

REGULAR ARBITRATION

28716

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

Grievant: Class Action

Post Office: Bismarck, ND

Case No: E06N-4E-C 09402571

Union No: 957-179

BEFORE ARBITRATOR Karen H. Jacobs

APPEARANCES

For the U S Postal Service: Nels W. Truelson, Labor Relations Specialist

For the Union: Jason Karnopp, Regional Administrative Assistant

Place of Hearing: Bismarck ND P&DC

Date of Hearing: February 2, 2010

AWARD

The violation of the Joint Statement was determined by the Step B Team, and is reaffirmed by this arbitrator.

The primary responsibility for correcting the violation of the Joint Statement and creating and maintaining a workplace that conforms to the Joint Statement's commitments rests with the Postal Service management at all levels. The specific remedial actions to be taken here are explained on pages 14 and 15, and is intended to limit and control the occasions on which Supervisor Welk has in the past violated the Joint Statement.

Date of Award: March 15, 2010

PANEL Western Area Regular


Karen H. Jacobs
Arbitrator

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ISSUE:

The Step B Team decided that management violated the National Agreement, specifically the Joint Statement on Violence and Behavior in the Workplace.

What is the appropriate remedy?

FACTS:

The Union filed a grievance on October 5, 2009 claiming that management had violated the National Agreement and the Joint Statement on Violence and Behavior in the Workplace (hereinafter the 'Joint Statement'). The grievance at the outset was based on several independent incidents that all involved one supervisor. As the grievance progressed, several other incidents were introduced. After reviewing the grievance, both members of the Step B team agreed in their November 9, 2009 Decision that "Management was in violation of the National Agreement and the Joint Statement" The management representative concluded "that Supervisor Welk is demonstrating behaviors which are the subject of the Joint Statement. What must be determined is the degree of which he is compliant with these principles; and equally important the appropriate remedy if a Manager fails to do so." The Step B team members were not able to reach agreement on an appropriate remedy. The Step B team stated that they had "considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration."

Supervisor Welk has worked for the Postal Service for 37 years. He has been a supervisor in this Bismarck office since 1985, except for about four years in the 90's when he was removed from carrier supervision because of complaints about his treatment of letter carriers, and worked in a different facility.

In 1999, Bismarck had an Intervention, apparently with encouragement if not instigation from a Senator and a Representative from Washington, DC, and based at least in part on complaints about Supervisor Welk and his street supervision.

In 2002, as the result of a grievance, "The Postmaster has removed (Supervisor Welk) from routinely supervising the grievant. The supervisor has been instructed regarding behavior during conversations with draft employees. No further action is warranted." according to the DRT report on that grievance.

The current postmaster at Bismarck started working for the Postal Service in 2002. She is new to her duties at Bismarck having started working at Bismarck in October 2009, after the events grieved here occurred. She had previously been a front line supervisor of letter carriers, and had been postmaster of a smaller facility. She acknowledged she has not had extensive experience in several aspects of Labor Relations, and the grievance process. All the problems that arose in her other offices were resolved at the informal stage of the grievance process.

On November 5, Step B issued its partial decision, partial impasse: They decided management violated the National Agreement and the Joint Statement, but they could not agree upon the remedy. The question of remedy is now before me.

UNION'S POSITION:

The Step B team found that the Joint Statement was violated. Arb. Snow decided in a National Award that the Joint Statement is a part of the National Agreement and can be enforced through the grievance process.

On four occasions in a short period of time four experienced letter carriers were treated by Supervisor Welk in ways that violated the Joint Statement. These are only examples of a long history of Supervisor Welk creating an unnecessarily stressful workplace. This causes a very bad working environment, and interferes with letter carriers doing their jobs.

Supervisor Welk's testimony indicated he had no understanding of what the Step B team said. He blamed the letter carriers for the incidents. He took no responsibility himself. He has made no effort to improve his supervisory practices, as shown by incidents that have occurred since the Step B decision was issued.

The incidents were all in one on one situations, on the street, or during the morning go (for the status of routes for the day) around when everyone is busy and the floor is noisy. So other people have rarely been witnesses to the things complained of.

These problems, Supervisor Welk's attitude and treatment of letter carriers, have gone on for years. In the 90's he was sent to other jobs for 4 years, and did not supervise letter carriers at Bismarck. In 1999, Bismarck had an Intervention as a result of a grievance about Supervisor Welk. In 2002, he was prohibited from supervising one letter carrier who had grieved the way Supervisor Welk treated him.

The Postal Service has taken action to correct Supervisor Welk's behavior in the past. It has not been effective. Supervisor Welk has continued to violate the Joint Statement. He should not be in a position of supervising letter carriers. The Joint Statement can be enforced through the grievance process. Arbitrators and the Federal Courts have recognized the right of arbitrators to issue disciplinary action against a supervisor.

The violation of the National Agreement has already been determined. Supervisor Welk should be removed from his employment, or put in a position where he does not supervisor letter carriers, or a remedy fashioned by the arbitrator.

POSTAL SERVICE'S POSITION:

There was no violation of the Joint Statement.

The Union is conducting a witch hunt. They are out to get Supervisor Welk. But there was no violence, no profanity, no harassment, no threat. The Union could identify no conduct that constitutes a violation of the Joint Statement. What someone thinks or feels about Supervisor Welk is not a violation of the Joint Statement, it is not a subjective thing. "It makes me feel stressed" does not prove a violation. There must be objective conduct that can be proved by admissible evidence. The conduct or behavior must be truly egregious in order to be actionable.

The Union cited events from many years ago, and seemed to rely on a "cumulative guilt." Those events are outside any statute of limitations. "They were resolved, and we hope for the best and move on."

The September 17 incident was nothing more than banter, hardly a violation.

On September 23, describing a letter carrier's job performance as 'piss poor,' as the letter carrier claimed, is not appropriate, and Supervisor Welk denies he said it. But even if he did say it, it is not a basis for this for action against him. He has been told to not use that expression again. The postmaster told him to not describe job performance as 'piss poor' or even as 'embarrassing' but rather to say 'disappointing.' The problem has been resolved. It must be recognized that if a criticism is offered, of course the employee is going to be unhappy.

On October 16, Supervisor Welk had a discussion with Glasser on the street. In management's opinion, it is ok to do an official job discussion (pre-disciplinary interview, day in court) on the street. It is a national issue, and has not been decided. If it is decided that it cannot be done on the street, we won't do it. But that has no relevance to the Joint Statement. It may not be procedurally correct, it may violate the National Agreement, but it is not worth doing anything about. It is not unusual for managers to not know the National Agreement requirements for the discipline process.

The Union criticized Supervisor Welk for getting on Bosch about a change of pace,. The change was over 20% slower than the prior count. That is a very noticeable decline. The slowdown appeared to have been intentional because it was right after Supervisor Welk told the letter carrier he should have taken a shortcut. If a letter carrier intentionally and deliberately slows down, a supervisor should deal with the problem immediately and directly.

The description of the screaming or loud voice incident is not credible. Based on the management representatives long acquaintance with Supervisor Welk, he knows that Welk is not like that. This claim is just part of the Union's concerted effort to 'get' Supervisor Welk.

We in management cannot identify what Supervisor Welk did or what happened that is a violation. It is an impression. For a remedy, the Union wants him to be less aggressive, but they cannot be specific. If we tell Supervisor Welk to be less aggressive, what does that mean?

The Union proposes thrusting Supervisor Welk onto another craft. If they are right in their evaluation of Supervisor Welk, how does that solve the problem.

Management maintains that the arbitrator cannot order disciplinary action against Supervisor Welk because he is not a party to the proceeding before this arbitrator. To so order would violate Supervisor Welk's due process rights.

The appropriate decision is 'no violation, no remedy.' The grievance should be denied.

DECISION:

Ordinarily, in a matter of contract interpretation, the Union has the burden of proving that a violation has occurred and that a remedy should be imposed. Here, both the Union and management Step B representatives agreed there was a violation. Therefore, only the issue of remedy must be addressed.

However, it will be necessary for me to discuss the merits of the violation. There are several reasons. First, management (the labor relations specialist and the current postmaster) denies there was any violation, although they acknowledge the Step B team found one.

The new postmaster testified she did not see anything wrong with Supervisor Welk's behavior. She said she had asked the other supervisors whether they had heard anything inappropriate. They assured her they had not heard Supervisor Welk say or do any of the things he was accused of. This arbitrator believes it is unrealistic to think that, as a brand new postmaster, a supervisor who reports to you is going to criticize a fellow supervisor who also reports to you, regardless what that first supervisor really thinks. That is not thorough investigation, and it is not a credible source.

The second reason to discuss the nature of the violations is in order to determine an appropriate remedy.

Throughout the file and the arbitration, the issue is referred to as a violation of the National Agreement and the Joint Statement. I want to make clear at the outset that there is no claim of violation of any specific provision of the National Agreement outside the Joint Statement.

Arb. Snow in his 1996 National Award (Q90N-4F-C 94024977, 1996) concluded the Joint Statement is a contractual commitment by the parties, the Postal Service and the NALC, and others, and that its terms are incorporated into the National Agreement and can be enforced, under Art. 16, in the grievance process. He did not, however, find that the Joint Statement displaces any procedural requirements or protections of the National Agreement, or general principles of law.

The Joint Statement has become the justification for a policy of 'Zero Tolerance' of any acts or threats of violence by employees under the National Agreement. It is used to argue in grievances and arbitrations for severe discipline of an employee, often removal.

Snow holds that the grievance process under the National Agreement is an appropriate instrument for enforcing the Joint Statement. Ordinarily a grievance is filed after a specific event or action is claimed to be a clear definable violation of explicit rules in the National Agreement or the manuals incorporated in it. An activity, event, or action that would constitute a violation of the Joint Statement may be less definable because the Joint Statement is aimed at preventing a situation from arising, not punishing an activity after it has occurred. It is aimed at creating 'a safe and humane working environment,' avoiding 'an unacceptable level of stress in the workplace', where there is 'no tolerance of harassment, intimidation, threats, or bullying by anyone.' The parties to the Joint Statement "affirm that every employee at every level of the Postal Service should be treated at all times with dignity, respect, and fairness."

The Joint Statement was a response to the 'Royal Oak incident' in 1991 in which 5 people were shot and killed in that postal facility. There were several other outbreaks of violence in Postal Service facilities about that time that are swept into the characterization "Royal Oak" and that led to the term 'going postal' becoming a part of the national vernacular. However, the Joint Statement was not aimed at assuring that that shooter would be disciplined for the shooting. In fact, the shooter was no longer an employee of the Postal Service, so at the time of the shooting he was not subject to the National Agreement. The shooter had previously been disciplined and removed from employment. Further, he killed himself in the incident. The Joint Statement addresses preventing violence from occurring, not just disciplining those who commit acts of violence.

The Joint Statement is a statement of no tolerance of violence, but it is also a commitment to maintain an atmosphere in the workplace that is not likely to lead to violence, where there is respect for and humane treatment of individuals. It is not just a statement that violence will be punished severely, but that behavior is required that creates a workplace environment that will not be conducive to violence. The Joint Statement recognizes all employees have a basic right to a humane working environment. It recognizes there are unacceptable levels of stress.

It establishes a zero tolerance for the outward acts of violence, or threats of violence. But it also commits to enforcing a workplace where dignity, respect, and fairness are basic human rights, and where those who do not respect those rights are not tolerated.'

As I was pondering the issues this case raises, I heard an author being interviewed on NPR about a book on urban violence. He observed, "Violence is not the problem, it is the symptom of the problem." I immediately recognized that was what I think the Joint Statement is about. The Joint Statement is a directive to prevent the underlying problem from developing, and thus to avoid the symptom, violence, that is more readily identifiable concrete evidence of the problem. The gunman at Royal Oak had already been removed from his postal employment. His actions would have subjected him to criminal penalties if he had not shot himself, too; but he would not have

been subject to penalties under the National Agreement. The shooting would meet management's requirement of clear cut proof of unacceptable conduct. However the objectives set forth in the Joint Statement would not have been met.

The Joint Statement acknowledges that 'unacceptable levels of stress' exist. To assess the level of stress, it is appropriate to look briefly first at the background for the specifics of this case, that is, the macro situation.

At this time of these events, and at the present time, the Postal Service is facing tough business conditions. This is due in part to long term, significant changes in the technology of communication (fax, email, etc.) which have led to a decrease in the volume of mail; and in part to the current state of the economy and decline in business activity. Both have led to constriction of the Postal Service, and a general and significant concern with job security.

Management at all levels is seeking ways to deal with the decline in mail volume. The local installation receives directives from district and above, and are faced with meeting new, higher expectations. The postmaster conveys those directives to supervisors, and puts pressure on them to accomplish more with less. Supervisors have to get more productivity from their people, and relay that pressure to them. Frequent changes in routes and procedures add the stress that change generally imposes. Letter carriers are the front line troops. They do not have anyone to whom to pass on these demands and pressures. The letter carrier is required by Art. 16 to follow orders and grieve later. If management will not listen to their concerns informally this grievance process is the only acceptable place they can go.

These macro causes of stress for employees at every level are beyond the ability of the Postal Service to control. How the Postal Service deals with employees within this context is, however, within its control.

So now we look at the events here, and how the Bismarck Post Office (in the person of Supervisor Welk) dealt with employees.

First, let me comment. Do I think anyone involved in this case is going to come into the Bismarck office shooting? No, absolutely not. However, I offer two caveats: First, I have no credentials in psychology. Second, did anyone at Royal Oak think that the man who just got an adverse arbitration award was going to come into the office shooting? I do not think so. (Disclosure: In 2003, I had an arbitration that was about the subsequent investigation of the Royal Oak incident, although not the incident itself.) Further, it is very important to note that "shooting" is the extreme of the behaviors of concern. The Joint Statement is aimed at avoiding all levels of violence and threats of violence. Looking at the discipline issued by managements across the country using the 'zero tolerance' principle makes this clear. The evaluation of management behavior leading to the environment the Joint Statement intends to prevent should be as

encompassing. The Joint Statement is not authorization to maintain maximum stress up to but just short of 'shooting.'

I must offer another aside, not addressed by the parties before me either with evidence or argument. I firmly believe that employees who are treated with respect and dignity are much more likely to do more and better work, to be more concerned about the results of their work, to be cooperative than are employees who are harassed, threatened, demeaned, feel they are not treated fairly. These employees are more likely to be on the defensive, be resentful, be less cooperative, and to spend time on grievances. I believe that supervision is tough, effective supervision is even tougher. Effective supervision requires good 'people skills.' Effective supervision is in management's best interest in terms of productivity, as well as in avoiding grievances like this.

The management representative at the arbitration argued vigorously that the Union has not identified what Supervisor Welk did that violated the contract; that the Union has not shown when Supervisor Welk swore, or when he improperly touched someone, or when he hit someone. He claims the Union did not focus on conduct; this arbitration process is not about how someone thinks or feels about Supervisor Welk, it cannot be subjective. There has to be a factual context of what he did, not that a letter carrier felt stressed.

The management representative has identified the problem, but not recognized it. What he sees as the weakness in the Union's case is exactly the thing that the Joint Statement and the Union states needs to be addressed. How people feel as a result of the way they are treated IS the problem the Joint Statement is addressing. It IS subjective, it IS about how people are made to feel. "We openly acknowledge that in some places or units there is an unacceptable level of *stress* in the workplace." (Joint Statement, paragraph 4, emphasis added) That sentence goes on to prohibit acts of or threats of violence; and it also goes on to equally prohibit harassment, intimidation, threats, or bullying. These latter prohibitions are often subjective in nature. Paragraph 5 "affirm(s) that every employee at every level ... should be treated at all times with dignity, respect, and fairness." By their nature, these things are subjective (and, of course, are subject to tests of reasonableness.) Abuse and intolerance are not justified. "Making the numbers" is not an excuse for the abuse of anyone." These latter violations are identified primarily by the effect on the person receiving the treatment. (I find it very telling that the management representative stated (not admissible testimony) that he was not a very good subordinate. He would not like someone looking over his shoulder telling him each and every thing he should do, and how to do it. He acknowledged he would not react well to such supervision. He should recognize the significance of these subjective factors.

Now I want to discuss the four incidents that are the core of the current grievance

On September 19, 2009, on an all day 3999 observation, Supervisor Welk, when they met up after a series of deliveries, said to Mayer, 'I can walk faster than you can drive down that street delivering mail. (The carrier testified he probably could, because of the number and closeness of single drive up mailboxes.) A few minutes later Supervisor Welk in an angry tone said "if you are going to waste all that time (getting mail into a pouch) you should have loaded all four apartment buildings into your pouch.' The carrier replied he had. Supervisor Welk ignored the response. The carrier was distressed that Supervisor Welk became very critical and confrontational without first finding out what the factual situation was.

Management passes this incident off as "just banter." In the context of a 3999 evaluation, which Supervisor Welk was doing, the comment about being able to 'walk faster' can only be interpreted as criticism, gratuitous negative criticism, since it was made with no suggestion of how to improve, and invalid as reasonably seen by the letter carrier.

Supervisors are uniquely in a position to threaten or intimidate. No employee is oblivious to the fact that a supervisor can issue discipline, so Supervisor Welk's frequent threats of discipline can only be seen as intended to raise the stress level. The supervisor's very presence can lead to a sense that 'you are watching me'. In this context of evaluation, this kind of comment is going to be felt, reasonably, as a criticism. To pass off this comment, made by a supervisor during a 3999, as banter is a superficial analysis at best.

Criticizing a carrier for not sorting mail a certain way, before finding out how the carrier had, in fact, sorted it, especially when, in fact, the carrier had sorted it the "correct" way, is insulting, and shows no respect for the letter carrier, and is a technique calculated for failure as an effective supervisor. For the supervisor to not acknowledge his error in any way (eg, Sorry, or Oh, I'm glad to see you are doing it that way. ...) confirms vindictiveness.

Supervisor Welk denied Geiger time he requested the morning of September 22. The letter carrier had to call in at 3, and got approval for the time from another supervisor. On the morning of September 23, Supervisor Welk approached Geiger at his case and said 'you took double time on that (commercial) mailing. "That's piss poor performance" and then commented, "you are milking the system," and walked away.

Supervisor Welk's written response to this incident was in part for the wrong day and wrong incident.

Everyone agreed 'piss poor' was not appropriate. Supervisor Welk testified he never uses that expression. On weighing the evidence, I find as fact that he did. Management testified they have taken appropriate action. They instructed him to not use that term, but to use 'embarrassing' instead. But after a complaint to that term, they changed the management approved term to 'disappointing.'

That management debated which term, 'piss poor', 'embarrassing', or 'disappointing', to use first thing in the morning to a letter carrier at his case about yesterday's work speaks volumes about the problem management has that the Union complains of. None of the debated descriptions of the letter carrier's job performance, including management's final choice, "disappointing," tells anyone what specifically the letter carrier did that was wrong, or how it could be improved. There was nothing constructive about it. So the reasonable conclusion is that it was just a gratuitous insult intended to be demeaning. It is clear management gave no thought to why Supervisor Welk would insult a letter carrier at the beginning of a day when he should want that letter carrier to go out and get mail delivered and do a good job. There was nothing constructive in the comment; nothing that would lead to better work that day. 'Piss poor performance' and 'milking the system' are not calculated to make that letter carrier feel like going out and doing his best. It leads to resentment, anger, frustration, a lousy attitude toward work, and it violates the Joint Statement.

On the afternoon of October 16, Glasser called in needing 45 minutes to finish deliveries. Supervisor Welk responded in a sarcastic baby voice, "Really, that does not surprise me. Are you walking any faster, and taking all shortcuts?" The next morning, the carrier told Supervisor Welk that he needed an hour and a half of help that day. Supervisor Welk's response was "Be reasonable, you are not even close" whereupon Supervisor Welk walked away. That afternoon, Supervisor Welk, while walking with Glasser, stopped him and said we are going to have a talk here. I counted your paces going up the hill at 104 paces, and coming down you paced yourself. This is an official job talk and if I ever catch you pacing yourself again, you will have your day in court." His face was 10-12 inches away from Glasser's. He also accused the carrier of taking a lunch break on a 'no lunch schedule' because he saw a banana peel and a pop can in the LLV. The carrier was criticized for wasting time for scanning parcels in the LLV before going to do a series of walking deliveries. The carrier was also cited on the Worksheet for time wasting for calling a Union representative.

I accept as fact the letter carrier's description of events. (My assessments of credibility, when made in this Decision, are based on accuracy where ascertainable, such as in dates of events; reasonableness; specificity; consistency with statements made at the time of the incident; as well as demeanor.) Glasser called in, as required, with a problem, and got a tone of voice that is sarcastic, and a response that was a put down. (Such calls from letter carriers are not unusual, and are required for instructions when deliveries cannot be completed within the workday.) What possible value, at 3 pm, is criticizing and harassing the letter carrier about pace and shortcuts, with no specific basis for either criticism. The tone and content of Supervisor Welk's response shows a

lack of respect for the letter carrier or concern with getting the mail delivered. It is unnecessary harassment, and counterproductive to the Postal Service's mission.

The next morning Glasser raises a problem (that is what the morning rounds is for). Supervisor Welk passes it off flippantly, and walks away without dealing with the problem. This is demeaning because it shows no respect for the employee or the mail.

Supervisor Welk was on the street with Glasser that afternoon. Pacing seems to be a big thing with Supervisor Welk. At the hearing, he explained to me in detail how use the watch, and to multiply out the 20 second segment to get the pace per minute. He treats the process as a major objective rather than as one element of job performance. Because two brief segments within a few minutes differed, he threatens discipline. There was no indication in his testimony or in his report of the day that pacing was a recurring problem for this letter carrier. But he interrupted mail delivery to have an official job discussion on the street. Management defends this on the basis that if a carrier is intentionally and deliberately slowing down, the supervisor is correct to deal with the issue immediately. Here the 'intentional' and 'deliberate' required further investigation. But Supervisor Welk threatened discipline.

At this point, I want to note that I was confused by Supervisor Welk's use of the terms 'job discussion' and 'official job discussion.' Based on Supervisor Welk's testimony, and the management representative's argument that lots of supervisors do not know the discipline process very well, I believe Supervisor Welk does not use those terms consistently or accurately. According to the JCAM, a job discussion is to be conducted in private. Despite management's argument that an on the street job discussion is ok, and that it is a national issue, it would be hard to convince me that a supervisor talking angrily to a letter carrier 10 inches or less from the letter carrier's face, on the street (residential or business) is 'in private.' For purposes here, for the supervisor to be in the face of the letter carrier criticizing and threatening him on the street, was not 'in private', and violates this JCAM standard, and is harassing and intimidating and demeaning in ways that violate the Joint Statement. Further, it is not calculated to get the rest of the day's mail delivered effectively, and is very poor public relations for the Postal Service. Further, as a part of a system of progressive discipline, which is to be corrective rather than punitive, the job discussion should focus on correcting the problem. Supervisor Welk goes directly to the punitive side. This leads to resentment, and stress. It also is not very effective to correct behavior, or to get discipline sustained. As to terminology again, I was led to believe that "official job discussion" is used locally for what in the JCAM is "day in court" (and in also referred to in some places as "predisciplinary interview", or "Pre-D", or "investigative interview.") Even at that stage, the purpose is to objectively get information. Supervisor Welk gives every indication that he has his mind made up well in advance of any discussion. This improper procedure adds to improper stress in the workplace.

As to the accusation of an unauthorized lunch break, a banana peel and a pop can in the LLV are not proof. The letter carrier was entitled to a 10 minute break during the day. The explanation that he ate a banana during such a break is reasonable. Inquiry might be appropriate. Accusation with no inquiry is not appropriate, and from a supervisor constitutes a lack of respect, and a threat.

I do not know the requirements concerning or merits of carrying a scanner along when making walking deliveries of parcels. Several carriers testified that they do what Glasser did, and that it was more efficient, and a common practice. Inquiry and conversation about the issue, and clarification and correction if appropriate, should replace the criticism.

Bosch became a letter carrier 10 years ago, after a career in the Navy where he supervised. He seemed to be generally highly thought of at the Bismarck office. On September 30, on an all day 3999, about 2:30, Supervisor Welk asked 'don't you take that shortcut?' pointing to a path. He reports the carrier said he 'usually does, but what about when there is snow?', and tried to discuss the issue. Supervisor Welk stated, "There is no snow today, so I am instructing you to take it." The letter carrier reports a different version: he told Supervisor Welk that he did not take the short cut across someone's lawn, and that he couldn't in the snow. Shortly after that, Supervisor Welk concluded that the carrier's paces had intentionally slowed. He said, "You need to walk your normal paces" and said that if his instruction is not followed; "we will have a day in court when we return to the office." The carriers version was that Supervisor Welk said they'd go back to the office immediately.

I do not know the merits of the shortcut issue. But whichever of the renditions of the facts is accurate, it is clear that Supervisor Welk did not permit any discussion of the issue. By his own statement, he immediately went to giving an order. On the pacing issue, Supervisor Welk's statement said the letter carrier's pace had slowed to 92 after averaging 110 to 112 all day. However, Supervisor Welk's testimony was that he had checked pace 2 or 3 times (2 or 3 20 second segments) that morning, hardly a basis for an all day average. Supervisor Welk did not suggest how he determined which pace was the 'regular' pace or how he determined intent. Further, the management representative assured that there is no set pace requirement, that pace varies in a day, and it is an individual thing. Supervisor Welk resorts immediately to the threat of discipline. A supervisor who has to threaten an employee with 'going back to the office for an official discussion' over a single occurrence of a matter of paces, or a shortcut, does not have an adequate knowledge of supervisory techniques and is violating the rule against intimidation, threat, bullying.

Supervisor Welk's report indicates an 'official job discussion' on the street that day about pacing. As noted above, I was led to believe that at Bismarck an 'official job discussion' is the

JCAM's 'day in court' which should be done in the office, and for which the employee is ordinarily entitled to Union representation.

These four specific incidents occurred within a short period of time. The individual letter carriers and their Union felt were sufficiently inappropriate that they raised them in a grievance. Other similar incidents during the same period of time, and over many years are also documented.

Given the long history, I am confident these four, and the others mentioned are only a sampling that were documented, and that they were not unique or exceptional events. The testimony leads me to conclude that the long series of events, and the level of stress led to sufficient frustration that letter carrier finally felt a need to document these specific examples. The filing of this grievance alone is worthy of note. My observation is that putting together a grievance is a lot of work. Grieving a supervisor's behavior is particularly difficult and inherently carries a concern with and fear of retribution, being labeled a trouble maker, etc. And it is an uphill battle (note management's pooh poohing of the claims even after a Step B decision). Such a grievance would not be initiated lightly. Having read the case file and having listened carefully to the testimony of all the witnesses, and the presentations by the advocates, I do not find any indication that the Union or its members are being frivolous, or that they 'out to get' Supervisor Welk. They have waited a long time to renew their formal objections, although testimony made clear the complained of behavior has continued over the years.

Each individual part of the incidents grieved may not seem to be a terrible monstrous event. It is the continual, wearing nature of the demeaning, insulting, critical and generally unfounded comments showing a lack of respect or concern that creates the unacceptably stressful workplace. The following factors support the Step B Team's conclusion, and my conclusion that the Bismarck post office violated the Joint Statement.

a. The number of letter carriers who had complaints of similar behavior by Supervisor Welk in a short period of time, and their similarity to what had led to corrective action in the past. The carriers who complained included experienced long time employees who have good work records, some are or have been active in the Union, some have not, some have been selected to participate on regional or district task forces.

b. The letter carriers do not going overboard with extreme or exaggerated claims; I hear measured descriptions. One carrier delayed submitting his written statement because he recognized he was very angry, and did not want that anger to distort his statement of the facts. (This moderation leads management to argue 'where's the beef?')

c. There is a very long history of similar complaints concerning this supervisor. Corrective action has been taken in the past, to no avail. Even an Intervention was conducted, apparently because of complaints that were taken to a Senator and Representative. Supervisor Welk was

taken off supervision of letter carriers at Bismarck for a number of years. Later, he was not allowed to supervise a particular carrier. Management argued statute of limitations concerning past events. That evidence goes to notice to management of the problem. The fact that it still exists now goes to the seriousness of the current problem.

d. Management acknowledged that one postmaster at Bismarck left his position at the facility because his management techniques were deemed not appropriate. The Union claims that postmaster had earlier brought Welk back from his four years of other work because that postmaster liked Welk's supervisory style.

e. Last, but far from least, the management representative at Step B agreed the supervisor's behavior constituted a violation of the Joint Statement, but could not agree on the degree, or the remedy.

Having described why I agree with the Step B Team's finding of a violation of the Joint Statement, and concluding that it is a serious and substantial violation, now I discuss remedy.

Sitting Supervisor Welk in front of a computer screen by himself to watch a video, as the postmaster did, may demonstrate some good faith effort on the postmaster's part to take corrective action. But it is not effective or sufficient. Much more significant corrective action has been taken in the past and it has not been effective. The recently appointed postmaster of Bismarck testified she did not see any violation. That is an affirmation of Welk's actions. His mind set when he was told to watch a video would have been that he is going through motions, and he does not need to pay any attention, or to make any change in his behavior.

I am cognizant of limitations on the range of remedies I can impose.

Supervisor Welk was not a party to this arbitration. I cannot impact his job status. Although Arb. Snow notes that arbitrators have flexibility in fashioning a remedy, he does not remove basic due process rights.

More importantly, the responsibility for fulfilling the requirements of the Joint Statement, and the accountability for failing to meet those requirements belongs to the management of the Postal Service, in Bismarck, and on up the administrative line.

Therefore, I order that the postmaster be trained in the theory and practice of effective supervision. Since she acknowledged that she is not very acquainted with the disciplinary process established in the National Agreement with the NALC, I order that she be trained in the administration of discipline, including the concepts of corrective and progressive discipline, under that contract; and trained in the administration of discipline within management ranks.

Since Supervisor Welk has in the past been removed from the facility for 4 years, and has received training before, and has been made aware of poor job performance in the past, to no avail, I am not ordering formal training or a change of location for Supervisor Welk, although I

suggest both. I am not ordering counseling, because to be effective there must be a recognition that a problem exists. Neither Supervisor Welk nor management have that recognition.

Rather, in relation to Supervisor Welk, I order the following:

Supervisor Welk shall do street observation (including 3999s and brief street observations) no more than two times per carrier per calendar year. On those street observations, Supervisor Welk shall say absolutely nothing to the letter carrier, and shall remain at least 15 feet away from the letter carrier during the street observation. Supervisor Welk's activity in relation to the letter carrier on the street will be observation and note taking. Anything Supervisor Welk wants to say to the letter carrier will be said to the letter carrier the next work day, in the post office, in the presence of someone in a supervisory relationship to Supervisor Welk (ie, not a fellow supervisor of customer service) and a Union representative. This is intended to give Supervisor Welk an opportunity to assess the whole observation, determine what is satisfactory or unsatisfactory in that whole context, and have a constructive plan for how to deal with any problem.

Supervisor Welk shall be relieved of 'morning go round' duties unless he is accompanied by, and listened to by someone who is in a supervisory relationship to Supervisor Welk.

Any time Supervisor Welk mentions to a letter carrier anything similar to the things he has referred to as a discussion, a job discussion, or an official job description, or makes a criticism of the person or job performance of any letter carrier, that letter carrier has the right to immediately demand and get Union representation before Supervisor Welk can proceed with the conversation.

Any letter carrier has a right to telephone or communicate by other means with management or the Union any time that these orders are not followed.

In any disciplinary action against any letter carrier that is initiated by, participated in by, or based on reports or statements from Supervisor Welk, the Postal Service shall not object to a copy of this award being made a part of the grievance packet for consideration at all levels.

I have intentionally not included a time limit on these orders. This is for several reasons. First, prior corrective measures did not work. Second, at the time of this arbitration, management did not see anything wrong with the workplace environment Supervisor Welk created for the letter carrier who work for him. Therefore, the order is intended to limit and control the occasions on which Supervisor Welk has violated the Joint Statement.

AWARD:

The violation of the Joint Statement was determined by the Step B Team, and is reaffirmed by this arbitrator.

The primary responsibility for correcting the violation of the Joint Statement and creating and maintaining a workplace that conforms to the Joint Statement's commitments rests with the Postal Service management at all levels. The specific remedial actions to be taken here are explained on pages 14 and 15 above, and are intended to limit and control the occasions on which Supervisor Welk has in the past violated the Joint Statement.

Karen H. Jacobs
Arbitrator