



American Postal Workers Union, AFL-CIO

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Article 19 Appeal to Arbitration

Greg Bell, Director
Industrial Relations
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April 13, 2007

VIA FACSIMILE AND REGULAR MAIL

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Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: Revising Section 665 ELM (Reporting Requirements of Sex
Offenders), APWU #: A19G20071

Dear Mr. Tulino:

In accordance with the provisions of Article 19 of the Collective Bargaining Agreement, the APWU appeals to arbitration the above referenced matter.

The issues and facts involved in this dispute are as follows:

By letter dated February 13, 2007, received by the Union on February 15, 2007, the Postal Service notified the Union that it was creating a new section of the ELM, Section 665.17, "*Reporting Requirements for Sex Offenders.*" According to the Postal Service, the revision requires current employees who are required by law to register as a sex offender within any jurisdiction to notify their respective Human Resources office, in writing, of their status within ten (10) calendar days from the date the employee registers.

The Postal Service identified the purpose and effects for this change as:

The language contained in ELM 665.17, Reporting Requirements for Sex Offenders, was established to identify current postal employees required by any jurisdiction to report their status as a sex offender. This language creates the requirement that any postal employee required to register as a sex offender with any governmental entity must notify the appropriate Postal Service management official as described. The purpose of this requirement is to assist the Postal Service in

protecting its brand, the public and its workforce. Each report will be analyzed on a case-by-case basis to determine the appropriate action, if any, to take.

Prior to this change, current employees were not required to inform the Postal Service of a conviction which required them to register in accordance with a law of any jurisdiction.

In addition, the proposed language broadens the specific language of Section 665.16 of the ELM, thus making the proposed language redundant.

The proposed language also fails the fair, reasonable and equitable test of Article 19. By failing to submit any rule, law, regulation, etc. authorizing the notice requirement this language sets, the Postal Service's effort violates the Collective Bargaining Agreement. The proposed language as well as the one paragraph explanation failed to describe the method and means of the administration of the language. Issues such as privacy, just cause protections, etc. were not addressed in the documents provided by the Postal Service.

Furthermore, as you are aware, Article 19 of the National Agreement includes the following obligation and requirement regarding notices of proposed changes to handbooks, manuals or published regulations of the Postal Service that directly relate to wages, hours, and working conditions, as they apply to employees covered by the National Agreement, before such changes can be issued:

The employer will furnish the union with the following information about each proposed change: a narrative explanation of the purpose and the impact on employees, and any documentation concerning the proposed change, from the manager who requested the change, addressing its purpose and effect.

In the instant case the Postal Service has failed to furnish the Union with notification of the proposed change, a narrative explanation of its purpose and impact on employees and any documentation concerning the proposed change from the manager(s) who requested the change addressing its purpose and effect.

It is requested that this information be provided immediately. As you know, the Postal Service is required to furnish this information at least sixty (60) days before it can issue any proposed changes that directly relate to wages, hours or working condition, as they apply to employees covered by the National Agreement.

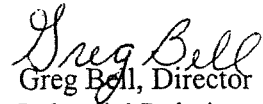
Please be advised that it is the APWU's position that the Postal Service has refused to deal in good faith by its failure and refusal to furnish the APWU with each proposed change in the above-reference handbook, manual, or published regulation(s), and with a narrative explanation of the purpose and impact on employees and any documentation concerning each proposed change from the manager(s) who requested the change addressing its purpose and effect. The Postal Service's action violates the parties' collective bargaining agreement and constitutes an unfair labor practice.

Re: APWU #A19G20071
April 13, 2007
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Article 19 provides that within fifteen days after an issue has been submitted to arbitration, each party shall provide the other with a statement in writing of its understanding of the precise issues involved, and the facts giving rise to such issues.

Please direct your statement of issues and facts to contact Gary Kloepper, case officer.

Sincerely,

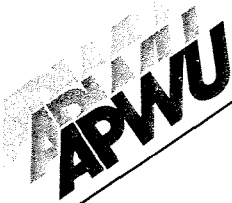

Greg Bell, Director
Industrial Relations

Appeal Date: 4/13/2007

Case Officer: Gary Kloepper
Contract Article(s): 19

cc: Resident Officers
Industrial Relations

GB/LB



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Gary Kloepper,
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Article 19 - 15 Day Statement of Issues and Facts

June 8, 2007

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
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Washington, D.C. 20260

National Executive Board

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Elizabeth "Liz" Powell
Northeast Region

William E. "Bill" Sullivan
Southern Region

Omar M. Gonzalez
Western Region

Re: Proposed Revisions to ELM Section 665 (Reporting Requirements for Sex Offenders), APWU No.A19G20071, USPS No. Q06C4QC07141697, Cert. No. 70022410000247622953

Dear Mr. Tulino:

The above referenced case was appealed to arbitration on 4/13/2007 in accordance with Article 19 of the Collective Bargaining Agreement. Article 19 provides that within fifteen days after an issue has been submitted to arbitration, each party shall provide the other with a statement in writing of its understanding of the precise issues involved, and the facts giving rise to such issues. The parties have agreed to extend time limits for the purpose of achieving full discussion on the issue and for the submission of the 15-Day Statement of Issues and Facts. In addition, the parties agreed that the deadline for the submission of 15-Day Statements would be no later than the close of business on June 11, 2007.

The following is the APWU's statement of issues and facts concerning this case.

The issue in this case involves the Postal Service's implementation of a new section of the ELM, Section 665.17, Reporting Requirements for Sex Offenders, that requires current employees to self-report on off-duty conduct to management. The Postal Service, in its notice to the Union, stated that the revision requires current employees, who are required by law to register as sex offenders within any jurisdiction, to notify management in writing of their status as a sex offender. It identified that purpose and effect of this change as:

The language contained in ELM, Section 665.17, Reporting Requirements for Sex Offenders was established to identify current postal employees required by any jurisdiction to report their status

as a sex offender. This language creates the requirement that any postal employee required to register as a sex offender with any governmental entity must notify the appropriate Postal Service management official as described. The purpose of this requirement is to assist the Postal Service in protecting its brand, the public and its workforce. Each report will be analyzed on a case-by-case basis to determine the appropriate action, if any, to take.

It is the position of the Union that the new ELM Section 665.17 violates Article 19 in that 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 the Employer shall only have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable.

The position of the Union is, but is not limited to, that the proposed changes conflict with or violate existing postal regulations, law, past practice and the collective bargaining agreement, and are not fair, reasonable, or equitable. Consistent with past practice, arbitral history, law, and the just cause principles and provisions provided for in the collective bargaining agreement, there must be a nexus between an employee's off-duty conduct and their postal position in order to warrant discipline. Section 404(a)(7) of the Postal Reorganization Act authorizes the Postal Service to "*investigate postal offenses and civil matters relating to the Postal Service.*"

It is the Union's position that there is no justification to unilaterally impose the proposed requirement to self-report "off duty" conduct, and that its stated purpose is unsupported by any evidence or the facts. Postal employees already undergo a suitability screening, which includes a background check for all criminal offenses, including sex-related offenses, prior to their employment. The self-reporting requirement is not necessary and is without justification in that a state's public registry of sex offenders is already available and accessible to the Postal Service. In fact, the Postal Service already has the names of postal employees who are on a state's public registry of sex offenders, thereby allowing the Postal Service to exercise its rights on a case-by-case basis to ascertain the suitability of employees for certain positions or continued employment as it relates to their off-duty conduct, without unilaterally imposing a self-reporting requirement. Contrary to Postal Service's assertions that it is undertaking this initiative for the purposes of "protecting its brand, the public and its workforce," the union contends that the self-reporting requirement is intended to serve as a means to discipline or remove from employment employees on a public registry of sex offenders simply for failure to report their off-duty conduct – even though the off-duty conduct would not warrant discipline or removal.

The union further contends that the requirement that employees report to management that they are registered as a sex offender violates the fair, reasonable and equitable standard by, among other things: (1) requiring employees to "self-report" their status as a sex offender even though such information is already available and accessible to the Postal Service; (2) requiring employees to "self-report" to management off-duty conduct that has no nexus to their job or employment; (3) creating a stressful or hostile work environment that may impair an employee's ability to work or work with co-workers; (4) circumventing the principle of just cause and of management's obligation to establish a nexus between any off-duty conduct and an employee's job or employment in order to justify discipline; and (5) providing for the disciplining or removing of an employee for violating the reporting requirement, even though there would be no justification to remove such employee for their off-duty conduct.

Furthermore, we believe that such a requirement may result in threats, intimidation, or harassment of such individuals, including registrants or family members. For example, the federal web site providing data from the various states' sex offender registries provides the following warning: "Any person who uses information contained in or accessed through this Website to threaten, intimidate, or harass any individual, including registrants or family members, or who otherwise misuses this information, may be subject to criminal prosecution or civil liability under federal and/or state law." The Postal Service elected not to provide any similar minimum safeguards or protections (including the accessibility of this information through the Employer) for employees who may be required to report to the Employer under the proposed ELM 665.17. In addition, the new rule contains no language regarding the application of Privacy Act requirements on any "self-report" record(s). The new rule does not identify the method or manner for maintaining and using and record(s) created as a result of an employee's self-reporting.

It is also the position of the Union that making the "self reporting" on current employees retroactive to cover all reportable offenses during the entire span of all current employees' past employment with the Postal Service is not fair, reasonable or equitable. In addition, it may place an employee's job and/or position in jeopardy based on the content of the "self report" rather than actual misconduct. Its action establishes a conflict with the just cause standard of Article 16 of the National Agreement in that each employee that "self reports" will be scrutinized by subjective rather than objective standards by numerous postal managers for which the union and the employee have no knowledge of their prejudices. The application of the rule could also lead to unlawful discrimination against employees who "self report."

During our discussions, the Postal Service stated that it did not rely on any rule, regulation, statute, law, etc. to establish its new "self reporting" requirement. Also during our discussions the Postal Service stated that the new rule was not created as a result of complaints from customers, employees, or the general public. In addition, the Postal Service stated that negative news coverage, if any existed, was not the reason for the rule change.

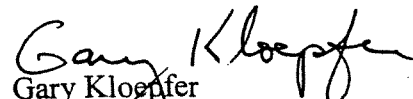
It is also the Union's position that the Postal Service had an obligation to bargain with the APWU over the disputed changes establishing a regulation that requires bargaining unit employees on a state's public registry of sex offenders to report such off-duty conduct to management. We believe that such action and the Postal Service's failure to bargain over the changes constitutes an unfair labor practice.

It is the APWU's position that the disputed provision be rescinded, and that any disciplinary or adverse action taken against any employee be rescinded and all related action(s)/references be removed from the employee's records – and that such employees be made whole, including for compensatory and punitive damages due to or related to the implementation of the disputed self-report requirement.

Due to the possible irreparable harm that the disputed self-report requirement may cause employees and liability to the Postal Service, it is requested that the Postal Service postpone implementation or enforcement of the reporting requirement pending resolution of this dispute. Moreover, it is requested that the parties schedule this dispute to be heard in national-level arbitration for a final and binding decision on the next available date.

Please contact me if you wish to discuss this matter.

Sincerely,


Gary Kloepfer
Case Officer

APWU #: A19G20071
USPS #: Q06C4QC7141697

Appeal Date: 4/13/2007
Contract Articles: 19

cc: Industrial Relations

GK/LB