



National Postal Mail Handlers Union

Paul V. Hogrogian
National President

Michael J. Hora
National Secretary-Treasurer

June Harris
Vice President
Central Region

John A. Gibson
Vice President
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David E. Wilkin
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Northeastern Region

Lawrence B. Sapp
Vice President
Southern Region

Don J. Sneesby
Vice President
Western Region

April 26, 2021

TO: All Local Presidents
National/Regional CAD

FROM: Paul Hogrogian, National President *PH*
Teresa Harmon, Manager, CAD *TH*

RE: USPS Challenge to National Arbitration Decision on Hatch Act and LWOP is Dismissed;
Arbitration Award is Controlling
(Arbitration Nos. Q15C-4Q-C 17697250 and 18033533)

Back in August 2018, we circulated a copy of the National Arbitration Award issued by Arbitrator Stephen Goldberg on August 6, 2018 in a case concerning the use of Union LWOP for political activities under the National Agreement. The matter was heard in June 2018, briefed in July 2018, and decided in August 2018.

The case was initiated by the APWU, with the NPMHU and the NALC intervening. It was generated by some stark political activity, succinctly described by Arbitrator Goldberg:

[T]he Office of Special Counsel (OSC), which [is a government agency that] has exclusive jurisdiction to investigate and prosecute alleged violations of the Hatch Act, received a complaint submitted by Senator Ron Johnson, Chairman of the U.S. Senate Committee on Homeland Security and Governmental Affairs. One of Chairman Johnson's constituents, a Postal Service employee, had told Chairman Johnson that the Postal Service was incurring unnecessary overtime costs by releasing employees who were members of the National Association of Letter Carriers (NALC) to participate in the AFL-CIO's Labor 2016 Program (Labor 2016).^[1]

¹ [Not surprisingly, these employees were primarily campaigning for Senator Johnson's opponent, former Senator Russ Feingold.]



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OSC investigated Chairman Johnson's complaint, and on July 14, 2017, issued a report of the results of its investigation. ("Report of Hatch Act Investigation: Facilitating Labor Union's Political Activity Through Use of 'Union Official' Leave Without Pay".) OSC found the existence of a practice by which NALC would provide a Postal Service Headquarters Labor Relations executive with a list of carriers NALC had recruited and wanted released to participate in Labor 2016. The Labor Relations executive would disseminate the list to the relevant field offices, which would release the designated carriers on "LWOP – Union Official" leave status.

OSC found that such practices were long-standing, going back several election years. It further found that although these practices were intended to engender goodwill with the Union, they constituted a systemic violation of the Hatch Act, and created an institutional bias in favor of the NALC's endorsed political candidates, a result prohibited by the Hatch Act.

Based on this investigative finding, and on political pressures from Senator Johnson and his supporters, the Postal Service unilaterally issued a Corrective Action Plan, which included changes to the ELM and its regulations on the use of Union LWOP and to the Form 3971. Those changes were made unilaterally, and without any bargaining or even consultation with the major postal unions.

Arbitrator Goldberg easily found that these unilateral changes violated the National Agreement, and ordered that they be rescinded. He also ordered the Postal Service to bargain with the APWU about any changes to Union LWOP. To reach this conclusion, he rejected the USPS claim that the Office of Special Counsel has the authority to demand that USPS make these changes. To the contrary, Goldberg concluded,

The Postal Service argument fails to take into account the limited authority vested in the OSC. As the Unions point out, the OSC does not have the power to determine whether a violation of the Hatch Act has occurred, much less to determine an appropriate remedy for such a violation. OSC is authorized only to investigate allegations of Hatch Act violations, to prosecute alleged violations before the Merit Systems Protection Board, and to issue advisory opinions. It is only the Merit Systems Protection Board which has the authority to determine whether a violation of the Hatch Act has occurred, and if so, to impose an appropriate penalty. An opinion or allegation by OSC of a Hatch Act violation is thus without legal effect, and, contrary to the Postal Service assertion, may be ignored without penalty.

Finally, by making these changes without notice to, or consultation with, APWU, the Postal Service violated the procedural requirements of Article 19, which require notice and consultation prior to making changes that directly relate to wages, hours, and working conditions, and the substantive requirement of Article 19 that any such changes must be not



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inconsistent with the Agreement, and be fair, reasonable, and equitable. I have found the changes to be inconsistent with [Articles 5 and 10.2 of] the [National] Agreement, and as such they cannot be fair, reasonable, and equitable.

With this arbitral victory, bargaining over the changes to Union LWOP submitted by the Postal Service was expected to occur over the subsequent weeks and months back in 2018. Instead, the Postal Service filed a lawsuit in federal district court to vacate the award, and expended pointless resources since early 2019 litigating the matter against the APWU. Last week, however, the Postal Service agreed to dismiss its lawsuit, and to return the relevant ELM provisions and Form 3971 to their previous status.

The aforementioned Senator Ron Johnson of Wisconsin, meanwhile, is considering whether to run for reelection in 2022. As recently described by *The Atlantic* magazine, Ron Johnson “has brought Republicans and Democrats together: They all seem to agree that they want the senator from Wisconsin to run for a third term next year.” Senator Johnson has become a staunch defender of former President Donald Trump, who already is urging the Senator to seek reelection. The Democrats, in turn, consider Johnson to be “villain No. 1 on the Senate map” in 2022. Johnson has been catering to his Trump-centric base, supporting the January 6, 2021 insurrectionists who attacked the U.S. Congress, and alienating Democrats and Independents in a closely divided Wisconsin.

So Wisconsin is likely to be a bellwether state for the elections in 2022. It will be difficult if not impossible to tell whether this arbitration award will affect that election’s outcome, but certainly the union victory may serve to discourage the Postal Service from engaging in unilateral actions that improperly amend its regulations or forms without union input.

Please contact the National Office should you have any questions about this National Arbitration Award or the dismissal of the lawsuit to vacate it. Also, please disseminate this memorandum as you deem appropriate.

Cc: Michael J. Hora, National Secretary-Treasurer
National Executive Board