C-30984

Regular Arbitration Panel

In the Matter of the Arbitration	
between	Grievant: Class Action
United States Postal Service	Post Office: Gadsden, AL
and	USPS Case No: G06N-4G-C 13084464
National Association of Letter Carriers, AFL-CIO	NALC Case No: 4M716
	DRT No: 08-262139

Before: Roberta J. Bahakel, J.D., Arbitrator

Appearances:

For the U.S. Postal Service:	Mr. Scott Brimer
For the Union:	Mr. Corey Walton
Place of Hearing:	Gadsden, AL
Date of Hearing:	September 4, 2013
Date of Award:	October 2, 2013
Relevant Contract Provision:	Article 5
Contract Year:	2006 - 2011
Type of Grievance:	Contract

Award Summary:

This grievance was filed when Management terminated the past practice of having a radio playing on the workroom floor. After considering the testimony and evidence presented the grievance is sustained and the letter dated November 9, 2012 terminating the past practice is hereby set aside and the past practice restored.

Roberta J. Bahakel

BACKGROUND

This class action grievance arose when Management terminated a past practice of having a radio playing on the workroom floor at the Gadsden station which had been in existence for approximately forty years. The radio was originally purchased by employees who donated to a "radio fund" and it is these employees who have been entitled to vote as to which station the radio will be tuned. The Union's position is that the employees enjoy having the radio playing and that it has been played at a low volume that is not a distraction. It is Management's position that the radio has been a source of argument between the employees at the station and that while some employees have given statements that indicate that the radio is not an issue, there are other employees that have given statements that the radio is too loud and that it prevents them from concentrating on their work.

Due to the issues over the radio, and realizing that having the radio playing in the station constituted a past practice at the Gadsden station, Management decided that it would explore the option of turning the radio off. In order to comply with the provisions of Article 5, which addresses past practices and the manner in which they may be changed, in September of 2012 Management sent the representatives of each Union involved, the NALC, the APWU and the NRLCA, a letter soliciting their input in regard to the matter of the radio. The APWU and the NRCLA responded to Management in writing, while the NALC gave no written response.

Management then sent each Union a notice setting up a meeting regarding the radio. Management met with the NRLCA representative on October 11, 2012 and with the representatives of the APWU and the NALC on October 12, 2012 in regard to the issue of the radio. After the October meetings, on November 9, 2012, Management mailed the following letter to the representative for each of the Unions:

> "Subject: Past Practice of the Radio Usage on the Workroom Floor
>
> Recently, management solicited your input concerning continuation or elimination of the past practice of playing the radio on the workroom floor. I have considered your written response NRLCA and APWU and verbal response NALC, APWU and NRLCA.

I find that the radio is a distraction on the workroom floor. On many occasions the volume was so loud that it could be heard in the customer lobby. Also, there have been numerous verbal concerns about the type of music played in the Postal Government Facility.

In light of the above, the past practice of playing the radio on the workroom floor shall cease within 14 days of the date of this notice."

This grievance followed.

ISSUE

Did Management violate Article 5 of the National Agreement when they changed the past practice of allowing the radio to be played on the work room floor, and if so what is the proper remedy?

CONTRACT PROVISIONS

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.

JOINT CONTRACT ADMINISTRATION MANUAL (JCAM)
ARTICLE 5

Changing Past Practices that Implement Separate Conditions of Employment.

If the Postal Service seeks to change or terminate a binding past practice implementing conditions of employment concerning areas where the contract is silent, Article 5 prohibits it

from doing so unilaterally without providing the union appropriate notice. Prior to making such a change unilaterally, the Postal Service must provide notice to the union and engage in good faith bargaining over the impact on the bargaining unit. If the parties are unable to agree, the union may grieve the change.

Management changes in such "silent" contracts are generally not considered violations if 1) the company changes owners or bargaining unit, 2) the nature of the business changes or, 3) the practice is no longer efficient or economical. The first of these has rarely arisen in Postal Service cases involving its numerous bargaining units.

A change in local union leadership or the arrival of a new postmaster or supervisor is not, in itself, sufficient justification to change or terminate a binding past practice, as noted in the previous paragraph.

DISCUSSION

I have reviewed the testimony and evidence presented at the hearing and considered the closing arguments of the parties. No issue was raised as to the arbitrability of this matter, therefore it is properly before me for decision.

At the hearing the NRLCA appeared and requested that the issue of turning off the the radio be continued until it could be referred to a tripartite arbitration process which would include the NRLCA and which would allow the NRLCA to have an opportunity to participate in the selection of the arbitrator or the arbitration panel. In support of its position the NRLCA cited the case of *United States Postal Service v. National Postal Letter Carriers' Association, 758 F. Supp. 741 (DC Cir. 1992)* which dealt with a craft jurisdictional dispute at the national level. The situation that existed in that case is far different than the dispute to be resolved here. In this matter the NRLCA representative argues that because it had a prior settlement with Management in regard to the issue of the radio that it should therefore be allowed to intervene in the case. The evidence showed that the NRLCA has not filed a grievance over Management's determination to discontinue the past practice of having the radio on the workroom floor and that it supports

Management's actions. The evidence further showed that the APWU has filed a grievance over the discontinuation of the past practice, which is still pending, but there was no request for intervention into this matter from the APWU.

A review of the settlement dated June 13, 2011 between the NRLCA and Management over this issue shows that it stated as follows:

> "As a result of our discussion on this date it is mutually agreed that the above cited grievance is resolved in accordance with the following:
>
> This issue involves the volume of a radio that is playing on the workroom floor and the volume is loud enough that it disrupts some employees and impacts their performance.
>
> The radio on the workroom floor is not a condition of employment and should not be disruptive to any employee. Management will monitor the volume of the radio and if the volume is at a level that is offensive or disruptive to any employee then the radio will be turned off.
>
> This agreement constitutes a full and complete settlement to this grievance."

The NRLCA's request here that it be allowed to intervene and that the NALC's grievance be referred to a tripartite panel where the NRLCA had the ability to participate in the selection of the arbitrator was denied at the hearing. It is frequently the case that other Unions feel that their contractual rights are affected by a grievance filed by a different Union and they are entitled to intervene in those matters to preserve their position on the issue at hand. The evidence showed that the NRLCA's settlement agreement with Management in Gadsden dealt solely with the volume of the radio. There is no doubt that the NRLCA would have an interest in a grievance regarding whether the workroom radio should be turned on or off, but whether the radio should be turned on or off is not the issue in this grievance. The only issue to be decided here is whether Management followed the provisions of Article 5 of the JCAM, which provisions were agreed to between the Postal Service and the NALC, when it terminated a past practice. Because the issue to be decided here deals solely with whether Management adhered to that negotiated contractual provision for discontinuing a past practice, it is my determination that the NRLCA has no standing to intervene in the NALC's grievance process over this issue, nor would it be entitled to

participate in the selection of an arbitrator to render a decision under the provisions of the NALC's contract.

In regard to the merits of this case, the NALC contends that Management did not comply with the provisions of Article 5 of the JCAM when it terminated the long standing past practice of having a radio playing on the workroom floor. The Union argues that Article 5 requires that Management bargain with the Union over the impact to the bargaining unit before making a unilateral change in an existing past practice and that while Management did meet with the Union, that it was only to get the Union's input and that there was no attempt by Management to bargain, which violates the provisions of Article 5.

Management contends that it followed the requirements of Article 5 of the JCAM and that it notified the Union of its reasons for wanting to change the past practice and asked for its response. In addition it met with the Union and had an open discussion about the radio. Management contends that it met all of the requirements of Article 5 and that the grievance should be denied.

The evidence presented showed that the use of the radio has been an issue at the station for the last several years. In 2011 the NRLCA settled a grievance in regard to the volume of the radio. Also in 2011 Management previously tried to terminate the past practice in regard to the radio and a grievance was filed by the APWU regarding the process used by Management. That grievance was later settled by the parties and the past practice was restored. In 2012 Management again tried to terminate the past practice of having a radio playing on the workroom floor. In September of 2012 Management sent the Union(s) a notice which set out the reasons why it wanted to terminate the past practice. Management then met with the Union(s) in October of 2012 before sending a letter on November 9, 2012 terminating the practice. The representatives from the NALC and the APWU met together with Management on October 12, 2012. The NALC representative's statement regarding that meeting was as follows:

> "During the meeting that Management called for regarding the radio being played on the workroom, Postmaster Bibbs ask my opinion regarding the matter and I gave them to her. During this meeting Postmaster Bibbs never responded to any of my concerns and when I asked her what her side had to bargain with and she

told me that she was just gathering information and would get back to me. Postmaster Bibbs never got back with me at all. The next time I heard from her regarding this matter was in a letter terminating the practice of the radio on the workroom floor."

The APWU representative's statement regarding that same meeting was as follows:

"This is to confirm that I was the APWU representative that met with Tracey Bibbs concerning the practice that allows for the usage of a workroom floor radio. During the meeting I was informed by Postmaster Bibbs that the meeting was to get the Union's position regarding the radio. I gave a full and detailed statement outlining the APWU position that the workroom floor radio should continue to be played. After I completed stating the union position I asked Postmaster Bibbs what Management's position was. She informed me that the purpose of the meeting was to get the Union's point of view.

Postmaster Bibbs, in her facts and contentions, sets out the following in regard to the October 12, 2012 meeting with the Union:

"Meeting Notes

NALC: At the meeting the NALC did not have much to say about the elimination of the past practice of playing the radio on the workroom floor. They stated most of the carriers enjoy the radio, and that he has no comment on the type of music that is being played on the radio. I then discussed several issues. I discussed how customers were standing in line and complaining that they could hear the radio and heard employees discussing football. I discussed that employees would stop working to discuss what was being played on the radio. I also discussed how many employees complained about the type of music that was being played loudly on the workroom floor. This should be a professional atmosphere. One person's choice should not affect everyone."

Management does not dispute that there was an existing past practice in Gadsden whereby a radio was played on the workroom floor. There was also no dispute that Section 5 of the JCAM in regard to Changing Past Practices that Implement Separate Conditions of Employment sets out the procedure that Management was to follow to change or terminate this past practice. There was no allegations by the Union that Management did not give the Union proper notice of its intent to terminate the past practice. That notice was properly given and set out the reasons that Management felt the change in past practice was needed. The dispute between the parties is whether Management engaged in good faith bargaining as required by JCAM Section 5.

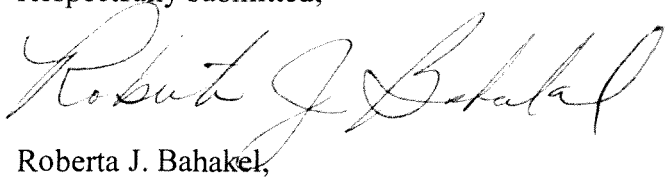
At the hearing Postmaster Bibbs testified that the purpose of the meeting with the Union was so that she could "get his input and make an informed decision". The provisions of Section 5 of the JCAM are clear that Management will not unilaterally change or terminate a past practice without first giving the Union notice and engaging in good faith bargaining over the impact to the bargaining unit. Getting input from the Union so she can make an informed decision is not the same as engaging in good faith bargaining as required by the JCAM. Bargaining involves a give and take between parties. The testimony of the two Union representatives that were present at the October 12, 2012 meeting, along with the testimony of Postmaster Bibbs, indicates that Management was in fact making sure that she got input from each of the Unions before making her decision. This is laudable, but it does not rise to the level of engaging in good faith bargaining as required by the parties agreement and set out in the JCAM. Even if Management discussed her reasons for wanting the change in the past practice as she alleged, there was no give and take that would indicate that the parties had engaged in good faith bargaining. Based on the foregoing, it is my determination that Management did not comply with the provisions of Section 5 of the JCAM when it attempted to terminate the past practice of having a radio playing on the workroom floor, therefore the grievance is due to be sustained.

DECISION

The grievance is sustained and the November 9, 2012 letter rescinding the past practice of playing the radio on the workroom floor is set aside and the past practice is restored.

Done this 2nd day of October, 2013.

Respectfully submitted,



Roberta J. Bahakel,
Arbitrator