bargaining. They are all investigatory tools or methods used by an

employer to ascertain whether any of its employees has engaged in misconduct. In addition, the Board found that the decision to utilize cameras is not a managerial decision that lies at the core of entrepreneurial control. *"In discussing the issue in Ford Motor Co., the Court relied on Justice Stewart's concurring opinion in Fibreboard Corp., n9 in which he states that the enterprise are not in themselves primarily about conditions of employment, those management decisions which are fundamental to the basic direction of a corporate enterprise or which impinge only indirectly upon employment security should be excluded from the area."* In conclusion, the Board found that *"the installation and use of surveillance cameras in the workplace are not among that class of managerial decisions that lie at the core of entrepreneurial control. The use of surveillance cameras is not entrepreneurial in character, is not fundamental to the basic direction of the enterprise, and impinges directly upon employment security. It is a change in the Respondent's methods with serious implications for its employees' job security which in no way touches on the discretionary "core of entrepreneurial control."... Thus, the placing of cameras, and the extent to which they will be secret or hidden, if at all, is proper subject of negotiations between the Respondent and the Union."*

The U.S. Court of Appeals for the Seventh Circuit in National Steel Corp. v. NLRB, Nos. 01-3798, 01-4149, upheld the determination of the NLRB that the

Employer violated Section 8 (a) (5) of the Act by refusing to bargain with several unions with which it had collective bargaining agreements regarding the installation and use of hidden surveillance cameras.

In Anheuser-Busch, Inc. and Brewers and Maltsters, Local Union No.6, affiliated with the International Brotherhood of Teamsters, Case 14-CA-25299, the Board concluded the Respondent violated Section 8(a) (5) and (I) by failing to notify and bargain with the Union prior to the installation and use of surveillance cameras in the workplace. The Board went on to state: **“We conclude, contrary to our dissenting colleague, that the cameras were trained on a work and break area where employees regularly performed their assigned duties and were permitted to take breaks, and therefore the unilateral installation and use of the cameras violated Section 8(a) (5) of the Act.”**

In defense of its position, the Postal Service relies upon its right to manage within the provisions of Article 3 of the Agreement. Indeed, Article 3 grants management the exclusive right to maintain the efficiency of operations entrusted to it and the right to determine the methods, means and personnel by which such operations are to be conducted. However, this exclusive right is subject to provisions of the Agreement and must be consistent with applicable laws and regulations. Therefore, the installation and utilization of cameras in the workplace must meet the provisions of Section 273.17 of the ASM and must be within the

terms and conditions of Section 8(a) (5) and (1) of the National Labor Relations Act. The management decision to install and use cameras at the Greenville facility does not meet either of these requirements.

Section 273.17 of the ASM, is the only contract language in the APWU-USPS Agreement allowing the installation and utilization of cameras in the workplace. This provision of the APWU-USPS Agreement only authorizes the use of CCTV systems at the determination of the Postal Inspection Service for security measures. Management attempts to create the illusion that Section 273.17 does not prohibit it from installing and utilizing cameras as a matter of administrative discretion. However, nothing could be further from the truth. The literal reading of Section 273.171 clearly puts this issue to rest. It states: **"This section clarifies the use of closed circuit television (CCTV) in administrative and security applications ..."** The assertion of management at Step 2 that Section 273.17 only applies to CCTVs and not to their "web cam" is seriously flawed. Section 273.17 applies to both administrative and security applications. Therefore, Section 273.17 limits the determination for the need for, quantity, type and location of cameras in administrative applications to the Postal Inspection Service.

At Step 2 management argued that this "web cam" is used to "monitor the flow of customers in the Retail line." This is a clear confession that management has unilaterally expanded its rights granted under Article 3 and exceeded its

authority which is subject to the provisions of Article 19 of the National Agreement. Moreover, this is an admission that the cameras are being utilized in an administrative manner as a device for managers, postmasters, supervisors and other management officials to monitor the customer lines in the lobbies to ensure that the counter lines are sufficiently staffed to ensure proper customer service. This action is prohibited under Section 273.172 which provides that these systems will be used for the protection of its employees, mail and postal assets, and to monitor automated mail flow operations. Furthermore, Section 273.17(b) excludes the use of cameras to evaluate employee performance as an administrative matter.

National Arbitrator William Dolson heard a case at the National level concerning Article 3 rights versus Article 19 in which he stated on page 10:

The language in Part (K) would seem to allow substitute carriers (now designated part-time flexible carriers) to perform clerk duties. This language, however, is inconsistent with Article 7.2 of the Agreement. A position description is part of a handbook or manual, and as such, is subject to the mandates of Article 19 that "all handbooks, manuals and published regulations of the Postal Service shall contain nothing that conflicts with this Agreement ..."

Arbitrator Steven Briggs in another National award on page 23 stated:

Section D of Article 3 also applies to the present dispute, for it confirms management's contractual right to determine "the methods, means, and personnel" by which Postal Service operations are conducted. So long as it does not violate other provisions of the National Agreement in doing so, management has a general right to make those determinations.

Finally National Arbitrator Carlton Snow summed it up best in his award on

page 20 and 21:

One standard of contract interpretation enjoying wide acceptance among arbitrators is the notion that "the expression of one thing is the exclusion of another." As one scholar observed, "Arbitrators follow an interpretive assumption that if parties specifically enumerated a list of items from a class to which a contractual provision is applicable, they meant to cover only the specific items listed and to exclude other items of that class from coverage." (See St. Antoine, The Common Law of the Workplace, 71 (1998).) Courts use the same standard. Almost four decades ago, the eminent contract scholar, Professor Edwin Patterson, stated that, "If one or more specific items are listed, without any general or inclusive terms, other items although similar in kind are excluded." (See 64 Columbia Law Review, 833, 853 (1964); see also Central Hous. Inv. Corp., 248 P.2d 866 (1952).)

Management also argued at Step 2 that “this case is Res Judicata at best based on the similar circumstances from an office in the same region.” With all due respect to Arbitrator Odom, whom I have appeared before many times as an advocate, his award is a Regional Award and is not precedent setting as you well know and does not carry the weight of the previous court, NLRB, and National cases I have cited here today. In fact the Union will provide at the close of the hearing at least two Regional Awards that say the exact opposite of the one Management would have you rely upon.

The Union will provide through testimony today the evidence of the contractual violation which comprises the majority of the moving papers. We will also provide testimony of how Management was using this camera to monitor employee performance.

The Union would respectfully ask after hearing the testimony today and

reviewing the evidence provided that you would sustain the grievance in its entirety by instructing the Postal Service to remove the camera that was placed into the Greenville Mississippi facility improperly and make the Union and or the Clerk craft whole for any adverse action caused by this violation of the Collective Bargaining Agreement.

Thank you,

Billy Woods
National Business Agent
American Postal Workers Union, AFL-CIO